

**BYLAWS
OF
PINNACLE MUSEUM TOWER ASSOCIATION**

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BYLAWS
OF
PINNACLE MUSEUM TOWER ASSOCIATION

ARTICLE I

OFFICE

The office of this corporation shall be located in the County of San Diego, State of California.

ARTICLE II

DEFINITIONS

Section 2.1. **Declaration.** "Declaration" shall mean and refer to that certain Declaration of Restrictions for The Pinnacle Museum Tower ("Declaration") recorded with the Office of the County Recorder of San Diego County, California (including such amendments thereto as may from time to time be recorded), which requires Owners of Condominiums to be Members of this Association.

Section 2.2. **Other Definitions.** The definitions of terms set forth in the Declaration shall also apply to these Bylaws.

ARTICLE III

VOTING RIGHTS IN ASSOCIATION

The Association shall have two (2) classes of voting membership as set forth in the Declaration.

ARTICLE IV

MEMBERSHIP ASSESSMENTS AND LIEN RIGHTS

The Association shall have the right to impose assessments as set forth in the Declaration.

ARTICLE V

MEMBERSHIP RIGHTS, PRIVILEGES AND PENALTIES

Section 5.1. **Rights of Use.** Members shall have the rights to use the Tower Association Property and the Common Area as set forth in the Declaration.

Section 5.2. **Suspension; Penalties.** The membership rights and privileges, together with the voting rights of any Member of the Association, may be suspended by the Board for the periods set forth in the Declaration. The Board may adopt rules and regulations imposing reasonable monetary penalties for such breach or noncompliance. Should the Board believe grounds may exist for any such suspension or imposition of monetary penalties, the Board shall give to the Member believed to be in violation at least fifteen (15) days' prior written notice of the intended suspension or proposed monetary penalty and the reasons therefor. The

Member shall be given an opportunity to be heard before the Board either orally or in writing not less than five (5) days before the effective date of suspension. The notice required hereby may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first class or registered mail sent to the last address of the Member shown on the Association's records. No suspension shall affect the rights of such Member to access to the Owner's Residential Unit nor the Owner's right to use of any Exclusive Use Area appurtenant to his Residential Unit.

Section 5.3. Adoption of Monetary Penalty; Distribution of Policy to Members. If the Board adopts a policy imposing any monetary penalty, including any fee, on any Member for a violation of the Declaration or the Board's policies, including any monetary penalty relating to the activities of a guest or invitee of a Member, the Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with these Bylaws and the Declaration. The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was previously adopted and distributed to Members.

ARTICLE VI

MEETINGS OF MEMBERS

Section 6.1. Place of Meeting. All meetings of Members shall be held at the Project or at such other location in San Diego County, California, as close to the Project as reasonably possible as may be designated in the notice of meeting.

Section 6.2. Annual Meetings of Members. The first annual meeting of Members shall be held no later than six (6) months after the first close of escrow for the sale of a Condominium to a Retail Purchaser. Subsequent regular annual meetings of the Members shall be held on the date determined by the Board provided that such annual meeting is held during the period commencing on the annual anniversary of the first annual meeting and ending four (4) weeks thereafter. Such meeting shall be held at the time determined by the Board. An election of directors shall be held at the first annual meeting of Members and all positions of director shall be filled at that election.

Written notice of each such annual meeting shall be given to each Member and, to all first Mortgagees who request notice, either personally or by sending a copy of the notice through the mail, first class, registered or certified, or by telegraph, charges prepaid, to his address appearing on the books of the Association or supplied by him to the Association for the purpose of notice. If no address is supplied, notice shall be deemed to have been given to him if mailed to the address of the Condominium owned by such Member or encumbered by the first Mortgagee, or published at least once in some newspaper of general circulation in the county of said principal office. All such notices shall be sent not less than ten (10) days and not more than ninety (90) days before each annual meeting, and shall specify the place, day and hour of such meeting, and those matters which the Board at the time of mailing the notice intends to present for action by the Members; however, except as otherwise provided by law, any proper matter may be presented at the meeting for action. An Eligible Mortgage Holder shall be entitled to designate a representative who shall have the right to attend all meetings of Members.

Section 6.3. Special Meeting. Special meetings of Members, for any purpose or purposes whatsoever, may be called at any time by the president or by a majority of a quorum of the Board, and shall be called by the Board upon receipt of a written request for a special meeting signed by Members representing at least five percent (5%) or more of the total voting power of the Members. Except in special cases where other express provision is made by statute, notice of such special meetings shall be given in the same manner as for annual meetings of Members. Notices of any special meeting shall specify in addition to the place, day and hour of such meeting, the general nature of the business to be transacted.

Section 6.4. Adjourned Meetings and Notice Thereof. Any membership meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of

the voting power present in person or represented by proxy, but in the absence of a quorum no other business may be transacted at any such meeting.

When any membership meeting, either annual or special, is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting other than by an announcement at the meeting at which such adjournment is taken.

Section 6.5. Mortgagee Representation. First Mortgagees shall have the right to attend all membership meetings through a representative designated in writing and delivered to the Board but, except as otherwise provided in the Declaration or Bylaws, the first Mortgagee shall have no voting rights.

Section 6.6. Voting. Voting of the Members may be by voice or by ballot, except that all elections for directors shall be by secret written ballot.

Section 6.7. Quorum. Except as stated in the Articles of the Declaration entitled "COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION" and "DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA OR TOWER ASSOCIATION PROPERTY", or as may otherwise be stated in the Declaration, the Articles or these Bylaws, the presence in person or by proxy of a majority of the voting power entitled to vote at any meeting shall constitute a quorum for the transaction of business. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough voting power to leave less than a quorum. In the event any meeting of Members cannot be held because a quorum is not present, the Members present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time of the original meeting date, at which meeting the quorum requirement shall be twenty-five percent (25%) of the voting power of the membership of the Association; provided, however, if after adjournment a new date is fixed for the adjourned meeting, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings; provided further, that in the event the quorum requirement becomes twenty-five percent (25%) of the voting power of the membership, then the only matters that may be voted upon at any meeting actually attended in person or by proxy by one-third (1/3) or less of the voting power are matters the general nature of which was set forth in the notice of meeting.

Section 6.8. Consent of Absentees. The transactions of any meeting of Members, either annual or special, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum be present either in person or by proxy and if, either before or after the meeting, each of the Members entitled to vote, not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 6.9. Action Without Meeting. Any action which may be taken at a meeting of the Members, except the election of directors by cumulative voting, may be taken without a meeting if done in compliance with the provisions of Section 7513 of the California CORPORATIONS CODE.

Section 6.10. Proxies. Every person entitled to vote or execute consents shall have the right to do so either in person or by a written proxy executed by such person and filed with the secretary of the Association. All proxies shall be revocable and shall automatically terminate upon transfer of title of a Condominium by the Owner. Any such form of proxy or written ballot shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except that a candidate for election to the Board need not be named in a proxy or written ballot. The proxy or written ballot shall provide that, where the Member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it will be valid.

Section 6.11. Parliamentary Procedures. Meetings of the Members shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt.

ARTICLE VII

DIRECTORS

Section 7.1. Number and Qualifications of Directors. The Board will initially consist of three (3) directors. However, the Board shall be increased to five (5) directors as of the first annual meeting of Members and shall thereafter remain a five (5) member Board.

Section 7.2. Election and Term of Office. Declarant shall appoint all three (3) directors to hold office until the first annual meeting of Members. Commencing with the first annual meeting of Members and at each annual meeting thereafter, the directors shall be elected by the Members. Each of the three (3) directors who received the greatest number of votes at the first annual meeting of members shall hold office for a two (2) year term and each of the remaining two (2) directors shall hold office for a one (1) year term. Directors shall be elected at each annual meeting of Members following the first annual meeting of Members to fill the vacancies of those directors whose term then expires, and each director so elected shall hold office for a two (2) year term. Each Member shall have the right to nominate from the floor candidates for the office of director. If any annual meeting is not held or the directors are not elected at an annual meeting, the directors may be elected at any special meeting of Members. All directors shall hold office until their successors are elected. Anything herein stated to the contrary notwithstanding, at the first election of directors by Members and thereafter for so long as a majority of the voting power of Members is held by Declarant, or so long as there are two (2) outstanding classes of membership, no fewer than twenty percent (20%) of the directors (but no fewer than one director) shall be elected solely by the voting power of Members other than Declarant. Furthermore, Declarant shall have the right at its discretion, at any meeting in which directors are being elected, to allow two (2) directors to be elected solely by the voting power of Members other than Declarant.

The directors shall be elected by secret written ballot. No Member shall be entitled to cumulate votes (i.e., cast for any one or more candidates a number of votes greater than the number of votes to which such membership is entitled) unless the candidate's or candidates' names have been placed in nomination prior to the voting and the Member has given notice at the meeting prior to the voting of the Member's intention to cumulate votes. If any one Member has given such notice, then every Member shall have the right to cumulate votes and give one (1) candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which the Member is entitled, or to distribute such Member's votes on the same principle among as many candidates as such Member shall think fit. The candidates receiving the highest number of votes up to the number of directors to be elected shall be elected.

Any director elected to office solely by the votes of Members other than Declarant, as provided above, may be removed from office without cause prior to the expiration of his term only upon the vote of a simple majority of the voting power of Members other than Declarant. Any other director may be removed from office without cause prior to the expiration of his term upon the vote of a simple majority of the voting power of all Members. The foregoing notwithstanding, no individual director may be removed (unless the entire Board is removed) prior to the expiration of such director's term of office if the number of votes cast against removal or not consenting in writing to removal would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast (or, if action is taken by written consent, all voting power entitled to vote were voted) and the entire number of directors authorized at the time of the most recent election of directors were then being elected.

Section 7.3. Vacancies. Vacancies in the Board created by death or resignation may be filled by a majority of the remaining directors, though less than a quorum, and each director so elected shall hold office until a successor is elected at an annual meeting of Members or at a special meeting called for that purpose. Vacancies created by the removal of any director may be filled only by the vote of the membership. The

Members may at any time elect directors to fill any vacancy not filled by the directors, and may elect the additional directors at the meeting at which an amendment of the Bylaws is voted, authorizing an increase in the number of directors. Any election of directors by written consent shall require the consent of a majority of the outstanding voting power entitled to vote; provided, however that no director shall be elected by written consent to fill a vacancy created by removal except by the unanimous written consent of all Members entitled to vote for the election of directors. If any director tenders a resignation from the Board, the Board shall have the power to elect a successor to take office at such time as the resignation shall become effective. No reduction of the number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

Section 7.4. Organization Meeting. Immediately following each annual meeting of Members, the Board shall hold a regular meeting for the purpose of organization, election of officers and the transaction of other business. Notice of such meeting is hereby dispensed with.

Section 7.5. Other Regular Meetings. Regular meetings of the Board shall be held quarterly unless the Board determines by its resolution to hold less or more frequent meetings. Regular Board meetings shall be held at least quarterly after the first annual meeting of Members. Board meetings shall be held at such place and hour within the Project as may be fixed from time to time by resolution of the Board. However, Board meetings may be held outside the Project if the Board determines that a larger meeting room is required, in which case the meeting room selected shall be as close as possible to the Project. Notice of all such regular meetings of the Board shall be posted at a prominent place within the Project and communicated to the directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to the holding of the meeting.

Section 7.6. Special Meetings. Special meetings of the Board for any purpose or purposes shall be called at any time by the president, or by any two (2) directors other than the president.

Written notice of the time and place of special meetings and the nature of any special business to be considered shall be posted in the manner prescribed for notice of regular meetings and shall be sent to all directors by first class mail not less than four (4) days prior to the scheduled time of the meeting, or such notice shall be delivered personally or by telephone or telegraph not less than seventy-two (72) hours prior to the scheduled time of the meeting; provided, however, notice of the meeting need not be given to any director who has signed a waiver of notice or a written consent to the holding of the meeting.

Section 7.7. Compensation and Fees. Neither the directors nor the officers of the Association shall receive any monetary compensation for their services performed in the conduct of the business of the Association unless the monetary compensation is, by vote at a meeting or by written ballot without a meeting pursuant to California CORPORATIONS CODE Section 7513, approved by a majority of the voting power of Members of the Association, other than Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of Members of the Association other than Declarant. Nothing herein contained shall be construed or preclude any director or officer from serving the Association in any other capacity as an agent, employee or otherwise and receiving compensation therefor. Directors and officers of the Association may be reimbursed for expenses incurred in carrying on the business of the Association; provided, however, that no such expenses in excess of \$50.00 during any fiscal year of the Association shall be reimbursed by the Association to any person without the approval of the Board.

Section 7.8. Attendance at Meetings and Executive Sessions. Regular and special meetings of the Board shall be open to all Members. The Board may, with the vote of a majority of its members present at a meeting in which a quorum has been established, adjourn to executive session in which Members of the Association may be excluded, to consider litigation, matters that relate to the formation of contracts with third parties, or personnel matters. The nature of any and all business to be considered in executive session shall first be announced in open session. Any matter discussed in executive session shall be generally noted in the minutes of the Board immediately following the Board meeting open to the entire membership. In any

matter relating to the discipline of a Member, the Board shall meet in executive session if requested by that Member, and the Member shall be entitled to attend the executive session.

The Board shall permit any Member to speak at any meeting of the Members or the Board, except meetings of the Board held in executive session. A reasonable time limit for all Members of the Association to speak to the Board or before a meeting of Members shall be established by the Board.

Section 7.9. Quorum. A majority of the directors shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board.

Section 7.10. Adjournment. A quorum of the directors may adjourn any directors' meeting to meet again at a stated time and hour; provided, however, that in the absence of a quorum, a majority of directors present at the directors' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board.

Section 7.11. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though had at a meeting to be held after regular call and notice if a quorum be present, and if, either before or after the meeting, each of the directors not present signs a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Nothing contained herein shall remove the obligation to post the notice of all directors' meetings on the Common Area or Tower Association Property.

Section 7.12. Entry of Notice. Whenever any director has been absent from any special meeting of the Board, an entry in the minutes to the effect that notice has been duly given shall constitute a rebuttable presumption that due notice of such special meeting was given to such director as required by law and these Bylaws.

Section 7.13. Notice of Adjournment. Notice of any adjournment of any directors' meeting, either regular or special, to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

Section 7.14. Action Without Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board individually or collectively consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. An explanation of the action to be taken or actually taken by the Board shall be given to the Members of the Association within three (3) days after all written consents have been obtained. The explanation shall be given in the same manner as provided in the Section of this Article entitled "Other Regular Meetings" for the giving of notice of regular meetings of the Board. Failure to give such notice shall not render the action to be taken or actually taken invalid.

Section 7.15. Indemnity. The Association shall indemnify any present or former director or officer of the Association to the fullest extent authorized under California CORPORATIONS CODE Section 7237, or any successor statute, and may advance to any such person funds to pay expenses that may be incurred in defending any action or proceeding on receipt of an undertaking by or on behalf of such person to repay such amount unless it is ultimately determined that such person was entitled to be indemnified under this provision.

Section 7.16. Board Minutes to be Available to Members. The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board, other than an executive session, shall be available to Members within thirty (30) days of the meeting. The

minutes, proposed minutes, or summary minutes shall be distributed to any Member upon request and upon reimbursement of the Association's costs in making that distribution.

Members shall be notified in writing at the time that the Association's pro forma budget is distributed or at the time of any general mailing to the entire membership of the Association of their right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

ARTICLE VIII

OFFICERS

Section 8.1. Officers. The officers of the Association shall be a president, a vice president, a secretary and a chief financial officer and such other officers as the Board may from time to time by resolution create. Officers other than the president need not be directors. One (1) person may hold two (2) or more offices.

Section 8.2. Election. The president, vice president, secretary and chief financial officer shall be chosen annually by the Board, and each shall hold his or her office until such officer shall resign, or shall be removed or otherwise disqualified to serve, or a successor shall be elected and qualified.

Section 8.3. Removal and Resignation. Any officer may be removed, either with or without cause, by a majority of the directors in office at the time, at any regular or special meeting of the Board.

Any officer may resign at any time by giving written notice to the Board or the president, or to the secretary of the Association. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 8.4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the Bylaws for regular appointments to such office.

Section 8.5. President. The president shall be the chief executive officer of the Association and shall, subject to the control of the Board, have general supervision, direction and control of the business and officers of the Association. The president shall preside at all meetings of the Members and at all meetings of the Board. The president shall be ex-officio a member of all standing committees, including the executive committee, if any, and shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the Board or by the Bylaws.

Section 8.6. Vice President. In the absence or disability of the president, the vice president shall perform all the duties of the president, and when so acting shall have all powers of and be subject to all the restrictions upon the president. The vice president shall have such other powers and perform such other duties as from time to time may be prescribed for him by the Board or by the Bylaws.

Section 8.7. Secretary. The secretary shall keep, or cause to be kept, a book of minutes at the principal office or such other place as the Board may order of all meetings of directors and Members, with the time and place of holding, whether regular or special and if special how authorized, the notice thereof given, the names of those present at the directors' meetings, the number of memberships present or represented at Members' meetings and the proceedings thereof.

The secretary shall give, or cause to be given, notice of all the meetings of the Members and of the Board required by the Bylaws or by law to be given, and he shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

Section 8.8. Chief Financial Officer. The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus. The books of account shall at all times be open to inspection by any director.

The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board. He or she shall disburse the funds of the Association as may be ordered by the Board, shall render to the president and directors, whenever they request it, an account of all of his or her transactions as chief financial officer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

Section 8.9. Deposits By Property Manager. The Board may designate a professional property management company to collect assessments and make deposits. A separate trust account shall be established for the Association so that the Association's deposits will not be commingled with non-Association funds. Another separate trust account, complying with the requirements of the Article below entitled "OPERATING AND RESERVE ACCOUNTS", shall be established in the name of the Association for the deposit of reserves and the Association shall require its property manager, if one is designated, to deposit reserves in such separate account on at least a monthly basis. In the event the Association authorizes a property manager to collect assessments or make deposits, the Association shall maintain a fidelity bond in an appropriate amount naming the Association as obligee and insuring against loss by reason of the acts of the management agent and its employees. The fidelity bond shall be in an amount equal to not less than three (3) months' aggregate regular assessments (including reserves) by the Association against all Condominiums then subject to assessment.

Section 8.10. Signing Checks, Etc. All checks, notes, leases and deeds of trust of the Association shall be signed by at least two persons who hold offices of this Association, and one such person must be the president or the vice president.

The Board may designate a professional property management company to pay the Association's operating expenses from the non-reserve trust account established pursuant to the Section above entitled "Deposits By Property Manager".

ARTICLE IX

POWERS AND DUTIES OF ASSOCIATION

Subject to the Declaration, the Articles of Incorporation and the California Nonprofit Corporation Law applicable to mutual benefit corporations, the Board shall have the following powers and duties:

Section 9.1. Selection of Officers. To select and remove all officers, agents and employees of the Association, prescribe such powers and duties for them as may not be inconsistent with law, the Declaration, the Articles of Incorporation or these Bylaws, and, subject to the provisions of the Section entitled "Compensation and Fees" of Article VII of these Bylaws, to fix their compensation.

Section 9.2. Management of Business. To conduct, manage and control the affairs and business of the Association, and to make such rules and regulations therefor not inconsistent with law, the Declaration, the Articles of Incorporation or these Bylaws as they deem best, including rules and regulations for the operation of the Common Area and Tower Association Property and the facilities owned or controlled by the Association.

Section 9.3. Borrowing of Money. To borrow money and incur indebtedness for the purposes of the Association, and to cause to be executed and delivered therefor, in the corporate name, promissory notes or other evidences of debt and, with the vote or written assent of two-thirds (2/3) of the voting power of

each class of Members of the Association, to (a) hypothecate, mortgage, pledge or deed in trust any or all of the real or personal property owned by the Association as real security for money borrowed or debts incurred, and (b) sell any real or personal property owned by the Association. After conversion of the Class B membership to Class A membership, the action herein requiring membership approval shall require the vote or written consent of (i) two-thirds (2/3) of the voting power of Members of the Association, and (ii) two-thirds (2/3) or more of the voting power of Members of the Association other than Declarant.

Section 9.4. Insurance. To contract and pay for fire, casualty, liability, fidelity bonds and other insurance as required by the Declaration and such other insurance as the Board deems to be appropriate.

Section 9.5. Payment of Common Area and Tower Association Property Utilities. To pay all charges for water, electricity, gas, CATV and other utility services for the Common Area and Tower Association Property and, to the extent not separately metered or charged, for each Residential Unit, Exclusive Use Area and Limited Exclusive Use Area.

Section 9.6. Management of Common Area and Tower Association Property. To manage, operate, maintain and repair the Common Area and Tower Association Property and all improvements located thereon, including the parking and drainage facilities and the restoration and replacement of any or all of the buildings, structures and improvements which are part of the Common Area or Tower Association Property at any time and from time to time as the Board may determine desirable or necessary; and to make capital expenditures for and on behalf of the Association; provided, however, unless the Declaration allows otherwise, the Board shall not incur aggregate expenditures for capital improvements in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year unless the capital expenditure is, by vote at a meeting or by written ballot without a meeting pursuant to California CORPORATIONS CODE Section 7513, approved by a majority of the voting power of Members of the Association, other than Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of the Members of the Association other than Declarant.

Section 9.7. Right to Enter. To enter onto any Residential Unit, Commercial Unit and Exclusive Use Area subject to the limitations set forth in the Declaration.

Section 9.8. Right to Enforce. To enforce the provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association, the rules and regulations adopted by the Board and the provisions of any agreement to which the Association is a party.

Section 9.9. Right to Contract. To contract and pay for goods and services relating to the Common Area and Tower Association Property, and to employ personnel necessary for the operation and maintenance of the same, including legal and accounting services. Anything herein to the contrary notwithstanding:

(a) The term of any contract with a third person for supplying goods or services to the Common Area or Tower Association Property or for the Association shall not exceed a term of one (1) year unless a longer term is, by vote at a meeting or by written ballot without a meeting pursuant to California CORPORATIONS CODE Section 7513, approved by a majority of the voting power of Members of the Association, other than Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of Members of the Association other than Declarant, with the following exceptions:

(i) A contract with the public utility company for materials or services the rates for which are regulated by the Public Utilities Commission may exceed a term of one (1) year so long as it does not exceed the shortest term for which the public utility will contract at the regulated rate;

(ii) A contract for prepaid casualty and/or liability insurance policies may be for a term of not to exceed three (3) years, provided that the policy permits short rate cancellation by the Association;

(iii) Agreements for cable television services and equipment or satellite dish television services and equipment, where the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more may exceed a term of one (1) year but may not exceed a term of five (5) years;

(iv) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services, where the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more may exceed a term of one (1) year but may not exceed a term of five (5) years; and

(v) Contracts with a term not to exceed three (3) years which are terminable by the Association without cause, penalty or other obligation after one (1) year upon ninety (90) days' written notice of termination given by the Association to the other party.

(b) Any agreement for management of the Project and any other contract providing for services by Declarant shall be terminable for cause upon thirty (30) days' written notice, and without cause or payment of a termination fee upon not more than ninety (90) days' written notice. Such agreements shall be renewable with the consent of the Board and the management agent.

(c) The Board shall not terminate professional management of the Project and assume self-management except in accordance with the Section of the Declaration entitled "Approval of First Mortgagees".

(d) No contract with the Association negotiated by Declarant shall exceed a term of one (1) year except as may otherwise be provided in this Section 9.9.

Section 9.10. Payment of Taxes on Common Area or Tower Association Property. To pay any taxes and governmental special assessments which are or could become a lien on the Common Area or Tower Association Property or any portion thereof.

Section 9.11. Adoption of Rules. To adopt reasonable rules not inconsistent with the provisions contained in the Declaration, and to amend the same from time to time relating to the use of the Common Area and Tower Association Property and the facilities located thereon.

Section 9.12. Right of Discipline. To suspend the voting rights and right to use the recreational facilities located on the Common Area and Tower Association Property of a Member who is in default in the payment of any assessment, as provided in Article V of these Bylaws.

Section 9.13. Preparation of Budgets and Financial Statements. To prepare budgets and financial statements for the Association as provided in these Bylaws.

Section 9.14. Notification to Mortgagee. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Condominium number or address, any Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a first Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable.

(b) Any delinquency in the payment of assessments or other default by an Owner of a Condominium subject to a first Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as required in these Bylaws or in the Declaration.

Section 9.15. Litigation.

(a) CODE OF CIVIL PROCEDURE Section 383. Pursuant to Section 383 of the CODE OF CIVIL PROCEDURE, the Association shall have standing to institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings in its own name as the real party in interest and without joining with it the individual Owners, in matters pertaining to the following:

- (i) Enforcement of the Declaration and related governing documents;
- (ii) Damage to the Common Area or Tower Association Property;
- (iii) Damage to improvements to the Residential Units or Commercial Units which the Association is obligated to maintain or repair, if any; and
- (iv) Damage to improvements to Residential Units or Commercial Units which arises out of, or is integrally related to, damage to the Common Area or Tower Association Property.

(b) CIVIL CODE Section 1368.4. Pursuant to CIVIL CODE Section 1368.4:

(i) Not later than thirty (30) days prior to the filing of any civil action by the Association against Declarant or other developer of the Project for: alleged damage to the Common Area or Tower Association Property which the Association is obligated to maintain or repair; or alleged damage to any residence within a Residential Unit which arises out of, or is integrally related to, damage to the Common Area or Tower Association Property (which the Association is obligated to maintain or repair), the Board of Directors shall provide written notice to each Member of the Association. This notice shall specify all of the following:

- (A) That a meeting will take place to discuss problems that may lead to the filing of a civil action;
- (B) The options, including civil actions, that are available to address the problems; and
- (C) The time and place of this meeting.

(ii) Notwithstanding Subsection (i) above, if the Board has reason to believe that the applicable statute of limitations will expire before the Association files the civil action, the Association may give the notice, as described above, within thirty (30) days after the filing of the action.

(c) CIVIL CODE Section 1354. The Association shall comply with CIVIL CODE Section 1354, which, in brief summary and in part, provides as follows:

(i) Unless the applicable time limitation for commencing the action would expire within one hundred twenty (120) days prior to filing a civil action by the Association or Owner, the Association and Owners shall endeavor to submit their disputes to a form of alternative dispute resolution, such as mediation or arbitration, with respect to claims for injunction, declaratory relief or monetary damages of \$5,000 or less.

(ii) Any party to such a dispute may initiate the process by serving on another party to the dispute a Request for Resolution, as described in CIVIL CODE Section 1354.

(iii) The Association shall annually provide a summary of the provisions of CIVIL CODE Section 1354, which specifically references that Section. The summary shall include the following language:

"Failure by any member of the association to comply with the prefiling requirements of Section 1354 of the CIVIL CODE may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents."

The summary shall be provided either at the time the pro forma budget is distributed as required by Section 1365 of the CIVIL CODE or in the manner specified in Section 5016 of the CORPORATIONS CODE.

(d) Civil Code Section 1366.3. The Association shall comply with CIVIL CODE Section 1366.3 which, in part, provides that assessment collection proceedings continue to be exempt from the alternative dispute resolution requirements of CIVIL CODE Section 1354, unless the Member elects to follow the dispute resolution procedure established by CIVIL CODE Section 1366.3. CIVIL CODE Section 1366.3 requires the Association to notify a Member that an assessment collection dispute may be resolved through alternative dispute resolution as provided in CIVIL CODE Section 1354, by civil action, or by any other procedure available to the Association to resolve collection disputes if:

(i) The Member pays the Association the amount in dispute, late charges, interest and all fees and costs associated with the preparation and filing of the notice of delinquent assessment, including all mailing costs and attorney's fees not to exceed \$425.00; and

(ii) The Member notifies the Association in writing by certified mail not more than thirty (30) days following recordation of a notice of delinquent assessment that the assessment payment is made under penalty of protest.

CIVIL CODE Section 1366.3 sets forth other limitations and requirements.

(e) CIVIL CODE Section 1375. The Association shall comply with CIVIL CODE Section 1375 which is a complex statute which sets forth various requirements pertaining to claims for defects in design or construction of the project, including requirements which must be met before such a claim is filed. Some of the matters covered by CIVIL CODE Section 1375 include the following:

(i) A requirement of written notice before an action is commenced.

(ii) Listing defects.

(iii) Surveying or questioning Owners regarding the nature and extent of defects.

(iv) Meetings, settlement attempts and alternative dispute resolution between the Declarant and the Board.

- (v) Possible tolling of statutes of limitations and cancellation of such tolling.
- (vi) Inspection and testing and making available the results of the inspections and tests.
- (vii) Notice to insurers of meetings between the Declarant and the Board.
- (viii) Procedures for a settlement offer.
- (ix) Procedures for various notices to the Owners and for holding a meeting of the Owners if the Association rejects a settlement offer.
- (x) Possible excuse from compliance with CIVIL CODE Section 1368.4.
- (xi) Provisions which allow for a special meeting of the Members of the Association if requested by five percent (5%) of the Members.
- (xii) Certain remedies for failure to comply with CIVIL CODE Section 1375.

Section 9.16. Right to Delegate. To delegate any of its powers hereunder to others, including committees, officers and employees.

Section 9.17. Right to Sell. As permitted in the Declaration, to sell the Project for the benefit of all of the Owners and their Mortgagees, as their interests may then appear, at such price and upon such terms as the Board may determine reasonable; provided, however, the Board shall not sell in any fiscal year Tower Association Property having an aggregate fair market value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year unless the sale is, by vote at a meeting or by written ballot without a meeting pursuant to California CORPORATIONS CODE Section 7513, approved by a majority of the voting power of Members of the Association, other than Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of Members of the Association other than Declarant.

Section 9.18. Availability of Documentation. To make available to any prospective purchaser of a Condominium, any Owner of a Condominium, any first Mortgagee, and the holders, insurers and guarantors of a first Mortgage on any Condominium, or any of their duly appointed representatives, current copies of the Declaration, the Articles of Incorporation, the Bylaws, rules governing the Condominium and all other books, records and financial statements of the Association, including, but not limited to, the membership register, mailing addresses and telephone numbers of Members, books of account and minutes of meetings of the Members, the Board and committees. "Available" as used in this Section shall mean available for inspection upon request at least during normal business hours or under other reasonable circumstances.

Section 9.19. Availability of Minutes. In the case of minutes of the Board, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board, other than executive session, shall be available to Members upon request and payment of the fee incurred for reproducing copies.

Section 9.20. Right to Permit Use of Common Area and Tower Association Property. To permit utility suppliers to use portions of the Common Area or Tower Association Property reasonably necessary to the on-going development or operation of the Project. So long as Class B membership remains in existence, the Board shall at Declarant's request, grant to utility suppliers reasonable easements and licenses over, under, upon and across the Common Area and Tower Association Property for the installation and maintenance of utility systems within the Project.

Section 9.21. Authorization to Contract. To authorize any officer or officers or agent or agents to enter into any contract or execute any instrument in the name and on behalf of the Association. Such authority may be general or confined to specific instances, and unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 9.22. Duty to Make Records Available for Inspection. To keep in its principal office for the transaction of business or at such place within the Project as the Board shall prescribe, the original or a copy of the Bylaws as amended or otherwise altered to date, certified by the secretary, a membership register (including mailing addresses and telephone numbers), books of accounts and copies of minutes of all membership, board and committee meetings, all of which shall be made available for inspection and copying by any Member of the Association, or by any Member's duly appointed representative and by all first Mortgagees, at any reasonable time and for a purpose reasonably related to his interest as a Member or Mortgagee. The Board shall establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of the records by the Member or Mortgagee desiring to make the inspection;
- (b) Hours and days of the week when such an inspection may be made; and
- (c) Payment of the costs of reproducing copies of documents requested.

Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and all physical property owned or controlled by the Association. The right of inspection by a director shall include the right at his expense to make extracts and copies of documents.

Section 9.23. Common Area Licenses. To grant irrevocable licenses for Owners to exclusively use portions of the Common Area adjoining the Owners' Residential Units provided that the granting of such licenses would not materially and adversely affect any Owner's use of the Common Area.

Section 9.24. Tower Association Property. To grant easements for Owners to exclusively use portions of the Tower Association Property adjoining the Owners' Residential Units provided that the granting of such easements would not materially and adversely affect any Owner's use of the Tower Association Property.

Section 9.25. Financial Statements. The Board shall do the following:

(a) **Annual Reports.** Annual reports consisting of the following shall be distributed within one hundred twenty (120) days after close of the Association's fiscal year:

- (i) a balance sheet as of the end of the fiscal year;
- (ii) an operating (income) statement for the fiscal year;
- (iii) a statement of changes in financial position for the fiscal year;
- (iv) a statement of the place where the names and addresses of the current Members are located;
- (v) any information required to be reported under Section 8322 of the California CORPORATIONS CODE;

(vi) for any fiscal year in which the gross income to the Association exceeds \$75,000.00, a copy of a review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.

(b) Independent Accountant. The annual report referred to in Subsection (a) above shall be prepared by an independent accountant.

(c) Annual Budgets. The Board shall cause a pro forma operating statement (budget) for the Association to be prepared for the second and each subsequent fiscal year of the Association, a copy of which shall be distributed personally or by mail to each of the Members not fewer than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year to which the budget relates. The budget shall include the following information:

(i) The estimated revenue and expenses of the Association on an accrual basis for the next fiscal year.

(ii) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to the Section of these Bylaws entitled "**Reserve Study**", which shall be printed in bold type and include all of the following:

(A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component in the Common Area or the Tower Association Property.

(B) As of the end of the fiscal year for which the study is prepared:

(1) The current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain the major components of the Common Area and the Tower Association Property;

(2) The current amount of the accumulated cash reserves actually set aside to repair, replace, restore or maintain the major components of the Common Area and the Tower Association Property; and

(3) The percentage of the amount determined pursuant to clause (2) above of the amount determined pursuant to clause (1) above.

(iii) A statement as to whether the Board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor.

(iv) A general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the future costs of repair, replacement or additions to major components of the Common Area and Tower Association Property for which the Association is responsible.

(d) Budget Summary. In lieu of distributing the budget, the Board may at its election distribute a summary of the budget along with a written notice (in at least 10 point bold type on the front page of the summary) that the budget is available at the business office of the Association or at another suitable location within the boundaries of the Project, and that copies will be provided upon request and at the expense of the Association. If any Member requests a copy of the budget to be mailed to the Member, the Association shall provide the copy to the Member by first-class United States mail at the expense of the Association and delivered within five (5) days.

(e) Notice of Right to Have Copies of Minutes. At the time the budget is distributed or at the time of any general mailing, Members shall be notified in writing of their right to have copies of the minutes of meetings of the Board and as to how and where those minutes may be obtained and the cost of obtaining such copies.

Section 9.26. Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the thirty-first (31st) day of December of each year, except that the first fiscal year shall begin on the date of incorporation of the Association. However, the fiscal year of the Association is subject to change from time to time as the Board shall determine.

Section 9.27. Checks. To cause to be issued checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, in the name of or payable to the Association, which shall be signed or endorsed by the president or vice president and another officer of the Association unless otherwise authorized by the Board or by these Bylaws.

Section 9.28. Audited Financial Statement. If the Project contains fifty (50) or more Condominiums, any holder, insurer or governmental guarantor of a first Mortgage shall be entitled, upon submission of a written request, to an audited financial statement for the immediately preceding fiscal year (if the Project has been established for a full fiscal year), free of charge to the party so requesting it. The audited financial statement shall be made available within one hundred twenty (120) days of the Association's fiscal year-end. If the Project contains less than fifty (50) Condominiums, the first Mortgagee shall be entitled to have such audited financial statement prepared at its expense if one is not otherwise available.

Section 9.29. Corporations Code. Except as specifically limited by this Article, the Association shall have all the powers granted to a nonprofit mutual benefit corporation as enumerated in Section 7140 of the CORPORATIONS CODE.

Section 9.30. Statement of Association's Assessment and Collection Policies. The Board shall comply with CIVIL CODE Section 1365.1 and distribute a statement of the Association's policies and practices in enforcing its remedies against Members for default in the payment of regular and special assessments to each Member during the sixty (60) day period immediately preceding the beginning of each fiscal year. The required form and content of said notice is expressly set forth in CIVIL CODE Section 1365.1, and includes information on the Association's foreclosure rights, the requirements set forth in CIVIL CODE Section 1367.1 for collecting delinquent assessments (see also Section 4.14 of the Declaration) and the delinquent Member's rights in connection with the collection process.

Section 9.31. Distribution to Members of Information About Insurance. The Board shall comply with CIVIL CODE Section 1365(e) and distribute to the Members information about the Association's insurance policies. CIVIL CODE Section 1365(e) requires, among other matters, that the Association give its Members a summary of insurance policies within sixty (60) days preceding the beginning of the Association's fiscal year and notice by first class mail, as soon as reasonably practical, if any of the policies have lapsed, been canceled and are not immediately renewed, restored or replaced or if there is a significant change, such as a reduction in coverage or limits or increase in the deductible for any policies. CIVIL CODE Section 1365(e) also requires immediate notice be given if the Association receives any notice of nonrenewal of a policy if replacement coverage will not be in effect by the date the existing coverage will lapse. CIVIL CODE Section 1365(e) sets forth various details as to the forms of notice, language which must be included in the notice, the size of type, etc.

ARTICLE X

OPERATING AND RESERVE ACCOUNTS

Section 10.1. Definitions. As used in this Article:

(a) **"Reserve accounts"** means moneys that the Board has identified for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain.

(b) **"Reserve account requirements"** means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.

Section 10.2. Reviews. The Board shall do the following:

(a) Review a current reconciliation of the Association's operating accounts on at least a quarterly basis.

(b) Review a current reconciliation of the Association's reserve accounts on at least a quarterly basis.

(c) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget.

(d) Review the latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts.

(e) Review an income and expense statement for the Association's operating and reserve accounts on at least a quarterly basis.

Section 10.3. Signatures on Checks. The signatures of at least (i) two directors or (ii) one officer who is not a director and the signature of a director shall be required for the withdrawal of moneys from the Association's reserve accounts.

Section 10.4. Limitation on Expenditure of Reserve Funds.

(a) Except as provided in **Subsection 10.4(b)** below, the Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement or maintenance of, or litigation involving the repair, replacement or maintenance of, major components which the Association is obligated to repair, restore, replace or maintain and for which the reserve fund was established.

(b) The Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash flow requirements or other expenses, provided the Board has made written findings, included in the Board's minutes, explaining the reasons the transfer is needed and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the project, temporarily delay the restoration. The Board shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this Subsection. A special assessment made by the Board pursuant to this Subsection is subject to the limitations imposed by Section 1366 of the California CIVIL CODE. The Board may extend the date the payment of the special assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

(c) In the event the Board decides to use reserve funds or to temporarily transfer money from the reserve funds to pay for litigation, the Board shall notify the Members of the decision in the next available mailing to Members pursuant to Section 5016 of the California CORPORATIONS CODE and of the availability of an accounting of those expenses. The Board shall provide an accounting of expenses

related to the litigation at least quarterly and shall make the accounting available for inspection by Members at the office of the Association.

Section 10.5. Reserve Study. Pursuant to CIVIL CODE Section 1365.5(e), at least once every three (3) years the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated to repair, replace or maintain as part of a study of the reserve account requirements of the project to be conducted if the current replacement value of the major components which the Association is obligated to repair, replace, restore, or maintain is equal to or greater than one-half of the gross budget of the Association for any fiscal year which excludes the Association's reserve account for that period. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.

The study required by this Section shall at a minimum include:

- (a) Identification of the major components which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years.
- (b) Identification of the probable remaining useful life of the components identified in **Subsection 10.5(a)** as of the date of the study.
- (c) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in **Subsection 10.5(a)** during and at the end of its useful life.
- (d) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

ARTICLE XI

AMENDMENT

Section 11.1. Prior to Escrow Closings. Prior to the date escrow closes for any sale of a Condominium to an Owner, these Bylaws may be unilaterally amended by Declarant.

Section 11.2. After Escrow Closings. The following provisions shall apply after the close of the first escrow for a sale of a Condominium to an Owner. During the period of time prior to conversion of the Class B membership in the Association to Class A membership, new Bylaws may be adopted or these Bylaws may be amended or repealed by the vote of the Members entitled to exercise a majority or more of the voting power of each class of Members of the Association or by the written assent of such Members. After conversion of the Class B membership to Class A membership, these Bylaws may be amended or repealed by the vote of (i) Members entitled to exercise a majority of the voting power of the Association, and (ii) at least a majority of the voting power of Members of the Association other than Declarant. **Section 7.2** shall not be amended without the prior written consent of Declarant. Anything herein stated to the contrary notwithstanding, no material amendment to the Bylaws shall be made without the prior written approval of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%) or more of the Condominiums. "Material amendment" shall mean, for purposes of this **Article XI**, any amendments to provisions of these Bylaws governing any of the following subjects:

- (a) Voting rights.

(b) Assessment liens and the priority of assessment liens and the right of Eligible Mortgage Holders to approve increases in regular assessments of in aggregate more than twenty-five percent (25%) during any fiscal year from the regular assessments assessed during the previous fiscal year.

(c) The right of Eligible Mortgage Holders to approve reductions in reserves for maintenance, repair and replacement of the Tower Association Property and the Common Area.

(d) Responsibility for maintenance and repairs.

(e) Reallocation of interests in the Common Area and Tower Association Property (including Exclusive Use Area and Limited Exclusive Use Area) or rights to its use.

(f) Redefinition of Residential Unit boundaries.

(g) Convertibility of Residential Units into Common Area or Tower Association Property and vice versa.

(h) Hazard or fidelity Insurance requirements.

(i) Imposition of any restrictions on the leasing of Condominiums.

(j) Imposition of any right of first refusal or similar restriction on the right of a Condominium Owner to sell, transfer or otherwise convey the Owner's Condominium.

(k) The Section above entitled "Right to Contract".

(l) Restoration or repair of the Project (after damage or partial condemnation) in a manner other than specified in the Declaration.

(m) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs.

(n) Any provision which, by its terms, is specifically for the benefit of the first Mortgagees, or specifically confers rights on first Mortgagees.

An Eligible Mortgage Holder who receives a written request to approve amendments (including additions) who does not deliver or mail to the requesting party a negative response within thirty (30) days, shall be deemed to have approved such request provided that such written request was delivered by certified mail or registered mail, with "return receipt" requested.

The percentage of voting power necessary to amend a specific clause or provision of these Bylaws shall not be less than any percentage of affirmative votes prescribed for action to be taken under that clause.

ARTICLE XII

VOTING BY DECLARANT

Prior to conversion of the Class B membership in the Association to Class A membership, any procedure, action or matter for which the Bylaws require the approval of a prescribed majority of the voting power of Members of the Association other than Declarant shall require the vote or written assent of (i) a bare majority of the Class B voting power, and (ii) the prescribed majority of the Class A voting power. After conversion of the Class B membership in the Association to Class A membership, any procedure, action or

matter for which the Bylaws require the approval of a prescribed majority of the voting power of Members of the Association other than Declarant shall require the vote or written assent of (A) a bare majority of the total voting power of Members of the Association, and (B) the prescribed majority of the total voting power of Members of the Association other than Declarant.

ARTICLE XIII

REFERENCES TO STATUTES

Several Sections of these Bylaws refer to or briefly summarize certain California statutes in order to provide information to the Members and Board about those statutes. However, (i) the references are only summary in nature and the full statutory provision should be reviewed, (ii) no attempt has been made to refer to all applicable statutes, and (iii) there is no intent to limit application of any future statutory amendments or any new statutory provisions.

I, the undersigned, do hereby certify:

1. That I am the incorporator of PINNACLE MUSEUM TOWER ASSOCIATION, a California nonprofit mutual benefit corporation; and

2. That the foregoing Bylaws, comprising twenty (20) pages, constitute the Bylaws of said corporation duly adopted by Written Consent of Incorporator dated _____, ____.

IN WITNESS WHEREOF, I hereunto subscribe my name and affix the seal of said corporation this _____ day of _____, ____.

Susan L. Daly, Incorporator

***** NOTICE *****

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MASTER BYLAWS
OF
CHILDREN'S MUSEUM
&
PINNACLE MUSEUM TOWER ASSOCIATION

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MASTER BYLAWS
OF
CHILDREN'S MUSEUM & PINNACLE MUSEUM TOWER ASSOCIATION

ARTICLE I

OFFICE

The office of this corporation shall be located in the County of San Diego, State of California.

ARTICLE II

DEFINITIONS

Section 2.1. Master Declaration. "Master Declaration" shall mean and refer to that certain MASTER DECLARATION OF RESTRICTIONS FOR THE CHILDREN'S MUSEUM & PINNACLE TOWER DEVELOPMENT("Master Declaration") recorded with the Office of the County Recorder of San Diego County, California (including such amendments thereto as may from time to time be recorded).

Section 2.2. Other Definitions. The definitions of terms set forth in the Master Declaration shall also apply to these Master Bylaws.

ARTICLE III

VOTING RIGHTS IN MASTER ASSOCIATION

Section 3.1. Members. The voting rights of Members of the Master Association are set forth in the Master Declaration.

Section 3.2. Owners. The vote of Owners of the Condominiums is required for certain actions or matters, as provided in the Master Declaration.

ARTICLE IV

ASSESSMENTS AND LIEN RIGHTS

Master Association shall have the right to impose assessments as set forth in the Master Declaration.

ARTICLE V

MEMBERSHIP RIGHTS, PRIVILEGES AND PENALTIES

Section 5.1. Rights of Use. Owners shall have the right to use the Master Common Area as set forth in the Master Declaration.

Section 5.2. Suspension; Penalties. The rights and privileges, together with the voting rights of any Owner of Master Association, may be suspended by the Board for the periods set forth in the Master Declaration. The Board may adopt rules and regulations imposing reasonable monetary penalties for such

breach or noncompliance. Should the Board believe grounds may exist for any such suspension or imposition of monetary penalties, the Board shall give to the Owner believed to be in violation at least fifteen (15) days' prior written notice of the intended suspension or proposed monetary penalty and the reasons therefor. The Owner shall be given an opportunity to be heard before the Board either orally or in writing not less than five (5) days before the effective date of suspension. The notice required hereby may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first class or registered mail sent to the last address of the Owner shown on Master Association's records. No suspension shall affect the rights of such Owner to access to the Owner's Museum Module or Tower Module or the Owner's right to use of any exclusive easement area appurtenant to its Museum Module or Tower Module.

Section 5.3. Adoption of Monetary Penalty; Distribution of Policy to Owners and Members.

If the Board adopts a policy imposing any monetary penalty, including any fee, on any Owner for a violation of the Master Declaration or the Board's policies, including any monetary penalty relating to the activities of a guest or invitee of an Owner, the Board shall adopt and distribute to each Owner and Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with these Master Bylaws and the Master Declaration. The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was previously adopted and distributed to Owners and Members.

ARTICLE VI

MEETINGS OF MEMBERS

Section 6.1. Place of Meeting. All meetings of Members shall be held within the Development or at such other location in San Diego County, California, as close to the Development as reasonably possible, as may be designated in the notice of meeting.

Section 6.2. Annual Meetings of Members. The first annual meeting of Members shall be held no later than six (6) months after the completion of the Parking Structure. Subsequent regular annual meetings of the Members shall be held on the date determined by the Board provided that such annual meeting is held during the period commencing on the annual anniversary of the first annual meeting and ending four (4) weeks thereafter. Such meeting shall be held at the time determined by the Board. An election of directors shall be held at the first annual meeting of Members and all positions of director shall be filled at that election.

Written notice of each such annual meeting shall be given to each Member and, to all first Mortgagees who request notice, either personally or by sending a copy of the notice through the mail, first class, registered or certified, or by telegraph, charges prepaid, to its address appearing on the books of Master Association or supplied by it to Master Association for the purpose of notice. If no address is supplied by a Member, notice shall be deemed to have been given to such Member if mailed to the Member's principal office address as shown on the Member's most recent Statement by Domestic Nonprofit Corporation filed with the California Secretary of State pursuant to Section 8210 of the California CORPORATIONS CODE, or if published at least once in some newspaper of general circulation in the county of Master Association's principal office. If no address is supplied by a first Mortgagee who requested notice, notice shall be deemed to have been given to such first Mortgagee if mailed to the address of the applicable Museum Module or Tower Module encumbered by the first Mortgagee, or if published at least once in some newspaper of general circulation in the county of Master Association's principal office. All such notices shall be sent not less than ten (10) days and not more than ninety (90) days before each annual meeting, and shall specify the place, day and hour of such meeting, and those matters which the Board at the time of mailing the notice intends to present for action by the Members; however, except as otherwise provided by law, any proper matter may be presented at the meeting for action. An Eligible Mortgage Holder shall be entitled to designate a representative who shall have the right to attend all meetings of Members.

Section 6.3. Special Meetings of Members. Special meetings of Members, for any purpose or purposes whatsoever, may be called at any time by the president or by a majority of a quorum of the Board,

and shall be called by the Board upon receipt of a written request for a special meeting signed by Members representing at least five percent (5%) or more of the total voting power of the Members. Except in special cases where other express provision is made by statute, notice of such special meetings shall be given in the same manner as for annual meetings of Members. Notices of any special meeting shall specify in addition to the place, day and hour of such meeting, the general nature of the business to be transacted.

Section 6.4. Adjourned Meetings and Notice Thereof. Any membership meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of the voting power present in person or represented by proxy, but in the absence of a quorum no other business may be transacted at any such meeting.

When any membership meeting, either annual or special, is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting other than by an announcement at the meeting at which such adjournment is taken.

Section 6.5. Mortgagee Representation. First Mortgagees shall have the right to attend all membership meetings through a representative designated in writing and delivered to the Board but, except as otherwise provided in the Master Declaration or Master Bylaws, the first Mortgagee shall have no voting rights.

Section 6.6. Voting. Voting of the Members may be by voice or by ballot, except that all elections for directors shall be by secret written ballot.

Section 6.7. Quorum. Except as may otherwise be stated in the Master Declaration, the Articles or these Master Bylaws, the presence in person or by proxy of a majority of the voting power entitled to vote at any meeting of Members shall constitute a quorum for the transaction of business. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough voting power to leave less than a quorum. In the event any meeting of Members cannot be held because a quorum is not present, the Members present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time of the original meeting date; provided, however, if after adjournment a new date is fixed for the adjourned meeting, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings.

Section 6.8. Consent of Absentees. The transactions of any meeting of Members, either annual or special, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum be present either in person or by proxy and if, either before or after the meeting, each of the Members entitled to vote, not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 6.9. Action Without Meeting. Any action which may be taken at a meeting of the Members, except the election of directors by cumulative voting, may be taken without a meeting if done in compliance with the provisions of Section 7513 of the California CORPORATIONS CODE.

Section 6.10. Proxies. Every Member entitled to vote or execute consents shall have the right to do so either in person or by a written proxy executed by such Member and filed with the secretary of Master Association. All proxies shall be revocable. Any such form of proxy or written ballot shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except that a candidate for election to the Board need not be named in a proxy or written ballot. The proxy or written ballot shall provide that, where the Member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it will be valid.

Section 6.11. Parliamentary Procedures. Meetings of the Members shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as Master Association may adopt.

ARTICLE VII

DIRECTORS

Section 7.1. Number and Qualifications of Directors. The Board will consist of three (3) directors until changed by amendment to this Section of these Master Bylaws. The director elected by each Member shall be a member of such Member's board of directors. The third director, who is elected by the two directors elected by the Members, need not be an Owner or a member of a Member's board of directors.

Section 7.2. Election and Term of Office. Commencing with the first annual meeting of Members and at each annual meeting thereafter, each Member shall elect one director and the two directors so elected shall elect a third director. In the event the two directors elected by the Members are unable to agree on the third director, the two directors shall each designate three candidates for the position of the third director. The two directors shall then alternately strike the name of one candidate until there is only one candidate remaining and that candidate shall be the third director. The director elected by the Owner of the Tower Module shall be the first to strike a name during odd numbered years, and the director elected by the Owner of the Museum Module shall be the first to strike a name during even numbered years. All directors elected shall hold office for a one year term. If any annual meeting is not held or the directors are not elected at an annual meeting, the directors may be elected at any special meeting of Members. All directors shall hold office until their successors are elected. The directors shall be elected by secret written ballot.

Any director may be removed from office without cause prior to the expiration of his term upon the vote of a simple majority of the voting power of the Members. The foregoing notwithstanding, no individual director may be removed (unless the entire Board is removed) prior to the expiration of such director's term of office if the number of votes cast against removal or not consenting in writing to removal would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast (or, if action is taken by written consent, all voting power entitled to vote were voted) and the entire number of directors authorized at the time of the most recent election of directors were then being elected.

Section 7.3. Vacancies. Vacancies in the Board shall be filled in the same manner as directors are elected. Each director so elected shall hold office until his successor is elected at the next annual meeting of Members or at a special meeting called for that purpose. A vacancy shall be deemed to exist in the case of death, resignation or removal of any director, or if the Members shall increase the authorized number of directors but shall fail at the meeting at which such increase is authorized to elect the additional directors, or the Members fail at any time to elect the full number of authorized directors. No reduction of the number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

Section 7.4. Organization Meeting. Immediately following each annual meeting of Members, the Board shall hold a regular meeting for the purpose of organization, election of officers and the transaction of other business. Notice of such meeting is hereby dispensed with.

Section 7.5. Other Regular Meetings. Regular meetings of the Board shall be held quarterly after the first annual meeting of Members unless the Board determines by its resolution to hold less or more frequent meetings. Board meetings shall be held at such place and hour within the Development as may be fixed from time to time by resolution of the Board. However, Board meetings may be held outside the Development if the Board determines that a larger meeting room is required, in which case the meeting room selected shall be as close as possible to the Development. Notice of all such regular meetings of the Board shall be posted at a prominent place within the Development and communicated to the directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to the holding of the meeting.

Section 7.6. Special Meetings. Special meetings of the Board for any purpose or purposes shall be called at any time by the president, or by any two (2) directors other than the president. Written notice of the time and place of special meetings and the nature of any special business to be considered shall be posted in the manner prescribed for notice of regular meetings and shall be sent to all directors by first class mail not less than four (4) days prior to the scheduled time of the meeting, or such notice shall be delivered personally or by telephone or telegraph not less than seventy-two (72) hours prior to the scheduled time of the meeting; provided, however, notice of the meeting need not be given to any director who has signed a waiver of notice or a written consent to the holding of the meeting.

Section 7.7. Compensation and Fees. Neither the directors nor the officers of Master Association shall receive any monetary compensation for their services performed in the conduct of the business of Master Association. Nothing herein contained shall be construed or preclude any director or officer from serving Master Association in any other capacity as an agent, employee or otherwise and receiving compensation therefor. Directors and officers of Master Association may be reimbursed for expenses incurred in carrying on the business of Master Association; provided, however, that no such expenses in excess of \$50.00 during any fiscal year of Master Association shall be reimbursed by Master Association to any person without the approval of the Board.

Section 7.8. Attendance at Meetings and Executive Sessions. Regular and special meetings of the Board shall be open to all Members and Owners. The Board may, with the vote of a majority of its members present at a meeting in which a quorum has been established, adjourn to executive session in which Members and Owners may be excluded, to consider litigation, matters that relate to the formation of contracts with third parties, or personnel matters. The nature of any and all business to be considered in executive session shall first be announced in open session. Any matter discussed in executive session shall be generally noted in the minutes of the Board. In any matter relating to the discipline of a Owner, the Board shall meet in executive session if requested by that Owner, and the Owner shall be entitled to attend the executive session.

The Board shall permit any Member or Owner to speak at any meeting of the Members or the Board, except meetings of the Board held in executive session. A reasonable time limit for all Members and Owners to speak to the Board or before a meeting of Members shall be established by the Board.

Section 7.9. Quorum. A majority of the directors shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board.

Section 7.10. Adjournment. A quorum of the directors may adjourn any directors' meeting to meet again at a stated time and hour; provided, however, that in the absence of a quorum, a majority of directors present at the directors' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board.

Section 7.11. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though had at a meeting to be held after regular call and notice if a quorum be present, and if, either before or after the meeting, each of the directors not present signs a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Nothing contained herein shall remove the obligation to post the notice of all directors' meetings at a prominent place within the Development.

Section 7.12. Entry of Notice. Whenever any director has been absent from any special meeting of the Board, an entry in the minutes to the effect that notice has been duly given shall constitute a rebuttable presumption that due notice of such special meeting was given to such director as required by law and these Master Bylaws.

Section 7.13. Notice of Adjournment. Notice of any adjournment of any directors' meeting, either regular or special, to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

Section 7.14. Action Without Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board individually or collectively consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. An explanation of the action to be taken or actually taken by the Board shall be given to the Members of Master Association within three (3) days after all written consents have been obtained. The explanation shall be given in the same manner as provided in the Section of this Article entitled "Other Regular Meetings" for the giving of notice of regular meetings of the Board. Failure to give such notice shall not render the action to be taken or actually taken invalid.

Section 7.15. Indemnity. Master Association shall indemnify any present or former director or officer of Master Association to the fullest extent authorized under California CORPORATIONS CODE Section 7237, or any successor statute, and may advance to any such person funds to pay expenses that may be incurred in defending any action or proceeding on receipt of an undertaking by or on behalf of such person to repay such amount unless it is ultimately determined that such person was entitled to be indemnified under this provision.

Section 7.16. Board Minutes to be Available to Members. The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board, other than an executive session, shall be available to Members within thirty (30) days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any Member upon request and upon reimbursement of Master Association's costs in making that distribution.

Members shall be notified in writing at the time that Master Association's pro forma budget is distributed or at the time of any general mailing to the entire membership of Master Association of their right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

ARTICLE VIII

OFFICERS

Section 8.1. Officers. The officers of Master Association shall be a president, a vice president, a secretary and a chief financial officer and such other officers as the Board may from time to time by resolution create. Officers other than the president need not be directors. One (1) person may hold two (2) or more offices.

Section 8.2. Election. The president, vice president, secretary and chief financial officer shall be chosen annually by the Board, and each shall hold his or her office until such officer shall resign, or shall be removed or otherwise disqualified to serve, or a successor shall be elected and qualified.

Section 8.3. Removal and Resignation. Any officer may be removed, either with or without cause, by a majority of the directors in office at the time, at any regular or special meeting of the Board.

Any officer may resign at any time by giving written notice to the Board or the president, or to the secretary of Master Association. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 8.4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the Master Bylaws for regular appointments to such office.

Section 8.5. President. The president shall be the chief executive officer of Master Association and shall, subject to the control of the Board, have general supervision, direction and control of the business and officers of Master Association. The president shall preside at all meetings of the Members and at all meetings of the Board. The president shall be ex-officio a member of all standing committees, including the executive committee, if any, and shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the Board or by the Master Bylaws.

Section 8.6. Vice President. In the absence or disability of the president, the vice president shall perform all the duties of the president, and when so acting shall have all powers of and be subject to all the restrictions upon the president. The vice president shall have such other powers and perform such other duties as from time to time may be prescribed for him by the Board or by the Master Bylaws.

Section 8.7. Secretary. The secretary shall keep, or cause to be kept, a book of minutes at the principal office or such other place as the Board may order of all meetings of directors and Members, with the time and place of holding, whether regular or special and if special how authorized, the notice thereof given, the names of those present at the directors' meetings, the number of memberships present or represented at Members' meetings and the proceedings thereof.

The secretary shall give, or cause to be given, notice of all the meetings of the Members and of the Board required by the Master Bylaws or by law to be given, and he shall have such other powers and perform such other duties as may be prescribed by the Board or the Master Bylaws.

Section 8.8. Chief Financial Officer. The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of Master Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus. The books of account shall at all times be open to inspection by any director.

The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of Master Association with such depositories as may be designated by the Board. He or she shall disburse the funds of Master Association as may be ordered by the Board, shall render to the president and directors, whenever they request it, an account of all of his or her transactions as chief financial officer and of the financial condition of Master Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or the Master Bylaws.

Section 8.9. Deposits By Property Manager. The Board may designate a professional property management company to collect assessments and make deposits. A separate trust account shall be established for Master Association so that Master Association's deposits will not be commingled with funds that are not those of Master Association. Another separate trust account, complying with the requirements of the Article below entitled "OPERATING AND RESERVE ACCOUNTS", shall be established in the name of Master Association for the deposit of reserves and Master Association shall require its property manager, if one is designated, to deposit reserves in such separate account on at least a monthly basis. In the event Master Association authorizes a property manager to collect assessments or make deposits, Master Association shall maintain a fidelity bond in an appropriate amount naming Master Association as obligee and insuring against loss by reason of the acts of the management agent and its employees. The fidelity bond shall be in an amount equal to not less than three (3) months' aggregate regular assessments (including reserves) by Master Association against all Condominiums then subject to assessment.

Section 8.10. Signing Checks, Etc. All checks, notes, leases and deeds of trust of Master Association shall be signed by at least two persons who hold offices of Master Association, and one such person must be the president or the vice president.

The Board may designate a professional property management company to pay Master Association's operating expenses from the non-reserve trust account established pursuant to the Section above entitled "Deposits By Property Manager".

ARTICLE IX

POWERS AND DUTIES OF MASTER ASSOCIATION

Subject to the Master Declaration, the Articles of Incorporation and the California Nonprofit Corporation Law applicable to mutual benefit corporations, the Board shall have the following powers and duties:

Section 9.1. Selection of Officers. To select and remove all officers, agents and employees of Master Association, prescribe such powers and duties for them as may not be inconsistent with law, the Master Declaration, the Articles of Incorporation or these Master Bylaws, and, subject to the provisions of the Section entitled "Compensation and Fees" of Article VII of these Master Bylaws, to fix their compensation.

Section 9.2. Management of Business. To conduct, manage and control the affairs and business of Master Association, and to make such rules and regulations therefor not inconsistent with law, the Master Declaration, the Articles of Incorporation or these Master Bylaws as they deem best, including rules and regulations for the operation of the Master Common Area and the facilities owned or controlled by Master Association.

Section 9.3. Borrowing of Money. To borrow money and incur indebtedness for the purposes of Master Association, and to cause to be executed and delivered therefor, in the corporate name, promissory notes or other evidences of debt and, with the vote or written assent of a majority of the Members of Master Association, to (a) hypothecate, mortgage, pledge or deed in trust any or all of the real or personal property owned by Master Association as real security for money borrowed or debts incurred, and (b) sell any real or personal property owned by Master Association.

Section 9.4. Insurance. To contract and pay for fire, casualty, liability, fidelity bonds and other insurance as required by the Master Declaration and such other insurance as the Board deems to be appropriate.

Section 9.5. Payment of Master Common Area Utilities. To pay all charges for water, electricity, gas, CATV and other utility services for the Master Common Area, if any.

Section 9.6. Management of Master Common Area. To manage, operate, maintain and repair the Master Common Area and all improvements located thereon, if any, including any parking and drainage facilities, and the restoration and replacement of all buildings, structures and improvements which are part of the Master Common Area at any time and from time to time as the Board may determine desirable or necessary; and to make capital expenditures for and on behalf of Master Association; provided, however, unless the Master Declaration allows otherwise, the Board shall not incur aggregate expenditures for capital improvements in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of Master Association for that fiscal year unless the capital expenditure is, by vote at a meeting or by written ballot without a meeting pursuant to California CORPORATIONS CODE Section 7513, approved by a majority of the voting power of Members of Master Association.

Section 9.7. Right to Enter. To enter onto the Museum Module or Tower Module subject to the limitations set forth in the Master Declaration.

Section 9.8. Right to Enforce. To enforce the provisions of the Master Declaration, the Articles of Incorporation and Master Bylaws of Master Association, the rules and regulations adopted by the Board and the provisions of any agreement to which Master Association is a party.

Section 9.9. Right to Contract. To contract and pay for goods and services relating to the Master Common Area, and to employ personnel necessary for the operation and maintenance of the same, including legal and accounting services. Anything herein to the contrary notwithstanding:

(a) The term of any contract with a third person for supplying goods or services to the Master Common Area or for Master Association shall not exceed a term of one (1) year unless a longer term is, by vote at a meeting or by written ballot without a meeting pursuant to California CORPORATIONS CODE Section 7513, approved by a majority of the voting power of Members of Master Association, with the following exceptions:

(i) A contract with the public utility company for materials or services the rates for which are regulated by the Public Utilities Commission may exceed a term of one (1) year so long as it does not exceed the shortest term for which the public utility will contract at the regulated rate;

(ii) A contract for prepaid casualty and/or liability insurance policies may be for a term of not to exceed three (3) years, provided that the policy permits short rate cancellation by Master Association;

(iii) Agreements for cable television services and equipment or satellite dish television services and equipment, where the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more may exceed a term of one (1) year but may not exceed a term of five (5) years;

(iv) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services, where the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more may exceed a term of one (1) year but may not exceed a term of five (5) years; and

(v) Contracts with a term not to exceed three (3) years which are terminable by Master Association without cause, penalty or other obligation after one (1) year upon ninety (90) days' written notice of termination given by Master Association to the other party.

(b) Any agreement for management of the Development and any other contract providing for services by Declarant shall be terminable for cause upon thirty (30) days' written notice, and without cause or payment of a termination fee upon not more than ninety (90) days' written notice. Such agreements shall be renewable with the consent of the Board and the management agent.

(c) The Board shall not terminate professional management of the Development and assume self-management.

(d) No contract with Master Association negotiated by Declarant shall exceed a term of one (1) year except as may otherwise be provided in this Section 9.9.

Section 9.10. Payment of Taxes on Master Common Area. To pay any taxes and governmental special assessments which are or could become a lien on the Master Common Area or any portion thereof.

Section 9.11. Adoption of Rules. To adopt reasonable rules not inconsistent with the provisions contained in the Master Declaration, and to amend the same from time to time relating to the use of the Master Common Area and any facilities located thereon.

Section 9.12. Right of Discipline. To suspend the voting rights and right to use of any facilities located on the Master Common Area of a Member who is in default in the payment of any assessment, as provided in **Article V** of these Master Bylaws.

Section 9.13. Preparation of Budgets and Financial Statements. To prepare budgets and financial statements for Master Association as provided in these Master Bylaws.

Section 9.14. Notification to Mortgagee. Upon written request to Master Association, identifying the name and address of the holder, insurer or guarantor and the Condominium or address, any Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Development or any Condominium on which there is a first Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable.
- (b) Any delinquency in the payment of assessments or other default by an Owner of a Condominium subject to a first Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of sixty (60) days.
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by Master Association.
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as required in these Master Bylaws or in the Master Declaration.

Section 9.15. Litigation.

(a) **CODE OF CIVIL PROCEDURE Section 383.** Pursuant to Section 383 of the CODE OF CIVIL PROCEDURE, Master Association shall have standing to institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings in its own name as the real party in interest and without joining with it the individual Owners, in matters pertaining to the following:

- (i) Enforcement of the Master Declaration and related governing documents;
- (ii) Damage to the Master Common Area;
- (iii) Damage to improvements to the Museum Module or Tower Module which the Master Association is obligated to maintain or repair, if any; and
- (iv) Damage to improvements to the Museum Module or Tower Module which arises out of, or is integrally related to, damage to the Master Common Area.

(b) **CIVIL CODE Section 1368.4.** Pursuant to CIVIL CODE Section 1368.4:

- (i) Not later than thirty (30) days prior to the filing of any civil action by Master Association against Declarant or other developer of the Development for: alleged damage to the Master Common Area which the Master Association is obligated to maintain or repair; or alleged damage to any Museum Module or Tower Module which arises out of, or is integrally related to, damage to the Master Common Area (which the Master Association is obligated to maintain or repair), the Board of Directors shall provide written notice to each Member of Master Association. This notice shall specify all of the following:

(A) That a meeting will take place to discuss problems that may lead to the filing of a civil action;

(B) The options, including civil actions, that are available to address the problems; and

(C) The time and place of this meeting.

(ii) Notwithstanding **Subsection (i)** above, if the Board has reason to believe that the applicable statute of limitations will expire before Master Association files the civil action, Master Association may give the notice, as described above, within thirty (30) days after the filing of the action.

(c) CIVIL CODE Section 1354. Master Association shall comply with CIVIL CODE Section 1354, which, in brief summary and in part, provides as follows:

(i) Unless the applicable time limitation for commencing the action would expire within one hundred twenty (120) days prior to filing a civil action by Master Association or an Owner, Master Association and Owners shall endeavor to submit their disputes to a form of alternative dispute resolution, such as mediation or arbitration, with respect to claims for injunction, declaratory relief or monetary damages of \$5,000 or less.

(ii) Any party to such a dispute may initiate the process by serving on another party to the dispute a Request for Resolution, as described in CIVIL CODE Section 1354.

(iii) Master Association shall annually provide a summary of the provisions of CIVIL CODE Section 1354, which specifically references that Section. The summary shall include the following language:

"Failure by any member of the association to comply with the prefiling requirements of Section 1354 of the CIVIL CODE may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents."

The summary shall be provided either at the time the pro forma budget is distributed as required by Section 1365 of the CIVIL CODE or in the manner specified in Section 5016 of the CORPORATIONS CODE.

(d) CIVIL CODE Section 1366.3. Master Association shall comply with CIVIL CODE Section 1366.3 which, in part, provides that assessment collection proceedings continue to be exempt from the alternative dispute resolution requirements of CIVIL CODE Section 1354, unless the Owner elects to follow the dispute resolution procedure established by CIVIL CODE Section 1366.3. CIVIL CODE Section 1366.3 requires Master Association to notify an Owner that an assessment collection dispute may be resolved through alternative dispute resolution as provided in CIVIL CODE Section 1354, by civil action, or by any other procedure available to Master Association to resolve collection disputes if:

(i) The Owner pays Master Association the amount in dispute, late charges, interest and all fees and costs associated with the preparation and filing of the notice of delinquent assessment, including all mailing costs and attorney's fees not to exceed \$425.00; and

(ii) The Owner notifies Master Association in writing by certified mail not more than thirty (30) days following recordation of a notice of delinquent assessment that the assessment payment is made under penalty of protest.

CIVIL CODE Section 1366.3 sets forth other limitations and requirements.

(e) CIVIL CODE Section 1375. Master Association shall comply with CIVIL CODE Section 1375, which is a complex statute which sets forth various requirements pertaining to claims for defects in design or construction of the project, including requirements which must be met before such a claim is filed. Some of the matters covered by CIVIL CODE Section 1375 include the following:

- (i) A requirement of written notice before an action is commenced.
- (ii) Listing defects.
- (iii) Surveying or questioning Owners regarding the nature and extent of defects.
- (iv) Meetings, settlement attempts and alternative dispute resolution between the Declarant and the Board.
- (v) Possible tolling of statutes of limitations and cancellation of such tolling.
- (vi) Inspection and testing and making available the results of the inspections and tests.
- (vii) Notice to insurers of meetings between the Declarant and the Board.
- (viii) Procedures for a settlement offer.
- (ix) Procedures for various notices to the Owners and for holding a meeting of the Owners if Master Association rejects a settlement offer.
- (x) Possible excuse from compliance with CIVIL CODE Section 1368.4.
- (xi) Provisions which allow for a special meeting of the Members of Master Association if requested by five percent (5%) of the Members.
- (xii) Certain remedies for failure to comply with CIVIL CODE Section 1375.

Section 9.16. Right to Delegate. To delegate any of its powers hereunder to others, including committees, officers and employees.

Section 9.17. Right to Sell. As permitted in the Master Declaration, to sell the Development for the benefit of all of the Owners and their Mortgagees, as their interests may then appear, at such price and upon such terms as the Board may determine reasonable; provided, however, the Board shall not sell in any fiscal year Master Association property having an aggregate fair market value in excess of five percent (5%) of the budgeted gross expenses of Master Association for that fiscal year unless the sale is, by vote at a meeting or by written ballot without a meeting pursuant to California CORPORATIONS CODE Section 7513, approved by a majority of the voting power of Members of Master Association.

Section 9.18. Availability of Documentation. To make available to any prospective purchaser of a Condominium, any Owner of a Condominium, any first Mortgagee, and the holders, insurers and guarantors of a first Mortgage on any Condominium, or any of their duly appointed representatives, current copies of the Master Declaration, the Articles of Incorporation, the Master Bylaws, rules and regulations concerning the project and all other books, records and financial statements of Master Association, including, but not limited to, the membership register, mailing addresses and telephone numbers of Members, books of account and minutes of meetings of the Members, the Board and committees. "Available" as used in this Section shall mean available for inspection upon request at least during normal business hours or under other reasonable circumstances.

Section 9.19. Availability of Minutes. In the case of minutes of the Board, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board, other than executive session, shall be available to Members and Owners upon request and payment of the fee incurred for reproducing copies.

Section 9.20. Right to Permit Use of Master Common Area. To permit utility suppliers to use portions of the Master Common Area reasonably necessary to the on-going development or operation of the Development. So long as Class B membership exists in either Member, the Board shall at Declarant's request, grant to utility suppliers reasonable easements and licenses over, under, upon and across the Master Common Area for the installation and maintenance of utility systems within the Development.

Section 9.21. Authorization to Contract. To authorize any officer or officers or agent or agents to enter into any contract or execute any instrument in the name and on behalf of Master Association. Such authority may be general or confined to specific instances, and unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind Master Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 9.22. Duty to Make Records Available for Inspection. To keep in its principal office for the transaction of business or at such place within the Development as the Board shall prescribe, the original or a copy of the Master Bylaws as amended or otherwise altered to date, certified by the secretary, a membership register (including mailing addresses and telephone numbers), books of accounts and copies of minutes of all membership, board and committee meetings, all of which shall be made available for inspection and copying by any Member of Master Association, or by any Member's duly appointed representative and by all first Mortgagees, at any reasonable time and for a purpose reasonably related to his interest as a Member or Mortgagee. The Board shall establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of the records by the Member or Mortgagee desiring to make the inspection;
- (b) Hours and days of the week when such an inspection may be made; and
- (c) Payment of the costs of reproducing copies of documents requested.

Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of Master Association and all physical property owned or controlled by Master Association. The right of inspection by a director shall include the right at his expense to make extracts and copies of documents.

Section 9.23. Financial Statements. The Board shall do the following:

(a) **Annual Reports.** Annual reports consisting of the following shall be distributed to Members and Owners within one hundred twenty (120) days after close of Master Association's fiscal year:

- (i) a balance sheet as of the end of the fiscal year;
- (ii) an operating (income) statement for the fiscal year;
- (iii) a statement of changes in financial position for the fiscal year;
- (iv) a statement of the place where the names and addresses of the current Members are located;

(v) any information required to be reported under Section 8322 of the California CORPORATIONS CODE;

(vi) for any fiscal year in which the gross income to Master Association exceeds \$75,000.00, a copy of a review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.

(b) Independent Accountant. The annual report referred to in Subsection (a) above shall be prepared by an independent accountant.

(c) Statement of Association's Policies. A statement of Master Association's policies and practices in enforcing its remedies against Owners for default in the payment of regular and special assessments, including the recording and foreclosing of liens against Owners' Condominium, shall be distributed to Owners and Members within sixty (60) days prior to the beginning of each fiscal year.

(d) Annual Budgets. The Board shall cause a pro forma operating statement (budget) for Master Association to be prepared for the second and each subsequent fiscal year of Master Association, a copy of which shall be distributed personally or by mail to each of the Members not fewer than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year to which the budget relates. The budget shall include the following information:

(i) The estimated revenue and expenses of Master Association on an accrual basis for the next fiscal year.

(ii) A summary of Master Association's reserves based upon the most recent review or study conducted pursuant to the Section of these Master Bylaws entitled "**Reserve Study**", which shall be printed in bold type and include all of the following:

(A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component in the Master Common Area.

(B) As of the end of the fiscal year for which the study is prepared:

(1) The current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain the major components of the Master Common Area;

(2) The current amount of the accumulated cash reserves actually set aside to repair, replace, restore or maintain the major components of the Master Common Area; and

(3) The percentage of the amount determined pursuant to (2) above of the amount determined pursuant to (1) above.

(iii) A statement as to whether the Board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor.

(iv) A general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the future costs of repair, replacement or additions to major components of the Master Common Area for which Master Association is responsible.

(e) **Budget Summary.** In lieu of distributing the budget, the Board may at its election distribute a summary of the budget along with a written notice (in at least 10 point bold type on the front page of the summary) that the budget is available at the business office of Master Association or at another suitable location within the boundaries of the Development, and that copies will be provided upon request and at the expense of Master Association. If any Member or Owner requests a copy of the budget to be mailed to the Member or Owner, Master Association shall provide the copy to the Member or Owner by first-class United States mail at the expense of Master Association and delivered within five (5) days.

(f) **Notice of Right to Have Copies of Minutes.** At the time the budget is distributed or at the time of any general mailing, Members shall be notified in writing of their right to have copies of the minutes of meetings of the Board and as to how and where those minutes may be obtained and the cost of obtaining such copies.

Section 9.24. Fiscal Year. The fiscal year of Master Association shall begin on the first day of January and end on the thirty-first (31st) day of December of each year, except that the first fiscal year shall begin on the date of incorporation of Master Association. However, the fiscal year of Master Association is subject to change from time to time as the Board shall determine.

Section 9.25. Checks. To cause to be issued checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, in the name of or payable to Master Association, which shall be signed or endorsed by the president or vice president and another officer of Master Association unless otherwise authorized by the Board or by these Master Bylaws.

Section 9.26. Audited Financial Statement. Any holder, insurer or governmental guarantor of a first Mortgage shall be entitled, upon submission of a written request, to an audited financial statement for the immediately preceding fiscal year (if the Development has been established for a full fiscal year), prepared at the expense of the party so requesting it, if one is not otherwise available. The audited financial statement shall be made available within one hundred twenty (120) days of Master Association's fiscal year-end.

Section 9.27. Corporations Code. Except as specifically limited by this Article, Master Association shall have all the powers granted to a nonprofit mutual benefit corporation as enumerated in Section 7140 of the CORPORATIONS CODE.

Section 9.28. Statement of Association's Assessment and Collection Policies. The Board shall comply with CIVIL CODE Section 1365.1 and distribute a statement of the Master Association's policies and practices in enforcing its remedies against Members for default in the payment of regular and special assessments to each Member during the sixty (60) day period immediately preceding the beginning of each fiscal year. The required form and content of said notice is expressly set forth in CIVIL CODE Section 1365.1, and includes information on the Association's foreclosure rights, the requirements set forth in CIVIL CODE Section 1367.1 for collecting delinquent assessments (see also Section 4.14 of the Master Declaration) and the delinquent Member's rights in connection with the collection process.

Section 9.29. Distribution to Members and Owners of Information About Insurance. The Board shall comply with CIVIL CODE Section 1365(e) and distribute to the Members and Owners information about Master Association's insurance policies. CIVIL CODE Section 1365(e) requires, among other matters, that Master Association give its Members and Owners a summary of insurance policies within sixty (60) days preceding the beginning of Master Association's fiscal year and notice by first class mail, as soon as reasonably practical, if any of the policies have lapsed, been canceled and are not immediately renewed, restored or replaced or if there is a significant change, such as a reduction in coverage or limits or increase in the deductible for any policies. CIVIL CODE Section 1365(e) also requires immediate notice be given if Master Association receives any notice of nonrenewal of a policy if replacement coverage will not be in effect by the date the existing coverage will lapse. CIVIL CODE Section 1365(e) sets forth various details as to the forms of notice, language which must be included in the notice, the size of type, etc.

ARTICLE X

OPERATING AND RESERVE ACCOUNTS

Section 10.1. Definitions. As used in this Article:

(a) **"Reserve accounts"** means moneys that the Board has identified for use to defray the future repair or replacement of, or additions to, those major components which Master Association is obligated to maintain.

(b) **"Reserve account requirements"** means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace, or restore those major components which Master Association is obligated to maintain.

Section 10.2. Reviews. The Board shall do the following:

(a) Review a current reconciliation of Master Association's operating accounts on at least a quarterly basis.

(b) Review a current reconciliation of Master Association's reserve accounts on at least a quarterly basis.

(c) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget.

(d) Review the latest account statements prepared by the financial institutions where Master Association has its operating and reserve accounts.

(e) Review an income and expense statement for Master Association's operating and reserve accounts on at least a quarterly basis.

Section 10.3. Signatures on Checks. The signatures of at least (i) two directors or (ii) one officer who is not a director and the signature of a director shall be required for the withdrawal of moneys from Master Association's reserve accounts.

Section 10.4. Limitation on Expenditure of Reserve Funds.

(a) Except as provided in Subsection 10.4(b) below, the Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement or maintenance of, or litigation involving the repair, replacement or maintenance of, major components which Master Association is obligated to repair, restore, replace or maintain and for which the reserve fund was established.

(b) The Board may authorize the temporary transfer of money from a reserve fund to Master Association's general operating fund to meet short-term cash flow requirements or other expenses, provided the Board has made written findings, included in the Board's minutes, explaining the reasons the transfer is needed and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the project, temporarily delay the restoration. The Board shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this Subsection. A special assessment made by the Board pursuant to this Subsection is subject to the limitations imposed by Section 1366 of the California CIVIL CODE. The Board may

extend the date the payment of the special assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

(c) In the event the Board decides to use reserve funds or to temporarily transfer money from the reserve funds to pay for litigation, the Board shall notify the Members and Owners of the decision in the next available mailing to Members and Owners pursuant to Section 5016 of the California CORPORATIONS CODE and of the availability of an accounting of those expenses. The Board shall provide an accounting of expenses related to the litigation at least quarterly and shall make the accounting available for inspection by Members and Owners at the office of Master Association.

Section 10.5. Reserve Study. Pursuant to CIVIL CODE Section 1365.5(e), at least once every three (3) years the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which Master Association is obligated to repair, replace or maintain as part of a study of the reserve account requirements of the project to be conducted if the current replacement value of the major components which Master Association is obligated to repair, replace, restore, or maintain is equal to or greater than one-half of the gross budget of Master Association for any fiscal year which excludes Master Association's reserve account for that period. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.

The study required by this Section shall at a minimum include:

(a) Identification of the major components which Master Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years.

(b) Identification of the probable remaining useful life of the components identified in **Subsection 10.5(a)** as of the date of the study.

(c) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in **Subsection 10.5(a)** during and at the end of its useful life.

(d) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

ARTICLE XI

AMENDMENT

Section 11.1. Amendments. These Master Bylaws may be amended or repealed by the vote of (i) a majority of Owners, and (ii) at least a majority of Owners other than Declarant. Anything herein stated to the contrary notwithstanding, no material amendment to the Master Bylaws shall be made without the prior written approval of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%) or more of the Condominiums. "Material amendment" shall mean, for purposes of this **Article XI**, any amendments to provisions of these Master Bylaws governing any of the following subjects:

(a) Voting rights.

(b) Assessment liens and the priority of assessment liens and the right of Eligible Mortgage Holders to approve increases in regular assessments of in aggregate more than twenty-five percent (25%) during any fiscal year from the regular assessments assessed during the previous fiscal year.

(c) The right of Eligible Mortgage Holders to approve reductions in reserves for maintenance, repair and replacement of the Master Common Area.

(d) Responsibility for maintenance and repairs.

(e) Reallocation of interests in the Master Common Area or rights to its use.

(f) Redefinition of either the Museum Module or Tower Module boundaries.

(g) Convertibility of either Museum Module or Tower Module into Master Common Area and vice versa.

(h) Annexation and deannexation.

(i) Hazard or fidelity insurance requirements.

(j) Imposition of any restrictions on the leasing of either the Museum Module or Tower Module.

(k) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the applicable Owner's Museum Module or Tower Module.

(l) Subsection (c) of the Section above entitled "Right to Contract".

(m) Restoration or repair of the Development (after damage or partial condemnation) in a manner other than specified in the Master Declaration.

(n) Any action to terminate the legal status of the Development after substantial destruction or condemnation occurs.

(o) Any provision which, by its terms, is specifically for the benefit of the first Mortgagees, or specifically confers rights on first Mortgagees.

An Eligible Mortgage Holder who receives a written request to approve amendments (including additions) who does not deliver or mail to the requesting party a negative response within thirty (30) days, shall be deemed to have approved such request provided that such written request was delivered by certified mail or registered mail, with "return receipt" requested.

The percentage of voting power necessary to amend a specific clause or provision of these Master Bylaws shall not be less than any percentage of affirmative votes prescribed for action to be taken under that clause.

ARTICLE XII

REFERENCES TO STATUTES

Several Sections of these Master Bylaws refer to or briefly summarize certain California statutes in order to provide information to the Members and Board about those statutes. However, (i) the references are only summary in nature and the full statutory provision should be reviewed, (ii) no attempt has been made to refer to all applicable statutes, and (iii) there is no intent to limit application of any future statutory amendments or any new statutory provisions.

I, the undersigned, do hereby certify:

1 That I am the incorporator of Master Association, a California nonprofit mutual benefit corporation; and

2 That the foregoing Master Bylaws, comprising eighteen (18) pages, constitute the Master Bylaws of said corporation duly adopted by Written Consent of Incorporator dated _____, 200__.

IN WITNESS WHEREOF, I hereunto subscribe my name and affix the seal of said corporation this _____ day of _____, 200__.

Susan L. Daly, Incorporator