

After Recording Return to:  
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Alpharetta, Georgia 30005

Cross Reference: Deed Book: 20127  
Page Number: 01

STATE OF GEORGIA

COUNTY OF FULTON

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

This Amendment to the Amended and Restated Declaration of Condominium for The Ponce Condominium (hereafter referred to as "Amendment") is made on the date first set below.

WITNESSETH:

WHEREAS, Killian/Wilkinson, a Georgia partnership, recorded that certain Declaration of Condominium for The Ponce Condominium (hereafter referred to as the "Original Declaration") on September 6, 1982 in Deed Book 8237, Page 126 of the Fulton County, Georgia land records

WHEREAS, the membership of The Ponce Condominium Association, Inc. (hereafter referred to as the "Association") amended and restated the Original Declaration with the Amended and Restated Declaration of Condominium for The Ponce Condominium (hereafter referred to as the "Declaration") recorded on October 17, 1995 in Deed Book 20127, Page 01 of Fulton County, Georgia land records;

WHEREAS, the Declaration has previously been amended by the Association membership from time to time;

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 percent (66-2/3%) of the total eligible votes of the Association;

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

NOW THEREFORE, the Declaration is hereby amended as follows:

1.

**Paragraph 16 of the Declaration is hereby stricken in its entirety and the following is substituted therefor:**

16. LEASING.

In order to protect the equity of the individual Unit Owners within the Condominium, to carry out the purpose for which the Condominium was formed by preserving the character of the Condominium as a residential property of predominantly owner-occupied homes, to prevent the Condominium from assuming the character of a renter-occupied complex, and to comply with any eligibility criteria for mortgages, including federally-backed mortgages and mortgages on the secondary mortgage market, insofar as such criteria provide that the Condominium be substantially owner-occupied, leasing of Units shall be governed by the restrictions imposed by this Paragraph.

(a) Except as provided herein, the leasing of Units shall be prohibited.

(b) Definition. "Leasing," for purposes of the Declaration, is defined as the regular, exclusive occupancy of a Unit by any person or persons other than the Owner; provided, however, leasing shall not include exclusive occupancy by the spouse, child or parent of an Owner and shall not include the occupancy by a roommate or domestic partner of an Owner who occupies the Unit as such Owner's primary residence.

(c) General. Owners desiring to lease their Units may do so only if they have applied for and received from the Board of Directors either a "Leasing Permit" or a "Hardship Leasing Permit." Such a permit, upon its issuance, will allow an Owner to lease his or her Unit provided that such leasing is in strict accordance with the terms of the permit and this Paragraph. The Board of Directors shall have the authority to establish conditions as to the duration and use of such permits consistent with this Paragraph. All permits shall be valid only as to a specific Unit Owner and Unit and shall not be transferable between either Units or Unit Owners.

(d) Leasing Permits. An Owner's request for a Leasing Permit shall be approved if current, outstanding Leasing Permits have not been issued for more than twenty percent (20%) of the total number of Units in the Condominium. A Leasing Permit shall be automatically revoked upon the happening of any of the following events: (1) the sale or transfer of the Unit to a third party (excluding sales or transfers to an Owner's spouse, a person cohabitating with the Owner, or a corporation, partnership, company, or legal entity in which the Owner is a principal); (2) the failure of a Unit Owner to lease his or her Unit within three months of the Leasing Permit having been issued; (3) the failure of a Unit Owner to have his or her Unit leased for any consecutive three month period thereafter; or (4) the occurrence of the date referenced in a written notification by the Owner to the Association that the Owner will, as of said date, no longer need the Leasing Permit.

If current Leasing Permits have been issued for twenty percent (20%) of the total number of Units in the Condominium, no additional Leasing Permits shall be issued (except for Hardship Leasing Permits, as set forth below) until the number of outstanding current Leasing Permits falls below twenty percent (20%) of the total number of Units in the Condominium. Owners who have been denied a Leasing Permit shall automatically be placed on a waiting list for a Leasing Permit and shall be issued a Leasing Permit if they so desire when the number of current outstanding Leasing Permits issued falls to less than twenty percent (20%) of the total number of Units in the Condominium. The issuance of a Hardship Leasing Permit to an Owner shall not cause the Owner to be removed from the waiting list for a Leasing Permit.

(e) Hardship Leasing Permits. If the failure to lease will result in a hardship, the Owner may seek to lease on a hardship basis by applying to the Board of Directors for a Hardship Leasing Permit. The Board of Directors shall have the authority to issue or deny requests for Hardship Leasing Permits in its discretion. In making such a determination, the Board may take any factor into account, including: (1) the nature, degree, and likely duration of the hardship, (2) the number of Hardship Leasing Permits which have been issued to other Owners, (3) the Owner's ability to cure the hardship, and (4) whether previous Hardship Leasing Permits have been issued to the Owner. A "hardship" as described herein shall include, but not be limited to the following situations: (1) a Unit Owner must relocate his or her residence outside the greater Atlanta metropolitan area and cannot, within three months from the date that the Unit was placed on the market, sell the Unit except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) where the Owner dies and the Unit is being administered by his or her estate; and (3) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Unit. Hardship Leasing Permits shall be valid for a term not to exceed one year. Owners may apply for additional Hardship Leasing Permits. Hardship Leasing Permits shall be automatically revoked if during the term of the permit, the Owner is approved for and receives a Leasing Permit.

(f) Leasing Provisions. Leasing which is authorized, pursuant to permit, hereunder shall be governed by the following provisions:

(1) Notice. At least seven (7) days prior to entering into the lease of a Unit, the Owner shall provide the Board of Directors with a copy of the proposed lease and such other information as the Board may reasonably require. The Board shall approve or disapprove the form of said lease. In the event a lease is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto. Within ten (10) days from the execution of the approved lease by both parties, the Owner shall provide the Board with a copy of the executed lease and the names and phone number of the lessees.

(2) General. Units may be leased only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Units or assignment of leases unless approved in writing by the Board. All leases shall be in writing and in a form approved by

the Board prior to the effective date of the lease. All leases shall be for a period of at least six months, except with written Board approval. The Unit Owner must provide the tenant copies of the Declaration, Bylaws, and Association rules and regulations, and the lease form shall provide that the Owner has done so.

(3) Liability for Assessments and Compliance With Declaration, Bylaws, 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 on the Unit. Any lessee, by occupancy of a Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(A) Liability for Assessments. Lessee agrees to be personally obligated for the payment of all assessments and all other charges against the Owner which become due during the term of the lease and any other 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 Declaration, the Bylaws, 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, for which he or she would otherwise be responsible.

When a Unit Owner who is leasing his or her Unit fails to pay any assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Unit Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board of Directors, lessee shall pay to the Association all unpaid annual and special assessments and other charges, as lawfully determined and made payable during the term of the lease and any other period of occupancy by lessee; provided, however, lessee need not make such payments to the Association in excess of, or prior to the due dates for monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or 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 lessee were the owner of the premises during the term of the agreement and any other period of occupancy by lessee.

(B) Compliance with Declaration, Bylaws, and Rules and Regulations. Lessee shall abide by and comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other occupants and guests in order to insure compliance with the foregoing. Lessee acknowledges that the violation by lessee or any occupant living with lessee of any provision of the Declaration, Bylaws, or rules and regulations adopted thereunder shall constitute a default under this lease. Owner shall cause all occupants of his or her

Unit to comply with the Declaration, Bylaws, 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, Bylaws, and rules and regulations adopted pursuant thereto. If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule and regulation for which a fine is imposed, such fine may be assessed against the lessee and/or the Owner; provided, however, if a 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 Board of the lessee's failure to do so. Unpaid fines shall constitute a lien against the Unit. Any lessee charged with a violation of the Declaration, Bylaws, 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, Bylaws, or rules and regulations adopted pursuant thereto by lessee, any occupant, or any person living with lessee is deemed to be a violation of the terms of the 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, Bylaws, 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, or to require the Owner to do so. 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 and the Owner thereof, such being deemed hereby as an expense which benefits the leased Unit and the Owner thereof.

(g) Applicability of this Paragraph (Grandfathering Existing Leases). Leases existing on the date which this Amendment is recorded in the Fulton County, Georgia land records shall not be subject to the terms of this Paragraph and such leases may continue in accordance with the terms of the Declaration as it existed prior to the recording date of this Amendment; provided, however, the grandfathering of existing leases set forth herein shall be automatically revoked upon the happening of either of the following events: (1) the sale or transfer of the Unit to a third party (excluding sales or transfers to an Owner's spouse, a person cohabitating with the Owner, or a corporation, partnership, company, or legal entity in which the Owner is a principal), or (2) the failure of a Unit Owner to lease his or her Unit within three months of the termination date of the last lease filed with the Board. Any Owner of a Unit which is leased on the effective date of this Declaration shall place on file with the Board of Directors a copy of the lease agreement in effect within thirty (30) days of the date on which this Amendment is recorded in the Fulton County, Georgia land records.

(h) Commercial Units. No Commercial Unit shall be used for the sale or display of pornographic material nor for the operation of any pornographic business, including, but not limited to, a store dealing in pornographic material. No other

restriction set forth in this Paragraph shall be applicable to a Commercial Unit, except subparagraphs 16(f)(1), 16(f)(2), and 16(f)(3).

IN WITNESS WHEREOF, the undersigned officers of The Ponce Condominium Association, Inc. hereby certify that this Amendment to the Declaration was properly adopted this 15<sup>th</sup> day of July, 2005.

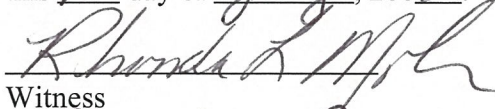
THE PONCE CONDOMINIUM  
ASSOCIATION, INC.



President

Print Name: ADRIAN PENKA

Sworn to and subscribed before me  
this 15<sup>th</sup> day of July, 2005.

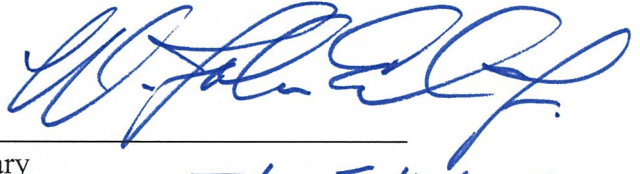


Witness



Notary Public

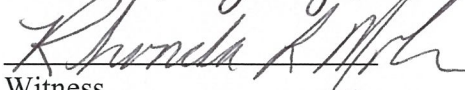
Notary Public, Gwinnett County, Georgia  
My Commission Expires July 28, 2008.



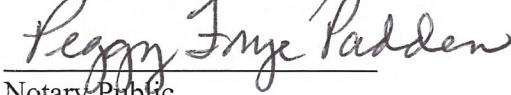
Secretary

Print Name: W. John Eckel, Jr.

Sworn to and subscribed before me  
this 15<sup>th</sup> day of July, 2005.



Witness



Notary Public

Notary Public, Gwinnett County, Georgia  
My Commission Expires July 28, 2008.