

2000-0203349

Real Estate Transfer Tax \$0.00

Juanita Hicks

Clerk of Superior Court

Fulton County, Georgia

After recording, please return to:

George F. Maynard

George F. Maynard
Burr & Forman LLP

Suite 1200, One Georgia Center

600 West Peachtree Street

Atlanta, Georgia 30308

Cross Reference: Deed Book 20127,
Page 01, Fulton County, Georgia Records.

This Fifth Amendment to Amended and Restated Declaration of Condominium for The Ponce Condominium ("Fifth Amendment") is entered into this 12 day of September, 2000 by and between THE PONCE CONDOMINIUM ASSOCIATION, INC., a Georgia nonprofit corporation (the "Association") and JOHN F. RASOR ("Owner");

WHEREAS, the Association is the "Association" as defined in that certain Amended and Restated Declaration of Condominium for The Ponce Condominium recorded at Deed Book 20127, Page 01, Fulton County, Georgia records, as amended by First Amendment recorded at Deed Book 20867, Page 308, aforesaid records, by Second Amendment recorded at Deed Book 21058, Page 97, aforesaid records, by Third Amendment recorded at Deed Book 21971, Page 150, aforesaid records, and by Fourth Amendment recorded at Deed Book 28650, Page 119 aforesaid records (as amended, the "Declaration");

77144.1 (2406.16)

WHEREAS, pursuant to paragraph 15 (b) (ii) of the Declaration and O.C.G.A. § 44-3-91, the Owner wishes to combine the three (3) Residential Units it owns in the Property into one (1) Residential Unit, to be named "Unit 1107-E";

WHEREAS, pursuant to Paragraph 24 thereof, the Declaration may be amended by the affirmative vote, written consent or combination of affirmative vote and written consent of owners of units to which at least two-thirds (2/3rds) of the total votes in the Association, pertain;

WHEREAS, members of the Association to which at least two-thirds (2/3) of the total votes in the Association pertain desire to amend the Declaration and have approved this Amendment to the Declaration; and

WHEREAS, this Fifth Amendment does not alter, modify, change or rescind any right, title, interest or privilege held by any mortgage holder of any Unit; provided, however, in the event a court of competent jurisdiction determines that this Fifth Amendment does alter, modify, change or rescind any right, title, interest or privilege held by any such mortgage holder without such mortgage holder's consent in writing to this Fifth Amendment, then this Fifth Amendment shall not be binding on the mortgage holder so involved, unless such mortgage holder consents to this Fifth Amendment; and if such consent is not forthcoming, then the provisions of the Declaration prior to this Fifth Amendment shall control with respect to the affected mortgage holder; and

WHEREAS, the Association and the Owner wish to execute this Fifth Amendment in order to amend the Declaration to reflect the combination of Units 1106, 1107 and 1108 into Unit 1107-E, set forth the new square footage of Unit 1107-E, and reallocate the Unit's percentage allocation of interest in common elements, voting rights and liability for common elements under the Declaration.

1. Incorporation of Recitals. The recitals set forth above are hereby incorporated into the substantive body of this Agreement. Unless defined herein, defined terms are as defined in the Declaration.

2. Amendment to Declaration. The Owners and the Association hereby amend the Declaration as follows:

(a) Exhibit "A" to the Declaration is hereby amended to assign and transfer the following parking spaces, which previously were assigned to Units 1106, 1107 and/or 1108, to Unit 1107-E: Parking Spaces No. 21, 22, and 47.

(b) That portion of Exhibit "B" to the Declaration under the heading "Location and Description of the Units" is hereby amended as follows:

All references on Exhibit "B" to the location and description of Residential Units 1106, 1107 or 1108 are hereby deleted and replaced with the following:

Residential Unit 1107-E. This Unit is located on the southwestern corner and western side of the Building on Floor Eleven. Unit 1107-E contains approximately 1,382 square feet.

The portion of Exhibit "B" under the heading "Percentage Allocation of Interests in Common Elements, Voting Rights and Liability for Common Elements" is hereby amended to delete references to Residential Unit 1106, Residential Unit 1107 and Residential Unit 1108, thereunder, and replace them with the following:

<u>Unit No.</u>	<u>Percentage Allocation of Interest In Common Elements, Voting Rights And Liability for Common Elements</u>
1107-E	2.49%

3. Floor Plan. In addition to recording this Fifth Amendment in the real property records of Fulton County, Georgia, the Owners shall file a revised floor plan for the second floor of the building in the form attached hereto as Exhibit "A", which is hereby approved by the Association.

4. Continuing Effect. Except as amended hereby, the Declaration shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

Executed under the hands and seals of the undersigned on the date first above written.

Signed, sealed and delivered
this 11 day of Sept
2000, in the presence of:

[Signature]
Unofficial Witness
[Signature]
Notary Public

My Commission Expires:

Notary Public, DeKalb County, Georgia
My Commission Expires July 27, 2004

ASSOCIATION:

THE PONCE CONDOMINIUM
ASSOCIATION, INC.

By: [Signature] (Seal)
Chairman

By: [Signature] (Seal)
Secretary

[Corporate Seal]

OWNER:

By: [Signature] (Seal)
John F. Rasor

Signed, sealed and delivered
this 26 day of August
2000, in the presence of:

[Signature]
Unofficial Witness
[Signature]
Notary Public

My Commission Expires
Notary Public, Fulton County, Georgia
My Commission Expires Jan. 23, 2004

[Affix Notarial Seal]

