

Deed Book 33351 Pg 123
Filed and Recorded Oct-18-2002 11:41am
2002-0308908
Real Estate Transfer Tax \$0.00
Juanita Hicks
Clerk of Superior Court
Fulton County, Georgia

[Space above left blank for recording data]

After Recording Return to:
Jay S. Lazega, Esq.
Weissman, Nowack, Curry & Wilco, P.C.
1349 West Peachtree Street, 15th Floor
Atlanta, GA 30309

Cross Reference: Deed Book: 20127
Page Number: 1

STATE OF GEORGIA
COUNTY OF FULTON

**AMENDMENT TO AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM FOR THE PONCE CONDOMINIUM**

WHEREAS, the Amended and Restated Declaration of Condominium for The Ponce Condominium was recorded on October 17, 1995, in Deed Book 20127, Page 1, *et seq.*, Fulton County, Georgia records, as amended; and

WHEREAS, pursuant to the Consent Judgment in Corwin Robinson, Wayne Hood and Chong Yun v. The Ponce Condominium Association, Inc., Superior Court of Fulton County, Civil Action File No. 2001-CV-38710 ("Consent Judgment"), the Association agreed to pursue obtaining approval of an amendment to the Declaration by its membership which affords Corwin Robinson, Wayne Hood and Chong Yun ("Commercial Unit Owners") access to the common element roof and elevators, subject to the same terms and conditions of use applicable to owners of Residential Units at The Ponce Condominium, and subject to the Commercial Unit Owners' obligations to pay assessments for the maintenance, repair, replacement and improvement of such items based on their percentage allocations of liability for assessments, all as set forth in the Declaration; and

WHEREAS, Paragraph 6(a) and Exhibit "B" of the Declaration define the Limited Common Elements assigned to the Residential Units as certain portions of the Common Elements, but specifically excluding the roof of the building and Elevators No. 1 and No. 3 of the building, which remain general Common Elements of the building; and

WHEREAS, Elevator No. 2 is a Limited Common Element appurtenant to the Residential Units, and, thus, is not subject to the terms and conditions of the Consent Judgment; and

WHEREAS, nothing in the Declaration restricts the Commercial Unit Owners' rights to access, use or enjoy the roof of the building as a Common Element of the Condominium. Accordingly, nothing must be done by the Association with regard to the roof of the building in order to comply with the Consent Judgment; and

WHEREAS, Paragraph 15(r) of the Declaration restricts the Commercial Unit Owners' access and use of Common Element Elevators No. 1 and No. 3; and

WHEREAS, pursuant to Paragraph 24 of the Declaration, the Declaration may be amended by the affirmative vote, written consent or any combination of affirmative vote and written consent of the members of the Association holding sixty-six and two-thirds (66-2/3%) percent of the total eligible votes of the Association; and

WHEREAS, at least sixty-six and two-thirds (66-2/3%) percent of the total eligible vote of the Association have approved this Amendment to the Declaration; and

WHEREAS, this Amendment is not material with respect to any Eligible Mortgage Holders under the Declaration in that it does not alter, modify or rescind any right, title or interest held by any Eligible Mortgage Holder; provided, however, in the event a court of competent jurisdiction determines that this Amendment does so without such Eligible Mortgage Holder's consent, then this Amendment shall not be binding on that Eligible Mortgage Holder, unless it consents hereto, and if such consent is not forthcoming, then the provisions of the Declaration prior to this amendment shall control with respect to the affected Eligible Mortgage Holder;

NOW, THEREFORE, the Declaration is hereby amended as follows:

1.

Paragraph 9(c) of the Declaration is hereby amended by deleting the phrase "*and repairs to the exterior of the building and reserves that apply to such repairs*" therefrom and substituting the phrase "*and the costs of maintenance, repair, replacement and improvement of the exterior of the building, the roof and roof structure of the building, the Elevators in the building, and reserves that apply to such items*" therefor.

2.

Paragraph 9(j) of the Declaration is hereby amended by deleting that Paragraph in its entirety and substituting the following therefor:

(j) All costs of maintaining, repairing, replacing and improving the roof and roof structure on the building, as well as all Elevators of the building, shall be a Common Expense shared by all Unit Owners, including Residential Unit Owners and Commercial Unit Owners, in proportion to their respective allocations of liability for Common Expenses set forth in Exhibit "B" hereto.

3.

Paragraph 15(r) of the Declaration is hereby amended by deleting that Paragraph in its entirety and substituting the following therefor:

(r) Elevators and Roof. In addition to the roof of the building, Elevators No. 1 and No. 3 (as designated on the Plans) are Common Elements, which are available for use by all Residential Unit Owners and Commercial Unit Owners, their guests and invitees, subject to such reasonable rules and regulations as may be established by the Board. The use of Elevator No. 2 (as designated on the Plans) shall be limited exclusively to the Association and those persons to whom the Association has given express permission in connection with special occasions or special uses. The Board may permit any Commercial or Residential Unit Owner (or the Association in connection with any maintenance, repair, improvement or reconstruction of the Common Elements or any Limited Common Elements) to use Common Element Elevator No. 1 or No. 3 on an exclusive basis for a temporary period of time, except that the Board shall not permit reserved, exclusive use of both elevators at the same time.

IN WITNESS WHEREOF, the undersigned officers of The Ponce Condominium Association, Inc., hereby certify that this Amendment to the Declaration was properly adopted this _____ day of _____, 2002.

ASSOCIATION: THE PONCE CONDOMINIUM ASSOCIATION, INC.

Sworn to and subscribed to before me this _____ day of _____, 2002.

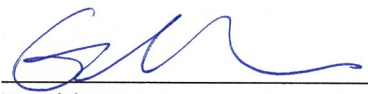


Witness



Notary Public

[Notary Seal]

By:  (Seal)

President

Attest:  (Seal)

Secretary

[Corporate Seal]

[Owner Signatures Continued on Next Page]

[Amendment Signatures Continued from Previous Page]

Sworn to and subscribed to before
me this 30 day of May,
2002.

Reed Shwedo
Witness

[Signature]
Notary Public

[Notary Seal]

OWNER:

[Signature] (Seal)
Corwin Robison

Sworn to and subscribed to before
me this 30 day of Aug,
2002.

Reed Shwedo
Witness

[Signature]
Notary Public

[Notary Seal]

OWNER:

Wayne Hood (Seal)
Wayne Hood

Sworn to and subscribed to before
me this 30 day of Aug,
2002.

Reed Shwedo
Witness

[Signature]
Notary Public

[Notary Seal]

OWNER:

Chong Yun (Seal)
Chong Yun

Deed Book 33351 Pg 126
Juanita Hicks
Clerk of Superior Court
Fulton County, Georgia
I HEREBY ADVISE YOU THAT THIS DEED WAS FILED FOR RECORD IN THE CLERK'S OFFICE OF THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA, ON AUGUST 30, 2002.