

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**211 / 211 ½ COLTON, NEWPORT BEACH, CA**

This Declaration of Covenants, Conditions, and Restrictions, is made this 31st day of May, 2007 by Barry Saywitz (hereinafter referred to as “Declarant.”)

**Recitals**

Declarant is the owner of that certain real property situated in the City of Newport Beach, County of Orange, State of California, more particularly described see Exhibit “A” for full legal description and popularly known as “211 / 211 ½ Colton, (hereinafter called “Property”). Declarant intends to sell all or part of the above-described Property as condominium estates, subject to the Davis-Sterling Common Interest Development Act, contained in Division II, Part 4, Title 6 of the California Civil Code, restricting it in accordance with a common plan designed to preserve the value, desirability and attractiveness of said Property for the benefit of its future owners.

**Declaration**

In furtherance of this intent, Declarant declares that all of said Property is and shall be held, transferred, encumbered, used, sold, conveyed, leased, and occupied, subject to the following limitations, easements, servitudes, liens, charges, covenants, conditions, and restrictions hereinafter set forth expressly for the use and benefit of said real property, all of which are declared and agreed to be in furtherance of a plan of condominium ownership as described in California Civil Code §§ 1350 et seq. (Davis-Sterling Common Interest Development Act herein called “Act”) for the subdivision, improvement, protection, maintenance, and sale of condominiums within the real property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining, and protecting the value and attractiveness of the real property. All of the limitations, easements, servitudes, liens, charges, covenants, conditions, and restrictions shall run with the land and shall be

binding on and inure to the benefit of all parties having any right, title or interest in the real property, or any part thereof, and to the benefit of the successors in interest of such parties. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of California Civil Code § 1353.

### **SECTION I: DEFINITIONS**

1.1 “Property” shall mean and refer to that certain real property hereinabove described.

1.2 “Unit” shall mean and refer to those elements of a Condominium that are not owned in common with the other Owners of Condominiums on the Property. The respective boundaries of the Unit, as shown and particularly described in the Condominium plan, deeds conveying the Condominiums, and this Declaration, include the interior unfinished surfaces of the perimeter walls and doors, windows, floors, and ceilings.

“Unit” does not include the wall between any conjoined Units, including the “wall” which acts as the ceiling of one Unit and the floor of another Unit (except for the surface area of any such Wall as described above), or any plumbing within any such wall. Neither the roof nor the garage door shall be deemed to be within any Unit. Further, “Unit” does not include other interests in real property that are less than estates in real property such as exclusive or nonexclusive use rights or easements.

In interpreting deeds and plans, the existing physical boundaries of a Unit or of a Unit reconstructed in substantial accordance with the original plan shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed or Condominium plan, regardless of minor variances between the physical boundaries and those expressed in deeds or shown on the Condominium plan. Whenever reference to a Unit is made in this Declaration, in the Condominium plan, in any deed, or elsewhere, it shall be assumed that such reference is made to the Unit as a

whole, including each of its component elements.

1.3 “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Property, including contract buyers under recorded contracts of sale, but excluding those having such interest merely as security for the performance of an obligation. “Owner” shall also mean a member of the Association, and “Ownership” shall include membership in the Association. Notwithstanding the foregoing, each Unit shall have a maximum of one vote in any Association decision pursuant to Paragraph 7.1.

1.4 “Mutual Reciprocal Easements” shall be and refer to the right of entry, ingress and egress over, on and under the Common Area for access, emergency access and for drainage, sewers, and utilities and the maintenance of the same. Said Mutual Reciprocal Easements are part of the Common Area.

1.5 “Association” means the “Homeowners’ Association of 211 / 211 ½ Colton, Newport Beach, California”, an unincorporated association created for the management of the Property and its successors and assigns.

1.6 “Common Area” means the entire Property except the Units as defined in this Declaration and as shown in the Condominium plan.

1.7 “Exclusive Use Common Area” means that portion of the Common Area that is reserved for the exclusive use of a particular Owner for the purposes described in Paragraph 6.1, Exclusive Right to Parking Space; Paragraph 6.2, Patios/Decks; and Paragraph 6.3, Internal or External Telephone Wiring.

Each such Exclusive Use Common Area shall be appurtenant to the Owner’s Unit and may not be conveyed or transferred apart therefrom.

## **SECTION II: RESTRICTIONS**

2.1 Land Use. All Units shall be used for residential purposes only.

2.2 Permits. No structures or improvements shall be erected on or in any Unit without properly approved permits.

2.3 Nuisances. No noxious or offensive activity shall be conducted within the Property. Nothing shall be done on or within the Property that may be or may become an annoyance or nuisance to the other residents of the Property or that in any way interferes with the quiet enjoyment of the other occupants of the Property.

2.4 Garbage and Refuse Disposal. No Unit shall be used or maintained as a dumping ground for rubbish. Garbage, trash, or other waste shall be kept in suitable containers.

2.5 Drainage. Each Owner of a Unit agrees not to interfere in any way with the established drainage pattern over the Property, and agrees that he or she will make adequate provisions for proper drainage in the event it is necessary to change the established drainage.

2.6 Architectural Control. No building or other structure shall be erected, placed or altered on any Unit until the construction plans and specifications and a plan showing the location of the structure or alterations have been approved by the Association, as to the quality of workmanship and materials, harmony and external design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed, or altered on any Unit nearer to any street than the minimum building set back line unless similarly approved. Approval by the Association of such requirements shall be in the manner provided in this Declaration.

## **SECTION III: RESPONSIBILITIES OF OWNERS**

3.1 Owner Responsibility for Maintaining Unit and Exclusive Use Common Areas

Appurtenant Thereto. Each Owner of a Unit shall be responsible for maintaining his or her Unit, including the equipment and fixtures in the Unit and the interior walls and the windows and doors of the owned Unit. Each Owner also shall be responsible for repair, replacement, and cleaning of the windows and glass of his or her Unit, both exterior and interior. Each Owner shall be responsible for maintaining the Exclusive Use Common Areas, including patio(s) or deck(s), appurtenant to his or her Unit including, without limitation, maintenance and repair. Notwithstanding the foregoing, the Association, and not the respective Owners, shall be responsible for structural repairs to the patio(s) or deck(s).

3.2 Compliance With Laws. Nothing shall be done or kept in any Unit or in the Common Area that might increase the rate of, or cancellation of, insurance for the Property, or any portion of the Property without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his or her Unit that violates any law, ordinance, statute, rule, or regulation of any local, county, state, or federal governmental entity.

3.3 Real Property Taxes. To the extent allowed by law, all Units, including their pro-rata interest in the Common Area, shall be separately assessed and taxed so that all taxes, assessments, and charges that may become liens prior to first mortgages under local law shall relate only to the individual Unit and not to the Property as a whole. Each Owner shall be obligated to pay any taxes or assessments assessed by the County Assessor of the County against his or her Unit and against his or her personal property.

3.4 Maintenance and Repair Costs. The maintenance and repair of the Common Area shall be the responsibility of the Association, which is comprised of the Owners. Each Unit shall normally bear an equal pro-rata share of the cost of maintenance and repair of said Common Area subject only to modification as provided in Paragraph 4.2. The amount and frequency of the

maintenance shall be determined by the Association as set forth herein below. Notwithstanding the foregoing, each Owner shall be responsible for non-structural maintenance and repair to the Exclusive Use Common Areas, including patio(s) or deck(s), appurtenant to his or her Unit pursuant to paragraph 6.2.

3.5 Insurance. The Association shall maintain insurance in the form of an association policy covering fire and liability for the entire Property, including the structure, and providing a minimum of One Million Dollars (\$1,000,000) of liability coverage. The cost of the association policy shall be apportioned equally to each Unit. If it is determined that the property is located in a flood zone, the Association shall maintain flood insurance covering the Property in an amount as required by any mortgage encumbering any Unit. The Owners may elect to maintain individual content policies covering their personal property and such other and additional policies of insurance as they may deem advisable, in their sole discretion.

3.6 Cost of Sprinkler-Water Usage.—By virtue of the sprinkler system for the front landscaping area, if any, is being metered to 211 / 211 ½ Colton, Owner, and shall be responsible to maintain the landscaping reasonably in keeping with the standards of the neighborhood. The Owner of said Unit shall have no right of reimbursement for the afore-referenced purposes unless otherwise agreed by the Association. If, in the sole discretion of the Association, the Owner of 211 / 211 ½ Colton is breaching his or her duties under this paragraph 3.6, the Association, by a majority vote, may take over the landscaping duties stated in this paragraph and levy assessments for the maintenance thereof pursuant to paragraph 7.4.

#### **SECTION IV: OWNERS' NONEXCLUSIVE RIGHTS**

4.1 Owners' Nonexclusive Rights. Every Owner has nonexclusive rights of use, enjoyment, ingress, egress, and support in, to, and throughout the Common Area and any

improvements or facilities on these areas. However, such nonexclusive rights shall be subordinate to, and shall not interfere with, exclusive use rights of any Exclusive Use Common Area. Notwithstanding the foregoing, easements are granted in all Common Areas, including Exclusive Use Common Areas, for emergency access, drainage, sewers, and utilities.

4.2 Construction. It is anticipated that each Unit may be improved or altered at some future time. Each Owner shall pay all costs for construction done or caused to be done by the Owner to his or her Unit or to the Property. Each Owner shall keep the Property and his or her Unit free and clear of all mechanics' liens resulting or arising from construction done by or for that Owner. In order to properly maintain the Common Area and to enable the other Owners to appropriately assess an Owner for any excess maintenance costs due to construction, prior to commencing any alteration or improvement to a Unit, the Owner shall give written notice thereof to the other Owner and shall describe the work to be done. Following such notice, the Owners shall document the condition of the Common Area prior to commencement of the work of alteration or improvement. Upon completion of the alterations or improvements, the Owner who first gave notice of the same shall give written notice of completion to the other Owner, together with documentation of the condition of the Common Area. The Owner whose Unit was altered or improved shall be responsible for the cost of restoration of the Common Area to a condition at least equal to that condition prior to commencement of the alterations or improvements. All repairs or restoration work shall be completed within thirty (30) days of the completion of the alterations or improvements to the Unit, or as soon thereafter as weather permits. In the event that the Owner whose Unit is altered or improved fails to comply with the provisions hereof, the other Owner may charge such Owner with the full cost of maintenance and repair of the Common Area for the entire time that any work of alteration or improvement is in process on such Owner's Unit. If any work of alteration or

improvement is at any later time discovered to have damaged or compromised the existing structure, or any portion thereof, the Association, if any Common Areas were damaged or compromised by such alteration or improvement, or the Owner of another Unit, if the other Unit was damaged or compromised by such alteration or improvement, shall have the right of indemnification from the Owner whose alteration or improvement damaged or compromised the structure for the costs of restoration and repair of the damage or condition and compensation for any consequential damages directly resulting therefrom not covered by insurance. The obligation of an Owner to restore or repair any such damage or condition and to compensate for any consequential damages directly resulting therefrom not covered by insurance, shall survive that Owner's ownership interest in its Unit subject to any applicable statutes of limitation under California law.

4.3 Installation of Solar Heating Systems. The Association, upon unanimous vote, may elect to install solar heating systems, subject to compliance with applicable zoning district regulations, the Uniform Building Code and associated ordinances, and reasonable architectural review by the Association upon a majority vote.

## **SECTION V: RIGHT OF ACCESS**

5.1 Right of Entry and Emergencies. City of Newport Beach Police and Fire Department personnel and vehicles shall have the immediate Right of Entry onto and across all Common Areas, including Exclusive Use Common Areas, within the Property for reasonable inspection and emergency purposes.

5.2 Right of Entry to Utility Providers. Utility providers shall have the Right of Entry onto and across all Common Areas, including Exclusive Use Common Areas, within the property at reasonable times, with reasonable notice for the purpose of maintaining and servicing existing

utilities.

## **SECTION VI: EXCLUSIVE USE RIGHTS**

6.1 Exclusive Right to Parking Space. Each Owner shall have an exclusive right to use the parking space designated in the Condominium plan attached to this Declaration and bearing his or her Unit number. All on-site parking shall be in such designated spaces only. No owner or guest of an Owner shall park a vehicle in any driveway or in front of a garage door. Each Owner having such an exclusive right for parking purposes shall keep his or her parking space in a neat, clean, attractive, and safe condition at all times. Notwithstanding the foregoing, each Unit shall have a right of ingress and egress over and on the area designated for the exclusive use of the other Unit for reasonable access to and use of washer/dryer facilities.

6.2 Patios or Decks. Each Owner shall have an exclusive right to use and enjoy that portion of the Common Area adjacent to his or her Unit designated on the Condominium plan attached to this Declaration as a Patio or Deck and bearing his or her Unit number. Each Owner shall keep his or her Patio or Deck area in a neat, clean, attractive, and safe condition at all times and shall be responsible for all non-structural repair and maintenance required thereto. Notwithstanding the foregoing, the Association shall maintain, and repair all structural aspects of the Patios and Decks, including any surrounding fences, and the costs shall be borne equally by each Unit notwithstanding any exclusive rights to use such patio or deck.

6.3 Internal or External Telephone Wiring. Internal and external telephone wiring constitutes an Exclusive Use Common Area and the Owner of the separate interest to which they belong has the right to reasonable access to that wiring.

## **SECTION VII: ASSOCIATION**

7.1 Membership. At all times, the Association shall be restricted to comprise only the

fee Owners (or their legal representative) of the Units known as Unit #1, 208 and Unit #2, 210. Each Unit shall have one (1) vote on any Association decision. The Association shall designate a neutral third party (i.e. law firm or Management Company) who shall be required to vote on any issue requiring a majority to which the Association is entitled to vote and upon which the Association is deadlocked. The initial neutral third party shall be Michael Lapin, Esq., Mediator, 600 Anton Blvd., 11<sup>th</sup> Flr., Costa Mesa, CA 92626; phone #(714)371-4111; email mlapin@lapinmediation.com. Such neutral third party may be changed only upon a majority vote of the Association (including the neutral third party, if applicable), provided that, in the event that the designated neutral third party is unable or unwilling to serve in such capacity, for any reason, and the Association is unable to select a replacement neutral third party, for any reason, the Presiding Judge of the Orange County Superior Court may, on application of any Owner, appoint the neutral third party. A majority membership shall designate a representative to act for it, and said representative shall be recognized as the Chairman of the Association. The Chairman shall have signing authority on behalf of the Association for any approved expense or endeavor so long as he or she obtains a second signature from either a representative of the other Unit or the neutral third party.

Fee ownership in any of said Units mandates membership representation in the Association. If for any reason the Association shall fail to function, the City of Newport Beach shall have the right to enforce this Declaration.

7.2 Power and Duties. The Association shall have the duties to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to consider, act upon and determine the need for maintenance and repair of the Common Area, to adopt Association rules for the performance of such duties and to carry out all other duties imposed upon it by this Declaration. The Association shall have the power of Assessments and Liens as provided herein and the power to

grant necessary easements. The Association shall pay all real and personal property taxes and assessments and all other taxes levied against the Association, the Common Area and the personal property owned by the Association.

7.3 Rules. The Association may, from time to time, and in its sole and absolute discretion, adopt, amend, and appeal, by majority vote any rules and regulations, to be known as Association Rules, said rules shall implement and interpret this Declaration by setting forth the standards and procedures for Association review and the guidelines for quality of workmanship, harmony and external design, erection, placement or alteration of any building of any Unit, and the guidelines for the maintenance and repair of the Common Area.

7.4 Assessment Authority. The Association shall levy regular and special assessments in sufficient amounts to perform the Association's obligations under this Declaration and the Act and to insure compliance with the Owners' responsibilities pursuant to Section III. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the members of the Association, to improve, replace, repair, operate, and maintain the Common Area, the landscaping, and the exterior of the structures and the improvements or personal property in the Common Area that are owned or maintained by the Association, to provide funds necessary for the performance of duties of the Association as set forth in this Declaration, and to further any other purpose that is for the common benefit of the Owners in their use and enjoyment of the Property.

7.5 Procedure for Approval by the Association of Architectural Control Requirements. The Association's approval or disapproval of the architectural control requirements set forth in Paragraph 2.6 of this Declaration shall be in writing. In the event the Association, or its designated representative, fails to approve or disapprove within thirty (30) days after plans and specifications

have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

7.6 Procedure by Association as to Common Area Maintenance. The Association's determination of the need for maintenance and repair, and the requirements for such maintenance and repair, of the Common Area shall be at the request of the Association, or upon the written request of any of the Owners of any Unit. Upon such request, the Association shall thereupon make its determination, and in the event the determination is made that any of the Common Areas is in need of maintenance or repair, the Association shall thereupon, in writing, notify each of the Owners. Thereupon, the Owners shall, within thirty (30) days, take any and all action required by the Association as set forth in said written notice. Emergency maintenance or repair may be initiated immediately by the Association.

7.7 Contracting Necessary Work and Equal Rate of Assessment. Payment for maintenance and repairs shall be defined as special assessments. Except in the event of an emergency or in the event that the Association votes unanimously otherwise, at least three (3) written bids shall be obtained from separate reputable contractors for necessary maintenance and repair of the Common Area. A majority of the Association members shall select the bid to be accepted.

Special assessments shall be fixed by the Association at an equal rate for all Units except that non-structural maintenance and repair of Exclusive Use Common Areas shall be assessed to the Unit to which any Exclusive Use Common Area repaired or maintained is appurtenant. Assessments shall be collected by the Association in a manner reasonably determined by the Association and consistent with this Declaration.

7.8 Nonpayment of Assessments and Remedies of the Association. Assessments, together with interest and reasonable costs (including reasonable attorney fees) for the collection thereof, shall be separate, distinct, and personal debts and obligations of the Owner or Owners of the Units against which the sums are assessed. Any Assessment which is not paid when due shall be delinquent (in Default) on said date (the delinquent/Default date). In the event of a default or defaults in the payment of such assessment or assessments, and in addition to any other remedies herein or by law provided, the Association may enforce each obligation as follows:

By suit or suits at law to collect each such assessment obligation. Said action shall be brought in the name of the Association and the Association shall be deemed to be acting on behalf of all the Owners. Any judgment or award rendered in any such action against any such Owner may include reasonable attorneys' fees to be fixed by the Court, interest at the legal rate, and collection costs in addition to the amount of said debt. Upon satisfaction of any such judgment, the Chairman of the Association shall, on behalf of the Association, execute and deliver to the Judgment Debtor an appropriate satisfaction thereof.

At any time within ninety (90) days after the occurrence of any such default in the payment of said assessment or assessments, the Association may give notice to the defaulting Owner, in accordance with Civil Code section 1367.1, including stating the date of the delinquency, providing an itemized statement of the charges due and making demand for payment thereof, and advising the delinquent Owner of the right to request a meeting with the Association's Board as provided in Civil Code section 1367.1 (c) If such delinquency is not paid within thirty (30) days after delivery of such notice, the Association may file a claim and record a lien (notice of delinquent assessment) against the Unit of such delinquent Owner, in accordance with Civil Code section 1367.1. Such claim shall state (1) the name of the delinquent Owner, (2) a description of the Unit

against which claim of lien is made, (3) the amount claimed (which may, at the Association's option, include interest at ten percent (10%) per annum from the date due of the unpaid delinquency plus reasonable attorneys' fees and collection costs) to be due and owing, (4) that the lien is asserted by the Association pursuant to the terms of this Declaration (giving the date of execution and the date, book and page references of the recording thereof in the Office of the Recorder of the County of Orange), (5) that a lien is claimed against the described Unit in any amount equal to the amount of the stated delinquency. Such claim shall be signed and acknowledged by any member of the Association and shall be dated as of the date of the execution of the last such member to execute said claim.

Said lien may be foreclosed by appropriate action in Court or in the manner provided by law for the foreclosure of a mortgage under power of sale in accordance with California Civil Code Sections 2924, 29246, 2924 (c), and related code sections. In the event such foreclosure is by action in Court, reasonable attorneys' fees shall be allowed to the full extent permitted by law. In the event of foreclosure of a mortgage under a power of sale, any person designated by the Association, in writing, to conduct said sale, shall be deemed to be acting as the agent of the lien holder and shall be entitled to actual expenses and such fees as may be allowed by law, or as may be prevailing at the time the sale is conducted. The Certification of sale shall be executed and acknowledged by two (2) members of the Association, or by the authorized agent conducting the sale. A Deed upon foreclosure shall be executed in like manner. The Association, on behalf of the Owners, shall have the power to bid for said Unit at the foreclosure sale and thereafter to sell, lease, hold and mortgage same. No owner may waive or otherwise be relieved of liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Unit. The

failure by the Association to meet any time limits set forth in this Paragraph shall in no way impair any of its lien rights securing Association assessments or any of its other rights.

### **SECTION VIII: ENFORCEMENT**

8.1 Right of Enforcement. The enforcement of each and every covenant, condition or restriction set forth in this Declaration shall be the right of each Owner of a Unit either by suit or action at law or in equity. In addition, such enforcement shall be the right of the Association.

8.2 Attorneys' Fees. In the event any such suit or action be brought to enforce any covenant, condition or restriction set forth in this Declaration, the prevailing party in such suit or action shall be entitled to reasonable attorneys' fees as determined by the Court in such suit or action.

8.3 Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Owner of any Unit, or by the Association.

8.4 Non-Waiver. The failure to enforce any of the provisions of this Declaration shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of this Declaration.

### **SECTION IX: GENERAL PROVISIONS**

9.1 Term. Approval from the Planning Director of the City of Newport Beach must be obtained prior to any termination of any or all of the herein stated easements, covenants, conditions and restrictions. Subject to said termination approval, this Declaration and the covenants herein contained, shall be in effect until January 10, 2016, and shall be automatically extended for successive periods of ten (10) years unless, within six (6) months prior to the expiration of the initial

term, or any ten (10) year renewal period, a written agreement, executed by one authorized representative from each of the Units, shall be recorded in the Office of the County Recorder of the County of Orange, by the terms of which agreement the effectiveness of this Declaration is terminated or the covenants herein contained are extinguished in whole or in part as to all or any part of the Property then subject thereto. In the event that any such written agreements of Change or Modification be fully executed and recorded, the conditions, restrictions and charges as therein modified shall continue in force for successive periods of ten (10) years each unless and until further changed, modified or extinguished in the manner herein provided.

9.2 Amendment. This Declaration may be amended by an instrument in writing signed by one authorized representative from each of the Units. Any amendment which would affect Mutual Reciprocal Easements or the right of the City of Newport Beach to enforce these Covenants Conditions and Restrictions as described in Section X below, must first be approved by the Planning Director of the City of Newport Beach.

9.3 Notices. In each instance in which Notice is to be given to the Owner of a Unit, the same shall be in writing and may be delivered personally, and in the event that a Unit has more than one Owner (i.e., Co-Owners), personal delivery of such Notice to any Co-Owners of a Unit, shall be deemed delivery to all of the Co-Owners, or such Notice may be delivered by United States Mail, certified or registered, postage pre-paid, return receipt requested, addressed to the Owner of such Unit at the most recent address furnished by such Owner in writing for the purpose of giving Notice, or if no such address shall have been furnished, then to the street address of such Unit, and any Notice so deposited in the mail within the State of California, shall be deemed delivered three (3) days after such deposit.

9.4 Severability. Should any of the covenants contained in this Declaration be void or become unenforceable in law or in equity, the remaining portions of this Declaration shall, nevertheless be and remain in full force and effect.

9.5 Captions. The titles or headings of the paragraphs of this Declarations are not a part hereof and shall have no effect upon the construction or interpretation of any part hereof.

9.6 Mortgage Protection. No breach of any of the foregoing covenants, conditions, or restrictions, or re-entry by reason of such breach, shall defeat, render invalid or impair the lien of any mortgage or Deed of Trust made in good faith and for value as to said Units and other properties, or any part thereof, but said covenants, conditions, and restrictions shall be binding upon and effective against any subsequent Owner of said properties or upon any part thereof whose title thereto is acquired by foreclosure, upon a Deed in lieu of foreclosure, or otherwise.

9.7 Easements Reserved and Granted. Any easement referred to in this Declaration shall be deemed to be reserved or granted, or both reserved and granted, by reference to this Declaration in a deed to any Condominium.

9.10 Incorporation of Exhibits. All exhibits referred to are attached to this Declaration and incorporated by reference.

#### **SECTION X: CITY OF NEWPORT BEACH ENFORCEMENT**

10.1 Right of Enforcement. Declarant has agreed with the City of Newport Beach (“the City”) that all Mutual Reciprocal Easements within the Property shall be maintained in accordance with specified standards of repair and maintenance. If, in the opinion of the City Manager of the City (or its authorized representative), the Owners at any time fail to maintain the Mutual Reciprocal Easements in accordance with the terms of the above-referenced Agreement, the City shall give written notice to the Owners of the Property, specifying the exact nature of such deficiency. This

notice of deficiency from the City shall require that the Owners take appropriate corrective action within thirty (30) days of receipt of such written notice unless there exists a hazardous condition creating an immediate possibility of serious injury to persons or property, in which case the time for correction may be reduced to a lesser period appropriate to the nature of the hazard. The Owners shall have the right, within ten (10) days of receipt of such written notice of deficiency, to file any Appeal with the City Council of the City for public hearing before the City Council to consider the reasonableness of the City's requirements as set forth in the written notice of deficiency. The decision of the City Council on such Appeal shall be binding upon all parties but may be appealed by the Owners through an appropriate action in any Court having jurisdiction. If the Owners, within the time set forth in the notice of deficiency (subject to extension for such time as may be required to appeal the notice of deficiency to the City Council) do not undertake and complete the corrective work required in the notice of deficiency, the City may undertake and complete such corrective measures as are set forth in the notice, and assess the costs thereof against the Owners as a lien, enforceable in the same manner as set forth herein for the establishment of liens against the Owner's property. The written notice of deficiency from the City shall state the anticipated costs that the City would assess against the Owners for the corrective work to be accomplished, which costs shall be no more than those charged by competitive private industry for similar work.

10.2 Access and Drainage Easements. Access and drainage easements shall be maintained in such a manner that surfaces shall not be allowed to deteriorate with large cracks, potholes, or disintegration. Paved areas shall always be maintained in such a condition that they may be utilized by vehicles and pedestrians without the possibility of damage to vehicles and equipment or injury to persons.

IN WITNESS WHEREOF, the undersigned being the Declarant herein have hereunto set

its hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2006.

By: \_\_\_\_\_  
Barry Saywitz, Declarant