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DECLARATION OF CONDOMINIUM  
FOR  
MOUNTAIN VIEW CONDOMINIUM

This Declaration submits certain real property located in Lake Arrowhead, Cherokee County, Georgia, to the condominium laws of the State of Georgia as provided by Chapter 85-16E of the Georgia Code Annotated (Georgia Laws 1975, pages 609-671).

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TABLE OF CONTENTS

<u>ARTICLE</u>	<u>SECTION</u>	<u>PAGE</u>
I	STATUTORY PROVISIONS AND DEFINITIONS	2
II	PROPERTY SUBJECT TO THIS DECLARATION	2
III	PLAN OF DEVELOPMENT	2
IV	PROPERTY RIGHTS	3
	1. Units	3
	2. Limited Common Elements	3
	3. Partition	3
	4. Easements	4
	(a) Use and Enjoyment	4
	(b) Maintenance and Repair	4
	(c) Structural Support	4
	(d) Encroachments	5
	(e) Utilities, etc.	5
	(f) Other	5
	5. Allocation of Percentage or Fractional Interests and Voting Weight	5
V	MAINTENANCE AND REPAIR	6
	1. Association	6
	2. Unit Owner	7
VI	ASSESSMENTS	8
	1. Creation of Lien and Personal Obligation of Assess- ments	8
	2. Allocation of Liabilities for Common Expenses	9
	(a) Special Assessments	9
	(b) General Assessments	9
	3. Special Assessments for Capital Improvements	11
	4. Assessments For Membership in Lake Arrowhead Yacht & Country Club	12
	5. Evidence of Payment	13
	6. Effect of Non-Payment of Assessments: Remedies of the Association	13
	7. Priority of Lien	14
VII	ADMINISTRATION	15
	1. Meetings	15
	2. Quorums	15
	3. Directors and Officers	15
	4. Duties and Powers	16
	5. Agreements	16
	6. Property	16
	7. Notices	17
	8. Enforcement	17
	9. Rules and Regulations	17
	10. Disclosure of Financial Records	18
	11. Liability	18
	12. Compensation	18

TABLE OF CONTENTS - Page Two

<u>ARTICLE</u>	<u>SECTION</u>	<u>PAGE</u>
VIII	INSURANCE	18
	1. Authority to Purchase	18
	2. Coverages	19
	3. Premiums	19
	4. Policy Provisions	19
	5. Insurance Trustee	20
	(a) Common Elements	20
	(b) Units	20
	(c) Mortgagees	20
	6. Other Insurance	21
IX	RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE	21
	1. Damage and Destruction	21
	2. Repair and Reconstruction	23
	3. Units Owned by Declarant	27
X	EMINENT DOMAIN	27
XI	ARCHITECTURAL CONTROL, USE RESTRICTIONS AND SALE OR LEASING OF UNIT	29
XII	GENERAL PROVISIONS	30
	1. Control by Declarant	30
	2. Amendment	31
	3. Rights of Third Parties	32
	4. Termination	33
	5. Withdrawal of Submitted Property	33
	6. Enforcement	33
	7. Duration	35
	8. Interpretation	35
	9. Gender and Grammar	35
	10. Severability	35
	11. Captions	36

DECLARATION OF CONDOMINIUM

FOR

MOUNTAIN VIEW CONDOMINIUM  
(Lake Arrowhead, Cherokee County, Georgia)

This Declaration made this 15 day of February, 1977,  
by DIAMONDHEAD CORPORATION, a Delaware corporation, (hereinafter some-  
times called "Declarant");

W I T N E S S E T H :

WHEREAS, certain multifamily residential buildings have  
been constructed in Lake Arrowhead, Cherokee County, Georgia on the  
real property described in Exhibit "A" attached hereto, which real  
property is owned in fee simple by Declarant; and

WHEREAS, Declarant desires to submit said real property  
described in said Exhibit "A" attached hereto, including the improve-  
ments constructed thereon, to the provisions of the Georgia Condominium  
Act and to the provisions of this Declaration; and

WHEREAS, as hereinafter provided in this Declaration,  
Declarant has retained and reserved the right, privilege and option  
to later submit to the provisions of said Act and this Declaration,  
as a part of the Condominium established hereby, all or any portion  
of the real property described in Exhibit "A-1" attached hereto,  
together with all improvements constructed or to be constructed thereon;

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NOW, THEREFORE, Declarant hereby declares that the real property described in Article II hereof, including the improvements constructed thereon, is hereby submitted and made subject to the form of ownership set forth in the Georgia Condominium Act, and said property is hereby made subject to this Declaration. Said property shall be owned, held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the provisions of the Georgia Condominium Act and this Declaration, and every grantee of any interest in said property by acceptance of a deed or other conveyance of such interest, whether or not such deed or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall take subject to the provisions of the Georgia Condominium Act and this Declaration and shall be deemed to have assented to the same.

#### ARTICLE I

##### STATUTORY PROVISIONS AND DEFINITIONS

This Declaration is made pursuant to the statutory provisions set forth in Exhibit "B" attached hereto and by reference made a part hereof. Further, certain words used in this Declaration shall have the definitional meaning set forth in said Exhibit "B".

#### ARTICLE II

##### PROPERTY SUBJECT TO THIS DECLARATION

The real property which is owned in fee simple by Declarant and which is, by the recording of this Declaration, submitted to the form of ownership set forth in the Georgia Condominium Act, and which is made subject to the provisions of this Declaration, and which, by virtue of the recording of this Declaration, shall be owned, held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the provisions of the Georgia Condominium Act and this Declaration, is described in Exhibit "A" attached hereto and by reference made a part hereof.

#### ARTICLE III

##### PLAN OF DEVELOPMENT

The development plan of the property is set forth in Exhibit "C" attached hereto and by reference made a part hereof.

## ARTICLE IV

### PROPERTY RIGHTS

1. Units. Each Unit, together with its undivided interest in the common elements in the percentage hereinafter specified and established, shall for all purposes constitute real property which may be owned in fee simple and which, subject to the provisions of the Georgia Condominium Act and this Declaration, may be conveyed, transferred and encumbered in the same manner as any other property. Each Unit shall include all the space within the boundaries thereof. The boundaries of a Unit shall be as set forth in Exhibit "D" attached hereto and by reference made a part hereof. Units shall not be subdivided and, unless the relocation thereof is accomplished in strict accordance with the provisions of the Georgia Condominium Act, boundaries between Units shall remain as established in accordance with the original construction of the Units. The ownership of each Unit shall include its appurtenant percentage or fraction of undivided interest in the common elements and voting weight assigned to the Unit for voting purposes. Such undivided interest in the common elements shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. A Unit Owner shall automatically be a member of the Association and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title. No Unit Owner, whether one or more persons, shall have more than one membership per Unit.

2. Limited Common Elements. "Limited common elements" shall mean the areas and facilities so designated in said Exhibit "D" attached hereto. Limited common elements shall not be construed or interpreted to be separate and apart from the common elements in general, being limited only with respect to the reserved use thereof to the Unit or Units served thereby.

3. Partition. The common elements shall remain undivided and, unless the condominium form of ownership hereby established is terminated, or submitted property is withdrawn from the Condominium, as hereinafter provided, no Unit Owner nor any other person shall bring any action for partition or division of the whole or any part of any Unit or of the whole or any part of the common elements.

4. Easements. The following easements from each Unit Owner to each other Unit Owner and to the Association are hereby reserved and established:

(a) Use and Enjoyment. Every Unit Owner, his family, tenants and guests, shall have a right and easement of use and enjoyment in and to the common elements (including the right of access, ingress and egress to and from his Unit over those portions of the Property designated for such purpose) and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions: The right of the Association to control the use and enjoyment thereof as provided in Article VII hereof and Article XI hereof, which shall include but not be limited to the right of the Association to limit the use and enjoyment thereof to the Unit Owners and their respective families, tenants and guests, as well as to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by a Unit Owner, his family, tenants and guests; the right of the Association to limit the number of guests of Unit Owners; the right of the Association to charge admission and other fees for the use of a particular recreational facility, if the Condominium includes any such facilities (which charges and fees, unless paid separately, shall be added to and become part of the assessment or portion thereof next coming due to which the Unit Owner is subject); and right of the Association to suspend the voting rights and right to use of such recreational facilities by a Unit Owner, his tenants and guests, for any period of time during which an assessment against his Unit remains unpaid or any separate charge incurred by such Unit Owner for use of such recreational facilities remains unpaid, or for a reasonable time for infraction of its published rules and regulations.

(b) Maintenance and Repair. There shall be an easement through the Units and the common elements for the installation, maintenance, repair and replacement of Units and the common elements. Use of this easement shall be only during normal business hours, except that access may be had at any time in the case of emergency.

(c) Structural Support. Every portion of a Unit which contributes to the structural support of another Unit shall be burdened with an easement of structural support. No Unit Owner shall be permitted to demolish his Unit except to the extent that such demolition may be required to repair or rebuild the Unit when the same has been partially or totally destroyed as provided in Article IX hereof.

(d) Encroachments. If any portion of the common elements encroaches upon any Unit, or if any Unit encroaches upon any other Unit or upon any portion of the common elements, as a result of the construction, reconstruction, repair, renovation, restoration, shifting, settlement or movement of any portion of the Condominium, a valid easement for the encroachment and for the maintenance, repair and replacement thereof shall exist so long as the encroachment exists. In the event any buildings, any Unit, any adjoining Unit, or any adjoining common element, shall be partially or totally damaged or destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then repaired or reconstructed, encroachments of portions of the common elements upon any Unit, or of any Unit upon any other Unit or upon any portion of the common elements, due to such repair or reconstruction, shall be permitted, and valid easements for such encroachments and the maintenance, repair and replacement thereof shall exist.

(e) Utilities, etc. The Association shall have the power to grant easements for utilities and other purposes as provided in the Georgia Condominium Act.

(f) Other. (i) There shall be a general easement to the Association, its directors, officers, agents and employees (including, but not limited to any manager employed by the Association) to enter upon the Property or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with the permission of the Unit Owner directly affected thereby.

(ii) The Declarant and his duly authorized agents, representatives and employees shall have an easement for the maintenance of sales offices and/or model Units on the submitted property, so long as the Declarant owns any condominium Unit primarily for the purpose of sale.

(iii) The Declarant shall have a transferable easement on and over the common elements for the purpose of making improvements contemplated by the condominium instruments on the submitted property and any additional property, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

5. Allocation of Percentage or Fractional Interests and Voting Weight. The percentage or fraction of interest in the common



elements and voting weight appurtenant to each Unit shall be as provided in Exhibit "E" attached hereto and by reference made a part hereof.

## ARTICLE V

### MAINTENANCE AND REPAIR

1. Association. Except as may be herein otherwise specifically provided, the responsibility of the Association shall be as follows:

(a) To maintain, repair and replace the common elements.

(b) To provide exterior maintenance upon the buildings containing the Units, including the following: paint, repair, replace and care for roofs (including the roof decking and trusses supporting the roof), gutters and downspouts, if any, exterior walls and surfaces bounding the Units (but not including the wood, dry-wall, plaster or other building material on the Unit side of the perimetrical or vertical boundaries of the Unit), patios, decks, stairways, stoops, landings, steps, projecting cornices and copings, and other exterior improvements. Such exterior maintenance shall include utility lines, pipes, wires and conduits serving more than one Unit, or serving a particular Unit up the point where the same intersect the exterior of the building or where the same go beneath the structure of the Unit itself. Such exterior maintenance shall not include exterior doors (including sliding glass doors), windows, screens or exterior lights serving a Unit. The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Unit, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the common elements or from any pipe, drain, conduit, appliance or equipment -the responsibility for the maintenance of which is that of the Association. The Association shall not be liable to the Owner of any Unit for loss or damage, by theft or otherwise, of any property which may be so-tred in or upon any of the common elements. No diminution or abatement of assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

(c) To repair incidental damage to any Unit resulting from the performance of work which is the responsibility of the Association.

(d) In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors of the Association.

2. Unit Owner. The responsibility of the Unit Owner shall be as follows:

(a) To maintain, repair and replace all portions of his Unit, except those portions which are to be maintained, repaired or replaced by the Association. The responsibility of the Unit Owner shall include the maintenance, repair and replacement of all fixtures and equipment installed in his Unit commencing at the point where the utility lines, pipes, wires, conduits or systems intersect the exterior walls forming the building in which the Unit is located. The responsibility of the Unit Owner shall also include the maintenance and repair of such wood, dry-wall, plaster or other building material on the Unit side of the exterior walls forming the boundaries of the Unit, as well as the maintenance, repair and replacement of the windows (including sliding glass doors), screens and exterior light fixtures serving his Unit. Further, the maintenance and repair of the heating, air conditioning, plumbing, electrical, chimney and vent systems serving the Unit, including those portions, such as the compressor, located outside the Unit, shall be the responsibility of the Unit Owner.

(b) To keep in a neat, clean and sanitary condition any limited common elements serving his Unit.

(c) To perform his responsibilities in such manner so as not to unreasonably disturb other persons in other Units.

(d) Not to paint or otherwise decorate or change the outside appearance of the Unit, any appurtenance thereto, or any limited common elements serving the Unit unless the written consent of the Board of Directors of the Association, or an architectural committee appointed by the Board, is first obtained. Further, the design, type, location, size, color and intensity of all exterior lights shall be subject to control by the Board of Directors of the Association.

(e) To promptly report to the Association or its agent any defect or need for repairs, the responsibility for the remedying of which is the Association.

(f) Not to make any alterations in the portions of the Unit which are to be maintained by the Association or to remove any portion thereof or to make any additions thereto or do anything which would or might jeopardize or impair the safety or soundness of any Unit without first obtaining the written consent of the Board of Directors of the Association and all mortgagees of the Units affected, nor shall any Unit Owner impair any easement without first obtaining written consent of the Association and of the Unit Owner or Owners and their mortgagees for whose benefit such easement exists.

(g) To pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Unit Owner but which responsibility such Owner fails or refuses to discharge, or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Unit Owner, his family, tenants or guests; with the cost thereof to be added to and become part of the assessment or portion thereof next coming due to which the Unit Owner is subject.

## ARTICLE VI

### ASSESSMENTS

1. Creation of Lien and Personal Obligation of Assessments. Each Owner of any Unit, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association annual assessments or charges and special assessments or charges which shall be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on and a continuing lien upon the Unit (including the undivided interest in the common elements appurtenant thereto) against which each such assessment is made. Each Unit Owner shall be liable for his portion of each assessment coming due while he is the Owner of a Unit and his grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of a conveyance but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor; provided, however, that if such grantor or grantee shall request

a statement from the Association as provided in Section 4 of this Article VI, such grantee, his successors, successor-in-title and assigns, shall not be liable for, nor shall the condominium Unit conveyed be subject to a lien for, any unpaid assessments against such grantor in excess of the amount set forth in such statement, if any. In the event that the holder of a first priority, or secondary purchase money, mortgage of record or other person acquires title to any condominium Unit as a result of foreclosure of a first, or secondary purchase money, mortgage, such holder or other person, his successors, successors-in-title and assigns, shall not be liable for, nor shall such condominium Unit be subject to a lien for, any assessment hereunder or under any condominium instrument chargeable to such condominium Unit on account of any period prior to such acquisition of title; provided, however, that such unpaid share of an assessment or assessments shall be deemed to be common expenses collectible from all of the Unit Owners including such holder or other person, his successors, successors-in-title and assigns.

## 2. Allocation of Liabilities for Common Expenses.

(a) Special Assessments. Any common expenses associated with the maintenance, repair, renovation, restoration, or replacement of any limited common element shall be specially assessed against the condominium Unit to which that limited common element was assigned at the time such expenses were made or incurred; however, if any such limited common element was assigned at that time to more than one Unit, such common expenses shall be specifically assessed against each such condominium Unit equally (so that the total of such special assessments equals the total of such expenses). Any other common expenses occasioned by the conduct of less than all those entitled to occupy all of the Units or by the licensees or invitees of any such Unit or Units shall be specially assessed against the condominium Unit or Units, the conduct of any occupant, licensee or invitee of which occasioned any such common expenses. Any other common expenses significantly disproportionately benefiting all of the Units shall be assessed equitably among all of the condominium Units. The special assessments provided for in this subsection shall be levied by the Board of Directors of the Association and the amount and due date(s) of such special assessments so levied by said Board shall be as specified by said Board. ✓

(b) General Assessments. The amount of all common expenses not specially assessed pursuant to subsection (a) above, less the amount of all undistributed and unreserved common profits, shall be assessed against the condominium Units in accordance with the respective percentages or fractions of undivided ownership interest in the common elements attributable to each Unit as provided

in Exhibit "E" attached hereto. For the calendar year 1976, if this Declaration is recorded prior to January 1, 1977, and also for the calendar year 1977, the amount of the annual assessment payable by the Unit Owners under this subsection shall be the amount specified in the operating budget which is furnished by Declarant to prospective purchasers of Units in the Condominium. For calendar years subsequent to 1977, the annual assessment payable by the Unit Owners under this subsection shall be levied by the Board of Directors of the Association after the same is determined in the following manner. Not later than September 1, 1977 and September 1st of each calendar year thereafter, the Board of Directors of the Association shall prepare and submit in writing to the Unit Owners an estimate of budget of the charges and expenses for the ensuing calendar year to be paid by assessments collected from the Unit Owners under this subsection. Such charges and expenses may include, but shall not necessarily be limited, to the following: (i) management fees and expenses of administration; (ii) common utility bills and charges for other common services; (iii) cost of any master or blanket policies of insurance purchased for the benefit of all Unit Owners and the Association as required by this Declaration, including fire and other hazard coverage, public liability coverage, and such other insurance coverage as the Board of Directors determines to be in the interests of the Association and the Unit Owners; (iv) the expense of maintenance, operation and repair of the common elements, if such expense is not covered by the special assessments provided for under subsection (a) above; and (v) establishment and maintenance of one or more reasonable reserve funds for such purposes as to cover unforeseen contingencies or deficiencies arising from unpaid assessments or liens, as well as emergency expenditures and other matters as may be authorized from time to time by the Unit Owners. It is anticipated that ad valorem taxes and governmental assessments, if any, upon the Property will be assessed by the taxing authorities upon the Unit Owners and that each such assessment will include the assessed value of the Unit and of the undivided interest of the Unit Owner in the common elements. Any such taxes and special assessments upon the Property which are not so assessed shall be included in the budget of the Association as recurring expenses and shall be paid by the Association as a common expense. Each Unit Owner is responsible for making his own return of taxes and such return shall include the Unit Owner's undivided interest in the common elements. In addition to the amount to be paid for common expenses, the Board of Directors of the Association may also include in such estimated budget for the ensuing calendar year an amount which, as a part of the annual assessment, is to be contributed by the Unit Owners for capital purposes. The actual amount of the annual assessment for common expenses and capital contributions, if any, shall be determined by (i) the approval of a majority vote of the Unit Owners, other than Declarant, present in person or by proxy at the annual meeting of the Unit Owners next preceding the calendar year for which the budget is being determined, or-at a special meeting of the Unit Owners duly called for such purpose, and (ii) the approval of Declarant so long as Declarant shall own one or more Units in the Condominium.

If the amount of the annual assessment originally so approved by the Unit Owners for a particular calendar year shall

be inadequate for any reason, then a further assessment may be levied by the Board of Directors under this subsection upon (i) the approval of a majority vote of the Unit Owners, other than Declarant, present in person or by proxy at a special meeting of the Unit Owners duly called for such purpose and (ii) the approval of Declarant so long as Declarant shall own one or more Units in the Condominium.

If for any reason an annual budget is not approved as required hereby, the budget last approved by the Unit Owners shall be deemed to be the currently approved budget, with assessments being payable in accordance therewith, until a new budget is approved by the Unit Owners at a meeting duly called for such purpose in accordance with the provisions hereof.

The annual assessment for common expenses and capital contributions, if any, determined as aforesaid, shall be paid by and collected from the Unit Owners in accordance with the respective percentages or fractions of undivided ownership interest in the common elements attributable to each Unit as provided in Exhibit "E" attached hereto. Each Unit Owner shall be obligated to pay such assessments to the Association treasurer in equal monthly installments on or before the first day of each month during the calendar year, or in such other reasonable manner as the Board of Directors of the Association shall designate. All capital contributions shall be deposited in a special reserve account to be used only for capital purposes, as determined from time to time by the Board of Directors of the Association. Unless otherwise specified by the Board of Directors of the Association, each installment payment made by a Unit Owner on the annual assessment shall be allocated to the common expense fund and to the capital reserve account on a prorata basis, according to the amount to be paid for common expenses and to be contributed to capital for the particular calendar year.

Any of the foregoing provisions of this subsection which may be construed to the contrary notwithstanding, no assessment shall be payable under this subsection by any Unit Owner until this Declaration is filed for record in the office of the Clerk of the Superior Court of the County in which this Condominium is located. Therefore, the first annual assessment payable under this subsection shall be prorated according to the number of days remaining in the calendar year after the date upon which this Declaration is so filed and recorded. Also, with respect to any Unit which may be constructed on any portion of the Additional Property and made a part of this Condominium, the annual assessment therefor shall be determined on the same basis as then appertaining to other Units already a part of this Condominium, and such assessment for the year in which such Unit is added to this Condominium shall be prorated to the effective date of the addition of such Unit to this Condominium. No Unit shall be subject to assessment for any period prior to the time such Unit is made a part of this Condominium.

3. Special Assessments for Capital Improvements. In addition to the special and general assessments authorized above, and in addition to the special assessments for reconstruction or repair

of casualty damage authorized below under Article IX, the Board of Directors of the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any capital addition to or capital improvement of the common elements (including the necessary fixtures and personal property related thereto), or for the cost of repair or replacement of a portion of the common elements (including the necessary fixtures and personal property related thereto), which is for the benefit of all Unit Owners in the Condominium as a whole. Provided, however, the total amount of the special assessments levied by the Board of Directors under and pursuant to the provisions of this Section shall not exceed the sum of \$50.00 per Unit in any one calendar year, unless approved by a majority of the votes of the Unit Owners who are voting in person or by proxy at a meeting duly called and held for such purpose. Unit Owners shall be assessed for special assessments under this Section in accordance with said respective percentages or fractions of undivided interest in the common elements appurtenant to each Unit and the due date(s) of any such special assessments shall be specified by the Board of Directors of the Association. Provided, further, so long as Declarant shall own one or more Units in the Condominium, no special assessment shall be levied against the Unit Owners under and pursuant to the provisions of this Section unless such special assessment shall be approved by a majority of the votes of the Unit Owners other than Declarant who are voting in person or by proxy at a meeting duly called and held for such purpose, and also by Declarant.

4. Assessments For Membership in Lake Arrowhead Yacht & Country Club. Each Unit Owner shall be a member of the Lake Arrowhead Yacht & Country Club, and, as such, shall have the same membership privileges and obligations as the owner of a residential lot in Lake Arrowhead. Accordingly, as an incident to such membership, each Unit Owner (other than Declarant) shall be obligated to pay, on a monthly basis, an annual assessment to the Lake Arrowhead Yacht & Country Club, which assessment shall be separate and apart from any assessments otherwise payable in connection with the Condominium as herein elsewhere provided, for the maintenance and operation of streets, common facilities, etc. in Lake Arrowhead. For the calendar year 1976, the annual assessment payable to the Lake Arrowhead Yacht & Country Club is \$150, payable at the rate of \$12.50 per month. To reflect the increase in the cost of living, the annual assessment payable by each Unit Owner (other than Declarant) to the Lake Arrowhead Yacht & Country Club shall be subject to increase to the extent of any rise subsequent to January 1, 1973 (with a \$10.00 per month base) in the cost of living index as determined by the U. S. Commodity Index, Washington, D.C., or any successor index. A Unit Owner shall have no ownership interest in the facilities operated by Lake Arrowhead Yacht & Country Club, but a Unit Owner shall have the privilege to use and enjoy such facilities on the same basis as the owner of a residential lot in Lake Arrowhead; provided, however, such privilege may be suspended during any period of time for which the assessment is not paid, or for a reasonable period of time for infraction of Lake Arrowhead Yacht & Country Club's rules and regulations. The obligation to pay this assessment to the Lake Arrowhead Yacht & Country Club shall be a lien and permanent charge against an Owner's Unit and the priority

of such lien shall be similar to that herein elsewhere provided with respect to the lien for assessments relating to the Condominium. Also, the liability of a Unit Owner to pay the annual assessment to the Lake Arrowhead Yacht & Country Club and the right of Lake Arrowhead Yacht & Country Club to enforce collection thereof shall be similar to that herein elsewhere provided with respect to the obligation of a Unit Owner to pay assessments with respect to the Condominium and the right of the Association to enforce collection thereof. The first annual assessment payable to Lake Arrowhead Yacht & Country Club by a Unit Owner (other than Declarant) under this Section shall be prorated according to the number of days remaining in the calendar year following the conveyance of the Unit by Declarant to a Unit Owner. No Unit shall be subject to the assessment provided for in this Section for any period prior to the time such Unit is conveyed by Declarant to a Unit Owner. In addition to the foregoing annual assessment, the payment of which is not dependent on actual use of the facilities operated by Lake Arrowhead Yacht & Country Club, Lake Arrowhead Yacht & Country Club shall have the right to charge, and change from time to time, separate fees for actual use of the facilities operated by Lake Arrowhead Yacht & Country Club. This Section is incorporated in this Declaration for the benefit of the Lake Arrowhead Yacht & Country Club and may not be abrogated, modified, rescinded, supplemented or amended in whole or in part without the written consent of Lake Arrowhead Yacht & Country Club.

5. Evidence of Payment. Any Unit Owner, mortgagee of a Unit, person having executed a contract for the purchase of a condominium Unit, or lender considering the loan of funds to be secured by a condominium Unit, shall be entitled upon request to a statement from the Association or its management agent setting forth the amount of assessments past due and unpaid (with late charges and interest applicable thereto) against that condominium Unit. Such request shall be in writing, delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. Failure on the part of the Association to mail to such address as may be specified in the written request therefor, or otherwise furnish, such a statement within five (5) business days from the receipt of such request shall cause the lien for assessments created by this Article, as to amounts due and payable at the expiration of such five-day period, with respect to the condominium Unit involved, to be extinguished and of no further force or effect as to the title or interest acquired by the purchaser or lender, if any, as the case may be, and their respective successors and assigns, in the transaction contemplated in connection with such request. The information specified in such statement shall be binding upon the Association and every Unit Owner. Payment of a fee of Ten (\$10.00) Dollars, which shall accompany such request, shall be required as a prerequisite to the issuance of such a statement.

6. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment, or portion thereof, not paid when due shall be delinquent. If the same is not paid within five (5) days after the due date, then a late charge equal to the greater



of Ten (\$10.00) Dollars or ten (10%) percent of the amount of each assessment or installment thereof not paid when due shall also be due and payable to the Association. If any assessment or portion thereof is delinquent for a period of more than five (5) days, then if not paid within ten (10) days after written notice is given to the Unit Owner to make such payment, the entire unpaid balance of the assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full, and foreclosure proceedings may be instituted to enforce such lien. Such notice shall be sent by certified mail, return receipt requested, to the Unit Owner both at the address of the Unit and at any other address or addresses the Unit Owner may have designated to the Association in writing, specifying the amount of the assessments then due and payable, together with authorized late charges, and interest accrued thereon. Any assessment or portion thereof not paid when due shall bear interest from the date of delinquency until paid at the maximum legal rate. The Board of Directors of the Association may suspend the rights of the Unit Owner during the period in which any assessment or portion thereof remains unpaid and after at least ten (10) days written notice is given to the Unit Owner as aforesaid, and the Association may bring an action at law against the Unit Owner personally obligated to pay the same or foreclose its lien against such Owner's Unit, in which event late charges, interest and costs of collection shall be included in such lien, with such costs of collection to include court costs, the expenses of sale, any expenses required for the protection and preservation of the Unit, and reasonable attorneys' fees actually incurred, and the fair rental value of the condominium Unit from the time of the institution of suit until the sale of the condominium Unit at foreclosure (or until the judgment rendered in such suit is otherwise satisfied). All payments on account shall be applied first to late charges, then interest, and then to the assessment lien first due. All late charges and interest collected shall be credited to the common expense fund. Each Unit Owner vests in the Board of Directors of the Association the right and power to bring all actions against him personally for the collection of such assessments as a debt and to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article VI shall be in favor of the Association and shall be for the benefit of all Unit Owners. The Board of Directors, acting on behalf of the Association, shall have the power to bid in the Unit at any foreclosure sale and to acquire, hold, lease, encumber and convey the same. No Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common elements or abandonment of his Unit. The lien for assessments shall lapse and be of no further effect as to assessments or installments thereof, together with late charges and interest applicable thereto, first becoming due and payable more than three (3) years prior to the date upon which the notice contemplated in this Section is given, or more than three (3) years prior to the institution of suit therefor if suit is not instituted within ninety (90) days after the giving of such notice.

7. Priority of Lien. The lien of the assessments provided for in this Article VI shall be prior and superior to all other liens except only (a) ad valorem taxes, (b) the lien of a first mortgage, if any, or secondary purchase money mortgage, if any, to which the Unit is subject, and (c) the lien of any

mortgage recorded prior to the recording of this Declaration. The sale or transfer of any Unit shall not affect the assessment lien; provided, however, that the sale or transfer of any Unit which is subject to any such mortgage pursuant to the judicial sale or foreclosure thereof, or pursuant to any proceeding in lieu of foreclosure, shall extinguish the lien of such assessments as to the payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve the Unit Owner from liability for any assessment thereafter becoming due or the Unit from the lien thereof.

## ARTICLE VII

### ADMINISTRATION

The administration of the Condominium, including but not limited to the acts required of the Association, shall be governed by the following provisions:

1. Meetings. Meetings of the members of the Association shall be held in accordance with the provisions of the Association's By-Laws, and in any event not less frequently than annually. Notice shall be given to each Unit Owner at least twenty-one (21) days in advance of any annual or regularly scheduled meeting, and at least seven (7) days in advance of any other meeting, stating the time, place and purpose of such meeting. Such notice shall be delivered personally or sent by United States mail, postage prepaid, to all Unit Owners of record at such address or addresses as any of them may have designated, or, if no other address has been so designated, at the address of their respective Units. At the annual meeting, comprehensive reports of the affairs, finances and budget projections of the Association shall be made to the Unit Owners.

2. Quorums. A quorum shall be deemed present throughout any meeting of the members of the Association until adjourned if persons entitled to cast more than one-third (1/3rd) of the votes of the Association are present in person or by proxy at the beginning of such meeting.

3. Directors and Officers. If the By-Laws provide that any member of the Board of Directors or any officer of the Association must be a Unit Owner, then, the term "unit owner" in such context shall be deemed to include, without limitation, any shareholder, director, officer, partner in, or trustee of any person which is, either alone or in conjunction with any other person or persons, a Unit Owner. Any individual who would not be eligible to serve as a member of the Board of Directors or officer were he not a shareholder, director, officer, partner in, or trustee of such a person, shall be deemed to have disqualified himself from continuing in office if he ceases to have any such affiliation with that person.

4. Duties and Powers. The duties and powers of the Association shall be those set forth in the Georgia Condominium Act, this Declaration and the By-Laws, together with those reasonably implied to effect the purposes of the Association. Such powers shall include, but shall not be limited to, the power to purchase one or more Units and to hold, lease, mortgage, sell and convey the same. Provided, however, that if there are conflicts or inconsistencies between the Georgia Condominium Act, this Declaration or the By-Laws, the terms and provisions of the Georgia Condominium Act and this Declaration (in that order) shall prevail and the Unit Owners covenant to vote in favor of such amendments as will remove such conflict or inconsistencies. The powers and duties of the Association shall be exercised in the manner provided by the Georgia Condominium Act, this Declaration and the By-Laws.

5. Agreements. Subject to the provisions of Section 1 of Article XII of this Declaration, all agreements and determinations lawfully authorized by the Board of Directors of the Association shall be binding upon all Unit Owners, their heirs, legal representatives, successors, assigns or others having an interest in the Property or the privilege of possession and enjoyment of any part of the Property. In furtherance of the foregoing and not in limitation thereof, unless each holder of a first mortgage lien on Units in the Condominium shall agree in writing that the same shall not be required, the Board of Directors of the Association shall employ a professional manager for the administration and operation of the Condominium, provided, however, any management agreement for the Condominium shall be terminable by the Association for cause upon thirty (30) days' written notice thereof, and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods. All costs and expenses incident to the employment of a manager shall be common expenses payable from the common expense fund. During his tenure, the manager may, if authorized by the Board of Directors, exercise all of the powers and shall be responsible for the performance of all the duties of the Association, excepting any of those powers and duties specifically and exclusively reserved to the Directors, officers or members of the Association by the Georgia Condominium Act, this Declaration or the By-Laws. The manager may be an individual, corporation, or other legal entity, as the Board of Directors shall determine and may be bonded in such amount as the Board of Directors may require. The cost of acquiring any such bond shall be an expense of administration, payable from the common expense fund.

6. Property. All funds received and title of all properties acquired by the Association and the proceeds thereon after deducting therefrom the costs incurred by the Association in ac-

quiring the same shall be held for the benefit of the Unit Owners as herein provided and for the purposes herein stated. The shares of the Unit Owners in the funds and assets of the Association cannot be individually assigned, hypothecated or transferred in any manner except as an appurtenance to a Unit. In the discretion of the Board of Directors, any surplus funds shall be distributed to, or credited to the next assessments chargeable to the Unit Owners, or added to one or more reserve funds established or maintained by the Association.

7. Notices. Notices or demands, for any purpose, shall be given by the Association and other unit Owners in the manner provided for notices to members of the Association by the Georgia Condominium Act, this Declaration or the By-Laws of the Association. Further, each Unit Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage affecting such Owner's Unit and the Association shall be obligated to notify the holder of any first mortgage affecting such Owner's Unit of any default by such Owner in the performance of any of such Owner's obligations under this Declaration or any other condominium document which is not cured within thirty (30) days from the date of any such default. Further, the holder of any first mortgage on any Unit in the Condominium shall, upon request, be entitled to written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings. Each Owner hereby consents to such notification to any such mortgage holder by the Association.

8. Enforcement. The failure of the Association or any Unit Owner to enforce any covenant or provision of the Georgia Condominium Act, this Declaration, the By-Laws, or the regulations affecting the Condominium shall not constitute a waiver of the right to do so thereafter.

9. Rules and Regulations. Reasonable regulations concerning the use of the Units, appurtenances thereto, and common elements may be made and amended from time to time by the Board of Directors of the Association; provided that copies of such regulations and amendments thereto shall be furnished by the Association to all Unit Owners. Such regulations shall be binding upon the Unit Owners, their families, tenants, guests, invitees and agents, until and unless such regulation, rule or requirement be specifically overruled and cancelled in a regular or special meeting by the vote of Unit Owners holding a majority of the total votes in the Condominium. Failure to abide by any such regulation, rule or requirement shall be grounds for an action by the Association and any aggrieved Unit Owner to recover damages, or obtain injunctive and equitable relief or both.

10. Disclosure of Financial Records. The holder of any first mortgage on any Unit in the Condominium shall, upon request, be entitled to: (a) inspect the books and records of the Association during normal business hours; and (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.

11. Liability. Each Director and each officer of the Association shall be held harmless from expense, loss or liability by reason of having served as such Director or as such officer and shall be indemnified by all the Unit Owners (as a common expense) against all expenses and liability, including reasonable attorneys' fees, incurred by or imposed upon him in connection with any proceeding to which he may be a party, or have become involved by reason of being such Director or such officer, whether or not he is a Director or officer at the time such expenses are incurred, except in such cases wherein the expenses and liability arise from a proceeding in which such Director or such officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties. Provided, however, that in the event of a settlement, the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interests of the Association.

12. Compensation. No Director or officer of the Association shall receive any fee or compensation for services performed by him unless such fee or compensation is first fixed by a resolution adopted by a majority vote of the Unit Owners present in person or by proxy at a meeting duly called and held for such purpose.

## ARTICLE VIII

### INSURANCE

The insurance which shall be carried upon the Property shall be governed by the following provisions:

1. Authority to Purchase. Except builder's risk and other required insurance furnished by Declarant during construction and except as herein otherwise provided, insurance policies upon the Property shall be master or blanket policies purchased by the Association for the benefit of the Unit Owners and their respective mortgagees as their interests may appear. Such policies shall provide for the issuance of certificates to the Unit Owners and for mortgagee endorsements to the mortgagees of the Units or any of

them. All policies purchased by the Association shall be written with a company licensed to do business in Georgia. Such policies and the endorsements thereon shall be deposited with the Insurance Trustee as hereinafter defined.

## 2. Coverages.

(a) All Units and all other insurable improvements (exclusive of improvements and betterments of a Unit Owner which shall be his responsibility) upon the Property and all personal property as may be owned by the Association shall be insured in an amount equal to the maximum insurable replacement value thereof as determined annually by the Board of Directors of the Association. Such coverage shall afford protection against: (i) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (ii) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as the Units, including but not limited to, vandalism and malicious mischief.

(b) Public liability and property damage in such amounts and in such forms as shall be required by the Board of Directors of the Association, (but not in amounts less than \$500,000.00 for injury, including death, to a single person, \$1,000,000.00 for injury or injuries, including death, arising out of a single occurrence, and \$50,000.00 property damage) covering the Association, the Board of Directors and the officers of the Association, all agents and employees of the Association, and all Unit Owners and other persons entitled to occupy any Unit or other portion of the Condominium.

(c) Workmen's Compensation Policy to the extent necessary to comply with any applicable laws.

(d) Such other types and amounts of insurance as may be authorized by the Board of Directors.

3. Premiums. Premiums upon insurance policies purchased by the Association shall be common expenses and shall be paid by the Association.

4. Policy Provisions. Insofar as permitted by law, the Association shall be required to make every effort to secure insurance policies providing:

(a) Waiver of subrogation by the insurer as to any claims against the Association, and Unit Owners, their respective families, tenants, agents and guests, with respect to property coverage only, except for arson and fraud;

(b) That the master policy not be cancellable, invalidated, or suspended on account of the conduct of one or more of the individual Unit Owners, or their respective families, tenants, agents and guests, without thirty (30) days advance written notice to the Association;

(c) That the "no other insurance" clause in the master policy not be applicable to insurance policies obtained by an individual Unit Owner on his contents, improvements and betterments; and

(d) That all liability insurance shall contain cross-liability endorsements to cover liability of the Unit Owners as a group to a Unit Owner.

5. Insurance Trustee. All casualty insurance policies purchased by the Association for the benefit of the Unit Owners and their mortgagees shall provide that (i) proceeds covering property losses of Declarant shall be paid directly to Declarant, or in the event a mortgagee endorsement has been issued, then jointly to the mortgagee and Declarant, and (ii) proceeds covering property losses of Unit Owners other than Declarant shall be paid to an insurance trustee, which shall be a bank or other financial institution having trust powers with offices in Georgia, as may from time to time be approved by the Board of Directors of the Association, which insurance trustee is herein referred to as the "Depositary". The duty of the Depositary shall be to receive such proceeds as are paid to it and hold the same for the purposes elsewhere stated herein and for the benefit of such Unit Owners and their mortgagees in the following shares but which shares need not be set forth on the records of the Depositary:

(a) Common Elements. Proceeds on account of damage to common elements not involving a Unit, an undivided share for each Unit Owner, such share being the same as the undivided share in the common elements appurtenant to his Unit.

(b) Units. Proceeds on account of damage to Units (or on account of damage to common elements involving a Unit) shall be held for the Owners of the damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Board of Directors of the Association.

(c) Mortgagees. In the event a mortgagee endorsement has been issued as to any Units, the share of a Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear. In the event of substantial damage to or destruction of any Unit or any part of the common elements, the holder of any first mortgage on a Unit shall be entitled to timely

written notice of any such damage or destruction and no provision of this Declaration or of any other document establishing the Condominium shall entitle the Owner of a Unit or other party to priority over such holder with respect to the distribution to such Unit of any insurance proceeds.

6. Other Insurance. Each Unit Owner may obtain insurance at his own expense, affording coverage upon his personal property, as well as upon any improvements and betterments he may make to his Unit, or as may be required by law. In the event a Unit Owner may carry insurance individually upon his interest in the Condominium, which, in case of loss, results in proration of insurance proceeds between the master policy carried by the Association and the Unit Owner's insurer, the proceeds available under the Unit Owner's policy shall be payable to the Depositary, who is irrevocably designated as trustee of each insuring Unit Owner (other than Declarant) for the purposes of reconstruction. Any over-plus remaining upon completion of reconstruction directly affecting any such Unit Owner shall thereupon be paid by the Depositary to the Unit Owner. Each Unit Owner acquiring additional separate insurance coverage shall furnish the Association with a copy of each such policy within ten (10) days following acquisition. Insofar as may be permitted by law, each such policy acquired by a Unit Owner shall contain a waiver of subrogation as to any claims against the Association and of any defense based on co-insurance.

## ARTICLE IX

### RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE

#### 1. Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Property covered by insurance purchased by the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance with respect to property losses of Unit Owners other than Declarant and obtain reliable and detailed estimates of the cost of repair or reconstruction of such damaged or destroyed property. Repair or reconstruction as used in this paragraph, means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty with each Unit and the common elements having the same boundaries as before.

(b) Each Unit Owner and each mortgagee of a Unit, by acceptance of a deed or other conveyance to a Unit, hereby agrees that in the case of damage or destruction to common elements not involving any Unit, such damage or destruction shall be re-



paired or reconstructed unless, within forty-five (45) days of the day of such a casualty, Unit Owners, and their first mortgagees, comprising at least seventy-five (75%) percent of the total vote of the Association agree in writing not to repair or reconstruct.

(c) Each Unit Owner and each mortgagee of a Unit by acceptance of a deed or other conveyance to a Unit, hereby agrees that in the case of damage or destruction to one or more Units, such damage or destruction (including any damage or destruction to any common elements involving any such damaged Unit) shall be repaired or reconstructed unless within forty-five (45) days of such a casualty:

(i) in the event seventy-five (75%) percent or more Units in any one (1) building have been damaged or destroyed, Unit Owners, and their first mortgagees, comprising at least seventy-five (75%) percent of the total vote of the Association agree in writing not to repair or reconstruct, provided, however, that notwithstanding such agreement, if, within thirty (30) days of said agreement, all of the Unit Owners of all damaged or destroyed Unit(s), and their first mortgagees, agree in writing to repair or reconstruct, then said damage or destruction shall be repaired or reconstructed, or

(ii) as to each damaged or destroyed Unit, in the event less than seventy-five (75%) percent of the Units in any one (1) building have been damaged or destroyed, the Unit Owner of the damaged or destroyed Unit, as well as any first mortgagee thereof, and Unit Owners and their first mortgagees, comprising at least seventy-five (75%) percent of the total vote of the Association agree in writing not to repair or reconstruct.

Should the Unit Owners, and their first mortgagees, so decide not to repair or reconstruct a damaged or destroyed Unit, then such damaged or destroyed Unit shall not be repaired or reconstructed and the entire undivided interest in the common elements appertaining to that Unit shall thenceforth appertain to the remaining Units, being allocated to them in proportion to their undivided interests in the common elements immediately prior to such allocation; and any remaining portion of such damaged or destroyed Unit, including the land which was subjacent thereto (if originally included within the boundaries of the Unit), shall thenceforth be a part of the common elements. Votes in the Association and liability for assessments shall thereupon appertain to the remaining Units, being allocated to them in proportion to their relative voting strength in the Association and liability for assessments immediately prior to such allocation.

(d) If for any reason the amount of insurance proceeds to be paid as a result of a casualty, or reliable and detailed estimates of the cost of repair or reconstruction of such a casualty, are not made available within forty-five (45) days after such a casualty, then the 45-day period specified in subsection (b) or (c) above, as the case may be, shall be extended until such information is made available; provided, however, that such period of time shall in no event exceed sixty (60) days after such a casualty.

(e) So long as Declarant retains control of the Association as hereinafter provided, the Depositary may rely upon a certificate signed by the Declarant to determine whether damage or destruction is to be repaired or reconstructed. After control of the Association is relinquished by Declarant, the Depositary may rely upon a certificate signed by the President and Secretary of the Association, to determine whether damage or destruction is to be repaired or reconstructed.

(f) If it is determined in accordance with the foregoing provisions hereof that any damaged common elements shall not be repaired or restored, then the insurance proceeds appertaining thereto shall be divided among the Unit Owners in accordance with the provisions of Section 5 of this Article VIII. If it is determined in accordance with the foregoing provisions hereof that any damaged Unit shall not be repaired or restored, then, after deducting therefrom a reasonable amount to be paid to the Association to cover the expense of cleaning up and landscaping the area where the damaged Unit was located, the insurance proceeds appertaining thereto shall be paid to the Owner of such damaged Unit in proportion to the total damage for which proceeds are received, and thereupon such Owner shall have no further right, title or interest in the Condominium. Provided, however, in all cases where there is a mortgagee endorsement, any insurance proceeds shall be disbursed to the Unit Owner and such mortgagee jointly, who shall use such proceeds as they alone may determine. This is a covenant for the benefit of any such mortgagee and may be enforced by any such mortgagee.

(g) For purposes of determining whether any damage or destruction shall be repaired or reconstructed, Declarant (and any first mortgagee of Declarant), as to Units owned by Declarant, shall be entitled to vote with respect thereto and/or approve or disapprove the same on the same basis as provided for other Unit Owners under this Section 1.

## 2. Repair and Reconstruction.

(a) If the damage or destruction for which the insurance proceeds are paid to the Depositary is to be repaired or reconstructed, then, after paying or making provision for the ex-

penses of the Depositary, the remaining proceeds shall be disbursed to defray the cost of such repairs or reconstruction as herein provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, as determined in accordance with the provisions of Section 5 of Article VIII hereof, remittances to Unit Owners and their mortgagees having mortgagee endorsements, being payable jointly to them, who shall use such proceeds as they alone may determine. This is a covenant for the benefit of such mortgagees and may be enforced by any such mortgagee.

(b) If the damage or destruction for which the insurance proceeds are paid to the Depositary is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall levy a special assessment to provide funds to pay such excess cost of repair or reconstruction, in the following manner:

(i) Any such assessment on account of damage or destruction to any Unit shall be assessed against the Owner of the damaged Unit.

(ii) Any such assessment on account of damage or destruction to any common elements serving less than all Unit Owners shall be assessed equitably against all Unit Owners served thereby.

(iii) Any such assessment on account of damage or destruction to any common element serving all Unit Owners shall be assessed against all Unit Owners in the Condominium in proportion to their respective ownership interest shares in the common elements.

If the amount of estimated costs of reconstruction and repair which is the responsibility of the Association is \$5,000.00 or less, the Association shall hold the sums paid upon such assessments and shall disburse the same in payment of the costs of repair and reconstruction. In all other cases, the sums paid upon such assessments shall be deposited by the Association with the Depositary.

(c) If the damage or destruction is to be repaired or reconstructed, the funds for the payment of costs for repair or reconstruction, which shall consist of the proceeds of insurance and funds collected by the Association from assessments, shall be held by the Depositary and disbursed in payment of such costs in the following manner:

(i) Unit Owners. The portion of insurance proceeds representing damage for which the responsibility

of reconstruction and repair lies with a Unit Owner, shall be paid by the Depositary to the Unit Owner or if there is a mortgagee endorsement as to such Unit, then to the Unit Owner and the mortgagee jointly, who shall use such proceeds to repair or reconstruct the damage or destruction which is the responsibility of the Unit Owner. Each Unit Owner shall be responsible for the repair and replacement of all fixtures and equipment installed in his Unit commencing at the point where the utility lines, pipes, wires, conduits or systems intersect the wood, dry-wall, plaster or other building material on the Unit side of the exterior walls forming the boundaries of the Unit. The Unit Owner shall also be responsible for the repair and replacement of that portion of the interior of his Unit which is located below the plane of the lower surfaces of the ceiling joists within the roof attic space, with such responsibility to include the repair and replacement of the wood, dry-wall, plaster or other building material on the Unit side of the exterior walls forming the boundaries of the Unit. The Unit Owner shall also be responsible for the repair and replacement of the windows, doors (including sliding glass doors), screens and exterior lights, if any, serving his Unit, and the repair or replacement of any portion of the heating, air conditioning, plumbing, electrical, chimney and vent systems serving his Unit, including those portions, such as the compressor, located outside the Unit. All other repairs or reconstruction shall be the responsibility of the Association. Subject to the approval of the Board of Directors of the Association, the Association may, but shall not be required to, undertake the repair or replacement of some or all of the damage or destruction which is the responsibility of the Unit Owner, provided, however, under no circumstances shall other Unit Owners in the Condominium be required to bear any portion of the cost for any repairs or replacements which are the responsibility of a particular Unit Owner, the liability therefor in all cases being that of the Unit Owner who is responsible for such repairs or replacements under the provisions of this Declaration.

(ii) Association - Minor Damage. If the amount of the estimated cost of reconstruction and repair which is the responsibility of the Association is \$5,000.00 or less, then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon request to the Depositary by any mortgagee having an endorsement to an insurance policy the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage. Under the latter circumstances, any special assessments collected by the Association for repair or reconstruction shall also be deposited with the Depositary and disbursed in the same manner.

(iii) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than \$5,000.00, then the Association shall supply to one or more independent contractors plans or specifications for such reconstruction and repair and, prior to the commencement of any such reconstruction and repair, any such contractor who agrees to perform all or any part of such reconstruction and repair shall execute a contract wherein the work, labor and materials indicated by such plans and specifications will be furnished at an agreed price, and, if the Board of Directors shall determine that the same is in the best interest of the Association, a performance, completion and payment bond shall be a part thereof. To the extent that any major damage shall involve personal property, a bid need only be supplied from a supplier of the same with a firm price indicated thereon. Further, the construction fund shall be disbursed in payment of such costs upon approval of a registered architect or licensed professional engineer selected and employed by the Board of Directors of the Association to supervise the work or upon approval of a builder selected and employed by the Board of Directors of the Association to supervise or perform the work provided such builder is approved by the mortgagees having endorsements to any insurance policy the proceeds of which are included in the construction fund.

(iv) Surplus. It shall be presumed that the first moneys disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial owner which is less than the assessments paid by such owner into the construction fund shall not be made payable to any mortgagee unless such mortgagee, itself, shall have advanced any portion of any such assessments paid by the Owner, in which event the agreement between the Owner and such mortgagee shall prevail.

(v) Certificate. Notwithstanding the provisions herein, the Depository shall not be required to determine whether or not sums paid by Unit Owners upon assessment shall be deposited by the Association with the Depository nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of an architect or otherwise nor whether a disburse-

ment is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the assessments paid by Unit Owners, nor to determine any other fact or matter relating to its duties hereunder. Instead, the Depository may rely upon a certificate of Declarant so long as Declarant shall control the Association and, after such control is relinquished, upon the certificate of the Association made by its President and Secretary as to any or all such matters and stating the name of the payee and the amount to be paid; provided that when a mortgagee has an endorsement to an insurance policy the proceeds of which are included in the construction fund and is herein required to be named as payee, the Depository shall also name the mortgagee; and further provided that when the Association, or a mortgagee which has an endorsement to an insurance policy the proceeds of which are included in the construction fund, so requires, the approval of a registered architect or licensed professional engineer named by the Association, or the approval of a builder named by the Association and approved by any such mortgagee, shall be first obtained by the Association.

3. Units Owned by Declarant. Any of the foregoing provisions of this Article to the contrary notwithstanding, with respect to any damaged Units owned by Declarant, including any common elements served thereby, it shall be the responsibility of Declarant to perform the functions which are herein specified to be performed by the Association. That is, in the event of damage or destruction by fire or other casualty to any Unit owned by Declarant, including any common elements served thereby, it shall be the responsibility of Declarant to file and adjust all insurance claims affecting the same and, if a decision not to repair or reconstruct any such damaged Unit owned by Declarant is not made by the Unit Owners as provided in Section 1 of this Article, then it shall be the responsibility of the Declarant to repair or reconstruct such damage. If there is a mortgagee endorsement as to any such damaged Unit which is to be repaired or reconstructed, then such mortgagee agrees that the insurance proceeds appertaining to such casualty shall be used to repair or reconstruct such damaged Unit.

#### ARTICLE X

##### EMINENT DOMAIN

1. If any portion of the common elements is taken by eminent domain, the award therefor shall be allocated to the Unit Owners in proportion to their respective undivided interests in the common elements; provided, however, that the portion of the

award attributable to the taking of any permanently assigned limited common element shall be allocated to the Unit Owner of the Unit to which that limited common element was so assigned at the time of the taking. If any limited common element is permanently assigned to more than one Unit at the time of the taking, then the portion of the award attributable to the taking thereof shall be allocated in equal shares to the Unit Owners of the Units to which it was so assigned or in such other shares as this Declaration may specify for this purpose. A permanently assigned limited common element is a limited common element which cannot be reassigned or which can be reassigned only with the consent of the Unit Owner or Owners of the Unit or Units to which it is assigned.

2. If one or more Units are taken by eminent domain, the undivided interest in the common elements assigned to any such Units shall thenceforth appertain to the remaining Units, being allocated to them in proportion to their respective undivided interests in the common elements. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the Unit Owner of any Unit taken for his undivided interest in the common elements as well as for his Unit.

3. If a portion of any Unit is taken by eminent domain, the court shall determine the fair market value of the portion of such Unit not taken, and the undivided interest in the common elements appertaining to any such Unit shall be reduced, in the case of each such Unit, in proportion to the diminution in the fair market value of such Unit resulting from the taking. The portion of undivided interest in the common elements thereby divested from the Unit Owner of any such Unit shall be reallocated among that Unit and the other Units in the Condominium in proportion to their respective undivided interests in the common elements, with any Units partially taken participating in such reallocation on the basis of their undivided interests as reduced in accordance with the preceding sentence. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the Unit Owner of any Unit partially taken for that portion of his undivided interest in the common elements divested from him by operation of the first sentence of this section and not revested in him by operation of the following sentence, as well as for that portion of his Unit taken by eminent domain.

4. If, however, the taking of a portion of any Unit makes it impractical to use the remaining portion of that Unit for the primary purpose permitted by the condominium instruments, then the entire undivided interest in the common elements appertaining to that Unit shall thenceforth appertain to the remaining Units, being allocated to them in proportion to their respective undivided interests in the common elements and the remaining

portion of that Unit shall thenceforth be a part of the common elements. The court shall enter a decree reflecting the re-allocation of the undivided interests produced thereby, and the award shall include, without limitation, just compensation to the Unit Owner of such Unit for his entire undivided interest in the common elements and for his entire Unit.

5. Votes in the Association, and liability for future assessments appertaining to any Unit or Units taken or partially taken by eminent domain, shall thenceforth appertain to the remaining Units, being allocated to them in proportion to their relative voting strength in the Association and liability for common expenses, respectively, with any Units partially taken participating in such reallocation as though their voting strength and its liability for common expenses in the Association had been reduced in proportion to the reduction in its undivided interest in the common elements, and the decree of the court shall provide accordingly.

6. Any or all of the matters in this Article which are prescribed for the determination of the court may instead be resolved by amendment to this Declaration agreed to by Unit Owners to which more than fifty (50%) percent of the votes in the Association appertain, including the Unit Owners of all Units wholly or partially taken or to which there is appurtenant any permanently assigned limited common element wholly or partially taken, together with the mortgagee of each such Unit.

7. If any Unit or portion thereof or the common elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder of any first mortgage on a Unit will be entitled to timely written notice of any such proceeding or proposed acquisition and no provision of this Declaration or of any other document establishing the Condominium will entitle the Owner of a Unit or other party to priority over such holder with respect to the distribution to such Unit of the proceeds of any award or settlement.

#### ARTICLE XI

#### ARCHITECTURAL CONTROL, USE RESTRICTIONS, AND SALE OR LEASING OF UNIT

To assure a community of congenial Owners and thus protect the value of the Units, the Property, including all improvements thereon, shall be subject to the architectural control and use restrictions set forth in Exhibit "F" attached hereto and by reference made a part hereof. Also, the sale and leasing of Units shall be subject to the provisions set forth in said Exhibit "F" attached hereto.



## ARTICLE XII

### GENERAL PROVISIONS

1. Control by Declarant. NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION to the contrary in this Declaration or in the Articles of Incorporation or the By-Laws of the Association, Declarant hereby retains the right to appoint and remove any member or members of the Board of Directors of the Association and any officer or officers of the Association. By an express written instrument to that effect, but not by implication, Declarant may relinquish such right in whole or in part at any time and from time to time. Further the Declarant's authority so to appoint and remove members of the Board of Directors and officers of the Association shall in no event extend beyond, and shall in all cases expire upon, the first of the following to occur:

(a) Unless the Declarant at that time has an unexpired option to add additional property, the date as of which Units to which four-fifths (4/5ths) of the undivided interests in the common elements appertain shall have been conveyed by the Declarant to Unit Owners other than a person or persons constituting the Declarant;

(b) The expiration of seven (7) years after the recording of this Declaration if this is an expandable condominium, or the expiration of three (3) years after the recording of this Declaration if this is not an expandable condominium; or

(c) The surrender by the Declarant of the authority to appoint and remove members of the Board of Directors and officers by an express amendment to this Declaration executed and recorded by the Declarant.

Every grantee of any interest in the Property, by acceptance of a deed or other conveyance of such interest, agrees that the Declarant shall have the authority to appoint and remove members of the Board of Directors and officers of the Association in accordance with the foregoing provisions of this Section.

Upon the expiration of the period of the Declarant's right to control the Association pursuant to the foregoing provisions of this Section, such right to control shall automatically pass to the Unit Owners (including the Declarant if the Declarant then owns one or more condominium Units). The Declarant shall be jointly responsible and liable with the members of the Board of Directors and officers to the Unit Owners for the books, records and accounts of the Association being in proper order, the Association's being in good standing under the laws of the State of Georgia, and the affairs of the Association having been conducted in a prudent and businesslike manner, all as of the date

upon which the Declarant's right to control the Association shall have expired; and the Declarant shall not be insulated against liability to the Unit Owners because any act, omission or matter complained of during such period of control may have been done, omitted or permitted by or on behalf of the Association as a corporate entity. Nothing herein contained shall make responsible or subject to liability any successor to the Declarant by operation of law or through purchase of the Declarant's interest in the property (or any part thereof) at foreclosure for any act, omission or matter occurring, or arising from any act, omission or matter occurring, prior to the time such successor succeeded to the interest of the Declarant.

Any management contract, lease of recreational area or facilities, or any other contract or lease executed by or on behalf of the Association during the period of the Declarant's right to control the Association pursuant to the foregoing provisions of this Section shall be subject to cancellation and termination at any time during the twelve (12) months next immediately following the expiration of such control period by the affirmative vote of Unit Owners of Units to which a majority of the votes in the Association appertain, unless the Unit Owners by a like majority shall have theretofore, following the expiration of such control period, expressly ratified and approved the same.

2. Amendment. So long as the same shall not (a) adversely affect the title to any Owner's Unit, (b) change the percentage or fraction of undivided ownership interest in and to the common elements of the Condominium appurtenant to any Owner's Unit, except changes resulting from the inclusion by Declarant of any of the Additional Property in the Condominium as herein elsewhere provided, (c) materially alter or change any Unit Owner's right to the use and enjoyment of his Unit or the common elements as set forth in this Declaration, or (d) otherwise make any material change in this Declaration, each Unit Owner agrees that, if requested to do so by Declarant, such Unit Owner will consent to the amendment of this Declaration (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Unit subject to this Declaration, or (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units subject to this Declaration. Further, this

Declaration may also be amended at any time and from time to time by the assent of Unit Owners having at least two-thirds (2/3rds) of the total vote of the Association; provided, however, that during such time, if any, as there shall exist an unexpired option to add any additional property to the Condominium and/or the Declarant has the right to control the Association pursuant to Section 1 of this Article XII, such amendment shall require the agreement of Declarant and Unit Owners to which two-thirds (2/3rds) of the votes in the Association appertain, exclusive of any vote or votes appertaining to any Unit or Units then owned by Declarant. Provided, however, except as expressly permitted or required by the Georgia Condominium Act, any amendment to this Declaration which would change the boundaries of any Unit, or which would change the undivided interest in the common elements appertaining to any Unit or the number of votes in the Association appertaining to any Unit or the liability for common expenses appertaining to any Unit, except for changes resulting from the inclusion by Declarant of any of the Additional Property in the Condominium as herein elsewhere provided, shall be approved in writing by all Unit Owners and all holders of all mortgages on all of the Units in the Condominium. Provided, further, any provision in this Declaration which may be construed to the contrary notwithstanding, any material amendment to this Declaration or to the By-Laws of the Association, including, but not limited to, any amendment which would change the percentage interest of the Unit Owners in the Condominium, except for any such change resulting from the inclusion by Declarant of any of the Additional Property in the Condominium as herein elsewhere provided, shall require the prior written approval of all holders of all mortgages on all of the Units in the Condominium. Amendments to this Declaration may be proposed by the Declarant, the Board of Directors of the Association, or by petition signed by Unit Owners having at least thirty (30%) percent of the total votes of the Association. Agreement of the required majority of Unit Owners to any amendment of this Declaration shall be evidenced by their execution of the amendment, or, in the alternative and provided that the Declarant does not then have the right to control the Association pursuant to Section 1 of this Article XII, the sworn statement of the president, any vice president or secretary of the Association attached to or incorporated in an amendment executed by the Association, in which sworn statement it is stated unequivocally that agreement of the required majority of Unit Owners was otherwise lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself. The written consent of any mortgagee required with respect to such amendment shall also be recorded with such amendment.

3. Rights of Third Parties. This Declaration shall be recorded pursuant to the provisions of the Georgia Condominium Act for the benefit of Declarant, the Unit Owners and their mortgagees as herein provided and by such recording no adjoining property owner or third party shall have any right, title or interest whatsoever in the Condominium or in the operation or continuation thereof or

in the enforcement of any of the provisions hereof, and, subject to the rights of Declarant and their mortgagees as herein provided, the Unit Owners shall have the right to cancel, extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any adjoining owner or third party.

4. Termination. The Condominium shall be terminated only by the agreement of Unit Owners of Units to which four-fifths (4/5ths) of the votes in the Association appertain and all mortgagees of such Units; provided, however, that during such time, if any, as there shall exist an unexpired option to add any additional property to the Condominium and/or the Declarant has the right to control the Association pursuant to Section 1 of this Article XII, such agreement shall be that of the Declarant and Unit Owners of Units to which four-fifths (4/5ths) of the votes in the Association appertain, exclusive of any vote or votes appurtenant to any Unit or Units then owned by the Declarant, and the mortgagees of such Units. Agreement of the required majority of Unit Owners and their mortgagees to termination of the Condominium shall be evidenced by their execution of a termination agreement. Any such termination agreement shall become effective only when recorded or at such later date as may be specified therein. Upon the effective date of a termination agreement, all of the property constituting the Condominium shall be owned by the Unit Owners as tenants in common in proportion to their respective undivided interests in the common elements immediately prior to such effective date. As long as such tenancy in common lasts, however, each Unit Owner and his heirs, representatives, successors and assigns, shall have the same right of occupancy and use of that portion of said property which formerly constituted his Unit and limited common elements appurtenant thereto, if any, as existed immediately prior to termination, and a nonexclusive right to use that portion of said property which formerly constituted common elements other than limited common elements. Upon the effective date of a termination agreement, any rights the Unit Owners may have to the assets of the Association shall be in proportion to their respective undivided interests in the common elements immediately prior to such effective date, and any distribution thereof to the Unit Owners shall be to such owners and their mortgagees as their interest may appear.

5. Withdrawal of Submitted Property. Submitted property may be withdrawn from the Condominium only in strict accordance with the provisions of the Georgia Condominium Act.

6. Enforcement. Each Unit Owner shall comply strictly with the By-Laws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully

amended from time to time and with the covenants, conditions and restrictions set forth in this Declaration or in the deed to his Unit. In the event of a violation or breach, or threatened violation or breach, of any of the same, Declarant, the Association or any aggrieved Unit Owner, jointly and severally, shall have the right to proceed at law or in equity to compel compliance therewith or to prevent a threatened violation or breach thereof. In addition to all other remedies, Declarant or the Association, or a duly authorized agent thereof, shall have the right to enter upon any portion of the Condominium where a violation exists and summarily abate or remove, at the expense of the violating Unit Owner, and using such force as may be reasonably necessary, any erection, thing or condition that may be or exist contrary to the intent and meaning of the provisions hereof, if after ten (10) days' written notice of such violation it shall not have been corrected by such Unit Owner. Neither Declarant nor the Association, nor their agents, shall be deemed guilty or liable for any manner of trespass for such entry, abatement or removal. Should the Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the violating Unit Owner. Inasmuch as the enforcement of the provisions of this Declaration and the By-Laws and such administrative rules and regulations is essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Unit Owners, it is hereby declared that any breach thereof cannot be adequately compensated by recovery of damages, and that Declarant, the Association, or any aggrieved Unit Owner, in addition to all other remedies, may require and shall be entitled to the remedy by injunction to restrain any such violation or breach or threatened violation or breach. Further, in any case of flagrant or repeated violation by a Unit Owner, then, in addition to the foregoing remedies, the Board of Directors of the Association may levy summary charges against the Unit Owner for such violation, provided that no summary charges may be levied for more than \$5.00 for any one violation; but each day or time a violation is continued or repeated after written notice is given to the Unit Owner to cease and desist, it shall be considered a separate violation. Collection of summary charges may be enforced against a Unit Owner as if such charges were a common expense owed by the Unit Owner involved. No delay, failure or omission on the part of Declarant, the Association or any aggrieved Unit Owner in exercising any right, power or remedy herein provided shall be construed as an acquiescence therein or shall be deemed a waiver of the right to do so thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever

against Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, of the provisions and regulations, however long continued, or for the imposing of provisions which may be unenforceable:

7. Duration. Unless the Condominium is terminated as herein otherwise provided, the provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by Georgia law. Provided, however, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law and it shall be the duty of the Board of Directors of the Association to cause this Declaration to be amended of record when necessary by filing a document bearing the signatures of Unit Owners having a majority of the voting interest in the Condominium reaffirming and newly adopting such provisions in order that the same may continue to be covenants running with the land of the Condominium. Such adoption by a majority shall be binding on all. Every purchaser or grantee of any interest in any property made subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind the land as provided hereby.

8. Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Association, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective.

9. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

10. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid; but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can

be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

11. Captions. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer.

IN WITNESS WHEREOF, DIAMONDHEAD CORPORATION, the Declarant herein, has executed this instrument, under seal, by and through its duly authorized officers, the day and year first above written.

Signed, sealed and delivered in the presence of:

DIAMONDHEAD CORPORATION

    /s/      
Unofficial Witness

By:     /s/      
Title: \_\_\_\_\_

    /s/      
Notary Public

Attest:     /s/      
Title: \_\_\_\_\_

(CORPORATE SEAL)

EXHIBIT "A" TO DECLARATION OF CONDOMINIUM  
FOR MOUNTAIN VIEW CONDOMINIUM

DESCRIPTION OF MOUNTAIN VIEW CONDOMINIUMS  
PHASE ONE

Being a portion of Land Lots 201 and 202 in the 22nd District 2nd Section of Cherokee County, Georgia, and described as follows:

Beginning at a point being North seventy-seven degrees West (~~N77~~<sup>N77</sup><sup>00'00"W</sup>) ninety-seven and ninety-nine hundredths (97.99) feet and North forty-four degrees sixteen minutes six seconds East (~~N44~~<sup>N44</sup><sup>016'06"E</sup>) distant one hundred forty and thirty-nine hundredths (140.39) feet from the northernmost common corner of lots 405 and 406 as shown and delineated upon that certain map entitled "22nd District 2nd Section Lake Arrowhead Phase I, Unit 4" which plat was duly recorded among the land records of Cherokee County, Georgia on 5/11/77 at Book 9 at Pages 34 etc. and more particularly in Plat Book 9 at Page 45 said point of beginning being also a point on the northerly right-of-way line of Lake Arrowhead Drive. Thence from said point of beginning running:

- (1) North forty-five degrees fifty-nine minutes ten seconds East (~~N45~~<sup>N45</sup><sup>059'10"E</sup>) one hundred thirty-four and twenty-eight hundredths (134.28) feet thence;
- (2) North thirty-six degrees thirty-three minutes fifty-three seconds East (~~N36~~<sup>N36</sup><sup>033'53"E</sup>) one hundred forty-four and ninety-seven hundredths (144.97) feet to the southerly right-of-way line of Country Club Lane thence;
- (3) Along same North seventydegrees West (~~N70~~<sup>N70</sup><sup>00'00"W</sup>) two hundred four (204.00) feet to a point thence;
- (4) Leaving said right-of-way of Country Club Lane South twenty degrees West (~~S20~~<sup>S20</sup><sup>00'00"W</sup>) one hundred (100.00) feet thence;
- (5) North Eighty degrees thirty minutes forty-one seconds West (~~N 80~~<sup>N 80</sup><sup>030'41"W</sup>) One hundred fifty-one and seventy-one hundredths (151.71) feet thence;
- (6) North forty-seven degrees fifteen minutes West (~~N47~~<sup>N47</sup><sup>015'W</sup>) fifty-five (55) feet thence;
- (7) South forty-two degrees forty-five minutes West (~~S42~~<sup>S42</sup><sup>045'W</sup>) eighty three (83) feet thence;
- (8) South thirty-seven degrees fifty-six minutes four seconds East (~~S37~~<sup>S37</sup><sup>056'04"E</sup>) seventy-four and sixty-seven hundredths (74.67) feet thence;
- (9) South thirteen degrees West (~~S13~~<sup>S13</sup><sup>00'00"W</sup>) seventy (70) feet to the northerly right of way line of Lake Arrowhead Drive thence;
- (10) Along said northerly right-of-way line South seventy-seven degrees East (~~S77~~<sup>S77</sup><sup>00'00"E</sup>) two hundred sixty-six (266.00) feet to the point of beginning, containing 1.7193 acres of ground.

Subject to and together with easements for water, sewer, telephone, electric ingress and egress.



Subject to easements ten (10) feet in width centered on and following water, sewer, telephone and electric lines constructed or about to be constructed.

Together with rights of access in, over and along driveways, parking areas, water and sewer lines, in Phase 1.

DESCRIPTION OF MOUNTAINVIEW CONDOMINIUMS  
PHASE TWO - B

Being a portion of Land Lots 201 and 202 in the 22nd District 2nd Section of Cherokee County, Georgia and described as follows:

Beginning at a point being North forty-four degrees sixteen minutes six seconds East ( $N44^{\circ}16'06''E$ ) distant one hundred forty and thirty-nine hundredths (140.39) feet from the northernmost common corner of lots 405 and 406 as shown and delineated upon that certain map entitled "22 District 2nd Section Lake Arrowhead Phase I, Unit 4" which plat was duly recorded among the land records of Cherokee County Georgia on 5/11/73 in Plat Book 9 at pages 34 etc. and more particularly in Plat Book 9 at page 45 said point of beginning being also a point of curve on the northerly right-of-way line of Lake Arrowhead Drive. Thence from said point of beginning running:

- (1) Along said northerly right-of-way line North seventy-seven degrees West ( $N77^{\circ}00'00''W$ ) ninety-seven and ninety-nine hundredths (97.99) feet thence;
- (2) North forty-five degrees fifty-nine minutes ten seconds East ( $N45^{\circ}59'10''E$ ) one hundred thirty-four and twenty-eight hundredths (134.28) feet thence;
- (3) North thirty-six degrees thirty-three minutes fifty-three seconds East ( $N36^{\circ}33'53''E$ ) one hundred forty-four and ninety-seven hundredths (144.97) feet to the southerly right-of-way line of Country Club Lane thence;
- (4) Along same South seventy degrees East ( $S70^{\circ}00'E$ ) two hundred ninety-four and three hundredths (294.03) feet to a point of curve thence;
- (5) Along the arc of a curve to the left having a radius of 201.27' an arc length of 79.04' the chord of which bears South eighty-one degrees fifteen minutes East ( $S81^{\circ}15'E$ ) distant seventy-eight and fifty-three hundredths (78.53) feet thence;
- (6) South two degrees thirty minutes East ( $S2^{\circ}30'E$ ) sixty-seven (67.00) feet along the center of a fifty (50) foot wide common driveway easement thence;
- (7) South twelve degrees West ( $S12^{\circ}00'W$ ) one hundred thirty-six and five tenths (136.50) feet to the center of a twenty (20) foot wide sanitary sewer easement thence;
- (8) In part along said easement centerline South eighty-eight degrees West ( $S88^{\circ}00'W$ ) two hundred thirty-nine and eighty-nine hundredths (239.89) feet to the aforementioned right-of-way line of Lake Arrowhead Drive thence;

EXHIBIT "A-1" TO DECLARATION OF CONDOMINIUM  
FOR MOUNTAIN VIEW CONDOMINIUM

DESCRIPTION OF MOUNTAIN VIEW CONDOMINIUMS  
PHASE TWO-A

Being a portion of Land Lot 202 in the 22nd District 2nd Section of Cherokee County, Georgia and described as follows:

Beginning at a point being North sixty-seven degrees eighteen minutes forty-five seconds East ( $N67^{\circ}18'45''E$ ) distant one hundred twenty and eighty-two hundredths (120.82) feet from the northernmost corner of Lot 414 as shown and delineated upon that certain map entitled "22 District 2nd Section Lake Arrowhead, Phase 1, Unit 4" which plat was duly recorded among the land records of Cherokee County Georgia on 5/11/73 in Plat Book 9 at Pages 34 etc. and more particularly in Plat Book 9 at Page 44 said point of beginning being also the intersection of the easterly right-of-way line of Lake Arrowhead Drive with the southerly right-of-way line of Country Club Lane thence from said point of beginning running:

- (1) Along the aforementioned southerly right-of-way line of Country Club Lane North seventy degrees East ( $N70^{\circ}00'E$ ) eighty-four and sixteen hundredths (84.16) feet to a point of curve thence;
- (2) Along the arc of a curve to the right having a radius of 260' an arc length of 161.28' the chord of which bears North eighty-seven degrees forty-six minutes fifteen seconds East ( $N87^{\circ}46'15''E$ ) distant one hundred fifty-eight and seventy-one hundredths (158.71) feet thence;
- (3) South seventy-four degrees twenty-seven minutes twenty-nine seconds East ( $S74^{\circ}27'29''E$ ) one hundred-eight and sixty-two hundredths (108.62) feet thence;
- (4) Still along said southerly right-of-way line South seventy degrees East ( $S70^{\circ}00'E$ ) one hundred sixteen and forty-eight hundredths (116.48) feet thence;
- (5) Leaving said right-of-way of Country Club Lane South twenty degrees West ( $S20^{\circ}00'W$ ) one hundred (100.00) feet thence;
- (6) North Eighty degrees thirty minutes forty-one seconds West ( $N80^{\circ}30'41''W$ ) one hundred fifty-one and seventy-one hundredths (151.71) feet thence;
- (7) North forty-seven degrees fifteen minutes West ( $N47^{\circ}15'W$ ) fifty-five (55) feet thence;
- (8) South forty-two degrees forty-five minutes West ( $S42^{\circ}45'W$ ) eighty three (83) feet thence;
- (9) South thirty-seven degrees fifty-six minutes four seconds East ( $S37^{\circ}56'04''E$ ) seventy-four and sixty-seven hundredths (74.67) feet thence;
- (10) South thirteen degrees West ( $S13^{\circ}00'W$ ) seventy (70) feet to the northerly right-of-way line of Lake Arrowhead thence;
- (11) Along same being along the arc of a curve to the right having a radius of 240' an arc length of 255.52' the chord of which bears North forty-six degrees thirty minutes West ( $N46^{\circ}30'W$ ) distant two hundred forty-three and sixty-two hundredths (243.62) feet thence;
- (12) North sixteen degrees West ( $N16^{\circ}00'W$ ) eighty-nine and forty-three hundredths (89.43) feet to the point of beginning, containing 1.6026 acres of ground.

(9) Along same being along the arc of a curve to the left having a radius of 410' an arc length of 199.60' the chord of which bears North sixty-three degrees three minutes thirteen seconds West ( $N63^{\circ}03'13''W$ ) distant one hundred ninety-seven and sixty-three hundredths (197.63) feet to the point of beginning. Containing 2.4714 acres of ground.

Subject to easements twenty (20) feet in width centered on and following water, sewer, telephone and electric lines constructed or about to be constructed.

EXHIBIT "B" to DECLARATION OF CONDOMINIUM FOR  
MOUNTAIN VIEW CONDOMINIUM

STATUTORY PROVISIONS AND DEFINITIONS

This Declaration is made pursuant to Chapter 85-16E of the Code of Georgia Annotated (Georgia Laws 1975, pages 609-671), and by reference incorporates the text and meaning of the Code of Georgia Annotated Sections 85-1601e through 85-1645e, inclusive, as the same may hereafter be supplemented, added to, amended, or modified from time to time. Words used in this Declaration, which are defined in said Chapter, shall have the same meaning as set forth therein, unless the context shall prohibit. Further, when used in this Declaration (unless the context shall prohibit), the following words shall have the following meanings:

- (a) "Association" shall mean and refer to the Mountain View Condominium Association, Inc., a nonprofit Georgia corporation, its successors and assigns.
- (b) "Condominium" shall mean and refer to the condominium hereby established on the Phase One Property, and as the same may be expanded from time to time as herein elsewhere provided to include all or any portion of the Additional Property. The name of this Condominium shall be the "Mountain View Condominium."
- (c) "Declarant" shall mean and refer to Diamondhead Corporation, a Delaware corporation, the owner of the property described in Exhibit "A" attached hereto and the party who has executed this Declaration, or any successor thereto who comes within the meaning of "Declarant" as that term is defined in Section 3(1) of the Georgia Condominium Act (Georgia Code Annotated, Section 85-1603e(1)).
- (d) "Lake Arrowhead" shall mean and refer to that certain community known as Lake Arrowhead which is being developed by Diamondhead Corporation in Cherokee County, Georgia.
- (e) "Lake Arrowhead Yacht & Country Club" shall mean and refer to Lake Arrowhead Yacht & Country Club, Inc., a Georgia corporation, its successors and assigns, or any other person to whom Diamondhead Corporation may from time to time assign the responsibility and authority of operating and maintaining the streets, common facilities, etc. in Lake Arrowhead.
- (f) "Lease" shall include all leases, subleases and rental contracts, whether oral or written.

- (g) "Majority" means more than fifty (50%) percent of the votes in accordance with the votes assigned to the Units as provided in this Declaration.
- (h) "Phase One Property" shall mean and refer to the real property described in Exhibit "A" attached hereto and by reference made a part hereof. "Additional Property" shall mean and refer to the real property described in Exhibit "A-1" attached hereto and by reference made a part hereof.
- (i) "Property" shall mean and refer to said Phase One Property which, pursuant to the provisions of Article II hereof, is herewith submitted to the form of ownership set forth in the Georgia Condominium Act and to the provisions of this Declaration. "Property" shall also mean and include all or any portion of said Additional Property which, as provided in Article III hereof, Declarant may submit to said form of ownership and make a part of the Condominium established hereby.

EXHIBIT "C" TO DECLARATION OF CONDOMINIUM  
FOR MOUNTAIN VIEW CONDOMINIUM

PLAN OF DEVELOPMENT

Declarant has constructed on the Phase One Property (i.e., the property described in Exhibit "A" attached hereto) four (4) buildings containing a total of sixteen (16) Units. The general area and location of the Units on the Phase One Property are shown on plat of survey of Mountain View Condominium (Phase One) prepared by Waldo Hallette Clarke, Registered Land Surveyor and Waldo Hallette Clarke, Registered Professional Engineers, dated February 7, 1977, and recorded in Condominium Plat Book 9, page 98-99, Cherokee County, Georgia records, which plat of survey, by this reference is incorporated herein and made a part hereof.

In addition to the Phase One Property, Declarant hereby retains and reserves the right, privilege and option (hereinafter called "option") to submit all or any portion of the Additional Property (i.e., the property described in Exhibit "A-1" attached hereto) to the provisions of the Georgia Condominium Act and this Declaration and thereby cause such added property to become a part of this Condominium. The option hereby retained and reserved by Declarant to include all or any portion of the Additional Property in this Condominium may be exercised in the manner provided by the Georgia Condominium Act. This option may be exercised as to all or any portion of the Additional Property and the exercise of this option as to a portion of the Additional Property shall not bar the further exercise of this option as to other portions or the balance of the Additional Property. Provided, however, to the extent not then exercised, this option shall lapse and terminate automatically upon the lapse of seven (7) years from the date this Declaration is filed for record in the office of the Clerk of the Superior Court of the County in which this Condominium is located; provided, further, the Unit Owners of Units to which two-thirds (2/3) of the votes in the Association appertain, exclusive of any vote or votes appurtenant to any Unit or Units then owned by the Declarant, may consent to the extension of such option within one (1) year prior to the date upon which such option would otherwise have expired. The option hereby reserved by Declarant to cause all or any portion of the Additional Property to become a part of this Condominium shall in no way be construed to impose upon Declarant any obligation to add all or any portion of the Additional Property to this Condominium.

If all of the Additional Property is added to this Condominium, Declarant shall have the right to create thereon, as a part of this Condominium, a total of not more than forty-four (44) additional Units, so that the total number of Units comprising this Condominium shall not exceed sixty (60) Units. Provided, however, if only a portion (and not all) of the Additional Property is added to this Condominium, then the maximum overall density of the property included in this Condominium (which shall include the Parcel One Property and any portion(s) of the Additional Property which may be added to this Condominium) shall not exceed 11 Units per acre.

Any Units constructed on any portion of the Additional Property which may be added to this Condominium shall be restricted exclusively to residential use in accordance with the provisions of Exhibit "E" to this Declaration.

No assurance is made by Declarant with respect to the improvements that will be made on any portion of the Additional Property which may be added to this Condominium, and there shall not be any limitations as to location of any improvements that may be made on any portion of the Additional Property which may be added to this Condominium. Also no limitations are placed on the Declarant's right, which is hereby reserved, to create limited common elements within any portion of the Additional Property and/or to designate common elements therein which may subsequently be assigned as limited common elements, on any portion of the Additional Property which may be added to this Condominium. Further, any Units created on any portion of the Additional Property added to this Condominium shall not be required to be substantially identical to the Units created on the Phase One Property. However, any and all structures erected on any portion of the Additional Property which may be added to this Condominium may be compatible with structures on the property already submitted to this Condominium in terms of quality of construction, the principal materials to be used and architectural style though no assurances are made in these regard.

Every purchaser of a Unit shall purchase such Unit and every mortgagee and lien holder thereof shall take title, or hold his interest with respect thereto, with notice of Declarant's plan of development as herein set forth, and, irrespective of the number of Units constructed or purchased at the time any purchaser, mortgagee or lien holder acquires title to or interest in a Unit, Declarant shall have and does hereby specifically reserve the right to create sixteen (16) Units on the Phase One Property and not more than forty-four (44) additional Units on the Additional Property if the same is added to the Condominium, as hereinabove provided, and with respect to each such Unit, convey to the purchaser thereof the title to the Unit and its appurtenant percentage of undivided interest in the common elements of the Condominium and voting weight which, in accordance with and subject to the terms, conditions, and provisions of this Declaration, is to be conveyed to the purchaser thereof.

Any provision in this Declaration to the contrary notwithstanding, the provisions of the above and foregoing plan of development may not be abrogated, modified, rescinded, supplemented or amended in whole or in part without the written consent of Declarant.

EXHIBIT "D" to DECLARATION OF CONDOMINIUM FOR  
MOUNTAIN VIEW CONDOMINIUM

PART I

UNIT BOUNDARIES

The upper boundary of a Unit shall be the plane of the lower surfaces of the wood trusses which serve as roof joists for the building in which the Unit is located. The upper boundary of a Unit shall include the wood, dry-wall, plaster or other material forming the ceiling on the Unit side of such wood trusses. The lower boundary of a Unit shall extend downward indefinitely to the extent provided by law for real property estates in general and shall include the space, if any, and the land subjacent to the Unit structure itself, including any oil, gas or mineral rights therein which Declarant may have, if any. The perimetrical boundaries of a Unit shall be the vertical planes formed by the interior side of the wood studs in the exterior walls of the building in which the Unit is located and in the common wall or walls separating the Unit from other Units in the building, extended to intersections with each other and with the upper boundary of the Unit. The perimetrical boundaries of a Unit shall include the wood, dry-wall, plaster or other material forming the walls on the Unit side of such wood studs. The boundaries of a Unit shall include exterior glass surfaces, such as windows and sliding glass doors, as well as screens, and all exterior doors, including the frame therefor, which serve only that Unit. Also, the Unit shall include any pipes, ducts, wires, cables, conduits or mechanical equipment within the boundaries of a Unit if they serve only that Unit. Also, heating, air-conditioning, plumbing, electrical, chimney and vent systems serving a single Unit, including any part of any such system located outside the boundaries of the Unit, as well as appliances and plumbing fixtures within the Unit, shall be construed to be a part of the Unit.

In interpreting deeds and plans, the existing physical boundaries of a Unit, as originally constructed or of a Unit reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in any deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between the boundaries shown in a deed or on a plan and those of the Unit.

PART II

LIMITED COMMON ELEMENTS

The limited common elements with respect to a Unit shall consist of any decks, stairways, stoops, landings, steps, balconies, garbage and trash container areas, patios and other appurtenant improvements, if any, which serve only that Unit.



There are no common elements located on the property described in Exhibit "A" attached to this Declaration which may subsequently be assigned as limited common elements.

EXHIBIT "E" to DECLARATION OF CONDOMINIUM FOR  
MOUNTAIN VIEW CONDOMINIUM

ALLOCATION OF UNDIVIDED INTERESTS IN COMMON ELEMENTS,  
LIABILITY FOR COMMON EXPENSES AND VOTING WEIGHT

The undivided interest in the common elements, liability for common expenses and voting weight (the same percentage applying to all) shall be allocated among the Units on the basis of the relative size of the Units in the Condominium, as determined by reference to the number of square feet included in the living area, exclusive of any basement, of a Unit. The number of square feet included within the living area of a particular Unit shall be stated by the Declarant on the plans therefor filed as a part of this Declaration and such designation shall be conclusive for purposes of this provision.

The appurtenant percentage of undivided interest in the common elements, liability for common expenses and voting weight for a particular Unit shall be the quotient derived by dividing the number of square feet of living area in that Unit by the total aggregate number of square feet of living area in all Units included in the Condominium at that time, multiplied by the number 100. Therefore, unless and until Declarant shall include all or any portion of the Additional Property in the Condominium, the percentage of undivided interest in the common elements, liability for common expenses and voting weight allocable to the sixteen (16) Units constructed initially on the Phase One Property shall be as set forth in the following schedule. If Declarant shall add any portion of the Additional Property to the Condominium as herein elsewhere provided, then, effective with such addition, the percentage of undivided interest in the common elements, liability for common expenses and voting weight allocable to all Units then included in the Condominium shall be reallocated and adjusted automatically so that the undivided interest in the common elements, liability for common expenses and voting weight allocable to a particular Unit shall thereupon be the quotient derived by dividing the number of square feet of living area in that Unit (determined as aforesaid) by the total aggregate number of square feet of living area in all Units (determined as aforesaid) then included in the Condominium, multiplied by the number 100.

The following table indicates the percentage of undivided interest in the common elements, liability for common expenses and voting weight allocable to each of the sixteen (16) Units constructed on the Phase One Property, prior to any expansion of the Condominium to include any additional Units on any portion of the Additional Property:

<u>Unit Number</u>	<u>Percentage of Interest in Common Elements, Liability for Common Expenses and Voting Weight</u>	<u>Square Feet of Living Area (exclusive of basement, if any)</u>
1	6.25%	1,088
2	6.25%	1,088
3	6.25%	1,088
4	6.25%	1,088
5	6.25%	1,088
6	6.25%	1,088
7	6.25%	1,088
8	6.25%	1,088
9	6.25%	1,088
10	6.25%	1,088
11	6.25%	1,088
12	6.25%	1,088
13	6.25%	1,088
14	6.25%	1,088
15	6.25%	1,088
16	6.25%	1,088

EXHIBIT "F" TO DECLARATION OF CONDOMINIUM  
FOR MOUNTAIN VIEW CONDOMINIUM

PART I

ARCHITECTURAL CONTROL AND USE RESTRICTIONS

1. Approval Required for Changes. To preserve the architectural appearance of the Condominium, no construction of any nature whatsoever shall be commenced or maintained with respect to any Unit after the purchase of such Unit from the Declarant, nor shall any exterior addition to or change or alteration therein be made unless and until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee appointed by the Board.

2. Residential Purposes. All Units constructed on the Property shall be, and the same hereby are, restricted exclusively to single-family residential use.

3. Business Activities. No business activities shall be conducted on any portion of the Property; provided, however, the foregoing restriction shall not apply to the business activities, signs and billboards of the Declarant, its agents or assigns during the sale period; provided further, private offices may be maintained in Units so long as such use is incident to the primary residential use of the Unit and is approved by the Association's Board of Directors.

4. Signs. Except as may be required by legal proceedings, no "For Sale" or "For Rent" signs or advertising posters of any kind shall be maintained or permitted on any portion of the Property without the express written permission of the Board of Directors of the Association first had and obtained. The approval of signs and posters shall be upon such conditions as may from time to time be determined by the Directors and may be arbitrarily withheld. Provided, however this provisions shall not apply to Declarant or the builder (if other than Declarant) of the Units during the period of construction and sale thereof, nor to anyone who becomes the Owner of a Unit as purchaser at a judicial or foreclosure sale conducted with respect to a first mortgage or as transferee pursuant to any proceeding in lieu thereof.

5. Pets. No animals or birds, other than a reasonable number of generally recognized house pets, shall be kept or maintained on any portion of the Property and then only if they are kept or maintained solely as domestic pets and not for commercial purposes. No animal or bird shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing, or confinement of any animal or bird shall be constructed or maintained outside any patio area serving the Unit. Pets shall be under leash

when walked or exercised in the common area. Upon the written request of any Unit Owner, the Board of Directors of the Association shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this section, a particular animal or bird is a generally recognized house pet, or a nuisance, or whether the number of animals or birds in any Unit is reasonable. Further, notwithstanding the foregoing provisions hereof, no structure for the care, housing or confinement of any animal or bird shall be constructed or maintained within any patio, porch or balcony area unless the same shall be approved in writing by the Board of Directors of the Association.

6. Use of Common Areas and Facilities. The use and enjoyment of the common areas and facilities by the Unit Owners, their families, visitors, guests, servants and agents, shall be subject to such reasonable rules and regulations as may be made and amended from time to time by the Association. It is expressly acknowledged and agreed by all parties concerned that this section is for the mutual benefit of all Owners in the Condominium and is necessary for the protection of said Owners.

7. Antennas. No antenna or other device for the transmission or reception of television signals, radio signals, or any form of electromagnetic radiation shall be erected, used, or maintained outdoors on any portion of the Property, whether attached to a building or structure or otherwise, with the prior written approval of the Association provided however, Declarant and the Association shall have the right to erect, construct and maintain such devices.

8. Motor Vehicles, Trailers, Boats, etc. Motor vehicles shall be operated and parked only upon those portions of the common areas designated for such purpose by the Board of Directors of the Association. Mobile homes, motor homes, truck campers, trailers of any kind and boats shall be kept, placed, stored, parked, maintained or operated only upon those portions of Property, if any, designated specifically for such purpose by the Board of Directors of the Association. Further, although not expressly prohibited hereby, the Board of Directors of the Association may prohibit mobile homes, motor homes, truck campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts and other such contrivances, or any of them, from being kept, placed, stored, maintained or operated upon any portion of the Property if in the opinion of the Board of Directors such prohibition shall be in the best interests of the Condominium.

9. Nuisances. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property, and no odors shall be permitted to arise therefrom, so as to render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using or occupying other portions of the Property. No nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to persons using or occupying other portions of the Property. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on the Property. Any Unit Owner (or his family, servants,

agents or guests) who shall dump or place any trash or debris upon any portion of the Property shall be liable to the Association for the actual cost of the removal thereof or the sum of \$25.00 whichever is greater, and the same shall be added to and become part of that portion of any assessment next coming due to which the Unit Owner is subject.

10. Prohibited Activities. Noxious or offensive activities shall not be carried on in any Unit or in the common areas and facilities. Each Unit Owner, his family, visitors, guests, servants and agents shall refrain from any act or use of his Unit or the common areas and facilities which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the occupants of the Units, or which could result in the cancellation of insurance on any Unit or any portion of the common areas and facilities, or which would be in violation of any law or governmental code or regulation.

11. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any portion of the Property.

12. No Discrimination. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of any other Owner or Owners.

13. Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the Property shall be observed. In the event of any conflict between any provision of any such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

14. Construction and Sale Period. Notwithstanding any provisions contained in the Declaration to the contrary, it shall be expressly permissible for Declarant and the builder (if other than Declarant) of the Units to maintain and carry on, during the period of construction (if not already constructed) and sale of the Units, upon such portion of the Property as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction (if not already constructed) and sale of said Units, including, but without limitation, business offices, signs, model units and sales offices. The right to maintain and carry on such facilities and activities shall include specifically the right to use Units owned by Declarant or such builder as model Units and offices for the sale of Units in this Condominium.

PART II

SALE OR LEASING OF UNITS

1. Sale of Units. The right of any Unit Owner (including Declarant) to sell, transfer, or convey the Owner's Unit shall not be subject to any right of first refusal or any similar restriction in favor of the Association.

2. Leasing of Units. No Unit Owner may lease less than his entire Unit. Without the prior approval of the Board of Directors of the Association, the term of any lease, including any extension or renewal of the original term, shall not exceed one (1) year. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the By-Laws of the Association and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing. Other than the foregoing, there shall be no restriction on the right of any Unit Owner to lease his Unit.

3. Exclusion. Any of the foregoing provisions of this Part which may be construed to the contrary notwithstanding, Declarant shall have the unqualified right to lease any Unit so long as such Unit is unsold and owned by Declarant. Also, any of the foregoing provisions of this Part which may be construed to the contrary notwithstanding, anyone who becomes the owner of a Unit at a judicial or foreclosure sale conducted with respect to a mortgage on such Unit, or as transfer pursuant to any proceeding in lieu thereof shall have the unqualified right to lease such Unit so long as such Unit is owned by such person who acquires title thereto in such manner. Provided, however, the occupancy of any Unit by any lessee of Declarant or such acquirer of title shall be otherwise subject to the provisions of this Declaration and the By-Laws of the Association.

FIRST AMENDMENT TO DECLARATION OF CONDOMINIUM  
FOR MOUNTAIN VIEW CONDOMINIUM

Cross Reference: Deed Book 211, page 582,  
Cherokee County, Georgia records.

THIS FIRST AMENDMENT TO DECLARATION OF CONDOMINIUM FOR MOUNTAIN VIEW CONDOMINIUM made this 27th day of June, 1977, by DIAMONDHEAD CORPORATION, a Delaware corporation, hereinafter called the "Declarant";

W I T N E S S E T H :

WHEREAS, Declarant has heretofore filed of record in Cherokee County, Georgia, that certain Declaration of Condominium for Mountain View Condominium, dated February 15, 1977, and recorded in Deed Book 211, at page 582, Cherokee County, Georgia records (said recorded Declaration of Condominium for Mountain View Condominium being hereinafter sometimes referred to as "the Condominium Declaration");

WHEREAS, words such as, but not limited to, "Unit" and "Condominium" as used herein shall have the same meaning as set forth in the Condominium Declaration;

WHEREAS, Declarant is the owner of the real property described in Exhibit "No. 1" attached hereto and by this reference made a part hereof (said property described in said Exhibit "No. 1" attached hereto being hereinafter referred to as "the Phase Two-A Property");

WHEREAS, the Phase Two-A Property is a portion of the property described in Exhibit "A-1" of the Condominium Declaration;

WHEREAS, Declarant has constructed or caused to be constructed on the Phase Two-A Property a total of sixteen (16) Units;

WHEREAS, under the provisions of Article III of the Condo-



minium Declaration, Declarant has reserved the right to subject the Phase Two-A Property to the Condominium Declaration and to make the same part of the Condominium;

WHEREAS, Declarant now desires to subject the Phase Two-A Property, including said Units and other improvements now constructed thereon, to the Declaration of Condominium and to make the same part of the Condominium;

NOW, THEREFORE, Declarant hereby declares, as follows:

1. That the Phase Two-A Property, being the real property described in Exhibit "No. 1" attached hereto, including the 16 Units and other improvements now constructed thereon, is hereby subjected to that certain Declaration of Condominium for Mountain View Condominium dated February 15, 1977, and recorded in Deed Book 211, at page 582, Cherokee County, Georgia records and, to each and every provision thereof, same being incorporated verbatim herein and made a part hereof by reference, and such property is and shall be a part of the Condominium created thereby and shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the provisions of the Condominium Declaration.

2. That, in accordance with the provisions of the Declaration of Condominium, every owner of, and every mortgagee or other grantee of any interest in any Unit located on the Phase Two-A Property, by acceptance of a deed or other conveyance of such interest, whether or not it shall be so expressed in any such deed or other conveyance, whether or not such deed or other conveyance shall be signed by such person and whether or not such person shall otherwise consent in writing, shall take subject to the Condominium Declaration and to the terms and conditions thereof and shall be deemed to have assented to said terms and conditions.

3. That, inasmuch as the property originally subjected to the Condominium Declaration (the property described in Exhibit "A" of the Condominium Declaration), has 16 Units located thereon, and inasmuch as the Phase Two-A Property which is hereby added to the Condominium has 16 Units located thereon, the percentage of undivided interest in the common elements, liability for common expenses and voting weight allocable to each of the 32 Units which now comprise the Condominium shall henceforth be as set forth on Exhibit "No. 2" attached hereto and by this reference made a part hereof; provided, however, Declarant shall have and hereby specifically reserves the right to further readjust the same in accordance with the provisions of Article III of the Condominium Declaration if Declarant shall subject additional property to the Condominium Declaration as therein provided, which latter right Declarant hereby also expressly reserves.

4. That, contemporaneously with the recording of this First Amendment, Declarant is also recording in the office of the Clerk of the Superior Court of Cherokee County, Georgia, the plats and/or plans and certifications required under the Georgia Condominium Act with respect to said Units located on the Phase Two-A Property which are herewith added to the Condominium.

IN WITNESS WHEREOF, Declarant, Diamondhead Corporation, has caused these presents to be executed in its corporate name by its officers thereunto duly authorized and its corporate seal properly attested to be hereto affixed on the day and year first above written.

Signed, sealed and delivered in the presence of:

Suzanne Patten  
Unofficial Witness

Sidney J. Abdalla, Jr.  
Notary Public

SIDNEY J. ABDALLA, JR.  
Notary Public, Parish of Orleans, State of La.

DIAMONDHEAD CORPORATION  
By: William H. Fulkner  
Title: VP  
Attest: W. E. H. [Signature]  
Title: ASST SECY  
(Corp. Seal)

DESCRIPTION OF MOUNTAIN VIEW CONDOMINIUMS  
PHASE TWO-A

Being a portion of Land Lot 202 in the 22nd District 2nd Section of Cherokee County, Georgia and described as follows:

Beginning at a point being North sixty-seven degrees eighteen minutes forty-five seconds East (N67°18'45"E) distant one hundred twenty and eighty-two hundredths (120.82) feet from the northernmost corner of Lot 414 as shown and delineated upon that certain map entitled "22 District 2nd Section Lake Arrowhead, Phase 1, Unit 4" which plat was duly recorded among the land records of Cherokee County Georgia on 5/11/73 in Plat Book 9 at Pages 34 etc. and more particularly in Plat Book 9 at Page 44 said point of beginning being also the intersection of the easterly right-of-way line of Lake Arrowhead Drive with the southerly right-of-way line of Country Club Lane thence from said point of beginning running:

- (1) Along the aforementioned southerly right-of-way line of Country Club Lane North seventy degrees East (N70°00'E) eighty-four and sixteen hundredths (84.16) feet to a point of curve thence;
- (2) Along the arc of a curve to the right having a radius of 260' an arc length of 161.28' the chord of which bears North eighty-seven degrees forty-six minutes fifteen seconds East (N87°46'15"E) distant one hundred fifty-eight and seventy-one hundredths (158.71) feet thence;
- (3) South seventy-four degrees twenty-seven minutes twenty-nine seconds East (S74°27'29"E) one hundred-eight and sixty-two hundredths (108.62) feet thence;
- (4) Still along said southerly right-of-way line South seventy degrees East (S70°00'E) one hundred sixteen and forty-eight hundredths (116.48) feet thence;
- (5) Leaving said right-of-way of Country Club Lane South twenty degrees West (S20°00'W) one hundred (100.00) feet thence;
- (6) North Eighty degrees thirty minutes forty-one seconds West (N80°30'41"W) one hundred fifty-one and seventy-one hundredths (151.71) feet thence;
- (7) North forty-seven degrees fifteen minutes West (N47°15'W) fifty-five (55) feet thence;
- (8) South forty-two degrees forty-five minutes West (S42°45'W) eighty three (83) feet thence;
- (9) South thirty-seven degrees fifty-six minutes four seconds East (S37°56'04"E) seventy-four and sixty-seven hundredths (74.67) feet thence;
- (10) South thirteen degrees West (S13°00'W) seventy (70) feet to the northerly right-of-way line of Lake Arrowhead thence;
- (11) Along same being along the arc of a curve to the right having a radius of 240' an arc length of 255.52' the chord of which bears North forty-six degrees thirty minutes West (N46°30'W) distant two hundred forty-three and sixty-two hundredths (243.62) feet thence;
- (12) North sixteen degrees West (N16°00'W) eighty-nine and forty-three hundredths (89.43) feet to the point of beginning, containing 1.6026 acres of ground.

Subject to easements ten (10) feet in width centered on and following water, sewer, telephone and electric lines constructed

(151.71) feet thence;

(7) North forty-seven degrees fifteen minutes West (N47°15'W)

fifty-five (55) feet thence;

(8) South forty-two degrees forty-five minutes West (S42°45'W)

eighty three (83) feet thence;

(9) South thirty-seven degrees fifty-six minutes four seconds East

(S37°56'04"E) seventy-four and sixty-seven hundredths (74.67)

feet thence;

(10) South thirteen degrees West (S13°00'W) seventy (70) feet to the northerly right-of-way line of Lake Arrowhead thence;

(11) Along same being along the arc of a curve to the right having a radius of 240' an arc length of 255.52' the chord of which bears North forty-six degrees thirty minutes West (N46°30'W) distant two hundred forty-three and sixty-two hundredths (243.62) feet thence;

(12) North sixteen degrees West (N16°00'W) eighty-nine and forty-three hundredths (89.43) feet to the point of beginning, containing 1.6026 acres of ground.

Subject to easements ten (10) feet in width centered on and following water, sewer, telephone and electric lines constructed or about to be constructed.

Together with rights of access in, over and along driveways, parking areas, water and sewer lines, in Phase 1.

EXHIBIT NO. "2"

<u>UNIT NUMBER</u>	<u>PERCENTAGE OF INTEREST IN COMMON ELEMENTS, LIABILITY FOR COMMON EXPENSES AND VOTING WEIGHT</u>	<u>SQUARE FEET OF LIVING AREA (EXCLUSIVE OF BASEMENT IF AN</u>
1	3.10%	1,088
2	3.10%	1,088
3	3.10%	1,088
4	3.10%	1,088
5	3.10%	1,088
6	3.10%	1,088
7	3.10%	1,088
8	3.10%	1,088
9	3.10%	1,088
10	3.10%	1,088
11	3.10%	1,088
12	3.10%	1,088
13	3.10%	1,088
14	3.10%	1,088
15	3.10%	1,088
16	3.10%	1,088
17	3.10%	1,088
18	3.10%	1,088
19	3.10%	1,088
20	3.10%	1,088
21	3.10%	1,088
22	3.10%	1,088
23	3.10%	1,088
24	3.10%	1,088
25	3.20%	1,122
26	3.20%	1,122

15	3.10%	.
16	3.10%	1,088
17	3.10%	1,088
18	3.10%	1,088
19	3.10%	1,088
20	3.10%	1,088
21	3.10%	1,088
22	3.10%	1,088
23	3.10%	1,088
24	3.10%	1,088
25	3.20%	1,122
26	3.20%	1,122
27	3.20%	1,122
28	3.20%	1,122
29	3.20%	1,122
30	3.20%	1,122
31	3.20%	1,122
32	<u>3.20%</u>	1,122
	100.00%	

SECOND AMENDMENT TO DECLARATION OF CONDOMINIUM  
FOR MOUNTAIN VIEW CONDOMINIUM

Cross Reference: Deed Book 211, page 582  
Cherokee County, Georgia Records

THIS SECOND AMENDMENT TO DECLARATION OF CONDOMINIUM FOR MOUNTAIN VIEW made this 1st day of September, 1977, by DIAMONDHEAD CORPORATION, a Delaware corporation (hereinafter referred to as "the Declarant");

W I T N E S S E T H :

WHEREAS, Declarant has heretofore filed of record in Cherokee County, Georgia, that certain Declaration of Condominium for Mountain View Condominium, dated February 15, 1977, and recorded in Deed Book 211, at page 582, Cherokee County, Georgia Records; as amended by that certain First Amendment to Declaration of Condominium for Mountain View Condominium dated June 27, 1977, and recorded in Deed Book 221, at Folio 89, Cherokee County, Georgia Records (said recorded Declaration of Condominium for Mountain View Condominium, as amended, being hereinafter referred to as "the Condominium Declaration");

WHEREAS, Declarant and the undersigned Unit Owners are the owners of all the property affected by the Condominium Declaration;

WHEREAS, Declarant and the undersigned Unit Owners desire to amend the Condominium Declaration to provide that a Unit Owner may make certain improvements to a Unit as hereinafter provided;

NOW, THEREFORE, Declarant, with the consent of the undersigned Unit Owners, hereby declares that Article XI of the Condominium Declaration is hereby amended to provide as follows:

(1) That any Unit Owner (including Declarant) at his

to amend the Condominium Declaration to provide that a Unit Owner may make certain improvements to a Unit as hereinafter provided;

NOW, THEREFORE, Declarant, with the consent of the undersigned Unit Owners, hereby declares that Article XI of the Condominium Declaration is hereby amended to provide as follows:

(1) That, any Unit Owner (including Declarant) at his election, and without the express approval otherwise required for architectural changes as provided for in Article XI of the Condominium Declaration (and as more fully set forth in Exhibit "F", Part I (1) of the Condominium Declaration) may construct within the common area adjacent to such Owner's Unit a porch of the type depicted on the architectural drawing attached hereto as Exhibit "A" and by reference made a part hereof, so long as any such porch shall be



constructed in strict compliance with said architectural drawing set forth on said attached Exhibit "A" and all applicable governmental building codes and regulations, which porch shall thereafter be a limited common element (as defined in Article IV (2) of the Condominium Declaration) serving such Unit; provided, however, that any expense incurred with respect to the construction or maintenance of such porch shall be the sole and exclusive responsibility of the Unit Owner and shall not be a common expense.

IN WITNESS WHEREOF, Diamondhead Corporation and the undersigned Unit Owners have executed this instrument under seal as of the day and year first above written.

Signed, sealed and delivered  
as to Diamondhead Corporation  
in the presence of:

1968  
Suzanne Potter  
Unofficial Witness

Sidney J. Abdalla, Jr.  
Notary Public

SIDNEY J. ABDALLA, JR.  
Notary Public, Parish of Orleans, State of La.  
My Commission is issued for life.

DIAMONDHEAD CORPORATION

BY: [Signature]  
TITLE: V.P.

ATTEST: [Signature]  
TITLE: ASSY. Sec'y

(CORPORATE SEAL)



# MOUNTAIN VIEW CONDOMINIUMS

