

STATE OF MISSISSIPPI:
COUNTY OF HANCOCK:

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Manager
Molokai Owners Association - 228-547-7804

AMENDED DECLARATION OF CONDOMINIUM

WHEREAS, pursuant to article XIII of the Declaration of Condominium recorded on the 12th day of October, 1971, in Deed Record Book No. W0 pages 229 through 273 in the records of the Chancery Clerk of Hancock County, Mississippi, the Board of Directors and the members of Diamondhead Condominium Association #1, Inc. have adopted and approved this amended Declaration of Condominium; and

WHEREAS, each record owner of the property and each record holder of security interest therein have executed an amended site plan in accordance with Section 896-05 of the Mississippi Condominium Act, said executed amended site plan being attached hereto as Exhibit "A" for recording;

NOW THEREFORE, said Declaration of Condominium is amended to read as follows:

DECLARATION OF CONDOMINIUM

DIAMONDHEAD CORPORATION, a Delaware Corporation does hereby declare that the property situated and being in Hancock County, State of Mississippi, described as follows:

Lot C, Unit 1, Phase 1, Diamondhead, as per subdivision map or plat prepared by Louis D. Rash, Registered Professional Engineer, and recorded in Plat Book No. 4, at pages 1-11, inclusive, in the Office of the Chancery Clerk of Hancock County, Mississippi.

is hereby affected by the following declaration, and recitals:

RECITALS, INTENT AND PURPOSE

WHEREAS, Diamondhead Corporation, a corporation, hereinafter referred to as the "Developer", as owner in fee simple of the Property, is constructing thereon 10 buildings of various heights and containing

various types of condominium units in a total number of 75, together with parking spaces, paving, walks, swimming pool and other improvements, all as hereinafter described ; and

WHEREAS, by this Declaration, it is intended to subdivide the Property into 75 parcels of real property which, in accordance with the provisions herein contained, shall nevertheless be subjected to the benefits and burdens of a condominium; and

WHEREAS, a condominium is a method of ownership which, when applied to a multi-family dwelling, provides for a separate title to each residential unit, which title shall consist of an apartment and an undivided interest in and to all of the Property that remains other than Apartments; and

WHEREAS, notwithstanding such separation of title, the owners by placing a condominium plan into effect will own with others common area property, including, without intending to limit the same, to such elements thereof as the parking lots and landscaped areas, to be used and controlled in a manner consistent both with the needs and desires of the residents and the community in which the property is located; and

WHEREAS, it is desirable, therefore, that this Declaration provide the basic requirements for such needs and provide for proper use of the Property, and that within these basic requirements, the Association hereinafter referred to, and its Board of Directors shall have the right and duty to effect the purpose of the condominium;

NOW THEREFORE,

DECLARATION. Developer hereby declares on behalf of itself, its successors, grantees and assigns to its grantees and their respective heirs, successors and assigns as well as to any and all persons having, acquiring or seeking to have or acquire any interest of any nature whatsoever in and to any part of the Property, as follows:

The Property from and after the date of the recording of this Declaration in the office of the Chancery Clerk in and for

Hancock County, shall be and continue subject to each and all of the terms hereof until this Declaration is terminated or abandoned in accordance with provisions herein elsewhere contained.

I. DEFINITIONS: As used herein or elsewhere in the Condominium Documents, unless otherwise provided, or unless the context requires otherwise, the following terms shall be defined as in this Article provided.

1. **Apartment:** any one of those parts of the Building which is separately described on "Surveyor Plans" as "Apartment" followed by a number and a letter. *Apartments numbered in the 100 series are ground level apartments, and apartments numbered in the 200 series are second story apartments. (italics added by amendment 12-14-72)*
2. **Apartment Owner:** the person or persons holding title in fee simple to an Apartment.
3. **Assessment:** that portion of the cost of maintaining, repairing and managing the Property which is to be paid by each Apartment Owner, which respective portions, except as herein specifically otherwise provided, are set forth in Exhibit "A" annexed hereto and made a part thereof.
4. **Association:** the "Diamondhead Condominium Association No. 1, Inc." and its successors, a corporation not for profit, copies of the Articles of Incorporation and By-Laws of which corporation are annexed hereto and made parts hereof as Exhibits "B" and "C" respectively.
5. **Building:** any one of the ten buildings which contain the Apartments.
6. **Common Elements:** all conduits, ducts, plumbing, wiring and other facilities and property for the furnishing of utility services, except the heating and air conditioning units; all that part of the Property which is not within the 75 apartments as such Apartments are shown on the Surveyor Plans for which exists within Apartments by virtue of an easement herein created, and the swimming pool.
7. **Common Expenses:** the actual and estimated costs of:
 - a. Maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Apartments as to which, pursuant to other provisions hereof, it is the responsibility of the Association to maintain, repair and replace;
 - b. Management and administration of the Association, including without limiting the same, to compensation paid by the Association to a managing agent, accountants, attorneys, and other employees;
 - c. Any other items held by or in accordance with other Documents to be Common Expense.
8. **Common Surplus:** the excess of all receipts of the Association including but not limited to assessments, rents, profits and revenue on account of the common elements, over the amount of common expenses.
9. **Condominium Documents:** this Declaration and the Exhibits annexed hereto as the same from time to time may be amended. Said exhibits are as follows:
 - **Exhibit A** - "Surveyor Plans"; Site plan with typical plan, together with Apartment plan and shares of interest attributed to the respective Apartments, prepared by J. J. Krebs, Engineering Co.

- **Exhibit B** - "Articles of Incorporation of DIAMONDHEAD CONDOMINIUM ASSOCIATION NO. 1, INC."
 - **Exhibit C** - "By-Laws of DIAMONDHEAD CONDOMINIUM ASSOCIATION NO. 1, INC."
 - **Exhibit D** - Rules and Regulations of the association.
10. **Developer:** Diamondhead Corporation, its assigns and/or successors.
 11. **Person:** Developer and any individual, firm, corporation, trustee, or other entity capable of holding title to real property.
 12. **Plans and Specifications:** The plans and specifications referred to in Article I, 9, hereof.
 13. **Property:** As defined and described in Declaration of Condominium.
 14. **Share:** The percentage attributed to each Apartment as set forth in Exhibit A.

II. Common Elements Use: The common elements shall be used in accordance with and subject to the following provisions:

1. **Covenant against Partition.** In order to effectuate the intent hereof and to preserve the Condominium and the Condominium method of ownership, the Property shall remain undivided and no person, irrespective of the nature of his interest in the Property, shall bring any action or proceeding for partition or division of the Property or any part thereof until the termination of the Declaration in accordance with provisions herein elsewhere contained or until the Building is no longer tenantable whichever first occurs.
2. **Rules and Regulations Promulgated by Association.** No person shall use the Common Elements or any part thereof in any manner contrary to or not in accordance with such rules and regulations pertaining thereto as from time to time may be promulgated by the Association. Without in any manner intending to limit the generality of the forgoing, the Association shall have the right, but not the obligation, to promulgate rules and regulations limiting the use of the Common Elements to members of the Association and their respective families, guests, invitees and servants. The Association shall also have the right, but not the obligation, to promulgate rules and regulations providing for the exclusive use by an apartment owner and his guests, for specific occasions, of the swimming pool. Such use may be conditioned upon, among other things; the payment by the apartment owner of such assessment as may be established by the Association for the purpose of deferring costs thereof.
3. **Maintenance, repair, management and operation** of the Common elements shall be the responsibility of the Association, but nothing herein contained however shall be construed so as to preclude the Association from delegating to persons, firms or corporations of its choice, such duties as may be imposed upon the Association by the terms of this sub article II.3 and as are approved by the Board of Directors of the Association.
4. **Expenses incurred or to be incurred** for the maintenance, repair, management and operation of the Common Elements shall be collected from Apartment Owners as assessed, in accordance with provisions contained elsewhere herein.
5. Subject to the rules and regulations from time to time pertaining thereto, all **Apartment Owners may use the Common Elements**

in such manner as will not restrict, interfere with or impede the use thereof by other Apartment Owners.

6. **Alterations and Improvements.** The Association shall have the right to make or cause to be made such alterations and improvements to the Common Elements (which do not prejudice the right of any Apartment Owner unless his written consent has been obtained), provided the making of such alterations and improvements are first approved by the board of Directors of the Association and all first mortgagees of individual units. The costs of such alterations and improvements shall be assessed as Common Expense, unless in the judgment of not less than 80% of the Board of Directors, the same are exclusively or substantially exclusively for the benefit of the Apartment Owner or Owners requesting the same, in which case such requesting Apartment Owner or Owners shall be assessed therefore in such proportions as he approves or as they approve jointly and failing such approval, in such proportions as may be determined by the Board of Directors of the Association.
7. **Shares of Apartment Owners.** The shares of the Apartment Owners in the Common Elements shall be as stated in Exhibit "A" annexed hereto and may be altered only by amendment hereof executed in form for recording by all of the Apartment Owners and First Mortgagees of such Owners. No such alteration shall affect the lien of prior recorded mortgages unless written consent of the holder of such mortgage is obtained and recorded.
8. **The Share of an Apartment Owner in the Common Elements** is appurtenant to the Apartment owned by him, and inseparable from Apartment ownership.

III. MAINTENANCE AND REPAIR OF APARTMENTS

1. **The Association at its expense**, shall be responsible for the maintenance, repair and replacement of:
 - a. All portions of the Apartment which contributes to the support of the Building, excluding, however, interior wall, ceiling and floor surfaces, and including, without intending to limit the same to, outside walls of the Building, structural slabs, roof, interior boundary walls of Apartments and load-bearing columns;
 - b. All conduits, ducts, plumbing, wiring and other facilities for furnishing of utility services which may be contained in the Apartment but excluding therefrom, appliances, plumbing fixtures, and the heating and air conditioning units.
 - c. All incidental damage caused to an Apartment by such work as may be done or caused to be done by the Association in accordance herewith.
 - d. The swimming pool and all drains, pipes, pumps, equipment and appurtenances which are a part of or which are necessary for and/or are used in the operation, maintenance and/or repair of said swimming pool.
2. **By the Apartment Owner.** The responsibility of the Apartment Owner shall be as follows:
 - a. To maintain, repair and replace at his expense, the heating and air conditioning units and all

portions of his Apartment except the portions of each to be maintained, repaired and replaced by the Association, and to use his best efforts to perform, and to facilitate and expedite the performance of any necessary maintenance, repairs or replacements;

- b. To perform his responsibilities in such manner so as not unreasonably to disturb the occupants of the other Apartments;
- c. Not to paint or otherwise decorate or change the appearance of any portion of the Building not within the walls of his Apartment, unless the written consent of the Association is obtained;
- d. To promptly report to the Association or its agent any defect or need for repairs, the responsibility for the remedying of which is with the association;
- e. Not to make any alterations in the portions of his Apartment or the Building which are to be maintained by the Association or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety or soundness of the Building without first obtaining the written consent of the board of Directors of the Association and all First Mortgagees or(sic) individual Apartments, nor shall any Apartment Owner impair any easement without first obtaining the written consent of the Association and of the Apartment Owner or Owners for whose benefit such easement exists.

3. Nothing herein contained, however, shall be construed so as to impose a contractual liability upon the Association for maintenance, repair and replacement, and the Association's liability shall be limited to damage resulting from negligence.

IV. APARTMENTS SHALL BE CONSTITUED AS FOLLOWS:

1. **Real Property.** Each Apartment, together with the space within it as shown on the Survey Plans and together with all appurtenances thereto, shall, for all purposes, constitute a separate parcel of real property which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other parcel of real property, independently of all other parts of the Property, subject only to the provisions of this Declaration.

2. **Boundaries.** Each Apartment shall have such horizontal and vertical boundaries as are shown on the Surveyor Plans, subject to such encroachments as are contained in the Building whether the same exist now or are created by construction, settlement or alterations. Said boundaries are intended to be as follows:

a. **Horizontal Boundaries:**

- i. The surface of the ceiling of the Apartment.
- ii. The surface of the floor of the Apartment.

b. **Vertical Boundaries:**

- i. Between apartments: the interior surface of the wall or walls between Apartments.
- ii. Other: the interior surface of the exterior walls.

3. **Appurtenances.** Each Apartment shall include and the same shall pass with each Apartment as inseparable appurtenance thereto, whether or not separately described, conveyed or encumbered, all of the rights, title and interest of an Apartment Owner in the Property, which shall include but not be limited to:

- a. **Common Elements:** an undivided share of the Common Elements, such undivided share to be that portion set forth in exhibit "A";
- b. A license with or without monthly fees to maintain a private **passenger automobile at and on a parking space** in accordance with the Rules and Regulations of the Association;
- c. Easements for the benefit of the Apartment;
- d. **Association membership** and funds and assets held by the association for the benefit of the Apartment Owner;
- e. **Membership in the Diamondhead Property Owners Association** and eligibility for membership in the Diamondhead Yacht and Country Club Association;
- f. All such appurtenances, however, shall be and continue to be subject to the easements for the benefit of other Apartments;
- g. In addition to and not in derogation of the ownership of the space described on the Surveyor Plans, an exclusive easement for the use of the space not owned by the Apartment Owner and which is occupied by the Apartment, which easement shall exist until the earlier of such time as this Declaration is terminated in accordance with provisions herein elsewhere contained, or the Building is no longer tenable;
- h. The following easements from each Apartment Owner to each other Apartment Owner and to the Association:
 - i. **Ingress and Egress.** Easements through the Common Elements for ingress and egress for all persons making use of such Common Elements in accordance with the terms of the Condominium Documents.
 - ii. **Maintenance, Repair and Replacement.** Easements through the Apartments and Common Elements for maintenance, repair and replacement of the Apartments and Common Elements. Use of these easements, however, for access to the Apartments shall be limited to reasonable hours, except that access may be had at any time in case of emergency.
 - iii. **Structural Support.** Every portion of an Apartment which contributes to the structural support of each Building shall be burdened with an easement of structural support for the benefit of the Common Elements.
 - iv. **Utilities.** Easements through the Apartments and Common Elements for all facilities for the furnishing of utility services within each Building, which facilities shall include but not be limited to conduits, ducts, plumbing and wiring; provided, however, that the easements for such facilities through an Apartment shall be only substantially in accordance with the Plans and Specifications of the building.

V. USE RESTRICTIONS

In order to provide for a congenial occupation of the Building and to provide for the protection of the values of the Apartments, the use of the Property shall be restricted to and be in accordance with the following provisions:

1. No Apartment shall be occupied by any person or family not approved in advance by the Board of Directors of the Association. The Association shall signify in writing such approval or disapproval within (30) days after the same is requested in writing, provided that simultaneously with such request, there is submitted to the Association the name of the person or family in question, his or its residence address and three business references, together with such other information as the Association might reasonably request. Any such approval once given may not thereafter be withdrawn. Failure of the Board of directors to disapprove within such period conclusively shall be deemed to constitute approval. The provisions in this paragraph shall not be applicable to any mortgagee or purchaser of lessee from such mortgagee as recited in article XVII hereof. Also the provisions of this paragraph and the provisions of Section VI, hereinafter set out, shall not be applicable to the rental or leasing of an apartment by an owner for a period of not more than thirty (30) days to any person or family of his choosing: PROVIDED, HOWEVER, that there shall be no extensions or renewals of any such thirty (30) day rentals or leases to the same person or family without compliance with the provisions of this paragraph and the provisions of Section VI, hereinafter set out and PROVIDED, FURTHER, that both the owners and the person or persons who are parties to any such rental or lease agreements shall at all times be subject to and bound by all of the other provisions of this Declaration.

2. **Nuisances.** No nuisances shall be allowed upon the Property nor shall any use or practice be allowed which is a source of annoyance to the residents or which interferes with the peaceful possession and use of the Property by its residents.

3. **Lawful use.** No immoral, improper, offensive or unlawful use shall be made of the Property nor any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibilities of Apartment Owners and the Association of complying with the requirements of governmental bodies which require maintenance, modification or repair of the Property shall be the same as hereinabove provided for the maintenance and repair of that portion of the Property subjected to such requirements.

4. **Interpretation.** In interpreting deeds, mortgages and plans the existing physical boundaries of the unit 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 the deed, mortgage or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or in the deed and those of the building.

5. **Regulations.** Regulations concerning use of the Property may be promulgated by the Association as hereinabove set forth; provided, however, that copies of such regulations are furnished to each Apartment Owner prior to the time the same become effective. The initial regulations, which shall be deemed effective until amended by the Association are annexed hereto and made a part hereof as Exhibit "D". Any amendments thereto shall be recorded in the Official Records of Hancock County as amendments to said Exhibit. Such regulations shall not impair or limit the rights of mortgagees, as elsewhere recited.

VI. CONVEYANCES

Except as set out in paragraph V, 1. above, the sale, leasing and mortgaging of Apartments shall be subject to the following provisions until this declaration is terminated in accordance with provisions herein elsewhere contained, or until the Building is no longer tenatable, whichever first occurs:

1. **Sale or Lease.** No Apartment Owner may dispose of an Apartment or any interest therein by sale or by lease without approval of the Board of Directors of the Association, except as elsewhere provided herein, which approval of the Association shall be obtained in the manner hereinafter provided.

- a. **Notice to Association.** An Apartment Owner intending to make a sale or lease of his Apartment or any interest therein shall give notice to the Association of such intention, together with the name and address of the intended purchaser or lessee, such other information as the Association reasonably may require and the terms of the proposed transaction. The giving of such notice shall constitute a warranty and representations by the Apartment Owner to the Association and any purchaser or lessee produced by the Association as hereinafter provided, that the Apartment Owner believes the proposal to be bona fide in all respects.
- b. **Election of Association.** Within thirty (30) days after receipt of such notice, the Board of Directors of the Association shall either approve the transaction or furnish a purchaser or lessee approved by the Association (and give notice thereof to the person desiring to sell or lease his Apartment) who will accept the transaction upon terms as favorable to the seller as the terms stated in the notice, except that a purchaser or lessee furnished by the Association may have not less than thirty (30) days subsequent to the date of approval within which to close the transaction , and except that the approval of a corporation may be conditioned as elsewhere stated. The approval of the Board of Directors of the Association shall be in recordable form, signed by any two members of the Board, and shall be delivered to the purchaser or lessee. The failure of the Association to act within such 30-day period shall be deemed to constitute approval, following which the Association nevertheless shall prepare and deliver written approval in recordable form, as aforesaid. The Apartment Owner giving such notice shall be bound to consummate the transactions with such purchaser or lessee as may be approved and furnished by the Association.
- c. *These provisions shall not apply to the first mortgagees who are in possession of units pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed in lieu of foreclosure. (italics added by amendment 12-14-72)*

2. **Mortgage.** *No Apartment Owner may mortgage his apartment nor any interest therein without the approval of the Association except to a bank, life insurance company, federal savings and loan association, or F. H. A. approved mortgagee. (italics replace by amendment 12-14-72)*

VII. ADMINISTRATION

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

1. **The Association** shall be incorporated under the name "Diamondhead Condominium Association No. 1" as a corporation not for profit under the laws of the State of Mississippi, under Articles of Incorporation of which a copy is attached as Exhibit "B". Any other form of organization for the Association may be submitted after first obtaining the written approval of all of the members thereof.

2. **The By-Laws** of the Association shall be in the form attached as Exhibit "C" until such are amended therein provided.

3. **The duties and powers** of the Association shall be those set forth in this Declaration, the Articles of Incorporation and the By-Laws, together with those reasonably implied to effect the purpose of the Association and this declaration; provided, however, that if there are conflicts or inconsistencies between this Declaration and either the Articles of Incorporation or the By-Laws, the terms and provisions of this Declaration shall prevail and the Apartment Owners covenant to vote in favor of such amendments in the Articles of Incorporation and/or By-laws as will remove such conflicts or inconsistencies. The power and duties of the Association shall be exercised in the manner provided by the Articles of Incorporation and the By-Laws and any duties or rights of the Association which are granted by or to be exercised in accordance with the provisions of this Declaration, shall be so exercised except that wherever this Declaration required the act or approval of the Board of Directors of the Association, such act or approval must be that of the Board done or given accordance with the By-Laws.

4. **Notices or demands**, for any purpose, shall be given by the Association to Apartment Owners and by Apartment Owners to the Association and other Apartment Owners in the manner provided for notices to members of the Association by the By-Laws of the Association.

5. **All funds and the titles** of all properties acquired by the Association and the proceeds thereof after deducting therefrom the costs incurred by the Association in acquiring the same shall be held for the benefit of the Apartment Owners for the purposes herein stated.

VIII. Insurance

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

1. **Authority to Purchase.** Except Builder Risk and other required insurance furnished by Developer during construction; all insurance policies upon the Property (except as hereinafter allowed) shall be purchased by the Association for the benefit of the Apartment Owners and their respective mortgagees as their interests may appear and shall provide for the issuance of certificate of insurance mortgage endorsements to the holders of first mortgages on the Apartments or any of them, and if insurance companies will agree, shall provide that the insurer waives its rights of subrogation as to any claims against Apartment Owners, the Association and their respective servants, agents, and guests. Such policies and endorsements shall be deposited with the treasurer of the Association who shall act as the Insurance Trustee, who must first acknowledge that the policies and any proceeds thereof will be held in accordance with the terms hereof.

2. **Apartment Owners.** Each Apartment Owner may obtain insurance, at his own expense, affording coverage upon his personal property and all such insurance shall contain the same waiver of subrogation

as that referred to in Article VIII 1. hereof (if the same is available).

3. **Coverage.**

- a. **Casualty.** The Buildings and all other insurable improvements upon the land 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 (exclusive of excavation and foundations) as determined annually by the *Board of Directors of the Association*. Such coverage shall afford coverage against: *(italics replace by amendment 12-14-72)*
 - 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 Buildings, including, but not limited to, vandalism, malicious mischief, windstorm and water damage;
- b. **Public Liability and Property Damage** in such amounts and in such forms as shall be required by the Association, including, but not limited to, water damage, legal liability, hired automobile, non-owned automobile and off-premises employee coverages;
- c. **Workmens Compensation** policy to meet the requirements of the law;
- d. **All liability insurance** shall contain cross-liability endorsements to cover liabilities of the Apartment Owners as a group to an Apartment owner.
- e. **Each insurance policy** obtained by the Association shall provide that it will not be cancellable, invalidated or suspended on account of the conduct of one or more of the individual Owners, or their respective families, servants, agents or guests.

4. **Premiums.** Premiums upon insurance policies purchased by the Association shall be paid by the Association and charged as Common Expenses.

5. **All Insurance Policies Purchased** by the Association shall be for the benefit of the Association and the Apartment Owners and their mortgagees as their respective interests may appear and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Treasurer of the Association as Insurance Trustee. The Insurance Trustee shall not be liable for payment of premiums nor for the renewal of the policies, nor for the sufficiency of coverage, nor for the form of contents of the policies, nor for the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Association, the Apartment Owners and their respective mortgagees, in the following shares, but such shares need not be set forth upon the records of the Insurance Trustee:

- a. **Common Elements.** Proceeds on account of damage to Common Elements – that undivided share for each Apartment Owner and his mortgagee, if any, which is set forth in exhibit “A”.
- b. **Apartments.** Proceeds on account of Apartments shall be held in the following undivided shares:
 - i. partial destruction when the Building is to be restored – for the Owners of damaged

Apartments in proportion to the cost of repairing the damage suffered by each damaged Apartment. Upon the request of the Insurance Trustee, the Association shall certify to the Insurance Trustee the appropriate portions as aforesaid, and each Apartment Owner shall be bound by and the Insurance Trustee may rely upon such certification.

- ii. Total destruction of the Building or where the Building is not to be restored – for all Apartment Owners, the share of each being that share set forth in Exhibit “A”.
- c. **Mortgages.** In the event that a mortgage endorsement has been issued as to an Apartment, the share of the Apartment Owner shall be held in trust for the mortgagee and the Apartment Owner as their interests may appear.

6. **Distribution of Proceeds.** Proceeds of Insurance policies received by the Insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

- a. **Reconstruction or Repair.** If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, all remittances to Apartment Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of an Apartment and may be enforced by him.
- b. **Failure to Reconstruct or Repair.** If it is determined in the manner elsewhere provided, that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial Owners, remittance to Apartment Owners and their mortgagees, being payable jointly to them. This is a covenant for the benefit of any mortgagee of an Apartment and may be enforced by him.
- c. **Certificate.** In making distribution to Apartment Owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association as to the names of the Apartment Owners and their respective shares of the distribution.

IX. Reconstruction or Repair of Casualty Damage

1. **Reconstruction or repair after casualty.** *In the event more than two-thirds (2/3) of the total number of units are substantially damaged or destroyed by fire or other casualty and members entitled to cast at least seventy-five percent (75%) of the votes in the Association do not within ninety (90) days from the date of such casualty make request in writing to the Board of Directors of the Association to proceed with repair or reconstruction, then and in that event the project shall be deemed to be owned in common by the owners of all the units, each owner's share in common being as set out in exhibit "A" hereto and the property shall be subject to an action for partition subject to the provisions of paragraph XIV (14) below at the suit of the owner of any unit or the holder of any lien therein, in which event the net proceeds of sale, together with the net proceeds of any insurance paid to the insurance trustee shall be considered as one fund and shall be distributed among the owners of all the units, each owner's share in said fund being as set out in Exhibit "A" hereto. Any distribution to the owner of a unit upon which there is a mortgage constituting a first lien shall be made to such owner and his mortgagee jointly. (italics replace by amendment 12-14-72)*

For the purpose of this section, should a mortgagee holding a mortgage which constitutes a first lien on a unit express in writing within said ninety (90) day period such mortgagee's desire to either rebuild, repair or reconstruct or not to rebuild, repair or reconstruct the damaged or destroyed property, the expressions of said mortgagee shall be deemed to be that of the unit owner, and any contrary expression by the owner of said unit shall be disregarded.

Other than as herein above provided, any property damaged or destroyed by fire or other casualty shall be promptly repaired or restored. (italics replace by amendment 12-14-72)

2. **Responsibility.** If the damage is only to those parts of the unit for which the responsibility of maintenance and repair is that of the unit owner, then the unit owner shall be responsible for reconstruction and repair after casualty. In all other instances the responsibility of reconstruction and repair after casualty shall be that of the Association.

3. **Estimate of Costs.** Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the costs to rebuild or repair so as to place the damaged property in condition as good as that before the casualty.

4. **Assessments.** If the estimated costs of reconstruction and repair to be made by the Association exceeds the total of the proceeds of Insurance, assessments shall be made against all unit owners in the case of damage to common areas and facilities, in sufficient amounts to provide funds to pay the estimated costs. If at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs therefore are insufficient, assessments shall be made against all unit owners in the case of damage to common areas and facilities in sufficient amounts to provide funds for the payment of such costs. Such assessments for reconstruction and/or repair of damage shall be in proportion to the owner's share in the common areas and facilities.

5. **Construction Fund.** The fund for payment of cost of reconstruction and repair after casualty shall consist of the following:

- a. The proceeds of insurance held by the Insurance Trustee.
- b. Funds collected by the Association from special assessments against Apartment Owners referred to in paragraph D above (if necessary). (?p4)

Funds described in b. above shall be deposited as necessary by the Association with the Insurance Trustee upon the determination by the Association that the insurance proceeds will not be sufficient to pay the estimated cost of reconstruction and repair to be made by the Association.

6. **Disbursement by Insurance Trustee.** The proceeds of Insurance collected on account of casualty and the sums deposited with the Insurance Trustee as set out in paragraph E(?p5) above shall be disbursed by the Insurance Trustee in payment of the cost of reconstruction and repair in the following manner:

a. **Apartment Owner.** The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with the Apartment Owner: to such contractors, suppliers and personnel as do the work or supply the materials or services required for such reconstruction and repair in such amounts and at such times as the Apartment Owner may direct, or if there is a mortgagee endorsement, then to such payees as the Apartment Owner and the first mortgagee jointly direct. Nothing contained herein, however, shall be construed so as to limit or modify the responsibility of an Apartment Owner to make such reconstruction and repair; and in the event that an Apartment Owner's proportionate share of any insurance proceeds is not sufficient to cover the entire cost of repairs for which such Apartment Owner is responsible, such Apartment Owner must complete the reconstruction or repairs at his own expense as provided in paragraph III, 2(a) above.

b. **Association –** Damage not in excess of Insurance proceeds. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with the Association: to such contractors, suppliers and personnel as do the work or supply the materials or services required for such reconstruction and repair, in accordance with the directions of the Association; provided, however, that upon request of a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such funds shall be dispersed in the manner hereafter provided for the reconstruction and repair of major damage.

c. **Association –** Damage in excess of Insurance proceeds. The portion of the construction fund representing damage for which the responsibility of reconstruction and repair lies with the Association; upon the order and direction of the Board of Directors of the Association and upon approval of an architect qualified to practice in Mississippi and employed by the Association to supervise the work.

d. **Surplus –** It shall be presumed that the first monies dispersed in payment of costs of the reconstruction and repair shall be from insurance proceeds; and if there is a balance in the construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed jointly to the Apartment Owners and their mortgagees who are the beneficial owners of the fund.

7. **Insurance Adjustments.** Each Apartment Owner shall be deemed to have delegated to the Board of Directors his right to adjust with insurance companies all losses under policies purchased by the Association, except in any case where the damage is restricted to one apartment, subject to the rights of mortgagees of such Apartment owners.

X. Taxes and Special Assessments

1. The assessment of each of the Apartments for taxes and special assessments by government bodies may be done in the following manner:
 - a. **Determination of value.** The total value for the tax or assessment roll for the Property shall be determined without regard to the apartments against which taxes and assessments ultimately are to be levied.

- b. **Allocation of Assessments to Apartments.** The assessments for each Apartment shall be the Apartment's respective share of the assessment of the property.
- c. **Certificate.** Any Tax Assessor may rely upon a Certificate of the Association as to the share of each Apartment and upon request or whenever appropriate, the association shall issue such Certificate.

2. During the period of time the taxes and special assessments upon the Property or any portion thereof are not assessed to Apartments as aforesaid, the taxes and assessments not separately assessed to Apartments shall be included in the budget of the Association. The Association shall assess each Apartment Owner in accordance with the manner hereinabove set forth for allocation of taxes and special assessments by Tax Assessors.

3. Return for Taxation. No Apartment Owner shall make a return for taxation which is inconsistent in any manner with the provisions hereof and if such return is made it shall be void. The Association shall make a return of all property for taxation in the names of the respective Apartment Owners returning for each share determined in the manner hereinabove provided for allocation of the assessments by Tax Assessors.

XI. Assessments

Assessments against the Apartment Owners shall be made or approved by the Board of Directors of the Association in accordance with the following provisions:

1. **Share of Expense.** Common Expenses – Each Apartment Owner shall be liable for his share of the Common Expenses and any Common Surplus shall be owned by each Apartment Owner in a like share.

2. **Assessments other than Common Expenses.** Any assessments, the authority to levy which is granted to the Association or its Board of Directors by the Condominium Documents, shall be paid by the Apartment Owners to the Association in the proportions set forth in the provision of the Condominium Documents authorizing the assessment.

3. **Accounts.** All sums collected by the Association from assessments may be co-mingled in a single fund but they shall be held for the Apartment Owners in the respective Shares in which they are paid and shall be credited to accounts from which shall be paid the expenses for which the respective assessments are made. Such accounts shall be as follows:

- a. **Common Expenses Account** – to which shall be credited collections of assessments for all Common Expenses, except maintenance, reconstruction and repair;
- b. **Alteration and Improvement Account** – to which shall be credited all sums collected for alteration and improvement assessments;
- c. **Reconstruction and Repair Account** – to which shall be credited all sums collected for maintenance, reconstruction and repair.

4. **Assessments for Common Expenses.** Assessments for Common Expenses shall be made for the calendar year annually in advance on or before the second Monday in December of the year preceding

for which the assessments are made and at such other and additional times as in the judgment of the Board of Directors, additional Common Expense assessments are required for the proper management, maintenance and operation of the Common Elements. Such annual assessments shall be due and payable in equal installments on or before the 15th day of each month, beginning with January of the year for which the assessments are made. The total of the assessments shall be in the amount of the estimated Common Expenses for the year including a reasonable allowance for contingencies and reserves less the amounts of unneeded Common Expense Account balances. If an annual assessment is not made as required, a payment in the amount required by the last prior assessment shall be due upon each assessment payment date until changed by a new assessment.

5. **Other Assessments** shall be made in accordance with the provisions of the Condominium Documents, and if the time of payment is not set forth in the Condominium Documents, the same shall be determined by the Board of Directors of the Association.

6. **Assessments for Emergencies.** Assessments for Common Expenses of emergencies which cannot be paid from the Common Expense Account shall be made by the Board of Directors of the Association.

7. **Assessments for Liens.** All liens of any nature including taxes and special assessments levied by governmental authority which are a lien upon more than one Apartment or upon any portion of the Common Elements, shall be paid by the Association as a Common Expense and shall be assessed against the Apartments in accordance with the Shares of the Apartments concerned or charged to the Common Expense Account, whichever in the judgment of the Board of Directors is appropriate.

8. **Assessment Roll.** The assessments against all Apartment Owners shall be set forth upon a roll of the Apartments which shall be available in the office of the Association for inspection at all reasonable times by Apartment Owners or their duly authorized representatives. Such roll shall indicate for each Apartment the name and address of the Owner or Owners, the assessments for all purposes and the amounts of all assessments paid and unpaid. A certificate made by the Association as to the status of an Apartment Owner's Assessment account shall limit the liability of any person for whom made other than the Apartment Owner. The Association shall issue such certificates to such persons as an Apartment Owner may request in writing.

9. **Liability for Assessments.** The Owners of an Apartment and his grantees shall be jointly and severally liable for all unpaid assessments due and payable at the time of conveyance but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefore. Such liability may not be avoided by a waiver of the use or enjoyment of any Common Element or by abandonment of the Apartment for which the assessments are made. A purchaser of an Apartment at a judicial or foreclosure sale or a first mortgagee who accepts a deed in lieu of foreclosure shall be liable only for assessments coming due after such sale and for that portion of due assessments prorated to the period after the date of the sale. Such a purchaser as aforesaid shall be entitled to the benefit of all pre-paid assessments paid beyond the date such purchaser acquires title.

10. **Lien for Assessments.** The unpaid portion of an assessment which is due shall be secured by a lien upon

a. the Apartment and all appurtenances thereto when a notice claiming the lien has been recorded by the Association in the public records of Hancock County. The Association shall not, however, record such claim of lien until the assessment is unpaid for not less

than twenty (20) days after it is due. Such a claim of lien shall also secure all assessments which come due thereafter until the claim of lien is satisfied. However, such lien shall be subordinate to prior bona fide liens of record.

- b. All tangible personal property located in the Apartment, except that such a lien shall be subordinate to prior bona fide liens of record.

11. Application.

- a. **Interest; Application of Payments.** Assessments and installments thereof paid on or before ten (10) days after the date when due shall not bear interest but all sums not paid on or before twenty (20) days after the date when due shall bear interest at the rate of eight percent (8%) per annum from the date when due until paid. All payments upon account shall be applied first to interest and then to the assessment payment first due. All interest collected shall be credited to the Common Expense Account.
- b. **Suit.** The Association at its option may enforce collection of delinquent assessments by suit at law or by foreclosure of the liens securing the assessments or by any other competent proceeding and in either event, the Association shall be entitled to recover in the same action, suit or proceeding the payments which are delinquent at the time of judgment or decree together with interest thereon at the rate of eight (8%) per annum, and all costs incident to the collection and the action, suit or proceedings, including, without limiting the same, to reasonable attorney's fees.

XII. Compliance and Default

Each Apartment Owner shall be governed by and shall comply with the terms of the Condominium Documents and Regulations adopted pursuant thereto and said Documents and Regulations as they may be amended from time to time. A default shall entitle the Association or other Apartment Owners to the following relief:

1. **Legal Proceedings.** Failure to comply with any of the terms of the Condominium Documents and Regulations adopted pursuant thereto, shall be ground for relief which may include, without intending to limit the same, to an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Association or if appropriate, by an aggrieved Apartment Owner.

2. **All Apartment Owners** shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or by that of any member of his family or his or their quests, employees, agents, or lessees, but only to the extent that such expense is not met by the proceeds of the insurance carried by the Association. Such liability shall include any increase in the fire insurance rates occasioned by use, misuse, occupancy, or abandonment of any Apartment or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

3. **Costs and Attorneys' Fees.** In any proceeding arising because of an alleged default by an Apartment Owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the court.

4. **No Waiver of Rights.** The failure of the Association or of an Apartment Owner to enforce any right, provision, covenant or condition which may be granted by the Condominium Documents shall not constitute a waiver of the right of the Association or Apartment Owner to enforce such right, provisions, covenant or condition in the future.

5. **All Rights, remedies and privileges** granted to the Association or any Apartment Owner pursuant to any terms, provisions, covenants or conditions of the Condominium Documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such party by the Condominium Documents or at law or in equity.

6. *The holder of a mortgage constituting a first lien on an apartment shall be given written notification by the Association of any default by the mortgagor of such apartment in the performance of such mortgagor's obligation under the Condominium documents which is not cured within thirty (30) days.* (italics added by amendment 12-14-72)

XIII. Amendment

Except for alterations in the Shares which cannot be done except with the consent of all Apartment Owners ~~whose shares are affected~~, and their mortgagees, the Condominium Documents may be amended in the following manner: (*"whose shares are affected" deleted by amendment 12-14-72*)

1. **Declaration.** Amendments to the Declaration shall be proposed and adapted as follows:
 - a. **Notice.** Notice of the subject matter of the proposed amendment in reasonably detailed form shall be included in the Notice of any meeting at which a proposed amendment is considered.
 - b. **Resolution.** A Resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by the Apartment Owners meeting as members of the Association and after being proposed and approved by either of such bodies, must be approved by the others. Directors and Apartment Owners not present at the meeting considering such amendment may express their approval in writing or by proxy. Such approvals must be by not less than seventy-five percent (75%) of the Directors and seventy-five percent (75%) of the Apartment Owners and their mortgagees.
 - c. **Recording.** A copy of each amendment shall be certified by at least two (2) officers of the Association as having been adopted and shall be effective when recorded in the public records of Hancock County, Mississippi. Copies of same shall be sent to each Apartment Owner and his mortgagee in the manner elsewhere provided for the giving of notices, but the same shall not constitute a condition precedent to the effectiveness of such amendment.

2. **Association; Articles of Incorporation and By-Laws.** The Articles of Incorporation and the By-Laws of the Association shall be amended in the manner provided by such documents.

XIV. Termination

The Condominium shall be terminated, if at all, in the following manner:

1. **The termination of the condominium** may be effected by the agreement of all Apartment Owners and First Mortgagees, which agreement shall be evidenced by an instrument or instruments executed in the manner required for conveyance of land. The termination shall become effective when such agreement has been recorded in the public records of Hancock County, Mississippi.

2. **Destruction.** If it is determined in the manner elsewhere provided, that the property shall not be reconstructed after casualty, the Condominium Plan of Ownership will be terminated and the Condominium Documents revoked. The determination not to reconstruct after casualty shall be evidenced by a Certificate of the Association certifying as to the facts effecting the termination, which Certificate shall become effective upon being recorded in the public records of Hancock County.

3. **Shares of Apartment Owners after Termination.** After termination of the Condominium, the Apartment Owners shall own the property as tenants in common in undivided shares and the holders of mortgages and liens against the Apartment or Apartments formally owned by such Apartment Owners shall have mortgages and liens upon the respective undivided shares of the Apartment Owners. Such undivided Shares of the Apartment Owners shall be as set forth in Exhibit "A". All funds held by the Association and insurance proceeds, if any, shall be and continue to be held jointly for the Apartment Owners and their First Mortgagees in proportion to the amount of the assessments paid by each Apartment Owner. The costs incurred by the Association in connection with a termination shall be Common Expense.

4. **If termination is due to Vote after casualty** not to repair or replace as provided for in Section IX, 1. above, it shall be the duty of the Association to provide for and to facilitate the removal of all debris, rubble, trash and litter of any kind from the property and the return of the property as nearly as possible to its natural state. The costs incurred by the Association in connection with carrying out the foregoing duty shall be a Common Expense.

5. **Following Termination**, the Property may be partitioned and sold upon the application of any Apartment Owner. If the Board of Directors following a termination, by not less than a three-fourths (3/4) vote, determines to accept an offer for the sale of the Property, each Apartment Owner shall be bound to execute such deeds and other documents reasonably required to effect such sale at such times and in such forms as the Board of Directors directs. In such event, any action for partition or other division of the Property shall be held in abeyance pending such sale, and upon the consummation thereof shall be discontinued by all parties thereto.

6. **The members of the board of Directors** acting collectively as agents for all Apartment Owners, shall continue to have such powers as in this Article are granted, notwithstanding the fact that the Association itself may be dissolved upon a termination.

XV. Covenants Running With the Land

All provisions of the Condominium Documents shall be construed to be covenants running with the land and with every part thereof

and interest therein including but not limited to every Apartment and the appurtenances thereto; and every Apartment Owner and claimant of the Property or any part thereof or interest therein, and his heirs, executors, administrators, successors and assigns shall be bound by all of the provisions of the Condominium Documents.

XVI. Liens

1. **Protection of Property.** All liens against an Apartment other than for permitted mortgages, taxes or special assessments will be satisfied or otherwise removed within thirty (30) days from the date the lien attaches. All taxes and special assessments upon an Apartment shall be paid before becoming delinquent.
2. **Notice of Lien.** An Apartment Owner shall give notice to the Association of every lien upon his Apartment other than for permitted mortgages, taxes and special assessments within five (5) days after the attaching of the lien.
3. **Notice of Suit.** Apartment Owners shall give notice to the Association of every suit or other proceeding which will or may affect the title to his Apartment or any other part of the Property, such notice to be given within five (5) days after the Apartment Owner receives notice thereof.
4. **Failure to comply** with this Article concerning liens will not affect the validity of any judicial sale.
5. **The Association shall** maintain a register of all permitted mortgages.

XVII. Judicial Sales

1. **No judicial sale** of an Apartment nor any interest therein shall be valid unless:
 - a. **Approval of the Association.** The sale is to a purchaser approved by the Board of Directors of the Association which approval shall be in recordable form and shall be delivered to the purchaser and recorded in the Public Records of Hancock County, Mississippi, or
 - b. **Public Sale.** The sale is the result of a public sale with open bidding.
2. **Unauthorized Transactions.** Any sale, mortgage or lease which is not authorized pursuant to the terms of this Declaration or for which authorization has not been obtained pursuant to the terms of this Declaration, shall be void unless subsequently approved by the Board of Directors of the Association.
3. **In the event proceedings are instituted to foreclose** any mortgage on any Apartment, the Association on behalf of one or more Apartment Owners, shall have the right to redeem from the mortgage for the amount due thereon or to purchase such Apartment at the foreclosure sale for the amount set forth to be due by the mortgage in the foreclosure proceedings, and should the mortgagor fail to redeem from such mortgage, and in case of such redemption by the Association, the Association thus redeeming shall take and have absolute fee simple title to the Property redeemed free from any claim or right of any grantee, his heirs or assigns or such mortgagor, and every person claiming by, through or under such mortgagor. Nothing herein contained shall preclude a mortgage institution, banker, saving and loan association, insurance company or any other recognized lending institution from owning a mortgage on any Apartment, and such lending institution shall have an unrestricted, absolute

right to accept title to the apartment in settlement and satisfaction of said mortgage or to foreclose the mortgage in accordance with the terms thereof and the laws of the State of Mississippi and to bid upon said Apartment at the foreclosure sale, provided said lending institution owning said mortgage shall give the Association, its successors and assigns, written notice by certified mail of the said default mailed at least thirty (30) days prior to the institution of foreclosure proceedings during which thirty (30) days the Association shall have the right to cure such default by payment to such mortgagee of all sums due upon such default and following such payment, such mortgagee shall be required to waive such default, and if such default is not cured as aforesaid, and should the Association or any member thereof individually or collectively fail to purchase such mortgage, together with any costs incident thereto, from such mortgagee, or fail to redeem such mortgage, then and in that event the mortgagee taking title on such foreclosure sale or taking title in lieu of foreclosure sale, may acquire such Apartment and occupy the same and let, relet, sell and resell the same without complying with the restriction limiting the occupation of said Property to persons approved by the Association. If the Association or any members as aforesaid, redeem such mortgage or cures such default, it shall have a lien against the Apartment for all sums expended in connection therewith, and shall have the same rights to collect such sums as in the case of a past-due assessment.

XVIII. Representations and Warranties of Developer

The Developer specifically disclaims any intent to have made any warranty or representation in connection with the Property or the Condominium Documents except as specifically set forth therein and no person shall rely upon any warranty or representation not so specifically made therein. The estimates of Common Expenses are deemed accurate, but no warranty or guaranty is made nor intended nor may one be relied upon.

XIX. Mortgages Taken by Developer

Any mortgage of any form taken by Developer in connection with the sale of an Apartment may be assigned by Developer at any time to any bank or other financing agency or institution of its choosing. Any such mortgage shall contain a provision recognizing this right of assignment.

1. *In addition to the other provisions contained in this declaration, pertaining to the rights of holders of mortgages constituting first liens on apartments, unless all holders of such mortgage liens on individual apartments have given their prior written approval, the Association shall not:*
 - (1) fail to employ a professional manager for the Condominium Project;*
 - (2) partition or subdivide any apartment or the common elements of the project or annex additional lands, or*
 - (3) by act or omission seek to abandon the Condominium status of the project except as provided by statute in case of substantial loss to the apartments and common elements of the Condominium Project.*
2. *The Association shall give holders of mortgages constituting first liens on apartments written notice thirty (30) days prior to the effective date of (1) any change in the Condominium documents, and (2) any changes of manager (not including change in employee of corporate manager) at the Condominium Project. (italics added by amendment 12-14-72)*

XX. Apartment Deeds

Any transfer of an Apartment shall include all appurtenances thereto whether or not specifically described.

XXI. Captions

Captions used in the Condominium documents are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of the Condominium Documents.

XXII. Gender, Singular, Plural

Whenever the content so permits, the use of the plural shall include the singular, the plural and any gender shall be deemed to include all genders.

XXIII. Severability

If any provision of this Declaration, or any section, sentence, clause, phrase or word, or the application thereof in any circumstances be judicially held in conflict with the laws of the State of Mississippi, then the said laws shall be deemed controlling and the validity of the remainder of the Declaration and the application of any such provision, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby.

This is to certify that the foregoing Amended Declaration of Condominium has been approved and adopted by the Board of Directors, the Apartment Owners, and their mortgagees, of the Diamondhead Condominium Association No. 1, Inc., in accordance with Article XIII of the Declaration of Condominium as originally filed and recorded in Deed Book No. W0, Page No. 229-273.



Secretary, Diamondhead Condominium Association, No. 1, Inc.

President, Diamondhead Condominium Association, No. 1, Inc.

STATE OF MISSISSIPPI

COUNTY OF HANCOCK

BOOK Y1 PAGE 114

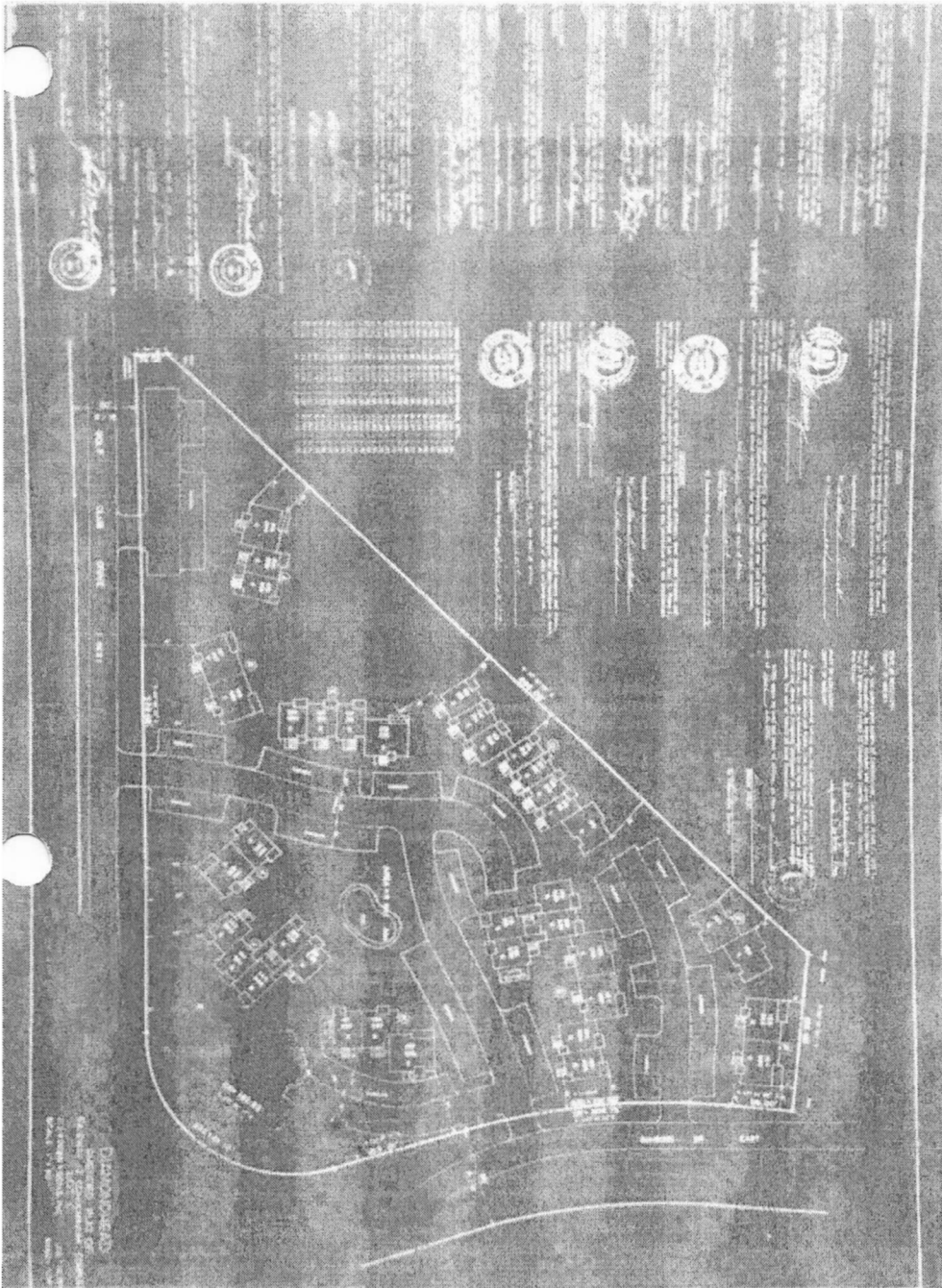
This day, personally appeared before me, the undersigned authority in and for the State of Mississippi and the County of Hancock, the within named Ralph M. Prince as President, Diamondhead Condominium Association, No. 1, Inc., and N. S. Whitman, Jr., as Secretary, Diamondhead Condominium Association, No. 1, Inc., respectively, of Diamondhead Corporation, a Delaware corporation, who acknowledged, as such officers, they signed, sealed and delivered the within and foregoing document on the day and year therein mentioned as the act and deed of said corporation.

GIVEN under my hand and seal of office, this 14th day of August, 1922.

A. M. ...
NOTARY PUBLIC, HANCOCK COUNTY, MISSISSIPPI

(AFFIX NOTARIAL SEAL)

My Commission Expires: May 6, 1925



STATE OF MISSISSIPPI
COUNTY OF HANCOCK

I, JOHN D. RUTHERFORD, JR., Clerk of the Chancery Court of said County, certify that the within instrument was filed for record in my office on this the 14 day of August, 1972, at 4:45 o'clock P. M., and duly recorded in Deed Record Book No. 28 Page No. 2-24

WITNESS my hand and Seal of Office this the 16 day of August, 1972

JOHN D. RUTHERFORD, JR., Chancery Clerk

John D. Rutherford, Jr.

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

I, JOHN D. RUTHERFORD, JR., Clerk of the Chancery Court of said County, certify that the within instrument was filed for record in my office on this the 17 day of December, 1972, at 1:35 o'clock P. M., and duly recorded in Deed Record Book No. 28 Page No. 19

WITNESS my hand and Seal of Office this the 19 day of December, 1972

JOHN D. RUTHERFORD, JR., Chancery Clerk

John D. Rutherford, Jr. D.C.

STATE OF MISSISSIPPI:
COUNTY OF HANCOCK:

AMENDMENTS TO AMENDED DECLARATION
OF CONDOMINIUM FILED ON THE 14TH
DAY OF AUGUST, 1972 AND RECORDED
IN VOLUME X-8 PAGE 7-29, DEED RECORDS,
HANCOCK COUNTY, MISSISSIPPI

At a meeting of the Board of Directors, the apartment owners and their mortgagees of the Diamondhead Condominium Association, No. 1, incorporated the following amendments here duly adapted.

At page 3, Add the following:

- I 1. "Apartments numbered in the 100 series are ground level apartments, and apartments numbered in the 200 series are second story apartments."

At page 9, Add the following:

- VI 1. (c) These provisions shall not apply to the first mortgagees who are in possession of units pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed in lieu of foreclosure.
- VI 2., Change to read:
Mortgage. No Apartment Owner may mortgage his apartment nor any interest therein without the approval of the Association except to a bank, life insurance company, federal savings and loan association, or F. H. A. approved mortgagee.

At page 11, change:

3. (a) "insurance company affording such coverage" to "Board of Directors of the Association".

At page 12, change to read:

- IX 1. Reconstruction or repair after casualty. In the event more than two-thirds (2/3) of the total number of units are substantially damaged or destroyed by fire or other casualty and members entitled to cast at least seventy-five percent (75%) of the votes in the Association do not within ninety (90) days from the date of such casualty make request in writing to the Board of Directors of the Association to proceed with repair or reconstruction, then and in that event the project shall be deemed to be owned in common by the owners of all the units, each owner's share in common being as set out in exhibit "A" hereto and the property shall be subject to an action for partition subject to the provisions of paragraph XIV (15) below at the suit of the owner of any unit or the holder of any lien therein, in which event the net proceeds of sale, together with the net proceeds of any insurance paid to the insurance trustee shall be considered as one fund and shall be distributed among the owners of all the units, each owner's share in said fund being as set out in Exhibit "A" hereto. Any distribution to the owner of a unit upon which there is a mortgage constituting a first lien shall be made to such owner and his mortgagee jointly.

(Cont. - Page 12, IX, 1.)

For the purpose of this section, should a mortgagee holding a mortgage which constitutes a first lien on a unit express in writing within said ninety (90) day period such mortgagee's desire to either rebuild, repair or reconstruct or not to rebuild, repair or reconstruct the damaged or destroyed property, the expressions of said mortgagee shall be deemed to be that of the unit owner, and any contrary expression by the owner of said unit shall be disregarded.

Other than as herein above provided, any property damaged or destroyed by fire or other casualty shall be promptly repaired or restored.

At page 18, Add the following:

- XII 6. The holder of a mortgage constituting a first lien on an apartment shall be given written notification by the Association of any default by the mortgagor of such apartment in the performance of such mortgagor's obligation under the Condominium documents which is not cured within thirty (30) days.

At page 18, Delete the following:

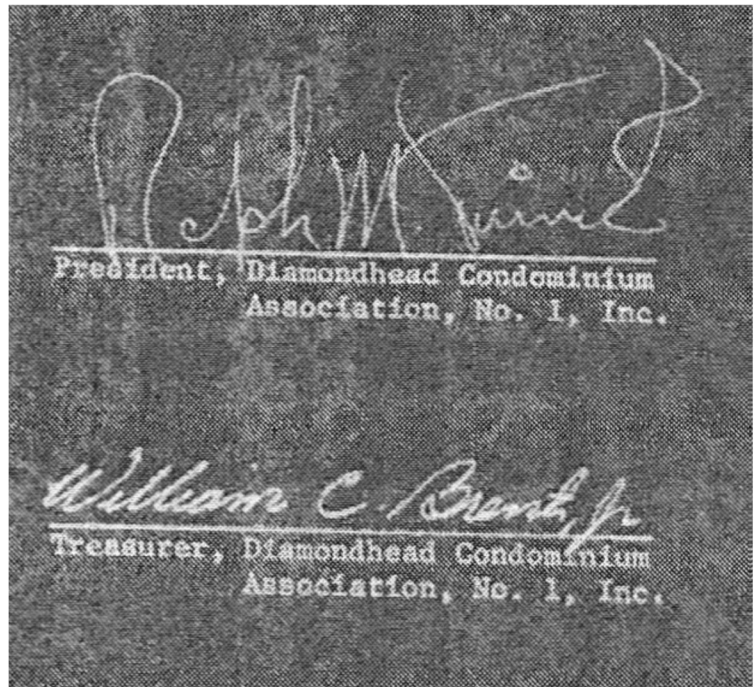
- XIII. "whose Shares are being affected".

At page 21, XIX, Add the following:

- XIX. (a)
1. In addition to the other provisions contained in this declaration, pertaining to the rights of holders of mortgages constituting first liens on apartments, unless all holders of such mortgage liens on individual apartments have given their prior written approval, the Association shall not:
 - (1) fail to employ a professional manager for the Condominium Project;
 - (2) partition or subdivide any apartment or the common elements of the project or annex additional lands, or
 - (3) by act or omission seek to abandon the Condominium status of the project except as provided by statute in case of substantial loss to the apartments and common elements of the Condominium Project.
 2. The Association shall give holders of mortgages constituting first liens on apartments written notice thirty (30) days prior to the effective date of (1) any change in the Condominium documents, and (2) any changes of manager (not including change in employee of corporate manager) at the Condominium Project.

This is to certify that the foregoing Amendments to the Declaration of Condominium have been duly approved and adopted by the Board of Directors, the Apartment Owners and their mortgagees, of the Diamondhead Condominium Association, No. 1, Inc., in accordance with Article XIII of the Declaration of Condominium.

Done this 14th day of December, 1972



Robert M. [unclear]
President, Diamondhead Condominium
Association, No. 1, Inc.

William C. Brent, Jr.
Treasurer, Diamondhead Condominium
Association, No. 1, Inc.

100 X 1 119

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

This day, personally appeared before me, the undersigned authority in and for the State of Mississippi and the County of Hancock, the within named Mr. Ralph M. Prince as President, Diamondhead Condominium Association, No. 1, Inc., and Mr. William C. Brent, Jr., as Treasurer, Diamondhead Condominium Association, No. 1, Inc., respectively, of Diamondhead Corporation, a Delaware corporation, who acknowledged, as such officers, they signed, sealed and delivered the within and foregoing document on the day and year therein mentioned as the act and deed of said corporation.

GIVEN under my hand and seal of office, this 14th day of December, 1972.

Virginia S. Johnston
NOTARY PUBLIC, HANCOCK COUNTY, MISSISSIPPI

(AFFIX NOTARIAL SEAL)

My Commission Expires: December 31, 1975

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

I, JOHN D. RUTHERFORD, JR., Clerk of the Chancery Court of said County, certify that the within instrument was filed for record in my office on this the 15 day of December, 1972, at 2:30 o'clock P. M., and duly recorded in Deed Record Book No. Y-1, Page No. 116

WITNESS my hand and Seal of Office, this the 19 day of December, 1972.

JOHN D. RUTHERFORD, JR., Chancery Clerk

By: Lawrence . D. C.