Landmark Owners, Please see page 22 of this court order for important information about your parking rights.

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

BOBBY HELTON, et al., Plaintiffs	:	
vs.	:	CIVIL ACTION,
JO KAPLAN and JIM WILLIAMS, Defendants	:	FILE NO. D-71874

JUDGMENT

The above action for Declaratory Judgment came on regularly for trial on August 1, 1990 before Honorable Frank M. Eldridge, presiding in the non-jury trial. After hearing evidence and considering the briefs of the parties, THE COURT FINDS:

1.

This matter is to be heard by the Court without a jury;

2.

This dispute concerns The Landmark parking garage property (the "property") located at 215 Piedmont Avenue, Atlanta, Georgia 30308 (Fulton County);

3.

There are presently 203 existing parking spaces in the parking lot; 76 are "covered" and 127 are "uncovered";

4.

Defendants must provide 205 parking spaces;

5.

Plaintiffs presently consist of 96 separate individuals representing 108 spaces;

6.

Some of the plaintiffs whose names appeared in the style of the case at the time it was filed have been dismissed voluntarily by plaintiffs' counsel;

7.

Realty Growth Investors ("RGI"), previously the owner of the subject real property, deeded the property, in lieu of foreclosure, to Chemical Bank;

8.

Chemical Bank deeded the property to defendants herein on or about the 29th day of June, 1989;

9.

Plaintiffs shall not proceed in this action as a "class" under Rule 23;

10.

Defendants are seeking to charge plaintiffs parking rates for both covered and uncovered parking that exceeds the Consumer Price Index ("CPI");

11.

From 1974 through the present, the Consumer Price Index escalator has not always been applied to the preceding year's parking rates until 1984 when the escalator has been regularly applied to the parking rate on an annual basis;

12.

The exact percentages of the applicable CPI table for the period from 1974 to the present is attached as Exhibit "1" to this stipulation.

13.

Horace Ward, units #406 and 407, and Katherine Bible, units #1003 and 1004, presently have not utilized a parking space for second units each owns which accounts for the two-space discrepancy between the number of painted spaces on the lot (203) and the obligation by Declaration of Condominium to provide 205 spaces.

14.

All documents and pleadings between the parties, including correspondence, have been stipulated between the parties for their authenticity and admissibility.

15.

The 1988 RGI Lease between RGI and the Association has been stipulated by the parties to be admissible. (See Exhibit "2" to this stipulation).

16.

Defendants are charging unit owners not parties to this litigation the rate of $37.50 per parking space (uncovered) and $51.00 per parking space (covered) and have been charging them the same since approximately September 1989. A list of the non-party unit owners representing 95 parking spaces is attached as Exhibit "3" to this stipulation.

17.

The Board of Directors of the Association approved a Five Dollar ($5.00) increase for parking costs collected, but did not pay to the parking lot owner more than the applicable CPI escalator for 1988.

18.

At the time the October 21, 1988 increase of $5.00 was approved, Barbara Fletcher and George Adams (plaintiffs herein) were members of the Board of Directors of The Landmark Condominium Association.

19.

The Landmark Condominium Association is not a party to this case.

20.

Plaintiff Sam Johnson (Unit 502) paid to defendants the amounts of $37.50 for November and December, 1989 and January and February, 1990 for his parking space #W92.

21.

Plaintiff Emily Knox (Unit 1602) paid directly to the defendants the sum of $37.50 for the November 1989 parking.

22.

Plaintiff Margaret Viel (Unit 1603) paid directly to the defendants the sum of $37.50 for the November 1989 parking.

23.

Plaintiff Pat Corley (Unit 1807) paid directly to the defendants the sum of $37.50 for the November 1989 parking.

24.

Plaintiffs requested on several occasions that over-payments to defendants in the total amount of $725.00 be remitted by defendants. Included among the $725.00 demanded are the monies paid as described in paragraphs 20-23 above.

25.

The envelope (Exhibit "5" to this stipulation) with the words "Kaplan Estates" written on same (or a copy of said envelope) is admissible.

26.

Approximately 16 parking spaces are located on real property owned by The Landmark Condominium Association (to the west of the subject building) and said spaces are not involved in this litigation.

27.

The parties agree that there is an actual controversy between each against the other and requests that the Court establish their rights under the Declaration of Condominium.

BACKGROUND EVIDENCE

1.

Landmark Apartments, Inc., the developer, in 1974 began to market the Landmark Condominiums for ownership by conversion from apartments to condominiums.

2.

At the time that the Landmark Apartments were constructed, a parking deck for tenant parking was also constructed adjacent to the structure. Landmark Apartments, Inc. owned both the parking garage and the condominium structure. The parking garage was used by it for parking for all unit owners. It retained ownership of the parking garage while selling off the condominium units.

3.

Following the dedication of the property to condominiums, Realty Growth Investors Trust (hereinafter "RGI") became the owner of the Landmark Condominiums and the parking garage. It remained a majority owner of the Landmark Condominiums until 1979.

4.

In 1979 a majority of owners were comprised of condominium unit owners.

5.

In 1974, when Landmark Apartments, Inc. first commenced sale of the condominium units, it charged unit owners a lesser

rate per month to park than it charged tenants. It charged unit owners $10.00 per month for uncovered spaces and $15.00 per month for covered spaces in 1974.

6.

In 1983 the Amended and Restated Declaration of Condominium was submitted by RGI and certain parking rights, which had been provided for in the original Declaration of Condominium, were recited and preserved.

7.

Jo Kaplan and Jim Williams have been longtime tenants and condominium unit owners in Landmark Condominium. Mrs. Kaplan in 1984 was president of the Landmark Condominium Association, Inc.

8.

In 1989 RGI transferred its ownership in the parking garage adjacent to the Landmark Condominium to Chemical Bank in lieu of foreclosure which it took in the name of Landmark Holding Corp.

9.

In June 1989 Landmark Holding Corp. conveyed by warranty deed and by transfer and assignment all its right, title and interest in the parking garage to Jo Kaplan and Jim Williams.

10.

In August 1980 RGI entered into an agreement with the Chase Manhattan Bank, N.A., The Bank of Nova Scotia, and The

Toronto-Dominion Bank and The Marine Midland Bank, N.A. in which they agreed to "The terms of the Declaration with respect to the grant by the Trust of parking rights to the unit owners, as such terms may be hereafter amended from time in the manner provided for in the Declaration, shall be binding upon the successors and assigns of the Trust as owners of the premises until the Declaration shall be terminated . . . ". The banks had taken deeds to secure debt on condominium units and wished to have RGI reaffirm the granted parking rights in the parking garage.

11.

The 1974 Declaration of Landmark Apartments, Inc. at Article III, Section 8 reads:

"Section 8. Parking Rights. The Developer is the owner of adjacent property to the property which is the subject of this Declaration and parking shall be provided to all the owners on the adjacent property. The Developer, at time of conveyance of the Unit to an Owner, shall grant a revocable license for a parking space to each Owner. The license agreement shall be in form and substance as shown on Exhibit "G", attached hereto and made a part hereof and shall be executed in a manner suitable for recording. Furthermore, any Owner shall have the right to freely assign or transfer his parking space to another Owner; but under no circumstances will an Owner be allowed to assign, sublease, or convey his parking space to any person who is not an Owner of a Unit at the Landmark. Notwithstanding, in the event an owner leases his unit to a Lessee, he may lease his parking space to said Lessee of his Unit.

The Owner shall have the right to park said vehicle in the designated parking space and said license shall not be revoked by Developer unless and until one of the following occurs:

a) The failure of the Owner to pay the monthly charge after the expiration of said notice period pursuant to paragraph 6 of said License Agreement. The initial amount of

said parking charge shall be $15.00 per month for covered parking and $10.00 for uncovered parking and said monthly charges shall only be increased in accordance with said license Agreement.

b) The violation of Paragraph 5 of the license Agreement by an Owner.

c) The construction by the Developer, its transferees, and assigns, of a building on the property upon which the Parking Area is located. In the event the Developer does decide to construct, build of erect a building on said property, the Developer agrees that he will provide adequate parking for all Owners at no increase in monthly rates and/or expense to the Owners. The parking during the construction period shall be made available in an area not to exceed a one-half (1/2) mile radius of the Landmark.

The Developer covenants and agrees that after said construction is complete it will provide additional parking for the Owners at no additional increase or additional expense and the Owners taking pursuant to this Declaration shall have priority as to parking over a future owner who may purchase a Unit in the "new building". The maintenance of the Parking Area shall be the responsibility of the Developer.

The Association shall provide for guest parking and for parking for its employees, and the Association shall be responsible for the parking charge for said parking spaces.

The Developer hereby expressly grants unto the Association, the Owners, their successors and assigns, and the mortgages of said Owners, a non-exclusive right to access, ingress and egress over, across and upon said parking area and between the specified parking spaces and the property which is the subject of this Declaration."

At Article XI Section 10 it reads:

"Section 10. Parking. The Developer shall provide reserved parking for the owner pursuant to a Parking Lot Agreement which is shown on Exhibit "G", being attached hereto and made a part hereof. The initial amount of said parking charge shall be $15.00 per month for covered parking an $10.00 per month for uncovered parking."

12.

Exhibit G to the 1974 Declaration reads:

"EXHIBIT G

REVOCABLE PARKING AGREEMENT

STATE OF GEORGIA

COUNTY OF FULTON

THIS AGREEMENT, made and entered into this _____ day of _____, 19___, by and between LANDMARK APARTMENTS, INC., or its successors in interest, hereinafter referred to as "Lessor"; and _____, hereinafter referred to as "Lessee".

IN CONSIDERATION of the Agreement hereinafter set out and the prompt payment of the regular monthly parking charge of $_____, to be paid in cash and in advance by Lessee to Lessor, it is agreed as follows:

1. Lessee is hereby assigned the right, use and occupancy of parking space number _____, as further shown on the drawing attached hereto and made a part hereof, until such time as Lessee shall divest himself of his residence in that certain condominium development known as the LANDMARK APARTMENTS, in which event, this Agreement may be assigned to his successor in interest.

2. Lessor shall not be liable under any circumstances for loss or damage to said vehicle or its contents due to fire, theft, collision or any other cause of whatever kind and nature, it being expressly understood and agreed between the parties that this is not a contract for bailment and, for all purposes, this Agreement shall be deemed to be a license.

3. Lessor shall not have an agent or attendant on the premises and Lessees shall be responsible for parking his own vehicle; it being expressly understood and agreed that Lessee shall defend and hold Lessor harmless on account of any liability arising by reason of Lessee's operation thereof.

4. The regular monthly parking charge shall not be increased except to reflect

(i) increases in the real estate ad valorem taxes on the property, or

(ii) increases in the cost of living index for the Metro Atlanta area, subsequent to January 1, 1974, and

any such increases shall only reflect the increases attributable to the above, and shall be prorated equally among all parking spaces.

5. The Lessee shall have the right to freely assign or transfer his parking space to another owner; but under no circumstances will an owner be allowed to assign, sublease, or convey his parking space to any person who is not an owner or a unit in The Landmark. Notwithstanding, in the event an owner leases his unit to a Lessee, he may lease his parking space to said Lessee of his Unit.

6. In the event of default by the Lessee of the monthly parking charge, lessor agrees to give lessee not less than ten (10) days after receipt of written notice to any such default by Lessor to Lessee, in which to cure the same before cancelling or otherwise terminating this Agreement. Any such notice to Lessee shall be by U. S. certified mail, return receipt requested, postage prepaid and addressed to Lessee at the address of the Lessee at The Landmark.

7. Lessor agrees that it will maintain said parking facility in a good and clean condition suitable for parking motor vehicles and all maintenance shall be the sole responsibility of the Lessor.

8. The Lessor shall not revoke this license under any circumstances unless and until one of the following occurs:

(a) The default of any provision of this Agreement by Lessee, or

(b) The construction of a "new building" by the Lessor on the property upon which the parking area is located. In the event the Lessor does decide to construct, build or erect a building on said property, the Lessor agrees that he will provide adequate parking for all Owners at no increase in monthly rates and/or expense to the Owners. The parking during the construction period shall be made available in an area not to exceed a one-half (1/2) mile radius of The Landmark. The Lessor covenants and agrees that after said construction is complete, it will provide additional parking for the Owners at no additional increase or expense and the Owners

taking pursuant to this Declaration shall have priority as to parking over a future owner who may purchase a Unit in the "new building".

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of:

LESSOR:

LANDMARK APARTMENTS, INC.

_____ BY:_____(SEAL)

_____
Notary Public

Signed, sealed and delivered in the presence of:

LESSEE(S):

_____ _____(SEAL)

_____ _____(SEAL)
Notary Public"

13.

Through custom, practice and design Landmark Apartments, Inc. and RGI did not issue Revocable Parking Agreements except to the first several unit purchasers but in practice followed such license agreement.

14.

In January 1983 the Landmark Condominium made the Amended and Restated Declaration of Condominium with Section 14 applicable to parking:

"14. Parking Rights. Property adjacent to the condominium property has been and is provided to all owners for parking. This commitment has been made by the "Developer"

as provided by the original Declaration and is hereby expressly preserved. Under the terms of the original Declaration, the "Developer" at the time of the conveyance of a unit from the Developer was required to grant a revocable license for a parking space to each owner. The license agreement was required to be in form and substance as shown on Exhibit C, attached hereto and made a part hereof, and was required to be executed in a manner suitable for recording. Under the license agreement, the unit owner is assigned the right, use and occupancy of the parking space until such time as the unit owner divests himself of his unit at the Landmark. The unit owner further has the right to transfer or assign freely his parking space to another owner, but under no circumstances shall the owner assign, sublease or convey his parking space to a person who is not an owner of a unit at the Landmark, provided, however, in the event the owner leases his unit to a tenant, the owner may lease his parking space to said tenant of his unit. The original Declaration further provided that notwithstanding anything provided therein to the contrary, each and every subsequent owner of a unit shall, subject to the terms of said license agreement, have the right to a parking space, such parking space to be assigned by either the Developer or the preceding owner of such unit.

All rights provided by the original Declaration are herein preserved and clarified to accomplish the purposes

originally set forth by the Developer. Inasmuch as an owner's right to hold a parking space and to assign or transfer said space are incidents of and contingent upon ownership of a unit, and inasmuch as every subsequent owner of a unit shall have the right to a parking space, and inasmuch as the Developer clearly intended to make available and did provide one parking space per unit with additional spaces to be assigned by the Association as guest park, the right to use a parking space and any transfer or assignment of a parking space by a unit owner shall be automatically revoked upon the sale or other disposition, other than leasing, of the unit. Said space shall then be assigned to the subsequent owner of the unit by the preceding owner or the Association.

The parking facility is currently leased by the Developer to the Association. The Association bears the full responsibility for maintenance and insurance of said facility; furthermore, the Association holds all rights of the Developer under the revocable parking license. Accordingly, the Association, through the Board of Directors, shall have the power to promulgate rules and regulations regulating the use of the parking facilities, including, but not limited to, the right to approve all transfers of parking spaces and the right to reserve parking spaces for guests and employees.

Furthermore, notwithstanding anything else herein to the contrary, the monthly parking fees as set forth in the

license agreement shall constitute a specific assessment against the unit of the owner holding the parking space. The assessment for parking fees shall be collected as provided in Article VII of the By-Laws.

In the event that the Association acquires title to the parking facility, the Association hereby expressly reserves the right to submit the parking facility to the condominium by an amendment hereto approved, executed and filed by the Board of Directors. Said amendment shall not be subject to Section 10 of this Declaration. Upon such submission of the parking facility to the condominium, the Board of Directors is herein expressly granted the authority to assign the parking spaces as limited common elements appurtenant to each unit, said assignments to be made by the Board of Directors in its sole discretion, any outstanding license agreement notwithstanding. Such assignments shall be made by amendment hereto approved, executed and filed by the Board of Directors.

In the original Declaration, the Developer expressly granted unto the Association, the Owners, their successors and assigns, and the mortgagees of said Owners, a non-exclusive right of access, ingress and egress over, across and upon said parking area and between the specified parking spaces and the property which is the subject of this Declaration. This foregoing easement, together with all the rights and obligations

stated by the Developer in the license agreement, attached hereto as Exhibit C, are hereby expressly preserved and by this reference incorporated herein.

EXHIBIT C

REVOCABLE PARKING AGREEMENT

STATE OF GEORGIA

COUNTY OF FULTON

THIS AGREEMENT, made and entered into this _____ day of _____, 19___, by and between THE TRUSTEES OF REALTY GROWTH INVESTORS, or its successors in interest, hereinafter referred to as "Lessor;" and _____, hereinafter referred to as "Lessee."

IN CONSIDERATION of the Agreement hereinafter set out and the prompt payment of the regular monthly parking charge of $_____, to be paid in cash and in advance by Lessee to Lessor, it is agreed as follows:

1. Lessee is hereby assigned the right, use and occupancy of parking space number _____, as further shown on drawing attached hereto and made a part hereof, until such time as Lessee shall divest himself of his residence in that certain condominium development known as the LANDMARK APARTMENTS, in which event, this AGreement may be assigned to his successor in interest.

2. Lessor shall not be liable under any circumstances for loss or damage to said vehicle or its contents due to fire, theft, collision or any other cause of whatever kind and nature, it being expressly understood and agreed between the parties that this is not a contract for bailment and, for all purposes, this Agreement shall be deemed to be a license.

3. Lessor shall not have an agent or attendant on the premises and Lessee shall be responsible for parking his own vehicle; it being expressly understood and agreed that Lessee shall defend and hold Lessor harmless on account of any liability arising by reason of Lessee's operation thereof.

4. The regular monthly parking charge shall not be increased except to reflect increases subsequent to January 1, 1974 in the Atlanta, Georgia Consumer Price Index ("CPI") for Urban Wage Earners and Clerical Workers Series A-27 (published by the Department of Labor, Washington, D.C.), the successor thereto, or if the CPI is discontinued, any comparable measuring index similar thereto; any such increase shall be applied equally to all parking spaces.

5. The Lessee shall have the right to freely assign or transfer his parking space to another owner; but under no circumstances shall Lessee assign, sublease, or convey his parking space to any person who is not an owner of a unit in The Landmark. Notwithstanding, in the event Lessee leases his unit to a tenant, Lessee may lease his parking space to said tenant of his unit.

6. In the event of default by the Lessee of the monthly parking charge, Lessor agrees to give Lessee not less than ten (10) days after receipt of written notice of any such default by Lessor to Lessee in which to cure the same before cancelling or otherwise terminating this Agreement. Any such notice to Lessee shall be by U. S. certified mail, return receipt requested, postage prepaid and addressed to Lessee at the address of the Lessee at The Landmark.

7. Lessor agrees that it will maintain said parking facility in a good and clean condition suitable for parking motor vehicles and all maintenance shall be the sole responsibility of the Lessor.

8. The Lessor shall not revoke this license under any circumstances unless and until one of the following occurs:

(a) The default of any provisions of this Agreement by Lessee, or

(b) The construction of a "new building" by the Lessor on the property upon which the parking area is located. In the event the Lessor does decide to construct, build or erect a building on said property, the Lessor agrees that he will provide adequate parking for all Owners. The parking during the construction period shall be made available in an area not to exceed a one-half (1/2) mile radius of The Landmark. The Lessor covenants and agrees that after said construction

is complete, it will provide additional parking for the Owners at no additional increase or expense and the Owners taking pursuant to this Declaration shall have priority as to parking over a future owner who may purchase a Unit in the "new building".

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of:

_____

_____
Notary Public

LESSOR:

THE TRUSTEES OF REALTY GROWTH INVESTORS, a Maryland Real Estate Investment Trust

By:_____

THE NAME "REALTY GROWTH INVESTORS" REFERS TO THE TRUSTEES, BUT NOT INDIVIDUALLY OR PERSONALLY, UNDER ARTICLES OF RESTATEMENT OF DECLARATION OF TRUST, DATED FEBRUARY 16, 1972, ON FILE WITH THE DEPARTMENT OF ASSESSMENTS AND TAXATION OF THE STATE OF MARYLAND, WHICH PROVIDES THAT NEITHER THE SHAREHOLDERS NOR THE TRUSTEES NOR ANY OFFICER, EMPLOYEE, REPRESENTATIVE OR AGENT OF THE TRUST SHALL BE PERSONALLY LIABLE FOR THE SATISFACTION OF OBLIGATIONS OF ANY NATURE WHATSOEVER OF THE TRUST, ALL PARTIES DEALING WITH THE TRUST SHALL LOOK SOLELY TO THE TRUST PROPERTY FOR THE SATISFACTION OF ANY CLAIM RESULTING FROM SUCH DEALINGS.

Signed, sealed and delivered in the presence of:

_____

_____
Notary Public"

LESSEE(S):

_____(SEAL)

_____(SEAL)

15.

Although the Revocable Parking Agreement Exhibit C was attached to the Amended and Restated Declaration of Condominium, RGI by practice, custom and design never executed such licenses although RGI adhered to such license provisions.

16.

RGI leased annually the entire parking garage to the Landmark Condominium Association, Inc. made up of all the owners at the applicable monthly rate annualized for all covered and uncovered spaces. The Association charged its owner-members a higher rate to pay for security, maintenance and improvements.

17.

The Association in 1989 could not reach an agreement with the new owners the defendants and the lease lapsed.

III.

FINDINGS OF FACT

1.

Neither Landmark Apartments, Inc. nor RGI executed Revocable Parking Agreements to individual unit owners except in a few cases; the prior grantors adhered to the license agreement as incorporated by reference into the Declaration of Condominium and the Amended and Restated Declaration of Condominium on a collective basis rather than on an individual basis with an executed agreement.

2.

The CPI by incorporation into the Declarations through custom and practice became the criteria for annual charge in parking fees.

3.

The base parking fee rate per unit was $10.00 per uncovered space and $15.00 per covered space as of 1974.

4.

Using the CPI annually from 1974 the 1990 rates would be as follows:

1974	10 x 11.1	15 x 11.1
1975	11.11 x 9	16.67 x 9
1976	12.11 x 4.7	18.17 x 4.7
1977	12.68 x 6.1	19.02 x 6.1
1978	13.45 x 7.4	20.18 x 7.4
1979	14.45 x 11.3	21.67 x 11.3
1980	16.08 x 14.2	24.12 x 14.2
1981	18.36 x 12	27.55 x 12
1982	20.56 x 6.2	30.86 x 6.2
1983	21.83 x 3.8	32.77 x 3.8
1984	22.66 x 3.4	34.02 x 3.4
1985	23.43 x 4.3	35.18 x 4.3
1986	24.44 x 2.7	36.69 x 2.7
1987	25.10 x 3.6	37.68 x 3.6
1988	26.00 x 3.3	39.04 x 3.3

1989	26.86 x 4.9	40.33 x 4.9
1990	28.28	42.31

5.

RGI did not insist upon and did assert the right to a CPI increase in parking rate every year prior to 1984, but it did each year after 1984.

6.

Landmark Apartments, Inc. and RGI did not enforce a rigid assignment of spaces which went with each change in ownership in a condominium, but by practice, custom and agreement allowed swapping of spaces or reassigned spaces to unit owners as they became available or allowed the Landmark Condominium Association manager to make such changes, so that each present owner has an assigned parking space that they are presently using.

7.

The lease between the defendants as assigns of their prior title holders and the Association has lapsed.

IV.

CONCLUSIONS OF LAW

1.

The Declarations of Condominium as amended, the assignments of record and the warranty deed from the original grantor of the condominium units and of the parking garage to the defendants created an easement coupled with an interest

that runs with the land in favor of all the condominium unit owners. Such easement gives only unit owners a right to park in the existing spaces and requires that one space be available for each unit. The right to an assigned space can not be permanently lost, forfeited or assigned away. Any unit owner or new owner who lacks a parking space upon tender of the appropriate monthly rate must be given a space; any unit owner who rents more than one space does so only on a month to month basis and upon demand of the parking garage owner or lessee such holder of multiple spaces is subject to loss of such space to a unit owner or new unit owner who lacks a parking space; such loss of multiple spaces should take place with the most recent holder of a multiple space being required to surrender it prior to a multiple space holder who has had multiple spaces longer. The purpose of such parking easement is to guarantee availability of one space per unit throughout the existence of the condominium.

2.

If the parking garage is demolished and a new structure or use made of the land, then the owner must make available in the new structure the same number of spaces as in the old; during the reasonable time of construction the owner must provide alternate parking within one-half mile of the condominium.

3.

The Exhibits G and C to the Declarations or Amended and Restated Declaration have been incorporated by reference into the easement stated therein and create the continuing duty running with the land, despite any future change of use, to provide an equal amount of parking equally available for each existing or new unit owner. For such availability to exist no parking space can be rented for more than one month at a time but each unit owner has the vested right to continue to rent the parking space now occupied so long as the applicable monthly rent has been paid. For administrative convenience rents can be collected on an annual basis, but any holder of multiple spaces with ownership of a single condominium unit only can loose such second space and have refunded any unearned rent when a unit owner or a new unit owner without a parking space requests such space from either the owner of the parking garage or a lessee.

4.

While the actual use of the parking spaces on an individual basis is governed by a license, collectively all present and future condominium owners have a right to one assigned space per unit as an easement right that runs with the condominium unit ownership as well as the land of the defendants.

5.

The defendants acquired this property subject to this incumbrance from the same grantor which created the condominium units. The defendants acquired such land subject to these existing and future rights with knowledge and bound by the obligations of the grantors.

6.

By design and as a mutual departure from the Declaration as amended both Landmark Apartments, Inc. and RGI and all condominium owners took title without receiving an individually executed Revocable Parking Agreement. In taking title without receiving such executed Revocable Parking Agreement each condominium unit owner relied to their detriment upon the mutual departure that incorporated by reference the Revocable Parking Agreement into the Declarations as amended to create a month to month license for each condominium unit owner. Under the doctrine of promissory estoppel and of mutual departure from a contract to create a quasi new agreement the defendants as successors in title are bound by such license on a month to month basis to the same extent as if a written license had been executed in favor of each condominium unit owner.

7.

RGI and Landmark Apartments, Inc. had under such license the right to assign or reassign parking spaces among the

condominium unit owners. Either by design, custom, practice or mutual departure amounting to a quasi new agreement it allowed the manager for Landmark Condominium Association, Inc. to assign or reassign parking spaces or the unit owners to swap, assign or otherwise change the permanent assignment of spaces so that few if any spaces are presently assigned to the original condominium unit such parking spaces were originally assigned to go with. The defendants are bound and estopped now by the conduct of their grantors from changing the present assignment of parking spaces from those individuals presently using the spaces. The defendants or lessee may create a reasonable and rational system to assign or reassign parking spaces in the future as existing condominium owners sell such units or drop their rental of existing space, but they cannot take away existing assigned spaces, because such renters have acquired a vested interest in such space on a month to month basis as long as they continue to pay the appropriate rent.

8.

The monthly rent rate method of determination has a base rate specifically set forth in the Declarations of $10.00 for uncovered parking and of $15.00 for covered parking as of 1974. Such base rate was well below the market for downtown parking but was an incentive granted by the grantors of the condominiums to facilitate sales.

9.

Exhibits G and C containing the Revocable Parking Agreements became incorporated by reference into the Declarations as amended and by custom, practice and design became a quasi new agreement of license blanketedly applied to the condominium unit owners without the individual execution of separate agreements and provided the exclusive means to increase the base parking rates. Under the doctrine of promissory estoppel the owners of the parking garage and the condominium unit owners both became bound by such method of change. In 1983 when the Amended and Restated Declaration and Exhibit C came into effect, RGI gave up the right to raise parking fees as a result of "increases in real estate ad valorem taxes on the property" which was a valuable right and agreed to restrict parking fee increases to "to reflect increases subsequent to January 1, 1974 in the Atlanta, Georgia Consumer Price Index ("CPI") for Urban Wage Earners and Clerical Workers Series A-27 (published by the Department of Labor, Washington, D.C.), the successor thereto, or if the CPI is discontinued, any comparable measuring index similar thereto; any such increase shall be applied equally to all parking spaces."

10.

The clear, plain and unambiguous language states that the increase will be linear in that it will follow the year to

year increases in the CPI to determine the increase. It states "increases subsequent to January 1, 1974" to calculate the parking rates from 1974 to date instead of stating a new base rate as of 1983. Such language clearly stated the intent to apply the accumulated CPI instead of treating prior year CPI's as lapsed or forfeited. The law abhors a forfeiture, and absent express language that clearly states that the failure to annually increase by the CPI will result in a future loss of such right, such language cannot be construed to have such meaning. RGI appeared more interested in selling condominiums than in making money from parking fees. Between 1979 and 1982 RGI by design chose not to increase parking rates each year; the condominium owners gained no vested right to a specific monthly rate and had notice that RGI could increase such rates. Any indulgence by RGI did not bar it or its successors in title to the subsequent right to raise rates based upon the cumulative CPI between 1974 and the date of increase. The base parking rates in 1974 were well below market rates and even today with cumulative CPI increases remain below the market.

11.

The additional language in the Exhibit C included in 1983 further evidence a consideration of possible change in calculation but does not express any lapse, waiver, loss or forfeiture of the right to increase the parking rates based

upon the accumulated annual CPI from 1974 to the date of increase.

12.

The easement and the license agreement construed together encumber the land with the duty to continue to provide parking for each condominium unit in perpetuity on this land following such rate schedule despite how the owners choose to develop the land in the future. A subservient estate has clearly been carved out on this land to the condominium owners. It would be destructive of the interests of the parking garage owners to further construe unreasonable limitations on their ability to raise rents when the stated method produces a below market return on their investment.

13.

The Court finds as a matter of law and fact that the defendants in 1990 have the right to charge $28.18 per uncovered lot and $42.31 per covered lot. Such charges must be uniformly applied among all condominium unit owners or occupiers henceforth.

14.

To the extent that defendants have collected more than such rental rates from non-plaintiff owners or occupiers per space, such space renters voluntarily made such payments with knowledge of a disputed claim and there exists no duty to refund such sums. To the extent that plaintiffs have

underpaid the monthly rental rate on an annualized basis then they each are obligated to pay such deficiency within a reasonable time or to inform the defendants that they will pay on a monthly rate.

15.

The defendants have no duty to maintain, to insure, to improve or for security except as otherwise set forth in the license, Declaration or imposed by law.

16.

The Landmark Condominium Association, Inc. through the parking easement and the easements for ingress and egress across the parking area and drives can voluntarily provide security and insurance and with consent of defendants can also maintain or improve the parking area. Funds to carry out such activities may be taken from general association funds pursuant to the Declarations and by-laws or by special parking easement surcharge assessed to service and to maintain such common rights within the Declarations and by-laws.

The Clerk is ORDERED to enter this as the Final Judgment of the Court this 11 day of October, 1990.

Frank M. Eldridge

FRANK M. ELDRIDGE, JUDGE
Fulton Superior Court
Atlanta Judicial Circuit