

Declaration of Condominium

AMENDED AND RESTATED DECLARATION OF CEDAR CANYON CONDOMINIUM

WHEREAS, on July 6, 1972, a certain Declaration of Condominium for Cedar Canyon was filed for record in the office of the Clerk of the Superior Court of Cobb County, Georgia, and recorded in Deed Book 1326, Page 709, et seq., of said records; and

WHEREAS, such Declaration has been superseded by an amended and restated by an amendment executed by all owners and mortgagees and recorded in Deed Book 1721, Page 103, et seq., Cobb County, Georgia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, Ga. Laws 1975, No.463, Ga. Code Ann. Sections 85-1601e, et seq., (hereinafter referred to as the "Act"); and

WHEREAS, the Second Declaration provides for amendment thereto by recording a certified copy of the amendment approved by not less than seventy-five (75%) percent of the Directors and by not less than seventy-five (75%) percent of the total vote of the Association; and

WHEREAS, not less than seventy-five (75%) percent of all the Directors and not less than seventy-five (75%) percent of the total vote of the Association have approved this Amendment and Restatement of the Second Declaration;

WHEREAS, this Amendment and Restatement of the Second Declaration does not substantially affect the rights of any mortgagee;

NOW, THEREFORE, the Second Declaration of Cedar Canyon Condominium, together with the appurtenant By-Laws, is stricken in its entirety, except for those parts expressly incorporated herein by reference, and the following Declaration of Cedar Canyon Condominium, (hereinafter referred to as the "Declaration"), and the By-Laws, attached as Exhibit "C" and by reference made a part of the Declaration, are substituted therefore:

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DECLARATION OF CEDAR CANYON CONDOMINIUM

Pursuant to the Georgia Condominium Act, Ga. Laws 1975, No. 463, Ga. Code Ann. Sections 85-1601e, et seq., (hereinafter the "Act"), the owners of units at Cedar Canyon Condominium hereby amend and restate the Second Declaration and continue to subject Cedar Canyon, a residential condominium, to the Act.

1. Name

The name of the condominium is Cedar Canyon Condominium), (hereinafter sometimes called "Cedar Canyon or the "Condominium~).

2. County and Description of Property

Cedar Canyon is located in Land Lots 859 and 860 of the 17th District, 2nd Section, of Cobb County, Georgia, and is more particularly described in Exhibit "A", attached hereto and by this reference incorporated herein.

3. Units and Boundaries

Cedar Canyon consist of a total of one hundred thirty-seven (137) units. Plats and plans pertaining to Cedar Canyon were filed and recorded on September 29, 1976, in Condominium Plat Book 2, Page 193, et seq., and Condominium Cabinet No. A, Cobb County, Georgia Records, and are specifically incorporated herein by reference.

Each unit, together with its undivided interest in the common elements, shall, for all purposes, constitute real property which may be owned in fee simple and shall include that part of the structure which lies within the following boundaries:

(a) Horizontal (Upper and Lower): There shall be no horizontal boundaries, except as may result from those areas which are within the vertical boundaries of the units but are limited common elements, as hereinafter provided.

(b) Vertical (Parametric): The vertical boundaries of the units shall be the vertical plane of the outer unfinished surfaces of all exterior walls and the centerline of all party walls extended to intersections with each other.

With respect to windows and doors, the boundaries extend to and include the exterior parts of the window or doorframe, its means of attachment to the structure, the exterior working parts, the exterior parts of the door, and the glass. The unit includes all items set out in Section 4 below serving the particular unit only, specifically including, without limitation, the power vent, if any, the compressor and blower units for heating and cooling each unit, whether located within or without the boundaries of the unit. All balconies and attachments to the exterior walls of a unit, which protrude beyond the vertical boundaries, are included as part of the unit and are conveyed as part of the unit as if located within the vertical boundaries of the unit. However, those portions of the patios, yards, and parking spaces located within the vertical boundaries are excluded from the unit, and are limited common elements, as defined in Section 5 below.

Each owner shall be entitled to the exclusive ownership and possession of his or her unit, subject to the provisions of the Act and this Declaration. The ownership of each unit includes, and there shall pass with each unit as appurtenances thereto, regardless of whether separately described, all of the rights, title, and interest of a unit owner in the property, which shall include, but not be limited to, an undivided interest in the common elements and membership in the Association.

Each unit shall include all the space within the boundaries thereof. These definitions setting forth unit boundaries shall be governed by the provisions of Section 12 of the Act.

4. Common Elements

The common elements shall include all parts of the condominium property not included within the boundaries of a unit, as defined in Section 3 hereof, including, without limitation, the following:

- (a) The remainder of the land described in Exhibit "A" which is not included in the units;
- (b) All recreational or community facilities, all driveway areas, and all parking spaces;
- (c) All central and appurtenant equipment for services, such as power, light, telephone, and gas;
- (d) All sewer pipes serving more than one unit;
- (e) All service and maintenance facilities and spaces;
- (f) All walks, shrubbery, and trees; and
- (g) All other parts of the property and installations in the buildings or on the property intended for common use or necessary or convenient to the existence, operation, maintenance, or safety of the property.

The provisions of Section 12 of the Act shall govern these definitions of the common elements.

The undivided percentage interest in the common elements appurtenant to each unit is set forth in Exhibit "a" to this Declaration. No such appurtenant interest may be separated from the unit to which it appertains.

All owners have a right of enjoyment and use in the common elements subject to any restrictions in the condominium instruments and any rules and regulations promulgated there under. Such right is specifically subject to (a) the right of the Association to borrow money for the purpose of improving the common elements and, in aid thereof, to mortgage said common area whereupon the rights of any such mortgagee in said common elements should be subordinate to the rights of the owners here under; and (b) the right of the Association to suspend the right to use of the facilities by an owner (i) for any period during which any assessment or charge against his or her unit remains unpaid and for such additional period not to exceed thirty (30) days as the Board may impose, and (ii) for a period not to exceed thirty (30) days for violation of any provisions of the Declaration, By-Laws, or rules and regulations promulgated there under; provided, however, that for a continuing violation, the suspension may be for the duration of the violation plus a period not to exceed thirty (30) days.

Subject to any restrictions in the condominium instruments and any rules and regulations promulgated there under, an owner may delegate his or her right of enjoyment in the common elements to the members of his or her family, guests, or approved tenants who reside on the property.

No owner, nor his or her delegates, may use the common elements in such a way as to encroach upon or hinder the lawful rights of the other owners; and except for the rights of ingress and egress, the owners of units are prohibited from using any of said property outside of their respective units, except as may be allowed by the condominium instruments or the Association's Board of Directors. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all owners in the condominium and is necessary for the protection of said owners.

5. Limited Common Elements

The limited common elements are permanently reserved for the exclusive use of the owners and occupants of specified units and include the following:

(a) Each unit owner whose unit has sole access to the assigned patio or patios shall have an exclusive easement for the use thereof.

(b) Each unit owner shall also have an exclusive easement for the use of the carport or parking space assigned to such unit.

The reservations herein set forth and the easements hereby created shall not be enlarged, diminished, or varied by any custom, practice, or usage that may ensue hereafter, and shall be deemed to be conveyed or transferred with the unit to which it is assigned, even though not specifically referred to in the deed or other instrument conveying or transferring title to such unit or creating a security interest in such unit.

6. Common Expenses

The liability for common expenses shall be assessed against each unit in the same proportion as that unit's percentage of interest in the common elements, as set forth in Exhibit "B" to this Declaration. Unless these percentages are altered by the consent of all Owners and mortgagees of all units expressed in a duly recorded amendment to this Declaration, the liability for common expenses shall be fixed at a uniform rate for all owners with each unit assessed an amount equal to that assessed against each other unit.

However, notwithstanding anything to the contrary herein, any expenses benefiting or occasioned by less than all units or owners may be charged to those benefiting from or causing the expense, as is more particularly set out in Section 17 (b) (1, 2, and 3) of the Act.

7. Votes in the Association

All unit owners, by virtue of their ownership of units in the condominium, are members of the Cedar Canyon Condominium Association, Inc., and shall be entitled to vote on all matters for which members of the Association are eligible to vote, pursuant to the Declaration, By-Laws, and the Articles of Incorporation. Pursuant to Section 16 (a) of the Act, an equal vote is allocated to each unit.

8. Purposes and Uses

(a) Residential Use Only. Units shall be used for residential purposes only and no business activities of any kind shall be conducted on the property, nor shall any advertising signs, billboards, unsightly objects, or nuisances be erected, placed, or permitted to remain on the property. The property shall not be used in any way or for any purpose, which may endanger the health of or unreasonably disturb the owner of any unit or any resident thereof.

(b) Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any part of the property, except that no more than two (2) dogs, cats, or other household pets may be kept by the respective owners in their respective condominiums provided that they are not kept, bred, or maintained for any commercial purpose and do not endanger the health or unreasonably disturb the owner of any unit or any resident thereof; provided, however, those occupants of units who as of the effective date of this Amended and Restated Declaration are keeping in excess of two (2) dogs, cats, or other household pets may continue to maintain those existing pets but shall be expressly prohibited from acquiring any additional pets or replacing those existing pets as of the effective date of this Amended and Restated Declaration so long as the respective occupants are maintaining two (2) or more pets.

(c) Exterior Appearance. The common elements shall not be altered in any way without the prior written approval of the Board. Specifically, but

without limitation, the following restrictions shall apply, unless waived in writing by the Board.

(1) There shall be no structures, improvements, or projections of any type, whether temporary or permanent, erected or placed on or attached to any window, patio, balcony, deck, or other portion of the property (provided, however, this provision shall not be construed to prevent the use of conventional furniture, such as tables and chairs on balconies, patios, and decks);

(2) There shall be no painting of any portion of the common elements;

(3) There shall be no clothing, sign, decoration, or any other objects hung on or from or projected from any window, deck, patio, balcony, or other portion of the property; provided, however, that one (1) "For Sale" or "For Rent" sign may be posted in accordance with rules and regulations promulgated by the Board of Directors; and

(4) All equipment, garbage cans, and storage areas shall be adequately concealed.

(d) Minimum Age. No unit shall be solely occupied by a person or persons under the age of sixteen (16) years for a period exceeding one (1) month.

(e) Regulation of Boats, Trailers, Campers, and Motorcycles. The Board may prohibit the parking or storage on the property of boats, trailers, campers, or recreational vehicles, except in specific areas designated by the Board. The Board may establish reasonable regulations concerning the use of motorcycles on the property. The Board may establish reasonable fines for the violation of said prohibitions and regulations.

(f) Rules and Regulations. The use of the property shall be subject to the Declaration, the By-Laws, and to such rules and regulations as the Board of Directors may promulgate from time to time, which rules and regulations shall be binding on all unit owners and occupants. The Board may establish reasonable fines for the violation of said rules and regulations, which shall become liens against violator's units in the same manner as assessments in the same manner as provided in Article VII, Section 2, of the By-Laws.

9. Sale of Units

Within ten (10) days after the execution of a sales contract, an owner intending to sell his or her unit shall submit to the Board of Directors a copy of the sales contract and a notice in writing in a form prescribed by the Board of Directors. Such notice shall state the names, age, and address of the intended purchaser and of those intending to occupy the unit, and such other information as the Board may reasonably require. Such notice shall be executed by both the current owner and by the prospective purchaser and shall contain a statement that the prospective purchaser has received a copy of the Cedar Canyon Declaration, By-Laws, and rules and regulations, that he or she has read them, and that the prospective buyer acknowledges that he or she is bound by their provisions.

The Board of Directors shall have the authority to make and to enforce reasonable rules and regulations in order to enforce this Section 9, including the right to impose and assess fines constituting a lien upon the unit pursuant to Sections 13 and 41 of the Act. Any sale or mortgage transaction executed without compliance with this Section 9 shall be void.

10. Renting or Leasing of Units

[Deleted and replaced by First Amendment, q. v.]

11. Rights and Powers of the Association and the Board of Directors
The Association and the Board of Directors may exercise all powers conferred by the Georgia Condominium Act, the Georgia Nonprofit Corporation Code, and the By-Laws.

12. Rights of Mortgagees

Except as provided by the Act in case of substantial loss to the units and/or common elements of the condominium project, unless at least two-thirds {2/3} of the first mortgagees of unit owners give their consent, the homeowners association is not entitled to:

(a) by act or omission seek to abandon or terminate the condominium project;

(b) change the pro rata interest or obligations of any individual condominium unit for the purpose of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each condominium unit in the common elements;

(c) partition or subdivide any condominium unit;

(d) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the common elements (the granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the condominium project shall not be deemed a transfer within the meaning of this clause);

(e) use hazard insurance proceeds for losses to any condominium property (whether to units or to common elements) for other than the repair, replacement, or reconstruction of such condominium property.

The prior written approval of each institutional holder of a first mortgage lien on units in the Condominium is required for the following:

(a) the abandonment or termination of the condominium project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(b) any material amendment to the Declaration or By-Laws of the homeowners association, including, but not limited to, any amendment which would change the percentage interests of the unit owners in the project; and

(c) the effectuation of any decision by the owners association to terminate professional management and assume self-management of the project.

By virtue of this Section, any institutional holder of a first mortgage on a unit in the Project is, upon written request, entitled to (a) inspect the books and records of the Project during normal business hours; (b) receive an annual audited financial statement of the Project within ninety (90) days following the end of any fiscal year of the Project; and (c) receive written notice of all meetings of the Owners Association and designate a representative to attend all such meetings.

Any provision in this Declaration or the By-Laws to the contrary notwithstanding, no provision of this Declaration or the By-Laws shall give a unit owner or any other party priority over any rights of the first mortgagee of the condominium unit, pursuant to its mortgage, in the case of a distribution to such unit owner of insurance proceeds or condemnation awards for losses to or a taking of condominium units

and/or common elements. The first mortgagee of the condominium unit is entitled to timely written notice of any such substantial damage or destruction or any condemnation or eminent domain proceeding or proposed acquisition.

13. Preparer

This Declaration was prepared by Caralinda J. Marris of Hyatt & Rhoads, P.C., 2200 Peachtree Center Harris Tower, 233 Peachtree Street, N.E., Atlanta, Georgia, 30303.

14. Amendments

This Declaration may be amended by the affirmative vote or written consent of the members of the Association holding two-thirds (2/3) of the vote thereof. Notice of any meeting at which a proposed amendment will be considered shall state that fact and the subject matter of the proposed amendment. No amendment shall be effective until a certified copy is filed in the Office of the Clerk of the Superior Court of Cobb County, Georgia.

IN WITNESS WHEREOF, the undersigned certify that this Amended and Restated Declaration of Cedar Canyon Condominium (including the amended By-Laws attached hereto as Exhibit "C") was duly adopted this _____ day of _____ 1981.

CEDAR CANYON CONDOMINIUM ASSOCIATION, INC.

By: _____
Attest: _____
Signed, sealed, and delivered
This ____ day of _____
1980, in the presence of:

WITNESS

NOTARY PUBLIC
EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lots 859 and 860 of the 17th District, 2nd Section of Cobb County, Georgia, and being more particularly described as follows:

BEGINNING at an iron pin at the northwestern corner of said Land Lot 859; thence easterly along the northern line of said Land Lot 859, 924.3 feet to a rock corner; thence north 02;41' east, and along a line which forms an interior angle of 267;05' with the preceding course, 218.0 feet to an iron pin on the southwestern right-of-way of Powers Ferry Road, which has a 70-foot right-of-way; thence southeasterly along said southwestern right-of-way of Powers Ferry Road 258.0 feet to a point (the foregoing arc having a chord of 257.7 feet which forms an interior angle of 61;56' with the preceding course); thence continuing southeasterly along said southwestern right-of-way 187.0 feet to an iron pin (the foregoing arc having a chord 186.8 feet which forms an interior angle of 168;30' with the chord of the preceding arc); thence southerly along a line which forms an interior angle of 131;36' with the chord of the immediately preceding arc 306.0 feet to an iron pin; thence continuing southerly along an extension of the immediately preceding course 6.5 feet to a point at the centerline of a creek; thence in a generally southwesterly direction along the centerline of said creek 1,483 feet, more or less, to a point at the intersection of said centerline with the western line of said Land Lot 859; thence northerly along said western land lot line 22.0 feet to an iron pin; thence continuing northerly along said western land lot line 1,002.0 feet to the POINT OF BEGINNING.

The foregoing courses, distances, and angles are taken from a plat of

survey, dated March 25, 1972, entitled "Cedar Canyon," from Evans & Mitchell Industries, Inc., by Landmark Engineering Corporation, J. R. Holland, Registered Surveyor #1087, which plat is hereby incorporated herein by reference.