

Declaration 1st Amendment

STATE OF GEORGIA

COUNTY OF COBB

Reference: Deed Book 2402 Page 71

AMENDMENT TO THE DECLARATION OF CEDAR CANYON CONDOMINIUM

This Amendment is executed this 24th day of October, 1990 by the Cedar Canyon Condominium Association, Inc. and is made (1) to protect the equity of the individual property owners in Cedar Canyon Condominium; (2) to carry out the purposes for which the Condominium was formed by preserving the character of the Condominium as a homogenous residential community of predominantly owner-occupied homes and by preventing the condominium from assuming the character of an apartment, renter-occupied complex; (3) to assist in compliance with the eligibility requirements for financing in a secondary mortgage market, and (4) for other purposes.

W I T N E S S E T H

WHEREAS, Cedar Canyon Condominium was created pursuant to a Declaration of Condominium for Cedar Canyon Condominium (hereinafter referred to as the "Original Declaration") recorded July 6, 1972 in the Office of the Superior Court of Cobb County, Georgia, in Deed Book 1326, page 709, et seq., of said records; and

WHEREAS, such Original Declaration was superseded by an amendment executed by all owners and mortgagers and recorded in Deed Book 1721, Page 103, et seq., Cobb County, Georgia Records, (hereinafter referred to as the "Second Declaration"), to submit the condominium property to the form of ownership as provided in the Georgia Condominium Act, Georgia laws 1975 No. 463, Ga. Code Ann. §85-1601(e) et seq., (hereinafter referred to as the " Act"); and

WHEREAS, this Second Declaration was amended and restated in its entirety by an Amended and Restated Declaration of Cedar Canyon Condominium (hereinafter referred to sometimes as the "Amended and Restated Declaration" and sometimes as the "Declaration"), recorded in Deed Book 2402, Page 71, et seq., recorded on August 24, 1981 in the Office of the Superior Court of Cobb County, Georgia; and

WHEREAS, the plat for Cedar Canyon Condominium is shown on that certain plat of survey entitled "Plats of Cedar Canyon Condominiums, Cobb County, Georgia" dated September 27, 1976 which was filed and recorded on September 29, 1976 in Condominium Plat Book 2, Page 193, et seq., in the Office of the Clerk of the Superior Court of Cobb County, Georgia; and

WHEREAS, said improvements are shown on those certain architectural drawings entitled "Cedar Canyon" prepared by William J. Dougherty , Architect which were filed and recorded on September 29, 1976 in Condominium Cabinet No. A (currently located at Plan Book 72-003 and Plan Book 72-010) in the Office of the Clerk of the Superior Court of Cobb County, Georgia; and

WHEREAS, Cedar Canyon Condominium Association, Inc. (hereinafter referred to as the "Association") the Association as defined under the aforesaid Amended and Restated Declaration, and the membership thereof desired to amend said Amended and Restated Declaration for the purpose of regulating the leasing of units in the Condominium; and

WHEREAS, pursuant to Section 14 of the Amended and Restated Declaration

of Cedar Canyon Condominium, and the Georgia Condominium Act, the Declaration may be amended by the affirmative vote of the members of the Association holding two-thirds (2/3) of the total vote of the members of the Cedar Canyon Condominium Association, Inc. entitled to vote; and

WHEREAS, members holding at least two-thirds (2/3) of the total vote of the members of the Association entitled to vote have, by affirmative vote at the annual meeting of the Cedar Canyon Condominium Association, Inc. held on October 8, 1990, approved this Amendment to the Amended and Restated Declaration;

NOW, THEREFORE, the Amended and Restated Declaration of Cedar Canyon Condominium is hereby amended as follows:

I. By deleting in its entirety Section 10 from the Amended and Restated Declaration of Cedar Canyon Condominium dated August 3, 1981 and recorded on August 24, 1981 in Deed Book 2402, Page 71, et seq., Cobb County, Georgia records, and substituting in its place a new Section 10 which shall read as follows:

Section 10. Leasing.

(a) GENERAL

The units at Cedar Canyon Condominium shall be and are restricted exclusively to residential use and occupancy by one (1) family, and no business may be conducted upon the condominium property. Notwithstanding the above, or any other provision within this Declaration, trade or business activity may be conducted in or from a unit such that said trade or business activity would cause no noise, odor, fire hazard or excessive traffic, and which cannot be seen by neighbors, and which would not have any tools of trade stored or placed on the patio or in the carport. Further, notwithstanding the above, "garage sales" are permitted, but only with the prior consent of the Board of Directors. As used in this Section, the term "one (1) family" shall mean one or more persons related by blood, adoption, or marriage. A number of persons, but not exceeding two (2) adults in a two (2) bedroom unit, three (3) adults in a three (3) bedroom unit and four (4) adults in a four (4) bedroom unit, plus not more than one (1) child in a two (2) bedroom unit, two (2) children in a three (3) bedroom unit, and three (3) children in a four (4) bedroom unit, though not all related by blood, adoption or marriage, shall also be deemed to constitute one (1) family. Occupancy of a unit by any inhabitants other than one (1) family, as defined herein, is expressly prohibited, unless otherwise approved by the Board of Directors. As used herein, the words "by blood" shall extend to children, grandchildren, brothers and sisters, nieces and nephews, parents, uncles and aunts, and first cousins, and no other kinships. Occupancy, for purposes of this Declaration, shall be defined as staying overnight in a unit for more than thirty (30) days in anyone (1) year period.

The general use restrictions shall not apply to require the removal of any one person occupying a unit on the effective date of this amendment. However, a person may not begin to occupy a unit after the effective date of this amendment if the unit occupancy does not comply with the use restrictions contained in this section prior to occupancy by such person, or if the unit occupancy would become not in compliance as a result of occupancy by such person.

(b) LEASING OF UNITS.

(I) Definition. "Leasing," for purposes of this Declaration, is defined as regular occupancy of a unit by any person other than the owner, with or without a written lease agreement, for which the owner, any relative of the owner or any other agent of the owner receives any consideration

or benefit, including, but not limited to, a fee, service, gratuity, or emolument.

(ii) In General. In order (1) to protect the equity of the individual property owners in Cedar Canyon Condominium; (2) to carry out the purposes for which the condominium was formed by preserving the character of the condominium as a homogeneous residential community of predominantly owner-occupied homes and by preventing the condominium from assuming the character of an apartment, renter-occupied complex; (3) to assist in compliance with the eligibility requirements for financing in a secondary mortgage market; and (4) for other purposes, except as provided in the subparagraphs relating to undue hardship (Section 10(b)(iii)) and the applicability of the leasing regulations (Section 10(b)(v)) of this Declaration, leasing of units at Cedar Canyon Condominium shall be prohibited.

(iii) Undo Hardship. Notwithstanding the above, the Board of Directors, in their discretion, shall be empowered to allow reasonable leasing of units, upon application, to avoid undue hardship upon an owner, including, but not limited to, those instances (1) where an owner must relocate his or her residence and cannot, within ninety (90) days from the date that the dwelling unit was placed on the market, sell the dwelling unit for the current fair market value (as may be determined by an appraiser or any other person approved by the Board and paid for by the Owner), after having made reasonable efforts to do so; (2) where the owner dies and the dwelling unit is being administered by his or her estate; (3) the owner temporarily relocates outside the metropolitan Atlanta area and intends to return to reside in the unit; and (4) the unit is to be leased to a member of the owner's immediate family (which shall be defined to include a spouse, child, parent, or parent-in-law). Those owners who are required to demonstrate and who have demonstrated that the inability to lease their dwelling unit would result in undue hardship and have obtained the requisite approval of the Board may lease their dwelling units for such duration as the Board reasonably determines is necessary to prevent undue hardship. In the event the Board permits an owner to lease a unit for a stated period of time in order to prevent undue hardship, such owner shall immediately discontinue leasing of his or her unit at the end of such period of time unless the Board renews or extends permission to lease.

Any owner who believes that he or she must lease his or her unit to avoid undue hardship shall submit a written application to the Board at least 15 days in advance of the proposed commencement of such lease term, setting forth the circumstances necessitating the leasing, the name of the proposed lessee, and members of the lessee's family who will be occupying the unit, if any, a copy of the proposed lease, and such other information as the Board may reasonably require. Leasing in the case of undue hardship shall only be permitted upon the Board's written approval of the Owner's application, and there shall be no occupancy by any lessee until such approval by the Board is granted. However, failure of the Board to approve or disapprove such written application to allow for leasing due to undue hardship within 15 days from the date of its submission shall automatically deem such application approved by the Board.

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and By-Laws, in order to enforce the provisions of this paragraph. Any transaction, which does not comply with this paragraph, shall be void unless subsequently approved by the Board of Directors in writing.

(iv) Leasing Provisions. The following provisions shall govern such leasing as is permitted by this paragraph of the Declaration:

(1) General. Units may be leased only in their entirety; no fraction or portion may be leased. There shall be no subleasing of units or assignment of leases unless approved in writing by the Board of Directors. No transient tenants may be accommodated in a unit. All leases shall be in writing and may be in the form approved by the Association attached hereto as Exhibit "A" and incorporated herein by this reference or in a similar form which shall include provisions 5,6,7, and 8 of the form attached as Exhibit "A". Except as otherwise permitted by the Board, all leases must be for a minimum term of one (1) year. The unit owner must make available to the tenant copies of the Declaration, By-Laws, and the rules and regulations.

(2) Liability for Assessments, Fines and other Charges and Compliance with Declaration, By-Laws, and Rules and Regulations. Any lease of a unit in the Condominium shall be deemed to contain the following provisions, whether or not expressly therein stated, and each owner covenants and agrees that any lease of a unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into a lease by existence of this covenant. Any lessee, by occupancy in a unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(A) Liability for Assessments, Fines and other Charges. Lessee agrees to be personally obligated for the payment of all assessments, fines and other charges levied against the owner which become due during any period of occupancy by the lessee or which become due as a consequence of Lessee's activities, including, but not limited to, activities which violate provisions of the Act, Declaration, the By-Laws, or the rules and regulations adopted pursuant thereto. The above provision shall not be construed to release the unit owner from any obligation, including the obligation for assessments or any other charges assessed against their lessees for which he or she would otherwise be responsible.

Upon the failure of the unit owner to pay, and upon request by Cedar Canyon Condominium Association, Inc. ("Association"), Lessee shall pay to the Association all rents and other charges payable to lesser hereunder. All such payments made by Lessee to the Association shall reduce, by the same amount, Lessee's obligation to make monthly rental payments to lesser. It shall be the responsibility of the Association and not of the Lessee to account to the lesser for funds actually received by the Association from the Lessee. In the event that Lessee fails to comply with the Association's request to pay such rents and other charges, Lessee shall pay to the Association all late charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorney's fees actually incurred, to the same extent Lessee would be required to make such payments to the Association if the Lessee were the owner of the unit.

(B) Compliance with Declaration, By-Laws, and Rules and Regulations. Lessee agrees to abide and comply with all provisions of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other occupants and guests in order to ensure compliance with the foregoing. Owner agrees to cause all occupants of his or her unit to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto and is responsible for all violations and losses caused by such occupants, notwithstanding the fact that such occupants of the unit are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, or a rule and regulation for which a fine is imposed, such fine shall be assessed against the Lessee; provided, however, if the fine is not paid by the Lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the Lessee's failure to pay the fine or fines. Notwithstanding the

above, the Board of Directors shall have the right, but not the obligation, to waive any fine or part thereof, assessed against the Lessee that is charged against the Owner, that was incurred during the term the Owner seeks, in good faith, to remedy a violation caused by the Lessee or to evict the Lessee. Unpaid fines constitute a lien against the unit. Any Lessee charged with a violation of the Declaration, By-Laws, or rules and regulations adopted pursuant thereto is entitled to the same procedure to which an owner is entitled prior to the imposition of a fine or other sanction.

Any violation of the Declaration, By-Laws, or rules and regulations adopted pursuant thereto is deemed to be a violation of the terms of the lease and thus a default under said Lease, and authorizes the owner to terminate the lease without liability and to evict the Lessee in accordance with Georgia law. The owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the Lessee for breaches resulting from the violation of the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the Lessee on behalf and for the benefit of the owner, in accordance with the terms hereof. In the event the Association proceeds to evict the tenant, any costs, including attorney's fees and court costs, associated with the eviction shall be specially assessed against the unit owner thereof, such being deemed hereby as an expense which benefits the leased unit and the owner thereof.

The Board of Directors of the Association shall have the authority to adopt and to enforce reasonable rules and regulations in order to enforce this Section 10, including all rights under the lease as a third party beneficiary and the right to impose and assess fines constituting a lien upon the unit pursuant to the Act.

(v) Applicability. Those owners who are owners of units at Cedar Canyon Condominium who obtained title by recorded instrument before the recording date of this Amendment may lease units in accordance with the terms of this Declaration as it existed before the adoption of this Amendment and shall not be required to demonstrate undue hardship as a prerequisite to the leasing of those units. Notwithstanding the above, all such owners who intend to lease their units must give fifteen (15) days written notice to the Board of Directors of their intention, along with a copy of the proposed Lease, and all such leasing and leases shall be subject to approval by the Association and the provisions of Section 10(b)(iv) as amended herein. However, upon any sale, transfer or other conveyance of the unit, any purchaser, transferee or other grantee thereof shall be subject to the provisions of this Amendment in its entirety in addition to all other provisions of the Declaration, Bylaws and Rules and Regulations adopted pursuant thereto. The failure of the Board to approve or disapprove such written application to allow for leasing within fifteen (15) days from the date of its submission shall automatically deem such application approved by the Board. Any lease, which is not authorized pursuant to the terms of this Section 10, shall be void.

Leases existing on the date on which this Amendment is recorded shall not be subject to the terms of this Amendment. Such leases may continue in accordance with the terms of the Declaration, as it existed prior to the recording date of this Amendment. However, any assignment, extension, renewal, or modification of any lease agreement, including, but not limited to, changes in the terms or duration of occupancy, shall be considered a termination of the old lease and commencement of a new lease which must comply with the provisions of this Amendment. All owners who are currently leasing shall file copies of their leases with the Board of Directors within thirty (30) days of the date on which this Amendment is recorded in the Cobb County, Georgia, Records.

Use of Common Elements. By the execution and submission of a lease to the Association by the Owner and Lessee, the Owner hereby acknowledges the transfer and assignment to the Lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the common elements of the Condominium, including, but not limited to, the use of any and all recreational facilities and other amenities that are a part of the common elements of the Association as defined under the Declaration.

The Amendment shall not apply to any leasing transaction entered into by the holder of any first mortgage on a unit who becomes the owner of a unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such mortgage.

II. By adding Section 15 to the Amended and Restated Declaration of Cedar Canyon Condominium dated August 3, 1981, recorded on August 24, 1981 in Deed Book 2402, Page 71 et seq., Cobb County, Georgia Records, entitled "Meetings of the Members" which shall read as follows:

15. MEETINGS OF THE MEMBERS

Meetings of the members of the Association shall be held in accordance with the provisions of the Association's Bylaws and in any event not less frequently than annually. A meeting of the members may be called upon the written request of at least fifteen percent (15%) of the unit owners.

The provisions of this Section 15 shall only remain in effect until such time as such provisions are no longer required pursuant to the Georgia Condominium Act, O.C.G.A. §443-70, et seq.

III. Except as herein modified and amended, the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned officers of Cedar Canyon Condominium Association, Inc. hereby certify that the Association and its membership duly adopted the above Amendment to the Declaration.

This 24th day of October 1990.
CEDAR CANYON CONDOMINIUM ASSOCIATION, INC.

BY: _____

Attest: _____
Secretary

Signed, sealed, and delivered
This 24th day of October, 1990,

In the presence of:

Witness

/s/ Patricia E Warren
Notary Public
Georgia, Cobb County
My Commission Expires March 16, 1993