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St. Francis Bay-One Hundred One Crescent Way Condominium
Owners Association

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ST. FRANCIS BAY - ONE HUNDRED ONE CRESCENT WAY

ENABLING DECLARATION

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Exhibit A - PARKING AND STORAGE PLAN

Exhibit B - ASSESSMENTS ALLOCATIONS

THIS DECLARATION CONTAINS A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT. ARBITRATION INCLUDES A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY, YOU MUST READ THE ARBITRATION PROVISION CAREFULLY AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.

**ST. FRANCIS BAY - ONE HUNDRED ONE CRESCENT WAY
ENABLING DECLARATION
ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP**

THIS DECLARATION, made on the date hereinafter set forth, by TOP VISION DEVELOPMENT, LLC, a California limited liability company, hereinafter referred to as "Declarant," is made with reference to the following facts:

A. **Location of Property.** Declarant is the Owner of certain real property (the "Property") located in the City and County of San Francisco ("City"), State of California, more particularly described on that certain Map entitled "Map of St. Francis Bay Condominiums 101 Crescent Way", filed for record in the Office of the Recorder of the County of San Francisco, California, on September 8, 2003 in Book 82 of Condominium Maps, page(s) 91-100.

B. **Intention.** Declarant intends to improve said real property by constructing sixty four (64) Condominiums thereon consisting of separate interests in Units and undivided interests in the remaining property.

C. **Owner's Interest.** The development shall be referred to as the "Project" as defined in section 1.38.

D. **General Plan of Improvement.** Declarant intends by this document to impose upon the Project mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Condominiums and the Owners thereof.

NOW, THEREFORE, Declarant hereby declares that the Project shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are imposed as equitable servitudes pursuant to a general plan for the development of the Project for the purpose of enhancing and protecting the value and attractiveness of the Project, and every part of it, in accordance with the plan for the improvements of the Project and its division into Condominiums. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants that run with the land and are binding upon Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Project or the property in the Project.

ARTICLE 1. DEFINITIONS

1.1 "Articles" shall mean and refer to the Articles of Incorporation of the Association, as amended from time to time.

1.2 "Assessment" shall mean that portion of the costs of maintaining, improving, repairing, operating and managing the Project which are allocated and assessed to each Condominium and are to be paid by each Owner as determined by the Association, and shall include Regular Assessments, Special Assessments and Reimbursement Assessments.

1.3 "Assessment Lien" shall mean the lien of an Assessment established by the Association pursuant to section 4.10B.

1.4 "Association" shall mean and refer to the ST. FRANCIS BAY - ONE HUNDRED ONE CRESCENT WAY CONDOMINIUM OWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, the Members of which shall be the Owners of Condominiums in the Project.

1.5 "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

1.6 "Bylaws" shall mean and refer to the bylaws of the Association, as amended from time to time.

1.7 "City" shall mean the City and County of San Francisco, California.

1.8 "Common Area(s)" shall mean and refer to all of the Project (excepting the individual Condominium Units) title to which shall be held by all of the Owners in common. The Common Area includes, without limitation, land; amenities such as landscaping, benches, parking and driveway areas; trash enclosures; patios; bearing walls, columns, girders, ceiling joists, subfloors, unfinished floors, roofs, and foundations; reservoirs, tanks, pumps, motors, ducts, flues and chutes; conduits, pipes, plumbing, wires and other utility installations (except the outlets thereof when located within the Unit and utility installations located within a Unit); common water heater, sprinklers and sprinkler pipes; elevators; stairs; central television antenna or cable television installation. Site lighting, gates, fencing, retaining walls, sanitary sewer, storm drainage, water and fire protection lines, shall be included within the Common Area.

1.9 "Common Driveway" shall mean the easement for the common driveway that is located on Parcel 235 and Parcel 236 of the final subdivision map entitled "Map of St. Francis Bay Condominiums" filed for record in the Office of the Recorder of the County of San Francisco, California, on March 9, 2001 in Map Book Z, Pages 166-174, Official Records of the City and County of San Francisco, California ("Master Map") and shown on the Condominium Plan for the Project, which common driveway and the improvements thereon are shared with the adjoining Parcel 235.

1.10 "Common Expenses" means and includes the actual and estimated expenses of maintaining, repairing, operating and replacing improvements within the Common Area, the Reciprocal Recreational Deck Easement as allocated to the Project under the Reciprocal Recreational Deck Easement Agreement and the Open Space Parcel and any reasonable reserve for such purposes as found and determined by the Board and all sums designated Common Expenses by or pursuant to the Project Documents. Common Expenses shall include the costs allocated to the Project under the Road Maintenance Agreement and under the Joint Expense Sharing Agreement. Included as a Common Expense shall be the Association's share of costs of operation of the Gym located on and shared with the owners of Lot 235 shown and described on the Master Map.

1.11 "Common Interest" means the proportionate undivided interest in the Common Area that is part of each Condominium as set forth in this Declaration.

1.12 "Condominium" shall mean an estate in real property as defined in California Civil Code §§783 and 1351(f), consisting of a Unit and an undivided interest in common in the Common Area.

1.13 "Condominium Building" shall mean the residential structure containing Units.

1.14 "Condominium Plan" shall mean and refer to the portion of the Map that shows the three-dimensional floor plan of the Condominiums built or to be built on the property in the Project which identifies the Common Area, and each Unit as a separate interest pursuant to California Civil Code §1351.

1.15 "Deck" shall mean that portion of the Common Area that is described as a "Deck" on the Condominium Plan and that is to be or has been granted and conveyed to the Unit Owner of the Unit that bears the same number as the Deck as Restricted Common Area pursuant to section 2.2.C(3).

1.16 "Declarant" shall mean and refer to TOP VISION DEVELOPMENT, LLC, a California limited liability company, and any successor or assign that expressly assumes the rights and duties of the Declarant under this Declaration, in a recorded written document.

1.17 "Declaration" shall mean and refer to this Enabling Declaration, as amended or supplemented from time to time.

1.18 "Eligible Mortgages" shall mean Mortgages held by "Eligible Mortgage Holders".

1.19 "Eligible Mortgage Holder" shall mean a First Lender who has requested notice of certain matters from the Association in accordance with section 9.6C.

1.20 "Eligible Insurer or Guarantor" shall mean an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with section 9.6C.

1.21 "First Lender" shall mean any person, entity, bank, savings and loan association, insurance company, or financial institution holding a recorded First Mortgage on any Condominium.

1.22 "First Mortgage" shall mean and refer to any recorded Mortgage made in good faith and for value on a Condominium with first priority over other Mortgages thereon.

1.23 "Foreclosure" shall mean and refer to the legal process by which a mortgaged Unit of an Owner in default under a Mortgage is sold pursuant to California Civil Code § 2924a et seq. or sale by the Court pursuant to California Code of Civil Procedure § 725a et seq. and any other applicable law.

1.24 "Gym" shall mean the work out room located on Lot 235 ("One Crescent Way") shown and described on the Master Map and to be shared with the owners and occupants of said Lot 235 as such Gym is to be shown on the map entitled "Map of St. Francis Bay Condominiums 1 Crescent Way", to be filed for record in the Office of the Recorder of the County of San Francisco, California.

1.25 "Joint Expense Sharing Agreement" shall mean the agreement entitled "Grant and Agreement for Easements, Covenants and Restrictions Regarding Open Space Use and Maintenance" by and between Declarant and the owner or owners of adjoining lands, which joint expense sharing agreement encumbers the Project and other lands that adjoin the Project for the purpose of the mutual undertaking of common maintenance or operation of open space lands and other facilities in the vicinity of the Project, or paying a portion of the costs and expenses of the common maintenance or operation of the open space lands or other facilities in the vicinity of the Project, which Joint Expense Sharing Agreement was recorded in the Official Records of the County of San Francisco as Instrument/Document 4535819 on September 15, 2003.

1.26 "Map" shall mean and refer to the "Map of St. Francis Bay Condominiums 101 Crescent Way" filed for record in the Office of the Recorder of the County of San Francisco, California, on September 8, 2003, in Book 82 of Condominium Maps, page(s) 91-100.

1.27 "Master Map" shall mean and refer to the final subdivision map entitled "Map of St. Francis Bay Condominiums" filed for record in the Office of the Recorder of the County of San Francisco, California, on March 9, 2001 in Map Book Z, Pages 166-174, Official Records of the City and County of San Francisco, California.

1.28 "Member" shall mean and refer to a person entitled to membership in the Association as provided herein.

1.29 "Mortgage" shall mean a mortgage, deed of trust, assignment of rents, issues and profits or other proper instrument (including, without limitation, those instruments and estates created by sublease or assignment) given as security for the repayment of a loan or other financing which encumbers a Condominium, made in good faith and for value.

1.30 "Mortgagee" shall mean the holder of a Mortgage as security, and shall include a beneficiary or a holder of a deed of trust.

1.31 "Mortgagor" mean an Owner who encumbers his Condominium with a Mortgage, and shall include the trustor of a deed of trust.

1.32 "Notice of Delinquent Assessment" shall mean a notice of delinquent assessment filed by the Association for a delinquent Assessment pursuant to section 4.10.C.

1.33 "Open Space Parcel" shall mean the Parcel designated as "OS-02" on the final subdivision map entitled "Map of St. Francis Bay Condominiums" filed for record in the Office of the Recorder of the County of San Francisco, California, on March 9, 2001 in Map Book Z, Pages 166-174.

1.34 "Owner" or "Owners" shall mean and refer to the record holder, or holders of title to a Condominium. This shall include any person having a fee simple title to any Unit, but shall exclude persons or entities having any interest merely as security for the performance of an obligation. If a Unit is sold under a contract of sale and the contract is recorded, the purchaser, rather than the fee owner, shall be considered the "Owner" from and after the date the Association receives written notice of the recorded contract.

1.35 "Parking Spaces" shall mean and refer to those parking spaces shown on the Parking and Storage Plan attached to this Declaration as Exhibit "A" designated by the letter "P" which are subject to being granted or conveyed to a Unit Owner as Restricted Common Area pursuant to section 2.2.C(1).

1.36 "Parking and Storage Plan" is attached as Exhibit "A".

1.37 "Person" means a natural person, a corporation, a partnership, a trust, or other legal entity.

1.38 "Project" shall mean and refer to all of the real property described on the Map and all improvements on that real property, subject to this Declaration.

1.39 "Project Documents" shall mean this Declaration, as amended from time to time, the exhibits, if any, that are attached, together with the other basic documents used to create and govern the Project, including the Map, the Articles, the Bylaws, and the Condominium Plan (but excluding unrecorded Rules adopted by the Board or the Association).

1.40 "Public Report" shall mean a public report for the Project issued by the State of California Department of Real Estate.

1.41 "Reciprocal Recreational Deck Easement Agreement" shall mean the Joint Use and Maintenance Agreement for Recreational Deck dated August 29, 2003, by and between St. Francis Bay - One Crescent Way Condominium Owners Association, a California nonprofit mutual benefit corporation and St. Francis Bay - One Hundred One Crescent Way Condominium Owners Association, a California nonprofit mutual benefit corporation, regarding the joint and reciprocal use of the Recreational Deck Easement and allocation of costs and expenses for the Recreational Deck Easement between Parcel 236 and Parcel 235 as shown on the Map, which Reciprocal Recreational Deck Easement Agreement was recorded in the Official Records of the County of San Francisco as Instrument/Document H535818 on September 15, 2003.

1.42 "Recreational Deck Easement" shall mean the area of the Project that is shown on the Condominium Plan as "Reciprocal Recreational Deck Easement" that is located on Parcel 236 and Parcel 235 as shown on the Map which Recreational Deck Easement is shared with the adjoining Parcel 235.

1.43 "Regular Assessment" shall mean and refer to a Regular Assessment determined and levied pursuant to section 4.3A of this Declaration.

1.44 "Reimbursement Assessment" shall mean and refer to a Reimbursement Assessment determined and levied pursuant to section 4.3C of this Declaration.

1.45 "Restricted Common Area" shall mean and refer to those portions of the Common Area set aside for exclusive use of a Unit Owner or Owners, pursuant to section 2.2C, and shall constitute "Exclusive Use Common Area" within the meaning of California Civil Code § 1351(i).

1.46 "Road Maintenance Agreement" shall mean and refer that certain Grant and Agreement for Easements, Covenants and Restrictions Regarding Crescent Way and Crescent Court - Roadway Improvements and Fire Pump House Improvements ("Roadway Agreement") dated August 29, 2003, by Top Vision Development, LLC, a California limited liability company, recorded in the Official Records of the County of San Francisco as Instrument/Document 9-15-03 H535820 that encumbers the Project and certain adjoining and neighboring lands which use the private roads designated as Crescent Way and Crescent Court on the Master Map.

1.47 "Rules" shall mean and refer to the rules adopted from time to time by the Association pursuant to section 5.2D.

1.48 "Special Assessment" shall mean and refer to a Special Assessment determined and levied pursuant to section 4.3B of this Declaration.

1.49 "Storage Spaces" shall mean and refer to those storage spaces shown on the Parking and Storage Plan and granted or conveyed to a Unit Owner as Restricted Common Area pursuant to section 2.2C(2).

1.50 "Unit" shall mean and refer to the elements of the Condominium, as defined in section 2.2A, which are not owned in common with the Owners of other Condominiums in the Project. Each Unit is identified by Building letters and Unit numbers on the Condominium Plan.

ARTICLE 2. DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS

2.1 **Description of Project:** The Project is a condominium project consisting of the land, the Condominiums and all other improvements thereon. Declarant has constructed or will construct on the property in the Project sixty-four (64) residential Units. Reference is made to the Condominium Plan for further details. The Association shall own and maintain the Open Space Parcel.

2.2 **Division of Property:** The Project is divided as follows:

A. **Units:** Each of the Units as separately shown, numbered and designated in the Condominium Plan, consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, window frames, doors and door frames and trim, of each Unit, each of such spaces being defined and referred to herein as a "Unit". Bearing walls located within the interior of a Unit are Common Area, not part of the Unit, except for the finished surfaces thereof. The firebox of any fireplaces serving a Unit shall be part of the Unit, with the chimneys and flues of a fireplace being part of the Common Area. Each Unit includes the utility installations located within its boundaries that the Owner has exclusive use of, including, without limitation, space heaters, lighting fixtures, cabinetry and air conditioning units (if any) which are located entirely within the Unit they serve. Each Unit includes both the portions of the Condominium Building so described and the airspace so encompassed. The Unit does not include those areas and those things which are defined as "Common Area". Each Unit is subject to such encroachments as are contained in the Condominium Building, whether the same now exist or may be later caused or created in any manner referred to in section 9.5. In interpreting deeds and Condominium Plans, the then existing physical boundaries of a Unit, when the boundaries of the Unit are contained within a Condominium Building, or of a Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or Condominium Plan, regardless of settling or lateral movement of the Condominium Building and regardless of minor variance between boundaries shown on the plan or deed, and those of the Condominium Building. Each Unit shall have appurtenant to it nonexclusive rights for ingress, egress and support through the Common Area subject to the rights of each Owner in the Restricted Common Area appurtenant to that Owner's Condominium.

B. **Common Areas:** The remainder of the Project constitutes "Common Area". Each Condominium Owner shall have, as appurtenant to his or her Unit, an undivided Common Interest in the Common Area as set forth on the Condominium Plan. The Common Interest appurtenant to each Unit is declared to be permanent in character and cannot be altered without the consent of all the Owners affected, as expressed in an amended Declaration. The undivided Common Interest cannot be separated from the Unit, and any conveyance or transfer of the Unit shall include the undivided Common Interest, the Owner's membership in the Association, and any other benefits or burdens appurtenant to that Owner's Condominium. Each Owner may use the Common Areas in accordance with the purposes for which they are intended subject to this Declaration and the Rules, without hindering the exercise of or encroaching upon the rights of any other Owners subject to the rights of each Owner in the Restricted Common Area appurtenant to that

Owner's Condominium. The Common Area shall be subject to the Reciprocal Recreational Deck Easement and the Common Driveway.

C. Restricted Common Areas: The following described portions of the Common Area, referred to as "Restricted Common Areas," and as shown on the Condominium Plan, are set aside and allocated for the exclusive use of the Owner of the Condominium to which they are assigned on the initial grant deed from the Declarant to the Owner, and shall be appurtenant to that Condominium:

(1) **Parking Spaces:** Parking Spaces are identified with the letters "P" followed by a number on the Parking and Storage Plan attached to this Declaration as Exhibit "A". Parking Spaces shall be assigned by the Declarant to the Condominiums as set forth on the grant deeds from the Declarant to the Owners of the Condominiums upon the first conveyance of Condominiums. The lower vertical boundary of a Parking Space is the surface of the finished pavement. The upper vertical boundary of the Parking Space shall be eight (8) feet above the lower vertical boundary, or to the exterior unfinished surface of any structure or utility fixture or facility of the Building within the Parking Space, whichever is lower. The holders of exclusive easements granted to those Parking Spaces shown on the Parking and Storage Plan by the designations as P-30, P-33, P-34, P-118, P-15 and P-16 are subject to having their Parking Space being relocated by Board to provide parking to handicapped Owners or occupants who are legally entitled to handicapped designated parking spaces. The Board shall have the right and power to reallocate and reassign Parking Spaces for these designated Parking Spaces in a reasonable manner as the Board determines necessary and appropriate to provide any Unit Owner or other occupant of a Unit with a handicapped designated parking space, if such Owner or occupant is legally entitled to a handicapped designated parking space.

(2) **Storage Spaces:** Storage Spaces are identified with the letters "S" followed by a number on the Parking and Storage Plan. The Storage Spaces shall be assigned by the Declarant to the Condominiums as set forth on the grant deeds from the Declarant to the Owners of the Condominiums upon the first conveyance of Condominiums. The lower vertical boundary of a Storage Space is the surface of the finished pavement. The upper vertical boundary of the Storage Space shall be to the exterior unfinished surface of any structure of the Building within the Storage Space. Any Storage Spaces that have not been assigned by the Declarant as of such time as Declarant has sold and conveyed all Units in the Project to a person other than Declarant, or Declarant's successor or assign that has expressly assumed the rights and duties of the Declarant under this Declaration in a recorded written document, shall be controlled by the Association, which may assign the use of any such Storage Spaces to Unit Owners on an exclusive basis. Each Owner who is granted a Storage Space shall have the right to traverse any Parking Space that is adjacent to the Storage Space to gain reasonable access to the Storage Space, provided that such Owner shall exercise reasonable care not to damage any vehicle that is parked in the Parking Space while making such access.

(3) **Decks:** Decks are identified on the Condominium Plan by the designation "Deck D" followed by the number of a Unit, and shall be conveyed to the Unit Owner of the Unit that bears the same number of the Deck as shown on the Condominium Plan. Only Units 2107, 2108, 2109, 2110 and 2111 have Decks.

Except as described herein, no other portion of the Common Areas shall be Restricted Common Area.

2.3 Parking: An Owner who has been granted the rights to more than one Parking Space may sell or transfer such Parking Spaces to another Owner, provided that such Owner shall always retain no less than one Parking Space as an appurtenance to his or her Unit, and provided further that no such sale or transfer of an extra Parking Space may occur prior to June 1, 2005. Any Parking Spaces that have not been

assigned by the Declarant as of such time as Declarant has sold and conveyed all Units in the Project to a person other than Declarant, or Declarant's successor or assign that has expressly assumed the rights and duties of the Declarant under this Declaration in a recorded written document, shall be controlled by the Association, which may assign or otherwise control the use of any such Parking Spaces as set forth section 7.19. The Association may establish reasonable Rules for the parking of vehicles in the Common Areas.

2.4 Rights of Entry and Use: The Units and Common Area (including Restricted Common Area) shall be subject to the following rights of entry and use:

A. The right of the Association's agents or employees to enter any Unit to cure any violation of this Declaration or the Bylaws, provided that the Owner has received notice and a hearing as required by the Bylaws (except in the case of an emergency) and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association.

B. The access rights of the Association to maintain, repair or replace improvements or property located in the Common Area as described in section 5.2E.

C. The rights of the Owners, the Association, and the Declarant to install, maintain, repair or replace utilities as described in Article 4.

D. The encroachment rights described in section 9.5.

E. The rights of the Declarant during the construction period as described in section 9.8.

F. The rights of Owners to make improvements or alterations authorized by California Civil Code § 1360(a)(2), subject to the provisions of section 7.9.

2.5 Partition Prohibited: The Common Area shall remain undivided as set forth above. Except as provided by California Civil Code §1359 or authorized under sections 8.2B or 8.3, no Owner shall bring any action for partition of the Common Area, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Condominium owned by two (2) or more persons and division of the sale proceeds is not prohibited by this paragraph.

2.6 All Easements Part of Common Plan: Whenever any easements are reserved or created or are to be reserved or created in this Declaration, such easements shall constitute equitable servitudes for the mutual benefit of all property in the Project, even if only certain Units are specifically mentioned as subject to or benefiting from a particular easement. Easements referred to in this Declaration that are created by grant deeds, subsequent to the date of this Declaration shall be part of the common plan created by this Declaration for the benefit of all property Owners within the Project.

ARTICLE 3.
ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

3.1 Association to Manage Common Areas: The management of the Common Area shall be vested in the Association. The Owners of all the Condominiums covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration, and the Articles and Bylaws.

3.2 Membership: The Owner of a Condominium shall automatically, upon becoming the Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as the ownership ceases for any reason, at which time the membership in the Association shall automatically cease. Membership shall be held in accordance with the Articles and Bylaws.

3.3 Transferred Membership: Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale or encumbrance of the Condominium to which it is appurtenant, and then only to the purchaser, in the case of a sale, or mortgagee, in the case of an encumbrance of such Condominium. On any transfer of title to an Owner's Condominium, including a transfer on the death of an Owner, the membership passes automatically along with title to the transferee. A mortgagee does not have membership rights until it obtains title to the Condominium by Foreclosure or deed in lieu of Foreclosure. Any attempt to make a prohibited transfer is void. No Member may resign his or her membership. On notice of a transfer, the Association shall record the transfer on its books.

3.4 Membership and Voting Rights: Membership and voting rights shall be as set forth in the Bylaws.

ARTICLE 4.
ASSESSMENTS AND LIENS

4.1 Creation of the Lien and Personal Obligation of Assessments: The Declarant, for each Condominium within the Project, hereby covenants, and each Owner of any Condominium by acceptance of a deed for that condominium, whether or not it shall be so expressed in such deed, covenants and agrees:

(1) to pay to the Association annual Regular Assessments, Special Assessments and Reimbursement Assessments, as such Assessments are established and collected as subsequently provided in this Declaration, and

(2) to allow the Association to enforce any Assessment Lien established under this Declaration by nonjudicial proceedings under a power of sale or by any other means authorized by law.

A. The Assessments, together with interest, late charges, collection costs and reasonable attorneys' fees, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such Assessment is made, the lien to become effective upon recordation of a Notice of Delinquent Assessment. Each such Assessment, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to his successors in title unless expressly assumed by them. No Owner shall be exempt from liability for payment of Assessments by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of the Owner's Condominium.

B. The interest of any Owner in the amounts paid pursuant to any Assessment upon the transfer of ownership shall pass to the new Owner. Upon the termination of these covenants for any reason, any amounts remaining from the collection of such Assessments after paying all amounts properly charged

against such Assessments shall be distributed to the then Owners on the same pro rata basis on which the Assessments were collected.

4.2 Purpose of Assessments: The Assessments levied by the Association shall be used exclusively to promote the economic interests, recreation, health, safety, and welfare of all the residents in the Project and to enable the Association to perform its duties, powers and obligations hereunder.

4.3 Assessments:

A. Regular Assessments: The Board shall establish and levy annual Regular Assessments in an amount that the Board estimates will be sufficient to raise the funds needed to for Common Expenses and other costs and expenses arising from the Association's performance of its powers and duties during each fiscal year.

(1) The annual Regular Assessment shall include a portion for reserves in such amounts as the Board in its discretion considers appropriate to meet the costs of the future repair, replacement or additions to the major improvements and fixtures that the Association is obligated to maintain and repair. Reserve funds shall be deposited in a separate federally insured account and the signatures of at least two (2) persons who shall either be members of the Board or one officer who is not a member of the Board and a member of the Board shall be required to withdraw monies from the reserve account.

B. Special Assessments: The Board, at any time, may levy a Special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate. Special Assessments shall be allocated among the Units in the same manner as annual Regular Assessments.

C. Reimbursement Assessments: The Board may levy a Reimbursement Assessment against a Member to reimburse the Association for costs incurred by the Association in the repair of damage to common areas and facilities for which the Member or the Member's guests or tenants were responsible and in bringing the Member and his Unit into compliance with the provisions of the Project Documents in the amount required to reimburse the Association for the actual costs incurred and the amounts incurred to enforce the Associations rights under this Declaration as are then permitted by law.

4.4 Restrictions on Increases in Annual or Special Assessments: The Board may not impose an annual Regular Assessment on any Condominium which is more than twenty percent (20%) greater than the annual Regular Assessment for the immediately preceding fiscal year. The Board may not levy a Special Assessment to defray the cost of any action or undertaking on behalf of the Association which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the vote or written assent of Members casting a majority of the votes at a meeting of the Association at which a quorum is present. For purposes of this section 4.4, a "quorum" means Members constituting more than fifty percent (50%) of the voting power of the Association. Any meeting of the Association for purposes of complying with this section 4.4 shall be conducted in accordance with Chapter 5 (commencing with § 7510) of Part 3, Division 2 of Title 1 of the California Corporations Code and § 7613 of the California Corporations Code. The Board may increase annual Assessments by up to twenty percent (20%) over the annual Assessment for the immediately preceding fiscal year only if the Board has complied with the provisions of California Civil Code § 1365(a), which provisions are set forth in section 12.1(1) of the Bylaws or has obtained the approval of such increase by the Members in the manner set forth above in this section 4.4.

A. Notwithstanding the foregoing, the Board, without membership approval, may increase annual Assessments or levy special Assessments necessary for an emergency situation. For purposes of this section, an emergency situation is one of the following:

(1) an extraordinary expense required by an order of a court,
(2) an extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety on the Project is discovered, or
(3) an extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget, provided, however, that prior to the imposition or collection of the Assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process and the resolution shall be distributed to the Members with the notice of the Assessment.

B. The Association shall provide to the Owners by first-class mail notice of any increase in the Regular Assessments or Special Assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due.

C. This section 4.4 incorporates the statutory requirements of California Civil Code § 1366. If this section of the California Civil Code is amended in any manner, this section 4.4 automatically shall be amended in the same manner without the necessity of amending this Declaration.

4.5 Notice and Quorum for Any Action Authorized Under Section 4.4: Any action authorized under section 4.4, which requires a vote of the membership, shall be taken at a meeting called for that purpose, written notice of which shall be personally delivered or mailed to all Members not less than ten (10) nor more than ninety (90) days in advance of the meeting specifying the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken. The action may also be taken without a meeting pursuant to the provisions of California Corporations Code §7513.

4.6 Division of Assessments: All Assessments, except Reimbursement Assessments, shall be levied equally among the Condominiums and except as follows: that portion of the Assessments allocated to meet the cost of insurance, painting and roof reserves, and any commonly metered domestic water, gas or electricity shall be allocated and levied among the Condominiums in the proportion that the square footage of living space of each Unit bears to the square footage of all the Units as set forth in Exhibit "B." Annual Regular Assessments shall be collected on a monthly basis unless the Board directs otherwise. Special Assessments and Reimbursement Assessments may be collected in one (1) payment or periodically as the Board shall direct.

4.7 Date of Commencement of Annual Assessment; Due Dates: The annual Regular Assessments provided for in this Declaration shall commence as to all Condominiums covered by this Declaration on the first day of the month following the first conveyance of a Condominium to an individual Owner under authority of a Public Report. The first Regular Assessment shall be adjusted according to the number of months remaining in the calendar year.

A. Subject to the provisions of section 4.3 hereof, the Board of Directors shall use its best efforts to fix the amount of the annual Regular Assessment against each Condominium and send written notice thereof to every Owner at least forty-five (45) days in advance of each annual Regular Assessment period, provided that failure to comply with the foregoing shall not affect the validity of any Assessment levied by the Board. Annual Regular Assessments may be prorated on a monthly basis. The due dates shall be established by the Board of Directors.

B. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or designated representative of the Association stating that the Assessments

on a specified Condominium have been paid. Such a certificate shall be conclusive evidence of such payment.

4.8 Effect of Nonpayment of Assessments: Any Assessment not paid within fifteen (15) days after the due date shall be delinquent, shall bear interest at the rate of twelve percent (12%) per annum commencing thirty (30) days after the due date until paid, and shall incur a late payment penalty in an amount to be set by the Board from time to time, not to exceed the maximum permitted by applicable law.

4.9 Transfer of Condominium by Sale or Foreclosure: Sale or transfer of any Condominium shall not affect any Assessment Lien. However, the sale of any Condominium pursuant to Foreclosure of a First Mortgage shall extinguish any Assessment Liens on that Condominium (including attorneys' fees, late charges, or interest levied in connection therewith) as to payments which became due prior to such sale or transfer (except for Assessment Liens as to which a Notice of Delinquent Assessments has been recorded prior to the mortgage). No amendment of the preceding sentence may be made without the consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and the consent of the Eligible Mortgage Holders holding first mortgages on Condominiums comprising fifty-one percent (51%) of the Condominiums subject to First Mortgages. No sale or transfer shall relieve such Condominium from liability for any Assessments thereafter becoming due or from the lien thereof. The unpaid share of such Assessments shall be deemed to be Common Expenses collectible from all of the Condominium Owners including such acquirer, his successors or assigns.

A. If a Condominium is transferred, the grantor shall remain liable to the Association for all unpaid Assessments against the Condominium through and including the date of the transfer. The grantee shall be entitled to a statement from the Association, dated as of the date of transfer, setting forth the amount of the unpaid Assessments against the Condominium to be transferred and the Condominium shall not be subject to a lien for unpaid Assessments in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any Assessments that become due after the date of the transfer.

4.10 Priorities; Enforcement; Remedies: If an Owner fails to pay an Assessment when due, the Association has the right, and option, to bring legal action against the Owner to enforce collection of the unpaid and past due Assessment, or may impose an Assessment Lien on the Unit owned by Owner pursuant to the provisions of Civil Code § 1367.1, or both. Suit to recover a money judgment for unpaid Assessments and attorneys' fees, shall be maintainable without foreclosing or waiving the lien securing the same. The Association shall distribute the written notice described in subdivision (b) of Civil Code § 1365.1 entitled "Notice Assessments and Foreclosure" to each Member during the 60-day period immediately preceding the beginning of the Association's fiscal year.

A. **Statement of Charges.** At least 30 days prior to the Association recording an Assessment Lien upon a Unit pursuant to Civil Code § 1367.1(a), the Association shall the Association shall notify the owner of record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount owed, a statement that the Owner has the right to inspect the Association's records, pursuant to section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION".

(2) An itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if any.

(3) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the Assessment was paid on time to the Association.

(4) The right to request a meeting with the Board as provided by Civil Code §1371(c), as provided in section 4.10.B, below.

B. Right to Request Meeting. An Owner may dispute the debt noticed pursuant to section 4.10.A, above, submitting to the Board a written explanation of the reasons for his or her dispute. The Board shall respond in writing to the Owner within 15 days of the date of the postmark of the explanation, if the explanation is mailed within 15 days of the postmark of the notice. The Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed pursuant to section 4.10.A, above. The Board shall provide the Owner the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more members to meet with the Owner.

C. Notice of Delinquent Assessment. After compliance with the provisions of Civil Code §1367.1(a), the Association may record a Notice of Delinquent Assessment and establish an Assessment Lien against the Condominium of the delinquent Owner prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage of record. The Notice of Delinquent Assessment shall state the amount of the Assessment, collection costs, attorneys' fees, late charges and interest, a description of the Condominium against which the Assessment and other sums are levied, the name of the record Owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any management agent retained by the Association and shall be mailed in the manner set forth in Civil Code § 2924b to all record owners of the Unit no later than ten (10) days after recordation.

Within twenty one (21) days after payment of the sums specified in the Notice of Delinquent Assessment, the Association shall record or cause to be recorded in the Office of the County Recorder in which the Notice of Delinquent Assessment is recorded a lien release or notice of rescission and provide the Owner a copy of the lien release or notice that the delinquent assessment has been satisfied.

D. Enforcement of Assessment Lien. Thirty (30) days following the recordation of the Notice of Delinquent Assessments, the Assessment Lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee substituted pursuant to California Civil Code § 2934(a). Any sale by the trustee shall be conducted in accordance with the provisions of §§ 2924, 2924b, 2924c, 2924f, 2924g, 2924h and 2924j of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, including any successor statutes thereto, or in any other manner permitted by law. The fees of a trustee may not exceed the amounts prescribed in Civil Code §§ 2924c and 2924d. Nothing in this Declaration shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay Assessments.

The Association, acting on behalf of the Owners, shall have the power to bid for the Condominium at Foreclosure sale, and to acquire and hold, lease, mortgage and convey the Condominium. If the purchase of a Condominium would result in a five percent (5%) or greater increase in Assessments, the purchase shall require the vote or written consent of a majority of the total voting power of the Association, including a majority of Members other than Declarant. During the period a Condominium is owned by the Association, following Foreclosure:

(1) no right to vote shall be exercised on behalf of the Condominium;

(2) no Assessment shall be assessed or levied on the Condominium; and

(3) each other Condominium shall be charged, in addition to its usual Assessment, its share of the Assessment that would have been charged to such Condominium had it not been acquired by the Association as a result of Foreclosure.

After acquiring title to the Condominium at Foreclosure sale following notice and publication, the Association may execute, acknowledge and record a deed conveying title to the Condominium which deed shall be binding upon the Owners, successors, and all other parties.

The Board may temporarily suspend the voting rights and right to use recreational facilities of a Member who is in default in payment of any Assessment, after notice and hearing, as provided in the Bylaws.

4.11 Reimbursement Charges: The Board may levy a Reimbursement Charge against a Member to reimburse the Association for costs incurred by the Association in the repair of damage to the Project improvements of facilities for which the Member or the Member's guests or tenants were responsible and in bringing the Member and his Unit into compliance with the provisions of the Project Documents in the amount required to reimburse the Association for the actual costs and expenses incurred and the amounts incurred to enforce the Associations rights under this Declaration as are then permitted by law. Reimbursement Charges shall be payable when directed by the Board after written notice to the Owners, which notice shall in no event be less than thirty (30) days. If an Owner disputes a Reimbursement Charge, the Owner may request a hearing before the Board. Neither Reimbursement Charges nor fines and penalties for violation of restrictions are "Assessments," and shall not enforceable by Assessment Lien, but are enforceable by court proceedings.

In conformity to Civil Code §1367.1(e), fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with this Declaration or the Rules, except for late payments, are not "Assessments," and are not enforceable by Assessment Lien, but are enforceable by court proceedings; provided, however, pursuant to Civil Code §1367.1(d), monetary penalties imposed by the Association to reimburse the Association for costs incurred for repair of damage to Common Area or facilities for which the Owner, or guests or tenants of an Owner, were responsible may become the subject of a lien. Provided however that any such enforcement as a lien shall only be permitted if there are no Units in the Project that are subject to the jurisdiction of the Department of Real Estate under a Public Report. In the event that Civil Code §1367.1(e) is amended to permit fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with this Declaration or the Rules to be enforceable by Assessment Lien, then this provision shall be deemed amended to conform to any such amendment of Civil Code §1367.1(e).

4.12 Unallocated Taxes: In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the Condominiums, said taxes shall be included in the Assessments made under the provisions of section 4.1 and, if necessary, a special Assessment may be levied against the Condominiums in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

ARTICLE 5.
DUTIES AND POWERS OF THE ASSOCIATION

5.1 Duties: In addition to the duties enumerated in the Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality of those duties, the Association shall perform the following duties:

A. Maintenance: The Association shall maintain, repair, replace (when necessary), restore, operate and manage all of the Common Area and all facilities (including utility facilities to the extent described in section 6.3), improvements, furnishings, equipment and landscaping and lighting thereon, and all property that may be acquired by the Association provided that each Owner shall maintain the Restricted Common Area appurtenant to that Owner's Condominium in a neat and clean condition. Maintenance shall include, without limitation, painting, maintaining, cleaning, repairing and replacing of all Common Areas, including exterior doors, landscaping and parking areas. The Association shall maintain the fire sprinklers and monitoring system located within the Building. The Association shall maintain the Open Space Parcel as required by the Road Maintenance Agreement and the City. The Association shall maintain the Recreational Deck Easement in cooperation with the owner of the adjoining Parcel 235 or the condominium association formed for said Parcel 235 as required by the Reciprocal Recreational Deck Easement Agreement.

(1) The Association shall have the Common Area periodically inspected for wood-destroying pests and organisms and shall take appropriate corrective measures therefor. The Association shall have the authority to require the temporary removal of occupants of a Unit as may be necessary in connection with the treatment of wood-destroying pests or organisms, pursuant to the procedures described in Civil Code § 1364(d) or any successor statute thereto. The costs of any temporary relocation shall be borne by each Owner of a Unit who is required to temporarily relocate.

(2) The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or omission of an Owner, or his guests, tenants or invitees; or the Owner's pets, except if the repair is covered by the insurance carried by the Association, the Association shall be responsible for making the repairs, and the responsible Owner shall pay any deductible pursuant to the insurance policy. If the Owner fails to make such payment, then the Association may make such payment and shall charge the responsible Owner, which charge shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. Any repairs arising out of or caused by the willful or negligent act of an Owner, or his guests, tenants or invitees, or the Owner's pets, the cost of which is not covered by insurance carried by the Association, shall be made by the responsible Owner, provided the Board approves the person actually making the repairs and the method of repair. If the responsible Owner fails to take the necessary steps to make the repairs within a reasonable time under the circumstances, the Association shall make the repairs and charge the cost thereof to the responsible Owner, which cost shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law) until paid in full. If an Owner disputes his or her responsibility for the repairs, the Owner shall be entitled to notice and a hearing as provided in the Bylaws before any charge may be imposed.

B. Insurance: The Association shall maintain such policy or policies of insurance as are required by section 8.1 of this Declaration.

C. Discharge of Liens: The Association shall discharge by payment, if necessary, any lien against the Common Area, and charge the cost thereof to the Member or Members responsible for the existence of the lien (after notice and a hearing, as provided in the Bylaws).

D. Assessments: The Association shall fix, levy, collect and enforce Assessments as set forth in Article 4 hereof.

E. Payment of Expenses and Taxes: The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the property of the Association. The Association expenses shall include one-half (1/2) of the costs and expenses of the costs of the operation, maintenance and repair of the Gym and its facilities, as a Common Expense, which the Association shall pay to the One Crescent Way Homeowners Association that operates the adjoining condominium project situated on Lot 235 of the Master Map.

F. Enforcement: The Association shall be responsible for the enforcement of this Declaration.

The Association shall maintain and operate the Common Area of the Project in accordance with all applicable municipal, state, and federal laws, statutes and ordinances, as the case may be. The Association shall also, as a separate and distinct responsibility, insure that third parties (including Owners and their guests) utilize the Common Area in accordance with the aforementioned regulations. The Association shall, when it becomes aware of any violation of the aforementioned regulations, expeditiously correct such violations.

G. Inspection and Maintenance Guidelines: The Declarant shall provide the Association and each Owner with the inspection and maintenance guidelines and schedules for the inspection and maintenance of the improvements within the Project (including manufacturers' guidelines and schedules) ("Maintenance Guidelines"). The Association shall maintain at the offices of the Association a copy of the Maintenance Guidelines provided by Declarant to the Owner and shall make available to every Owner, upon request, a copy of the Maintenance Guidelines. When an Owner transfers a Unit, the Owner shall deliver complete copies of the Maintenance Guidelines to the transferee of the Unit on or before the date of the transfer of title. Replacement copies of the Maintenance Guidelines may be obtained from the Declarant at Declarant's principal place of business. Declarant may charge a reasonable fee for providing replacement copies of the Maintenance Guidelines. The Board shall comply with the Maintenance Guidelines for the periodic inspection and maintenance of the Common Area improvements and other portions of the Project that the Association is required to maintain under this Declaration. The Board shall take all appropriate actions to implement and comply with the Maintenance Guidelines.

5.2 Powers: In addition to the powers enumerated in the Articles and Bylaws, or elsewhere provided for in this Declaration, and without limiting their generality, the Association shall have the following powers:

A. Utility Service: The Association shall have the authority (but not the obligation) to obtain, for the benefit of all of the Condominiums, all hot and cold water, gas service and central refuse collection, and window cleaning service and CATV.

B. Easements: The Association shall have authority, by document signed by the President and the Secretary, to grant permits, licenses, and easements in addition to those shown on the Map or Condominium Plan and/or referred to in Article 6, where necessary for roads, utilities, cable television, and sewer facilities over the Common Area to serve the common and open space areas and the Condominiums, and/or where necessary to satisfy or achieve appropriate governmental purpose or request.

C. Manager: The Association may employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, record or foreclose liens, or make capital expenditures, provided that any contract with a firm or person appointed as a manager or managing agent shall not exceed a one (1) year term, shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association, and to terminate the same for cause on thirty (30) days' written notice, or without cause or payment of a termination fee on ninety (90) days' written notice.

D. Adoption of Rules: The Board or the Members of the Association by majority vote, may adopt reasonable rules, that are not inconsistent with this Declaration, relating to the use of the Common Area and all its facilities, and the conduct of Owners and their tenants and guests with respect to the Project and other Owners. Written copies of such Rules and any schedule of fines and penalties adopted by the Board shall be furnished to Owners.

E. Access: For the purpose of performing construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common, and/or to perform maintenance work that a Unit Owner has failed to perform as provided in section 9.7, the Association's agents or employees shall have the right, after reasonable notice (not less than twenty-four (24) hours except in emergencies) to the Owner of the Unit in which maintenance work has not been performed, to enter the Unit or to enter any portion of the Common Area at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused by such entry shall be repaired by the Board at the expense of the Association.

F. Assessments, Liens, Penalties and Fines: The Board shall have the power to levy and collect Assessments in accordance with the provisions of Article 4 hereof. The Board may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violation of any provision of the Project Documents and the unrecorded Rules adopted by the Board or the Association. Penalties may include, but are not limited to, fines, temporary suspension of voting rights, rights to the use of recreational facilities or other appropriate discipline, provided the Member is given notice and a hearing as provided in the Bylaws before the imposition of any fine or disciplinary action. The Board shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of this Declaration, and for violations of any Rules adopted pursuant to section 5.2D. The penalties prescribed may include suspension of all rights and privileges of membership; provided, however, that suspension for failure to pay Assessments shall be for a maximum period of thirty (30) days, renewable by the Board for an additional thirty (30) day period or periods until paid; and provided further that suspension for infraction of Rules or violation of this Declaration, other than for failure to pay Assessments, shall be limited to a maximum period of thirty (30) days per infraction or violation, and shall be imposed only after a hearing before the Board. The Board may extend that period for an additional thirty (30) day period or periods in the case of a continuing infraction or violation, and no hearing need be held for such extension. Written copies of Rules and the schedule of penalties shall be furnished to Owners. The Board shall levy fines and penalties and shall enforce such assessments as appropriate under applicable law.

G. Enforcement: The Board shall have the authority to enforce this Declaration as per Article 6 hereof.

H. Acquisition and Disposition of Property: The Board shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of property shall be by document signed or approved by two-thirds (2/3) of the total voting power of the Association which shall include two-thirds (2/3) of the Members other than

Declarant, or where the two (2) class voting structure is still in effect, shall include two-thirds (2/3) of the voting power of each class of Members.

I. Loans: The Board shall have the power to borrow money, and, only with the assent (by vote or written consent) of two-thirds (2/3) of the total voting power of the Association including two-thirds (2/3) of the Members other than Declarant, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

J. Dedication: The Association shall have the power to dedicate all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication shall be effective unless an instrument has been signed by two-thirds (2/3) of the total voting power of the Association including two-thirds (2/3) of the Members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3) of the voting power of each class of Members, agreeing to such dedication.

K. Contracts: The Board shall have the power to contract for goods and/or services for the Common Area(s), for the Condominiums, or for the Association, subject to limitations set forth in the Bylaws, or elsewhere in this Declaration. The Board shall not enter into any contracts with an independent contractor until it meets the requirements of section 8.1(3) herein.

L. Delegation: The Association, the Board, and the officers of the Association shall have the power to delegate their authority and powers to committees, officers or employees of the Association, or to a manager employed by the Association, provided that the Board shall not delegate its responsibility:

(1) to make expenditures for capital additions or improvements chargeable against the reserve funds;

(2) to conduct hearings concerning compliance by an Owner or his or her tenant, lessee, guest or invitee with the Declaration, Bylaws or Rules promulgated by the Board;

(3) to make a decision to levy monetary fines, impose special Assessments against individual Condominiums, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline;

(4) to make a decision to levy Assessments; or

(5) to make a decision to bring suit, record a claim of lien or institute Foreclosure proceedings for default in payment of Assessments.

M. Appointment of Trustee: The Association, or the Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce Assessment Liens by sale as provided in section 4.10 and California Civil Code § 1367(b).

N. Litigation/Arbitration: The Association, subject to section 9.15 of this Declaration, shall have the power to institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings on behalf of the Association pursuant to Code of Civil Procedure § 383. The Board of Directors has authority to enter into a contingent fee contract with an attorney in a matter involving alleged design or construction defects in the Project, only as to facilities or improvements the Association is responsible for maintaining as provided herein, and then only after getting the vote at a duly noticed and properly held membership meeting, of a majority of a quorum of the Members other than Declarant.

O. Other Powers: In addition to the powers contained herein, the Board may exercise the powers granted to a nonprofit mutual benefit corporation under California Corporations Code § 7140.

P. Common Area Improvements: The Association shall have the authority and power to demolish, remove and reconstruct any and all improvements on or over or under the Common Area in a manner not inconsistent with this Declaration, and to construct, improve and repair improvements that are appropriate for the use and benefit of the Members of the Association, and to charge for the use of such improvements, provided that the Association shall not include in any Assessment, annual or special, the cost of any new capital improvement which exceeds \$5,000 in cost to be expended in any one calendar year, unless fifty-one percent (51%) or more of the voting power of the Association previously shall have approved said expenditure.

5.3 Commencement of Association's Duties and Powers: Until incorporation of the Association, all duties and powers of the Association as described in this Declaration, including all rights of consent and approval, shall be and remain the duties and powers of Declarant. After the date of incorporation of the Association, the Association shall assume all duties and powers, and Declarant shall be relieved of any further liability for those duties and powers.

ARTICLE 6. UTILITIES

6.1 Owners' Rights and Duties: The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, water, drainage, electric, gas, television receiving, telephone equipment, cables and lines, exhaust flues, fire sprinklers, and heating and air conditioning facilities, collectively, "utility facilities") shall be as follows:

A. Whenever utility facilities are installed within the Project, which utility facilities or any portion of those facilities lies in or upon Condominiums owned by other than the Owner of a Condominium served by those utility facilities, the Owners of any Condominium served by those utility facilities shall have the right of reasonable access for themselves or for utility companies to repair, replace and generally maintain those utility facilities as and when necessary, due to failure or inability of the Board to take timely action to make such repairs or perform such maintenance.

B. Whenever utility facilities serving more than one (1) Condominium are installed within the Project, the Owner of each Condominium served by those utility facilities shall be entitled to the full use and enjoyment of such portions of those utility facilities as service his or her Condominium.

C. In the event of a dispute between Owners with respect to the repair or rebuilding of utility facilities, or with respect to the sharing of the cost of those facilities, then, upon written request of one (1) Owner addressed to the other Owner(s), the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within sixty (60) days pursuant to the rules of the American Arbitration Association, or any successor rules, or to any other generally recognized system of alternative dispute resolution. The decision of the arbitrator(s) shall be final and conclusive on the parties, and judgment on the decision may be entered in any court having jurisdiction.

6.2 Easements for Utilities and Maintenance: Easements over, under and through the Project, including soffits and utility chases within Units, if any, for the installation, repair, and maintenance of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating and air conditioning facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the Map, and as may be hereafter required or needed to service the Project, are reserved by Declarant and its successors and assigns, until the completion of construction of the Project and sale of the first Unit under authority of a Public Report, and thereafter are reserved by and for the benefit of the Association and its Members, together with the right to grant and transfer the same. The easements shall be in favor of Declarant, and its successors and assigns, and in favor of the Association. The location of the facilities described in this section, and hence, the location of the easements to accommodate such facilities, shall be set forth in the final "as-built plans." As used in this Declaration, the term "as-built plans" shall mean and refer to the drawings indicating the precise locations of utility runs, elevator shafts, etc., which drawings are prepared to show the final as-built locations thereof to the extent they deviate from or were not shown on prior plans. In case of any variance between the Condominium Plan and the final "as-built plans" with respect to the locations of said facilities, the "as-built plans" shall be determinative as to the location of said facilities, and hence, the location of the easements to accommodate such facilities.

6.3 Association's Duties: The Association shall maintain all utility facilities located in the Common Area except for those facilities maintained by utility companies, public, private, or municipal and those maintained by the Owners as described in section 9.7. The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Condominiums.

ARTICLE 7. USE RESTRICTIONS

In addition to all of the covenants contained in this Declaration, the use of the Project and each Condominium in the Project is subject to the following:

7.1 Condominium Use: No Condominium shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests.

A. Notwithstanding the foregoing: (1) the Declarant, its successors or assigns, may use any Condominium owned by Declarant for a model home site or sites and display and sales/construction office during construction and until the last Condominium is sold by Declarant, or until three (3) years from the date of closing of the first sale in the Project, whichever occurs first and (2) a Condominium may be used as a combined residence and executive or professional office by the Owner of the Condominium, so long as such use does not interfere with the quiet enjoyment by other Owners of their Condominiums, does not include visiting clients or employees, and does not involve any signage.

B. Residents shall be limited as follows: No more than two (2) persons per bedroom in any Condominium shall be permitted as permanent residents. (A "permanent resident" means any person residing in a Condominium more than sixty (60) days out of any twelve (12) consecutive month period) One (1) child under three (3) years of age shall be allowed in addition to the maximum number of permanent residents otherwise permitted in each Condominium.

C. No Condominium or any portion of any Condominium in the Project shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so-called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy or possess the Condominium or Condominiums, or any

portion of the Condominiums in the Project rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time of twenty-five (25) consecutive calendar days or less. Provided, this section shall not be construed to limit the personal use of any Unit or any portion thereof in the Project by any Unit Owner or his social or familial guests.

7.2 Nuisances: No noxious, illegal, or seriously offensive activities shall be carried on within Condominium, or in any part of the Project, nor shall anything be done thereon that which may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners' Condominiums or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any building.

7.3 Vehicle Restrictions and Towing: No trailer, camper, mobile home, commercial vehicle, recreational vehicle, truck having carrying capacity of greater than 3/4 ton, or van having seating capacity in excess of eight (8) persons or vehicle which is too large to fit within the Owner's garage or parking space, boat, inoperable automobile, or similar equipment shall be permitted to be parked or remain upon any area within the Project. Permitted vehicles which are used both for business and personal use are not prohibited, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky vehicles shall be operated on the Project. No unregistered or unlicensed motor vehicles shall be operated or parked upon the Project. The occupants of a Condominium shall not have or park more than two (2) permitted vehicles on the Project at any one time.

(1) The Association may install a sign at each vehicular entrance to the Project containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Project will be removed at the owner's expense. The sign shall contain the telephone number of the local traffic law enforcement agency and shall not be less than 17 x 22 inches in size with lettering not less than one (1) inch in height.

(2) The Association may cause the removal of any vehicle wrongfully parked on the Project, including a vehicle owned by an occupant. If the identity of the registered owner of the vehicle is known or readily ascertainable, the President of the Association or his designee shall, within a reasonable time thereafter, notify the owner of the removal in writing by personal delivery or first-class mail. In addition, notice of the removal shall be given to the local traffic law enforcement agency immediately after the vehicle has been removed. The notice shall include a description of the vehicle, the license plate number and the address from where the vehicle was removed. If the identity of the owner is not known or readily ascertainable and the vehicle has not been returned to the owner within one hundred twenty (120) hours after its removal, the Association immediately shall send or cause to be sent a written report of the removal by mail to the California Department of Justice in Sacramento, California and shall file a copy of the notice with the proprietor of the public garage in which the vehicle is stored. The report shall be made on a form furnished by the Department of Justice and shall include a complete description of the vehicle, the date, time and place from which the vehicle was removed, the amount of mileage on the vehicle at the time of removal, the grounds for removal and the name of the garage or place where the vehicle is stored. Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated for handicapped without proper authority or in a manner which interferes with any entrance to, or exit from, the Project or any Condominium, parking space or garage located thereon. The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any person causing the removal of or removing the vehicle.

If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle.

(1) Designated turn-around and back-up areas shall be kept free and clear for the purposes intended.

(2) Owners are to use their assigned parking spaces for parking of their vehicles. Only non-resident guests may use any Parking Space that is designated specifically for guest or visitor parking. The Association may establish Rules from time to time for the parking of vehicles in the Common Areas.

(3) The provisions of this section 7.3 are intended to comply with Vehicle Code section 22658.2 in effect as of January 1, 2003. If this Vehicle Code section is amended, this provision automatically shall be amended in the same manner. If this section is repealed and no successor section is enacted, this provision shall remain in full force and effect. Vehicle Code section 22658.2 may have been amended by the State Legislature since this Declaration was recorded, and the Board should confirm the current statutory requirements.

7.4 Signs: No signs shall be displayed to the public view on any Condominiums or any portion of the Project, except such signs as are approved by the Board or committee appointed by the Board. However, each Owner may display only one (1) "For Sale" or "For Rent" or "For Exchange" sign and may also display one (1) sign advertising directions to another Owners' Condominium which is for sale, rent, or exchange, provided the design, dimensions and locations are reasonable.

7.5 Animals: No animals of any kind shall be raised, bred, or kept in any Condominium, or on any portion of the Project, with the exception of trained dogs used for assistance by visually impaired, hearing impaired or physically handicapped persons except pets normally kept in cages or aquariums, such as small birds and fish, and one (1) usual and ordinary household pet such as a dog or cat provided it is not kept, bred, or maintained for any commercial purposes, is at all times is less than 20 pounds in weight, and it is kept under reasonable control at all times. No Owner shall allow an animal to enter the Common Area except on a leash or in a cage. After making a reasonable attempt to notify the Owner, the Association or any Owner may cause any pet found within the Common Area in violation of the Rules of the Board or this Declaration to be removed by the Association (or any Owner) to a pound or animal shelter under the jurisdiction of the City, by calling the appropriate authorities, whereupon the Owner may, upon payment of all expenses connected therewith, repossess the pet. Owners shall prevent their pet from soiling all portions of the Common Area and shall promptly clean up any waste left by their pet. Owners shall be fully responsible for any damage caused by their pet. An Owner shall use reasonable efforts to prevent any animal within his Unit from making disturbing noises that can be heard from any other Unit between the hours of 10:00 PM to 7:00 AM. The Board, after notice and a hearing, may require the permanent removal of any animal that the Board determines to be a danger to the health and safety of any occupant in the Project, or otherwise to be a nuisance within the Project. The Board may find that an animal is a nuisance if the animal or its owner continue to violate the Rules regulating pets after receipt by the owner of a written demand from the Board to comply with the Rules.

7.6 Garbage and Refuse Disposal: All rubbish, trash and garbage shall be regularly removed from the Units and the Project, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall only be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All garbage cans or recycling containers shall be kept within the Unit. Unit Owners shall deposit garbage, trash and recycling materials in accordance with the Project Rules. The Association shall be responsible for removal of garbage from the central pick-up point(s). No toxic or hazardous materials shall be disposed of within the Project by dumping in the garbage containers or down the drains, or otherwise.

7.7 Radio and Television Antennas: No alteration to or modification of a central radio and/or television antenna system or cable television system, whichever is applicable, if developed by Declarant or a cable television franchisee and as maintained by the Association or said franchisee, shall be permitted. No Owner shall construct, install and/or use and operate a radio and/or television antenna, satellite dish, other signal reception or transmission devices or related equipment in the Common Areas of the Project which are exterior of his or her Unit without the consent of the Board, which the Board shall have the discretion to withhold, subject to applicable legal requirements. The Board may adopt other Rules for installation and operation of any satellite dish or other signal reception or transmission devices that comply with California Civil Code §1376 and FCC regulations.

7.8 Right to Lease:

A. Any Owner who wishes to lease his Condominium must meet each of the following requirements, and the lease will be subject to these requirements whether they are included within the lease or not:

- (1) all leases must be in writing;
- (2) the lease must be for the entire Condominium and not merely parts of the Condominium, unless the Owner remains in occupancy;
- (3) all leases shall be subject in all respects to provisions of the Declaration, the Bylaws, and all Rules adopted by the Board;

(4) all Owners who lease their Condominiums shall promptly notify the Secretary of the Association in writing of the names of all tenants and members of tenants' family occupying such Condominiums and shall provide the Secretary of the Association with a complete copy of the lease. All Owners leasing their Condominium shall promptly notify the Secretary of the Association of the address and telephone number where such Owner can be reached;

B. Any failure of a tenant to comply with the Declaration, Bylaws, and Association Rules, shall be a default under the lease, regardless of whether the lease so provides. In the event of any such default, the Owner immediately shall take all actions to cure the default including, if necessary, eviction of the tenant;

C. The Association shall give the tenant and the Owner notice in writing of the nature of the violation of the Declaration and/or Rules, and twenty (20) days from the mailing of the notice in which to cure the violation before the Association may file for eviction.

D. Each Owner shall provide a copy of the Declaration, Bylaws and all Rules of the Association to each tenant of his or her Unit. By becoming a tenant, each tenant agrees to be bound by the Declaration, the Bylaws and the Rules of the Association, and recognizes and accepts the right and power of the Association to evict a tenant for any violation by the tenant of the Declaration, the Bylaws, and Rules of the Association.

7.9 Architectural Control: The purpose and intent of this section is to empower the Association to preserve property values within the Project. The Board has the ultimate responsibility, but may delegate that authority to an Architectural Control Committee. The emphasis shall be upon keeping out of the Project what is considered bizarre, outlandish, or offensive to a reasonably prudent homeowner within the Project. The objective shall be to prevent additions, alterations or replacements which are reasonably likely to be detrimental to the overall ambiance of the Project, and reasonably likely to adversely affect property values throughout the Project. The restrictions herein stated are not intended to empower the Board or the Committee to act arbitrarily, capriciously, or whimsically in the process of reviewing plans. Standards should be established which are both reasonable and objective, and which are reasonably ascertainable, and

are uniformly and fairly applied to all, and in all cases. The Board and the Committee shall base their decisions on what is in the best interests of the Project as a whole, and not upon what will appease a particular Member or group of Members.

A. No building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, improvement or structure of any kind shall be commenced, installed, erected, painted, repainted or maintained upon the Project, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by the Board, or by an Architectural Control Committee appointed by the Board. Notwithstanding the foregoing, Owners may improve or alter any improvements within the interior boundaries of the Owner's Unit, provided such improvement or alteration does not impair the structural or acoustical integrity of any Common Area, the utilities or other systems servicing the Common Area or other Condominiums, and does not involve altering any Common Area (including bearing walls).

B. The Architectural Control Committee shall not restrict or prohibit the installation or use of a solar energy system except that it may adopt reasonable restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or which allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

C. Plans and specifications showing the nature, kind, shape, color, size, materials and location of any proposed improvements or alterations, shall be submitted to the Board or to the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with Declarant's original color scheme, or to rebuild in accordance with Declarant's original plans and specifications. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Board or the Committee, or to rebuild in accordance with plans and specifications previously approved by the Board or by the Committee. Nothing contained in this paragraph shall be construed to limit the right of an Owner to paint the interior of his or her Unit any color desired.

D. In order to maintain noise transference levels between units, and to comply with applicable building standards, floor covering materials that are replaced shall be replaced only with materials of equal or better quality and noise transmission specifications.

E. The Architectural Control Committee shall consist of three (3) members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original final Public Report for the Project. The Declarant reserves to itself the power to appoint a majority of the members to the Committee until ninety percent (90%) of all the Condominiums in the Project have been sold or until the fifth anniversary of the issuance of the final Public Report for the Project, whichever occurs first. After one (1) year from the of issuance of the original Public Report for the Project, the Board shall have the power to appoint one (1) member to the Architectural Control Committee until ninety percent (90%) of all the Condominiums in the Project have been sold or until the fifth anniversary date of the issuance of the final Public Report for the Project, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Control Committee. Members appointed to the Architectural Control Committee need not be Members of the Association. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the successor shall be appointed by the person, entity or group which appointed such member until Declarant no longer has the right to appoint any members to the Committee, and thereafter the Board shall appoint such a successor. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this Declaration. In the event the Committee fails to approve or disapprove plans and

specifications in writing within thirty (30) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with. Approval of plans by the Committee or the Board shall in no way make the Committee or its members or the Board or its members responsible for or liable for the improvements built after approval of the plans, and the Owner whose plans are approved shall defend, indemnify and hold the Committee, the Board, the Association, and its members, harmless from any and all liability arising out of such approval.

F. Before commencement of any alteration or improvements approved by the Architectural Control Committee, the Owner shall comply with all appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

7.10 Structural Integrity: Nothing shall be done in or on any Unit or in or on the Common Area which will impair the structural integrity of any building.

7.11 Window Coverings: All drapes, curtains, shutters, blinds or other window coverings visible from the street or Common Areas shall be beige, white or off-white in color or lined in beige, white or off-white, or as the case may be, of colors, materials and patterns which are approved by the Board or its authorized committee.

7.12 Clothes Lines: There shall be no outside laundering or drying of clothes. No draping of towels, carpets, or laundry over exterior railings shall be allowed.

7.13 Power Equipment and Motor Vehicle Maintenance: No power equipment, hobby shops, or motor vehicle maintenance (other than emergency work) shall be permitted within the Project except with prior written approval of the Board. Approval shall not be unreasonably withheld, and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections. All hazardous waste shall be disposed of properly by each Owner.

7.14 Liability of Owners for Damage to Common Area: The Owner of each Condominium shall be liable to the Association for all damage to the Common Area or improvements to the extent described in section 5.1A.

7.15 Commonly Metered Utilities: The Board may establish restrictions regarding the individual use of any utility on a common meter, and may impose reasonable charges for the individual use thereof.

7.16 Flags, Pennants, Banners, Etc.: There shall be no exhibiting, flying or hanging of any flags, pennants, banners, kites, towels, etc., from any area of the Project (except the Declarant's sales office) that would be visible from the street, Common Area, or the other Units, except under reasonable Rules adopted by the Board or the Architectural Control Committee, and except as expressly permitted by statute.

7.17 Water Bed Restrictions: No water beds shall be permitted.

7.18 Activities Causing Increase in Insurance Rates: Nothing shall be done or kept in any Unit or in any improvements constructed in any Unit, or in the Common Area, which will increase any applicable rate of insurance or which will result in the cancellation of insurance on any Unit or any part of the Common Area, or which would be in violation of any law.

7.19 Parking Spaces; Storage: The Project includes 131 Parking Spaces. At least one (1) Parking Space will be reserved as Restricted Common Area for each Unit. Such Parking Space will be assigned on the grant deed from the Declarant at the time Declarant conveys to Unit to the first Owner of the Unit. After such time as Declarant no longer owns a Unit in the Project, any Parking Spaces that are not so assigned to a specific Unit shall be controlled by the Board. The Board may elect to assign those Parking Spaces for exclusive use of Owners, and charge fees for such assignment, if the Board elects to do so, or maintain those Parking Spaces for handicapped parking or visitor parking, in accordance with Rules to be adopted by the Board. After such time as the Declarant no longer owns a Unit in the Project, the Board also control the allocation and use of Storage Spaces in the garage that have not been assigned to specific Owners by the Declarant, and may set and assess fees for the use of those Storage Spaces.

7.20 Floor Coverings: No change in the floor covering materials as originally installed in the Units by Declarant shall be permitted except with the consent of the Architectural Control Committee. To reduce sound transmission between Units, all Units shall have all floor areas except entries, kitchens and bathrooms covered with carpet or other material which provides equivalent insulation against sound transmission. Flooring in bathrooms shall be acoustical cushioned linoleum as originally installed by Declarant, or material with the same or better acoustical quality and rating.

7.21 Common Area Use: Nothing shall be stored, grown, or displayed in the Common Area, that is not approved in advance by the Architectural Control Committee.

7.22 Gym: Subject to the rules and regulations adopted by the association that operates the condominium project that adjoins the Project, known as One Crescent Way, located on Lot 235 of the Master Map and to be shown and described on the map entitled "Map of St. Francis Bay Condominiums 1 Crescent Way", to be filed for record in the Office of the Recorder of the County of San Francisco, California, the Owners in the Project shall be entitled to use the Gym, provided that and conditioned upon the Association paying to the One Crescent Way Homeowners Association one-half (1/2) of the costs of the operation, maintenance and repair of the Gym and its facilities as a Common Expense. It is understood that the association for One Crescent Way Homeowners Association shall have the right to relocate the Gym within the common area of the One Crescent Way Condominium Project as long as the Gym is essentially the same size as the original Gym shown on the Map of St. Francis Bay Condominiums 1 Crescent Way.

ARTICLE 8. INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION

8.1 Insurance: The Association shall obtain and maintain the following insurance:

(1) a master hazard policy insuring all improvements, equipment and fixtures in the Project (including the Units as originally constructed) with policy limits of either: [a] full replacement value of the covered improvements or [b] no less than 80% of replacement cost of the covered improvements, excluding foundations and footings in either instances, unless otherwise required by FNMA or FHLMC requirements as set forth in subparagraph 8.1A, below;

(2) if obtainable, an occurrence version comprehensive general liability policy insuring the Association, its agents, the Owners and their respective family members, against liability incident to the ownership or use of the Common Area or any other Association owned or maintained real or personal property. The amount of general liability insurance that the Association shall carry at all times shall be not less than the minimum amounts required by California Civil Code §1365.7;

(3) workers' compensation insurance to the extent required by law (or such greater amount as the Board deems necessary). The Association shall obtain a Certificate of Insurance

naming it as an additional insured in regard to workers' compensation claims from any independent contractor who performs any service for the Association, if the receipt of such a certificate is practicable;

(4) fidelity bonds or insurance covering officers, directors, and employees that have access to any Association funds;

(5) flood insurance if the Project is located in an area designated by an appropriate governmental agency as a special flood hazard area;

(6) officers and directors liability insurance in the minimum amounts required by California Civil Code §§ 1365.7;

(7) insurance against water damage, and liability for non-owned and hired automobiles, such other insurance as the Board in its discretion considers necessary or advisable; and

(8) earthquake insurance to the extent required by law, and if not required by law, then to the extent available at commercially reasonable rates in the opinion of the Board.

(9) the following endorsements should be included, if applicable:

(a) changes in building codes, and demolition coverage (sometimes referred to as "ordinance or law endorsement");

(b) inflation guard coverage;

(c) "agreed-amount" endorsement (to eliminate a coinsurance problem);

(d) replacement cost endorsement; and

(e) primary coverage endorsement.

A. Amount, Term and Coverage. The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements imposed for this type of project by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") or any successor to either of those entities (except for earthquake insurance, the purchase of which shall be within the discretion of the Board, as provided in section 8.1(8) above). If the FNMA or FHLMC requirements conflict, the more stringent requirement shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is customary for similar policies on similar projects in the area. The Board shall adopt a policy regarding payment of deductibles on any insurance coverage. Unless the Board determines otherwise, the Association shall pay deductibles required under any insurance claims from Association funds, unless insufficient funds are available to the Association from the Association's accounts or from funds borrowed by the Association in accordance with this Declaration, in which event the Association shall levy a Special Assessment, in accordance with sections 4.3B and 4.4 of this Declaration, with respect to the amount of any such deductible which exceeds funds available to the Association from Association funds or from borrowing.

B. Representation for Claims. Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

C. Waiver of Subrogation. Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors and Members, the Owners and

occupants of the Condominiums and mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. All individually maintained insurance shall contain a waiver of subrogation as to the Association and its officers, directors and Members, the Owners and occupants of the Condominiums and mortgagees, and all Members are deemed to have waived subrogation rights as to the Association and/or other Members, whether or not their policies so provide.

D. Review of Policies. The Association shall periodically (and not less than once every three (3) years) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

E. Separate Insurance Limitations. No Condominium Owner shall separately insure his Condominium against loss by fire or other casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance. The insurance maintained by the Association does not cover the personal property in the residences and does not cover personal liability for damages or injuries occurring in the Units. Any Owner can insure his personal property against loss and obtain any personal liability insurance that he desires. In addition, any improvements made by an Owner within his Unit may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "improvements insurance". The Owner shall not obtain such insurance if the policy referred to in section 8.1(1) will provide coverage for such improvements.

F. Copies of Policies. The Association shall make available to all Members a copy of the Association's policy to enable Members to insure their Units without duplicating insurance carried by the Association and inadvertently triggering a co-insurance clause in the Association's policy referred to in section 8.1(1).

G. Limitation on Liability. The Association, and its directors and officers, shall have no liability to any Owner or mortgagee if, after a good faith effort, it is unable to obtain the insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any Assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any mortgagee entitled to notice that the insurance will not be obtained or renewed.

H. Policies and Procedures Regarding the Filing and Processing of Claims: The Board shall adopt a policies and procedures regarding the filing and processing of claims for damage and destruction of Common Area improvements or any other matters covered by insurance maintained by the Association.

8.2 Damage or Destruction: If Project improvements are damaged or destroyed by fire or other casualty, the improvements shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by the Architectural Control Committee, unless either of the following occurs: (1) the cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all Project improvements, available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction, and three-fourths (3/4) of the total voting power of the Association residing in Members and their First Lenders vote against such repair and reconstruction; or (2) available insurance proceeds are not sufficient to substantially repair or reconstruct the improvements within a reasonable time as determined by the Board, a special Assessment levied to supplement the

insurance fails to receive the requisite approval (if such approval is required) as provided in section 4.4, and the Board, without the requirement of approval by the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

A. Process For Repair or Reconstruction: If the improvement is to be repaired or reconstructed and the cost for repair or reconstruction is in excess of twenty-five percent (25%) of the current replacement cost of all the Project improvements, the Board shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that require as a minimum that the construction consultant, general contractor and architect certify within ten (10) days prior to any disbursement substantially the following:

(1) that all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

(2) that such disbursement request represents monies which either have been paid by or on behalf of the construction consultant, the general contractor or the architect and/or are justly due to contractors, subcontractors, materialmen, engineers, or other persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of those persons in respect of such services and stating the progress of the work up to the date of the certificate;

(3) that the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;

(4) that no part of the cost of the services and materials described in the foregoing paragraph 8.2(1) has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and

(5) that the amount held by the depository, after payment of the amount requested in the pending disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction.

If the cost of repair or reconstruction is less than twenty-five percent (25%) of the current replacement cost of all the Project improvements, the Board shall disburse the available funds for the repair and reconstruction under such procedures as the Board deems appropriate under the circumstances.

The repair or reconstruction shall commence as soon as reasonably practicable after the date of such damage or destruction and shall be completed as quickly as is reasonably practicable after commencement of reconstruction, subject to delays that are beyond the control of the party responsible for making the repairs. The Owner of the damaged or destroyed improvement immediately shall take such steps as may be reasonably necessary to secure any hazardous condition and to screen any unsightly views resulting from the damage or destruction.

B. Process If Repair or Reconstruction Not Undertaken: If the improvements are not required to be repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed among all Owners and their respective Mortgagees in proportion to the respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction.

as determined by a qualified independent appraiser selected by the Board, after first applying the proceeds to the cost of mitigating hazardous conditions on the Project, making provision for the continuance of public liability insurance to protect the interests of the Owners until the Project can be sold, and complying with all other applicable requirements of governmental agencies. In the event of a failure to agree upon an appraiser, the appraiser shall be appointed by the then President of the San Francisco County Bar Association.

(1) If the failure to repair or reconstruct results in a material alteration of the use of the Project from its use immediately preceding the damage or destruction as determined by the Board (a material alteration shall be conclusively presumed if repair or reconstruction costs exceed twenty-five percent (25%) of the current replacement cost of all Project improvements), the Project shall be sold in its entirety under such terms and conditions as the Board deems appropriate. If any Owner or First Lender disputes the Board's determination as to a material alteration, the dispute shall be submitted to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the arbitrator shall be conclusive and binding on all Owners and their Mortgages.

(2) If the Project is sold, the sales proceeds shall be distributed to all Owners and their respective Mortgages in proportion to their respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by the independent appraisal procedure described above. Such distribution shall occur only after the Association first uses such proceeds and other available Association funds to take such steps as may be reasonably necessary to remove or render safe any hazardous or unsafe condition within the Project, to screen any unsightly views resulting from the damage or destruction and obtain the continuance of public liability insurance to protect the interests of the Owners until the property can be sold. For the purpose of effecting a sale under this section 8.2, each Owner grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of the Owners, to terminate the Declaration and to dissolve the Association. In the event the Association fails to take the necessary steps to sell the entire Project as required under this Article within sixty (60) days following the date of a determination by the Board or arbitrator of a material alteration, or if within one hundred twenty (120) days following the date of damage or destruction the Board has failed to make a determination as to a material alteration, any Owner may file a partition action as to the entire Project under California Civil Code § 1359, or any successor statute, and the court shall order partition by sale of the entire Project and distribution of the sale proceeds as provided in this Declaration.

(3) Notwithstanding anything in this Declaration to the contrary, any Owner or group of Owners shall have a right of first refusal to match the terms and conditions of any offer made to the Association in the event of a sale of the Project under this section 8.2B, provided this right is exercised within ten (10) days of receipt by the Owners of a notice from the Association containing the terms and conditions of any offer it has received. If the Owner or group of Owners subsequently default on their offer to purchase, they shall be liable to the other Owners and their respective mortgagees for any damages resulting from the default. If more than one (1) Owner or group elects to exercise this right, the Board shall accept the offer that in its determination is the best offer.

8.3 Condemnation: The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area(s), or part of the Common Area(s). In the event of a taking or acquisition of part or all of the Common Area(s) by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or any trustee appointed by the Association, for the use and benefit of the Owners and their Mortgagees as their interests may appear. In the event of an award for the taking of any Condominium in the Project by eminent domain, the Owner of such Condominium shall be entitled to receive the award for such taking and, after acceptance of the award, he and his Mortgagee shall be divested of all interest in the Project if such Owner shall vacate his Condominium as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project, or take other action. The remaining portion of the

Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project. In the event of a taking by eminent domain of any part of the Common Area, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Condominiums are not valued separately by the condemning authority or by the court. Proceeds of condemnation shall be distributed among Owners of Condominiums and their respective Mortgagees according to the relative values of the Condominiums affected by the condemnation, said values to be determined by the method provided in section 8.2. If there is a substantial taking of the Project (more than fifty percent (50%)), the Owners may terminate the legal status of the Project and, if necessary, bring a partition action under California Civil Code § 1359 or any successor statute, on the election to terminate by fifty-one percent (51%) of the total voting power of the Association and the approval of Eligible Mortgage Holders holding Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgages. The proceeds from the partition sale shall be distributed to the Owners and their respective Mortgagees in proportion to the fair market values of their Condominiums as determined under the method described in section 8.2.

ARTICLE 9. GENERAL PROVISIONS

9.1 Enforcement: The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Articles and the Bylaws, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the Court. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

9.2 Invalidity of Any Provision: Should any provision or portion of this Declaration be declared invalid or in conflict with any law of the jurisdiction where this Project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

9.3 Term: The covenants and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners of the Condominiums, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions in whole or in part, or to terminate the same.

9.4 Amendments: Prior to close of escrow on the sale of the first Condominium, Declarant may amend this Declaration. After sale of the first Condominium, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing a majority of the total voting power of the Association and a majority of the affirmative votes or written consent of Members other than the Declarant, or where the two (2) class voting structure is still in effect, a majority of each class of membership. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by the President or Vice President of the Association and recorded in the Recorder's Office of the County where the Project is located.

9.5 Encroachment Rights: If any portion of the Common Area encroaches on any Unit or any part of a Unit, or any portion of a Unit encroaches on any Common Area due to engineering errors, errors or adjustments in original construction, reconstruction, repair, settlement, shifting, or movement of the

building, or any other cause, the owner of the encroachment shall have the right to maintain, repair or replace the encroachment, as long as it exists, and the rights and obligations of Owners shall not be altered in any way by that encroachment, settlement or shifting; provided, however, that no right shall be created in favor of an Owner or Owners if that encroachment occurred due to the intentional conduct of such Owner or Owners other than adjustments by Declarant in the original construction. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Condominiums or Common Area shall be permitted and that there shall be appropriate rights for the maintenance of those encroachments so long as they shall exist. In the event that an error in engineering, design or construction results in an encroachment, a correcting modification may be made in the subdivision map and/or Condominium Plan. Such modification may be in the form of a certificate of correction and shall be executed by Declarant (so long as Declarant is the sole Owner of the Project) and by Declarant's engineer and, in addition, by the City engineer.

9.6 Rights of First Lenders: No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any of its lien provisions, shall render invalid the lien of any First Mortgage (meaning a mortgage with first priority over any other mortgage) on any Condominium made in good faith and for value, but all of those covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through Foreclosure or trustee's sale, or otherwise. Notwithstanding any provision in the Project Documents to the contrary, First Lenders shall have the following rights:

A. Copies of Project Documents: The Association shall make available to Condominium Owners and First Lenders, and to holders, insurers or guarantors of any First Mortgage, current copies of the Declaration, Bylaws, Articles or other Rules concerning the Project and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. The Board may impose a fee for providing the requested documents which may not exceed the reasonable cost to prepare and reproduce them.

B. Audited Statement: Any holder of a First Mortgage shall be entitled, upon written request, to have an audited financial statement for the immediately preceding fiscal year prepared at its expense if one is not otherwise available. Such statement shall be furnished within one hundred twenty (120) days of the Association's fiscal year-end.

C. Notice of Action: Upon written request to the Association, identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or Guarantor, and the Condominium number or address, such Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

(1) 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;

(2) any default in performance of obligations under the Project Documents or delinquency in the payment of Assessments or charges owed 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;

(3) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(4) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as specified in section 9.6D.

The Association shall discharge its obligation to notify Eligible Mortgage Holders or Eligible Insurers or Guarantors by sending written notices required by this Declaration to such parties, at the address given on the current request for notice, in the manner prescribed by section 9.11.

D. Consent to Action:

(1) Except as provided by statute or by other provision of the Project Documents in case of substantial destruction or condemnation of the Project, and further excepting any reallocation of interests in the Common Area(s) which might occur pursuant to any plan of expansion or phased development contained in the original Project Documents:

(a) the consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgages, shall be required to terminate the legal status of the Project as a Condominium Project; provided, however, that if termination is for reasons other than substantial destruction or condemnation, the agreement of Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the votes of the mortgaged Unit is required;

(b) the consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding mortgages on Units which have at least fifty-one percent (51%) of the votes of the Condominiums subject to Eligible Mortgages, shall be required to add or amend any material provisions of the Project Documents which establish, provide for, govern or regulate any of the following: (i) voting rights; (ii) increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment Liens, or the priority of Assessment Liens; (iii) reductions in reserves for maintenance, repair, and replacement of Common Areas; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the general or Restricted Common Areas, or rights to their use; (vi) convertibility of Units into Common Areas or vice versa; (vii) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project; (viii) hazard or fidelity insurance requirements; (ix) imposition or any restrictions on the leasing of Units; (x) imposition of any restrictions on an Owner's right to sell or transfer his Unit; (xi) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Project Documents; or (xii) any provisions that expressly benefit mortgage holders, insurers, or guarantors;

(c) an Eligible Mortgage Holder who receives a written request to approve additions or amendments without delivering or posting to the requesting party a negative response within thirty (30) days after the notice of the proposed addition or amendment shall be deemed to have approved such request, provided the notice has been delivered to the mortgage holder by certified or registered mail, return receipt requested.

(2) except as provided by statute in case of condemnation or substantial loss to the Condominiums and/or common elements of the Project, unless the holder(s) of at least two-thirds (2/3) of the First Mortgages (based upon one (1) vote for each First Mortgage owned), or Owners of the individual Condominiums have given their prior written approval, the Association and/or the Owners shall not be entitled to:

(a) by act or omission, seek to abandon or terminate the Condominium Project (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain);

(b) change the pro rata interest or obligations of any individual Condominium for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (ii) determining the pro rata share of ownership of each Condominium in the Common Area, provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner;

(c) partition or subdivide any Condominium Unit;

(d) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Condominium Project shall not be deemed a transfer within the meaning of this clause);

(e) use hazard insurance proceeds for losses to any of the Project (whether to Units or to Common Area) for other than the repair, replacement or reconstruction of such Project.

E. Right of First Refusal: Except for any rights imposed on the Project by the City, the right of an Owner to sell, transfer, or otherwise convey his Condominium shall not be subject to any right of first refusal or similar restriction.

F. Contracts: Any agreement for professional management of the Project, or lease or any other contract providing for services of the developer, sponsor, or builder, may not exceed one (1) year. Any agreement, contract, or lease, including a management contract entered into prior to passage of control of the Board of Directors of the Association to Unit purchasers, must provide for termination by either party for cause on thirty (30) days' written notice, or without cause and without payment of a termination fee or penalty on ninety (90) days' or less written notice.

G. Reserves: Condominium dues or charges shall include an adequate reserve fund for maintenance, repairs, and replacement of those improvements which the Association is obligated to maintain and that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special Assessments.

H. Priority of Liens: Any lien created under the provisions of this Declaration is expressly made subject and subordinate to the lien and encumbrance of any First Mortgage that encumbers all or any portion of the Project, or any Unit. Each holder of a First Mortgage lien on a Condominium who comes into possession of the Condominium by virtue of Foreclosure of the Mortgage, or any purchaser at a foreclosure sale under a first deed of trust, will take the Condominium free of any claims for unpaid Assessments and fees, late charges, fines or interest levied in connection with such claims, against the Condominium which accrue prior to the time such holder takes title to the Condominium, except for claims for a pro rata share of such Assessments or charges to all Condominiums including the mortgaged Condominium, and except for Assessment Liens as to which a Notice of Delinquent Assessment has been recorded prior to the Mortgage.

I. Distribution of Insurance or Condemnation Proceeds: No provision of the Project Documents gives an Owner, or any other party, priority over any rights of First Lenders in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Condominiums and/or Common Area.

J. Termination of Professional Management: When professional management has been previously required by the Project Documents or by any Eligible Mortgage Holder or Eligible Insurer or Guarantor, whether such entity became an Eligible Mortgage Holder or Eligible Insurer or Guarantor at that time or later, any decision to establish self management by the Association shall require the prior consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgages.

K. Status of Loan to Facilitate Resale: Any First Mortgage given to secure a loan to facilitate the resale of a Condominium after acquisition by Foreclosure or by a deed in lieu of Foreclosure or by an assignment in lieu of Foreclosure, shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of Mortgages under this Declaration.

L. Right to Appear at Meetings: Any Eligible Mortgage Holder may appear (but cannot vote) at meetings of Owners and the Board to draw attention to violations of this Declaration that have not been corrected or that have been made the subject of remedial proceedings or Assessments.

9.7 Owner's Right and Obligation to Maintain and Repair:

A. Maintenance Manual. Each Owner shall maintain the improvements on his or her Unit in accordance with the Maintenance Manuals. A copy of the Maintenance Manuals shall be delivered by Declarant to each Owner when the Unit is sold to the Owner. Each Owner shall retain the Maintenance Manuals and take all appropriate actions to comply with and implement the Maintenance Manuals. When an Owner transfers a Unit, the Owner shall deliver a complete copy of the Maintenance Manuals to the transferee of the Unit on or before the date the Unit is transferred.

B. Maintenance Requirements. Except for those portions of the Project which the Association is required to maintain and repair, each Unit Owner shall, at his sole cost and expense, maintain and repair the Unit, keeping the same in good condition. Each Owner shall be responsible for and bear the cost of maintenance, repair and replacement of the following items within such Owner's Unit: entrance and interior surfaces of all perimeter and interior walls, ceilings and floors (including carpeting, tile, wall paper, paint or other covering); garbage disposals, ranges, refrigerators, dishwashers, washing machines, dryers, light fixtures, smoke detectors and any and all other appliances of any nature whatsoever; heating equipment servicing such Unit; interior doors, including all hardware on the doors; light bulbs; plumbing and other fixtures of any nature whatsoever; "built-in" features; and decorative features, fireplaces, if any, and any furniture and furnishings. Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, and doors bounding his Unit. In the event an Owner fails to maintain the interior of his Unit in a manner which the Board deems necessary to preserve the appearance and value of the Project, the Board may notify Owner of the work required and request it be done within sixty (60) days from the giving of such notice. In the event Owner fails to carry out such maintenance within said period, the Board may, following notice and hearing as provided in the Bylaws, cause such work to be done and the cost of the work shall immediately be paid by such Owner to the Association and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law).

9.8 Limitation of Restrictions on Declarant: Declarant is undertaking the work of construction of residential Condominiums and incidental improvements upon the subject Project. The completion of that work and the sale, rental, and other disposal of those Condominiums is essential to the establishment and welfare of the Project as a residential community. In order that the work may be completed and the Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

A. Prevent Declarant, its contractors, or subcontractors from doing on the Project or any Condominium whatever is reasonably necessary or advisable in connection with the completion of the work; or

B. Prevent Declarant or its representatives from erecting, constructing and maintaining on the Project (except upon Units owned by others), such structures as may be reasonable and necessary for the conduct of its business of completing the work and establishing said Project as a residential community and disposing of the Project in parcels by sale, lease or otherwise; or

C. Prevent Declarant from conducting on Project (except upon Units owned by others) its business of completing the work and of establishing a plan of Condominium ownership and of disposing of said Project in Condominiums by sale, lease or otherwise (including use of one (1) or more Units as a sales office) (Use of the recreation room by Declarant as a sales office after close of escrow on the first sale of a Condominium shall require payment of a reasonable rental fee by Declarant to the Association); or

D. Prevent Declarant from maintaining or displaying such sign(s), pennants and flag(s) on the Project (except upon Units owned by others) as may be necessary for the sale, lease or disposition thereof; or

E. Subject Declarant to the architectural control provisions of section 7.9 for the construction of any Condominium or other improvement on the Project.

The foregoing rights of Declarant shall terminate upon sale of Declarant's entire interest in the Project.

So long as Declarant, its successors and assigns, owns one (1) or more of the Condominiums established and described in this Declaration, Declarant, and its successors and assigns, shall be subject to the provisions of this Declaration. Declarant shall make reasonable efforts to avoid disturbing the use and enjoyment of Units (and the Common Area) by Owners, while completing any work necessary to those Units or Common Area.

9.9 Termination of any Responsibility of Declarant: In the event Declarant shall convey all of its right, title and interest in and to the Project to any Declarant, then and in such event, Declarant shall be relieved of the performance of any further duties or obligations under this Declaration arising after such conveyance, and such successor Declarant, shall thereafter be obligated to perform all such duties and obligations of the Declarant. The obligations of Declarant to the City contained in the conditions of approval for the Project, which obligations are intended to be on-going after Declarant has sold its interest in the Project, shall become the obligations of the Association, and the Association shall indemnify Declarant against any liability arising out of the performance or non-performance of those obligations after Declarant has sold its interest in the Project and/or turned over the maintenance and management of the Project to the Association.

9.10 Owners' Compliance: Each Owner, tenant or occupant of a Condominium shall comply with the provisions of this Declaration, and (to the extent they are not in conflict with the Declaration) the Articles and Bylaws, the decisions and resolutions of the Association or the Board, as lawfully amended from time to time. Failure to comply with any such decisions, or resolutions shall be grounds for an action (1) to recover sums due, (2) for damages, (3) for injunctive relief, (4) for costs and attorneys' fees, or (5) any combination of the foregoing.

In the event of a violation of the Project Documents, the Association may, if permitted by applicable law, record a Notice of Violation against the Condominium of the non-complying Owner. Upon recording a Notice of Violation, the Association shall have complete discretion in deciding whether, when and how to proceed with enforcement, and any delay after recording a Notice of Violation shall not give rise to a defense of waiver or estoppel in favor of a non-complying Owner. The Association may take action to enforce compliance against a subsequent Owner who acquires a Condominium with a recorded Notice of Violation. The right of the Association to record a Notice of Violation shall be in addition to all other rights and remedies the Association may have at law or under the Project Documents.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Articles or the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns.

9.11 Notices: Any notice permitted or required by the Declaration, Articles or Bylaws may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, first class or registered, postage prepaid, addressed to the person to be notified at the current address given by such person to the Secretary of the Board or addressed to the Unit of such person if no address has been given to the Secretary. The Association shall notify the City Clerk each year, in writing, of the name, address and telephone number of the principal officer of the Association.

9.12 Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements: Where the Project includes Common Area improvements which have not been completed prior to the close of escrow on the sale of the first Condominium, and where the Association is obligee under a bond or other arrangement (hereafter "bond") to secure performance of the commitment of Declarant to complete said improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvement for which a notice of completion has not been filed within sixty (60) days after the completion date specified for those improvements in the planned construction statement appended to the bond. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the aforesaid question if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. A special meeting of Members of the Association for the purpose of: (i) voting to override a decision by the Board not to initiate action to enforce the obligations under the bond; or (ii) to consider the failure of the Board to consider and vote on the question shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members of the Association other than the Declarant shall be required to take action to enforce the obligations under the bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

On satisfaction of the Declarant's obligation to complete the Common Area improvements, the Association shall acknowledge in writing that it approves the release of the bond and shall execute any other

documents as may be necessary to effect the release of the bond. The Association shall not condition its approval of the release of the bond on the satisfaction of any condition other than the completion of the Common Area improvements as described on the planned construction statement. Any dispute between the Declarant and the Association regarding the question of satisfaction of the Conditions for exoneration or release of the security shall, at the request of either party, be submitted to arbitration pursuant to section 9.15 of this Declaration.

9.13 Special Provisions Relating to Enforcement of Declarant's Obligation to Pay Assessments: Where the Association is obligee under a bond or other arrangement (hereafter "bond") to secure performance of the commitment of Declarant to pay assessments on Units owned by Declarant, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any of Declarant's assessments which are delinquent for thirty (30) days. A special meeting of Members of the Association for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the bond or such a meeting to consider the failure of the Board to consider and vote on the question shall be held not less than ten (10) days nor more than twenty (20) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members of the Association other than the Declarant shall be required to take action to enforce the obligations under the bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

A. Upon satisfaction of the Declarant's obligation to assure the availability of funds to pay assessments upon unsold Units as set forth in Title 10 Cal Code of Regs § 2792.9, the escrow holder holding the bond shall return the bond to Declarant, after delivery to said escrow holder of Declarant's written request for release of the bond, and Declarant's written statement that [1] Declarant has paid, as and when due, all regular and special assessments levied by the Association against Units owned by the Declarant and that [2] 80% of the Units in the Project have been conveyed by Declarant, unless pursuant to Title 10 Cal Code of Regs § 2792.9, the Association delivers to said escrow holder its written objection to the return of the Bond to Declarant within forty (40) days after delivery of notice of Declarant's request from release and the statement to the Association. The Association shall not condition its approval of the release of the bond on the satisfaction of any condition other than the payment of Assessments.

B. If the Association delivers to the escrow holder of the bond a demand for remittance of the bond or a portion thereof, or the proceeds thereof to the escrow holder of the bond, which demand is accompanied by a written statement signed by an officer of the Association that the Declarant is delinquent in the payment of regular or special assessments which have been levied by the Association against Units owned by the Declarant, then all of some specified portion of the security as demanded shall be remitted to the Association upon the Declarant's failure to give the escrow holder within forty (40) days after receipt of delivery of the demand by the escrow holder, the subdivider's written objection to remittance of the security. Both the Declarant and the Association shall adhere and comply with the terms of escrow instructions with the escrow depository of the bond, which shall be in the form approved by the Department of Real Estate, with respect to the holding of the bond, the return or remittance of the bond and other disposition of matters set forth in said escrow instructions with respect to the bond. Any dispute between the Declarant and the Association regarding the question of satisfaction of the conditions for exoneration or release of the security shall, at the request of either party, be submitted to Arbitration as provided in section 9.15E hereof.

9.14 Fair Housing. No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, or mortgaging, or occupancy of his Unit to any person of a specified race, sex, age, marital status, color, religion, ancestry, physical handicap, or national origin.

9.15 Dispute Resolution: The Board is authorized to resolve any civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings.

A. Claims for Declaratory Relief or Enforcement of Project Documents: Prior to initiating the prosecution of a civil action solely for declaratory relief or injunctive relief to enforce the Project Documents, or for declaratory relief or injunctive relief to enforce the Project Documents in conjunction with a claim for monetary damages not in excess of Five Thousand Dollars (\$5,000), the Board, or any Owner who seeks such relief, shall first endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of California Civil Code section 1354(b). The Board shall comply with the requirements of California Civil Code section 1354(i) by providing Members of the Association annually with a summary of the provisions of California Civil Code section 1354, including the following language: "Failure by any Member of the Association to comply with the pre-filing 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."

B. Design or Construction Claims:

(4) Actions by the Association pertaining to or based upon a claim for defects in the design or construction of improvements within the Project against the Declarant, or any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof, or otherwise defined in Civil Code sections 896 or 897 as an Actionable Defect ("Claim"), shall be resolved and administered in accordance with Civil Code sections 895 through 945.5, and Civil Code sections 1375 and 1375.05, as such sections may be amended, revised or superseded, from time to time.

(5) If a Claim is subject to pre-litigation procedures in Civil Code sections 910 through 938, or any successor statutes, each Owner, and the Declarant, prior to filing any civil action, arbitration or action in judicial reference regarding such Claim shall comply with the prelitigation procedures of Civil Code sections 910 through 938. Notices of Claims shall specify all of the matters as set forth in Civil Code section 1368.4 and/or Civil Code sections 910 through 938, as applicable, and any successor statutes or laws.

(6) The Association and not the individual Members shall have the power to pursue any Claims for alleged construction defects in the Common Area [or other improvements or property within the Project that the Association is obligated to maintain or repair under this Declaration]. Any recovery by the Association with respect to any damage to or defect in the Common Area [or other improvements or property within the Project that the Association is obligated to maintain or repair under this Declaration] shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such damage or defect.

(7) If the Claim is not resolved by and pursuant to the prelitigation procedures of under Civil Code sections 910 through 938, subject to the provisions of Civil Code section 1375 and 1375.05, then notwithstanding the provisions of California Code of Civil Procedure section 1298.7, the Claim shall be resolved in accordance with the provisions of section 9.15.D of this Declaration [Judicial Reference] and section 9.15.E of this Declaration [Arbitration of Disputes].

C. Notices to Members of Legal Proceedings Against Declarant. In accordance with Civil Code section 1368.4, at least 30 days prior to filing any civil action, including arbitration, against Declarant or other developer of the Project for alleged damage to (i) the Common Area, (ii) all or portions of Units which the Association is required to maintain, or (iii) the Units which arises from or is integrally

related to alleged damage to the Common Area or all or portions of the Units which the Association is required to maintain, the Board shall provide written notice to each Member specifying each of the following:

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

If the Association has reason to believe that the applicable statute of limitations will expire before the Association is able to give notice, hold the meeting and file the civil action, the Association may file the civil action first and then give the notice within thirty (30) days after filing of the action.

D. Judicial Reference for Certain Disputes: Subject to the provisions of Civil Code sections 895 through 938, for any action or claim by the Association or any Owner against the Declarant, any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof ("Developer Parties"), or any other action by the Association or any Owner against the Declarant, except as otherwise provided herein, such claim shall be submitted to Judicial Reference as hereinafter provided:

(1) The dispute shall be submitted to binding general judicial reference pursuant to California Code of Civil Procedure sections 638(1) through 645.1, or any successor statutes thereto pertaining to proceedings under judicial reference ("Judicial Reference"). The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the Judicial Reference proceeding. Declarant shall not be required to participate in the Judicial Reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. The parties shall share the fees and costs of the Referee for the Judicial Reference proceeding as determined by the Referee.

(2) The Referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services ("JAMS") for judicial reference (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties), provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

(a) If the Declarant is a party to the Judicial Reference, then any fee to initiate the Judicial Reference shall be paid by Declarant, provided however, that the cost of the judicial reference shall ultimately be borne as determined by the Referee;

(b) The proceedings shall be heard in the County of San Francisco, California;

(c) The Referee must be a neutral and disinterested party who is a retired judge or a licensed attorney with at least ten (10) years' experience in relevant real estate matters;

(d) Any dispute regarding the selection of the Referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;

- (e) The Referee may require one or more pre-hearing conferences;
- (f) The parties shall be entitled to discovery, and the Referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;
- (g) A stenographic record of the Judicial Reference proceedings shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;
- (h) The Referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable;
- (i) The Referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge;
- (j) The Referee shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the Judicial Reference; and
- (k) The statement of decision of the Referee upon all of the issues considered by the Referee shall be binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the Referee shall be appealable as if rendered by the court.

(l) If submission of a disputed matter referenced in this section 9.15.D to Judicial Reference is not permitted under the then applicable law, then notwithstanding California Code of Civil Procedure section 1298.7, if the dispute is not resolved through mediation, each Owner, the Association and Declarant shall resolve such dispute exclusively through binding arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") pursuant to section 9.15.E of this Declaration.

(3) Judicial Reference shall only proceed for any matter that is subject to the requirements of California Civil Code section 1354 after the parties have attempted to reasonably comply with the alternative dispute resolution requirements set forth in California Civil Code section 1354, as same may be amended from time to time.

(4) Notwithstanding the foregoing, any dispute under sections 9.12 and 9.13 of this Declaration between the Declarant and the Association regarding the question of satisfaction of the conditions for exoneration or release of the security shall, at the request of either party, be submitted to arbitration pursuant to section 9.15.E of this Declaration.

E. Arbitration of Disputes: If a dispute is the subject of binding arbitration under this Declaration, the following shall apply:

(1) costs and fees of the arbitration, including ongoing costs and fees of the arbitration shall be paid as agreed by the parties, and, if the parties cannot agree, as determined by the arbitrator, with the costs and fees of the arbitration to ultimately be borne as determined by the arbitrator; provided, however, if the Declarant is a party to the arbitration, then any fee to initiate arbitration shall be paid by Declarant, but the cost of arbitration shall ultimately be borne as determined by the arbitrator;

(2) a neutral and impartial individual shall be appointed to serve as arbitrator, with the arbitrator to be selected by mutual agreement of the parties. If the parties are unable to agree on an

arbitrator within fifteen (15) days after any party initiates the arbitration, a neutral and impartial arbitrator shall be selected by the AAA. In selecting the arbitrator, the provisions of §1297.121 of the Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed in §1297.121, or in §1297.124 of the Code of Civil Procedure;

(3) venue of the arbitration to be in the County of San Francisco, California;

(4) the arbitration shall commence in a prompt and timely manner in accordance with (i) the Commercial Rules of AAA, or if the rules do not specify a date by which arbitration is to commence, then (ii) by a date that was agreed upon by the parties, and if they cannot agree as to a commencement date, (iii) a date determined by the arbitrator. The arbitrator shall apply California substantive law in rendering a final decision. The arbitrator shall have the power to grant all legal and equitable remedies and award compensatory damages. When the arbitrator is prepared to make the award, the arbitrator shall first so inform the parties, who shall have ten (10) days to attempt to resolve the matter by a binding agreement between them. If the parties resolve the matter, the arbitrator shall not make any award. If the parties do not so resolve the matter within the ten (10) day period, the arbitrator shall make the award on the eleventh day following the arbitrator's notice of being prepared to make the award;

(5) the arbitration shall be conducted in accordance with the Commercial Rules of AAA;

(6) the arbitration shall be conducted and concluded in prompt and timely manner;

(7) the arbitrator shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of arbitration;

(8) A judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement. The parties agree to be bound by the decision of the arbitrator, which shall be final and non-appealable.

(9) Preliminary Procedures. If state or federal law requires an Owner, the Association or Declarant to take steps or procedures before commencing an action in arbitration, then the Owner, the Association or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claim or Disputes pursuant to California Civil Code section 895 et seq., as hereafter amended may be subject to the non-adversarial procedures set forth in California Civil Code section 910 through 938, prior to the initiation of any arbitration. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code sections 1368.4, 1375, 1375.05 or 1375.1;

(10) Participation by Other Parties. An Owner, the Association and Declarant, to such extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration;

(11) Federal Arbitration Act. Because many of the materials and products incorporated into the home are manufactured in other states, the development and conveyance of the Property evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1 et seq.) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions set forth herein;

(12) AGREEMENT TO ARBITRATE - ARBITRATION OF DISPUTES. BY EXECUTING THIS DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER AND THE ASSOCIATION SHALL BE DEEMED TO HAVE AGREED TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP ANY RIGHTS DECLARANT, THE ASSOCIATION AND EACH OWNER MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION. IF DECLARANT, THE ASSOCIATION OR ANY OWNER REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, DECLARANT, THE ASSOCIATION OR SUCH OWNER MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

9.16 Number; Gender: The singular and plural number and masculine, feminine and neuter gender shall each include the other where the context requires.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 29th day of August, 2003.

TOP VISION DEVELOPMENT, LLC, a California limited liability company

By:

Its:

Cheng Chen
CHENG CHEN
MANAGING MEMBER

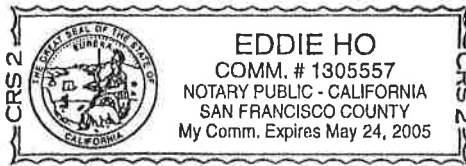
STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

)
) ss.
)

On this 29th day of August, 2003 before me, EDDIE HO, a notary public for the state, personally appeared CHENG CHEN, known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.





Notary Public, State of California (EDDIE HO)

EXHIBIT A
PARKING AND STORAGE PLAN

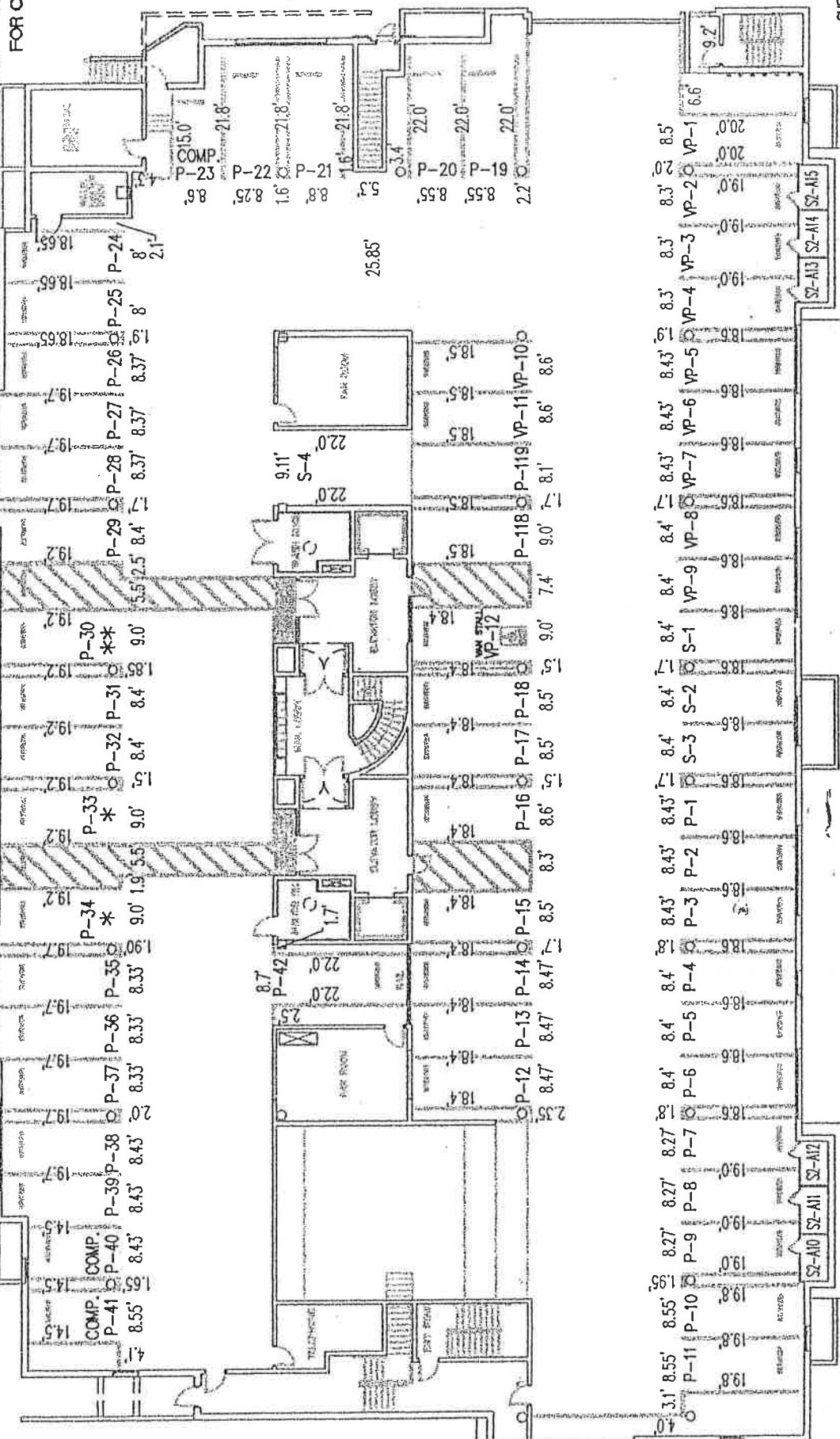
The attached Parking and Storage Plan shows the the Parking Spaces and the Storage Spaces in the Project and supercedes any description of parking spaces that were shown on the Map for the Project. The exclusive use parking spaces and storage easements as shown on the final map are herewith deleted and replaced by this Exhibit "A".

PARKING EXHIBIT
101 CRESCENT WAY
UPPER GARAGE
 CITY AND COUNTY OF SAN FRANCISCO
 CALIFORNIA

LUX AND ASSOCIATES
 399 TAYLOR BOULEVARD, #288
 PLEASANT HILL, CALIFORNIA 94523
 JUNE 2003 NOT TO SCALE

FOR COOR

* ADAPTABLE ACCESS SPACE
 ** ADAPTABLE VAN ACCESSIBLE SPACE



SHEET 2 OF 3 SHEETS
 PLOT DATE: 08/29/03

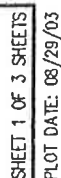
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LUK AND ASSOCIATES
399 TAYLOR BOULEVARD, #788
PLEASANT HILL, CALIFORNIA 94523
NOT TO SCALE

LUK AND ASSOCIATES

399 TAYLOR BOULEVARD, #288
PLEASANT HILL, CALIFORNIA 94523
JUNE 2003 NOT TO SCALE

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PARKING EXHIBIT

101 CRESCENT WAY
CITY AND COUNTY OF SAN FRANCISCO

LUK AND ASSOCIATES
399 TAYLOR BOULEVARD, #288
PLEASANT HILL, CALIFORNIA 94523
JUNE 2003 NOT TO SCALE

FOR CCH

101 CRESCENT WAY
UPPER STORAGE
STORAGE UNIT DIMENSION TABLE

STORAGE	LENGTH	WIDTH	AREA
S2-A10	7.5'	4.7'	35.25 SQ. FT.
S2-A11	7.5'	4.7'	35.25 SQ. FT.
S2-A12	7.5'	4.7'	35.25 SQ. FT.
S2-A13	7.5'	4.7'	35.72 SQ. FT.
S2-A14	7.5'	4.7'	35.25 SQ. FT.
S2-A15	7.5'	4.7'	35.72 SQ. FT.
S-1	8.4'	18.6'	156.24 SQ. FT.
S-2	8.4'	18.6'	156.24 SQ. FT.
S-3	8.4'	18.6'	156.24 SQ. FT.
S-4	9.11'	22.0'	200.42 SQ. FT.

101 CRESCENT WAY
LOWER STORAGE
STORAGE AREA DIMENSIONS TABLE

STORAGE	LENGTH	WIDTH	AREA
S2-B10	8.15'	5.4'	44.01 SQ. FT.
S2-B11	8.15'	5.4'	44.01 SQ. FT.
S2-B12	8.15'	5.4'	44.01 SQ. FT.
S2-B13	8.15'	5.4'	44.01 SQ. FT.
S2-B14	8.7'	7.0'	60.9 SQ. FT.
S2-B15	8.7'	7.0'	60.9 SQ. FT.
S2-B16	8.7'	7.0'	60.9 SQ. FT.
S2-B17	8.7'	7.0'	60.9 SQ. FT.
S2-B18	7.2'	4.8'	34.56 SQ. FT.
S2-B19	7.2'	4.8'	34.56 SQ. FT.
S2-B20	6.5'	4.8'	31.2 SQ. FT.
S2-B21	7.3'	4.8'	35.04 SQ. FT.
S2-B22	8.0'	4.8'	38.4 SQ. FT.
S2-B23	7.3'	4.8'	35.04 SQ. FT.
S2-B24	7.2'	4.8'	34.56 SQ. FT.
S2-B25	7.5'	4.7'	35.25 SQ. FT.
S2-B26	7.5'	4.7'	35.25 SQ. FT.
S2-B27	7.5'	4.7'	35.25 SQ. FT.
S2-B28	7.7'	5.2'	40.04 SQ. FT.
S2-B29	7.7'	5.2'	40.04 SQ. FT.
S2-B30	7.7'	5.2'	40.04 SQ. FT.
S2-B31	6.6'	4.8'	31.68 SQ. FT.
S2-B32	7.0'	4.8'	33.6 SQ. FT.
S2-B33	7.0'	4.8'	33.6 SQ. FT.
S2-B34	6.6'	4.8'	31.68 SQ. FT.
S2-B35	8.0'	4.5'	36 SQ. FT.
S2-B36	8.0'	4.5'	36 SQ. FT.
S2-B37	8.0'	4.5'	36 SQ. FT.
S2-B38	7.75'	4.5'	34.88 SQ. FT.
TOTAL			1,162.31 SQ. FT.

SHEET 3 OF 3 SHEETS
PLOTDATE: 08/29/03

EXHIBIT B
ASSESSMENTS ALLOCATIONS

<u>UNIT [LOT#]</u>	<u>SQUARE FOOTAGE</u>	<u>PERCENTAGE INTEREST</u>
2101 [346]	984	1.42%
2102 [347]	1063	1.54%
2103 [348]	1337	1.93%
2104 [349]	814	1.18%
2105 [350]	1063	1.54%
2106 [351]	1374	1.99%
2107 [352]	984	1.42%
2108 [353]	984	1.42%
2109 [354]	1063	1.54%
2110 [355]	984	1.42%
2111 [356]	984	1.42%
2112 [357]	1374	1.99%
2113 [358]	1063	1.54%
2114 [359]	814	1.18%
2115 [360]	1337	1.93%
2116 [361]	1063	1.54%
2201 [362]	984	1.42%
2202 [363]	1063	1.54%
2203 [364]	1337	1.93%
2204 [365]	814	1.18%
2205 [366]	1063	1.54%
2206 [367]	1374	1.99%
2207 [368]	984	1.42%
2208 [369]	984	1.42%
2209 [370]	1063	1.54%
2210 [371]	984	1.42%
2211 [372]	984	1.42%
2212 [373]	1374	1.99%
2213 [374]	1063	1.54%
2214 [375]	814	1.18%
2215 [376]	1337	1.93%
2216 [377]	1063	1.54%

San Francisco Assessor-Recorder
Mabel S. Teng, Assessor-Recorder
DOC- 2003-H532195-00

Check Number 1083

Monday, SEP 08, 2003 12:48:05

Ttl Pd \$24.00 Nbr-0002265019

REEL 1467 IMAGE 0404

ofa/KC/_-9

MAP OF ST. FRANCIS BAY CONDOMINIUMS 101 CRESCENT WAY

BEING A SUBDIVISION OF LOT 236 OF
MAP OF ST. FRANCIS BAY CONDOMINIUMS (Z M 166-174)
FOR RESIDENTIAL CONDOMINIUM PURPOSES

ALSO BEING A PORTION OF ASSESSOR'S BLOCK NO. 4991
CITY AND COUNTY OF SAN FRANCISCO

CALIFORNIA

LUK AND ASSOCIATES
399 TAYLOR BOULEVARD, #288
PLEASANT HILL, CALIFORNIA 94523

JULY 2003

RY DE ASIS
ision # 1236689
ublic - California
nisco County
Expires Oct 7, 2003

RECORDER'S STATEMENT

FILED FOR RECORD THIS 8TH DAY OF AUG, 2003, AT 46 MINUTES PAST
12 P.M., IN CONDOMINIUM MAPS BOOK 82 AT PAGES 92 TO 99,
INCLUSIVE, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE
OF CALIFORNIA.

COUNTY RECORDER Mabel S. Teng
CITY AND COUNTY OF SAN FRANCISCO

OWNER'S STATEMENT

WE HEREBY CERTIFY THAT THE UNDERSIGNED ARE THE ONLY PARTIES HAVING ANY RECORD
TITLE INTEREST IN THE LANDS SUBDIVIDED AND SHOWN ENCLOSED WITHIN THE BOUNDARY LINES
UPON THIS MAP AND DO HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS
FINAL MAP ENTITLED " MAP OF ST. FRANCIS BAY CONDOMINIUMS, 101 CRESCENT WAY"
COMPRISING NINE (9) SHEETS, AND DO HEREBY OFFER FOR DEDICATION FOR PUBLIC USE THE
IMPROVEMENTS ON HARNEY WAY.

THIS MAP SHOWS ALL EASEMENTS ON THE PREMISES OR OF RECORD.

TOP VISION DEVELOPMENT, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

BY: Cheng Lin

NAME: CHENG LIN

TITLE: Managing Member



CITY AND COUNTY OF SAN FRANCISCO

H532195

OFFICE OF THE CONTROLLER

Edward Harrington
Controller

I, Edward Harrington, Controller of the City and County San Francisco, State of California, do hereby certify that according to the records of my office, there are no liens against the subdivision designated on the map entitled:

101 Crescent Way
Block 4991 Lot No. 236



for unpaid City & County property taxes or special assessments collected as taxes.

Edward Harrington
Controller

Dated this 7th day of August, 2003

H532195

SUBDIVISION GUARANTEE

Fee : \$ 300.00
No. : 400418E
Subdivision : 101 Crescent Way
Condominiums



OLD REPUBLIC NATIONAL
TITLE INSURANCE COMPANY
a Corporation, of Minneapolis, Minnesota

GUARANTEES

The County of San Francisco and any City within which said subdivision is located in a sum not exceeding \$ 1,000.00

That, according to those public records which, under the recording laws, impart constructive notice of matters affecting the title to the land included within the exterior boundary shown on the map of the above referenced subdivision, the only parties having any record title interest in said land whose signatures are necessary, under the requirements of the Subdivision Map Act, on the certificates consenting to the recordation of said map and offering for dedication any streets, roads, avenues and other easements offered for dedication by said map are:

** SEE EXHIBIT "A" ATTACHED **

The map hereinbefore referred to is a subdivision of:

** SEE EXHIBIT "A" ATTACHED **

Dated: September 5th, 2003 at 8:00 a.m.

Dick Witt

FTG90_X

Guarantee No. 400418E

EXHIBIT 'A'**Necessary Parties for Execution:**

1. NOTE: The necessary parties to sign the contemplated map (and their interests) are as follows:
 - A. TOP VISION DEVELOPMENT, LLC, a California limited liability company (Owner)
 - B. OLD REPUBLIC TITLE COMPANY (Trustee)
 - C. U. F. SERVICE CORPORATION (Trustee)
 - D. OLD REPUBLIC TITLE COMPANY (Trustee)
2. NOTE: The signature of Old Republic Title Company, as trustee, or Bank of Canton of California, as beneficiary under deed of trust dated November 9th, 2001, recorded November 19th, 2001 in Reel 117 of Official Records, Image 563 under Recorder's Serial Number 2001-H057816 , (but not both) may be omitted.
3. NOTE: The signature of U. F. Service Corporation, as trustee, or United Commercial Bank, as beneficiary under deed of trust dated July 1st, 2003, recorded July 3rd, 2003 in Reel 1422 of Official Records, Image 185 under Recorder's Serial Number 2003-H476738 , (but not both) may be omitted.
4. NOTE: The signature of Old Republic Title Company, a California corporation, as trustee, or St. Francis Bay, Inc., a California corporation, as beneficiary under deed of trust dated July 2nd, 2003, recorded July 3rd, 2003 in Reel 1422 of Official Records, Image 188 under Recorder's Serial Number 2003-H476741 , (but not both) may be omitted.

This is a subdivision of:

PARCEL I:

LOT 236 and COMMON AREA PARCEL OS-2, as shown upon the filed Map entitled, "Map of St. Francis Bay (Condominiums), Being a Merger and Resubdivision of Lot 88 and a Portion of Lot 90 of "Parcel Map of San Francisco Executive Park III" (41 PM 113) Also Being a Portion of Assessor's Block No. 4991, City and County of San Francisco California", filed for record in the office of the Recorder of the City and County of San Francisco on March 9th, 2001, in Map Book "Z", at Pages 166 to 174, inclusive.

RESERVING THEREFROM an easement for reciprocal access purposes in favor of adjacent Lot 235 and Common Area Parcel OS-1 (as to Reciprocal Access Easement), as shown upon said Map.

H532195

FW10_X

Guarantee No. 400418B

NOTE: The easement "subject to" and/or "reserving therefrom" in the description used in this report has not yet been created of record.

The written approval from the seller(s), the purchaser(s) and lender(s) must be furnished to the Company.

PARCEL II:

TOGETHER WITH a reciprocal access easement over that portion of "Reciprocal Access Easement 2" lying within Lot 237, as said easement and Lot are shown upon the filed Map referred to herein.

Said easement is to be appurtenant to and for the benefit of PARCEL I as hereinabove described.

PARCEL III:

TOGETHER WITH a reciprocal access easement over that portion of "Reciprocal Access Easement 1" lying within Lot 235 and Common Area Parcel OS-1, as said easement Lot and Parcel are shown upon the filed Map referred to herein.

Said easement is to be appurtenant to and for the benefit of PARCEL I as hereinabove described.

PARCEL IV:

TOGETHER WITH easements for access and utilities within Parcels "A" and "B", as shown upon the filed Map referred to herein.

Assessor's Lot 236; Block 4991

NOTE: Parcel III herein described has not yet been created of record and is shown herein only for the purposes of conveying.

RECORDED AT THE REQUEST OF:

3 TOP VISION DEVELOPMENT, LLC.

AND WHEN RECORDED RETURN TO:

Stephanie L. Brochier, Subdivision Consultant
Old Republic Title Co.
265 Montgomery Street
San Francisco, CA 94104
400418E - CHK

CONFORMED COPY of document recorded on,

9/15/03 as No. H535820 at 8:00am
This document has not been compared with the original
SAN FRANCISCO ASSESSOR RECORDER

**GRANT AND AGREEMENT FOR
EASEMENTS, COVENANTS AND RESTRICTIONS
REGARDING CRESCENT WAY AND CRESCENT COURT - ROADWAY IMPROVEMENTS
AND FIRE PUMP HOUSE IMPROVEMENTS**

THIS GRANT AND AGREEMENT FOR EASEMENTS, COVENANTS AND RESTRICTIONS REGARDING CRESCENT WAY AND CRESCENT COURT - ROADWAY IMPROVEMENTS AND FIRE PUMP HOUSE IMPROVEMENTS ("Roadway Agreement") is made and entered into this 29 day of August, 2003, by TOP VISION DEVELOPMENT, LLC, a California limited liability company (hereinafter "Top Vision").

RECITALS:

A. Top Vision is the owner of that certain real property (the "Top Vision Property") located in the City and County of San Francisco, State of California, consisting of Lots 237, 238, 239, 240, OS-3, OS-4, OS-5, OS-6, OS-7, and OS-8 as shown on the Subdivision Map entitled "St. Francis Bay Condominiums" filed for record on March 9, 2001 in Map Book Z, Pages 166-174, Official Records of the City and County of San Francisco, California (the "Master Project Map").

B. Top Vision is also the owner of that certain real property (the "St. Francis Bay Property") located in the City and County of San Francisco, State of California, consisting of Lots 235 and 236, OS-1 and OS-2 as shown on the Master Project Map.

C. Top Vision is also the owner of those parcels designated on the Master Project Map as Parcel A [Crescent Way and Crescent Court] and Parcel B [Crescent Way](the "Roadway Parcels").

D. Lots 235, 236, 237, 238, 239, and 240 are referred to herein as the "Residential Parcels", upon each of which there is constructed or will be in the future constructed a residential condominium project or residential apartment project ("Project").

E. There is situated on Parcel A, the main gate house and security booth ("Gate House Improvements") that will be for the use and benefit of all of the Residential Parcels as a Common Expense.

F. There is situated on Lot 238 a fire pump house ("Fire Pump House") that will be for the use and benefit of all of the Residential Parcels as a Common Expense.

G. Top Vision wishes to establish reciprocal nonexclusive appurtenant easements for ingress and egress over the private roads commonly known as Crescent Way and Crescent Court (the "Roadway") that are

now or in the future to be built over the Roadway Parcels and by this Agreement provide for the rights of use, maintenance, operation, repair and replacement of the Roadway, and for the sharing of the costs of such maintenance, operation, repair and replacement of the Roadway.

H. Top Vision wishes to establish reciprocal nonexclusive appurtenant easements for use of the Gate House Improvements and the Fire Pump House and by this Agreement provide for the rights of use, maintenance, operation, repair and replacement of the Gate House Improvements and the Fire Pump House, and for the sharing of the costs of such maintenance, operation, repair and replacement of the Gate House Improvements and the Fire Pump House.

NOW, THEREFORE, in consideration of the mutual covenants and declarations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Top Vision agree and declares the following as obligations that shall run with the title to the Residential Parcels and the Road Way Parcels:

1. Creation of Roadway Easement. There is hereby established, reserved and granted in favor of the St. Francis Bay Property, as dominant tenement, over, across, and under the Roadway Parcels owned by Top Vision, or the successors to Top Vision, as servient tenement, reciprocal non-exclusive appurtenant easements for the purpose of ingress and egress by motor vehicles and pedestrians for normal residential purposes (including development) of the Owners and occupants of the residential improvements within the St. Francis Bay Property mutually with the Owners and occupants of the residential improvements within the Top Vision Property and for installation, maintenance, repair and replacement of utility lines and services, including but not limited to, gas lines, water lines, telephone and cable television lines by the owners of the St. Francis Bay Property or its successors in interest, as well as for the purposes of maintenance of the same in accordance with this Agreement.

2. Duration of Easement. The easements herein granted shall be perpetual easements in favor of the respective Owners of the St. Francis Bay Property, the Owners of the Top Vision Property and the successors and assigns of each of the respective Owners.

3. Use of Roadway.

(a) The Roadway shall be for the benefit of the Owners, all subsequent owners and occupants of the residential condominiums or apartments located within the St. Francis Bay Property and the Top Vision Property, any homeowners' associations formed or to be formed within any condominium project within either the St. Francis Bay Property or the Top Vision Property, and the guests, licensees and invitees of all such persons or entities.

(b) The Roadway may be used by all future Owners and occupants of the Residential Parcels and their families and invitees for the benefit and convenience of their respective Parcels, and there shall be no apportionment of expenses of maintenance on account of the relative use by the parties for such purposes. However, if any of the Owners or occupants causes the private road improvements of the Roadway to be damaged, or to be excavated, filled or significantly disturbed or damaged on account of activities peculiar to only one of the Parcels, then the property owner or owners so involved shall be obligated, on his or her own account and at his or her own expense, to forthwith repair the private road, not later than forty-five (45) days after receipt of written notice from the other party.

4. Use of Gate House Improvements and the Fire Pump House.

(a) The Gate House Improvements and the Fire Pump House shall be for the benefit of the Owners, all subsequent owners and occupants of the residential condominiums or apartments located within the St. Francis Bay Property and the Top Vision Property, any homeowners' associations formed or to be formed within any condominium project within either the St. Francis Bay Property or the Top Vision Property, and the guests, licensees and invitees of all such persons or entities.

(b) The Gate House Improvements and the Fire Pump House may be used by all future Owners and occupants of the Residential Parcels and their families and invitees for the benefit and convenience of their respective Parcels, and there shall be no apportionment of expenses of maintenance on account of the relative use by the parties for such purposes. However, if any of the Owners or occupants causes the improvements of the Gate House Improvements or the Fire Pump House to be damaged on account of activities peculiar to only one of the Parcels, then the property owner or owners so involved shall be obligated, on his or her own account and at his or her own expense, to forthwith repair the Gate House Improvements or the Fire Pump House, not later than forty-five (45) days after receipt of written notice from the other party.

5. Voting Rights of Residential Parcels. The determination of (i) when the Roadway should be repaired or maintained, (ii) the budget for the cost of such Roadway maintenance, (iii) when the Gate House Improvements should be repaired or maintained, (iv) the nature and extent of the operations of the Gate House Improvements, (v) the budget for the cost of such Gate House Improvements maintenance and operations, (vi) when the Fire Pump House should be repaired or maintained, (vii) the nature and extent of the operations of the Fire Pump House, (viii) the budget for the cost of such Fire Pump House maintenance and operations shall be made from time to time collectively by the Owners of the St. Francis Bay Property and the Top Vision Property, or if any of such St. Francis Bay Property and the Top Vision Property is a condominium project, the homeowners association formed for that portion of such property. Each of the Residential Parcels shall have one vote for each residential unit that is situated within the Residential Parcel, or if no residential improvements are yet to be completed within a Residential Parcel, the number of residential improvements that are approved for development by the City and County of San Francisco for that Residential Parcel. Any determinations hereunder shall be made by a majority of the voting power determined by the total number of residential units approved for all of the Top Vision Property and the St. Francis Bay Property, divided by 2 + 1. Provided however, in all events any proposed action must be approved by a vote of no less than a majority of all of the Residential Parcels entitled to vote based upon the number of Residential Parcels that vote. Therefore, if there are a total of six (6) Residential Parcels entitled to vote, the proposed action must be approved by no less than four (4) of the Residential Parcels.

(a) In the event any Projects is subdivided and sold as a common interest development within the meaning of Section 1351 et. seq. of the California Civil Code, the president or other authorized officer of the homeowners' association of that Project shall be the representative of that Project and shall have the authority, subject to restrictions established in the governing documents for that subdivision, to exercise such Project's voting rights under this Declaration.

6. Contribution for Costs.

(a) Subject to Section 16 and Section 17, Top Vision shall each be responsible for upkeep, maintenance, repair and operations of the Roadway, the Gate House Improvements and the Fire Pump House.

(b) Subject to **Section 16** and **Section 17**, and except as set forth in **Section 9** hereof, all costs and expenses of operation, maintenance, repair and replacement of the Roadway, the Gate

House Improvements and the Fire Pump House shall be based upon the reasonable expectation of use of the Roadway, the Gate House Improvements and the Fire Pump House by the Owners of each of the Projects, which is hereby declared to be in the following percentages, based on the number of residential units within the Project situated on the Lot, or the number of residential units approved for construction on the Lot:

	Approved	Planned
(i) Lot 235:	64	64
(ii) Lot 236:	64	64
(iii) Lot 237:	72	72
(iv) Lot 238:	39	52
(v) Lot 239:	48	52
(vi) Lot 240:	521	352
Total Number of Residential Units:	<u>808</u>	<u>656</u>

If the number of residential units approved by the City and County for any Residential Parcel is modified from the numbers stated above, this **Section 6(b)** shall be amended to reflect such modification.

7. Undertaking of Work. Upon determination by the vote of the majority of the voting power of the Lots that maintenance, repair or replacement of the Roadway, the Gate House Improvements or the Fire Pump House is required, Top Vision shall be responsible for conducting and completing the maintenance, repair or replacement work. Top Vision shall, in such event, solicit bids from independent, qualified and bonded contractors licensed to do business in California for work to be performed on the Roadway, the Gate House Improvements or the Fire Pump House; (2) administer the selection and hiring of such contractor; and (3) send notices to the owners of Lots, or, if a homeowners' association has been formed for a Project, to the office of such homeowners' association, stating the total cost of the repair, maintenance or replacement of the Roadway, Gate House Improvements or Fire Pump House, that Project's proportionate share thereof, and the place for contribution of funds for payment.

(a) Top Vision shall receive and hold funds for the cost of maintenance, repair or replacement work and shall administer payment of contractors who provide approved maintenance, repair or replacement work. Each Residential Parcel or Project shall provide for payment of its proportionate share within thirty (30) days following receipt of the notice under **Section 15** hereof.

(b) Top Vision shall not be obligated to commence any such work until all Residential Parcels or Projects have contributed their share of the costs of the maintenance, repair or replacement work.

8. Determination of Maintenance, Repair or Replacement of Roadway. The Owners and their successors and assigns shall cause the road surface of the Roadway within the right-of-way of Crescent Way and Crescent Court (as shown on the Map) to be maintained, repaired or replaced when: (a) the Owners agree that such repair is necessary and also agree upon the total amount to be expended therefor; or (b) when in the opinion of the City Engineer of the City and County of San Francisco the roadway has deteriorated to such an extent that either no longer meets the requirements of the improvement plans as approved by the City; or (c) maintenance of the private road is required to ensure access by emergency vehicles to the Parcels served by the private road, as determined by the City of San Francisco Fire Department. The road surface subject to maintenance, repair or replacement under this Agreement shall not include road surfaces extending beyond the Parcel A or Parcel B to individual driveways serving the Residential Parcels.

9. Sharing of Costs. The Owners of the Parcels shall share the costs of maintenance, repair and replacement of the Roadway, the Gate House Improvements and the Fire Pump House based upon a formula that accounts for the number of dwelling units developed and constructed on each of the Parcels that are subject to the Agreement, such that each Parcel will pay its proportionate share based upon the number of residential units that are developed for the subject Residential Parcels divided by the total number of residential units developed for all of the Residential Parcels. "Developed and constructed" shall mean the issuance of a notice of completion for a residential unit in the Residential Parcel.

10. Failure to Contribute. Failure of any Owner to pay its proportionate share of the cost of maintenance, repair or replacement of the Roadway, Gate House Improvements or Fire Pump House within thirty (30) days following delivery of the notice set forth in **Section 15** hereof shall constitute a material breach of this Declaration and shall forthwith, upon such default, give rise to all remedies set forth in Section 845 of the Civil Code of California, or otherwise under California law, including but not limited to (i) the right of non-defaulting Owner to seek appointment of an arbitrator should a dispute arise as to the actual cost of repair and maintenance, and (ii) the right of the non-defaulting Owner to advance the money owing by the defaulting Owner and/or to commence an action for specific performance or contribution against the defaulting Owner. Each Owner agrees that it shall be no defense for failure to contribute that any portion of the Roadway, Gate House Improvements or Fire Pump House was not in need of repair or maintenance in the area immediately adjacent to the property of the respective Owner, or that any repairs were not made in a proper and correct manner.

11. Damage to Roadway, Gate House Improvements or Fire Pump House. Notwithstanding anything to the contrary herein, each Owner shall be responsible for extraordinary damage (other than normal wear and tear) caused to the Roadway, the Gate House Improvements or the Fire Pump House by reason of the acts of such Owner or its licensees or invitees.

12. Insurance.

(a) Types. Each Parcel Owner shall procure and keep in full force and effect during the term, for the mutual benefit of each of the other Parcel Owners, insurance policies meeting the minimum requirements set forth below or such greater requirements that are generally obtained from time to time for properties, improvements, activities, and operations similar to those on the Parcels in the City and County of San Francisco:

(i) commercial general liability insurance with respect to the operations of or on behalf of the Parcel Owner or its agents, officers, directors, and employees in, on or about the Easement Areas, in an amount not less than Two Million Dollars (\$2,000,000) per occurrence combined single limit bodily injury, personal injury, death and property damage, subject to such increases as herein provided.

(ii) Such coverage shall also contain endorsements:

[a] deleting any employee exclusion on personal injury coverage;

insureds;
[b]including employees of the Parcel Owner Grantee as additional
[c]deleting any liquor liability exclusion; and
[d]providing for coverage of employer's automobile non-ownership
liability.

(b) Coverage shall include, but not be limited to personal injury liability, premises and operation, blanket contractual, cross liability, severability of interest, broad form property damage, and independent contractors. The policy or policies shall include that any home owners association for a Parcel, and its officers, employees, and agents shall be additional insureds under such policy or policies;

(c) Inflation adjustment: the dollar amounts herein stated shall be adjusted over the course of time of this Agreement as follows: Beginning on the third anniversary of the recordation of this Declaration in the Official Records and continuing annually each year on each anniversary date (each being an "Adjustment Date"), the foregoing dollar limit shall be increased (but not decreased) as follows: The amount in effect immediately prior to an Adjustment Date shall be increased on such Adjustment Date by a percentage equal to the percentage increase, as of such Adjustment Date, in the Consumer Price Index For All Urban Consumers, Subgroup "All Items," as published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-San Jose Area (1982-84=100) from the date of recordation of this Declaration as to the first adjustment and from the date of the previous adjustment as to all subsequent adjustments.

(d) Standard. All policies of insurance required to be carried by Grantee under this agreement shall be written by responsible and solvent insurance companies authorized to do business in the State of California and having a rating of at least B+ VII in Bests Insurance Guide. Any such insurance required hereunder may be furnished under any blanket policy carried by a parcel owner or under a separate policy therefor; provided, however, if such insurance is covered by a blanket policy, then the limit of liability shall be at least \$2,000,000 combined single limit per occurrence.

(e) A copy of each paid-up policy evidencing such insurance (appropriately authenticated by the insurer) or a certificate of the insurer, certifying that such policy has been issued, providing the coverage required by this Section and containing provisions specified herein, shall be delivered to by each Parcel Owner to the other Parcel Owners and upon renewals, not less than thirty (30) days prior to the expiration of such coverage.

(f) Specific Provisions in Policy. Each policy evidencing insurance required to be carried by Grantee pursuant to this section shall contain the following provisions or clauses:

(i) a provision that the insurer will not cancel or materially change the coverage provided by such policy without first giving thirty (30) days prior written notice; and

(ii) a waiver by the Parcel Owner's insurer of any right to subrogation against any other Parcel Owner, its agents, attorneys, employees or representatives which arises or might arise by reason of any payment under such policy or policies or by reason of any act or omission of the Parcel Owner, its agents, attorneys, employees or representatives.

13. Homeowners' Associations. For each Project which becomes a common interest development within the meaning of California Civil Code Section 1350, et seq., each Owner's rights and obligations hereunder shall inure to the benefit of and be binding upon both the subsequent owners and the homeowners' association within such common interest development.

14. Equitable Servitudes; Covenants Running With the Land. All of the easements, covenants and declarations herein contained shall be deemed to be equitable servitudes enforceable by any of the parties hereto or their successors and assigns. The easements, covenants and declarations set forth herein shall be covenants running with the land and shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in any of the property herein described.

15. Notices. Any notice or demand permitted or required herein shall be conclusively presumed to be received by the Owner of the Parcel when personally delivered to the Owner, or forty-eight (48) hours after the notice has been deposited in the United States mail, certified and return receipt requested, postage prepaid, and addressed either to that Owner's parcel address or such other address that the Owner has provided each other Owner for purposes of receiving notice. Where a Parcel is a Project with an Association, the notice shall be delivered to and shall be deemed delivered when delivered to the President of the Association.

16. Assignment of Top Vision Rights and Obligations. Upon development and construction of residential improvements on Lot 240 by Top Vision, Top Vision may assign and convey the ownership of Parcel A and Parcel B, the Roadway Parcels, to the Owner of Lot 240, or to the homeowners association for a condominium project formed for the residential units within Lot 240, subject to the rights stated in this Agreement. Upon such assignment and conveyance, the Owner of Lot 240, or such homeowners association, shall assume the obligations and rights afforded to Top Vision hereunder. After such assignment and conveyance to the Owner of Lot 240 or such association, Top Vision shall have no further obligations or liability under this Agreement, all of which shall be performed by the Owner of Lot 240 or such association.

17. Interim Operation of Roadway. Until Top Vision has commenced construction [obtained a building permit for construction] upon any of the Top Vision Property for construction of residential improvements on a Residential Parcel within the Top Vision Property, the undertaking of maintenance, repair and replacement of the Roadway within Parcel A, and of the Gate House Improvements and the Fire Pump House, shall be undertaken by the Owners of Lot 235 and Lot 236, who shall equally share the costs of such maintenance, repair and replacement of the Roadway within Parcel A and of the Gate House Improvements and the Fire Pump House. After Top Vision has obtained a building permit for construction of any Residential Parcel within the Top Vision Property, Top Vision shall be responsible for undertaking all of the maintenance, repair and replacement of the Roadway within Parcel A, and, upon completion of the Roadway within Parcel B, the Roadway within Parcel B and of the Gate House Improvements and the Fire Pump House. The costs of any such maintenance, repair and replacement of the Roadway and of the Gate House Improvements and the Fire Pump House shall be shared by the Residential Parcels upon which there are residential units that have been developed and constructed.

18. Arbitration. All disputes, claims and other matters in question arising out of, or relating to, this Declaration or the breach thereof may, at the election of any of the parties hereto, be decided by arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. This agreement to arbitrate shall be specifically enforceable in any court of law under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The arbitration shall be held in the City and County of San Francisco.

19. Governing Law. This Declaration shall be governed under the laws of California.

IN WITNESS WHEREOF, this Agreement is executed effective as of the date first above set forth.

TOP VISION DEVELOPMENT, LLC, a California limited liability company

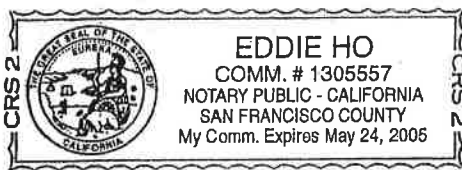
By: _____

CHUNG E. HEN
Title: MANAGING MEMBER

STATE OF CALIFORNIA)

COUNTY OF San Francisco) ss.

On this 29th day of August, 2002, before me, EDDIE HO, a
notary public for the state, personally appeared
CHENG CHEN, known to me or proved to me on the basis
of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)
acted, executed the instrument.



WITNESS my hand and official seal.

(Signature) (EDDIE HO)
Notary Public, State of California

[T:\WPWIN60\PROJECTS\STFRANC\ROADMAIN.AG3]

WHEN RECORDED RETURN TO:

Stephanie L. Brochier, Subdivision Consultant
Old Republic Title Co.
265 Montgomery Street
San Francisco, CA 94104

400418E-CHK



San Francisco Assessor-Recorder
Mabel S. Teng, Assessor-Recorder
DOC- 2003-H535818-00

Acct 4-OLD REPUBLIC Title Company

Monday, SEP 15, 2003 08:00:00

Ttl Pd \$16.00

Nbr-0002269133

REEL I472 IMAGE 0103

dar/AB/1-4

410

Joint Use and Maintenance Agreement for Recreational Deck

This Agreement, made this 14 day of Aug, 2003 by and between TOP VISION DEVELOPMENT, LLC, a California limited liability company ("Top Vision"), and ST. FRANCIS BAY - ONE HUNDRED ONE CRESCENT WAY CONDOMINIUM OWNERS ASSOCIATION, a California nonprofit mutual benefit corporation ("HOA 101") is made with reference to the following facts:

- A. Top Vision is the owner of the land described as Parcel 235 as shown on the Subdivision Map entitled "St. Francis Bay Condominiums" filed for record on March 9, 2001 in Map Book Z, Pages 166-174, Official Records of the City and County of San Francisco, California (the "Master Project Map"). Top Vision has developed on Parcel 235 as shown on the Master Project Map as condominium project to be known as One Crescent Way. Top Vision will form for the condominium project to be known as One Crescent Way a condominium homeowners association to be known as "ST. FRANCIS BAY - ONE CRESCENT WAY CONDOMINIUM OWNERS ASSOCIATION, a California nonprofit mutual benefit corporation" (hereinafter "HOA 1"). HOA 1 will be the homeowners association that will operate the condominium project known as One Crescent Way Condominiums that is located on Parcel 235 as shown on the Subdivision Map entitled "St. Francis Bay Condominiums" filed for record on March 9, 2001 in Map Book Z, Pages 166-174, Official Records of the City and County of San Francisco, California (the "Master Project Map"). The Condominium Project that is the One Crescent Way Condominiums will be more particularly described on that certain Map entitled "Map of St. Francis Bay Condominiums 1 Crescent Way" ("Condo Map 1"), to be filed for record in the Office of the Recorder of the County of San Francisco, California ("Project 1").
- B. HOA 101 is the homeowners association that operates the condominium project known as One Hundred One Crescent Way Condominiums that is located on Parcel 236 as shown on the Subdivision Map entitled "St. Francis Bay Condominiums" filed for record on March 9, 2001 in Map Book Z, Pages 166-174, Official Records of the City and County of San Francisco, California (the "Master Project Map"). The Condominium Project that is the One Hundred One Crescent Way Condominiums is more particularly described on that certain Map entitled "Map of St. Francis Bay Condominiums 101 Crescent Way" ("Condo Map 101"), filed for record in the Office of the Recorder of the County of San Francisco, California, on September 8, 2003 in Book 82 of Condominium Maps, page(s) 91-100 ("Project 101").

- C. Project 1 and Project 101 are adjacent to each other and share an area that is to be defined and described on Condo Map 1 and Condo Map 101 as "Reciprocal Recreational Deck Easement" located on both Parcel 235 and Parcel 236.
- D. Project 101 is subject to the St. Francis Bay - One Hundred One Crescent Way Enabling Declaration Establishing a Plan For Condominium Ownership dated ~~August 27, 2003~~ recorded in the Official Records of the City and County of San Francisco, on Sept 5, 2003 (Project 101 Declaration").
- E. Project 1 will be subject to the St. Francis Bay - One Crescent Way Enabling Declaration Establishing a Plan For Condominium Ownership to be recorded by Top Vision in the Official Records of the City and County of San Francisco.
- F. The Owner or Owners of Project 1 and the Owner or Owners of Project 101 shall have the rights to jointly use the Reciprocal Recreational Deck Easement ("Recreational Deck Easement") and shall share equally the costs of maintenance and repair of the improvements and facilities located on the Recreational Deck Easement as stated in this Agreement.

NOW, THEREFORE, TOP VISION, FOR ITSELF AND ON BEHALF OF HOA 1 THAT IS TO BE FORMED BY TOP VISION, AND HOA 101 AGREE AND COVENANT TO THE FOLLOWING:

1. The Owners of Units in Project 1 and the Owners of Units in Project 101, their tenants, and guests, shall have the reciprocal rights of use and enjoyment of the Recreational Deck Easement, subject to such rules and regulations that the Boards of Directors of HOA 1 and HOA 101 shall mutually agree upon and impose.
2. The undertaking of the maintenance and repairs for the Recreational Deck Easement shall be made only upon the mutual consent of the Owners of each Project 1 and Project 101. All rights and decisions for each Project 1 and Project 101 under this agreement project shall be made by the Board of Directors of homeowners association, HOA 1 and HOA 101, for the respective projects.
3. The costs for maintenance, repair and operation of the improvements and facilities within the Recreational Deck Easement shall be allocated and assessed equally to each Project 1 and Project 101 and shall be Common Expenses to the Association for each Project as defined in that Project's Declaration of Covenants. The Project 1 Association shall maintain the Recreational Deck Easement in cooperation with the Project 101 Association as set forth in Section 5.1.A of the Declaration of Covenants of each Project.
4. The Boards of Directors of both the HOA 1 and the HOA 101 shall meet annually, no later than October 1 of each year, and determine an operating budget and plan for the maintenance, repair and operations of the Recreational Deck Easement for the next fiscal year.
5. The contracting and performance of maintenance or repair work on the Recreation Easement Area will be as agreed upon by Boards of Directors of HOA 1 and HOA 101. In the event of the inability of the Board to so agree, bids should be obtained from at least two contractors, licensed in California to perform the type of work to be done, and the work will be performed by the lowest bidder. The funds required to perform any work on the Recreation Easement Area will be placed in a trust account, or escrow account, by each Boards of Directors of HOA 1 and HOA 101 within 15 days after the contracting costs have been determined and a contract

has been awarded. Upon the failure of either HOA 1 and HOA 101 to deposit the funds required, the other association may seek legal or equitable relief.

6. Any notice or demand permitted or required herein shall be conclusively presumed to be received by each party to the other party when personally delivered to the other party, or forty-eight (48) hours after the notice has been deposited in the United States mail, certified and return receipt requested, postage prepaid, and addressed either to that party's address or such other address that the party has provided each other owner for purposes of receiving notice.
7. The rights and obligations described in this Agreement shall constitute covenants running with the land and equitable servitudes that benefit or burden each Project 1 and Project 101.
8. If the Boards of Directors are unable to determine an operating budget and plan for the maintenance, repair and operations of the Recreational Deck Easement, then the matter shall be mediated by an independent mediator who shall be a property manager who has no less than 10 years of experience in the management of common interest developments. The mediation shall be held in the City and County of San Francisco.
9. All disputes, claims and other matters in question arising out of, or relating to, this Agreement or the breach thereof may, at the election of any of the parties hereto, be decided by arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. This agreement to arbitrate shall be specifically enforceable in any court of law under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The arbitration shall be held in the City and County of San Francisco.
10. Until such time as HOA 1 is incorporated, all rights and obligations as to HOA 1 shall be the rights and obligations of Top Vision as to Project 1. At the time of incorporation of HOA 1, Top Vision shall obtain ratification of this Agreement by the Board of Directors of HOA 1.
11. This Declaration shall be governed under the laws of California.

IN WITNESS WHEREOF, this Agreement is executed effective as of the date first above set forth.

TOP VISION DEVELOPMENT, L.P.C., a California limited liability company

By: _____

Title: _____

HOA 101

ST. FRANCIS BAY ONE HUNDRED ONE CRESCENT WAY CONDOMINIUM OWNERS ASSOCIATION, a California nonprofit mutual benefit corporation

By: _____

Its: _____

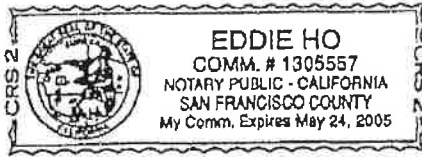
H535818

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN FRANCISCO } ss.On August 29, 03, before me, EDDIE HO a Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared CHENG CHEN
Name(s) of Signor(s)☒ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Place Notary Seal Above

(EDDIE HO)
Signature of Notary Public**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached DocumentTitle or Type of Document: Joint Use & Maintenance
Agreement for Recreational ParkDocument Date: August 29, 2003Number of Pages: Three (3)

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐
- Individual
-
- ☐
- Corporate Officer — Title(s): _____
-
- ☐
- Partner —
- ☐
- Limited
- ☐
- General
-
- ☐
- Attorney in Fact
-
- ☐
- Trustee
-
- ☐
- Guardian or Conservator
-
- ☐
- Other: _____

Signer Is Representing: _____

**RIGHT THUMBPRINT
OF SIGNER**
Top of thumb here