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DECLARATION OF CONDOMINIUM

FOR

1350 NORTH MORNINGSIDE CONDOMINIUM

FULTON COUNTY, GEORGIA

Recording References:

Plat recorded in Condominium Plat Book 13, Page 104,
Fulton County, Georgia Records.

Plans recorded in Condominium Floor Plan Cabinet No. 7, Folder No. 6,
Fulton County, Georgia Records.

1350 NORTH MORNINGSIDE CONDOMINIUM

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DECLARATION OF CONDOMINIUM
FOR
1350 NORTH MORNINGSIDE CONDOMINIUM
Fulton County, Georgia

THIS DECLARATION OF CONDOMINIUM (hereinafter referred to as the "Declaration") made the 26 day of September, 2000 by KPR, LLC, a Georgia limited liability company (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant desires to submit certain real property and improvements constructed thereon located in Fulton County, Georgia (which real property is more fully described on Exhibit "A", attached hereto and made a part hereof) to the provisions of the Georgia Condominium Act, Official Code of Ga. Ann. Chapter 44, Article 3, Section 70 et seq. (hereinafter referred to as the "Act"), and to the provisions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the real property described on Exhibit "A", together with the improvements constructed thereon, are hereby submitted to the Act and made subject to this Declaration. The terms and provisions of this Declaration shall constitute covenants running with the land.

ARTICLE I - DEFINITIONS

1.01 General. As used herein, the terms defined in Section 44-3-71 of the Act shall be deemed to have the same meanings as set forth therein, unless the context shall otherwise require or unless otherwise specified.

1.02 Articles. "Articles" shall mean the Articles of Incorporation of the Association as amended from time to time.

1.03 Association. "Association" shall mean 1350 North Morningside Condominium Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

1.04 Bylaws. "Bylaws" shall mean the bylaws of the Association as amended from time to time.

1.05 Condominium. "Condominium" shall mean the Property known as 1350 North Morningside Condominium.

1.06 Declarant. "Declarant" shall mean KPR, LLC, a Georgia limited liability company or any successor-in-title who comes to stand in the same relation to the Condominium as Declarant, including, without limitation, any party that acquires ownership of all of Declarant's then remaining interests in the Condominium.

1.07 Declaration. "Declaration" shall mean this Declaration of Condominium for 1350 North Morningside Condominium, as amended from time to time.

1.08 Director. "Director" shall mean a member of the Board of Directors of the Association.

1.09 First Mortgagee. "First Mortgagee" shall mean the holder of a first-in-priority mortgage, deed to secure debt or other instrument conveying a first-in-priority lien upon or security title to any Unit and any insurer or guarantor of any such instrument.

1.10 Lender. "Lender" shall mean the holder of any mortgage, deed to secure debt or other instrument conveying a lien upon or security title to any Unit (including a First Mortgagee), and any insurer or guarantor of any such instrument.

1.11 Plans. "Plans" shall mean those certain plans, prepared by Scott D. Newton and John A. Eisenlaw, certified by John Andrew Eisenlaw, and filed for record with the Clerk of the Superior Court of Fulton County, Georgia, as indicated on the cover page hereof, and as revised or amended from time to time, and such other plans filed in connection with this Declaration.

1.12 Plat. "Plat" shall mean that certain Survey for 1350 North Morningside Condominiums, prepared by Joseph C. King, doing business as Dekalb Surveys, under seal and certification of Joseph C. King, filed for record with the Clerk of the Superior Court of Fulton County, Georgia, as indicated on the cover page hereof, as revised or amended from time to time, and such other plats recorded in connection with making property subject to the Declaration.

1.13 Property. "Property" shall mean the property described on Exhibit "A" together with all improvements located thereon and such other property made subject to the Declaration.

1.14 Unit. "Unit" shall mean a portion of the Condominium depicted on the Plat and the Plans and having the boundaries described in Exhibit "B" attached hereto and incorporated herein by reference and intended for residential use.

1.15 Unit Owner or Owner. "Unit Owner" or "Owner" shall mean one or more persons, including Declarant, who owns fee simple title to any Unit.

ARTICLE II - THE CONDOMINIUM

2.01 Name. The name of the Condominium shall be 1350 North Morningside Condominium.

2.02 Units, Equal Share in Common Elements, Vote. Appurtenant to each Unit shall be an undivided interest in the Common Elements. Each Unit, together with such undivided interest in the Common Elements, shall constitute a separate parcel of real property, which may be owned, held, transferred, sold, conveyed, used, occupied, mortgaged or otherwise encumbered, in fee simple in the same manner as any other separate parcel of real property, subject, however, to the Act and this Declaration. The undivided interest in the Common Elements appurtenant to each Unit shall not be separated from such Unit and shall be deemed to be transferred, conveyed and encumbered with the Unit even if such interest is not stated or referred to in the document or instrument effecting such transfer, conveyance or encumbrance. An equal share of the Common Elements shall be allocated to each Unit. Each Unit shall be allocated one vote in the affairs of the Association. The boundaries of a Unit shall be as set forth on Exhibit "B" attached hereto and incorporated herein by reference. The boundaries between adjoining Units may be relocated in accordance with the provisions of Section 44-3-91 of the Act and two or more Units may be combined pursuant to Section 44-3-90 of the Act.

2.03 Common Elements. The Common Elements consist of all portions of the Condominium that are not Units.

2.04 Limited Common Elements. Those portions of the Common Elements which are assigned to the exclusive use of a certain Unit or Units, as hereinafter set forth, are Limited Common Elements. Each Unit is assigned as Limited Common Elements the entry ways immediately in front of the Unit, and appurtenant fixtures and facilities which provide direct access to the Unit. In the event that any of the items described herein or other Common Elements serve more than one but less than all Units, such items shall be Limited Common Elements appurtenant to the Units served thereby. Reassignment of Limited Common Elements may be accomplished pursuant to Section 44-3-82 of the Act. Assignment of Common Elements not previously assigned as Limited Common Elements may be accomplished upon the approval of a majority of the Board of Directors in accordance with procedures set forth in Section 44-3-82 of the Act.

2.05 Alterations. Alterations within Units may only be made subject to the provisions of Section 44-3-90(a) of the Act.

2.06 Partition. Unless the condominium form of ownership hereby established is terminated as provided herein, no Unit Owner or other person shall bring any action for partition of the whole or any part of any Unit or the whole or any part of the Common Elements.

2.07 Maintenance and Repair of Condominium.

- (a) Association Responsibility. The Association shall maintain, repair and replace all improvements constituting a part of the Common Elements, including the Limited Common Elements, and including but not limited to utility facilities serving more than one Unit, utility lines in the Common Elements, lawns, shrubs, trees, walkways, drives, parking areas, and the structural portions and exterior portions of the building and improvements which are a part of the Common

Elements, including the Limited Common Elements, and that do not constitute part of a Unit, provided that the Association will not be responsible for the cleaning and housekeeping of Limited Common Elements or components thereof. The Association shall maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements which are a part of the Common Elements, including the Limited Common Elements. The Association will not have responsibility to repair or maintain any Unit, or component thereof, or personal property within a Unit except to repair damages caused thereto while performing such maintenance, repairs and replacements as provided above.

- (b) Unit Owner Responsibility. Each Owner shall repair and maintain the Unit or Units, and all components thereof, owned by that Owner, and perform cleaning and housekeeping with respect to the Limited Common Elements appurtenant to that Owner's Unit. Without limiting the generality of the foregoing, this repair and maintenance responsibility of an Owner includes repair, maintenance and replacement of all windows, screens and doors, including the frames, sashes and jams, and the hardware therefor. If an Owner fails to make a repair or perform maintenance required of that Owner, or if the need for maintenance or repair of any part of the Common Elements or Limited Common Elements is caused by the negligent or intentional act of any Owner or any occupant, or is as a result of the failure of any Owner or his or its predecessors in the title to timely pursue to conclusion a claim under any warranty, express, implied, or imposed by law, then the Association may perform the same, and if the cost of such repair or maintenance is not covered by insurance, whether because of a deductible or otherwise, the cost thereof will constitute a special assessment, as hereinafter defined, on the Unit owned by that Owner and on that Owner. The determination that such maintenance or repair is necessary, or has been so caused, will be made by the Board of Directors.

2.08 Ingress and Egress of Unit Owners. Each Unit Owner has an unrestricted right of ingress and egress to his Unit, which right shall be appurtenant to the Unit and shall be in effect for as long as the Unit is subject to the Act and this Declaration.

ARTICLE III - THE CONDOMINIUM ASSOCIATION

3.01 General. "The Association" is a non-profit membership corporation. The business and affairs of the Association shall be governed by the Directors of the Association. The Association, the Directors and the officers of the Association shall have all of the duties and powers set forth in the Declaration, the Articles, the Bylaws, the Act, the Georgia Nonprofit Corporation Code and such other duties and powers reasonably implied to carry out the provisions of this Declaration and the purposes of the Association.

authorized agents, representatives, or employees to use any Common Elements while Declarant owns one or more Units primarily for the purpose of sale.

3.06 Compensation of Directors and Officers. No Director or Officer of the Association shall receive any fee or compensation for services performed by him as such Director or Officer.

3.07 Application of Votes in the Association. Each Unit Owner shall automatically be a member of the Association and shall remain a member for the period of ownership. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Each Unit is allocated one vote in the Association. All votes in the Association shall be cast under such rules and procedures as adopted by the Board of Directors, or by Georgia law.

ARTICLE IV - MAINTENANCE ASSESSMENTS

4.01 Lien for Assessments. Each Unit Owner shall pay to the Association assessments for common expenses. The assessments shall be established and collected from time to time as hereinafter provided. The assessments, together with interest, costs, late charges and reasonable attorney's fees for collection, shall be a charge on the Unit in favor of the Association and shall be a continuing lien upon the Unit upon which such assessment is made and shall be the personal obligation of the person who was the owner of the Unit at the time the assessment was due.

4.02 Effect of Transfer of Unit. The sale or transfer of any Unit shall not affect the lien set forth above, and any grantee shall not be personally liable for the portion of any assessment or charge assessed against such Unit prior to the time of conveyance. Any Unit Owner, Lender, person having executed a contract for the purchase of a Unit, or lender considering the loan of funds to be secured by a Unit shall be entitled to a statement from the Association or its management agent setting forth the amount of assessments past due and unpaid together with late charges and interest applicable thereto against that Unit. Such request shall be in writing, shall be delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. Failure on the part of the Association to mail or otherwise furnish such statement regarding amounts due and payable at the expiration of such five-day period with respect to the Unit involved to such address as may be specified in the written request therefor within five business days from the receipt of such request shall cause the lien for assessments created by the Act to be extinguished and of no further force or effect as to the title or interest acquired by the purchaser or lender, if any, as the case may be, and their respective successors and assigns, in the transaction contemplated in connection with such request. The information specified in such statement shall be binding upon the Association and upon every Unit Owner.

4.03 Purpose of Assessments. The assessments levied pursuant to this Declaration shall be used exclusively to promote the recreation, health, safety and welfare of the residents and Unit Owners of the Condominium and for the improvement, upkeep, and maintenance of the Condominium as provided for herein.

4.05 Assessments for Common Expenses. The Board of Directors of the Association shall determine for each year, (on a calendar year basis), prior to January 1 of that year the estimated aggregate amount of the common expenses for such year. Except for the first year after Declarant relinquishes control of the Association, a monthly assessment fee increase in excess of a percentage equal to the annual rate of inflation as measured by the Consumer Price Index for all Urban Consumers for the immediately preceding 12 month period may be disapproved by Unit Owners holding a majority of the Association vote. The Board of Directors of the Association may from time to time during each year make reasonable adjustments in such estimated amounts on the basis of actual cost or expense incurred or for any emergency or unforeseen expenses. Except as permitted by Subsections (a) and (b) of Section 44-3-80 of the Act and by Subsections (a) and (b) of Section 44-3-109 of the Act, a special assessment per Unit in excess of an average of \$200.00 per fiscal year may not be imposed by the Association without the approval of a majority of the Unit Owners. Except as otherwise provided in this Declaration, assessments for the estimated amount of common expenses shall be allocated and assessed by the Association against the Units in the percentages shown on Exhibit "C".

4.06 Payment of Assessments. The assessments provided for herein shall be established on a calendar year basis except as hereinafter provided, and each Unit Owner shall pay their respective assessment in equal monthly installments in advance on or before the first day of each month unless otherwise provided by the Board of Directors of the Association. In the event an assessment is not established for a year by January 1 of that year, the assessment shall be the same as the preceding year until a new assessment is established. Any deficiency caused by such delay may be made payable as the Board of Directors of the Association shall reasonably determine. The assessments for common expenses shall commence the date this Declaration is recorded in the Fulton County, Georgia Records. No Unit Owner (other than the Association if it becomes Unit Owner) shall be exempt from any liability to pay all of any assessment for common expenses for any reason whatever, including without limitation abandonment, non-use, or waiver of the use or enjoyment of his Unit or any part of the Common Element. Assessments for capital improvements and emergencies as provided above need not be on a calendar year basis and may be payable in whole or in installments on such date or dates as reasonably determined by the Board of Directors of the Association. No delay, failure or omission on the part of the Association or any aggrieved Unit Owner or Owners in exercising any right, power or remedy provided in this Declaration or the Bylaws or as required by law or equity shall be deemed to be an abatement of any assessment or relieve any Unit Owner from paying any assessment when due.

4.07 Non-Payment of Assessments. Any assessment or installment thereof not paid within five (5) days after the due date shall be delinquent and shall:

- (a) Subject the delinquent Unit Owner to the imposition of a late charge in such amount, not in excess of the greater of Ten Dollars (\$10.00) or 10% of each assessment or installment thereof not paid when due, as determined from time to time by the Association;

5.02 Types of Insurance.

- (a) Casualty. The Association shall obtain a casualty insurance policy or policies affording fire and extended coverage insurance for, and in an amount consonant with the full replacement value of, all structures and other insurable improvements within the Condominium; provided, however, that the Association may exclude from such coverage (i) improvements and betterments made by the Unit Owners, and/or (ii) structures covered by builder's risk insurance in an amount consistent with the full replacement value thereof, but only during such period of time as such builder's risk insurance remains in full force and effect and only on the condition that the Association is named as an additional insured.

- (b) Liability. The Association shall obtain a liability insurance policy or policies, in amounts determined by the Board of Directors, but no less than \$1,000,000 for injury, including death, to a single person; \$1,000,000 for injury or injuries, including death, arising out of a single occurrence; and \$50,000 property damage; or in the alternative, a liability policy affording coverage for bodily injury and property damage with a combined single limit in an amount not less than \$1,050,000.00. The policy or policies shall cover the Association, the Board of Directors and the officers of Association, all agents and employees of the Association and all Unit Owners and other persons entitled to occupy any Unit or other portion of the Condominium for occurrences commonly insured against arising out of or in connection with the use, ownership or maintenance of the Common Elements or other portions of the Condominium which the Association has the responsibility to maintain.

- (c) Fidelity Bond. The Association shall obtain and maintain at all times a master or blanket fidelity bond for all officers, directors, trustees and employees of the Association, managing agents and all other persons handling or responsible for funds of the Association. The amount of coverage shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Association or any management agent at any given time during the term of each bond. However, in no event may the aggregate amount of such bond be less than a sum equal to three months aggregate assessments on all Units plus reserve funds. The fidelity bond must to the reasonable extent possible meet the following requirements:
 - (i) The fidelity bond must name the Association as an obligee;
 - (ii) The bond shall contain waivers by insurers of the bond of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms; and

- (iii) The bond shall provide that it may not be canceled or substantially modified without at least 20 days prior written notice to the Association and Lenders whose name and address have been previously furnished to the insurer with a request for such notice.
- (iv) The bond shall cover the maximum funds that will be in the custody of the Association or its managing agents at any time while the policy is in force.
- (d) Other. The Association shall obtain such other insurance policies, including, without limitation, fidelity insurance policies, a blanket flood insurance policy, if required as a condition to First Mortgagees making first mortgage loans on the Units, and such other insurance policies required under the Bylaws, in the amounts of coverage as may be required by law or authorized by the Board of Directors from time to time.

5.03 Unit Owners' Policies. The Unit Owners and Lenders may purchase and carry at their own expense any type of insurance policy or policies as they may desire from time to time; provided, however, that in no event shall any recovery or payment under any insurance policy obtained by the Association be affected or diminished by any such Unit Owner's or Lender's policy and no such policy shall provide for contribution by any insurance policy obtained by the Association nor shall it decrease in any other way the amount which the Association may realize under any insurance policy which it may have in force on any portion of the Condominium.

5.04 Insurance Proceeds. All insurance policies purchased by and in the name of the Association shall provide that proceeds covering property losses shall be paid to the Association. The Association shall receive such proceeds as are paid and delivered to it and hold them in trust for the benefit of the Unit Owners and their Lenders as their interests may appear. Such proceeds, or such portion thereof as may be required for such purpose, shall be distributed by the Association in payment of repairs or reconstruction or to the Unit Owners and their Lender jointly if such damaged property is not repaired or reconstructed as hereinafter provided. Any proceeds remaining after defraying all costs of repairs or reconstruction shall be disbursed to the Unit Owners of the damaged or destroyed Units and their Lender, or in the same proportion of their respective share of Common Elements if the Common Elements are damaged or destroyed, remittances to Unit Owners and their Lenders being payable jointly to them.

5.05 Insufficient Insurance Proceeds. If the insurance proceeds are not sufficient to defray the cost of repair and reconstruction of the damaged Property, the Association may levy a special assessment against the Unit Owners of the damaged or destroyed Units, and against all Unit Owners in the case of damage to Common Elements, in sufficient amounts to provide funds to pay the excess cost of repair or reconstruction. Additional assessments may be made in like manner at any time nearing or following the completion of any repair or reconstruction. Any funds required for restoration of a Unit in excess of the insurance proceeds attributable thereto shall be assessed against the Unit Owner of that Unit. Assessments, if any, against Unit Owners for damage to the Common Elements shall be levied in the same proportion of their respective share of Common Elements.

5.06 Damage and Destruction.

- (a) Estimates, Repair or Reconstruction. As soon as practicable after any damage by fire or other casualty to the Property, the Association shall proceed with the filing and adjustment of all claims arising under insurance purchased by the Association which covers such damaged or destroyed Property and obtain reliable and detailed estimates of the costs of repair or reconstruction of the damaged or destroyed Property. Repair or reconstruction, as used herein, means repairing or restoring the damaged Property substantially in accordance with the original plans and specifications to substantially the same condition in which it existed prior to the fire or other casualty; provided, however such damaged Property may be repaired or restored to a substantially different condition with the approval of (i) the Board of Directors, (ii) a majority of the votes in the Association, (iii) at least 51% of the votes of the First Mortgagees (with First Mortgagees having one (1) vote per security deed held on a Unit), and (iv) if the damaged Property is a part or all of a Unit, with the approval of the Owner of such Unit and the First Mortgagee of such Unit.
- (b) Determination. Any damaged or destroyed Property shall be repaired or reconstructed unless: (i) the Condominium is terminated pursuant to the provisions of Section 44-3-98 of the Act, (ii) the damaged or destroyed portion of the Property is withdrawn from the Condominium pursuant to Section 44-3-99 of the Act, (iii) in the case of Units, the Unit Owners of the damaged or destroyed Units, together with two-thirds of the votes of the Unit Owners of the other Units exclusive of the vote appertaining to any damaged or destroyed Units, agree not to repair or reconstruct such damaged or destroyed Units and reallocate the undivided interest in the Common Elements and the votes in the Association appertaining to such Units not repaired or reconstructed to the remaining Units pursuant to Section 44-3-94 of the Act, or (iv) in the case of Common Elements, two-thirds of the votes of the Unit Owners vote not to repair or reconstruct such Common Elements. Any such determination shall be conclusively made within 90 days after the casualty or loss. Consent from the First Mortgagees shall be obtained as required by Section 10.02 hereof for the foregoing. To the extent damaged or destroyed Property is not repaired or reconstructed, the insurance proceeds attributable to such damaged or destroyed Units shall be disbursed by the Association to the beneficial Unit Owners of the damaged or destroyed Units. To the extent damaged or destroyed Property not repaired or reconstructed is Common Elements, the insurance proceeds attributable to such Common Elements shall be distributed to all Unit Owners according to their respective share of Common Elements. Remittances to any Unit Owner shall be paid jointly to such Unit Owner and his Lender. In the event the Property is not repaired or reconstructed, the area where the damaged or destroyed Property was located shall be placed in an aesthetically pleasing condition in harmony with the other portions of the Condominium, the expense of such work to be specially assessed

against the Owner of such Unit to the extent damaged or destroyed Property is a Unit and specially assessed against all Unit Owners in the same proportion of their respective share of the Common Elements to the extent the damaged or destroyed Property is Common Elements.

5.07 Insurance Trustee. Notwithstanding anything to the contrary contained herein, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom such Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. Each Unit Owner appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including without limitation: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of settlement and releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

ARTICLE VI - RESTRICTIONS

6.01 Residential Use. Each Unit shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Unit or any part of the Property, except that the Owner or occupant residing in a Unit may conduct such business activities within the Unit so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the Unit; (b) the business activity does not involve persons coming onto the Property who do not reside on the Property; (c) the business activity conforms to all zoning requirements for the Property; (d) the business activity does not increase the liability or casualty insurance obligation or premium of the Association; and (e) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, as may be determined in the sole discretion of the Board of Directors.

"Business" or "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, including, but not limited to, the following definitions: (i) employment of one or more persons for the purpose of earning a livelihood; (ii) any conduct or activities carried on for the purpose of earning a livelihood or contributing to a person's livelihood; (iii) any activities of a person carried on with the intent of improving that person's economic or financial condition; (iv) the occupation, work, or trade in which a person is engaged, including the giving or teaching of any kind of lessons, public or private, regardless of whether such activities or conduct are engaged in for profit and regardless of whether such activities require obtaining a license; and (v) any commercial, industrial, or professional dealings.

Notwithstanding anything to the contrary contained in this Section 6.01 or this Declaration to the contrary, Declarant may use one or more of the Units owned or leased by Declarant, to conduct sales and rental activities, as models, and for storage and maintenance purposes.

6.02 Temporary Structures. No structures of a temporary nature, nor any trailer, tent, shack, shed, barn or other out buildings shall be allowed on any portion of the Property at any time either temporarily or permanently.

6.03 Planting. No planting or gardening shall be done without the prior written approval of the Board of Directors.

6.04 Clothes Drying. No drying or airing of clothes outside is permitted.

6.05 Architectural Standards. The Board of Directors or its designees shall be responsible for maintaining and enforcing the architectural standards of the Association. No Owner, occupant, lessee or lessor, or any other person may make any exterior change, alteration, or addition, nor construct, erect, place, or post any sign, object, light, or thing on the exterior of the buildings or any Common Element or any porches without first obtaining the written approval of the Board of Directors and Declarant as long as Declarant owns one or more Units primarily for sale. Application shall be in writing and shall provide such information as the Board of Directors may reasonably require. The Board of Directors may publish written architectural standards for exterior alterations or additions, and any request in substantial compliance with any such published standards shall be approved. In the event that the Board of Directors fails to approve or to disapprove such application within ninety (90) days after it has been submitted, the application shall be deemed approved and this Section 6.05 shall be deemed complied with; provided that even if the requirements of this section are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of this Declaration or the By-Laws or any building code or zoning ordinance or any other applicable law, ordinance or regulation. As a condition of approval for a requested architectural change, modification, addition, or alteration of the grounds or landscape affected to facilitate an architectural change, modification, addition, or alteration, an Owner, on behalf of himself and his successors-in-interest, shall assume all responsibility for maintenance, repair, and replacement and insurance to or on such change, modification, addition, or alteration. In the discretion of the Board of Directors, an Owner may be made to verify such condition of approval by written instrument acknowledged by such Owner on behalf of himself and his successors-in-interest. The provision of this Section 6.05 shall not apply to the initial construction of any improvements by Declarant or to any exterior changes, alteration, or additions or any construction, erection, placing or posting of any sign, object, light or thing on the exterior of any buildings or any Common Element by Declarant.

6.06 Satellite Dishes. An Owner shall not install a satellite reception dish on the exterior of the Owner's Unit without the prior written consent of the Board of Directors.

6.07 Visible Areas. Nothing may be hung or displayed on the outside or inside of windows except interior inoffensive drapes, curtains, or louvered blinds which, from exterior

observation, must be white, beige or light gray, or as otherwise authorized by the Board of Directors, or placed on the outside walls of a building or otherwise outside of a Unit, or any part thereof. No awning, canopy, shutter or television or citizens' band or other radio antenna or transmitter, or any other device or ornament (except as set forth in Section 6.06), may be affixed to or placed upon an exterior wall or roof or any part thereof, or the exterior of any door or window, or in, on, or over a patio, porch or balcony, visible to the exterior, unless authorized by the Board of Directors. Nothing visible to the exterior may be hung, placed, displayed or maintained in Limited Common Elements unless approved, in writing, by the Board of Directors.

6.08 Animal or Pets. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any part of the Condominium, except that dogs, cats or other common household pets may be kept by the respective Unit Owners in their respective Units provided (i) they are not kept, bred or maintained for any commercial purposes, (ii) the maintaining of pets shall be subject to such rules and regulations as the Board of Directors may from time to time promulgate, including, without limitation, the right to levy fines against persons who do not clean up after their pets, provided however, the Board of Directors shall not have the right to prohibit the right to maintain a pet then owned by a Unit Owner or occupying a Unit unless the Board of Directors determines that maintenance of the pet constitutes a nuisance or creates a detrimental effect on the Condominium or other Units or occupants; and (iii) when outside each pet must be on a leash or caged and be under the control of a responsible person.

6.09 Common Elements. All Occupants of Units and their guests shall have a non-exclusive right to the use of the Common Elements, other than the Limited Common Elements, for the purposes for which they are reasonably intended, subject, however, to the following:

- (a) No such use shall encroach upon the lawful rights of other persons;
- (b) The right of the Board of Directors to restrict the use and to govern the operation of the Common Elements by promulgating reasonable rules and regulations with respect thereto.

Those portions of the Common Elements described in this Declaration that are Limited Common Elements will be used and possessed exclusively by the Owners and occupants of the Unit or Units served by the same, and may be used only for the purposes intended.

6.10 Leasing of Units. The leasing of a Unit by any Owner, except Declarant, shall be subject to the following provisions.

- (a) Units may be rented only in their entirety; no fraction or portion may be rented. No transient tenants may be accommodated therein. All leases and lessees are subject to provisions of the Declaration and By-Laws. All leases must be in writing. The Unit Owner must make available to the tenant copies of the Condominium documents including the Declaration, By-Laws, and rules and regulations. Any lessee, by occupancy in a Unit, agrees to the applicability of this covenant and agrees to comply strictly with all provisions of the Declaration, By-Laws, and with the administrative rules and regulations adopted pursuant thereto, as any of

the foregoing may be lawfully amended from time to time. Upon entering into any lease the Unit Owner shall notify the Board of Directors in writing of the name or names of the tenant or tenants, the name or names of all persons entitled to occupy the Unit pursuant to such lease, and the term of such lease.

(b) Any lessee charged with a violation of the Declaration, By-Laws, or rules and regulations is entitled to the same rights to which an Owner is entitled as provided in the Association's By-Laws.

(c) Notwithstanding anything to the contrary herein contained, the provisions of this Article shall not apply to impair the right of any First Mortgagee to:

- (i) foreclose or take title to a Unit pursuant to remedies contained in any deed to secure debt;
- (ii) take a deed or assignment in lieu of foreclosure; or
- (iii) sell, lease, or otherwise dispose of a Unit acquired by the First Mortgagee.

6.11 Signs. Except as hereinafter provided for Declarant, no advertising signs of any kind, except one "For Rent" or "For Sale" sign per Unit of not more than nine (9) square feet placed only inside the enclosed Unit, shall be erected, placed, or permitted to remain on the Property without the written consent of the Board of Directors or its designee. The Board of Directors shall have the right to erect reasonable and appropriate signs. However, the foregoing covenant shall not apply to the business activities, signs and billboards of Declarant or its duly authorized agents, representatives, or employees while Declarant owns one or more Units primarily for the purpose of sale.

6.12 Vehicles. The Board may promulgate rules and regulations restricting or prohibiting the parking of automobiles, vans, buses, inoperable vehicles, trucks, trailers, boats and recreational vehicles on the Common Areas, or parts thereof, and may enforce such regulations or restrictions by levying enforcement charges, having such vehicles towed away, or taking such other lawful actions as it deems appropriate. The provisions of this Section 6.12 shall not apply to Declarant or its duly authorized agents, representatives, contractors, suppliers or employees.

6.13 Parking. Parking shall only be permitted within the areas designated for parking on the Common Elements.

6.14 No Repairs. No repairs or similar activity to boats, trailers, or vehicles of any nature shall be permitted to be performed on the Common Elements, except in the event of an emergency.

6.15 Rules and Regulations. Subject to the approval of Declarant while Declarant owns any Unit primarily for the purpose of sale, which approval may be granted or withheld in

Declarant's sole and unfettered discretion, the Board of Directors may adopt, and amend from time to time, rules and regulations, as provided in Section 3.05, concerning the use of the Property which rules and regulations may be in addition to, but not conflict with, the restrictions in this Declaration.

6.16 Nuisance. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property, and no odor shall be permitted to arise therefrom, so as to render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using or occupying other portions of the Condominium. No nuisance shall be permitted to exist or operate upon any portion of the Condominium so as to be offensive or detrimental to persons using or occupying the portions of the Condominium.

6.17 Prohibited Activities. Noxious or offensive activities shall not be carried on in any Unit or in the Common Elements. Each Unit Owner, his family, guests, invitees, servants and agents shall refrain from any act in his Unit or on the Common Elements which could reasonably cause embarrassment, discomfort, annoyance or a nuisance to the Occupants of the Units or which may result in cancellation or increase in premium of any insurance on any Unit or any portion of the Common Elements, or which would be in violation of any law, code, or governmental regulations.

6.18 Discrimination. No action at any time shall be taken by the Association or its Board of Directors which in any manner would for reasons of race, creed, color, sex, religion or national origin discriminate against any Unit Owner or Unit Owners in favor of any other Unit Owner or Unit Owners.

6.19 Heating of Dwellings in Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to the Property, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units shall be maintained with the heat in an "on" position and at a minimum of fifty-five (55) degrees Fahrenheit (except during power failures or periods when heating equipment is broken) during the months of October, November, December, January, February, March and April whenever the temperature is forecast to or does reach thirty-two (32) degrees Fahrenheit or below. Owners and occupants of Units shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working properly, the Unit Owner or occupant shall immediately inform the Board of Directors of this failure of the equipment and of the time needed to repair the equipment. Notwithstanding any provision to the contrary, any Owner or occupant may be fined up to Five Hundred (\$500.00) Dollars for violation of this requirement by the Board of Directors, in addition to any other remedies of the Association, without a prior warning, demand, or hearing. Any fine imposed pursuant to this paragraph shall be deemed an assessment against the Unit and may be collected in the same manner as provided herein for the collection of assessments.

6.20 Single Families. No Unit shall be occupied by more than a single family. As used herein, the term "single family" shall mean one or more persons, provided all persons occupying the Unit are interrelated by blood, adoption, or marriage, or, if persons occupying a Unit are not all interrelated by blood, adoption, or marriage, then the occupancy of that Unit shall be limited to a maximum of three (3) persons. The words "by blood" shall be deemed to encompass only children, grandchildren, grandparents, brothers, sisters, nieces, nephews, parents, aunts, uncles, and first cousins, and no other degree of kinship. "Occupancy," for the purposes of this Declaration, shall be defined as staying overnight in a Unit for a total of more than thirty (30) days, either consecutive or non-consecutive, in any year.

6.21 Construction in Easements. No structure, planting or other material may be placed or permitted to remain within the easements for the installation and maintenance of utilities and drainage facilities which may damage or interfere with the installation and maintenance of utility lines or which may change the direction of the flow or drainage channels in the easement areas. The utility facilities within the easement areas will be subject to the right of the Association to maintain the same, and its right to delegate that right to a public authority or utility.

ARTICLE VII - EASEMENTS

In addition to the easements granted to each Unit Owner in regard to the Common Elements set forth in Section 6.09, and the easements set forth in the Act, there shall exist the following easements or easement rights:

- (a) The Association shall have easements upon, over and under all of the Property for ingress to and egress from, and the installation, replacing, repairing and maintaining of, all utilities, including but not limited to water, sewer, gas, telephone, electricity, security systems, master television antennas and cable television, and the road system and all walkways, for all purposes necessary for the proper operation of the Property.
- (b) The Association shall have the power to grant and accept easements over, through, and across Common Elements for the installation, maintenance, and replacement of utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium, and in addition, if the Board of Directors determine that the grant of easement rights to others is in the best interest of the Association, the Association shall have the right to grant the same, provided that the use of the same would not, in the judgment of the Board of Directors, unreasonably interfere with the use and enjoyment of the Property by Unit Owners;
- (c) The Association shall have a right of entry and access to, over, upon and through all of the Property, including each Unit and the Limited Common Elements, to

enable the Association to perform its obligations, rights and duties pursuant to this Declaration with regard to maintenance, repair, restoration and/or servicing of any items, things, or areas of or in the Condominium Property. In the event of an emergency, the Association's right of entry to a Unit and its appurtenant Limited Common Elements may be exercised without notice. Otherwise, the Association shall give the Owners or Occupants of a Unit no less than twenty-four hours advance notice prior to entering a Unit or its appurtenant Limited Common Elements.

- (d) Notwithstanding anything to the contrary contained in this Declaration, Declarant and its duly authorized agents, representatives and employees shall have the following easements until the date Declarant no longer owns a Unit primarily for the purpose of sale to maintain sales offices, rental offices, model units, a construction trailer, portable potties and construction offices on the Property; to go on and over the Common Elements to conduct sales, rental and construction activities and to construct and maintain signs and structures in connection therewith; and to park vehicles on the paved surfaces the Common Elements.
- (e) Notwithstanding anything to the contrary contained in this Declaration, Declarant and its duly authorized agents, representatives, and employees shall have a perpetual non-exclusive easement over the Common Elements for the construction and completion of improvements and making repairs on the Property and for parking of vehicles on the paved surfaces in connection therewith.
- (f) If any portion of the Common Elements encroaches upon any Unit or any Unit encroaches upon the Common Elements or another Unit as a result of the construction, re-construction, repair, shifting, settlement or movement of any portion of the improvements there shall be an easement for such encroachment and for the maintenance of the same for as long as such encroachment shall exist, provided the physical boundaries of the Units after such construction, reconstruction or repairs are in substantial accord with the description of those boundaries set forth in the Plans and Exhibit "B" of this Declaration.
- (g) There shall be non-exclusive easements for all police, firemen, ambulance operators, mailmen, delivery men, garbage men, and all similar persons, and to the local governmental authorities and the Association, but not the public in general, to enter upon the Common Elements in the performance of their duties, subject to reasonable rules and regulations as the Board may establish from time to time.

ARTICLE VIII - GENERAL PROVISIONS

8.01 Termination of the Condominium. The Condominium may be terminated pursuant to the provisions of Section 44-3-98 of the Act.

8.02 Withdrawal of Submitted Property. Portions of the Condominium may be withdrawn pursuant to provisions of Section 44-3-99 of the Act.

8.03 Amendments. This Declaration may be amended pursuant to the provisions of Section 44-3-93 of the Act, other provisions of the Act and as otherwise provided in this Declaration. Notwithstanding the foregoing to the contrary, every amendment to this Declaration is subject to the prior written approval of Declarant so long as Declarant owns any Unit primarily for the purpose of sale .

8.04 Eminent Domain. The provisions of Section 44-3-97 of the Act shall apply in the event any or all of the Property shall be taken by eminent domain. The Association shall represent the Unit Owners in condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Elements, or part thereof, by the condemning authority and each Unit Owner appoints the Association as attorney-in-fact for such purpose. In the event of a taking or acquisition of part or all of the Common Elements by a condemning authority, the award or proceeds of settlement shall be payable to the Association to be held in trust for Unit Owners and their First Mortgages as their interests may appear.

8.05 No Priority over First Mortgagee. No Owner or any other party shall have priority over any rights of any First Mortgage pursuant to its deed to secure debt in case of a payment to the Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

8.06 Governmental Laws. Each Unit Owner, and the Association shall comply with all applicable governmental laws, statutes, ordinances and regulations (the "Laws") affecting the Units and the Common Elements and each party violating the Laws shall hold harmless and indemnify the others from and against all claims and damages, including court costs, attorney fees and costs of investigation arising out of such violation.

8.07 Severability. If any provision of this Declaration shall be deemed to be invalid or unenforceable, the remainder of this Declaration shall not be affected thereby.

8.08 Gender and Grammar. The singular whenever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, masculine or feminine shall be assumed as though in each case fully expressed.

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

8.10 Controlling Law. The terms and conditions of this Declaration shall be governed by the laws of the State of Georgia.

8.11 Notice.

(a) To the Association. Any notice to be given to the Association shall be delivered to the office of the Association, if any, or deposited in the mail, postage prepaid, addressed to the Association at the address of the office of the Association or at such other address last designated by notice to the Unit Owner. Such notice shall be deemed given upon hand delivery to the office of the Association, if any, or, if mailed, two business days after depositing in the mail.

(b) To a Unit Owner or Occupant. Any notice to be given to a Unit Owner or occupant of a Unit shall be delivered to the Unit or deposited in the mail postage prepaid, addressed to the Unit Owner or occupant of a Unit at the address last designated by notice to the Association. Such notice shall be deemed given upon hand delivery to the Unit or, if mailed, two business days after depositing in the mail.

8.12 Documents Available. The Association shall make available for inspection upon request, during normal business hours or under other reasonable circumstances, to Unit Owners, First Mortgagees and prospective purchasers and First Mortgagees of a Unit current copies of the Declaration, the Bylaws and all other documents affecting the Condominium, including the books and records, financial statements, and the most recent audited financial statement, if one is prepared.

8.13 Meeting of the Association. A meeting of the members of the Association shall be called in the manner provided in the Bylaws upon the written request of at least 15 percent of the Unit Owners.

8.14 Preparation. This Declaration was prepared by Stuart M. Neiman, Attorney at Law, Kilpatrick Stockton, LLP, 1100 Peachtree Street, Suite 2800, Atlanta, Georgia 30309.

ARTICLE IX - SUBORDINATION OF LIEN OF ASSESSMENT

The lien of the assessments provided for herein (including interest, costs, attorneys fees and late fees) shall be subordinate to (a) the lien held by any First Mortgagee, (b) the lien of any security deed recorded prior to the Declaration; (c) liens for ad valorem taxes on the Unit, and (d) the lien of any secondary purchase money security deed covering the Unit provided neither the grantee nor any successor grantee on the secondary purchase money security deed is the seller of

the Unit. A seller transferring any Unit shall not affect the assessment lien. However, any First Mortgagee or any grantee of a secondary purchase money security deed (provided that neither the grantee nor any successor grantee on the secondary purchase money security deed is the seller of the Unit) transferring any Unit pursuant to a mortgage foreclosure, power of sale contained in a deed to secure debt, or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer; provided, that such unpaid assessments shall become part of the common expenses collectible from all Unit Owners, including the subsequent Owner of such Unit. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereon. .

ARTICLE X - MORTGAGEES

10.01 Rights of First Mortgagees. Each First Mortgagee of a Unit shall:

- (a) Be entitled to written notice from the Association of any default in the performance by the Owner of a Unit secured by such First Mortgagee's security interest of any obligation under the Declaration, Bylaws, Articles, Rules and Regulations or other Condominium documents which remain uncured for a period of 60 days;
- (b) Be entitled to attend and observe all meetings of Unit Owners, but not meetings of the Association Board of Directors;
- (c) Be furnished copies of annual financial reports made to the Unit Owners and of any insurance policies affecting the Condominium and taken out by or on behalf of the Association;
- (d) Be entitled to inspect the financial books and records of the Association, current copies of the Declaration, Bylaws and other rules concerning the Condominium during reasonable business hours;
- (e) Be entitled to notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (f) Be entitled to notice of any proposed action which requires the consent of First Mortgagees as specified in Section 10.02;
- (g) Be entitled to written notice of any condemnation loss or any casualty loss which affects a material portion of the Condominium or the Unit securing its Unit;
- (h) Be entitled to written notice of any event which affects the Common Elements, or a Unit which is security for a First Mortgagee.

acknowledges and agrees that the Association shall not be entitled to institute any legal action against anyone on behalf of any or all of the Unit Owners which is based on any alleged defect in any Unit or the Common Elements, or any damage allegedly sustained by any Unit Owner by reason thereof, but rather, that all such actions shall be instituted by the Unit Owners owning such Units or served by such Common Elements or allegedly sustaining such damage.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal this the 26 day of September, 2000.

Signed, sealed and delivered in the presence of:

[Signature]
Witness

[Signature]
Notary Public

My Commission expires:

Notary Public, Cobb County, Georgia.
My Commission Expires Feb. 21, 2003.

DECLARANT:

KPR, LLC,
a Georgia limited liability company

By: [Signature] (SEAL)
Name: Kelly T. Lindsley
Title: Member



EXHIBIT "A"

**DECLARATION OF CONDOMINIUM
FOR
1350 NORTH MORNINGSIDE CONDOMINIUM**

All that tract or parcel of land lying and being in Land Lot 2 of the 17th District of Fulton County, Georgia, and being more particularly described on the plat of survey as follows:

To find the POINT OF BEGINNING, commence at a point on the southwestern edge of the right-of-way of North Morningside Drive (70' R/W) at the intersection of North Morningside Drive and North Highland Avenue (60' R/W); thence northwesterly from said point 128.0 feet along said North Morningside Drive right-of-way to a 1" crimped pipe found and the POINT OF BEGINNING; thence from said POINT OF BEGINNING South 57° 10' 32" West a distance of 157.60 feet to a 1" crimped pipe found; thence North 39° 35' 27" West a distance of 122.00 feet to a 1" crimped pipe found; thence North 56° 53' 37" East a distance of 172.50 feet to a 1" pipe found on the southwestern edge of North Morningside Drive; thence South 32° 34' 40" East along the southwestern edge of North Morningside Drive a distance of 122.00 feet to a 1" crimped pipe found and the POINT OF BEGINNING; all as more particularly shown on a plat of survey entitled "Survey for 1350 North Morningside Condominiums" prepared by Joseph C. King, Land Survey No. 1478, dated September 14, 2000, which plat is incorporated herein and made a part of this legal description.

EXHIBIT "B"

**DECLARATION OF CONDOMINIUM
FOR
1350 NORTH MORNINGSIDE CONDOMINIUM**

Units

Upper and Lower Boundaries. The upper boundary of each Unit is the horizontal plane of the unfinished upper interior surface of the ceiling. The upper boundary includes the plaster, dry-wall or other material forming the finished interior surface of the ceiling. The lower boundary of each Unit is the horizontal plane of the lower unfinished surface of the floor. The lower boundary includes the wood, tile or other material forming the finished flooring. The upper and lower boundaries of each Unit extend to their intersection with each other and the perimetrical boundaries of the Unit.

Perimetrical Boundaries. The perimetrical boundaries of each Unit are the vertical planes of the interior unfinished surface of the walls of the Unit (whether such walls separate the Unit from other Units or the Common Elements) and the vertical planes of the exterior surfaces of windows and entry doors, including sliding glass doors. The perimetrical boundaries include all doors and windows therein, and all sheetrock, lath, and wallboard. The materials constituting the interior finished surfaces of the walls, including without limitation, the molding, tiles, wallpaper and paint are within the boundaries of each Unit. The perimetrical boundaries of each Unit extend to their intersection of the upper and lower boundaries of the Unit.

General. Window screens and all fixtures, equipment and appliances located within the boundaries of each Unit are deemed to be a part of such Unit. Any heating and/or air conditioning compressors, units, components or other apparatus serving a Unit located beyond the boundaries of the Unit shall be deemed a part of that Unit, but any portions thereof serving more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements. If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or any other apparatus lie partially inside and partially outside of the designated boundaries of a Unit, any portions thereof serving only that Unit shall be deemed a part of that Unit, but any portions thereof serving more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements.

Porches. Unit 19 and Unit 20 each includes the screened porch as shown in the Plans.

EXHIBIT "C"

**DECLARATION OF CONDOMINIUM
FOR**

1350 NORTH MORNINGSIDE CONDOMINIUM

Share of Common Expenses

<u>Unit #</u>	<u>Pro Rata Share</u>
Unit #1	3.22060%
Unit #2	4.02576%
Unit #3	5.15298%
Unit #4	5.15298%
Unit #5	5.15298%
Unit #6	5.15298%
Unit #7	5.15298%
Unit #8	5.15298%
Unit #9	5.15298%
Unit #10	5.15298%
Unit #11	5.15298%
Unit #12	5.15298%
Unit #13	5.15298%
Unit #14	5.15298%
Unit #15	5.15298%
Unit #16	5.15298%
Unit #17	5.15298%
Unit #18	5.15298%
Unit #19	5.15298%
Unit #20	5.15298%
Total	100.00%

