

COVENANTS, CONDITIONS AND RESTRICTIONS
for SAN GABRIEL PLACE CONDOMINIUMS

RECITALS

THIS DECLARATION is made by Michael & Treasa Skiles, the William P. Reilly Jr. Family Trust and **William** H. Corpstein, Sue Ann Corpstein and John Corpstein (collectively **the** "Declarant"), with reference to the following:

- A. Declarant is the Owner of a tract of land located in the City and County of San Diego, California, more particularly described in Exhibit A attached to this Declaration and incorporated into it by reference (the "Property").
- B. There exists on the land a building which consists of three (3) residential units.
- C. Declarant intends by this Declaration to create a Condominium Project and to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all the condominiums and Owners of Condominiums. Declarant intends by this Declaration to establish a Condominium Project under the provisions of California Civil Code sections 1350 et seq., the Davis-Stirling Common Interest Development Act.
- D. Declarant establishes by this Declaration a plan for the individual ownership of real property estates, consisting of an undivided interest in common in a portion of real property referred to as the Common Area, coupled with a separate interest in space, referred to as a Unit, the boundaries of which are described on the Condominium Plan.
- E. Declarant declares that the Property shall be held, conveyed, encumbered, leased, occupied and improved subject to the following declarations, limitations, covenants, conditions, restrictions, and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, in accordance with the plan for the improvement of the Property and the division of it into Condominiums. All of the limitations, covenants, conditions, restrictions and easements constitute equitable servitudes and covenants which shall run with the land will benefit **and burden** and be binding upon **the** Association as herein after defined, Declarant and Declarant's successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Property.

ARTICLE 1. DEFINITIONS

The **bold-type nouns** listed below are defined as follows:

- 1.1 "**Assessment**" means the proportionate costs of operating, maintaining and managing the Property assessed against each Owner. There are three types of assessments: Regular Annual Assessments, Special Assessments and Personal Reimbursement Assessments. The characteristics of each are described in Article 5. All such Assessments shall be collectively referred to as "Assessments."
- 1.2 "**Association**" means the San Gabriel Place HOMEOWNERS ASSOCIATION.
- 1.3 "**Condominium**" means a Unit together with appurtenant easements and an undivided interest in the Common Area.
- 1.4 "**Condominium Plan**" means the plan dividing the Property into Condominiums which is recorded concurrently hereto in the Official Records of the City and County of San Diego, State of California.

- 1.5 **"Emergency"** means a condition within the Property that immediately endangers the integrity of the Property, or the safety or health of the Occupants, guests or public.
- 1.6 **"Governing Documents"** means this Declaration and any Rules which govern the Property.
- 1.7 **"Governmental Regulation"** means all applicable laws, ordinances, resolutions, procedures, orders, standards, conditions, approvals, rules and regulations of any governmental entity with jurisdiction over the Property.
- 1.8 **"Mortgage"** means the conveyance of any interest in a Condominium or other portion of the Property to secure the performance of an obligation as defined in California Civil Code §2920. The word "Mortgage" shall be considered synonymous with "deed of trust".
- 1.9 **"Mortgagee"** means a person or entity in whose favor a Mortgage is made. The word "Mortgagee" shall be considered synonymous with "beneficiary" under a deed of trust.
- 1.10 **"Owner"** means the record owner of a Condominium and a contract buyer under an installment land contract once equitable title has passed to the contract buyer. "Owner" shall not include those who hold title to, or an interest in, a Condominium merely as security of the performance of an obligation.
- 1.11 **"Interest in the Common Area"** means the interest in the Common Area conveyed with each Unit as shown on the Condominium Plan. Except as specifically provided in the Condominium Plan or this Declaration, each Owner shall have an equal and undivided interest in one Common Area.
- 1.12 **"Reasonable Entry Notice,"** under non-Emergency circumstances, means seventy-two (72) hours prior written notice to one of the Occupants of the area to be entered; no notice is required for entry in the case of an Emergency.
- 1.13 **"Rules"** means the rules adopted pursuant to this Declaration.
- 1.14 **"Utilities"** means electrical, plumbing, heating, ventilation, telephone lines, television lines, sprinklers, mechanical devices, services or other utilities within the Property, and all incidental pipes, conduits, ducts, wiring, equipment and enclosures.

ARTICLE 2. PROPERTY RIGHTS

2.1 BOUNDARIES. The approximate location and physical boundaries of Units, Exclusive Use Common Areas and Common Area are shown on the Condominium Plan. The actual, as-built dimensions of the structures, either as originally constructed, or as reconstructed in accordance with the Governing Documents, shall be presumed the true boundaries and take priority over any legal description in a document, regardless of minor encroachments resulting from constructions, settlement, lateral movement or other causes.

2.2 DIVISION OF PROPERTY. The property is divided as follows:

- A. **Unit.** A Unit consists of the area bounded by the interior unfinished surfaces of its perimeter walls, bearing walls, floors, fireplaces, ceilings, windows and

interior portions of window frames, trim, doors (including windows in doors) and interior portions of door frames, and trim; including both the portions of the building so described and the airspace so encompassed. A Unit includes (i) the wallboard, plaster and paint on all interior surfaces located or exposed within the Unit, (ii) window sashes or other elements that directly contact the glass portion of the window, (iii) door and window hardware and all mechanical elements of door and windows, (iv) plumbing, heating, air conditioning and electrical fixtures or appliances located or exposed within the Unit, and (v) water heaters, furnaces or air conditioners serving only the Unit. A Unit does not include (i) structural components of walls, ceilings, and floors, (ii) any portion of the frames of windows or exterior doors not exposed within a Unit interior, or (iii) portions of plumbing, heating, air conditioning, or electrical systems serving more than one Unit.

- B. **Common Area.** The Common Area consists of the entire Property except for the Units. All Common Areas (except for the exclusive use common areas) are for the mutual use of the Owners and the guests of the Owners.
- C. **Exclusive Use Common Area.** Exclusive Use Common Area consists of those portions of Common Area reserved for the exclusive use of an Owner on the Condominium Plan and in this Declaration, and any other building component designed to serve only one Unit but located outside the interior boundaries of that Unit. Exclusive Use Common Areas are limited to the entry way to Unit 2 (E-2), the deck area for Unit 3 (D-3), and the parking spaces as designated in Article 2.5.
- D. **Condominium.** A Condominium is a Unit together with an undivided interest in the Common Area.

2.3 SEVERANCE AND SUBDIVISION OF CONDOMINIUMS. There shall be no further subdivision of a Condominium into different interests than provided in this Declaration. This section prohibits timeshare ownership. No Owner shall transfer an ownership interest in a Condominium which does not include all associated rights, title and interests described in the Governing Documents. Any transfer in violation of this section is void.

2.4 OWNER'S EASEMENTS. The following are reserved for the benefit of each Owner and Unit: (i) a nonexclusive easement for ingress, egress and support through the Common Area; (ii) a nonexclusive easement for utilities at reasonable places through the Common area; (iii) a nonexclusive easement for the full use and enjoyment of those portions of any shared Utility which serves the Unit; and, (iv) an easement for minor encroachments resulting from construction, repair, shifting, settlement or movement upon any portion of the Property.

2.5 ASSIGNMENT OF EXCLUSIVE USE AREAS. The parking areas designated 1, 2, 4 and 5 on the Condominium Plan are hereby granted as Exclusive Use Common Areas appurtenant to the following Units:

| <u>DESIGNATION</u> | <u>UNIT ASSIGNMENT</u> |
|--------------------|--------------------------------|
| P-1 | Unit 3 (2907 Ocean Front Walk) |
| P-2 | Unit 2 (710 San Gabriel Place) |
| P-4 | Unit 3 (2907 Ocean Front Walk) |
| P-5 | Unit 1 (2905 Ocean Front Walk) |

P-3 as designated on the Condominium Plan shall be for the mutual use of the Owners or for the guest of an Owner. P-3 shall not be used by an Owner or the guest of an Owner unless the Owner's space is first being used. P-3 shall only be used during periods when the Owner or the guest of an Owner is occupying their Unit and shall not be used for a continuous period of more than 48 hours without the consent of the other Owners who are currently occupying their Unit.

ARTICLE 3. DUTIES AND POWERS OF THE ASSOCIATION

3.1 GENERAL POWERS OF ASSOCIATION. The Association shall have the power to do any lawful thing required or permitted to be done under the Governing Documents and necessary, appropriate or incidental to the exercise of the express powers or duties of the Association for the peace, health, comfort, safety and general welfare of the Owners, subject only to the limitations on those powers set forth in the Governing Documents. The duties and powers of the Association shall include, but are not limited to, those specifically enumerated in this Declaration.

3.2 ADOPTION OF RULES. To the fullest extent permitted by law, the Association may adopt reasonable Rules related to the management and use of the Property and the implementation of the Governing Documents. The Association shall follow the procedure for adopting and changing Rules described in Civil Code Sections 1357.100 et seq.

3.3 ENFORCEMENT. The Association shall exercise prudent business judgment in determining whether, when and how to enforce the Governing Documents. The Association may not impair an Owner's right to use and enjoy his/her Unit as part of any disciplinary action. Each Owner shall have a right of action against another Owner for failure to comply with the Governing Documents or with a decision of the Association. A failure by the Association to enforce any provision of the Governing Documents on one or more occasions shall not be deemed a waiver or estoppel of the Association's right to enforce a similar or other violation of the Governing Documents.

3.4 LEGAL ACTIONS. The Association may institute, defend, settle or intervene in litigation, mediation, arbitration or administrative proceedings in matters pertaining to (i) enforcement of the Governing Documents, (ii) damage to the Common Area, (iii) damage to other parts of the Property which the Association is obligated to maintain or repair, or (iv) damage to Units or Exclusive Use Common Areas which arises out of, or is integrally related to, damage to the Common Areas or other parts of the Property which the Association is obligated to maintain or repair. The Association shall not be required to conduct inspections, maintain inspection records, exhaust any applicable casualty insurance coverage, or provide an opportunity to cure prior to initiating a civil action.

3.5 MANAGER. The Association may delegate to one of the Owners the responsibility to perform all or any part of the Association's delegable duties. The Association shall not delegate the following powers: (i) to borrow money; (ii) to use Association property as security for a debt; (iii) to levy Assessments; (iv) to begin litigation; (v) to make capital expenditures in excess of budgeted amounts; (vi) to impose discipline for violation of the Governing Documents; or (vii) to hold disciplinary hearings.

3.6 UTILITY SERVICE. The Association shall obtain and maintain Utility service for the Common Area. Each Owner shall be responsible for reimbursing the Association for 1/3 of the utility cost attributable to the Common Area.

3.7 ANNUAL BUDGETING AND REPORTING.

- A. **Operating Budget.** Not less than thirty (30) nor more than ninety (90) days before the beginning of each calendar year, the Association shall prepare and distribute to each owner a *pro forma* operating budget for the next fiscal year in compliance with Civil Code Section 1365, including an Assessment And Reserve Funding Disclosure Summary in the form required by civil Code Section 1365.2
- B. **Insurance Summary.** Along with the operating budget, the Association shall distribute a summary of the information regarding the Association's insurance coverage for property damage, general liability, earthquake (if any) and flood (if any), in compliance with civil Code Section 1365(e).
- C. **Assessment and Foreclosure Policy.** Along with the operating budget, the Association shall distribute the notices required by Civil Code Section 1365.1 relating to collections, foreclosures, payment plans, and association meetings regarding these matters.
- D. **Annual Report.** Within one hundred and twenty (120) days after the close of the calendar year, the Association shall prepare and distribute to each Owner an annual report for the previous year which includes an operating statement, a year-end balance sheet, and a statement of changes in financial position from the close of the prior year. The annual report shall mention that the statements were prepared without audit from the books and records of the Association.

3.8 RESERVE FUND ADMINISTRATION.

- A. **Reserve Fund Account.** The Association shall deposit operating funds and reserve funds in segregated accounts. Withdrawal of funds from the reserve account shall require the approval of all three Owners.
- B. **Using Reserve Funds.** The Association shall not expend reserve funds for any purpose other than maintenance, repair or replacement of items which the Association is obligated to maintain, repair or replace.

3.9 MECHANICS LIENS. When a mechanics lien against the Common Area arises from work for which an Owner has contracted, the Association may discharge it and charge any associated cost to the responsible Owner as a Personal Reimbursement Assessment. When a mechanics lien against the Common Area arises from work for which the Association has contracted and there is no dispute with the lienor, the Association shall promptly discharge it. When a mechanics lien against a Unit arises from work for which the Association has contracted and the Unit Owner so requests, the Association shall promptly discharge it.

ARTICLE 4. VOTING RIGHTS/PRESIDENT

4.1 MEMBERSHIP IN THE ASSOCIATION. An Owner shall be a Member of the Association while he/she owns a Condominium. Membership shall automatically cease when ownership ceases. Membership shall be appurtenant to and automatically pass with the ownership of a Condominium, regardless of a provision to the contrary in the transfer

documents. Membership shall not be transferred except as provided in this Section. Any prohibited transfer of a Membership is void.

4.2 VOTING.

- A. Meetings and Agenda: Decisions may be made only at Annual or Special Owner Meetings attended by representatives of all three Units. Owner Meetings may be called by any Owner. All Owner Meetings shall be held at the Property unless all Owners otherwise agree. Notice of all Owner Meetings shall be given to each Owner at least twenty (20) but not more than ninety (90) days before the Owner Meeting.
- B. Voting Power and Abstention: Each Unit shall have one vote. If a vote is cast on behalf of a Unit, it shall be conclusively presumed for all purposes that the voting Owner was acting with the authority and consent of all other Owners of the same Unit. Fractional votes are not allowed. If co-Owners are unable to agree how to cast their vote, they shall abstain, and the votes shall be counted for the Owners who are represented. Units not represented at the time a duly noticed vote is taken shall also abstain. Except as otherwise provided in this Declaration, the vote of all three Owners shall be required for Association Action.
- C. Actions Requiring 100% Vote: The Association shall not take the following Actions without the approval of all three Owners.
 - (1) Except as otherwise provided in this Declaration, abandon the Property or terminate Association activities prior to the expiration of the term provided in the Governing Documents;
 - (2) Change the allocation of responsibility for maintenance, repair or replacement between the Owners and the Association;
 - (3) Change the method of allocating Assessments or voting rights among Units;
 - (4) Sell, convey or otherwise transfer any Association property;
 - (5) Use the proceeds from an insurance claim or from a settlement or judgment of a legal dispute for any purpose other than to restore the loss or damage for which the recovery was obtained;
 - (6) Alter or amend the provisions of this Declaration regarding assessment liens, assessment lien priority, insurance, leasing of Units, or repair of the Property following Catastrophic Damage or condemnation;
 - (7) Change the Percentage Interest of an owner;
 - (8) Except as specifically provided in this Declaration, alter, reconfigure or redefine the boundaries of a Unit, Exclusive Use Common Area, or Common Area;

- (9) Approve an alteration to the exterior appearance of the Property;
or
- (10) Impose any restriction of the free alienation or transferability of a Condominium.

4.3 DUTIES OF PRESIDENT. A "President" shall be elected at the initial meeting of the Association and every year thereafter. The President shall serve a term of one (1) year. The President's duties shall be as provided below.

- A. Maintenance: The President shall facilitate all maintenance which is the responsibility of the Association by proceeding in the following manner.
 - (1) The President shall first inspect the repair and maintenance problem and confirm that it does exist.
 - (2) If he/she reasonably believes that the repair and maintenance problem can be repaired for less than \$1500, contact an appropriate repair person to schedule the repair, arrange for the repair person to obtain access to the location of the problem, inspect the repair person's work upon completion, pay the repair person out of Association funds.
 - (3) If he/she believes the problem will cost more than \$1500 to repair, the President shall secure the consent of the other two Owners before proceeding with the repair.
 - (4) The President shall have the authority to spend sums in excess of \$1500 in the event of an emergency condition as defined in Article 1.5.
 - (5) It is expressly provided that unless the President completes repair him/herself with approval as described above, he/she shall not be responsible for improperly completed repairs.
- B. Accounting: The President shall maintain proper and complete books of account of the Association at the President's home or principal place of business which shall be open to inspection by any Owner.
- C. Other Duties: In addition to those duties listed above, the President shall (i) implement all decisions of the Association, and (ii) perform all duties of the Association which do not require a specific decision or authorization by the Association.

ARTICLE 5. ASSESSMENTS AND LIENS

5.1 TYPES OF ASSESSMENTS. There are three types of Assessments: Regular Annual Assessments, Special Assessments and Personal Reimbursement Assessments.

- A. Regular Annual Assessments. Regular Annual Assessments shall be levied against all Owners to fund the operating and reserve requirements of the Association as projected in the pro forma operating budget prepared in

accordance with Civil Code §1365.5. If at any time during the fiscal year, the Association determines that the amount of the Regular Annual Assessments is inadequate or excessive, it may revise it for the balance of the fiscal year.

- B. Special Assessments. Special Assessments may be levied against all Owners to defray (i) the cost of construction, repair or replacement of capital improvements to portions of the Property which the Association is obligated to maintain, (ii) extraordinary expenses of the Association that were not anticipated in the pro forma operating budget, or (iii) any other purpose permitted by law.
- C. Personal Reimbursement Assessments. A Personal Reimbursement Assessment may be levied against any Owner to enforce the Owner's obligations and responsibilities under the Governing Documents.

5.2 USE OF ASSESSMENTS. Revenue raised by Assessments must be used to maintain, preserve and enhance the Property, or to promote the health, safety and general welfare of the Owners.

5.3 DIVISION OF ASSESSMENTS. All Regular and Special Assessments shall be divided among the Owners as follows:

Assessments for Insurance, Capital Construction Costs, Maintenance, Administrative Expenses and Annual Reserve Assessment:

| <u>UNIT</u> | <u>PERCENTAGE</u> |
|-----------------------|-------------------|
| 2907 Ocean Front Walk | 50% |
| 2905 Ocean Front Walk | 25% |
| 710 San Gabriel Place | 25% |

Assessments for Common Area Utility Expenses:

| <u>UNIT</u> | <u>PERCENTAGE</u> |
|-----------------------|-------------------|
| 2907 Ocean Front Walk | 33 1/3% |
| 2905 Ocean Front Walk | 33 1/3% |
| 710 San Gabriel Place | 33 1/3% |

5.4 PAYMENT OF ASSESSMENTS. Quarterly Assessments shall be assessed against each Owner on the first day of the first month of the calendar year and thereafter during the year on April 1, July 1 and October 1 (collectively the "Assessment Dates"), and shall be due and payable within 30 days of the Assessment Date. In addition to the quarterly Assessments an Annual Reserve Assessment of \$3000 shall be assessed on the first day of the calendar year and shall be due and payable within 30 days of such first day of the calendar year. Assessments are due and payable on their due dates without deduction or offset for any claim an Owner may have against the Association. Each Assessment, together with authorized charges, is the joint and several personal obligation of all owners of the Condominium against which it is levied. No Owner may exempt him/herself from liability for payment of Assessments.

5.5 DELINQUENT ASSESSMENTS.

- A. **Delinquency Timing and Charges.** An Assessment becomes delinquent if payment is not received by the Association within fifteen (15) days after its due date. The Association may impose a late charge of ten percent (10%) or \$10.00, whichever is greater, on delinquent payments as compensation for additional administrative costs. A late charge may be imposed on each delinquent payment, but may not be imposed more than once on any single delinquent payment. The Association may also recover reasonable costs incurred in collecting delinquent Assessments including reasonable attorney's fees. The Association may also charge interest on delinquent payments, late charges, collection costs, and **reasonable** attorney's fees, at the rate of twelve percent (12%) per annum beginning thirty (30) days after the due date and continuing until the date payment is received.
- B. **Assessment Liens.** A penalty, fine, charge or other financial obligation, including costs and expenses of collection, levied by the Association against an Owner as a Personal Reimbursement Assessment for a violation of the Governing Documents may be made a lien against the Condominium of such Owner, but may not be enforced by nonjudicial foreclosure under Civil Code §§2924, 2924(b) and 2924(c) except as allowed by law. The obligation may be enforced by judicial foreclosure or judicial execution once the obligation is reduced to judgment. A lien for delinquent Regular Assessments and Special Assessments, and a lien for delinquent Personal Reimbursement Assessments levied to reimburse the Association for costs associated with the repair of damage for which an Owner, occupant or invitee is responsible, may be enforced by nonjudicial foreclosure conducted in accordance with the provisions of Civil Code §§2924, 2924(b) and 2924(c). A delinquent Assessment, regardless of type, plus any late charges, interest, costs of collection or related charges may be made a lien on the delinquent Owner's Condominium by recording a notice of delinquent Assessment with the County Recorder. The notice of delinquent Assessment shall contain the information and meet the other requirements of Civil Code §1367.1(d). Such a lien may be enforced in any manner permitted by law.
- C. **Owner Right and Remedies.** At least thirty (30) days prior to recording a lien against a Condominium, the Association shall provide to the Owner, by certified mail, a notice ("Owner Notice Of Delinquency") in compliance with Civil Code Section 1367.1(a).
- (1) The Owner may dispute the debt by submitting to the Association a written explanation of the reasons for his/her dispute. The Association shall respond in writing to the Owner with fifteen (15) days of the date of the postmark of the explanation, if the explanation is mailed within fifteen (15) days of the postmark of the Owner Notice Of Delinquency.
 - (2) Under certain limited circumstances as described in Civil Code Section 1366.3, an Owner may use the alternative dispute resolution process mentioned in that Section to resolve a dispute regarding Assessments.
 - (3) An Owner may submit a written request to meet with an Owner of each of the other Units, or their representative(s), to discuss a

payment plan for the debt. The meeting shall take place within forty-five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the Owner Notice Of Delinquency.

- D. Homestead Waiver. Each Owner waives the benefit of statutory debtor protection, including homestead and exemption rights, to the full extent permitted by California and Federal law with respect to enforcement of Assessment liens.
- E. Payment of Delinquent Assessments. Payment toward a delinquent Assessment shall be credited first to satisfying the Assessment, and then to late charges, collection costs, attorney's fees and interest. Upon payment of the sums specified in the notice, the Association shall promptly record a notice acknowledging satisfaction and releasing the lien. The lien shall not be affected by the sale or transfer (other than through foreclosure) of the affected Condominium.

5.6 STATUS CERTIFICATE. Upon written request of an Owner, the Association shall provide an Owner with a written statement, signed by an authorized representative of the Association, stating the amount of all unpaid Assessments, fines, penalties, charges and other financial obligations owed to the Association by the Owner as of the date of the statement. The statement shall be conclusively presumed accurate as of its date in favor of any good faith purchaser of a Condominium who relies on it. The Association may charge a reasonable fee for the statement which shall not exceed the actual administrative cost.

ARTICLE 6. OWNER MAINTENANCE AND ALTERATION

6.1 OWNER MAINTENANCE RESPONSIBILITY.

- A. Owner's Unit. Each Owner shall maintain, repair and replace all elements of his/her Unit in a condition which does not impair the value or desirability of other Condominiums and the Property as a whole.
- B. Damage to Other Units Or Common Area. Each owner is liable and responsible to the other Owners and the Association for the costs of all maintenance, repair or replacement of all areas equipment or improvements of the Property necessitated to the extent such costs are not covered by the Association's insurance (i) by the acts or omissions of him/herself, his/her guests and invitees (including independent contractors and employees), the Occupants of his/her Unit and the guests and invitees of such occupants, or (ii) as a consequence of the malfunction of any element which the Owner is responsible to maintain. The provisions of this Subsection B are intended to supersede any conflicting provisions of Subsections of 6.1A or 6.2.

6.2 ASSOCIATION MAINTENANCE RESPONSIBILITY. The Association shall maintain, repair and replace all Common Area which is not Exclusive Use Common Area in good condition and repair. Notwithstanding this provision, the Association shall maintain, repair and replace the parking spaces as designated in Article 2.5.

6.3 ALTERATION OF UNITS. Without Association approval, an Owner may make alterations or improvements within the interior boundaries of his/her assigned Unit that do not impair the structural integrity or mechanical systems of the Property, or alter or modify the exterior appearance of the Property. All other alterations or improvements shall require **the** approval of the other two Owners and such work shall be performed only by a contractor licensed by the State of California. With respect to the installation of awnings, sunshades, screen doors, and other minor installations to the exterior of any individual Unit, the prior written consent of the other two Units will be reasonably exercised with a view toward promoting uniformity and thereby enhancing the attractiveness of the Property as a whole, and any such request shall not be unreasonably denied. No satellite or television receiving or transmitting antennae, dish or external apparatus may be installed on any Unit or in or on any part of the Common Area without the prior written approval of the Association. Normal radio and television installations within an individual Unit will be permitted. Regardless of whether Association approval is required, prior to making any alteration, an Owner shall (i) obtain all required governmental permits and approvals and (ii) in cases where a building permit is required, provide a copy of the building permit application to at least one Owner of each of the other Units at least ten (10) calendar days before commencing work.

6.4 ALTERATION OF COMMON AREA. Common Area, including Exclusive Use Common Area may be physically altered only with Association approval.

6.5 APPROVAL PROCEDURES.

- A. Application for Alteration Approval. Owners wishing to make alterations requiring Association approval shall be required to secure the written consent of the other two Owners.
- B. Standards For Association Decision. The other two Owner's decision must be made in good faith and may not be unreasonable, arbitrary, or capricious. The Owners shall approve an alteration only if it makes an affirmative finding that the alteration (i) will not impair the structural integrity of any part of the Property, (ii) will not interfere with any Utility, (iii) is consistent with the Governing Documents and all Governmental Regulations, (iv) will not detract from the appearance, harmony, attractiveness and enjoyability of the Property, and (v) will not impose an unreasonable maintenance burden on the Association. The approval or disapproval of an alteration shall not be deemed a waiver of the Owners' subsequent right to approve or disapprove a similar alteration or any other matter.
- C. Proceeding With Approved Work. Upon approval of an alteration, the Owner shall diligently proceed with the commencement and completion of all work so approved. Work must be commenced within one (1) year from the date of the approval. If the Owner fails to comply with the provisions of this Subsection, the approval given shall be deemed revoked unless the Association extends the time for commencement. Any request for any extension shall be in writing. No extension shall be granted unless the Association finds that there has been no change in the circumstances under which the original approval was granted.

6.6 INSPECTION AND NON-COMPLIANCE. Upon the completion of any work performed by an Owner for which approval was required, the Owner shall give written notice of completion to all Owners. Any Owner, following Reasonable Entry Notice, may inspect any work

performed on the Property to ensure it is done in accordance with the Article, regardless of whether approval was required or granted, and regardless of whether notice of completion was required or given. If, as a result of an inspection, an Owner finds a violation of this Article, he/she may notify the violating Owner in writing of the violation. The notice shall specify the particulars of non-compliance and shall require the Owner to remedy it. If the Owner fails to remedy the non-compliance in accordance with the provisions of this notice, then, after the expiration of thirty days from the date of the notice, the Owner who discovered the alleged non-compliance shall call a Special owner Meeting in accordance with the notice and agenda requirements of this Declaration to consider the Owner's continuing non-compliance. At the meeting, if both other Owners find that there is no valid reason for the continuing non-compliance, the Association shall require the violating Owner to remedy it within a period of not more than forty-five (45) days from the date of the ruling. At any time within such period, the Association, upon vote of a majority of all Owners, may choose not to wait for the violating Owner to act, and instead may act on its own to remedy the non-compliance, and assess any associated costs against the Owner as a Personal Reimbursement Assessment. The Association, upon vote of a majority of all Owners, may also cause a notice of nonresponsibility for mechanics' liens to be recorded and posted as specified in Civil Code §3094.

ARTICLE 7. USAGE COVENANTS AND RESTRICTIONS

7.1 CONDOMINIUM USE. The Property shall be solely for residential use except that an Occupant may engage in a professional or administrative occupation within the Property if (i) there is no external evidence of business activity, (ii) it conforms to all applicable Governmental Regulations, and (iii) it is merely incidental to the use of the Unit as a residence. No tent, trailer, garage, or structure of a temporary character may be used at any time as a residence anywhere on the Property.

7.2 PARKING AND USE OF MOTOR VEHICLES. Any Owner may remove any motor vehicle wrongfully parked on the Property at the vehicle owner's expense. Each owner shall be deemed to have the authority of the Association to do so. Following the removal, the removing Owner shall notify (i) the local traffic law enforcement agency and (ii) if his/her identity is known by such removing Owner, the vehicle owner. The notice shall include a description of the vehicle, the license number and the address from where the vehicle is removed. If the identity of the owner is not known and the vehicle has not been returned to its owner within one hundred and twenty (120) hours after removal, the removing Owner shall promptly notify the California Department of Justice and file a copy of the notice with the proprietor of the 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 and the time of removal, the grounds for removal and the name of the garage where the vehicle is stored. Neither the Association nor the removing Owner shall be liable for any damages or loss suffered by the vehicle owner as a consequence of removal.

7.3 NUISANCE.

- A. No person shall use any part of the Property in a way that unreasonably interferes with the quiet enjoyment of an Occupant, or which is noxious, illegal, seriously annoying or offensive to a person of reasonable and normal sensitivity. There shall be no exterior fires except in barbecue receptacles designed for that purpose. No activity may be carried on that adversely affects insurance coverage or rates on the Property. No Occupant shall do or permit anything to be done which is in violation of a Governmental Regulation

or which will or may decrease the attractiveness, desirability or value of another Unit or the Property as a whole.

- B. Without limiting the generality of the preceding Subsection, all Occupants specifically agree to use reasonable efforts to minimize noise and disruption to other Occupants. Loud noise is prohibited (i) from 10:30 P.M. each day Sunday through Thursday until 8:00 A.M. each day Monday through Friday, and (ii) from 11 P.M. until 8 A.M. each day Saturday and Sunday. Loud noise is defined as anything that is disturbing to Occupants including but not limited to washer/dryers, kitchen appliances, stereos, televisions, excessive footfalls, and musical instruments, but shall not include noise generated by children under the age of eight (8).

7.4 RIGHT TO LEASE. No Owner may rent or lease or receive any other form of compensation for a Unit without the written consent of the other two Owners.

7.5 STORAGE. Within interior Common Areas designated for storage, Occupants may store any non-hazardous material provided it is organized in a manner which does not create a fire hazard or impair the value or desirability of any Condominium. Occupants may not store any item in other Common Areas without prior written approval of all Units.

7.6 GARAGE SALES. Rummage sales, garage sales or flea market sales of any kind are prohibited on the Property without the prior written approval of the other two Owners.

7.7 DELEGATION OF RIGHTS. An Owner may delegate his/her rights of use and enjoyment in the Property to members of his/her family and guests.

ARTICLE 8. INSURANCE

8.1 GENERAL LIABILITY INSURANCE. The Association shall maintain an insurance policy insuring the Owners against public liability incident to ownership and use of the Property. The limits of coverage shall not be less than Two Million dollars (\$2,000,000) per incident of injury, death and property damage. The policy shall contain a severability of interest endorsement precluding the insurer from denying coverage to a named insured because his/her act or omission created liability in favor of another insured. The policy shall also contain a contractual liability endorsement.

8.2 FIRE AND CASUALTY INSURANCE The Association shall maintain a policy of fire and casualty insurance providing multi-peril coverage for the building and appurtenances to the building. The limits of coverage shall not be less than full current replacement cost and shall include an agreed amount endorsement.

8.3 GENERAL POLICY PROVISIONS. Each Association insurance policy shall (i) name the Association as trustee for policy benefits payable to the Owners, (ii) provide a waiver of subrogation rights against the Association, its officers and the Owners, (iii) state that coverage be primary and not affected by any other insurance held by an owner, and (iv) require that at least thirty (30) days prior written notice be given to the Association by the insurer before cancellation.

8.4 NOTICE OF CHANGE IN INSURANCE COVERAGE. The Association shall notify the Owners by first-class mail as soon as reasonable practical if any of its insurance policies: (i) lapses or is canceled and is not immediately renewed, restored or replaced; (ii) will undergo

significant change such as a reduction in coverage or limits, or an increase in the deductible; or (iii) is subject to a notice of non-renewal and replacement coverage will not be in effect at the time the existing coverage will lapse.

8.5 INABILITY TO OBTAIN INSURANCE. If the insurance required by the Governing Documents is difficult, impractical or unduly expensive to obtain, the Association shall obtain insurance as nearly equivalent to the required insurance as is reasonable available.

8.6 OWNER'S INSURANCE. An Owner is responsible for obtaining and maintaining insurance covering his/her personal liability, separate interest and personal property, provided that the insurance contains a waiver of subrogation rights by the carrier as to the other Owners, the Association and its officers.

8.7 CASUALTY INSURANCE DEDUCTIBLES AND PROCEEDS. The deductible payable in the event of a loss shall be paid by the person(s) or entity responsible for maintenance at the point of origin of the physical damage. The person(s) or entity who pays the deductible shall have the right to recover such amount from any party responsible for the loss. Proceeds from Association insurance received as a consequence of damage or loss to a portion of the Property which an Owner must maintain shall be distributed to that owner. If the insurance proceeds are insufficient to complete the work, the Owners shall pay the additional amounts in the same percentage that each Owner is responsible for insurance under Article 5.3

ARTICLE 9. DAMAGE/DESTRUCTION/CONDEMNATION

9.1 CATASTROPHIC DAMAGE. As used in this Section, "Catastrophic Damage" means sudden and unexpected physical damage to portions of the Property which the Association is obligated to maintain and to which there are no or insufficient insurance proceeds to repair or restore the Property.

- A. **Obtaining Bids/Determining Funds Availability.** As soon as practical after any event causing Catastrophic Damage, the Association shall (i) determine the amount of all funding available for repair from Association funds and insurance proceeds, and (ii) obtain two or more written repair bids from separate licensed contractors. Repair bids shall include at a minimum a detailed scope of work, a fixed or not-to-exceed contract price, a completion date and a provision for adequate insurance coverage by the contractor.
- B. **Decision to Rebuild.** Provided that repairing the damaged areas of the Property would not necessitate a Special Assessment of more than thirty thousand dollars (\$30,000) on any Owner, the Association shall repair, and any difference between the total funds available and the actual repair cost shall be imposed as a Special Assessment. If repair would necessitate a Special Assessment of more than thirty thousand dollars (\$30,000) on any Owner, the Association shall not repair unless all such Owners vote to do so. If the Association does not repair, it shall sell the entire Property in its then existing condition on the best available terms. The sale proceeds together with any insurance proceeds shall then be distributed as provided in Section 9.3. If the Association fails to sell the Property within a reasonable period of time, any Owner may bring an action for judicial partition.
- C. **Repair Work.** All individuals or entities performing repairs of Catastrophic Damage for the Association shall (i) hold all licenses legally required for such

repairs and (ii) enter into a written contract with the Association which satisfies all of the requirements for repair bids specified in Subsection A. The Association shall ensure that repairs are diligently pursued to completion in accordance with best construction practices prevailing in the locale at the time the work is done. Payment and performance bonds shall be required in repair contracts exceeding one hundred thousand dollars (\$100,000).

- D. **Emergency Repair.** The Association may make repairs or take any other necessary action in an emergency without first complying with the provisions of this Article.
- E. **Certification Of Intention.** If the Association decides, by affirmative act or failure to act, to sell the Property rather than repair Catastrophic Damage, it shall promptly notify an Owner of each Unit in writing of the decision and record a certificate reciting that fact with the County Recorder.
- F. **Revision Of Documents.** If the Association decides, by affirmative act or failure to act, not to repair Catastrophic Damage, the Association shall have the power and authority to execute and record, on behalf of itself and the individual Owners, all necessary documents to show the altered status of the Property, including but not limited to a revised Condominium Plan.

9.2 CONDEMNATION. Each Owner hereby grants the Association an irrevocable power of attorney to represent the Owner in any condemnation or eminent domain negotiation or proceeding, whether or not a civil action has been started. The proceeds from a taking of two or more Condominium Units or of the Common Area by eminent domain shall be distributed as provided in this Declaration.

9.3 DISTRIBUTIONS. All proceeds from insurance, liquidation, or condemnation relating to two or more Condominiums or the Common Area shall be paid to the Association for the benefit of the Owners and their mortgagees. To the extent proceeds from insurance or condemnation have been allocated among affected Units and the Common Area by the paying entity, the Association shall distribute such funds in accordance with that allocation. Otherwise, the Association shall distribute these funds to the affected Owners based upon the relative value of the affected Owners' Condominiums. Relative value shall be determined through an appraisal process as follows:

- A. The Association shall retain three (3) appraisers meeting the following requirements: (i) having at least two (2) years experience appraising real estate similar to the Property in the area where the Property is located, (ii) holding a valid real estate sales, brokerage or appraisal license, (iii) having no prior business or personal relationship with any Owner, and (iv) agreeing in writing to complete his/her appraisal with fourteen (14) calendar days of retention.
- B. The Association shall instruct each appraiser to determine the fair market value of each Condominium involved in the relative valuation. The appraisers shall base their valuations on the physical conditions which existed on the date immediately preceding the destruction or other event triggering the need for valuation.

- C. Upon receiving the valuations of all appraisers, the Association shall disregard the lowest and highest appraisal for each Condominium. The Association shall then use the remaining appraisal for each Condominium to determine the relative values.

If any Owner owes money to the Association at the date of the disbursement, the amount owed shall be subtracted from the amount to be disbursed to that Owner.

ARTICLE 10. RIGHT OF FIRST REFUSAL

10.1 Right of First Refusal: An Owner who wishes to transfer any interest in a Unit whether by sale, exchange or otherwise at least thirty days prior to accepting any offer to purchase shall give to the other two Owners a written notice of the terms of such offer. Such notice shall specify the name and address of the offeror and all of the terms of the proposed sale. If within said thirty day period any Owner submits to the selling Owner an identical offer including any deposits required under the existing offer, the selling Owner is obligated to accept the offer of such owner in preference to the original offer described in the notice. In the event more than one Owner submits an identical offer during the 30-day period, the Selling Owner shall accept the highest offer received during the 30-day time period. If no other Owner submits an identical or higher offer with the 30-day time period, the Selling Owner may, at the expiration of said period, accept the offer described in the notice. The provisions of this Article shall not apply to gifts or bequests of the property involving the Owner's family members or changes in ownership within the Owner's family for estate planning purposes. No transfer or sale of an Owner's interest in a Unit may be made except in accordance with the provisions of this Article.

ARTICLE 11. MORTGAGE PROTECTION

11.1 SUBORDINATION. Any lien created or claimed under the Declaration is subject and subordinate to the rights of any previously recorded Mortgage secured by the same Property made in good faith and for value; and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates its interest, in writing, to such lien. On foreclosure of a previously recorded Mortgage, the foreclosure-purchaser shall take title free of any Assessment liens and shall be obligated to pay only assessments or other charges levied or assessed by the Association that became due or payable on or after the foreclosure-purchaser acquired title. The subsequently levied assessments or other charges may include previously unpaid assessments, provided all Owners including the foreclosure-purchaser and his successors and assigns are required to pay their proportionate share.

11.2 FIRST REFUSAL INAPPLICABLE TO MORTGAGEE. The right of first refusal shall bind a Mortgagee but shall not impair the rights of a Mortgagee to foreclose or take title pursuant to the remedies provided in the Mortgage, or to accept a deed (or assignment) in lieu of foreclosure in the event of default under the Mortgage. In the event of a subsequent sale by a Mortgagee who has taken title the Mortgagee shall be subject to the Right of First Refusal.

11.3 MORTGAGEE RIGHT TO FURNISH INFORMATION. Any Mortgagee can furnish information to any Owner concerning the status of any Mortgage.

11.4 FORMER OWNER IN POSSESSION FOLLOWING FORECLOSURE. A former Owner who loses title by foreclosure but remains in possession shall be bound by the Governing Documents as long as he/she remains in possession, but shall have no obligation to pay Assessments accruing after the date title is transferred.

11.5 MORTGAGEE PRIORITY IN DISTRIBUTION OF PROCEEDS. Each Mortgagee shall have priority over the rights of the Owner of the mortgaged property in case of a distribution to the respective Owner of insurance proceeds or condemnation awards for losses to or a taking of such Owner's interest in the Property. Any provision to the contrary in the Governing Documents is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Mortgagees, naming such Mortgagees as their interest may appear.

11.6 MORTGAGEE APPROVAL REQUIREMENTS. The prior written consent (or deemed consent as provided below) of any Mortgagee holding a first (1st) mortgage on a Condominium shall be required to take any of the following actions:

- A. Except as otherwise provide in this Declaration for cases of Catastrophic Damage, use hazard insurance proceeds for a purpose other than the repair, replacement, or reconstruction, abandon the Property, or terminate the Association;
- B. Change the method of determining the obligations, assessments, dues, or other charges that may be levied against an owner, or to change the pro rata interest or obligations of any Owner for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or for determining the pro rata share of ownership of each Owner in the Common Area;
- C. Abandon, partition, subdivide, encumber, sell or transfer the Common Area (but the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Association or the Owners shall not be deemed to be a transfer with the meaning of this clause);
- D. Fail to maintain fire and extended coverage insurance on insurable property owned by the Association, including any Common Area improvements, in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; and
- E. Materially amend any provision of the Governing Documents that are for the express benefit of Mortgagees.

Any Mortgagee who receives a written request to consent to additions or amendments requiring consent under this provision who does not deliver or post to the requesting party a negative response within thirty (30) days after such receipt shall be deemed to have consented to such request.

11.7 MORTGAGEE NOTICE RIGHTS. Each Mortgagee shall be entitled to written notice of the following:

- A. Any 60-day delinquency in the payment of Assessments by, or Association commencement of judicial or nonjudicial foreclosure proceedings to enforce payment of delinquent obligations owed under the Governing Documents against, the Owner of its encumbered property; and

B. Any lapse or cancellation of any Association insurance policy.

Failure of a Mortgagee to receive the notice required by this Section shall not be construed to benefit an Owner or to impede the Association in enforcing the Governing Documents.

11.8 MORTGAGEE INFORMATION RIGHTS. A Mortgagee is entitled to obtain the same information as an Owner from the Association upon written request and payment of required fees.

11.9 MORTGAGEE RIGHT TO APPEAR AT MEETINGS. Because of its financial interest in the Property, any Mortgagee may appear (but cannot vote, except as otherwise provided hereunder), at meetings of Owners to draw attention to violations of the Declaration that have not been corrected or that have been made the subject of remedial proceedings or assessments.

ARTICLE 12. GENERAL PROVISIONS OF DECLARATION

12.1 NOTICE. Unless otherwise provided in the Declaration, a notice or notification permitted or required by the Governing Documents shall be in writing and deemed received by the person to whom it is given upon either (i) personal delivery or (ii) expiration of twenty-four (24) hours following drop off with an overnight mail courier service, such as FedEx or UPS or expiration of forty-eight (48) hours after deposit in the United States mail, postage prepaid. All such notices shall be sent to the street address of his or her Unit or to any other address that he or she has designated in writing to the Association. It does not matter whether a notice is sent by first-class, registered or certified mail. Notice to the Association shall be given to its President at the street address he or she has designated in writing to the Association. When Co-Owners own a Unit, notice shall be given to the Owner designated by the other Co-Owners. If no Owner has been designated by the other Co-Owners, then notice to any of them shall be deemed notice to all of them.

12.2 SEVERABILITY . Each provision of the Governing Documents is independent and severable, and may be enforced even though another provision may be unenforceable.

12.3 COSTS AND ATTORNEY'S FEES. The party who prevails in an arbitration, civil action or other proceeding to enforce or interpret the Governing Documents shall be entitled to recover all costs and expenses, including reasonable attorney's fees, but the arbitrator, judge or other decision maker shall have final discretion to allocate such costs and expenses between the parties in a manner that will accomplish substantial justice.

12.4 TERM OF DECLARATION. This Declaration shall continue for a term of fifty (50) years from the date it is recorded unless superseded or terminated sooner. The term shall be automatically extended for successive periods of ten (10) years, unless the Association is terminated, and it records with the County Recorder a notice of termination prior to the commencement of the next period.

12.5 STATUTORY REFERENCES. References to particular statutes of the State of California shall include any amendment of the statute. If a particular statute is repealed, reference to the statute shall include another statute which thereafter governs the same subject.

12.6 OWNER LIABILITY. If the Unit has more than one record Owner, the liability of the co-owners will be joint and several. In the event of personal injury or property damage sustained by any person while physically within the Unit or in Exclusive Use Common Areas E-2 and D-3,

and in the further event any other Owner is sued or acclaim is made against him or her for the injury or damages, the Owner(s) of the Unit(s) in which the injury or damage occurred must fully indemnify and hold harmless any such other Owner against whom acclaim is made. The Owner(s) must further defend any such other Owners in the event of litigation of the claim, at the expense of the Owner on whose property the injury occurred, provided that the protection will not extend to any other Owner whose own negligence may have caused or contributed to the cause of any such injury or damage.

12.7 INCORPORATION OF RECITALS. The Recitals are hereby incorporated herein by this reference.

AGREED TO AND ACCEPTED BY:

Michael L. Skiles

Date

Treaasa L. Skiles

Date

Peter J. Corpstein

Date

W. H. Corpstein

Date

Sue Anne Corpstein

Date

W. P. Reilly, Jr. Trustee

Date