

Master

Return to:

Broadmoor Homes, Inc.  
17802 Irvine Blvd.  
Tustin, Calif. 92680  
Attn: Ken Alton

22512

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J. WYLLIE CARLYLE, County Recorder

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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

BROADMOOR HUNTINGTON HARBOUR

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RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

BK:238816 583

Broadmoor Homes, Inc.  
17802 Irvine Boulevard  
Tustin, California 92680

Attention: Ken Alton

Above space for Recorder's use only

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
BROADMOOR HUNTINGTON HARBOUR

THIS DECLARATION is made this 21st day of September, 1977, by BROADMOOR HOMES, INC., a California corporation ("Broadmoor"), and BROADMOOR GRIMAUD, a California limited partnership ("Grimaud"). Broadmoor and Grimaud shall be referred to hereinbelow as the "Declarant".

RECITALS

A. Declarant is the owner of certain real property ("Property") located in the City of Huntington Beach ("City"), County of Orange, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

B. Declarant desires to create on the Property and such additions ("Additions") thereto as may be made pursuant to Article II hereof an interrelated and interdependent residential community composed of residential dwellings and private recreational facilities for the benefit of portions of the community.

C. Declarant has deemed it desirable to impose a general plan for the protection, maintenance, improvement, development, use, occupancy and enjoyment of the Property and Additions and to adopt and establish covenants, conditions and restrictions upon the Property and Additions for the purpose of protecting the value, desirability and attractiveness thereof.

D. Declarant has deemed it desirable for the efficient preservation of the value, desirability and attractiveness of the Property and Additions to create a corporation to which should be delegated and assigned the powers of administering and enforcing these covenants, conditions and restrictions.

E. Broadmoor Huntington Harbour Community Association, a nonprofit corporation, has been or will be incorporated under the laws of the State of California for the purpose of exercising the powers and functions as aforesaid.

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F. Declarant intends to convey all of the Property and Additions subject to the protective covenants, conditions and restrictions set forth hereinbelow.

NOW, THEREFORE, Declarant hereby certifies, agrees, and declares that it has established, and does hereby establish, a General Plan for the protection, maintenance, improvement, and development of the Property and Additions and has fixed, and does hereby fix, the covenants, conditions, restrictions, easements, reservations, liens and charges upon and subject to which all of the Property and Additions and each portion thereof shall be held, used, leased, sold and conveyed, and each and all of which is and are declared hereby to be for the benefit of all the Property and Additions and each portion thereof and each present and each future Owner (as hereinbelow defined) thereof and Declarant. These covenants, conditions, restrictions, easements, reservations, liens and charges shall run with the Property and Additions and shall be binding upon all parties having or acquiring any right, title, or interest in the Property and Additions or any portion thereof and shall inure to the benefit of and bind each owner thereof and their respective successors in interest, and are imposed upon the Property and Additions and each and every portion thereof as a servitude in favor of the Property and Additions and each and every portion thereof as the dominant tenement or tenements.

## ARTICLE I

### Definitions

The terms set forth hereinbelow in this Article I are defined, for purposes of this Declaration, as follows:

Section 1. "Articles" and "By-Laws" shall mean and refer to the Articles of Incorporation and By-Laws of the Association as the same may be amended from time to time.

Section 2. "Assessment" shall mean and refer to any or all, as the context in which the term is used shall require, of the assessments hereinbelow defined:

(a) "Boat Dock Assessment" shall mean and refer to a charge against each Owner of a Lot within the R-1 Property and his Lot representing a portion of the cost incurred by the Association in discharging its duties and obligations with respect to the Boat Dock Area pursuant to Article IX, Section 1(e) hereinbelow.

(b) "Capital Improvement Assessment" shall mean and refer to a charge against certain Owners and their Lots or Condominiums, as the case may be, representing a portion of the cost to the Association for the installation or construction of any capital improvements on any Recreation Area, Street Area, Maintenance Area or Boat Dock Area as provided for in this Declaration.

(c) "Reconstruction Assessment" shall mean and refer to a charge against each Owner and his Condominium representing a portion of the cost to the Association for the reconstruction of any portion or portions of any Condominium Building, the Common Area, Street Area or Recreation Area and against each Owner of a Lot within the R-1 Property and his Lot representing a portion of the cost to the Association for the reconstruction of any portion or portions of the Boat Dock Area or Street Area as provided for in this Declaration.

(d) "Condominium Regular Assessment" shall mean and refer to a charge against each Owner of a Condominium and his Condominium representing that portion of the Common Expenses attributable to such Owner and his Condominium as provided for in this Declaration.

(e) "R-1 Regular Assessment" shall mean and refer to a charge against each Owner of a Lot within the R-1 Property and his Lot representing that portion of the Common Expenses attributable to such Owner and his Lot as provided for in this Declaration. Condominium and R-1 Regular Assessments shall be collectively referred to hereinbelow as "Regular Assessments."

(f) "Special Assessment" shall mean and refer to a charge against a particular Owner and his Lot or Condominium, as the case may be, directly attributable to such Owner, for certain costs incurred by the Association or the Declarant as provided for in this Declaration.

Section 3. "Association" shall mean and refer to Broadmoor Huntington Harbour Community Association, a non-profit corporation, incorporated or to be incorporated under the laws of the State of California, and its successors and assigns.

Section 4. "Association Rules" shall mean and refer to rules adopted by the Association pursuant to the Article of this Declaration entitled "Duties and Powers of the Association."

Section 5. "Beach Area" shall mean and refer to that certain beach located at the terminus of the Street Area.

Section 6. "Board" shall mean and refer to the Board of Directors of the Association.

Section 7. "Common Area" shall mean and refer to the entirety of each project except the Units in each such project and, without limiting the generality of the foregoing, specifically including all structural projections within a Unit which are required for the support of a Condominium Building, gas, water, waste pipes, all sewers, all ducts, chutes, conduits, wires and other utility installations of the structures wherever located (except the outlets thereof when located within Units), the land upon which the structures are located, the air space above these structures,



all bearing walls, columns, floors, the roof, the slab foundation, common stairways, window glass and the like.

Section 8. "Common Expenses" shall mean and refer to the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Area (unless the cost of such repair and replacement is otherwise provided for in the Article hereof entitled "Destruction of Improvements"), the Street Area or Recreation Area (unless the cost of such repair and replacement is otherwise provided for in Sections 16 and 17, respectively, of the Article hereof entitled "Destruction of Improvements") and any Maintenance Area (except the Boat Dock Area); unpaid Assessments; management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; utilities, trash pick-up and disposal, gardening and other services benefiting the Common Area, Street Area, Recreation Area, and any Maintenance Area (except the Boat Dock Area); fire, casualty, liability, workmen's compensation and other insurance covering the Common Area, Street Area, Recreation Area, and any Maintenance Area (except the Boat Dock Area); reasonable reserves as appropriate; bonding of the members of the management body; taxes paid by the Association; amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Area, Street Area or Recreation Area or any portion thereof; amounts paid or incurred by the Association in collecting Assessments pursuant to Section 1 of Article VI hereof, including amounts expended to purchase a Lot or Condominium in connection with the foreclosure of an Assessment lien against such Lot or Condominium; and expenses incurred by the Association for any reason whatsoever in connection with the Common Area, Street Area, Recreation Area or any Maintenance Area (except the Boat Dock Area), this Declaration or any Supplementary Declaration of Covenants, Conditions and Restrictions recorded in accordance with Article II of this Declaration, the Articles or By-Laws or in furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association or the Board by this Declaration or any such Supplementary Declaration.

Section 9. "Condominium" shall mean and refer to an estate in real property in a project (as to that project only) consisting of a fractional undivided fee interest in common with the other Owners in the project in the Common Area of such project, together with a separate fee interest in a Unit and all right, title and interest appurtenant thereto. Such fractional undivided interest in common of each Owner shall be as described in the instrument conveying a Condominium to such Owner and shall not be changed except as provided in Section 10 of Article XIII hereof and in Section 8 of Article XIV hereof.

Section 10. "Condominium Building" shall mean and refer to a separate building containing one or more Units or elements of Units.

(a) "Balcony" shall mean and refer to that portion of a Unit designed for use as a balcony, and shall be identified on the Condominium Plan by a Unit number and the letter "B". The upper and lower elevations of Balconies are horizontal planes, the elevations of which are as stated in the Elevation Note contained in the Condominium Plan. The lateral boundaries of the Balconies are the vertical planes at the limits of the horizontal dimensions shown in the Condominium Plan for each Balcony.

(b) "Garage" shall mean and refer to that portion of a Unit designed for use as a garage, and shall be identified on the Condominium Plan by a Unit number and the letter "G" and shall consist of the interior undecorated surfaces of the perimeter walls, floors, ceilings, windows (if any) and doors of each Garage element and the space encompassed thereby, including the outlets of all utility installations therein.

(c) "Patio" shall mean and refer to that portion of a Unit designed for use as a patio, and shall be identified on the Condominium Plan by a Unit number and the letter "P" and shall consist of the contiguous surfaces of any Common Area walls or fences, the surfaces of the walls of contiguous Condominium Buildings, with the upper and lower horizontal boundary of the Patio element being planes as shown on the Condominium Plan, and the space encompassed by all of the foregoing. In the event that the contiguous Common Area land or improvements do not completely enclose the Patio element, the remaining boundaries of the airspace contained within said Patio element shall be as delineated on the Condominium Plan.

(d) "Residential Element" shall mean and refer to that portion of a Unit designed for use as a residence, and shall be identified on the Condominium Plan by a Unit number only and shall consist of the interior undecorated surfaces of the perimeter walls, floors, ceilings, windows and doors of each Residential Element and the space encompassed thereby, including the outlets of all utility installations therein and also including the interior surfaces of the firebox of each fireplace extending from the floor to the top of each fireplace, if any, and the space encompassed thereby, which adjoins any Residential Element.

Section 11. "Condominium Plan" shall mean and refer to the condominium plan for each project recorded by Declarant in the Office of the County Recorder of Orange County, California, and any amendments or modifications thereto.

Section 12. "Declarant" shall mean and refer to Broadmoor and/or Grimaud and such of their successors as shall acquire Broadmoor's and/or Grimaud's entire fee interest in Broadmoor Huntington Harbour as of the date of acquisition thereof. Persons or entities who acquire less than all of such fee interest (including, without limitation, those acquiring less than all of the Lots owned by Broadmoor and/or all of the Condominiums owned by Grimaud

for purposes of development or residential use) shall not be successors of Broadmoor and/or Grimaud for purposes of this Declaration, but rather shall be Owners. However, nothing herein contained shall be deemed to preclude the Declarant from assigning any of its rights or duties to anyone as provided in Article XVIII, Section 16 hereof. Notwithstanding the foregoing, in the event any person or entity ("Grantee") acquires from Broadmoor all of the Lots within the R-1 Property, such Grantee (but not any person or entity acquiring a Lot or Lots from the Grantee, except Broadmoor) shall be a Declarant, and shall have all of the rights and obligations of the Declarant, but only to the extent that said rights and obligations relate to the R-1 Property. The Grantee shall not be a Declarant with respect to any of the property within Broadmoor Huntington Harbour except the R-1 Property, and shall have no rights or obligations with respect thereto.

Section 13. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Broadmoor Huntington Harbour as the same may be amended, supplemented, modified or changed from time to time.

Section 14. "Deed of trust" shall be deemed to include a mortgage, "beneficiary" shall be deemed to include the mortgagee of a mortgage and "trustor" shall be deemed to include the mortgagor of a mortgage.

Section 15. "Family" shall mean and refer to one or more persons related to each other by blood, marriage or legal adoption, or a group of not more than three persons not so related, together with his or their domestic servants, maintaining a common household in a Unit or on a Lot.

Section 16. "First Beneficiary" shall mean and refer to the first beneficiary under a deed of trust of record or the first mortgagee under a mortgage of record covering a Lot or Lots or Condominium or Condominiums in Broadmoor Huntington Harbour.

Section 17. "Lot" shall mean and refer to any numbered or lettered plot of land shown upon any recorded subdivision map of Broadmoor Huntington Harbour or any portion thereof, with the exception of the Common Area, Street Area, Boat Dock Area or Recreation Area.

Section 18. "Maintenance Area" shall mean and refer to any area within or outside of Broadmoor Huntington Harbour which is not Common Area, Recreation Area, or Street Area, but which the Association is required to maintain by this Declaration or any Supplementary Declaration of Covenants, Conditions and Restrictions recorded in accordance with Article II hereof.

Section 19. "Member" shall mean and refer to every person or entity who holds membership in the Association as provided in Article III, Section 1 hereof.

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Section 19. "Member" shall mean and refer to every person or entity who holds membership in the Association as provided in Article III Section 1 hereof.

for purposes of development or residential use) shall not be successors of Broadmoor and/or Grimaud for purposes of this Declaration, but rather shall be Owners. However, nothing herein contained shall be deemed to preclude the Declarant from assigning any of its rights or duties to anyone as provided in Article XVIII, Section 16 hereof. Notwithstanding the foregoing, in the event any person or entity ("Grantee") acquires from Broadmoor all of the Lots within the R-1 Property, such Grantee (but not any person or entity acquiring a Lot or Lots from the Grantee, except Broadmoor) shall be a Declarant, and shall have all of the rights and obligations of the Declarant, but only to the extent that said rights and obligations relate to the R-1 Property. The Grantee shall not be a Declarant with respect to any of the property within Broadmoor Huntington Harbour except the R-1 Property, and shall have no rights or obligations with respect thereto.

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Section 19. "Member" shall mean and refer to every person or entity who holds membership in the Association as provided in Article III, Section 1 hereof.

Section 20. "Owner" shall mean and refer to one or more persons or entities who are the record owner, including the Declarant, or the record vendee of a Lot or a Condominium under an installment sales contract, of the fee simple title to any Lot or Condominium, but shall not mean or refer to those having such interest merely as security for the performance of an obligation.

Section 21. "R-1 Property" shall mean and refer to the Property.

Section 22. The term "project" shall mean and refer to Project No. 1 and each other parcel of real property, including all structures thereon, annexed thereto in accordance with Article II hereof, which is divided, or which is to be divided, into Condominiums.

Section 23. "Project No. 1" shall mean and refer to the first project annexed to the R-1 Property in accordance with Article II hereof.

Section 24. "Broadmoor Huntington Harbour" shall mean and refer to the Property together with such additions thereto as may become subject to this Declaration or any Supplementary Declaration of Covenants, Conditions and Restrictions pursuant to the provisions of Article II hereof.

Section 25. "Recreation Area" shall mean and refer to that certain property designated as such in any Supplementary Declaration of Covenants, Conditions and Restrictions pursuant to Article II hereof, and all facilities and improvements thereon, if any, owned or leased by the Association for the common use and enjoyment of the Owners of Condominiums within Broadmoor Huntington Harbour.

Section 26. "Residential Dwelling" shall mean and refer to any one-family residential dwelling located on a Lot within the R-1 Property and designed for occupancy by not more than one Family.

Section 27. "Street Area" shall mean and refer to Lot C of Tract No. 9738 as shown on a map recorded in Book 415, Pages 48 to 50, inclusive, of Miscellaneous Maps, records of Orange County, California, and any other real property which may be annexed pursuant to Article II hereof and is owned or leased by the Association for the common use and enjoyment, as a street, of all of the Owners within Broadmoor Huntington Harbour.

Section 28. "Unit" shall mean and refer to the elements of a Condominium which are not owned in common with the Owners of other Condominiums in a project and shall consist of a Residential Element together with one or more other Condominium elements set forth in this Article. Each Unit shall be identified on the Condominium Plan with a separate number. In interpreting deeds, leases, declarations and plans, the existing physical boundaries of a Unit constructed in substantial accordance with the Condominium Plan shall be conclusively presumed to be its boundaries rather

than the description expressed in the deed, lease, declaration or plan regardless of settling or lateral movement of the Condominium Building and regardless of minor variances between boundaries as shown on the plan or in the deed, lease or declaration and those of the Condominium Building as constructed.

ARTICLE II

Property Subject to this Declaration  
and Additions Thereto

Section 1. R-1 Property. The real property which shall be held, used, leased, sold and conveyed subject to this Declaration is the real property referred to herein as the R-1 Property.

Section 2. Additions to R-1 Property. Additional real property may be annexed to the R-1 Property and become subject to this Declaration in the manner set forth hereinbelow:

(a) Additions by Declarant. If the Declarant shall develop, or cause to be developed, additional real property within the area described in Exhibit "B", attached hereto and incorporated herein by this reference, the Declarant shall have the right from time to time to annex such additional real property or any portion or portions thereof, including improved and/or unimproved Recreation Area to the R-1 Property and to bring such real property within the general plan and scheme of this Declaration without the approval of the Association, its Board or the Members; provided that said right of Declarant shall terminate on the third anniversary of the date of issuance by the California Department of Real Estate of the most-recently-issued final subdivision public report with respect to any portion of the real property described in Exhibit "B".

(b) Other Additions. In addition to the provision for annexation specified in Section 2(a) hereinabove, additional real property may be annexed to the R-1 Property and brought within the general plan and scheme of this Declaration upon the approval by vote or written consent of Members of the Association entitled to exercise not less than two-thirds (2/3) of the voting power of each class of membership of the Association. Upon obtaining the requisite approval pursuant to this Section 2(b), the owner of any real property who desires to annex it to the R-1 Property and add it to the general plan and scheme of this Declaration and subject it to the jurisdiction of the Association, shall file of record a Supplementary Declaration of Covenants, Conditions and Restrictions, as more particularly described in Section 2(d) hereinbelow.

(c) Conveyances of Recreation Area. Prior to the conveyance of any Condominium within the annexed real

property to the purchaser thereof, fee simple or other fee or leasehold title to, or an easement or license in, the Recreation Area within said annexed project, if any, shall be conveyed to the Association, free and clear of any and all encumbrances and liens, except current real property taxes, which taxes shall be prorated to the date of transfer, and reservations, easements, covenants, conditions and restrictions then of record, including those set forth in this Declaration.

(d) Supplementary Declaration. The additions authorized under Sections 2(a) and 2(b) of this Article II shall be made by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions, or other similar instrument, with respect to the additional real property which shall be executed by Declarant or the owner thereof and shall extend the general plan and scheme of this Declaration to such real property. If the annexed real property is a project, the Supplementary Declaration therefor shall fix and state the undivided interest of the Owner of each Condominium within the annexed project in the Common Area of such project. The filing of record of said Supplementary Declaration shall constitute and effectuate the annexation of the additional real property described therein, and thereupon said real property shall become and constitute a part of Broadmoor Huntington Harbour, become subject to this Declaration and encompassed within the general plan and scheme of this Declaration, and become subject to assessment by the Association and to the functions, powers and jurisdiction of the Association, and the Owners of Condominiums or Lots, as the case may be, in said annexed real property shall automatically become Members of the Association; provided, however, no such annexation shall in any way modify or change the Owner of a Condominium's undivided interest in the Common Area of the project within which his Unit is located. Such Supplementary Declaration may contain such additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added real property, or as the Declarant may deem appropriate in the development of such real property, and as are not inconsistent with the general plan and scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants, conditions or restrictions established by this Declaration as the same pertain to the R-1 Property, except as hereinbelow may be provided.

### ARTICLE III

#### Membership and Voting Rights in the Association

Section 1. Membership. Every person or entity who is a record owner of a fee interest in any Lot or Condominium which is subject by this Declaration to assessment by the Association shall be a Member of the Association. Any person or entity having any such interest merely as security



for the performance of an obligation shall not be a Member. Membership in the Association and the right to vote shall be appurtenant to, and may not be separated from, the fee ownership of any Lot or Condominium which is subject to assessment by the Association. Ownership of such Lot or Condominium shall be the sole qualification for membership in the Association.

Section 2. Transfer. The membership held by any record Owner of a Lot or Condominium shall not be transferred, pledged or alienated in any way except upon the sale or assignment of such Lot or Condominium and then only to the purchaser or assignee thereof. Any attempt to make a prohibited transfer will be void and will not be reflected upon the books and records of the Association. In the event any Owner shall fail or refuse to transfer the membership registered in his name to the purchaser of his Lot or Condominium, the Association shall have the right to record the transfer upon the books of the Association.

Section 3. Voting Rights. The Association shall have two classes of voting membership as follows:

(a) Class A. Class A Members shall be all those Owners entitled to membership as defined in Section 1 of this Article III, with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each Lot or Condominium in which they hold the interest required for membership by Section 1. When more than one person holds such interest in any Lot or Condominium, all such persons shall be Members, and the vote for such Lot or Condominium shall be exercised as they determine among themselves, but in no event shall more than one vote be cast with respect to any such Lot or Condominium. Any votes cast with regard to any such Lot or Condominium in violation of this provision shall be null and void.

(b) Class B. The Class B Member shall be the Declarant. ~~The Class B Member shall be entitled to three (3) votes for each Lot or Condominium in which it holds the interest required for membership by Section 1;~~ provided that the Class B membership shall forever cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earliest:

(i) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;

(ii) On the second anniversary of the date of the original issuance by the California Department of Real Estate of the most-recently-issued final subdivision public report with respect to any portion of Broadmoor Huntington Harbour;

(iii) On the fourth anniversary of the date of the original issuance by the California Department of Real Estate of a final subdivision public report for the R-1 Property.

(c) Restrictions on Voting Rights. The voting rights of both classes of membership shall be subject to the restrictions and limitations provided in this Declaration and in the Articles and By-Laws.

#### ARTICLE IV

#### Property Rights in the Recreation

#### Area and Street Area

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 2 hereinbelow, every Member who owns a Condominium, and only such Members, shall have a right and easement of access, use and enjoyment in and to any Recreation Area and such easement shall be appurtenant to and shall pass with the title to every Condominium subject to assessment.

Section 2. Extent of the Easements of Those Members who Own Condominiums. The rights and easements of access, use and enjoyment created by Section 1 hereinabove shall be subject to the following:

(a) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Recreation Area and facilities thereon, if any, and in aid thereof, to deed in trust said Recreation Area; provided, however, that the rights of any beneficiary under such deed of trust shall be subordinate to the rights of the Members of the Association who own Condominiums; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the Recreation Area against foreclosure; and

(c) The right of the Association, as provided in its By-Laws, to suspend the voting rights and/or use or enjoyment rights to recreational or social facilities within the Recreation Area of any Member for any period during which any Assessment against his Condominium remains unpaid and delinquent, and for a period not to exceed thirty (30) days for any infraction of the Association Rules; and

(d) The right of the Association to dedicate or transfer all or any part of the Recreation Area to any public agency, authority or utility or any other entity for such purposes and subject to such conditions as may be agreed to by its Members who own Condominiums; provided, that no such dedication or transfer shall be effective unless approved by the vote or written consent of each class of Members who own Condominiums entitled to exercise not less than two-thirds (2/3) of the voting power of each such class of Members and an instrument in writing is recorded and signed by the Secretary of the Association certifying that such dedication or transfer has been approved by the required vote and/or written consent; provided further, that

the granting of easements for public utilities or for other public purposes consistent with the intended use of the Recreation Area shall not require such prior written consent; and

(e) The right of the Association to establish and enforce reasonable rules and regulations pertaining to the use and enjoyment of the Recreation Area and the facilities thereon; and

(f) The right of the Association to limit the number of guests of Members and to limit the use of the Recreation Area by persons not in possession of a Condominium, but owning a portion of the interest in a Condominium required for membership; and

(g) The right of the Association to charge reasonable admission and other fees for the use of any facility situated upon the Recreation Area; and

(h) The right of the Association to perform its duties and exercise its powers under Article IX hereof, including the power of the Association to grant easements on the Recreation Area as provided in said Article; and

(i) Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Recreation Area imposed by the Declarant or any city or county or other governmental agency having jurisdiction to impose any such limitations, restrictions or conditions, and whether by agreement with the Association, the Declarant or otherwise; and

(j) Such other rights of the Association, the Condominium Architectural Committee, the Board, the Owners of Condominiums and the Declarant with respect to the Recreation Area as may be provided for in this Declaration.

Section 3. Delegation of Use. Subject to the limitations of Section 2 of this Article IV, any Member who owns a Condominium may delegate, in accordance with the By-Laws, his right of use and enjoyment to the Recreation Area and facilities thereon to the members of his family, his tenants and contract purchasers who reside in his Unit.

Section 4. Street Area.

(a) Subject to the provisions of subsections (c) and (f) hereinbelow, every Member shall have a right and easement of access, use and enjoyment in and to the Street Area and such easement shall be appurtenant to and shall pass with the title to every Lot and Condominium subject to Assessment.

(b) Prior to the first to occur of (a) the conveyance of the first Lot within the R-1 Property to an Owner who acquires such Lot for residential use or (b) the conveyance of the first Condominium within Project No. 1, fee simple or other fee or leasehold title to, or an easement

the granting of easements for public utilities or for other public purposes consistent with the intended use of the Recreation Area shall not require such prior written consent; and

(e) The right of the Association to establish and enforce reasonable rules and regulations pertaining to the use and enjoyment of the Recreation Area and the facilities thereon; and

(f) The right of the Association to limit the number of guests of Members and to limit the use of the Recreation Area by persons not in possession of a Condominium, but owning a portion of the interest in a Condominium required for membership; and

(g) The right of the Association to charge reasonable admission and other fees for the use of any facility situated upon the Recreation Area; and

(h) The right of the Association to perform its duties and exercise its powers under Article IX hereof, including the power of the Association to grant easements on the Recreation Area as provided in said Article; and

(i) Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Recreation Area imposed by the Declarant or any city or county or other governmental agency having jurisdiction to impose any such limitations, restrictions or conditions, and whether by agreement with the Association, the Declarant or otherwise; and

(j) Such other rights of the Association, the Condominium Architectural Committee, the Board, the Owners of Condominiums and the Declarant with respect to the Recreation Area as may be provided for in this Declaration.

Section 3. Delegation of Use. Subject to the limitations of Section 2 or this Article IV, any Member who owns a Condominium may delegate, in accordance with the By-Laws, his right of use and enjoyment to the Recreation Area and facilities thereon to the members of his Family, his tenants and contract purchasers who reside in his Unit.

Section 4. Street Area.

(a) Subject to the provisions of subsections (c) and (f) hereinbelow, every Member shall have a right and easement of access, use and enjoyment in and to the Street Area and such easement shall be appurtenant to and shall pass with the title to every Lot and Condominium subject to Assessment.

(b) Prior to the first to occur of (a) the conveyance of the first Lot within the R-1 Property to an Owner who acquires such Lot for residential use or (b) the conveyance of the first Condominium within Project No. 1, fee simple or other fee or leasehold title to, or an easement

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or license in, the Street Area shall be conveyed to the Association, free and clear of any and all encumbrances and liens, except current real property taxes, which taxes shall be prorated to the date of transfer, and reservations, easements, covenants, conditions and restrictions then of record, including those set forth in this Declaration.

(c) The rights and easements of access, use and enjoyment created by Section 4(a) hereinabove shall be subject to the following:

(i) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Street Area and facilities thereon, if any, and in aid thereof, to deed in trust said Street Area; provided, however, that the rights of any beneficiary under such deed of trust shall be subordinate to the rights of the Members; and

(ii) The right of the Association to take such steps as are reasonably necessary to protect the Street Area against foreclosure; and

(iii) The right of the Association to dedicate or transfer all or any part of the Street Area to any public agency, authority or utility or any other entity for such purposes and subject to such conditions as may be agreed to by its Members; provided, that no such dedication or transfer shall be effective unless approved by the vote or written consent of Members entitled to exercise not less than two-thirds (2/3) of the voting power of each class of membership of the Association, and an instrument in writing is recorded and signed by the Secretary of the Association certifying that such dedication or transfer has been approved by the required vote and/or written consent; provided, further, that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Street Area shall not require such prior written consent; and

(iv) The right of the Association to establish and enforce reasonable rules and regulations pertaining to the use and enjoyment of the Street Area including, without limitation, parking thereon; and

(v) The right of the Association to perform its duties and exercise its powers under Article IX hereof, including the power of the Association to grant easements on the Street Area as provided in said Article; and

(vi) Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Street Area imposed by the Declarant or any city, county or other governmental agency having jurisdiction to impose any such limitations, restrictions or conditions, and whether by agreement with the Association, the Declarant or otherwise; and

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(vii) Such other rights of the Association, the Condominium Architectural Committee, the Board, the Owners and the Declarant with respect to the Street Area as may be provided for in this Declaration.

(d) Subject to the limitations of this Section, any Member may delegate, in accordance with the By-Laws, his right of use and enjoyment to the Street Area and facilities thereon to the members of his Family, his tenants and contract purchasers who reside in his Unit or Lot.

(e) The California Vehicle Code may be enforced on the Street Area by the City. The City is hereby declared to have a right of access over the Street Area for purposes of police and fire protection, trash collection, utility maintenance, and access to the Beach Area.

(f) Persons who do not own a Lot or Condominium within Broadmoor Huntington Harbour are hereby declared to have a right of access over the Street Area for purposes of ingress and egress to and from the Beach Area; provided, however, that such right of access shall be subject to the same limitations and restrictions applicable to the Street Area set forth in Section 4(c) of this Article IV and to the following additional restrictions and limitations: (i) the Street Area shall not be used for any purpose tending to disturb the neighborhood or occupants of adjoining property, or to constitute a nuisance, or be in violation of any public law, ordinance or regulation in any way applicable thereto; (ii) the right of access shall not be used for any business or commercial purposes; (iii) only pedestrian and vehicular movement shall be permitted; and (iv) no motor vehicle, boat, trailer, bicycle, or any other means of transportation or equipment or personal property of any kind shall be kept, stored, parked, maintained, constructed or repaired on the Street Area. To the fullest extent permitted by law, neither the Association, its officers, directors, employees or agents, nor any Owner or Member, shall bear any responsibility for any liabilities, costs, damages, claims, demands or expenses resulting from, incurred in connection with, or otherwise arising out of, any person's use of the Street Area and all persons using the Street Area do so completely at their own risk.

## ARTICLE V

### Covenant for Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each Lot or Condominium owned by it within Broadmoor Huntington Harbour hereby covenants, and each Owner of any Lot or Condominium within Broadmoor Huntington Harbour by acceptance of a deed or other conveyance therefore, whether or not it shall be so expressed in any such deed or other conveyance, is and shall

be deemed to covenant and agree to pay to the Association: (a) Regular Assessments, (b) Special Assessments, (c) Capital Improvement Assessments, (d) Reconstruction Assessments, and (e) Boat Dock Assessments, such Assessments to be levied, fixed, established and collected from time to time as hereinbelow provided. The Assessments, together with such interest thereon and costs of collection thereof as are provided hereinbelow in Section 1 of Article VI, shall be a charge on the real property and shall be a continuing lien upon the Lot or Condominium against which each such Assessment is made. The lien shall become effective upon recordation of a notice of claim of lien in accordance with Section 2 of Article VI of this Declaration. Each such Assessment, together with such interest and costs, shall also be the personal obligation of the person or entity who was the Owner of such Lot or Condominium at the time when the Assessment, or any portion thereof, fell due and shall bind his heirs, devisees, personal representatives, successors and assigns; provided, however, the personal obligation shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The Regular Assessments levied by the Association shall be collected, accumulated and used exclusively for the purpose of providing for and promoting the pleasure, recreation, health, safety and social welfare of the Members, including the enhancement of the value, desirability and attractiveness of Broadmoor Huntington Harbour; the improvement and maintenance of the Common Area, Street Area, Recreation Area and facilities thereon, the improvement and maintenance of Maintenance Areas (except the Boat Dock Area), if any; and the discharge of any obligations or duties imposed on the Association or the Board by this Declaration. Special, Capital Improvement, Reconstruction and Boat Dock Assessments shall be used exclusively for the purposes for which such Assessments were levied as provided for in this Declaration.

Section 3. Regular Assessments.

(a) Amount and Time of Payment. Regular Assessments shall be levied on a calendar or fiscal year basis ("Assessment Period") as determined by the Board and the amount and time of payment of said Assessments shall be determined by the Board after giving due consideration to the Common Expenses of the Association. In the event the amount budgeted to meet Common Expenses for an Assessment Period proves to be excessive in light of the actual Common Expenses, the Board, in its discretion, may, by resolution, reduce the amount of the Regular Assessments.

(b) Date of Commencement of Condominium and R-1 Regular Assessments. The R-1 Regular Assessments provided for herein shall commence as to all Lots in the R-1 Property on the first day of the month following the conveyance of the first Lot within the R-1 Property to an Owner who acquires such Lot for residential uses. The Condominium Regular Assessments for Condominiums added hereafter to the R-1 Property, provided said Condominiums have become subject to assessment by the Association, shall commence with respect

to all Condominiums within such added property on the first day of the month following the conveyance of the first Condominium within said added property to an Owner.

(c) Assessment Procedures. At least thirty (30) days in advance of each Assessment Period, the Board shall estimate the total Common Expenses to be incurred by the Association for such forthcoming Assessment Period and shall at that time determine and fix the amount of the Condominium and R-1 Regular Assessments against each Condominium and Lot, respectively, subject thereto for such Assessment Period. Written notice of such Condominium and R-1 Regular Assessment shall be sent to every Owner of a Condominium or Lot, as the case may be, subject thereto at least fifteen (15) days in advance of each Assessment Period. Each Owner shall thereafter pay to the Association his Condominium or R-1 Regular Assessment, as the case may be, in the installments established by the Board; provided, however, that such installments shall be paid on a monthly basis until such time as the Board determines otherwise. In the event the Board shall determine at any time that the Regular Assessments levied for a current Assessment Period are, or will become, inadequate to meet all Common Expenses for any reason, it shall immediately determine the approximate amount of such inadequacy, issue a supplemental estimate of the total Common Expenses and revise and fix the amount of Regular Assessments against each Owner.

(d) Regular Assessment Limitations. No Condominium or R-1 Regular Assessment for an Assessment Period shall be in an amount which is more than twenty percent (20%) greater than such Assessment for the immediately preceding Assessment Period without the approval by vote or written consent of a majority of each class of Members; provided, however, that only those Owners who own Condominiums shall be permitted to vote with respect to such an increase in Condominium Regular Assessments and only those Owners of Lots within the R-1 Property shall be permitted to vote with respect to such an increase in R-1 Regular Assessments.

(e) Allocation of Common Expenses. The Owners of Lots within the R-1 Property shall pay as a portion of their R-1 Regular Assessments, eight and twenty-seven hundredths percent (8.27%) of those Common Expenses benefiting both the Owners of Lots within the R-1 Property and the Condominium Owners (including, without limitation, the Common Expenses incurred in connection with the maintenance of the Street Area) and the Owners of Condominiums shall pay, as a portion of their Condominium Regular Assessments, the remainder of such Common Expenses.

(f) Common Expenses Excluded from R-1 Regular Assessments. Notwithstanding any other term or provision of this Declaration, the R-1 Regular Assessment levied against the Owner of any Lot within the R-1 Property shall not include any Common Expenses incurred (or estimated) in connection with, or as a result of, the maintenance, management, operation, repair or replacement of the Common Area or



Recreation Area, or in connection with, or as a result of, the discharge by the Association of any of its duties or obligations hereunder insofar as such duties or obligations solely concern the Owners of Condominiums, and, without limiting the generality of the foregoing, said exclusion shall include, but shall not be limited to: utility, trash pick-up and disposal, gardening and other fees and charges for services benefiting the Common Area or Recreation Area; premiums charged for fire, casualty, liability, workmen's compensation and other insurance covering the Common Area or Recreation Area; and amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Area or Recreation Area.

(g) Common Expenses Excluded from Condominium Regular Assessments. Notwithstanding any other term or provision of this Declaration, the Condominium Regular Assessment levied against the Owner of any Condominium shall not include any Common Expenses incurred (or estimated) in connection with, or as a result of, the maintenance, management, operation, repair or replacement of the Boat Dock Area, or in connection with, or as a result of, the discharge by the Association of any of its duties or obligations hereunder, insofar as such duties or obligations solely concern the Owners of Lots, including, but not limited to, the obligation to maintain the Bulkhead in accordance with Section 1(j) of Article IX hereinbelow.

Section 4. Capital Improvement Assessments. In addition to the Regular Assessments, the Association may levy, for any Assessment Period, Capital Improvement Assessments, applicable to that Assessment Period only, for the purpose of defraying, in whole or in part, the cost of any reconstruction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Recreation Area, Street Area or Boat Dock Area, to the extent the same is not covered by the provisions for Reconstruction Assessments herein, or any unexpected improvement to or maintenance of any Maintenance Area, including the necessary fixtures and personal property related thereto; provided that any such Capital Improvement Assessments which in the aggregate exceed five percent (5%) of the budgeted Common Expenses for such Assessment Period shall have the approval by vote or written consent of a majority of each class of Members against which the Assessment may be levied. Capital Improvement Assessments shall be due and payable at the times and in the amounts fixed by the Board. Capital Improvement Assessments shall, with respect to any Recreation Area, be levied only upon the Owners of Condominiums and their Condominiums and shall, with respect to the Boat Dock Area, be levied only upon the Owners of Lots within the R-1 Property and their Lots. Capital Improvement Assessments shall, with respect to the Street Area, be levied upon the Owners of Lots within the R-1 Property and their Lots and upon the Owners of Condominiums and their Condominiums in the same proportion as the Common Expenses provided for in Section 3(e) of this Article are allocated.

Section 5. Special Assessments. Special Assessments may be levied (a) by the Board from time to time against Lots or Condominiums with respect to which parti-

cular costs or expenses have been incurred by the Association for materials or services furnished at the request, or with the consent, of the Owner of any such Lot or Condominium or (b) by the Declarant and/or the Association in accordance with the provisions of this Declaration (including, without limitation, Section 4 of Article XVIII hereinbelow). Special Assessments levied by the Association shall be due and payable at the times and in the amounts fixed by the Board. Special Assessments levied by the Declarant shall be due and payable at the times and in the amounts which the Declarant establishes.

Section 6. Boat Dock Assessments. Boat Dock Assessments shall be levied by the Board only against the Owners of Lots within the R-1 Property for the purpose of maintaining, in accordance with the terms and provisions of Article IX, Section 1(e) hereinbelow, the Boat Dock Area described in Article XVII hereof. Boat Dock Assessments shall be due and payable at the times and in the amounts fixed by the Board.

Section 7. Certificate of Payment. Upon demand, the Association shall furnish to any Owner liable for Assessments a certificate in writing signed by an officer or authorized agent of the Association setting forth whether said Assessments or any portions thereof have been paid. Such certificate shall be conclusive evidence of payment of any Assessments or portions thereof therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of any such certificate.

Section 8. Assessment of Lots or Condominiums Owned by Declarant. Without exception, each Lot or Condominium owned by the Declarant shall be subject to assessment to the same extent and in the same manner as any other Lot or Condominium owned by any Owner.

Section 9. Nonuse and Abandonment. No Owner may waive or escape personal liability for the Assessments provided for herein, nor release the Lot or Condominium owned by him from the liens and charges hereof, by nonuse of the Common Area, Street Area, Recreation Area or Boat Dock Area or abandonment of his Lot or Condominium.

Section 10. Uniform Rate of Assessment. All R-1 Regular, Capital Improvement, Reconstruction and Boat Dock Assessments shall be fixed at a uniform rate for all Lots within the R-1 Property and all Condominium Regular, Capital Improvement and Reconstruction Assessments shall be fixed at a uniform rate for all Condominiums.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments, charges and liens created herein: (a) all properties dedicated to, and accepted by, a public authority; (b) all Recreation Area and Street Area; and (c) all properties exempted from taxation by the laws of the State of California, upon the terms and to the extent of such legal exemption. Notwithstanding any provision in this

Section, no-real property or improvements devoted to residential dwelling use shall be exempt from said Assessments, charges or liens.

Section 12. Offsets. All Assessments shall be payable in the amount specified in the Assessment levied by the Association or the Declarant and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance or enforcement.

#### ARTICLE VI

##### Non-Payment of Assessments

Section 1. Delinquency and Remedies of Association. If any Assessment, or any portion thereof, is not paid on the date when due, then such Assessment or portion thereof shall become delinquent and shall, together with interest and costs of collection as provided hereinbelow, thereupon become a continuing lien on the Lot or Condominium against which such Assessment was made as more particularly described in Section 1 of Article V hereinabove. If the Assessment, or any portion thereof, is not paid within thirty (30) days after the delinquency date, a late charge of Ten Dollars (\$10.00) may be levied by the Board and the Assessment shall bear interest from the date of delinquency at a rate set by the Board, which rate shall not exceed the maximum permitted by law. In addition to all other legal and equitable rights or remedies which it may have, the Association may, at its option, bring an action at law against the Owner personally obligated to pay such Assessment and/or upon compliance with the notice provisions set forth in Section 2 hereinbelow, bring an action to foreclose the lien against the Lot or Condominium, and there shall be added to the amount of such Assessment or any portion thereof, and interest thereon, the late charge and all costs and expenses, including reasonable attorneys' fees, incurred by the Association in collecting the delinquent Assessment. Each Owner vests in the Association, and its successors or assigns, the right and power to bring all actions at law or lien foreclosure against such Owner or other Owners for purposes of collecting delinquent Assessments.

In lieu of judicially foreclosing the lien, the Association, at its option, may foreclose such lien by proceeding under a power of sale as provided hereinbelow in Section 3, such a power of sale being given to the Association as to each and every Lot and Condominium, for the purpose of collecting delinquent Assessments.

Section 2. Notice of Claim of Lien. No action shall be brought to foreclose the lien, or to proceed under the power of sale, sooner than thirty (30) days after the date that a notice of claim of lien, executed by a duly authorized representative of the Association, is recorded with the Orange County Recorder. Said notice shall set

forth the amount claimed to be delinquent (which may include the late charge, interest and costs of collection, including reasonable attorneys' fees), a good and sufficient legal description of the Lot or Condominium being assessed, the name of the record Owner or reputed Owner thereof, and the name and address of the Association as claimant. A copy of said notice shall be deposited in the United States mail, certified or registered, and postage prepaid, to the Owner of the Lot or Condominium.

Section 3. Foreclosure Sale. Any such sale under the power of sale provided for above shall be conducted in accordance with the provisions of Sections 2924, 2924b, and 2924c of the Civil Code of the State of California, applicable to the exercise of powers of sale in deeds of trust, or in any other manner permitted or provided by law. The Association, through its duly authorized agents, shall have the power to bid on the Lot or Condominium at foreclosure sale, using Association funds or funds borrowed for such purpose, and to acquire and hold, lease, mortgage and convey the same.

Section 4. Curing of Default. Upon the timely curing of any default for which a notice of claim of lien was recorded by the Association, any officer of the Association is hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee to be determined by the Association, but not to exceed a reasonable fee, to cover the costs of preparing and filing or recording such release together with the payment of such other charges, costs, interest or fees as shall have been incurred.

Section 5. Cumulative Remedies. The Assessment lien and the rights to foreclosure and sale thereunder shall be in addition to, and not in substitution for, all other rights and remedies which the Association and its successors and assigns may have hereunder and by law.

Section 6. Subordination of the Lien to Deeds of Trust. The lien of the Assessments provided for herein shall be subordinate to the lien of any deed of trust now or hereafter placed upon any of the Lots or Condominiums within Broadmoor Huntington Harbour subject to assessment; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot or Condominium pursuant to a decree of foreclosure, sale under a power of sale included in any such deed of trust, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Lot or Condominium from liability for any Assessment thereafter becoming due, nor from the lien of any such subsequent Assessment. Nothing in this section shall be construed to release any Owner from his obligation to pay any Assessment levied pursuant to this Declaration.

## ARTICLE VII

Architectural and Landscaping Control

Section 1. Architectural Approval for Property other than R-1 Property. Notwithstanding anything contained in this Section 1, the provisions of this Section shall not apply to the R-1 Property or to any Owner of a Lot within the R-1 Property and the Condominium Architectural Committee shall have no power or authority with respect to said area. No fence, wall, building, sign or other structure (including basketball standards), or exterior addition to or change or alteration thereof (including painting) or landscaping, shall be commenced, constructed, erected, placed, altered, maintained or permitted to remain on Broadmoor Huntington Harbour or any portion thereof, until plans and specifications shall have been submitted (in triplicate) to and approved in writing by an architectural committee, initially to be appointed by the Declarant (the "Condominium Architectural Committee"). Said plans and specifications shall be prepared by a duly licensed architect or other person approved by the Condominium Architectural Committee and shall include, where appropriate, the following: (a) plot plans, showing the location of all structures and showing grade elevations and drainage; (b) building plans, including floor, foundation and roof plans, with all materials therefor; (c) exterior elevations, surfaces, and sections, structural design and salient exterior details; (d) general exterior color schemes; and (e) landscaping plans, showing type, location and elevation of trees, bushes, shrubs, plants, hedges and fences. All such plans and specifications shall be submitted in writing over the signature of the Owner of the property or such Owner's authorized agent. Approval shall be based, among other things, on adequacy of site dimensions; adequacy of structural design and material; conformity and harmony of external design with neighboring structures; effect of location and use of improvements and landscaping on neighboring property, improvements, landscaping, operations and uses; relation of topography, grade and finished ground elevation of the property being improved to that of neighboring property; proper facing of main elevations with respect to nearby streets; preservation of view and aesthetic beauty with respect to fences, walls and landscaping; assurance of adequate access to the Association in connection with the performance of its duties and the exercise of its powers hereunder; conformity with such rules and regulations as may be adopted by the Condominium Architectural Committee in accordance with this Article; and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration. In any event, the Condominium Architectural Committee shall have the right, but not the obligation, to require any Member to remove, trim, top, or prune any shrub, tree, bush, plant or hedge which such Committee reasonably believes materially obstructs the view of any Unit. The Declarant shall not be required to comply with any of the provisions of this Section 1.

Section 2. Architectural Approval for R-1 Property.  
 No fence, wall, building, sign or other structure (including basketball standards) or exterior addition to or change or alteration thereof (including painting) or landscaping, shall be commenced, constructed, erected, placed, altered, maintained or permitted to remain on the R-1 Property, or any portion thereof, until plans and specifications shall have been submitted (in triplicate) to and approved in writing by an architectural committee, initially to be appointed by the Declarant (the "R-1 Architectural Committee"). In addition, no perimeter walls ("R-1 Perimeter Walls") or exterior addition to or change or alteration thereof (including painting) shall be commenced, constructed, erected, placed, altered, maintained or permitted to remain on the R-1 Property along the Street Area, until plans and specifications shall have been submitted (in triplicate) to and approved in writing by the Condominium Architectural Committee. All said plans and specifications shall be prepared by a duly licensed architect or other persons approved by the R-1 Architectural Committee (and the Condominium Architectural Committee in the case of the R-1 Perimeter Walls) and shall be in compliance with Section 1 hereinabove. All such plans and specifications shall be submitted in writing over the signature of the Owner of the property or such Owner's authorized agent. Approval shall be based, among other things, upon the same factors set forth in Section 1 hereinabove. In any event, the R-1 Architectural Committee shall have the right, but not the obligation, to require any Member who owns a Lot within the R-1 Property to remove, trim, top or prune any shrub, tree, bush, plant or hedge, which such Committee reasonably believes materially obstructs the view of any Lot within the R-1 Property. The Declarant shall not be required to comply with any of the provisions of this Section 2.

Section 3. Number of Members and Term of Each of the Architectural Committees Appointed by Declarant. The term "Architectural Committee" as used in this Declaration shall mean and refer to either the Condominium Architectural Committee or the R-1 Architectural Committee, as the case may be. The Architectural Committees provided for hereinabove in Sections 1 and 2 shall consist of not less than three nor more than five members. The Declarant shall have the right to appoint all of the members of each such Committee and their replacements until the first anniversary of the issuance by the California Department of Real Estate of the original public report for the R-1 Property (the "Anniversary Date"). After the Anniversary Date, the Declarant shall have the right to appoint a majority of the members of each such Committee and their replacements until ninety percent (90%) or more of the Lots and Condominiums within Broadmoor Huntington Harbour have been sold, or until the fifth anniversary of the date of original issuance by the California Department of Real Estate of the final subdivision public report for the R-1 Property (the "Fifth Anniversary Date"), whichever shall first occur. After the Anniversary Date, the Board shall appoint all of the members of the Architectural Committees not appointed by the Declarant. After ninety percent (90%) or more of the Lots and Condomin-

iums within Broadmoor Huntington Harbour have been sold or after the Fifth Anniversary Date, whichever shall first occur, the Board shall appoint all of the members of the Architectural Committees. Those appointed to the Condominium Architectural Committee by the Board shall be Members who own Condominiums and those appointed to the R-1 Architectural Committee by the Board shall be Members who own Lots within the R-1 Property; the Declarant, however, need not appoint Members to the either Architectural Committee. Those Members of the Architectural Committees appointed by the Board may be dismissed and replaced at any time and from time to time as determined by the Board in its sole and absolute discretion.

Section 4. Failure to Approve or Disapprove Plans and Specifications. In the event an Architectural Committee, or its representatives designated in accordance with Section 9 hereinbelow, fails to either approve or disapprove such plans and specifications within thirty (30) days after the same have been submitted to it, it shall be conclusively presumed that such Architectural Committee has approved such plans and specifications. All improvement work approved by the Architectural Committees shall be diligently completed and constructed in accordance with approved plans and specifications.

Section 5. No Liability. Neither the Declarant, the Association, the Architectural Committees, or the members or designated representatives thereof shall be liable in damages to anyone submitting plans or specifications to them for approval, or to any Owner of property affected by this Declaration by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications, or for any defect in any structure constructed from such plans and specifications. Such plans and specifications are not approved for engineering design. Every person who submits plans or specifications to the Architectural Committees for approval agrees, by submission of such plans and specifications, and every Owner of any of said property agrees that he will not bring any action or suit against the Declarant, the Association, the Architectural Committees, or any of the members or designated representatives thereof to recover any such damages.

Section 6. Notice of Noncompliance or Noncompletion. Notwithstanding anything to the contrary contained herein, after the expiration of (a) one (1) year from the date of issuance of a building permit by municipal or other governmental authority for any improvements or (b) one (1) year from the date of the commencement of construction within Broadmoor Huntington Harbour of any improvements, said improvements shall, in favor of purchasers and encumbrancers in good faith and for value, be deemed to be in compliance with all provisions of this Article VII, unless actual notice of such noncompliance or noncompletion, executed by the Architectural Committee having jurisdiction or such Architectural Committee's designated representatives,

shall appear of record in the office of the County Recorder of Orange County, California, or unless legal proceedings shall have been instituted to enforce compliance or completion.

Section 7. Rules and Regulations. The Architectural Committees may, from time to time, in their sole discretion, adopt, amend and repeal reasonable rules and regulations interpreting and implementing the provisions hereof and establishing reasonable architectural standards for that portion of Broadmoor Huntington Harbour under each such Committee's jurisdiction.

Section 8. Variances. Where circumstances such as topography, location of property lines, location of trees, configuration of Lots, or other matters require, each of the Architectural Committees, by the vote or written consent of a majority of their respective members, may allow reasonable variances as to any of the covenants, conditions or restrictions contained in this Declaration under the respective jurisdiction of each such Committee, on such terms and conditions as it shall require; provided, however, that all such variances shall be in keeping with the general plan for the improvement and development of Broadmoor Huntington Harbour.

Section 9. Appointment and Designation. Each Architectural Committee may, from time to time, by a majority of the members thereof, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects or other qualified persons who shall have full authority to act on behalf of said Architectural Committees in all matters delegated.

Section 10. Review Fee and Address. All plans and specifications required by Sections 1 and 2 hereof shall be submitted in writing for approval together with a reasonable processing fee. The address of the Condominium Architectural Committee is 17802 Irvine Boulevard, Tustin, California 92680, or such other place as may from time to time be designated by such Committee by a written instrument recorded in the office of the County Recorder of Orange County. The last instrument so recorded shall be deemed the Condominium Architectural Committee's proper address. Such address shall be the place where the current rules and regulations, if any, of such Committee shall be kept. The address of the R-1 Architectural Committee is 17802 Irvine Boulevard, Tustin, California 92680, or such other place as may from time to time be designated by such Committee by written instrument recorded in the Office of the County Recorder of Orange County. The last instrument so recorded shall be deemed the R-1 Architectural Committee's proper address. Such address shall be the place for the submittal of plans and specifications and the place where the current rules and regulations, if any, of such Committee shall be kept.

Section 11. Inspection. Any member or agent of either Architectural Committee may, from time to time, at any reasonable hour or hours and upon reasonable notice,



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enter and inspect any property subject to the jurisdiction of said Architectural Committee as to its improvement or maintenance in compliance with the provisions hereof.

#### ARTICLE VIII

##### General Restrictions

Section 1. Except as provided in Section 11 of Article XVIII hereof, no building, structure or improvement shall be constructed, erected, altered, placed or permitted to remain on any of the Lots within the R-1 Property other than a residential dwelling and customary appurtenances designed for occupancy by not more than one Family.

Section 2. Neither Broadmoor Huntington Harbour, nor any portion thereof, shall be used for any purpose tending to injure the reputation thereof, or to disturb the neighborhood or occupants of adjoining property, or to constitute a nuisance, or in violation of any public law, ordinance or regulation in any way applicable thereto.

Section 3. None of the Lots or Condominiums shall be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such nonresidential purposes.

Section 4. Subject to the provisions of Section 3 of Article IV, the Recreation Area for each project shall be used for recreational, social, pedestrian and vehicular movement and other purposes authorized under this Declaration and such Supplementary Declarations as may be recorded pursuant to the provisions of Article II hereof.

Section 5. No projections of any type which are attached or affixed to any Residential Dwelling, Condominium Building or any other building shall be placed or permitted to remain above the roof of any such Dwelling or Building or any other building with the exception of one or more chimneys and one or more vent stacks. No outside television or radio pole or antenna or other electronic device shall be constructed, erected or maintained on any Residential Dwelling, Condominium Building, any other building or on any property within Broadmoor Huntington Harbour or connected in such manner as to be visible from the outside of any such building unless and until the same shall have been approved by the appropriate Architectural Committee.

Section 6. No shed, tent or temporary building shall be erected, maintained or used on any property within Broadmoor Huntington Harbour; provided, however, that temporary buildings for use and used only for purposes incidental to the initial construction and sale of improvements and dwellings on any portion of Broadmoor Huntington Harbour may be erected, maintained and used, provided that such erection, maintenance and use has been approved by the appropriate

Architectural Committee and provided further that said temporary buildings shall be promptly removed upon the completion of such construction work.

Section 7. When garages are not in use, garage doors shall be closed. Garages shall be used only for the purpose of parking automobiles and other vehicles and equipment and storing an Owner's household goods; provided, however, that all such uses shall be accomplished so that garage doors can be closed. No open carport, if any, shall be used for the storage of any item other than an automobile. Condominium Owners shall park in their garages and not, without Board approval, in parking spaces provided for guests.

Section 8. No mobile home, boat, truck, trailer, recreational vehicle of any kind or similar equipment shall be kept, stored, parked (other than temporarily), maintained, constructed or repaired, on any property within Broadmoor Huntington Harbour in such a manner as to be visible from any neighboring property; provided, however, that the provisions of this Section shall not apply to emergency vehicle repairs. Temporary parking shall mean parking of vehicles belonging to guests of Owners, delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of services to the Association or the Owners and parking of vehicles belonging to or being used by Owners for loading or unloading purposes.

Section 9. No privy shall be erected, maintained or used upon any portion of Broadmoor Huntington Harbour, but a temporary privy may be permitted during the course of construction of a building, provided that such erection, maintenance or use has been approved by the appropriate Architectural Committee. Any lavatory, toilet or water closet which shall be erected, maintained or used upon any portion of Broadmoor Huntington Harbour shall be enclosed and located within a building permitted under this Declaration to be erected within Broadmoor Huntington Harbour, shall be properly connected with the sewer system and shall be so constructed and operated that no offensive odor shall arise or otherwise escape therefrom.

Section 10. No animals, fowl, reptiles, insects or poultry shall be kept within Broadmoor Huntington Harbour, except that domestic reptiles, dogs, cats, birds and fish may be kept as household pets upon said property, provided that they are not kept, bred or raised thereon for commercial purposes or in unreasonable quantities. All dogs permitted to be kept by this Section shall be kept on a leash within Broadmoor Huntington Harbour when not within an enclosed area of a Lot or Unit.

Section 11. Except for a sign of customary and reasonable dimensions, the area of which shall not exceed four (4) square feet and advertising a Lot or Condominium for sale, such sign to be located on such Lot or within the Unit of such Condominium, no sign or other advertising device of any character shall be erected, maintained, or

displayed upon any portion of Broadmoor Huntington Harbour; provided, however, that Declarant, its agents and designees, may erect and maintain such signs and other advertising devices or structures as they may deem necessary or proper in connection with the conduct of the Declarant's operations for the development, improvement, subdivision and sale of the Lots and Condominiums within Broadmoor Huntington Harbour.

Section 12. No weeds, rubbish, debris, objects or materials of any kind shall be placed or permitted to accumulate upon any property within Broadmoor Huntington Harbour which render such property unsanitary, unsightly, offensive or detrimental to any property in the vicinity thereof or to the occupants of any such property in such vicinity. Trash, garbage, rubbish and other waste shall be kept only in sanitary containers. All service yards or service areas, clothesline areas, sanitary containers and storage piles on any property within Broadmoor Huntington Harbour shall be enclosed or fenced in such a manner that such yards, areas, containers and piles will not be visible from any neighboring property or street. Sanitary containers may be set out for a reasonable period of time before and after scheduled trash pick-up times.

Section 13. No plants or seeds infected with noxious insects or plant diseases shall be brought upon, grown or maintained upon any part of Broadmoor Huntington Harbour.

Section 14. No noxious or offensive activity shall be carried on upon any property within Broadmoor Huntington Harbour, nor shall anything be done or maintained thereon which may be or become an annoyance or nuisance to the neighborhood.

Section 15. All buildings and other structures upon Broadmoor Huntington Harbour and each portion thereof shall at all times be maintained in good condition and repair and well and properly painted. No windows shall be covered, either inside or outside, with aluminum foil or any other similar material.

Section 16. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken on any slope area or any other area within Broadmoor Huntington Harbour which might damage or interfere with established slope ratios, create erosion or sliding problems, or interfere with established drainage systems or patterns. Any area drains, gutters, downspouts, berms, swales and other drainage facilities and systems not maintained by the Association shall be maintained by the Owner thereof in a neat, orderly, safe and sanitary condition and in such a manner as to facilitate the orderly discharge of water by means of same.

Section 17. All landscaping of every kind and character, including shrubs, trees, grass and other plantings within the R-1 Property shall be neatly trimmed, properly cultivated and maintained continuously by the Owner thereof,

other than such landscaping, if any, within a Lot maintained by the Association, in a neat and orderly condition and in a manner to enhance its appearance.

Section 18. During reasonable hours and after reasonable notice, the Declarant or any agent thereof, so long as the Declarant is an Owner of at least twenty-five percent (25%) of the Lots and Condominiums, or the Association shall have the right to enter upon and inspect Broadmoor Huntington Harbour or any portion thereof and the improvements thereon for the purpose of ascertaining whether or not the provisions of this Declaration are being complied with and shall not be liable for or deemed guilty of trespass by reason thereof.

Section 19. Each Member shall be liable to the Association for any damage to the Common Area, Recreation Area, Street Area, Boat Dock Area or any Maintenance Area under the Association's jurisdiction or to any of the equipment or improvements thereon which may be sustained by reason of the negligence or wilful misconduct of said Member or of his Family, relatives, guests or invitees, both minor and adult.

Section 20. As used herein, the term "drainage pattern and system" includes, but is not necessarily limited to, underground drain pipes and patterns of drainage over Lots, Common Area, Street Area, Boat Dock Area and Recreation Area. The Owner of each Lot, Common Area, Street Area, Boat Dock Area or Recreation Area shall have the right to use the established drainage pattern and system for the purpose of draining his Lot, Common Area, Street Area, Boat Dock Area or Recreation Area and improvements thereon; provided that such right of drainage shall not include the right to discharge noxious or offensive matter. Water from any Lot, Common Area, Street Area, Boat Dock Area or Recreation Area and the improvements thereon may drain or flow into adjacent streets. Water shall not be allowed to drain or flow on to adjacent Lots, Common Area, Street Area, Boat Dock Area or Recreation Area, except to the extent provided for by the established drainage pattern and system. All slopes or terraces on any Lot, Common Area or Recreation Area shall be maintained as provided herein so as to prevent any erosion thereof upon adjacent streets or adjoining property.

Section 21. No property within Broadmoor Huntington Harbour shall be used in any manner to explore for or to remove any water, oil or other hydrocarbon minerals of any kind, gravel, earth or any earth substance or any other mineral of any kind. No machinery or equipment of any kind shall be placed, operated or maintained upon any Lot, except such machinery or equipment as is usual and customary in connection with the use or maintenance of a private residence.

Section 22. None of the restrictions contained within this Article shall limit or be deemed to limit the rights of Declarant provided for in Section 11 of Article XVIII hereof.

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Section 23. No structural alterations to the interior of any Unit shall be made, nor shall any plumbing or electrical alteration within any bearing wall of a Condominium be made by any individual Owner of such Condominium without the prior written consent of the Condominium Architectural Committee.

Section 24. Each Owner of a Unit shall be responsible for the maintenance and repair of the glass doors, if any, and windows enclosing his Residential Element, the interior of his Residential Element, the interior of his Garage, Patio and Balcony, and shall also be responsible for the maintenance and repair of the plumbing, electrical and heating systems servicing his Unit and located within or underneath the outside perimeter of the exterior bearing wall of said Unit, and all appliances and equipment located in said Unit. In the event such repair and maintenance are not so accomplished by any such Owner, the Association or its delegates shall have the right to enter, at reasonable times, the Unit to effect such repair, and the cost thereof shall be charged to the Owner of the Unit, and, if not paid in a timely manner, shall be a Special Assessment.

#### ARTICLE IX

##### Duties and Powers of the Association

Section 1. General. In addition to the duties and powers enumerated in its Articles and By-Laws, or elsewhere provided for herein, and without limiting the generalities thereof, the Association shall:

(a) Own, lease, maintain, control and otherwise manage, or cause to be managed, in a neat, safe, attractive, sanitary and orderly condition, the Recreation Area (including, without limitation, any tennis courts, natural areas, parks, clubhouse, pools, volley ball courts, playground equipment and pedestrian trails) and the Street Area and maintain and manage, or cause to be maintained and managed, in a neat, safe, attractive, sanitary and orderly condition, the Common Area (including all perimeter walls and bulkheads, which bulkheads shall be maintained in accordance with the standards set forth in subsection (j) below) of each project within Broadmoor Huntington Harbour and, with respect to the Recreation Area and Street Area, all facilities, improvements, walls, fencing, buildings, fire hydrants, utility facilities, parking areas, drainage courses and facilities and landscaping thereon and thereunder, including (subject to the provisions of the Article hereof entitled "Destruction of Improvements") the reconstruction, repair or replacement thereof when necessary or appropriate, the exterior of all Condominium Buildings as further provided in subsection (i) hereinbelow and all other real or personal property acquired by the Association.

(b) Subject to the provisions of the Article hereof entitled "Insurance", maintain such policy or policies

of insurance as the Board deems necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members.

(c) Establish and maintain a working capital and contingency fund in an amount to be determined by the Board.

(d) Enforce the provisions of this Declaration by appropriate means, including, without limitation, the expenditure of funds of the Association, the employment of legal counsel, the commencement of actions, and the promulgation of the Association Rules by the Association.

(e) Maintain, or cause to be maintained, substantially as originally improved by the Declarant or as may be further improved or modified with the consent of the R-1 Architectural Committee and the Board, the Boat Dock Area described in Article XVII hereof as a Maintenance Area and all improvements thereon in a neat, safe, sanitary and orderly condition (including the repair and replacement of improvements when necessary or appropriate) and in such a manner as to enhance its appearance and such other Maintenance Areas as may be established from time to time by any Supplementary Declaration of Covenants, Conditions and Restrictions recorded in accordance with Article II hereof or by contract between the Association and the Declarant or any public entity.

(f) Pay any real and personal property taxes and other charges assessed against the Recreation Area or Street Area unless separately assessed to the Owners.

(g) Obtain, for the benefit of all the Common Area, Recreation Area and Street Area, all telephone, water, gas and electric services and refuse collections.

(h) Subject to the limitations of Section 2(d) of Article IV hereof, grant easements where necessary for utilities and sewer facilities over the Recreation Area and Street Area to serve Broadmoor Huntington Harbour.

(i) Maintain, or cause to be maintained, the exteriors of all Condominium Buildings as originally improved by the Declarant, or as may be further improved or modified with the consent of the Association and the Board, in good condition and repair and in such a manner as to enhance their appearance and place such exteriors in an attractive, neat and orderly condition, which maintenance shall include, but shall not be limited to, painting, and repair and replacement of roofs, gutters, downspouts, and exterior building surfaces.

(j) Maintain, or cause to be maintained, substantially as originally improved by the Declarant or as may be further improved or modified with the consent of the R-1 Architectural Committee and the Board, the bulkhead ("Bulkhead") bordering the R-1 Property in a neat, safe, sanitary and orderly condition (including the repair and

replacement thereof when necessary or appropriate) and in such a manner as to enhance its appearance and avoid staining and discoloration.

(k) Maintain a signing program designed to encourage, promote and protect the public's use of the Boardwalk and the Street Area which shall delineate the entries/exits, routes and hours of operation thereof.

Section 2. Boat Dock Area, Bulkhead and Owner Maintenance Limitations.

(a) To the extent not covered by insurance carried by the Association, the cost of any Boat Dock Area and Bulkhead maintenance services required to be performed within the R-1 Property which are caused by earthquake, fire, acts of God, riot, civil insurrection or by any other cause, except ordinary wear, tear, deterioration or the negligence or willful misconduct of the Association in the performance or nonperformance of its duties under this Declaration, shall be borne in equal shares by the Owners of Lots in the R-1 Property.

(b) The cost of any Boat Dock Area or Bulkhead maintenance services required to be performed by the Association in accordance with Section 1 hereinabove within the R-1 Property which are caused by the negligence or willful misconduct of any Owner, or his Family, relatives, guests or invitees, both minor and adult, shall be borne entirely by such Owner.

(c) No Owner shall provide or cause to be provided any of the maintenance services required to be performed by the Association in accordance with Section 1 hereinabove unless the Board approves the Owner's performance of such services.

(d) Any of the costs required to be paid by an Owner hereunder, if not timely paid, shall be a Special Assessment.

(e) No improvements shall be installed by any Owner upon the Boat Dock Area or Bulkhead without the prior written consent of the R-1 Architectural Committee and the Board. Any such approved improvements shall be maintained by the Owner thereof at his own cost and expense entirely in a neat, safe, sanitary and orderly condition and in such a manner as to enhance their appearance and, if appropriate, facilitate the orderly discharge of water through established drainage systems and patterns, provided, however, upon approval of the Board, such maintenance and/or the cost and expense thereof may be assumed by the Association upon such reasonable terms and conditions as the Board may determine.

Section 3. Use of Agent and Duration of Contracts.  
The Board may employ a manager or other persons and may contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association. Any contract with a person or firm

appointed as a manager or managing agent shall be terminable by the Association for cause upon thirty (30) days' written notice thereof. Any such contract, and any other contract (except prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration where the policy permits short term cancellation by the insured) with a third person wherein the third person is to furnish goods or services for the Recreation Area, Common Area, Street Area, Boat Dock Area or the Association, shall be limited to a duration of one (1) year; provided, however, that such contracts may be renewable for successive one-year periods with the approval for each such period, by vote or written consent of Members entitled to exercise not less than a majority of the voting power of each class of membership of the Association.

Section 4. Association Rules. The Association shall have the power, as provided in its By-Laws, to adopt, amend and repeal Association Rules. The Association Rules shall govern such matters in furtherance of the purposes of the Association as the Board shall deem appropriate, including, without limitation, the use and enjoyment of the Recreation Area and facilities thereon, if any; provided, however, that the Association Rules may not discriminate among Members and shall not be inconsistent with this Declaration, the Articles or By-Laws. A copy of the Association Rules, as they may from time to time be adopted, amended or repealed shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place within the Recreation Area. Upon such mailing or delivery and posting, the Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of any conflict between any such Association Rules and any provisions of this Declaration, the Articles or the By-Laws, the provisions of the Association Rules shall be deemed to be superseded by such other provisions to the extent of any such inconsistency.

Section 5. Entry and Emergency Powers. The Association or any person authorized by the Association may enter any Lot or Condominium in the event of any emergency involving illness or potential danger to life or property, or in nonemergency situations, after reasonable notice and at reasonable hours, for the purpose of performing its duties and exercising its powers as set forth in this Declaration (including entry when necessary in connection with construction, maintenance, or repair for the benefit of the Recreation Area, Boat Dock Area or Common Area or the Owners in common). Any damage caused by said entry shall be repaired at the cost of the Association.

Section 6. Sales of Association Property. No property of the Association shall, during any fiscal year, be sold which has an aggregate fair market value greater than five percent (5%) of the budgeted Common Expenses for such fiscal year without the vote or written consent of a majority of each class of Members.



Section 7. Enforcement of Bonded Obligations. In the event any Recreation Area or Street Area improvements included within any portion of Broadmoor Huntington Harbour have not been completed prior to the issuance under the California Real Estate Law of the final subdivision public report covering such portion and the Association is the obligee under a bond or other arrangement ("Bond") to secure the performance of the commitment of the Declarant to complete such improvements, the following actions shall be taken:

(a) The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvement within the Recreation Area or Street Area for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Recreation Area or Street Area improvement, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

(b) A special meeting of the Members may be held for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the failure of the Board to consider and vote on the question. At any such meeting, only those Owners who own Condominiums shall be able to vote if the Bond covers the completion of improvements to the Recreation Area ("Condominium Bond"). Declarant shall not vote at any such meeting. Such meeting shall be held not less than fifteen (15) days nor more than thirty (30) days after receipt by the Board of a petition for such a meeting signed, with respect to the Condominium Bond, by Members who own Condominiums representing a percentage, to be prescribed by the Board, of not less than five percent (5%) nor more than ten percent (10%) of the total voting power of such Members and signed, with respect to any other Bond, by Members representing a percentage, to be prescribed by the Board, of not less than five percent (5%) nor more than ten percent (10%) of the total voting power of such Members.

(c) A vote of a majority of the voting power residing in the appropriate Members, as specified in subsection (b) above, other than Declarant, to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

Section 8. Lagoon.

(a) Definition and Uses. As used herein, the term "Lagoon" shall mean and refer to any Recreation Area which is annexed in accordance with the terms and provisions of Article II hereof and which consists of a lagoon or other similar body of water. Swimming in the Lagoon is prohibited. Boating will be allowed in the Lagoon

only if permitted by the Board and, if so permitted, only boats propelled by oars and/or sails shall be permitted and the use of any type of motorized boat is hereby prohibited. There shall be included in the Association Rules such rules and regulations as the Board deems appropriate to protect the health, safety and welfare of those Condominium Members and other persons permitted hereunder to use and enjoy the Lagoon. In addition, the Association may stock the Lagoon with such fish as the Board, in its discretion, deems appropriate and the Association Rules may provide for a reasonable fishing charge and reasonable rules and regulations with regard to fishing.

(b) Maintenance. At such time as any Recreation Area in which the Lagoon is located is annexed in accordance with Article II hereof, the Association shall maintain the Lagoon, or cause it to be maintained, in a neat, safe, attractive, sanitary and orderly condition and in such a manner as to enhance its appearance. The Lagoon shall be maintained in compliance with all applicable federal, state and local statutes, ordinances, laws and regulations, including, but not limited to, the requirements of the Santa Ana Regional Water Quality Control Board. The maintenance obligation set forth in this Section shall include, but not be limited to, maintenance of the water circulation systems, water supply system and storm overflow system; measures necessary to restrict the growth of aquatic plants and algae; insect control; and periodic water testing. The expenses attributable to Lagoon maintenance shall be Common Expenses and shall be borne solely by the Owners of Condominiums.

ARTICLE X

Easements

Section 1. Encroachments. Declarant shall grant to each Owner an easement over all adjoining property (including Lots, Units, Common Area, Recreation Area, Boat Dock Area and Street Area) for the purpose of:

(a) Accommodating trellises, eaves, overhangs, balconies and other similar projections created during the original construction of Broadmoor Huntington Harbour or the reconstruction or repair of a Condominium Building or Residential Dwelling in accordance with plans and specifications approved by the appropriate Architectural Committee;

(b) Accommodating minor encroachments due to original engineering or surveying errors, errors in original construction, errors in reconstruction or repair in accordance with the plans and specifications approved by the appropriate Architectural Committee, or settlement or shifting or movement of a building or other structure;

(c) Maintaining, repairing and reconstructing such trellises, eaves, overhangs, balconies, projections and encroachments; and

(d) Accepting water from drainage patterns and systems referenced, but not by way of limitation, in section 20 of Article VIII.

Each Owner agrees, for himself and his heirs, successors, executors, administrators and assigns, and the Association agrees, for itself and its successors and assigns, that each will permit free access, at reasonable times and upon reasonable notice, by each Owner for whose benefit an easement shall be granted hereunder for the purpose of exercising his rights with respect to such maintenance, repair and/or construction.

Section 2. Maintenance Area, Recreation Area, Street Area, and Common Area. The Association is hereby declared to have a license in favor of the Association, its agents and representatives, to traverse upon such property contiguous to Recreation Area, Common Area, Street Area and any Maintenance Area as shall be necessary to gain access to such areas. Each Owner agrees, for himself and his heirs, successors, executors, administrators and assigns, that he will permit free access by the Association and its authorized agents and representatives for the purpose of exercising its rights and duties with respect to Maintenance Areas, Recreation Area, Street Area and Common Area.

Section 3. Ingress, Egress and Recreational Rights. Declarant hereby reserves to itself, its successors and assigns, and agrees that it will grant to all Owners of Condominiums, a nonexclusive easement for access, ingress and egress, pedestrian walkway, street and general recreational purposes (as such purposes may be designated in any such grant) over and upon the portion of the Common Area which is not a Unit or Condominium Building (as such portions may be designated in any such grant). Such easements when granted to Owners of Condominiums shall be subject to the rights of the Association as set forth in Article IV hereof.

Section 4. Bulkheads. There shall be granted to the Association over the R-1 Property an easement or easements for purposes of maintaining the Bulkhead in accordance with the provisions of Section 1(j) of Article IX hereinabove.

## ARTICLE XI

### Reservation of Easements by Declarant

Section 1. Utilities. Easements over Broadmoor Huntington Harbour for the installation, maintenance, service, repair, reconstruction and replacement of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as shown on the recorded Condominium

Plan, tract maps and parcel maps of Broadmoor Huntington Harbour are hereby reserved by the Declarant, together with the right to grant and transfer the same.

Section 2. Recreation Area, Boat Dock Area and Street Area. There is hereby reserved by the Declarant, including, without limitation, its sales agents and representatives and prospective purchasers of Condominiums or Lots, together with the right in the Declarant to grant and transfer the same, over the Recreation Area, Street Area and Boat Dock Area as the same may from time to time exist, easements for construction, display, sales offices and incidental parking and exhibit purposes in connection with the construction, development and sale of Condominiums and Lots within Broadmoor Huntington Harbour and for such other purposes and subject to such limitations as may be provided in Section 11 of Article XVIII; provided however, that such use by the Declarant and others shall not unreasonably interfere with the reasonable use and enjoyment of the Recreation Area, Street Area and Boat Dock Area by the Members entitled to such use and enjoyment.

Section 3. Discharge of Rights and Obligations. There is hereby reserved by the Declarant, together with the right to grant and transfer the same, easements over Broadmoor Huntington Harbour for the purpose of permitting the Association, the Board, the Architectural Committees, the Declarant and others to discharge their rights and obligations as described in this Declaration.

## ARTICLE XII

### Insurance

Section 1. Types. The Association, to the extent available, shall obtain and continue in effect in its own name the following types of insurance:

(a) Comprehensive public liability insurance insuring the Association, its agents and employees and the Owners against any liability incident to the ownership or use of the Common Area, Recreation Area, Boat Dock Area and Street Area and including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than One Million Dollars (\$1,000,000) for death of or injury to any one person in any one occurrence, One Million Dollars (\$1,000,000) for death or injury to more than one person in any one occurrence, and One Hundred Thousand Dollars (\$100,000) for property damage in any one occurrence.

(b) A policy of fire and casualty insurance with extended coverage endorsement for the full replacement value of the Common Area, Recreation Area, Boat Dock Area (if requested by a majority of the Owners of Lots within the R-1 Property) and Street Area and all improvements thereto (including all building service equipment and the like), and

the landscaping, facilities and improvements upon any Maintenance Area (except the Boat Dock Area) required to be maintained by the Association, without deduction for depreciation, with an "agreed amount endorsement" or its equivalent and clauses waiving subrogation against Members and the Association and persons upon Broadmoor Huntington Harbour with the permission of a Member. Such insurance shall afford protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, including, without limitation, loss or damage caused by sprinkler leakage, vandalism, malicious mischief, windstorm, water damage, and covering the cost of demolition and debris removal and such other risks as shall customarily be covered with respect to similar planned unit and condominium developments in the area of Broadmoor Huntington Harbour.

(c) Fidelity coverage against dishonest acts on the part of directors, officers, employees or volunteers who handle the funds of the Association. Such fidelity bonds shall name the Association as obligee, shall be written in an amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, including reserves, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation or from any definition of "employee" or similar expression.

Section 2. Waiver By Members. As to each of said policies, which will not be voided or impaired thereby, the Members hereby waive and release all claims against the Association, the Board, the Declarant and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of, or breach of any agreement by, said persons, but only to the extent of insurance proceeds received in compensation for such loss.

Section 3. Other Insurance; Annual Review. The Association may purchase such other insurance as it may deem necessary, including, but not limited to, plate-glass, workmen's compensation, officers' and directors' liability, and errors and omissions insurance. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Common Area, Recreation Area, Boat Dock Area and Street Area and other areas referenced herein in light of increased construction costs, inflation, practice in the area in which Broadmoor Huntington Harbour is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

Section 4. Premiums, Proceeds and Settlement. Insurance premiums for any insurance coverage obtained by the Association pursuant to this Article shall be a Common Expense to be included in the Regular Assessments levied by the Association. Insurance proceeds shall be used by the

Association for the repair or replacement of the property for which the insurance was carried, or otherwise disposed of as provided in the Article entitled "Destruction of Improvements" in this Declaration. The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on the Association and the Members.

Section 5. Abandonment of Replacement Cost Insurance. Unless at least seventy-five percent (75%) of the First Beneficiaries based on one (1) vote for each deed of trust have given their prior written approval, the Association shall not be entitled to fail to maintain the extended coverage fire and casualty insurance required by this Article on less than a one hundred percent (100%) current replacement cost basis.

Section 6. Requirements of FNMA, GNMA and FHLMC. Notwithstanding the foregoing provisions of this Article, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit development and condominium projects established by Federal National Mortgage Association, Government National Mortgage Association and Federal Home Loan Mortgage Corporation, so long as any of the foregoing is a First Beneficiary or Owner within Broadmoor Huntington Harbour, except to the extent such coverage is not available or has been waived in writing by the foregoing entities.

### ARTICLE XIII

#### Destruction of Improvements

Section 1. Automatic Reconstruction. In the event of partial or total destruction of any Condominium Building, the Board shall promptly take the following action:

(a) The Board shall ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, each such bid to include the obligation to obtain a performance bond, if the Board deems the same to be necessary or appropriate.

(b) The Board shall determine the amount of insurance proceeds, if any, payable by contacting the appropriate representative of the insurer of said Condominium Building.

(c) The Board shall meet and determine whether the insurance proceeds, if any, will cover eighty-five percent (85%) or more of the estimated cost of reconstruction as determined pursuant to subsection (a) of this Section, or whether the portion of the estimated cost not

covered by insurance is less than Two Thousand Dollars (\$2,000.00) per Unit in the project within which the partially or totally destroyed Condominium Building is located. Such percentage covered by insurance or such cost shall hereinbelow be referred to as the "Acceptable Range of Reconstruction Cost." If the Board finds that a bid obtained under this Section is within the Acceptable Range of Reconstruction Cost, the Board shall cause a notice to be sent to all Owners of Condominiums in the project within which the partially or totally destroyed Condominium Building is located (hereinbelow referred to in this Article as the "affected Owners") and to the beneficiaries of deeds of trust encumbering Condominiums in said Condominium Building setting forth such findings and informing said Owners and said beneficiaries that the Board intends to commence reconstruction pursuant to this Declaration. In the event that at least twenty percent (20%) of the affected Owners, based on one (1) vote for each Condominium, object in writing to such reconstruction by the date indicated therefor on such notice, which in no event shall be sooner than ten (10) days or later than thirty (30) days after the date on which the Board sends such notice to the affected Owners, the Board shall call a meeting of the affected Owners pursuant to Section 2 of this Article. In the event that the foregoing requirements are satisfied and the requisite number of affected Owners do not object in writing by such date, the Board, using such insurance proceeds as are available, shall cause reconstruction to take place as promptly as practicable and shall levy a uniform Reconstruction Assessment against each affected Owner at such time and in such amount as the Board shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds. If the Board in good faith determines that none of the bids submitted under this Section reasonably reflects the anticipated reconstruction costs, the Board shall proceed according to Section 2 of this Article.

(d) The foregoing determinations shall be made by the Board as soon as possible. However, if such determinations cannot be made within sixty (60) days of the date of destruction because of the unavailability or unacceptability of an insurance estimate or reconstruction bid, or otherwise, the Board shall immediately call a meeting of the affected Owners pursuant to Section 2 of this Article.

(e) If the Board determines that any Unit has become uninhabitable by reason of its total or partial destruction, Condominium Regular Assessments shall abate against the Owner thereof until the Board determines that the reconstruction of the Unit has restored its habitability. However, if the Board determines that such abatement will adversely and substantially affect the management, maintenance and operation of Broadmoor Huntington Harbour it may elect to disallow such abatement.

(f) In the event that Condominium Buildings are totally or partially destroyed in more than one (1) project, the Board shall separately follow the procedures set forth in this Article as to each project so affected.

Section 2. Reconstruction Pursuant to Meeting.

If the Board determines that the requirements of the Acceptable Range of Reconstruction Cost have not been met, or if the requisite number of affected Owners object in writing to a decision by the Board to reconstruct pursuant to Section 1 of this Article, the Board shall call a meeting of the affected Owners by mailing notice of such determination and of the meeting to each such Owner at his address as shown on the records of the Association. Such meeting shall be held not less than fourteen (14) days and not more than twenty-one (21) days after (i) the meeting at which the Board makes its determination that the cost of reconstruction is not within the Acceptable Range of Reconstruction Cost, or (ii) the date indicated on the notice of the Board sent to Members pursuant to subsection (c) of Section 1 above, as the case may be. The affected Owners may, by a vote at such meeting, or by the written consent, of not less than sixty-six and two-thirds percent (66-2/3%) of such Owners based on one (1) vote for each Condominium, determine to proceed with the reconstruction. If the affected Owners so determine to reconstruct the partially or totally destroyed Condominium Building, the Board shall levy a uniform Reconstruction Assessment against each affected Owner at such time and in such amount as the Board shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds.

Section 3. Decision to Reconstruct; Procedure After Meeting. In the event that the Association undertakes reconstruction pursuant to Section 2 of this Article, the following shall apply:

(a) Immediately after such meeting, the Board shall notify by first-class mail, registered or certified, all First Beneficiaries of Condominiums in totally or partially destroyed Condominium Buildings of the Association's decision to undertake reconstruction.

(b) In the event that any First Beneficiary desires to apply insurance proceeds allocable to the Condominium encumbered by its deed of trust to the reduction or elimination of the indebtedness secured by such deed of trust, such First Beneficiary shall notify the Association in writing of such election within thirty (30) days of the date of the notice of the Board sent pursuant to subsection (a) above is deposited in the United States mail. Upon receipt of timely notice from any such First Beneficiary, the Board shall promptly pay to such First Beneficiary the insurance proceeds allocable to the Condominium encumbered by the deed of trust of such First Beneficiary for the purpose of the reduction or elimination of the obligation secured by such deed of trust; provided, however, in no event shall the Board pay to such First Beneficiary an amount greater than (i) the outstanding indebtedness secured by said deed of trust, or (ii) the insurance proceeds allocated to such Condominium, whichever of (i) or (ii) is the lesser. The Board shall not make any payments to any First Beneficiary pursuant to this subsection (b) unless such First Beneficiary notifies the Board of its election prior



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to the expiration of the thirty (30) day period following the deposit in the United States mail of the Board's notice to such First Beneficiary pursuant to this subsection (b).

(c) As to each Condominium for which insurance proceeds have been paid to the Board and for which a First Beneficiary has not timely notified the Board of its election to apply such proceeds to the reduction or elimination of the obligation owing to such First Beneficiary, the Board, promptly upon the expiration of the appropriate time period, shall apply all insurance proceeds allocable to such Condominium to reconstruction undertaken by the Association pursuant to Section 2 of this Article. In the event that the Board has paid a portion of the insurance proceeds allocable to a Condominium to a First Beneficiary after timely request therefor, all remaining proceeds, if any, allocable to such Condominium shall be applied to reconstruction undertaken by the Association pursuant to Section 2 of this Article.

(d) For the purposes of this Article, the amount of insurance proceeds "allocated" or "allocable" to a Condominium shall be determined pursuant to this subsection (d). In the event that the insurance carrier allocates casualty insurance proceeds among Condominiums for which such proceeds are payable, such allocation shall be final and binding on the Owners, First Beneficiaries and the Association. The Board shall make every possible effort to cause such insurance carrier to make such allocation. In the event that such allocation is not made, the Board shall allocate such proceeds among such Condominiums in totally or partially destroyed Condominium Buildings based upon the relative value of the Condominiums as established by the assessed valuation of each Condominium as last determined prior to the destruction by the tax assessor of the governmental entity having jurisdiction over Broadmoor Huntington Harbour and to the extent to which the Units involved have been affected by the destruction. Such allocation made by the Board shall be final and binding on the Owners and First Beneficiaries.

(e) In the event that the Board pays insurance proceeds to any First Beneficiary pursuant to this Section, the Owner of the Condominium which was encumbered by the deed of trust of such First Beneficiary shall pay to the Association an amount equal to the insurance proceeds paid by the Board to such First Beneficiary. In the event that such Owner has failed to pay such amount within thirty (30) days of a written demand therefor by the Association, the Board may levy a Special Assessment against such Owner and his Condominium for such amount. In the event such Special Assessment is not paid within thirty (30) days of its due date, the Board may effect the remedies of the Article hereof entitled "Non-Payment of Assessments." Such Special Assessment and any Condominium Regular Assessment levied subsequent thereto shall not be a personal liability of the Owner against whom such Assessments are levied and shall only be charged against his Condominium.

Section 4. Decision Not to Reconstruct; Procedure After Meeting. In the event that the affected Owners decide not to reconstruct at the meeting called pursuant to Section 2 of this Article, the Board shall apply the insurance proceeds as follows:

(a) The Board shall first apply insurance proceeds to the reduction or elimination, as the case may be, of all outstanding deeds of trust encumbering Condominiums for which insurance proceeds have been paid by reason of the casualty; provided, however, as to any Condominium, the Board shall not pay insurance proceeds to First Beneficiaries in an amount greater than (i) the outstanding indebtedness secured by deeds of trust encumbering said Condominium, or (ii) the insurance proceeds allocable to said Condominium, whichever of (i) or (ii) is the lesser.

(b) All proceeds allocated to Condominiums and remaining after payments to First Beneficiaries pursuant to subsection (a) shall be distributed by the Board to such Owners in the partially or totally destroyed Condominium Building after the deduction of an amount determined pursuant to subsection (c) below.

(c) The Board shall levy a uniform Reconstruction Assessment against all affected Owners equal to the costs of clearing of the debris of totally or partially destroyed Condominium Buildings and cleaning of the area. The Board shall retain, out of the insurance proceeds allocated to such Owners pursuant to subsection (b) above, said Reconstruction Assessments of the Owners of partially or totally destroyed Condominiums. In the event that insurance proceeds allocated to any Owner, after deduction of proceeds paid to First Beneficiaries, are not sufficient to pay the entire Reconstruction Assessment levied against such Owner, such Owner shall pay any such excess.

Section 5. Certificate of Intention to Reconstruct. In the event that the Association undertakes reconstruction pursuant to this Article, the Board shall execute, acknowledge and record in the Office of the County Recorder of Orange County, California, a certificate declaring the intention of the Association to rebuild not later than one hundred eighty (180) days from the date of destruction. If no such certificate of reconstruction is so filed within said one hundred eighty (180) day period, it shall be conclusively presumed that the Association has determined not to undertake reconstruction pursuant to this Article.

Section 6. Partition. In the event that a certificate described in Section 5 of this Article is not recorded within the one hundred eighty (180) day period provided therein, the right of any Owner to partition through legal action as described in the Article hereof entitled "Limitations Upon the Right to Partition and Severance" shall forthwith revive.

Section 7. Compliance with Condominium Plan. Any reconstruction undertaken pursuant to this Article shall

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substantially conform to the Condominium Plan, as amended pursuant to the section 10 of this Article, or otherwise, if appropriate.

Section 8. Negotiations with Insurer. The Board shall have full authority to negotiate in good faith with representatives of the insurer of the totally or partially destroyed Condominium Building or any other portion of the Common Area and to make settlement with the insurer for less than the full insurance coverage on the damage to the Condominium Building or any other portion of the Common Area. Any settlement made by the Board in good faith shall be binding upon all Owners.

Section 9. Repair of Units. Installation of improvements to, and repair of any damage to, the interior of a Unit shall be made by and at the individual expense of the Owner of that Unit and, in the event of a determination to reconstruct after partial or total destruction, shall be completed as promptly as practical and in a lawful and workmanlike manner.

Section 10. Amendment of Condominium Plan. In the event that reconstruction is to take place pursuant to this Article, the Board shall have the power to record an amendment to the Condominium Plan so that the Condominium Plan conforms to the Condominium Buildings as designed to be reconstructed; provided, however, the Board shall not file an amendment to the Condominium Plan without the prior authorization of the beneficiary of a deed of trust encumbering any Condominium, the plan of which Condominium would be altered by such amendment. In the event that the Board, together with said beneficiaries, if appropriate, decide to record such amendment to the Condominium Plan, all Owners within the affected project and the record holders of all security interests in said project shall execute and acknowledge said amendment so that it will comply with Section 1351 of the California Civil Code or any similar statute then in effect. Said Owners and holders of security interests shall also execute such other documents or take such other actions as are required to make such amendment effective.

Section 11. Reconstruction of Other Improvements. If Common Area, other than a Condominium Building, is totally or partially destroyed, the Board shall cause reconstruction to commence by the earlier of (i) within thirty (30) days after the Association's receipt of the insurance proceeds payable by reason of such destruction, or (ii) ninety (90) days after such destruction, and to thereafter be diligently and continuously prosecuted to completion within a reasonable period of time. The Board shall apply all insurance proceeds payable by reason of such destruction to the costs of reconstruction. In the event that the insurance proceeds are not sufficient to pay the costs of any such reconstruction, the Board shall levy a uniform Reconstruction Assessment against all Owners in the project which suffered such damage to its Common Area, in a total amount equal to such difference. If the insurance proceeds

exceed the cost of reconstruction, the Board shall distribute the excess in equal shares to each Owner in such project or to their beneficiaries as their interests may appear.

Section 12. Availability of Labor and Material. In determining whether the plans for a reconstructed Condominium Building are in substantial conformance with the Condominium Plan, the Board may take into consideration the availability and expense of the labor and materials used in the original construction of the project. If such labor or material is not available or is prohibitively expensive at the time of reconstruction, the Board may permit the substitution of such other labor or material as it deems proper.

Section 13. Contracting for Reconstruction. In the event repair or reconstruction is undertaken pursuant to this Article, other than the Section 9 hereof, the Board or its delegates shall have the sole ability to contract for such work as may be necessary for said repair and reconstruction.

Section 14. Seventy-Five Percent (75%) Vote Required. All insurance proceeds available from any total or partial destruction of any Condominium Building and other Common Area improvements shall be applied to the purposes set forth in this Article, except upon the vote or written assent of not less than seventy-five percent (75%) of First Beneficiaries based on one (1) vote for each first deed of trust held thereby.

Section 15. Costs of Collecting Insurance Proceeds. If it should become necessary in the judgment of the Board to incur costs for appraisals, legal fees, court costs and similar expenses in order to determine or collect insurance proceeds, such costs shall be first deducted before distribution or application of insurance proceeds as provided in this Article.

Section 16. Destruction of Recreation Area. In the event of partial or total destruction of the Recreation Area (including any improvements thereon), it shall be the duty of the Association to restore and repair the same to their former condition as promptly as is practical and in a lawful and workmanlike manner. The proceeds of any insurance maintained pursuant to this Declaration shall be used for such purpose, subject to the prior rights of beneficiaries of deeds of trust whose interests may be protected by said policies. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be at least eighty-five (85%) of the estimated costs of restoration and repair, a Reconstruction Assessment, with each Owner of a Condominium contributing a like sum, may be levied by the Association to provide the necessary funds for such reconstruction and repair, over and above the amount of any insurance proceeds available from the proceeds of such insurance policies for such restoration and repair. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair

shall be less than eighty-five percent (85%) of the estimated cost of restoration and repair, the Recreation Area shall not be replaced or restored unless approved by the vote or written consent of each class of Members who own Condominiums entitled to exercise not less than two-thirds (2/3) of the voting power of each such class of Members. In the event of a determination not to replace or restore the Recreation Area, the Recreation Area shall be cleared and landscaped for community park use; provided, however, that there shall exist in such Recreation Area adequate vehicular and pedestrian rights-of-way for the Owners of Condominiums to insure legal access thereto, and the costs thereof shall be paid for with the insurance proceeds, and any deficiency may be raised by the levy against the Condominium Owners of uniform Reconstruction Assessments in an amount determined by the Board. In the event any excess insurance proceeds remain, the Board shall retain such sums in the general funds of the Association for the benefit of the Condominium Owners. Notwithstanding anything to the contrary contained in this Section, the distribution of any insurance proceeds for any damage or destruction to the Recreation Area shall be subject to the prior rights of beneficiaries under deeds of trust.

Section 17. Destruction of Street Area. In the event of partial or total destruction of the Street Area (including any improvements thereon), it shall be the duty of the Association to restore and repair the same to their former condition as promptly as is practical and in a lawful and workmanlike manner. The proceeds of any insurance maintained pursuant to this Declaration shall be used for such purpose, subject to the prior rights of beneficiaries of deeds of trust whose interests may be protected by said policies.

#### ARTICLE XIV

##### Eminent Domain

Section 1. Definition of Taking. The term "taking" as used in this Article shall mean condemnation by eminent domain, or by sale under threat thereof, of all or part of the projects within Broadmoor Huntington Harbour.

Section 2. Representation by Board in Condemnation Proceeding Involving Projects. In the event of a taking involving a project, the Board shall, subject to the right of all beneficiaries who have requested the right to join the Board in the proceedings, represent all of the affected Members in an action to recover all awards. No Member shall challenge the good faith exercise of the discretion of the Board in fulfilling its duties under this Article. The Board is further empowered, subject to the limitations herein, to act as the sole representative of the Members, in all aspects of condemnation proceedings not specifically covered herein.

Section 3. Procedure on Taking Involving Projects.

In the event of a taking involving a project, the Board shall distribute the award forthcoming from the taking authority according to the provisions of this Section after deducting therefrom fees and expenses related to the condemnation proceeding including, without limitation, fees for attorneys and appraisers and court costs. In the event that the taking is by judgment of condemnation and said judgment apportions the award among the Owners of Condominiums affected by the taking and their respective beneficiaries, the Board shall distribute the amount remaining after such deductions among such Owners and beneficiaries on the allocation basis set forth in such judgment. In the event that the taking is by sale under threat of condemnation, or if the judgment of condemnation fails to apportion the award, the Board shall distribute the award among the Owners in the project in which the taking occurs and their respective beneficiaries based upon the relative values of the Condominiums affected by such taking as determined by: (i) the assessed valuation of each Condominium as last determined prior to the taking by the tax assessor of the governmental entity having jurisdiction over the project, and (ii) the degree to which each Condominium has been affected by the taking. The determination by the Board as to the degree each Condominium has been affected by the taking shall be final and binding on all Owners and beneficiaries. Nothing contained herein shall entitle an Owner to priority over a beneficiary of his Condominium as to the portion of the condemnation award allocated to his Condominium. In no event shall any portion of such award be distributed by the Board to an Owner and/or the beneficiaries of his Condominium in a total amount greater than the portion allocated hereunder to such Condominium.

Section 4. Inverse Condemnation. The Board is authorized to bring an action in inverse condemnation. In such event, the provisions of this Article shall apply with equal force.

Section 5. Revival of Right to Partition. Upon a taking which renders more than fifty percent (50%) of the Condominiums in any project incapable of being restored to at least ninety-five percent (95%) of their floor area and substantially their condition prior to the taking, the right of any Owner within such project to partition through legal action as described in the Article hereof entitled "Limitations Upon the Right to Partition and Severance" shall forthwith revive. The determination as to whether Condominiums partially taken are capable of being so restored shall be made by the Board, whose decision shall be final and binding on all Owners and beneficiaries.

Section 6. Awards for Members' Personal Property and Relocation Allowances. Where all or part of a project is taken, each Member shall have the exclusive right to claim all of the award made for his personal property, and any relocation, moving expenses, or other allowance of a similar nature designed to facilitate relocation. Notwithstanding the foregoing provisions, the Board shall represent

each affected Member in an action to recover all awards with respect to such portion, if any, of Members' personal property as is at the time of any taking, as a matter of law, part of the real property comprising any Condominium, and shall allocate to such Member so much of any awards as is attributable in the taking proceedings, or failing such attribution, attributable by the Board, to such portion of Members' personal property.

Section 7. Notice to Members. The Board, immediately upon having knowledge of any taking or threat thereof with respect to a project or any portion thereof, shall promptly notify all affected Members.

Section 8. Change of Condominium Interest. In the event of a taking, and notwithstanding Section 2 of Article XVIII hereof, the Board may amend the Condominium Plan to reflect the change in the project or projects affected by a taking. In the event that the Board decides to record such amendment to the Condominium Plan, all Owners within such project or projects and the beneficiaries of deeds of trust encumbering property in such project or projects shall execute and acknowledge said amendment so that it will comply with Section 1351 of the California Civil Code or any similar statute then in effect. Said Owners and beneficiaries shall also execute such other documents or take such other actions as are required to make such amendment effective. The Board shall cause a notice of change in the Condominium Plan to be sent to each Owner and beneficiary in such project or projects within ten (10) days of the filing of such amendments in the County Recorder's Office of Orange County, California.

Section 9. Recreation Area. The term "taking" as used in this Section shall mean condemnation by eminent domain or by sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Recreation Area, the Members of the Association hereby appoint the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Subject to the prior rights of beneficiaries of deeds of trust, if any, any awards received on account of the taking shall be paid to the Association for the benefit of the Condominium Owners. In the event of a taking of less than all of the Recreation Area, the rules as to restoration and replacement of the Recreation Area and the improvements thereon shall apply as in the case of destruction of the Recreation Area as provided in Section 16 of Article XIII hereof. In the event of a total taking, the Board shall retain any award in the general funds of the Association for the benefit of the Condominium Owners.

Section 10. Street Area. The term "taking" as used in this Section shall mean condemnation by eminent domain or by sale under threat of condemnation. In the

event of a threatened taking of all or any portion of the Street Area, the Members of the Association hereby appoint the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Subject to the prior rights of beneficiaries of deeds of trust, if any, any awards received on account of the taking shall be paid to the Association. In the event of a taking of less than all of the Street Area, the rules as to restoration and replacement of the Street Area and the improvements thereon shall apply as in the case of the destruction of the Street Area as provided in Section 17 of Article XIII hereof. In the event of a total taking, the Board shall retain any award in the general funds of the Association.

#### ARTICLE XV

##### Rights of Lenders

###### Section 1. Filing Notice; Notices and Approvals.

A beneficiary shall not be entitled to receive any notice which this Declaration requires the Association to deliver to beneficiaries unless and until such beneficiary, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such beneficiary is the holder of a deed of trust encumbering a Condominium or Lot within Broadmoor-Huntington Harbour. Such notice need not state whether such beneficiary is a First-Beneficiary. Wherever the approval of all or a specified percentage of beneficiaries is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of all or a specified percentage of only those beneficiaries which have delivered such notice to the Board. Notwithstanding the foregoing, if any right of a beneficiary under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section, a beneficiary must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a beneficiary's rights pursuant to this Declaration, including, without limitation, the priority of the lien of such beneficiary's deed of trust over the lien of Assessments levied by the Association hereunder, shall not be affected by the failure to deliver a notice to the Board. Any notice or request delivered to the Board by a beneficiary shall remain effective without any further action by such beneficiary for so long as the facts set forth in such notice or request remain unchanged.

Section 2. Priority of Mortgage Lien. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or



charge of any deed of trust made in good faith and for value encumbering any Lot or Condominium, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot or Condominium.

Section 3. Curing Defaults. A beneficiary, or the immediate transferee of such beneficiary, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is noncurable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is noncurable or not feasible to cure shall be final and binding on all beneficiaries.

Section 4. Relationship with Assessment Liens.

(a) The lien provided for in the Article hereof entitled "Non-Payment of Assessments" for the non-payment of Assessments shall be subordinate to the lien of any deed of trust which was recorded prior to the date any such Assessment becomes due.

(b) If any Lot or Condominium subject to a monetary lien created by any provision hereof shall be subject to the lien of a deed of trust, the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such deed of trust and the foreclosure of the deed of trust or sale under a power of sale included in such deed of trust (such events being hereinbelow referred to as "Events of Foreclosure") shall not operate to affect or impair the lien hereof.

(c) Any beneficiary who obtains title to a Lot or Condominium by reason of any of the Events of Foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take title to such Lot or Condominium free of any lien or claim for unpaid Assessments against such Lot or Condominium which accrue prior to the time such beneficiary or purchaser obtains title to such Lot or Condominium by reason of any of the Events of Foreclosure, except for liens or claims for a share of such Assessments resulting from a reallocation of such Assessments to all Lots or Condominiums within Broadmoor Huntington Harbour but shall take title to such Lot or Condominium subject to any lien or claim for unpaid Assessments against such Lot or Condominium which accrues subsequently to the time such beneficiary or purchaser obtains title to such Lot or Condominium by reason of any of the Events of Foreclosure.

(d) Nothing in this Section shall be construed to release any Owner from his obligation to pay any Assessment levied pursuant to this Declaration.

Section 5. Seventy-Five Percent (75%) Vote of Beneficiaries. Except upon the prior written approval of at

least seventy-five percent (75%) of all First Beneficiaries, based on one (1) vote for each deed of trust, neither the Association nor the Members shall be entitled to do any of the following:

(a) Abandon or terminate by any act or omission the condominium legal status of any project, or any part thereof, except for abandonment or termination provided by law and/or this Declaration in the case of a substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain.

(b) Dissolve the Association or abandon or terminate the maintenance of the Common Area, Recreation Area, or Street Area by the Association.

(c) Amend a material provision of this Declaration, the By-Laws or the Articles, and, without limiting the generality of the foregoing, the following shall be deemed material: (i) the provisions of this Article, (ii) the provisions of the Article hereof entitled "Insurance", (iii) any other rights granted specifically to beneficiaries pursuant to any other provision of this Declaration, or (iv) any provision of this Declaration which is a requirement of Federal National Mortgage Association, Government National Mortgage Association or Federal Home Loan Mortgage Corporation.

(d) Effectuate any decision to terminate professional management and assume self-management of Broadmoor Huntington Harbour.

(e) Change the ownership interest of a Condominium.

(f) Partition or subdivide a Unit or any elements thereof.

(g) Abandon, partition, sell, alienate, subdivide, release, transfer, hypothecate or otherwise encumber the Common Area, Recreation Area, or Street Area; provided, however, the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area, Recreation Area, or Street Area shall not require such approval.

Section 6. Other Rights of First Beneficiaries.  
Any First Beneficiary shall, upon written request to the Association, be entitled to:

(a) Inspect the books and records of the Association during normal business hours; and

(b) Receive the annual audited financial statements of the Association ninety (90) days following the end of the Association's fiscal year; and

(c) Receive written notice of all annual and special meetings of the Members or of the Board, and First

Beneficiaries shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been corrected or made the subject of remedial action by the Association; provided, however, nothing contained in this Section shall give a First Beneficiary the right to call a meeting of the Board or of the Members for any purpose or to vote at any such meeting.

Section 7. Beneficiaries Furnishing Information.  
Beneficiaries are hereby authorized to furnish information to the Board concerning the status of any loan encumbering a Lot or Condominium.

Section 8. Notice to First Beneficiaries of Owner Default. Any First Beneficiary shall be entitled to written notification from the Association of any default in the performance of the obligations imposed by this Declaration by the Owner whose Lot or Condominium is encumbered by such beneficiary's deed of trust, which default has not been cured within sixty (60) days of a request therefor by the Association; provided, however, the Association shall only be obligated to provide such notice to First Beneficiaries who have previously requested such notice in writing.

Section 9. Right of First Refusal. In the event this Declaration is amended to provide for any right of first refusal in the Association, a beneficiary who comes into possession of a Lot or Condominium pursuant to a judicial foreclosure, a deed in lieu of foreclosure or a trustee's sale shall be exempt therefrom.

Section 10. Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

Section 11. Voting Rights of First Beneficiaries.  
In the event of a default by the Owner of any Lot or Condominium in any payment due under the terms of any first deed of trust or the promissory note secured thereby, the First Beneficiary or his representative shall have the right, upon giving written notice to such defaulting Owner and placing of record a notice of default, to exercise the voting rights of such defaulting Owner attributable to such Lot or Condominium at any regular or special meeting of the Members held during such time as such default may continue.

Section 12. Notice of Destruction or Taking. In the event that any Condominium, Common Area, Recreation Area or Street Area or any portion thereof is substantially damaged or is made the subject of any condemnation proceeding in eminent domain or is otherwise sought to be acquired by a condemning authority, the Board shall promptly notify any First Beneficiary affected by such destruction, taking or threatened taking. As used in this Section, "substantially damaged" shall mean damage exceeding Ten Thousand Dollars (\$10,000). If requested in writing by a First Beneficiary, the Association shall evidence its obligations under this Section in a written agreement in favor of such First Beneficiary.

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Section 13. Payments of Taxes or Premiums By First Beneficiaries. First Beneficiaries may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Recreation Area or Street Area, unless such taxes or charges are separately assessed against the Owners in which case the rights of First Beneficiaries shall be governed by the provisions of their deeds of trust. First Beneficiaries may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure a new hazard insurance coverage on the lapse of a policy, for the Common Area, Recreation Area and Street Area and First Beneficiaries making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any First Beneficiary which requests the same to be executed by the Association.

#### ARTICLE XVI

##### Limitations upon the Right to Partition and Severance

Section 1. No Partition. The right of partition is hereby suspended, except that the right to partition shall revive and any project may be sold as a whole when the conditions for such action set forth in the Articles hereof entitled "Destruction of Improvements" and "Eminent Domain" have been met; provided, however, notwithstanding the foregoing, any Owner may, upon the prior written approval of the First Beneficiary encumbering his Condominium, bring an action for partition by sale of the project in which his Condominium is located, as provided in Section 1354 of the Code of Civil Procedure of the State of California or any similar statute then in effect upon the occurrence of any of the events therein provided. Provided, further, that if any Condominium shall be owned by two (2) or more co-tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants.

Section 2. No Severance. The elements of a Condominium and other rights appurtenant to the ownership of a Condominium are inseparable, and each Owner agrees that he shall not, while this Declaration or any similar declaration is in effect, make any conveyance of less than an entire Condominium and such appurtenances. Any conveyance made in contravention of this Section shall be void. The provisions of this Section shall terminate on the date that judicial partition shall be decreed.

##### Section 3. Proceeds of Partition Sale.

(a) Whenever an action is brought for the partition by sale of a project whether upon the occurrence of any of the events provided in Section 752b of the Code of Civil Procedure of the State of California (or similar statute then in effect) or upon the revival of the right to partition pursuant to the Articles hereof entitled "Destruction of Improvements" or "Eminent Domain," the Owners of

Condominiums in such project shall share in the proceeds of such sale in the same proportion as their interest in the Common Area of such project. As used in the foregoing sentence, such interest of each Owner shall be determined by comparing (i) the latest assessed valuation of an Owner's Condominium as determined by the tax assessor having authority over such project, to (ii) the total of such assessed valuation for all Condominiums in such project.

(b) The distribution of the proceeds of any such partition sale shall be adjusted as necessary to reflect any prior distribution of insurance proceeds or condemnation award as may have been made to Owners and their beneficiaries pursuant to the Articles hereof entitled "Destruction of Improvements" and "Eminent Domain." In the event of any such partition and sale, the liens and provisions of all deeds of trust or Assessment liens encumbering Condominiums within the project or projects so encumbered shall extend to each applicable Owner's interest in the proceeds of such partition and sale. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment of any deed of trust or Assessment lien encumbering such proceeds as aforesaid.

## ARTICLE XVII

### BOAT DOCK AREA

Section 1. Definition and Easement. "Boat Dock Area" shall mean and refer to that area within the R-1 Property labelled as such on Exhibit "C" attached hereto and incorporated herein by this reference, and shall include the boardwalk ("Boardwalk") labelled as such on said Exhibit. There shall be granted to the Association over the Boat Dock Area an easement for purposes of maintenance of said Area in accordance with the provisions of Section 1(e) of Article IX hereinabove, together with a license in favor of the Association, its agents and representatives, to traverse upon such additional contiguous property as shall be necessary to gain access to the Boat Dock Area. Each Owner agrees, for himself and his heirs, successors, executors, administrators and assigns, that he will permit free access by the Association and its authorized agents and representatives for the purpose of exercising its rights and duties with respect to the Boat Dock Area.

Section 2. Public Access Along Boardwalk. Persons who do not own a Lot within the R-1 Property are hereby declared to have an unrestricted right of access and use over and along the Boardwalk from sun up to sun down.

Section 3. No Responsibility. To the fullest extent permitted by law, neither the Association, its officers, directors, employees or agents, nor any Owner or Member, shall bear any responsibility for any liabilities, costs, damages, claims, demands or expenses resulting from, incurred

in connection with, or otherwise arising out of, any person's use of the Boardwalk and all persons using the Boardwalk do so completely at their own risk.

## ARTICLE XVIII

### General Provisions

Section 1. Duration. The covenants, conditions, restrictions, easements, reservations, liens and charges of this Declaration shall run with and bind the property within Broadmoor Huntington Harbour and shall inure to the benefit of and be enforceable as provided herein by the Association, or the Owner, including Declarant, of any Lot or Condominium subject to this Declaration, their respective legal representatives, heirs, successors and assigns, and are imposed upon the real property within Broadmoor Huntington Harbour as a servitude in favor of each and every parcel of land therein as a dominant tenement, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions, restrictions, easements, reservations, liens and charges shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners of the Lots and Condominiums, has been recorded with the Orange County Recorder, agreeing to change said covenants, conditions and restrictions in whole or in part. In the event a Lot or Condominium is owned by more than one Owner, any one of the Co-Owners may sign such instrument in writing on the behalf of all Co-Owners.

Section 2. Amendment. Subject to the other provisions of this Declaration, including, without limitation, the rights of First Beneficiaries and/or beneficiaries pursuant to the Article hereof entitled "Rights of Lenders," this Declaration may be amended only by an instrument in writing signed by not less than seventy-five percent (75%) of each class of Members. When the Class B membership becomes converted to Class A membership in accordance with the provisions of Section 3 of Article III hereinabove, this Declaration may be amended, subject to the other provisions of this Declaration, including, without limitation, the rights of First Beneficiaries and/or beneficiaries pursuant to the Article hereof entitled "Rights of Lenders," only by an instrument in writing signed by not less than (i) seventy-five percent (75%) of the Members and (ii) a majority of the Members other than the Declarant. Any amendment must be properly recorded. In the event a Lot or Condominium is owned by more than one Owner, any one of the Co-Owners may sign such instrument in writing on behalf of all Co-Owners. Notwithstanding the foregoing, the terms and provisions of this Declaration relating to the R-1 Property (including, without limitation, the assessment or use thereof and Article XVII hereof) may not be amended without the consent of the Members owning Lots within the R-1 Property. That consent shall be given only by an instrument in writing signed by not less than seventy-five percent (75%) of each class of

Members owning Lots within the R-1 Property and, upon the conversion of the Class B membership into the Class A membership in accordance with the provisions of Section 3 of Article III hereinabove, only by an instrument in writing signed by not less than (i) seventy-five percent (75%) of the Members who own Lots within the R-1 Property and (ii) a majority of such Members other than Declarant.

Further, notwithstanding the foregoing, Section 2 of Article XVII hereof shall not be amended without the consent of the South Coast Regional Commission of the California Coastal Zone Conservation Commission, or its successors or assigns; provided, however, in the event said Regional Commission waives its right to consent to any such amendment, such consent shall not be required for the amendment as to which the waiver is applicable.

Further, notwithstanding the foregoing, Section 4(f) of Article IV hereof shall not be amended without the consent of the City; provided, however, in the event the City waives its right to consent to any such amendment, such consent shall not be required for the amendment as to which the waiver is applicable.

Further, notwithstanding the foregoing, prior to the sale of any Lot or Condominium to an Owner who acquires any such Lot or Condominium for residential use, Broadmoor, acting on behalf of the Declarant, may unilaterally amend this Declaration in order to comply with the requests or requirements of the California Department of Real Estate or any other governmental body or agency having jurisdiction over Broadmoor Huntington Harbour. Any such amendment by Broadmoor shall not require the consent of any person or entity acquiring any Lot or Lots for the purpose of constructing and selling Residential Dwellings or who otherwise acquires such Lot or Lots without the intent of residing thereon.

Section 3. Notices. Any notice required to be sent to any Member, Owner or First Beneficiary under the provisions of this Declaration shall be in writing and shall be deemed to have been properly sent when delivered personally or mailed, postage prepaid, if to an Owner or Member, to the last known address of the person who appears as such a Member or Owner on the records of the Association at the time of such mailing, and, if to a First Beneficiary, to the address furnished to the Association by such beneficiary for the purposes of notice or, if no such address is furnished, to any office of the First Beneficiary in the County of Orange, or if no such office is located in said County, to any office of the First Beneficiary. In the case of Co-Owners, any such notice may be delivered or sent to any one of the Co-Owners.

Section 4. Enforcement.

(a) The Association or the Owner of any Lot or Condominium, including the Declarant (as long as the Declarant is the Owner of any real property subject to this Declaration), shall have the right to enforce by proceedings

at law or in equity all covenants, conditions, restrictions, easements, reservations, liens and charges now or hereafter imposed by this Declaration, as amended and supplemented, the Articles and By-Laws, including, without limitation, the right to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of these covenants, conditions, restrictions, easements, reservations, liens or charges to enjoin or prevent them from doing so, to cause said violation to be remedied and/or to recover damages for said violation.

(b) Should the Association fail to perform its duties of repair and maintenance of the Common Area, Recreation Area, Street Area, Boat Dock Area or any Maintenance Area as specified herein or should any Owner fail to comply with the provisions of Article VIII hereof and should any such failure of the Association or an Owner continue for a period of thirty (30) days following written notice of such failure from the Declarant to the Association or from the Declarant and/or the Association to the Owner, Declarant and/or the Association, as the case may be, shall have the right, but not the duty, to perform all or a portion of such repair and maintenance and the Declarant and/or the Association shall have the right, but not the duty, to correct any such noncompliance, and the cost thereof shall be borne by the Association or any such Owner, respectively; provided, however, that in the event such costs are not paid to the Declarant or the Association, as the case may be, within thirty (30) days after the Declarant or the Association has furnished a statement therefor, the Declarant in the case of a failure by the Association, and Declarant and/or the Association in the case of a failure by an Owner, shall have the right, but not the duty, to levy a Special Assessment against each Owner on a pro-rata basis to cover such costs of maintenance and repair or against any such Owner to cover the costs of correction, if any, of such noncompliance, as the case may be. The Declarant shall have the same remedies as the Association has pursuant to Article VI hereinabove to collect delinquent Special Assessments. No one or more failures or refusals by the Declarant to accomplish such repair and maintenance work or by the Declarant and/or the Association to accomplish such compliance which the Association or an Owner shall have failed to perform shall be deemed a waiver of the right in the Declarant or the Association, as the case may be, to perform such work at a later time as to the same or different work or compliance.

(c) The result of every action or omission whereby any covenant, condition, restriction, easement, reservation, lien or charge herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an Owner, either public or private, shall be applicable against every such result and may be exercised by the Association or any Owner, including the Declarant, subject to these restrictions.

(d) In any legal or equitable proceeding for the enforcement or to restrain the violation of these covenants, conditions, restrictions, easements, reservations,



liens or charges or any provisions hereof, the losing party or parties shall pay the attorneys' fees of the prevailing party or parties in such amount as may be fixed by the court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

(e) Failure by the Declarant, the Association, or by any Owner to enforce any covenant, condition, restriction, easement, reservation, lien or charge herein contained shall in no event be deemed a waiver of any breach or violation or a waiver of the right to do so thereafter.

(f) Nothing contained herein shall be deemed to require the Declarant to enforce any covenant, condition, restriction, easement, reservation, lien, charge or provision hereof.

Section 5. Severability. Invalidation of any one or more of these covenants, conditions, restrictions, easements, reservations, liens or charges by judgment or court order shall not in any way affect any other provisions, which shall remain in full force and effect. The Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration.

Section 6. Breach of Restrictions, Easements, Conditions, Covenants and Reservations. A breach of any of the restrictions, easements, conditions, covenants, reservations, liens or charges herein contained shall not defeat or render invalid the lien of any deed of trust made in good faith and for value as to any Lot or Condominium in Broadmoor Huntington Harbour but said restrictions, easements, conditions, covenants, reservations, liens and charges shall be binding upon and effective against any Owner thereof whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

Section 7. Headings. Section headings are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope or intent of the particular section to which they refer.

Section 8. Singular Includes Plural. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

Section 9. Construction. The provisions of this Declaration shall be liberally construed to effectuate this Declaration's purpose of creating a uniform plan for the development of a residential community with private social and recreational areas and for the maintenance of such areas.

Section 10. Phased Development. It is the intention of the Declarant to develop Broadmoor Huntington Harbour into a single interrelated and interdependent residential

community in which the rights of all residents will be determined in substantially the same manner. The Declarant contemplates that it will construct Broadmoor Huntington Harbour and/or cause it to be constructed in several phases and annex each phase to the R-1 Property in accordance with Article II of this Declaration. Although the Declarant contemplates the construction of such additional phases, it shall in no way be obligated to do so.

Section 11. Construction by Declarant. Nothing in this Declaration shall limit the right of the Declarant to commence and complete construction of improvements to Broadmoor Huntington Harbour or to alter the foregoing or the Lots, Condominiums, Recreation Area, Street Area, Boat Dock Area or Common Area or to construct such additional improvements as the Declarant deems advisable prior to the completion and sale of the entire Broadmoor Huntington Harbour development. The Declarant may use any of the property within Broadmoor Huntington Harbour owned by it for model home sites and incidental parking and for any other purpose for which the Declarant may use the Lots, Condominiums, Common Area, Recreation Area, Boat Dock Area or Street Area as provided in this Section 11. The Declarant shall have the right and an easement to enter upon, use and enjoy and designate and permit others (including, without limitation, Declarant's agents, employees, representatives, contractors and prospective purchasers) to enter upon, use and enjoy the Common Area, Recreation Area, Boat Dock Area or Street Area for any purpose in connection with or incidental to (a) the construction, development, sale, lease or other transfer of property within or adjacent to Broadmoor Huntington Harbour (including, without limitation, the erection, construction and maintenance of displays, sales offices and incidental parking, exhibits, signs and other structures), (b) the management, operation or maintenance of Broadmoor Huntington Harbour and/or (c) the exercise of any rights or powers granted hereunder to the Declarant; provided, however, that the exercise of such right and easement shall not unreasonably interfere with the reasonable use and enjoyment of the Common Area, Recreation Area, Boat Dock Area or Street Area by the Members. The Declarant reserves the right to alter its construction and development plans and designs as it deems appropriate. This Declaration shall not limit the right of the Declarant at any time prior to acquisition of title by a purchaser from the Declarant to establish on any Lot or Condominium additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of Broadmoor Huntington Harbour.

Section 12. Nonliability of Officials. To the fullest extent permitted by law, neither the Board, any committees of the Association nor any member shall be liable to any Member or Owner or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within

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which such Board, committee, or persons reasonably believed to be the scope of their duties.

Section 13. Obligation of Owners and Members.  
The terms and provisions set forth in this Declaration are binding upon all Owners of all Lots and Condominiums, the Association and all Members. In addition, both the Member and the Lot or Condominium owned shall be subject to the terms and provisions of the Articles and By-Laws as the same may from time to time be amended. Each Member shall cause the Association to exercise all of the powers and privileges and perform all of the duties and obligations of the Association as set forth in this Declaration, the Articles and By-Laws.

Section 14. Leases of Lots or Condominiums. Any Owner who shall lease his Lot or Condominium to any person or entity shall be responsible for assuring compliance by any such person or entity with all of the covenants, conditions, restrictions, easements, reservations, liens and charges of this Declaration, as amended and supplemented. Any lease agreement between an Owner and a lessee must provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles and By-Laws, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All such leases shall be in writing. No Residential Dwelling or Unit shall be leased for transient or hotel purposes, which shall be defined as rental for any period less than thirty (30) days or any rental whatsoever, if the occupants of the Residential Dwelling or Unit are provided customary hotel services, such as room service for food and beverage, maid service, laundry, linen and bellboy service.

Section 15. Mergers and Consolidations. Upon a merger or consolidation of the Association with another association as provided in the Articles, its properties, rights and obligations may be transferred to the surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may, subject to the terms and provisions of this Declaration, administer the covenants, conditions, restrictions, easements, reservations, liens and charges established by this Declaration, as supplemented and amended, with respect to Broadmoor Huntington Harbour, together with the covenants, conditions, restrictions, easements, reservations, liens and charges established upon any other property, as one general plan and scheme or in such other plan of administration as the surviving or consolidated corporation deems reasonable.

Section 16. Assignment of Rights and/or Duties.  
Any or all of the rights and/or duties, if any, of the Declarant herein may be assigned or delegated, respectively, to any other person or entity and upon any such assignment or delegation any such person or entity shall, to the extent

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of such assignment or delegation, have the same rights and/or duties as are given to and/or assumed by the Declarant herein, and, thereupon, the Declarant shall be relieved of the performance of any further duty, if any, hereunder.

IN WITNESS WHEREOF, the undersigned have executed and sealed this Declaration as of the day and year first above written.

BROADMOOR HOMES, INC.

By [Signature]

Its Executive Vice President

By John B. Staver

Its Secretary

BROADMOOR GRIMAUD, a limited partnership

By BROADMOOR HOMES, INC., a general partner

By [Signature]

Its Executive Vice President

By John B. Staver

Its Secretary

"Declarant"

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STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

On September 21, 1977 before me, the under-  
signed, a Notary Public in and for said State, personally  
appeared R. F. Osgood, known to me to be  
the Executive Vice President, and John B. Sauer,  
known to me to be the Secretary of  
BROADMOOR HOMES, INC., the corporation that executed the  
within instrument, known to me to be the persons who executed  
the within instrument on behalf of said corporation, and  
acknowledged to me that such corporation executed the within  
instrument pursuant to its by-laws or a resolution of its  
board of directors.

WITNESS my hand and official seal.

Signature *Bette J. Fazekas*  
Bette J. Fazekas  
Name (Typed or Printed)

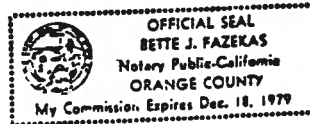


STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

On September 21, 1977 before me, the under-  
signed, a Notary Public in and for said State, personally  
appeared R. F. Osgood, known to me to be the  
Executive Vice President, and John B. Sauer, known  
to me to be the Secretary of BROADMOOR HOMES,  
INC., the corporation that executed the within instrument and  
known to me to be the persons who executed the within instru-  
ment on behalf of said corporation, said corporation being  
known to me to be a general partner of BROADMOOR GRIMAUD,  
the partnership that executed the within instrument and  
acknowledged to me that such corporation executed the same  
as such partner and that such partnership executed the same.

WITNESS my hand and official seal.

Signature *Bette J. Fazekas*  
Bette J. Fazekas  
Name (Typed or Printed)



BK! 238095 544

DESCRIPTION

All that certain land situated in the State of California, County of Orange, City of Huntington Beach, described as follows:

PARCEL 1:

Lots 1 to 22 inclusive, and Lots A, B and C of Tract No. 9738, as shown on a map recorded in book 415, pages 48, 49 and 50 of Miscellaneous Maps in the County Recorders Office of said Orange County, California.

PARCEL 2:

An Easement and right of way for the purpose of construction, maintaining and using without rental be the City of Huntington Beach, the same for docks, wharves, slips, ramps, floats and other mooring structures, and for footings, pilings and ancillary structures for bulkheads located on adjacent property, said easement shall be severable and shall, within such boundaries as shall be designated by Huntington Harbour Corporation in writing and recorded in the Official Records of Orange County, California, by appurtenant to and run with the ownership of the lot to which the same is adjacent as reserved in deed from Huntington Harbour Corporation, a Corporation, recorded June 6, 1952 in book 6134, page 409 of Official Records, over the following described land:

That portion of Tract No. 4499, as shown on a map recorded in book 151, pages 11 through 15 of Miscellaneous Maps, records of said County, described as follows:

Beginning at the most Southern corner of Lot "B" as shown on said map of Tract No. 4499; thence along the Southwestern line of said Lot North  $29^{\circ} 51' 16''$  West 60.00 feet to the point of intersection with the Northwestern right of way line of Admiralty Drive 60 feet wide, said point being the true point of beginning; thence along said right of way line North  $60^{\circ} 08' 44''$  East 30.00 feet; thence parallel with and 30 feet Northeasterly of the Southwestern boundary of said Tract North  $29^{\circ} 51' 16''$  West 533.00 feet to the beginning of a tangent curve concave to the East having a radius of 70 feet; thence Northerly along said curve through a central angle of  $90^{\circ} 00' 00''$  a distance of 109.96 feet; thence tangent to said curve North  $60^{\circ} 08' 44''$  East 425.10 feet to the beginning of a tangent curve concave to the West having a radius of 130 feet;

EXHIBIT "A"

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BK 12386PS 645

thence Northerly along said curve through a central angle of  $39^{\circ} 42' 54''$  a distance of 90.11 feet more or less to a point of intersection with the Northwestern boundary of said Tract, a radial line from said point bearing North  $69^{\circ} 34' 10''$  West; thence along the Northwestern boundary of said Tract South  $60^{\circ} 08' 44''$  West 508.17 feet more or less to the beginning of a tangent curve in said boundary concave to the East having a radius of 100 feet; thence Southerly along said curve through a central angle of  $90^{\circ} 00' 00''$  a distance of 157.08 feet (157.00 feet on map of Tract No. 4499); thence tangent to said curve South  $29^{\circ} 51' 16''$  East 533.00 feet to the true point of beginning.

The bearing North  $60^{\circ} 08' 44''$  East as shown for the centerline of Admiralty Drive on said map of Tract No. 4499 was used as the Basis of Bearings for the above description.

Excepting therefrom all oil, gas, petroleum and other hydrocarbon substances and all other minerals of every kind and character (except water and rights to appropriate or divert water, whether such rights be vested or contingent) in, under or recoverable from said land, without, however, any right to enter upon the surface or subsurface of said land above 500 feet below the present natural level of the surface of said land, as reserved in various deeds to Jaxam Inc., a corporation, recorded October 11, 1960 in book 5456, pages 410 and following of Official Records.

Also excepting therefrom all subsurface water rights as dedicated to the City of Huntington Beach and recited on the map of said Tract.

PARCEL 3:

An Easement and right of way for the purpose of constructing, maintaining and using without rental by the City of Huntington Beach, the same for docks, wharves, slips, ramps, floats and other mooring structures, and for footings, pilings and ancillary structures for bulkheads located on adjacent property, said easement shall be severable and shall within such boundaries as shall be designated by Huntington Harbour Corporation, in writing and recorded in the Official Records of Orange County, California, be appurtenant to and run with the ownership of the lot to which the same is adjacent, as reserved in deed from Huntington Harbour Corporation, a corporation, recorded June 6, 1962 in book 6134, page 409 of Official Records, over that portion of the following described land included in Lots B and C of Tract No. 4499, as shown on a map recorded in book

Exhibit "A"

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EX 12365PS 645

161, pages 11 to 15 inclusive of Miscellaneous Maps, records of Orange County California:

Beginning at the most Southern corner of Lot "B" as shown on said map of Tract No. 4499; thence along the Southwestern line of said Lot, North  $29^{\circ} 51' 16''$  West 60.00 feet to the point of intersection with the Northwestern right of way line of Admiralty Drive 60 feet wide; thence along said right of way line North  $60^{\circ} 08' 44''$  East 30.00 feet to the true point of beginning; thence parallel with and 30 feet Northeasterly of the Southwestern boundary of said Tract North  $29^{\circ} 51' 16''$  West 533.00 feet to the beginning of a tangent curve concave to the East having a radius of 70 feet; thence Northerly along said curve through a central angle of  $90^{\circ} 00' 00''$  a distance of 109.96 feet; thence tangent to said curve North  $60^{\circ} 08' 44''$  East 425.10 feet to the beginning of a tangent curve concave to the West having a radius of 130 feet; thence Northerly along said curve through a central angle of  $39^{\circ} 42' 54''$  a distance of 90.11 feet more or less to a point of intersection with the Northwestern boundary of said Tract, a radial line from said point bearing North  $69^{\circ} 34' 10''$  West; thence along the Northwestern boundary of said Tract, a line of a 400 foot wide channel deeded to the State of California and described as Strip A in a Corporation Grant Deed recorded December 20, 1962 in book 6368, page 411, records of Orange County; thence along said Southwesterly line South  $61^{\circ} 00' 00''$  East 140.21 feet more or less to a point on a line parallel with and 120 feet Southeasterly of the Northwestern boundary of said Tract; thence along said parallel line South  $60^{\circ} 08' 44''$  West 549.89 feet to the beginning of a tangent curve concave to the East having a radius of 105 feet; thence Southerly along said curve through a central angle of  $90^{\circ} 00' 00''$  a distance of 164.93 feet; thence tangent to said curve South  $29^{\circ} 51' 16''$  East 468.00 feet more or less to the Northwestern right of way line of Admiralty Drive 60 feet wide; thence along said right of way line South  $60^{\circ} 08' 44''$  West 90.00 feet to the true point of beginning.

The bearing North  $60^{\circ} 08' 44''$  East as shown for the centerline of Admiralty Drive on said Map of Tract No. 4499 was used as the Basis of Bearings for the above description.

Excepting therefrom all oil, gas, petroleum and other hydrocarbon substances and all other minerals of every kind and character (except water and rights to appropriate or divert water, whether such rights be vested or contingent) in, under or recoverable from said land, without, however, any right to



enter upon the surface or subsurface of said land above 500 feet below the present natural level of the surface of said land, as reserved in various deeds to Jasam Inc., a corporation, recorded October 11, 1960 in book 5456, page 410 and following of Official Records.

Also excepting therefrom all subsurface water rights as dedicated to the City of Huntington Beach and recited on the Map of said Tract.

PARCEL 4:

Excepting all that portion of Lot A of Tract No. 4499, as shown on Map recorded in book 161, pages 11 to 15 inclusive of Miscellaneous Maps, records of Orange County, California, included within the following:

Beginning at the most Southern corner of Lot "3" as shown on said map of Tract No. 4499; thence along the Southwestern line of said Lot, North 29° 51' 16" West 60.00 feet to the point of intersection with the Northwestern right of way line of Admiralty Drive 60 feet wide; thence along said right of way line North 60° 08' 44" East 30.00 feet to the true point of beginning; thence parallel with and 30 feet Northeasterly of the Southwestern boundary of said Tract North 29° 51' 16" West 533.00 feet to the beginning of a tangent curve concave to the East having a radius of 70 feet; thence Northerly along said curve through a central angle of 90° 00' 00" a distance of 109.96 feet; thence tangent to said curve North 60° 08' 44" East 425.10 feet to the beginning of a tangent curve concave to the West having a radius of 130 feet; thence Northerly along said curve through a central angle of 39° 42' 54" a distance of 90.11 feet more or less to a point of intersection with the Northwestern boundary of said Tract, a radial line from said point bearing North 69° 34' 10" West; thence along the Northwestern boundary of said Tract North 60° 08' 44" East 94.20 feet more or less to the Southwesterly line of a 400 foot wide channel deeded to the State of California and described as Strip A in a Corporation Grant Deed recorded December 20, 1962 in book 6368, page 411, Records of Orange County; thence along said Southwesterly line South 61° 00' 00" East 140.21 feet more or less to a point on a line parallel with and 120 feet Southeasterly of the Northwestern boundary of said Tract; thence along said parallel line South 60° 08' 44" West 549.89 feet to the beginning of a tangent curve concave to the East having a radius of 105 feet; thence Southerly along said curve through a central angle of 90° 00' 00" a distance of 164.93 feet; thence tangent to said curve

EXHIBIT "A"

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South 29° 51' 16" East 468.00 feet more or less to the Northwestern right of way line of Admiralty Drive 60 feet wide; thence along said right of way line South 60° 08' 44" West 90.00 feet to the true point of beginning.

The bearing North 60° 08' 44" East as shown for the centerline of Admiralty Drive on said Map of Tract No. 4499 was used as the Basis of Bearings for the above description.

Excepting therefrom all oil, gas, petroleum and other hydrocarbon substances and all other minerals of every kind and character (except water and rights to appropriate or divert water, whether such rights be vested or contingent) in, under or recoverable from said land, without, however any right to enter upon the surface or subsurface of said land above 500 feet below the present natural level of the surface of said land, as reserved in various deeds to Jasan Inc., a corporation, recorded October 11, 1960 in book 5456, pages 410 and following of Official Records.

Also excepting therefrom all subsurface water rights as dedicated to the City of Huntington Beach and recited on the Map of said Tract.

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Parcel 2, as shown on a Map filed in book 89, pages 48 and 49 of  
Parcel Maps, records of Orange County, California.

EXHIBIT "B"

BK 12386PG 650 BK 12386PG 657

BK 12386PG 651

BK 12386PG 652

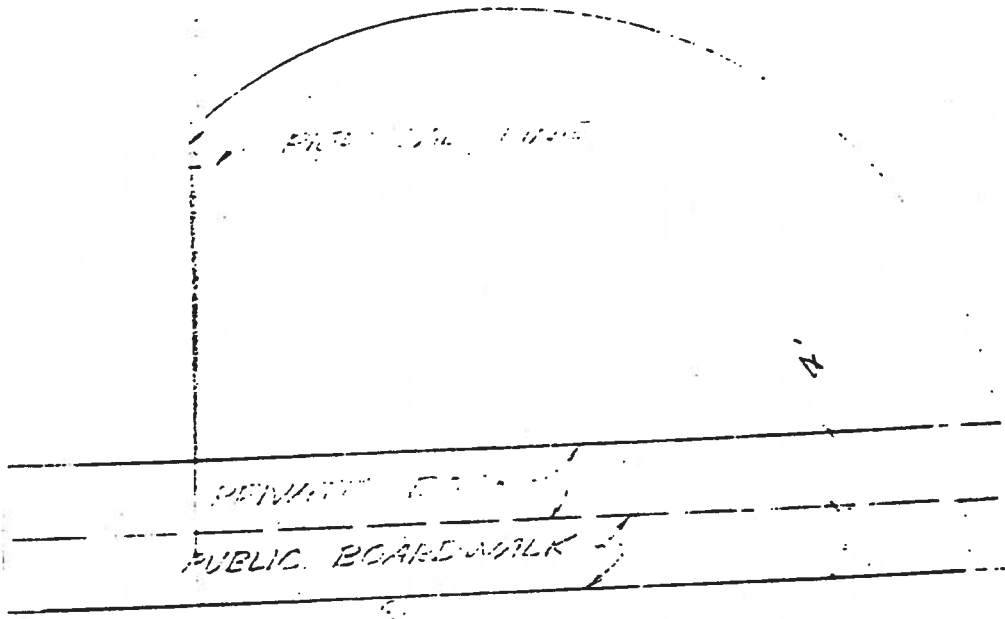
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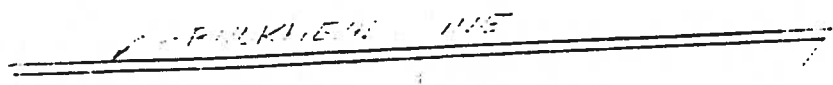
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BK 12386PG 656

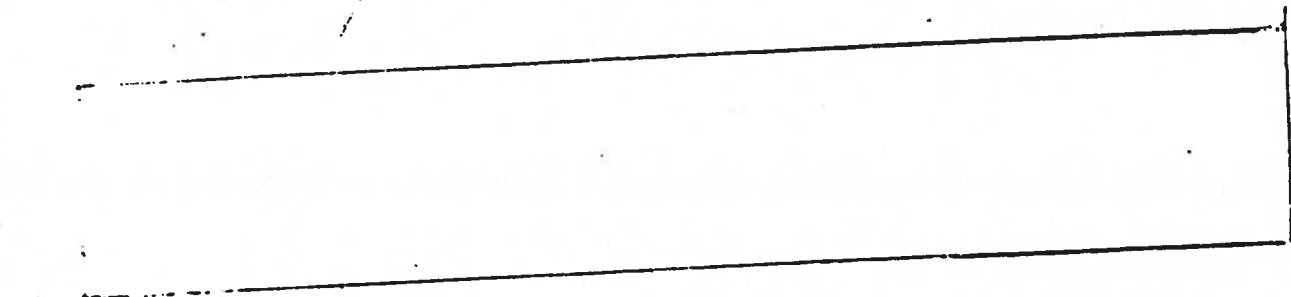
IN THE EVENT OF A VARIANCE BETWEEN  
THE "BOAT DOCK AREA" AND THE "BOARDWALK"  
AS SHOWN ON THIS PLAN AND AS ACTUALLY  
CONSTRUCTED, THE "BOAT DOCK AREA" AND  
THE "BOARDWALK" AS ACTUALLY CONSTRUCTED  
SHALL SUPERSEDE THE "BOAT DOCK AREA" AND  
THE "BOARDWALK" AS SHOWN ON THIS PLAN.

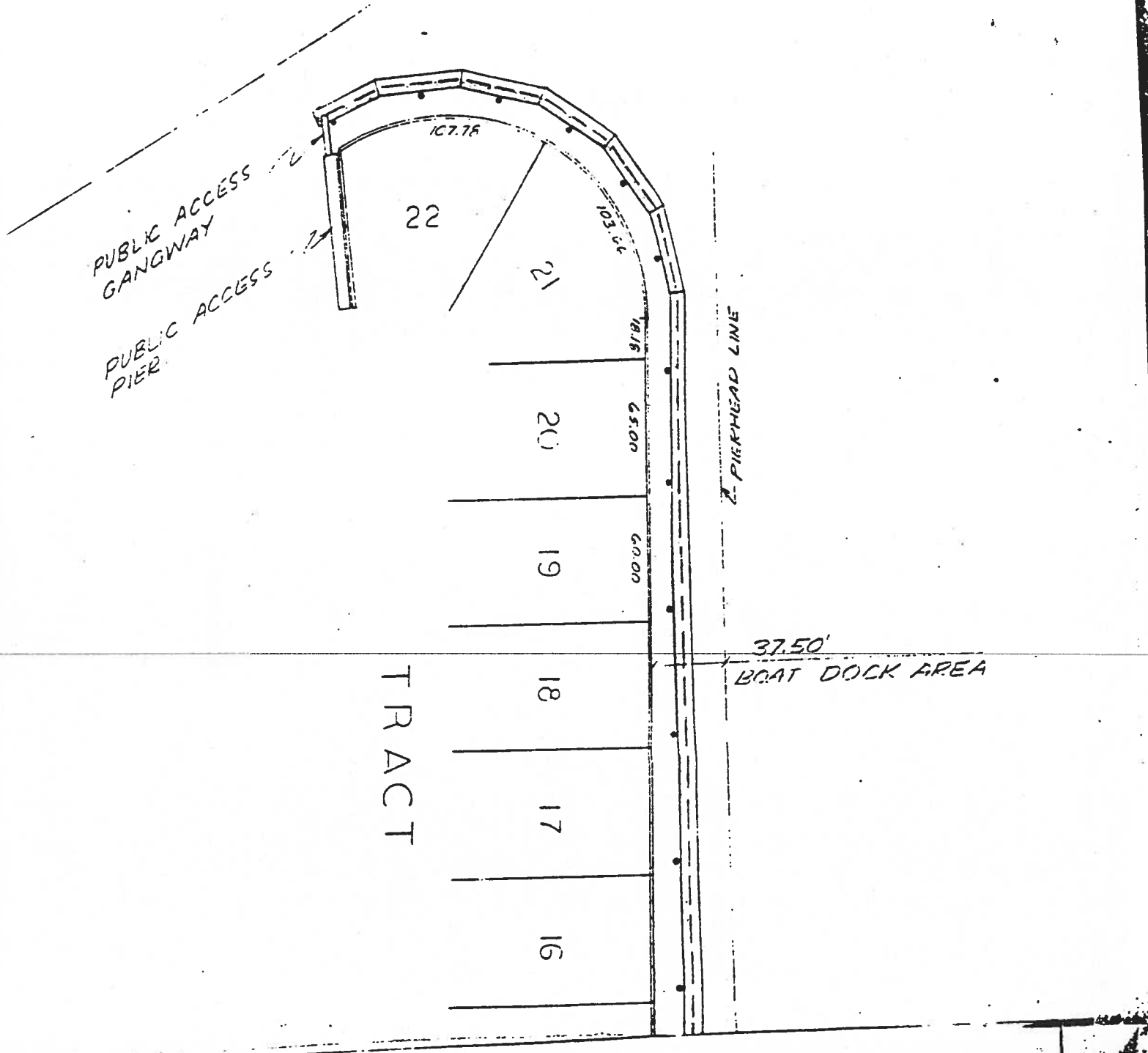


SCOT LOCK AREA



LOT 6      LOTS





PUBLIC ACCESS  
GANGWAY

PUBLIC ACCESS  
PIER

TRACT

22

21

20

19

18

17

16

107.76

102.6

81.8

65.00

60.00

PIERHEAD LINE

37.50'

BOAT DOCK AREA

DRAWN BY  
DATE  
SCALE  
NO.

KSH

5/13/77

1"=50'

4-22-77

# MARINE CONSULTING & DESIGN

3700 NEWPORT BOULEVARD  
SUITE 104

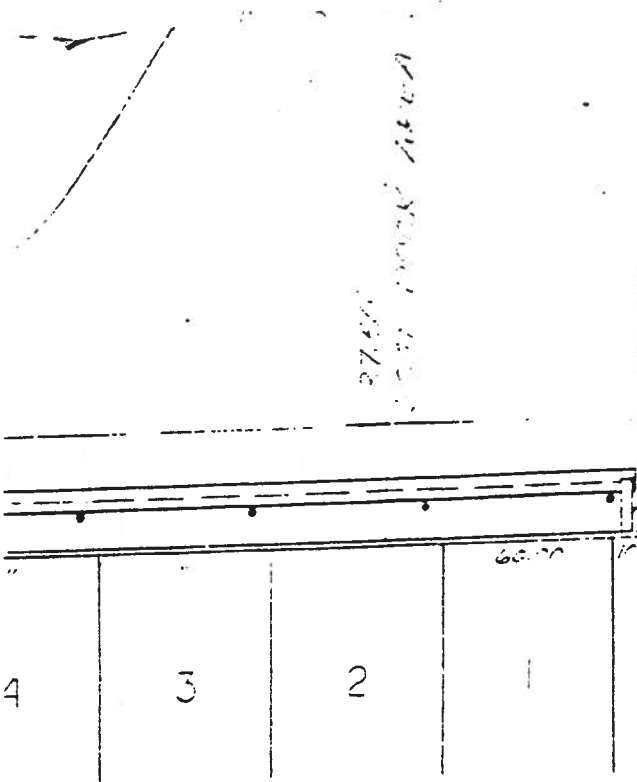
NEWPORT BEACH, CA 92663  
714 675 - 6803

SHEET NO.

1

OF

SHEETS



PUBLIC ACCESS  
GANGWAY

BIT "C"

HUNTINGTON HARBOUR

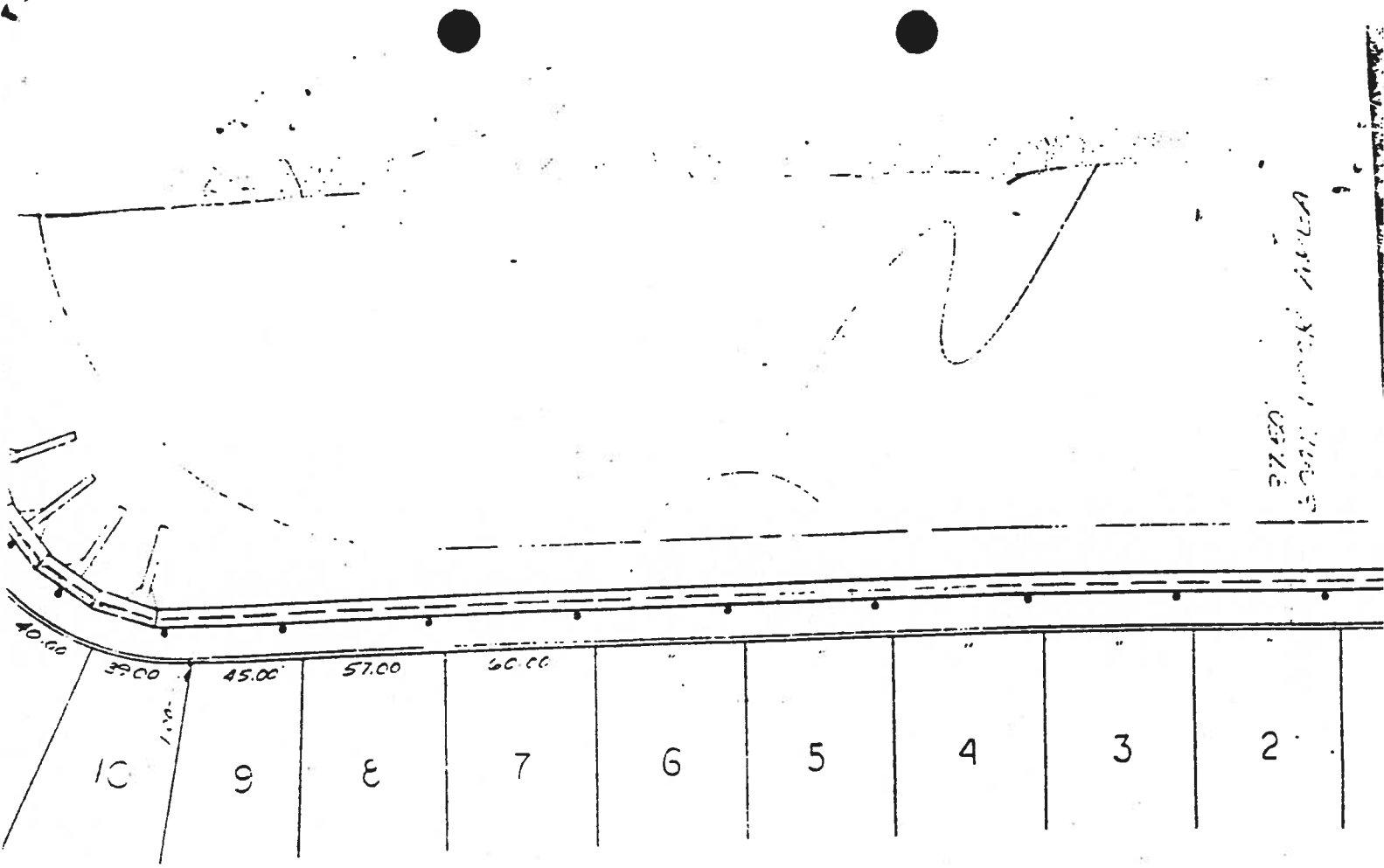
2 HOMES, INC.

TUSTIN, CA 92680

DRAWN BY	R'SH
DATE	5/13/77
SCALE	1"=50'
J.N.	4-22-77

MARINE CO  
3700 NEWPORT BCULE  
SUITE 104





9738

TRACT NO. 9738

EXHIBIT "C"

HUI

BROADMOOR HOMES, INC.

17802 IRVINE BLVD.