


Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

Map
[Space Above Reserved For Recording Information]

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Attn: Jay Lazega

STATE OF GEORGIA
COUNTY OF COBB

Cross Reference: Deed Book 2595
Page 442

AMENDMENT TO THE DECLARATION
FOR
ST. AUGUSTINE PLACE CONDOMINIUM

WHEREAS, the Declaration of Condominium for St. Augustine Place Condominium was recorded on September 27, 1982, in Deed Book 2595, Page 442, *et seq.*, Cobb County, Georgia Records, as amended (hereinafter the "Declaration"); and

WHEREAS, Paragraph 15 of the Declaration provides that the Declaration may be amended as provided in O.C.G.A. Section 44-3-93 and by the vote of unit owners at the Condominium to which ninety percent (90%) of the vote of the St. Augustine Place Condominium Association, Inc. ("Association"), appertain; and

WHEREAS, O.C.G.A. Section 44-3-93(a)(2) provides that no amendment of a condominium instrument shall require approval of unit owners to which more than eighty percent (80%) of the association vote pertains; and

WHEREAS, unit owners to which more than eighty percent (80%) of the Association vote pertains desire to amend the Declaration and have approved this Amendment; and

WHEREAS, this Amendment is not material with respect to any first mortgagees on units at the Condominium in that it does not materially and adversely change, alter, modify or rescind any right, title, interest or privilege granted to a first mortgagee, and no first mortgages have requested notice of this proposed action under Paragraph 20 of the Declaration; provided, however, if a court of competent jurisdiction determines that this Amendment does so without such first mortgagee's written consent, when required, then this Amendment shall not be binding on the first mortgagee so involved, 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 first mortgagee;

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

1.

Paragraph 10 of the Declaration is hereby amended by adding the following to the end thereof:

No owner shall be eligible to vote on any matter under this Declaration or the By-Laws if more than thirty (30) days delinquent in any sum owed to the Association.

2.

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

15. AMENDMENT.

- (a) **Member Approval Procedure.** Except where a higher vote is required for action under any other provisions of this Declaration or by the Act, this 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 vote thereof. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the Cobb County, Georgia land records.
- (b) **Default Member Approval Procedure After Nonresponse.** It is recognized that, when owners fail to participate in an amendment vote because of apathy or other reasons which are not based on any disagreement with a proposed amendment, vital amendments to the Declaration or By-Laws may have no chance of approval, with the supermajority voting requirements established under the Act. It also is recognized that supermajority voting requirements are important for owner actions which are as significant as amending this Declaration or By-Laws. To balance these competing concerns, this subparagraph establishes a mechanism which provides every eligible owner an opportunity to issue a vote of approval, disapproval or abstention on proposed amendments to the Declaration or By-Laws, but also a realistic mechanism for approving important amendments, without the damaging consequences of owner nonresponse.

The Board shall issue notice of all proposed amendments to each owner. With each such notice, the Board shall include a copy of the proposed amendment, along with a consent form, ballot in lieu of a meeting, or directed proxy, each complying with any requirements of the Georgia Nonprofit Corporation Code, O.C.G.A. Section 14-3-1, *et seq.*, giving owners an opportunity to vote for, vote against or abstain from voting on the proposed amendment.

If the amendment is not approved by sufficient vote or defeated by sufficient vote within sixty (60) days of such notice, then the Board may seek to obtain default approval from owners under this subparagraph. In such case the Board shall, by certified mail, send or issue a default approval notice to all owners who have not voted or returned consents or ballots on a proposed amendment within the sixty (60) day period. The default approval notice shall include a consent form or ballot, as provided above, along with a statement that the owner's failure to return an executed consent form or ballot, marked with a vote for, a vote against, or an abstention from voting on the amendment, within thirty (30) days of the date of such notice, will be deemed consent to such amendment. If the Board does not receive such consent or ballot within the time specified, the owner will be deemed to have consented to and approved the amendment.

(c) Eligible Mortgage Holder Approval. In addition to approval by the owners as provided in subparagraph (a) above, material amendments to this Declaration must be approved by Eligible Mortgage Holders who represent at least fifty-one (51%) percent of the votes of units that are subject to mortgages held by Eligible Mortgage Holders. For purposes of this Declaration and the Association By-Laws, "Eligible Mortgage Holder" shall mean a first mortgagee on a unit who, in accordance with Paragraph 20 hereof, has requested in writing notice of any proposed action which would require the consent of a specified percentage of holders of first mortgages on units.

Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

(d) Amendments to Comply with Law or Conform Documents. Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the owners, may amend this Declaration to comply with any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA"), or to resolve conflicts between this Declaration, the By-Laws, the Articles, and applicable laws.

(e) Validity of Amendments. If legal action is not instituted to challenge the validity of this Declaration or any amendment hereto within one (1) year of the recording thereof in the Cobb County, Georgia land records, then such amendment or document shall be presumed to be validly adopted.

3.

Paragraph 19 of the Declaration is hereby amended by deleting the phrase "first mortgagee" therefrom and substituting "Eligible Mortgage Holder" therefor.

IN WITNESS WHEREOF, the undersigned officers of the St. Augustine Place Condominium Association, Inc. hereby certify that the above amendments to the Declaration were adopted by the required majority of the Association and its membership, with any required notices duly given.

This 6th day of January, 2005

Sworn to and subscribed to before me this 6 day of January, 2005

ST. AUGUSTINE PLACE CONDOMINIUM ASSOCIATION, INC.

By: [Signature] (Seal)
President

Attest: [Signature] (Seal)
Secretary

[Corporate Seal]

Witness
[Signature]
Notary Public

[Notary Seal]
JS1:360139, 1.DOC (7880)

Notary Public, Cobb County, Georgia
My Commission Expires May 01, 2006