

DECLARATION OF CONDOMINIUM
OF
LAKESIDE VILLA
A CONDOMINIUM

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THIS DECLARATION, made this 6th day of January, 1973, by Diamondhead Corporation, a corporation created and existing under the laws of the State of Delaware (herein called "Developer") for itself, its successors, grantees and assigns.

WHEREIN, the Developer makes the following declaration.

WHEREAS, Diamondhead Corporation is the fee simple owner of certain real property situated in Hancock County, Mississippi, as is more particularly described in Exhibit "A" which is attached hereto and made a part hereof.

WHEREAS, Diamondhead Corporation intends to improve said real property more particularly described in said Exhibit "A" hereto attached by constructing thereon ninety-six (96) apartment units contained in nine (9) buildings, eight (8) of which will be wholly two-story structures and one (1) of which will be partly one-story and partly two-story, said improvements to be constructed substantially in accordance with the plans prepared by Developer which plans are attached hereto as Exhibit "B" and made a part hereof; and located substantially as shown on the site plan attached hereto as Exhibit "A" and made a part hereof, which said lands and improvements (excepting the Golf Course well and pipe line easement shown on Exhibit "A") are to be legally created as a condominium property by and through this enabling Declaration and under and by authority of Title 7 (New) Chapter 2A Sections 896-01 et seq. (Mississippi Code, 1942 as Recompiled and Amended) (also called the "Mississippi Condominium Act"); and

WHEREAS, it is the intent of Developer that the condominium property hereby created as Lakeside Villa shall be operated and administered as condominium property; and

WHEREAS, Developer proposes to establish by this Declaration a plan for the individual ownership of the area or space contained in the several units in said structures and the co-ownership by the individual and separate owners thereof, as owners in common, of all of the remaining real property which is herein-after defined and referred to as the "Common areas and facilities."

NOW, THEREFORE, Diamondhead Corporation, the Developer, hereby makes the following declaration as to the division to which said real property and improvements thereon (excepting the Golf Course well and pipe line easement shown on Exhibit "A") may be put, hereby specifying that said Declaration shall constitute covenants to run with the land and shall be binding upon Diamondhead Corporation, its successors and assigns, and upon all subsequent owners of all or any part of said real property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns:

1. Purpose. The purpose of this Declaration of condominium is to submit the real property herein described and the improvements thereon constructed or to be constructed thereon to the condominium form of ownership and use in the manner provided for by the "Mississippi Condominium Act", Title 7, (New Chapter 2A, Sections 896-01 et seq. (Mississippi Code, 1942 as Recompiled and Amended).

2. Name. The name by which this condominium is to be known is Lakeside Villa.

3. The Real Property.

(a) The real property owned by the Developer which is hereby submitted to the condominium form of ownership is the parcel of real property lying and being in Hancock County, Mississippi, as is more particularly described in and shown on Exhibit "A" hereto (excluding the Golf Course well and pipe line easement as shown on Exhibit "A" hereto which are hereby reserved by and unto Developer).

(b) Post Office Address. The post office address of said real property is c/o Diamondhead, P.O. Box 22, Bay St. Louis, Miss. 39520.

4. Definition. The terms used in this Declaration of condominium and in the By-Laws of the Lakeside Villa Owners Association shall have the meanings stated in the Mississippi Condominium Act as said Act is written as of the date hereof, and as follows:

- A. "Association" means Lakeside Villa Owners Association, and its successors.
- B. "Building" means any one of the nine (9) buildings which contain the units.
- C. "Condominium Documents" means this Declaration and all Exhibits attached hereto.

5. Lakeside Villa Development Plan.

.1. Plans. The improvements have been or will be, as the case may be, constructed by the Developer substantially in accordance with the plans therefor prepared by Developer, which plans, attached hereto as Exhibits "A" and "B" include a set of floor plans of the units, showing the layout, unit numbers and dimensions of the units. The improvements have been or will be, as the case may be, constructed by the Developer on the said real property substantially as shown on Exhibit "A" hereto which shows the location and designating numbers of each unit of each building, which said buildings have no name.

.2. Easements are reserved throughout the condominium property as may be required for utility services in order to adequately serve the condominium; provided, however, such easements to a unit shall be only in accordance with the plans for the buildings or as the buildings are constructed, unless approved in writing by the unit owners. Each owner shall have an easement in common with the owners of all other units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other units and serving his unit. Each unit shall be subject to an easement in favor of the owners of all other units to use the pipes, ducts, cables, wires, conduits, public utility lines and other common elements serving such other units and located in such unit. The Association shall have a right of access to each unit to inspect

the same, to remove violations therefrom, and to maintain, repair and replace the common elements contained therein or elsewhere in any building.

.3. Description of buildings and principal materials of which constructed. The buildings to be constructed upon the land include and will be limited to nine (9) buildings, eight (8) of which will be wholly two-story structures and one (1) of which will be partly one-story and partly two-story, said buildings to contain ninety-six (96) apartment units. The condominium will also include a laundry and storage room, a swimming pool and parking areas for each unit located substantially as shown in the plans and specifications. The buildings are and will be wood frame with wood shingle roofs and cedar plywood sides. The interior finish will be sheet rock. The buildings have outside wooden stairways. All units have one balcony. Each apartment kitchen will be equipped with dishwasher, garbage disposal, range, oven and refrigerator. Each apartment unit is supplied with water, sewer line, and electricity, with a separate air conditioning and heating system and hot water heater for each unit.

.4. The Common Elements. The common elements of the condominium will include the common areas and facilities located substantially as shown upon the site plan (Exhibit "A" hereto attached), including the following:

- (a) The land described on Exhibit "A" hereto.
- (b) The driveways and paved areas, including the individual parking slots, servicing the buildings.
- (c) All foundations, columns, beams and supports of the buildings.
- (d) All central and appurtenant installations for services such as power, lights, telephone, sewer and water, including all pipes, ducts, wires, cables and conduits used in connection therewith, whether located in common areas or in units, all utility and mechanical equipment, and all buildings, and spaces; provided, however, that neither the unit central air conditioning and heating system, nor the unit hot water heater shall not constitute a common element.
- (e) The laundry and storage area.

- (f) Landscaping.
- (g) All exterior walls, the wooden stairways and all roofs, of the buildings.
- (h) The swimming pool.

.5. Share of Common Expenses. The proportionate share of each unit in the profits and common expenses in the common elements is the same as that set out in Exhibit "C" attached hereto.

.6. The Units. The description and location of the particular units and the appurtenances thereto are determined with the aid of the plans therefor as follows:

(a) Each building is assigned a letter and each apartment unit a number as indicated on the site plan, Exhibit "A" hereto, with ground-level units having numbers in the "100" series, and second-story units having numbers in the "200" series. Numbers run consecutively from building to building, except that there are no units numbered 209-212.

(b) The boundaries of a unit are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and a unit includes the portions just described, all walls within a unit which are not load-bearing walls, the balcony, and the airspace encompassed by the boundaries as hereinabove described.

6. Encroachments. If any portion of the common elements now encroaches upon any unit, or if any unit now encroaches upon any other unit or upon any portion of the common elements, as a result of the construction of any building, or if any such encroachment shall occur hereafter as a result of settling or shifting of any building or as a result of any construction done subsequent to the date hereof, a valid easement for the encroachment and for the maintenance of the same so long as such building stands shall exist. In the event any building, unit, adjoining unit, or adjoining common element, shall be partially or totally destroyed as a result of fire, or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts 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 rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as such building shall stand.

7. Rights and Duties of Owners, Tenants and Occupants of Units.

.1. Units, owners, etc. subject to Declaration, By-Laws, and Rules and Regulations. All units and all present and future owners, tenants and occupants of units shall be subject to, and shall comply with the provisions of this Declaration, the By-Laws, and the Rules and Regulations, as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease or the entering into occupancy of any unit shall constitute an agreement that the provisions of this Declaration, the By-Laws, and the Rules and Regulations, as they may be amended from time to time, are accepted and ratified by such owner, tenant, and occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance or lease thereof.

.2. Exclusive ownership. Each owner shall be entitled to an undivided interest in the common elements in the percentages expressed in Exhibit "C" to this Declaration, which percentages of undivided interest of each owner shall have a permanent character and shall not be altered without the consent of all owners and holders of first mortgages of record, expressed in an Amendment to this Declaration duly recorded. The percentage of the 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 or released from liens with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each owner may use the common elements in accordance with the purposes for which the same are intended, without hindering or encroaching upon the lawful rights of the other owners.

.3. Enforcement. Failure of any owner to comply strictly with the provisions of this Declaration, the By-Laws, and the Rules and Regulations shall

be ground for an action to recover sums due, or damages, or injunctive relief or any or all of them. Such actions may be maintained by the Association on its behalf or on behalf of the unit owners aggrieved. In any case of flagrant or repeated violation by a unit owner, he may be required by the Association to give sufficient surety or sureties for his future compliance with the provisions of this Declaration, the By-Laws, and the Rules and REgulations. Nothing herein contained shall prevent, in a proper case, an independent action by an aggrieved unit owner for such relief.

8. Maintenance. The responsibility for the maintenance of the condominium property shall be as follows:

.1. Units.

(a) By the Association. The Association shall maintain, repair and replace at its expense:

(i) All portions of a unit (except the interior surfaces, and the appurtenances mentioned in paragraph (b)(i) below) contributing to the support of the building, which portions shall include but not be limited to the outside walls and roof of the building and all fixtures thereon, and boundary walls of units, load-bearing columns and load-bearing walls, the wooden stairways and the balconies, even though balconies constitute a part of a unit and not a common element.

(ii) All conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility service which are contained in the portions of a unit maintained by the Association, except the airconditioning and heating system and the hot water heater appurtenant to such unit; and all such facilities contained within a unit which service part or parts of the condominium other than the unit within which contained.

(iii) All incidental damage caused to a unit by such work shall be promptly repaired at the expense of the Association.

(b) By the Unit Owner. The responsibility of the unit owner shall be as follows:

(i) To maintain, repair and replace at his expense all portions of his unit except the portions to be maintained, repaired and replaced by the Association. Such shall be done without disturbing the rights of other unit owners. Each central air conditioning and heating system, including any portions thereof which are located outside of the units, and the hot water heater appurtenant to units shall be maintained by the owner of the unit to which such improvement is appurtenant.

(ii) Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the building, including balconies.

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

.2. Common Elements.

(a) By the Association. The maintenance and operation of the common elements shall be the responsibility and the expense of the Association.

(b) Alteration and Improvement. After the completion of the improvements included in the common elements which are contemplated by this Declaration, there shall be no alteration nor further improvement of the common elements without prior approval in writing of seventy-five percent (75%) of the votes of the unit owners, which such approval shall be binding on all unit owners and shall constitute consent on the part of all owners for the purposes of Section 896-12 of the Mississippi Condominium Act which pertains to the lien of those per-

forming labor or furnishing services or materials. The cost of any such alterations or improvements shall be a common expense. Where the Board of Directors deems it necessary, any alterations or improvements so made shall be reflected in an Amendment to Exhibits A and B to this Declaration in accordance with Section 896-05 of the Mississippi Condominium Act.

9. Assessments. The making and collecting of assessments against unit owners for common expenses shall be pursuant to the By-Laws and subject to the following provisions:

.1. Share of Common Expense. Each unit owner shall be liable for a proportionate share of the common expenses, and shall share in the common surplus, such share being the same as his percentage of ownership in the common elements, which is set out in Exhibit "C" attached hereto.

.2. Interest, Application of Payments. Assessments, and installments thereof, paid on or before thirty (30) days after the date when due shall not bear interest, but all sums not paid on or before thirty (30) 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 first applied to interest and then to the assessment payment first due.

.3. Liens for Assessments. The Association shall have a lien upon a unit and its appurtenant undivided interest in the common elements for the unpaid portion of an assessment which has remained unpaid for thirty (30) days after it is due upon the recording by the Association of a notice claiming such lien in the Condominium Lien Book in the Office of the Chancery Court of Hancock County, Mississippi. Any such notice shall state: (i) the amount of such lien, which lien shall also secure interest, if any, which may be due on the amount of any delinquent assessment owing to the Association, and which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said unit and its appurtenant undivided interest in the common elements; (ii) a description of the unit against which the same has been assessed; and (iii) the name of the record owner thereof, and

such notice shall be signed and verified by the President of the Association or by an agent appointed by him in writing to sign and verify such notice. In any suit for the foreclosure of said lien, the Association shall be entitled to reasonable rental from the owner of any unit from the date of the commencement of such foreclosure proceedings and shall be entitled to the appointment of a receiver to collect same, without notice to the owner of such unit. The lien granted to the Association shall further secure such advances for taxes and other payments which may be advanced or paid by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at the rate of eight percent (8%) per annum on any such advances made for such purposes. The lien granted to the Association shall be prior to all other liens, except only (i) prior bona fide liens of record, (ii) tax liens on the unit in favor of the state and the county and (iii) all sums unpaid on a first mortgage of record, and where the holder of a first mortgage of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of a first mortgage, such acquirer of title, his successors and assigns, shall not be liable for payment of the lien granted to the Association for charges which became due prior to the acquisition of title to such unit by such acquirer, except for the acquirer's pro rata share of said charges which results from a pro rata reallocation of such charges to all units.

.4. No Exemption from Assessments. No owner of a unit may exempt himself from liability for contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements or by the abandonment of his unit.

10. Association. The operation and administration of the condominium shall be by an association, pursuant to the provisions of the Mississippi Condominium Act, which may be incorporated as a non-profit corporation, and which shall be organized and shall fulfill its function pursuant to the following provisions:

.1. Name. The name of the Association shall be Lakeside Villa Association.

.2. Powers. The powers and duties of the Association shall include