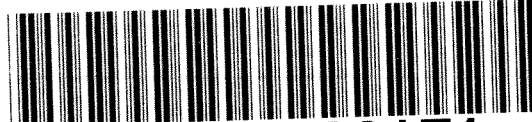


Return Address:

Mike O'Neill  
516 E. Roman St  
Seattle, WA  
98102



20100514000171

MICHAEL ONEILL AMDCN 68.00  
PAGE-001 OF 007  
05/14/2010 10:37  
KING COUNTY, WA

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

**Document Title(s)** (or transactions contained therein): (all areas applicable to your document **must** be filled in)

- ~~4th Amendment to Declaration~~ 2. SR Amendment to Declaration
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**Reference Number(s) of Documents assigned or released:**

Additional reference #'s on page \_\_\_\_\_ of document

**Grantor(s)** Exactly as name(s) appear on document

- Gayle Condominium
- \_\_\_\_\_

Additional names on page \_\_\_\_\_ of document.

**Grantee(s)** Exactly as name(s) appear on document

- Gayle Homeowners Association
- \_\_\_\_\_

Additional names on page \_\_\_\_\_ of document.

**Legal description** (abbreviated: i.e. lot, block, plat or section, township, range)

Lot 7, Block 46 Suppl Plat of Portius 2nd Edition  
Vol 5 page 76 Except East 65.87 feet Reveal

Additional legal is on page \_\_\_\_\_ of document.

**Assessor's Property Tax Parcel/Account Number**  
assigned

Assessor Tax # not yet

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

"I am signing below and paying an additional \$50 recording fee (as provided in RCW 36.18.010 and referred to as an emergency nonstandard document), because this document does not meet margin and formatting requirements. Furthermore, I hereby understand that the recording process may cover up or otherwise obscure some part of the text of the original document as a result of this request."

\_\_\_\_\_  
Signature of Requesting Party

Note to submitter: Do not sign above nor pay additional \$50 fee if the document meets margin/formatting requirements

**FIFTH AMENDMENT TO DECLARATION OF CONDOMINIUM FOR THE GAYLE**

This Fifth Amendment to the Declaration of Condominium for The Gayle (the "Declaration"), is made as of this 11<sup>th</sup> day of May, 2010.

**WHEREAS** the Declaration was recorded on March 9, 1978 in King County, Washington under recording number 7803090539 with respect to the following described property to wit:

Lot seven, Block 46, Supplementary Plat of Pontius Second Edition to Seattle, according to the plat recorded in Volume 5 of Plats, page 76, in King County, Washington, except the East 65.87 feet thereof;

**WHEREAS** the Declaration was first amended by an instrument on May 16, 1978 in King County, Washington under recording number 7805160694;

**WHEREAS** the Declaration was next amended by an instrument on May 15, 1979 in King County, Washington under recording number 7905151157;

**WHEREAS** the Declaration was next amended by an instrument on June 25, 2009 in King County, Washington under recording number 20090625000280;

**WHEREAS**, pursuant to Section 22 of the Declaration, after notice to all of the Owners entitled to vote there on duly given, not less than spell out sixty-six and 2/3 percent (66.66%) of the unit Owners have consented in writing to amend the Declaration as hereinafter set forth;

**WHEREAS**, pursuant to Section 13 of the Declaration after not less than 30 days' notice to all of the eligible mortgage holders and duly given by certified mail, return receipt requested, all security holders have expressly or impliedly consented to the amendment of the Declaration as hereinafter set forth;

**NOW THEREFORE**, the President and Secretary of The Gayle Homeowners' Association certifies that the following Fifth Amendment to the Declaration of Condominium for The Gayle has been properly approved and adopted in accordance with the requirements of the Declaration and applicable law:

A. A new Section 16.5 is hereby added to the Declaration:

16.5 Owner Occupancy Restrictions

16.5.1 Minimum Owner Occupancy. No Apartment owner may, by deliberate action, cause the owner-occupancy rate of the Association to drop or remain below the threshold established in Section Two (2) of this amendment, unless the Apartment owner has vacated his unit while remodeling or actively attempting to sell said unit, or the unit is vacant due to foreclosure.

## 16.5.2 Owner-Occupancy Threshold.

16.5.2.1 The minimum owner occupancy rate of the Association is 51%.

16.5.2.2 The minimum owner occupancy rate shall be permanently raised as the actual owner occupancy rate reaches the following thresholds:

- If at any time owner occupancy rises to 65% or above, the minimum owner occupancy rate shall be permanently increased to 55%.
- If at any time owner occupancy rises to 70% or above, the minimum owner occupancy rate shall be permanently increased to 60%.
- If at any time owner occupancy rises to 75% or above, the minimum owner occupancy rate shall be permanently increased to 65%.
- If at any time owner occupancy rises to 80% or above, the minimum owner occupancy rate shall be permanently increased to 70%.

16.5.2.3 If at any time the Federal National Mortgage Association (a.k.a. Fannie Mae) or its successor announces it will raise the minimum occupancy rate required for it to purchase and securitize mortgages, a simple majority vote of the Board of Directors shall suffice to raise the minimum owner occupancy rate of the Association to Fannie Mae's (or its successor's) new rate, provided the Association's new owner occupancy rates does not take effect prior to the effective date of Fannie Mae's or its successor's new rate.

16.5.2.4 The Board of Directors must send notice to all Apartment owners documenting the minimum owner occupancy rate any time that an Apartment owner signs a new lease, and at least once per year.

16.5.2.5 Amending the Declarations to allow an owner occupancy threshold below 51% shall require a 100% vote of the ownership. Amending the Declarations to reverse an automatic threshold increase or lower the owner occupancy threshold below 60% shall require a 75% vote of the ownership.

## 16.5.3 Remediation.

16.5.3.1 Action in case of rental. Within thirty (30) days of an Apartment owner causing the owner-occupancy rate to drop or remain below the threshold established in Section 2 of this Amendment by leasing his unit to a new tenant, the Board of Directors and Officers must initiate legal action against that Apartment owner to invalidate the lease, evict the tenant, recover legal fees, and obtain a court order prohibiting the Apartment owner from entering into new leases until such time as the owner occupancy rate exceeds the threshold. The Associations may not reach an out-of-court settlement if it would result in the owner occupancy rate remaining below Fannie Mae's or its successor's minimum owner-occupancy rate. Until such time that the tenant is evicted, the Apartment owner shall pay as a fine each month 100% of rent collected from any and all units in the Association that the Apartment owner is currently leasing, and 100%

of monthly HOA dues assessed to any and all units in the Association the Apartment owner owns (on top of normal HOA dues). If the Association lacks sufficient funds to complete legal action against the Apartment owner, the Board of Directors and Officers must levy a special assessment, due immediately, that is sufficient to pay for said legal action.

16.5.3.2 Action in case of vacancy. Within sixty (60) days of an Apartment owner causing the owner-occupancy rate to drop below the threshold established in Section 2 of this Amendment by vacating his unit, the Board of Directors and Officers must determine the cause of the vacancy. If the Apartment owner has retained a real estate agent and has listed his apartment for sale using industry standard listing procedures, then the Board of Directors and Officers shall take no action until such time as the Board of Directors and Officers has affirmatively determined that the Apartment owner is not making a good faith effort to sell his unit. If the Apartment owner has left his unit vacant with no intent to sell, that unit shall pay as a fine each month 100% of monthly HOA dues until such time as the unit is sold or returns to owner occupancy. If the Apartment owner has left his unit vacant for remodeling, either prior to sale or with the intent to re-occupy the unit once remodeling is complete, the Board of Directors and Officers shall take no action, provided the remodeling takes less than six (6) months. If the unit is vacant for more than six (6) months for remodeling, the Board of Directors may elect to require the Apartment owner to pay as a fine each month 100% of the Apartment owner's monthly HOA dues until such time as the unit is sold or returns to owner occupancy. If the Apartment owner has left his unit vacant because he has declared his Apartment to be a secondary residence and the owner occupancy rate is below Fannie Mae's or its successor's minimum owner-occupancy rate, then that unit shall pay as a fine each month 100% of monthly HOA dues until such time as the unit is sold, the owner occupancy rate is above Fannie Mae's or its successor's minimum owner-occupancy rate, or the owner declares his Apartment to be his primary residence.

16.5.3.3 Future Consequences. Any Apartment owner that causes the owner occupancy rate to drop below 51% by leasing his Apartment is banned from leasing any and all Apartments in the Association that he owns for five years, regardless of owner occupancy rate. Any Apartment owner that causes the owner occupancy rate to drop below the threshold established in Section 2 of this Amendment while delinquent in payment of common expenses and assessments, or who becomes delinquent in payment of common expenses after causing the owner occupancy rate to drop below the threshold established in Section 2 of this Amendment, shall be permanently banned from leasing any and all Apartments he owns. Upon sale of any apartment that is banned from leasing under this Section, the contract of sale will require that the new Apartment owner not lease their unit for a period of twelve (12) months from date of purchase if the purchase is made by individuals, and thirty-six (36) months from date of purchase if the purchase is made by a corporation or other similar legal entity.

16.5.3.4 Any apartment owner who is banned from leasing his units under Section 3.3 of this amendment shall, if he leases any of his units in the Association, pay as a fine

each month 100% of rent collected from any and all units the Apartment owner is currently leasing in the Association, and 100% of monthly HOA dues assessed to any and all units the Apartment owner owns in the Association (on top of normal HOA dues).

16.5.3.5 Any fines collected under this section shall not preclude the Association from any other remediation action.

16.5.3.6 All fines enumerated in this Amendment shall be governed by Addendum Item 2 to the 20 May 2009 Amendments.

16.5.4 Hardship Exception. Where, on written application from an Apartment owner, the Board determines that a hardship exists whereby that owner would suffer serious harm by virtue of the limitations on leasing contained in this Section 16.5, the Board may, in its discretion, grant an Apartment owner a waiver of those limitations for a period of time determined by the Board (the "Hardship Exception"). An Apartment leased pursuant to a Hardship Exception shall not be counted as a non-owner occupied Apartment for the purpose of determining the owner occupancy rate. The Board, at its discretion, may require compliance with any provision of this Section 16.5 in connection with the granting of a Hardship Exception.

16.5.5 Temporary Suspension. The provisions in sections 16.5.1 and 16.5.3 may be suspended for a period of no more than twenty-four (24) months by a written vote of not less than 60% of the ownership, **provided** that a temporary suspension was not approved at any time in the preceding sixty (60) months, **and also provided** that the owner occupancy rate at the time of the vote exceeds the minimum threshold per 16.5.2.

**EXCEPT AS MODIFIED AND AMENDED HEREBY**, the Declaration shall remain in full force and effect. This Fifth Amendment to the Declaration shall take effect upon recording. The terms of this Fifth Amendment shall control over any inconsistent provision of the Declaration, any prior unknown amendments thereto, and the bylaws and rules of the Association.

DATED and ATTESTED this 11<sup>R</sup> day of May, 2010.

THE GAYLE HOMEOWNERS' ASSOCIATION

DEPARTMENT OF ASSESSMENTS  
Examined and approved this 14<sup>th</sup> day of May 2010  
[Signature] Assessor [Signature] Deputy Assessor

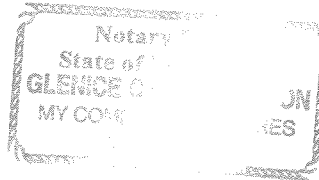
By: [Signature], President

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 11 day of May, 2010, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Michael A. O'Neill, to me known to be the President of The Gayle Homeowners' Association, the Washington nonprofit corporation that executed the foregoing instrument, and acknowledged that instrument to be the voluntary act of the Association, and on oath stated that s/he was authorized to execute the instrument on behalf of said Association.

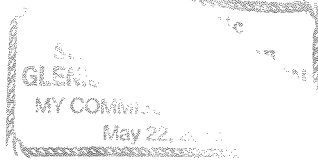
WITNESS my hand and seal hereto affixed the date in this certificate above written.

[Signature]  
Glenice Encarnacion (Print name)



Notary Public in and for the State of Washington, residing at Mountlake Terrace

My commission expires: 5-22-13



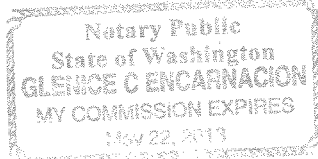
By: Meghan Traylor, Secretary

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 11 day of May, 2010, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Meghan Traylor, to me known to be the Secretary of The Gayle Homeowners' Association, the Washington nonprofit corporation that executed the foregoing instrument, and acknowledged that instrument to be the voluntary act of the Association, and on oath stated that s/he was authorized to execute the instrument on behalf of said Association.

WITNESS my hand and seal hereto affixed the date in this certificate above written.

Glenice Encarnacion



Glenice Encarnacion (Print name)

Notary Public in and for the State of Washington, residing at Mantlake

My commission expires: 5-22-13

Tarana