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AMENDED AND RESTATED DECLARATION OF  
COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS  
ESTABLISHING A PLAN OF OWNERSHIP FOR  
PEACHTREE ESTATES, A CONDOMINIUM DEVELOPMENT (EXPANDABLE)

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COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS  
ESTABLISHING A PLAN OF OWNERSHIP FOR  
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THIS AMENDED AND RESTATED DECLARATION (the "Declaration") is made this \_\_\_\_ day of March, 1989, by BRYCE NELSON CONSTRUCTION, INC. ("Declarant") and replaces and supercedes in their entirety the following declarations and supplementary declarations previously filed in the office of the Recorder of Utah County, Utah:

1. Amended Declaration of Covenants, Conditions and Restrictions Establishing a Plan of Condominium Ownership for Peachtree Estates, a Condominium Subdivision, recorded as Entry No. 45494 in Book 2371 Page 748, et suite, on December 31, 1986, Official Records of Utah County, Utah (and the document which such Amended Declaration as described in this paragraph purports to amend):

2. First Supplementary Declaration to the Declaration of Covenants, Conditions and Restrictions Establishing a Plan of Condominium Ownership for Peachtree Estates, a Condominium Subdivision, recorded as Entry No. 24866 in Book 2429 Page 11, et suite, on June 25, 1987, Official Records of Utah County, Utah; and

3. Second Supplementary Declaration to the Declaration of Covenants, Conditions and Restrictions Establishing a Plan of Condominium Ownership for Peachtree Estates, a Condominium Subdivision, recorded as Entry No. 43643 in Book 2472 Page 559, et suite, on December 1, 1987, Official Records of Utah County, Utah,

all of which shall be herein referred to collectively as the "Original Declaration."

RECITALS

A. Declarant is the owner and developer of certain real property in the City of Provo, Utah County, Utah, portions of which have been developed as a residential condominium development represented by the following Record of Survey Maps filed in the Office of the Recorder of Utah County, Utah:

1. Peachtree Estates Condominiums Phase I, recorded as Entry No. 27881, Map Filing No. 3354-36 on August 26, 1986, Official Records of Utah County, Utah;

2. Peachtree Estates Condominiums Phase II, recorded as Entry No. 24865, Map Filing No. 3469 Arm 38 on June 25, 1987, Official Records of Utah County, Utah; and

3. Peachtree Estates Condominiums Phase III, recorded as Entry No. 43633, Map Filing No. 3535 Arm 39 on December 1, 1987, Official Records of Utah County, Utah.

Descriptions of the real property to which said Records of Survey Maps relate are set forth and described in Exhibit "A", Attached hereto and made part hereof.

B. An undeveloped portion of Declarant's said real property set forth and described as "Additional Land" in Exhibit "B", attached hereto and made a part hereof, is reserved for further expansion of the Development.

C. Certain discrepancies, inconsistencies and ambiguities in the Original Declaration; the desire to provide for the completion of the Development (Phase IV); and the need to bring the Development and the Original Declaration more fully into compliance with the Utah Condominium Ownership Act have prompted Declarant to make this Amended and Restated Declaration and to submit it to the required number of Owners and Mortgagees for approval and recordation.

D. Declarant desires to provide for the preservation of the values and amenities in the Development and for the maintenance of the Common Areas therein and, to this end, subjects the real property described herein to the covenants, restrictions, easements, charges and liens herein set forth, each and all of which is and are for the benefit of said property, the Owners and the subsequent Owners thereof.

## ARTICLE I

### DEFINITIONS

When used in this Declaration (including that portion hereof captioned "Recitals" and in the Bylaws attached hereto as Exhibit "C") each of the following terms used will have the meaning indicated. Any term used herein which is defined by the Act shall, to the extent permitted by the context hereof, have the meaning ascribed by the Act.

1.1 Act shall mean and refer to the Condominium Ownership Act, Title 57, Chapter 8, Utah Code (1953), as the same may be amended from time to time.

1.2 Additional Land shall mean, refer to, and consist of that real property described in Exhibit "B", attached hereto and made a part hereof. A description of the Additional Land is set forth in this Declaration solely for purposes of identification. This Declaration is not intended as and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon any portion of the Additional Land, unless and until such portion is added to the Development in accordance with the provisions of this Declaration.

1.3 Association shall mean and refer to the Peachtree Estates Condominium Owners Association, Inc., a Utah non-profit corporation, and its successors and assigns.

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1.4 Board of Trustees shall mean the governing board of the Association.

1.5 Building shall mean and refer to a structure containing Units and comprising a part of the Development.

1.6 Common Areas shall mean, refer to, and include:

(a) The real property and interests in real property which this Declaration submits to the provision of the Act, including the entirety of the real property subject to or made subject to this Declaration and all landscaping, sidewalks, walkways, parking areas, private streets or roadways located thereon, but excluding all Units;

(b) Those Common Areas and Limited Common Areas specifically set forth and designed as such on the Map;

(c) All other parts of the Development normally in common use or necessary or convenient to its use, existence, maintenance, safety or management, including any central services such as electricity, gas, water, and sewer; and

(d) All Common Areas and all Limited Common Areas as defined in the Act, whether or not expressly listed herein or on any Map.

1.7 Common Assessments shall mean and refer to:

(a) The expenses of, or reasonable reserves for, the maintenance, management, operation, protection, preservation, repair, replacement for or of the Common Areas, including the cost of unpaid Special Assessments;

(b) The expenses of management and administration of the Association, including compensation paid by the Association to managers, accountants, attorneys or other employees or agents; and

(c) Any other item or items designated by the Declaration or the Bylaws of the Association to be Common Expenses, and any other expenses reasonably incurred by the Association on behalf of the Owners.

1.8 Development shall mean the Peachtree Estates Condominium Development (Expandable) as the same exists at any given time as evidenced by the totality of recorded Maps purporting to be part of the Development. The Development is a statutory "Condominium Development" as defined in the Act, Section 57-8-37.

1.9 Limited Common Areas shall mean those portions of the Common Areas which are limited to and reserved for the exclusive use of a particular Unit or group of Units to the exclusion of other Units whether or not the same are designated as such on the Map.

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1.10 **Map or Maps** shall mean and refer to the record of survey map or record of survey maps referred to in Recital A, above, as the same may hereafter be modified, amended, supplemented or expanded in accordance with law and the provisions hereof.

1.11 **Member** shall mean a member of the Association.

1.12 **Mortgage** shall mean and included both a recorded first mortgage on one or more Units and a recorded first Deed of Trust on one or more Units.

1.13 **Mortgagee** shall mean and include both a mortgage and a beneficiary under a recorded Mortgage as defined in Section 1.12, above.

1.14 **Owner** shall mean and refer to the person who is the owner of record (in the Utah County Recorder's Office) whether one or more persons or entities of a fee simple interest in a Unit. In the event a Unit is the subject of an executory contract of sale, the Buyer thereunder shall, unless the Seller and Buyer have otherwise agreed in writing of such agreement, be considered the Owner for all purposes. The term "Owner" shall not mean or include a Mortgagee under a Mortgage unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceedings in lieu thereof.

1.15 **Rules and Regulations** shall mean the Rules and Regulations adopted by the Association governing the use of the Common Areas.

1.16 **Special Expenses** shall mean any of the following:

(a) Expenses incurred for the repair of damage or loss to the Common Areas or the property of Owners caused by the act or neglect of an Owner which is not covered by insurance;

(b) Expenses of repair or reconstruction of property damaged or destroyed by fire or other casualty or damage for which there shall be no insurance coverage and the repair or reconstruction of which will directly benefit less than all of the Owners; or

(c) Any other item or items designated by other provisions of this Declaration or the Bylaws of the Association to be Special Expenses.

1.17 **Unit** shall mean and refer to one of the residential living Units in the Development intended for independent use as defined in the Act, and shall include any and all exclusive easements appurtenant to said Unit over the Common Areas or over Limited Common Areas, if any, appertaining to that Unit, and shall include anything located within or without said Unit but designated and designed to serve only that Unit, such as deck, appliances, electrical receptacles and outlets, air conditioning compressors or other air conditioning apparatus. Fixtures and the like shall also be considered part of the Unit as shall all decorated interiors. All surfaces of interior structural walls,

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floors and ceilings, windows and window frames, door and door frames, and trim consisting of inter alia and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wire, conduits or other public utility lines or installation constituting part of a particular Unit or serving only that Unit, and any structural members of any other property of any kind, including fixtures and appliances within any Unit, which are not removable without jeopardizing the soundness, safety or usefulness of the remainder of the Building within which such Unit is situated, shall be considered part of the Unit.

## ARTICLE II

## SUBMISSION, RESERVATION AND UNDIVIDED INTERESTS

2.1 **Submission to Act.** Declarant hereby submits to the provision of the Act the following described real property situated in Utah County, State of Utah:

See Exhibit "A", attached hereto and incorporated herein by this reference.

TOGETHER WITH ALL easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described real estate.

RESERVING, HOWEVER, UNTO DECLARANT, such easements and rights of ingress and egress over, across, through, and under the above-described real property and improvements (other than Buildings) now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any assignee or successor of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct and complete each of the buildings and all of the other improvements described in this Declaration or in the recorded Maps, and to do all things reasonably necessary or proper in connection therewith; (ii) to construct and complete on the Additional Land or any portion thereof such improvements as Declarant or said assignee or successor shall determine to build in its sole discretion (and whether or not the Additional Land or said portion has been or hereafter will be added to the Development); and (iii) to improve portions of the real property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant or as such assignee or successor may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the above-described real property or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless terminated sooner terminated in accordance with their terms, expire twenty (20) years after the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; all mineral reservations or record and rights incident thereto; all instruments of record which affect the above-described real property or any portion thereof, including, without limitation, any Mortgage (and nothing in this paragraph shall be deemed to modify or amend such Mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Maps or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above described real property at such time as construction of the Development improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

2.2 Undivided Interests. The Development is hereby divided into Units, each such Unit consisting of a Unit and appurtenant undivided interest in and to the Common Areas as set forth in Exhibit "D", attached hereto and made a part hereof as the same may, from time to time, be revised, supplemented or amended.

### ARTICLE III

#### PROPERTY RIGHTS

3.1 Owners' Easements of Enjoyment. Every Owner shall have a fee simple interest in a Unit, as defined herein, together with a right and easement of enjoyment in and to the Common Areas and Limited Common Areas which shall be appurtenant to and shall pass with the title to every Unit, subject to any other rights of the Association, or limitations as set forth in this Declaration.

3.2 Delegation of Use. Any Owner may designate his right of enjoyment to the Common Areas to the members of his family who reside with him in his Unit and to the guests or invitees of any of the foregoing. The rights and privileges of such delatee shall be subject to restriction, suspension or limitation in all respects in the same manner and to the same extent as those of the Owner.

3.3 Allocation of Interests in Common Area. The undivided interest in the Common Areas of each Owner appurtenant to each such Owner's Unit shall be equal and in the percentages or fractions set forth in Exhibit "D" hereto.

3.4 Owners' Duty to Maintain, Right to Decorate. Each Owner shall, at his sole expense, maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, walls, floors, window frames, door frames, trim, and perimeter walls of his Unit and surfaces of the bearing walls and



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the partitions located within such Unit. Each Owner shall also have the right to substitute new finished surfaces in the place of those existing on the ceilings, floors and walls. The Owner shall have the right to maintain floors and walls. Notwithstanding the foregoing, windows shall be covered only by drapes and shades of a commercial nature and character and shall not be painted or covered by foil, paper, blankets, sheets or other similar materials. Except as otherwise provided for herein, an Owner shall not be allowed to modify or decorate any exterior portion of a Unit, including fixtures, walls or other exterior portion or portions of any Unit without the prior written approval of the Association.

**3.5 Fixtures and Appliances.** An Owner shall be the owner of the light fixtures, plumbing fixtures, refrigerator, stove, oven, dishwasher, cabinets and other fixtures located within his Unit. Such fixtures and appliances may be removed by the Owner, provided that such removal does not cause damage to the Common Areas or the Development. For purposes of this Article III, the Association shall have the sole discretion to determine what act or acts constitute "damage to the Common Areas or the Development."

**3.6 Other Easements, Encroachments, etc.** Notwithstanding any of the provisions of this Declaration to the contrary, each Owner shall have an unrestricted right of ingress and egress to such Owner's Unit, which right shall be perpetual and appurtenant to Unit ownership. If any portion of the Common Areas encroaches upon any Unit or if any Unit encroaches on the Common Areas or another Unit as the result of error in original construction, error in any Map, reconstruction, repair, shifting, settlement, or movement of any portion of any improvements in the Development, a valid easement for the encroachment and for the maintenance of the same shall and does exist in favor of the Association and/or the affected Owner, so long as such encroachment exists, and such encroachment shall not be considered to be encumbrances upon the Common Areas or Units affected.

## ARTICLE IV

## DEVELOPMENT ADMINISTRATION

**4.1 Administration of Development.** The Development shall in all respects be administered by the Association, acting by and through its Board of Trustees, who shall be elected in accordance with the Bylaws of the Association, and whose duties will be governed by the terms of the Act, this Declaration, and the Articles of Incorporation and Bylaws of the Association. The Association may employ a professional management agent to perform such duties and services as the Board of Trustees shall direct, including, but not limited to, management, repair and maintenance of the Common Areas and Limited Common Areas and the collection of and accounting for assessments made by the Association.

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4.2 **Rules and Regulations.** The Association shall have the power to establish Rules and Regulations further governing the Development, and shall enforce compliance therewith and may amend them from time to time. A copy of such Rules and Regulations or amendment thereto shall be delivered or mailed to each Member promptly upon the adoption thereof.

4.3 **Common Utilities.** The Association shall be responsible for the monthly payment of Common Area utility services that are provided by public utilities. The Association shall prorate costs thereof to Unit Owners on an equitable basis which shall be reflected in Common Expenses.

## ARTICLE V

## MEMBERSHIP, VOTING RIGHTS, TRANSFER OF CONTROL

5.1 **Membership.** Each Owner shall be a Member of the Association. Membership is appurtenant to and shall not be separated from the Ownership of the Units. Ownership of a Unit shall be the sole qualification for membership. The membership held by an Owner shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of such Unit, and then only to the purchaser or Mortgagee of such Unit. If more than one person is the Owner of a Unit, such persons shall jointly hold one Association Membership.

5.2 **Class of Voters.** The Association shall have two classes of voting membership.

Class A. Class A members shall all be Owners, with the exception of the Declarant in his capacity as Declarant, and shall be entitled to one vote for each Unit owned.

Class B. The only Class B member shall be the Declarant who shall be entitled to three (3) votes for each unsold Unit within a given phase whether or not the Unit is completed. Class B membership is determined on a phase-by-phase basis, and Class B membership in one phase in no way affects Class B membership in another phase. The Class B membership in each phase shall cease to exist and shall be converted to Class A membership no later than the earlier of: (i) after seventy-five percent (75%) of the Units per phase in the Development have been conveyed to Unit purchasers; (ii) or three (3) years after the first Unit in each phase in the Development has been conveyed.

5.3 **Voting, Multiple Ownership.** The vote attributable to and exercisable in connection with Unit ownership shall be equal to the percentage of undivided Ownership interest in the Common Areas which is appurtenant to each Unit as set forth in Exhibit "D" attached. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves; however, no more than one vote per Unit shall be possible.

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5.4 **Suspension of Voting Rights.** The voting rights of any Member shall automatically be suspended during any period in which such member shall be delinquent in the payment of assessments or other charges or fees due the Association.

5.5 **Transfer of Control.** Declarant shall transfer control of each phase of the Development to the Association no later than the earlier of:

- (a) After seventy-five percent (75%) of the Units per phase in the Development have been conveyed to Unit purchasers; or
- (b) Three (3) years following conveyance of the first Unit per phase in the Development.

**ARTICLE VI****REPAIR AND MAINTENANCE OF DEVELOPMENT**

6.1 **Duties of Association.** The Association shall have the exclusive responsibility of maintaining, repairing, replacing and otherwise keeping in excellent condition any and all portions of the Development not required in this Article to be maintained by the Owners, specifically the Common Areas and Limited Common Areas. The Association shall bear the cost of such repair or replacement to the exterior of the Units or other Common Area structures or improvements caused by reasonable wear and tear and acts of God only. It shall be the obligation of each Owner to pay the costs of said repairs or replacements if they are occasioned by the negligence or abuse of the Owner or his guests or invitees. In addition, the Association shall have a reasonable right of entry upon any Unit to make emergency repairs and to do other work reasonably necessary for the proper maintenance or operation of the Development. The Association shall also have the right to grant permits, licenses and easements over the Common Areas for utilities, roads and other purposes necessary for the proper operation of the Development.

6.2 **Duties of Owners.** Each Owner, at his expense, shall be responsible for the maintenance and repair of the interior of his Unit, the windows of his Unit, the appliances and equipment located in his Unit, and the plumbing, heating and other systems servicing his Unit, whether such services are located within, above or underneath the Unit or within the exterior or interior bearing walls of such Unit. The Association shall be responsible for the maintenance and repair of any of the above-described items if such work would affect the structural integrity or change the appearance of any portion of the Common Areas or if such work involves equipment or facilities used in common by several Owners, provided, however, that in the event such maintenance or repair is attributable to the extraordinary use or abuse of an Owner or of a few Owners, the cost of such work may be assessed to such Owner or Owners.

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6.3 **Unit Exterior Maintenance; in General.** Except as otherwise provided herein and in the Rules and Regulations, the Association shall have the responsibility for the general maintenance and repair of the exterior of all Units.

6.4 **Unit Exterior Maintenance; Owner's Responsibility.** In the event an Owner of any Unit shall fail to maintain the exterior of his Unit in compliance with the Declaration and Rules and Regulations, and in a manner satisfactory to the Board of Trustees, the Board of Trustees shall have the right, through its agents and employees, to enter upon said Unit and to repair, maintain, and restore the Unit. The cost of such action shall be added to and become part of the assessment to which such Unit is subject.

## ARTICLE VII

## ASSESSMENTS

7.1 **Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Unit owned within the Development, hereby covenants, and each Owner of any Unit by acceptance of a deed therefor whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. Each such person understands and agrees that the annual and special assessments, together with interest, costs and reasonable attorneys fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made except as otherwise provided in Section 57-8-20 of the Act. In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. In the event the Association exercises its right to foreclose for nonpayment of amounts due, the Owner shall be required to pay a reasonable rental for the Unit during the time Owner is in possession thereof.

7.2 **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Development and for the improvement and maintenance of the Common Area, and of the Units situated within the Development.

7.3 **Annual Budget.** Not less than thirty (30) days prior to the commencement of each fiscal year (which shall commence on the first day of the month in which the sale of the first Unit by Declarant is closed), the Board of Trustees shall establish an annual budget for such fiscal year, including therein all anticipated items of Common Expense together with a reasonable reserve fund for the periodic maintenance, repair and replacement

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of improvements to the Common Areas and those Limited Common Areas which the Association is obligated hereby to maintain.

**7.4 Annual Common Assessment.** By the adoption of the annual budget by the Board of Trustees there shall be established an annual Common Assessment for the payment of which each Owner (including Declarant) shall be personally liable in the same percentage as his percentage Ownership in the Common Areas. Each Owner shall pay his percentage share in even monthly installments of one-twelfth (1/12) thereof on the first day of each month during the fiscal year.

**7.5 Capitalization Fund.** Upon acquisition of record title to a Unit from Declarant, each Owner shall contribute to the capital of the Association an amount equal to one-sixth (1/6) of the amount of the projected annual assessment for that Unit. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed from the escrow to the Association. Any amounts paid into this fund by buyers shall not be considered as advance payments of regular assessments. Notwithstanding any provision hereof to the contrary, prior to the expiration of sixty (60) days following the conveyance of the first Unit in each phase, the assessment due on each Unit not yet sold on which construction has begun shall be one-half the amount otherwise due as set forth in this Article VII. Upon the close of escrow of any Unit for which any portion of the capitalization fund was pre-paid by Declarant, there shall be remitted to Declarant the amount of his prepayment from the fee collected from the buyer.

**7.6 Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be four hundred eighty Dollars (\$480) per Unit.

(a) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year by not more than 15% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above the 15% limitation set forth herein by a vote of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Trustees may not fix the annual assessment at an amount in excess of the maximum except as otherwise provided in Section 7.6(b) hereof.

**7.7 Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole, or in part, the cost of any construction, reconstruction, repair or

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replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

**7.8 Notice and Quorum for Any Action Authorized Under Sections 7.6 and 7.7.** Written notice of any meeting called for the purpose of taking any action authorized under sections 7.6 or 7.7 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

**7.9 Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Units except as otherwise provided herein and shall be collected on a monthly basis.

**7.10 Individual Special Assessments.** Special Assessments may be levied by the Board of Trustees against particular Owners for the payment of Special Expenses. Such individual Special Assessments shall be due and payable to the Association upon demand. However, no individual Special Assessments shall be levied against an Owner until he shall have been given the opportunity to present evidence on his behalf at a hearing before the Board of Trustees, and no such hearing shall be held until such Owner shall have received at least ten (10) days written notice specifying the reason for the proposed individual Special Assessment and the exact time and place of the hearing.

**7.11 Effect of Nonpayment of Assessments, Remedies of the Association.** A late fee, as set from time to time by the Board of Trustees, will be added to each monthly assessment if payment is not made on or before the fifteenth (15th) of each month. Any assessment (including any and all late fees added) not paid within thirty (30) days after the due date shall bear interest at the rate of 10% per annum. The Association may pursue its rights pursuant to Utah law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Unit. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Unit.

**7.12 Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein, or other charges the Association has on a Unit, will be subordinate to a first mortgage on such Unit, if the mortgage was recorded before the delinquent assessment was due, unless otherwise restricted by Utah law. Sale or transfer of any Unit shall not affect the assessment

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lien, unless a foreclosure of a first mortgage is involved. Such foreclosure of a first mortgage will extinguish the assessment lien for any assessments that were payable before the foreclosure sale, but will not relieve any subsequent Owner of the foreclosed Unit from paying further assessments. No sale or transfer shall relieve such Unit or Unit Owner from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE VIII

## INSURANCE

The Association shall obtain and pay premiums upon, as a Common Expense, the following types of insurance coverage insuring the Association and its membership; the Common Areas; and Association employees, agents, etc.:

- (a) Hazard insurance;
- (b) Liability insurance; and
- (c) Fidelity bond coverage.

All such insurance policies shall comply in all respects with the FNMA insurance requirements as set forth in Chapter 3, Part 5, (Sections 501-504) of the FNMA Lending Guide, dated January 3, 1983, as amended or supplemented.

## ARTICLE IX

## ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Development, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Trustees of the Association, or by an Architectural Committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

## ARTICLE X

## RESTRICTIONS

10.1 Residential Use. Except as otherwise provided in Article II hereof, each Building shall contain from two (2) to ten (10) Units, which Units may be occupied or used by Owner(s), or by the tenants of any such Owner(s), as "Dwelling Units" and occupied by one "Family" per Unit, as the terms "Dwelling Unit" and "Family" are defined in the Provo City Ordinances, provided, however, that to the extent such use is not prohibited by Provo City Ordinances, a Unit may be occupied and used by family, or social guests of any such Owner or tenant.

10.2 Commercial Use. Except as otherwise provided in this Declaration, including paragraph 10.1 above, no part of the Development shall be used or caused, allowed or authorized to be used in any way, directly or indirectly for and business, commercial, manufacturing, mercantile, storing, vending, mineral extraction or other such non-residential purpose or purposes, unless such use is authorized in writing by the Board of Trustees and the person seeking authorization accepts sole responsibility for and insures against any liability caused by the authorized commercial use.

10.3 External Fixtures. No flag poles, clothes lines, or other external fixtures other than those originally installed by Declarant or provided by the Association through the Architectural Committee and replacements, shall be constructed, erected or maintained on or within the Development or any structures within it. No wiring, insulation, air conditioning, or other machinery or equipment other than that originally installed by Declarant or their replacements or approved by the Association shall be constructed, erected or maintained on or within the Development, including any structures within it.

10.4 Fences. No fences, awnings, sunshades or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within the Development except those that are installed in accordance with the original construction of the Development, and their replacements, or as are authorized and approved by the Association through the Architectural Committee. No Owner shall make structural alterations or modifications to his Unit or any of the Common Areas or Limited Common Areas, except as otherwise approved by the Association in writing. The Association shall not approve any alterations, decorations or modifications which would jeopardize or impair the soundness, safety or appearance of the Development.

10.5 Signs. No sign of any kind shall be displayed to the public view on or from any condominium or Unit or any other portions of the Development without the approval of the Association, except such signs that may be used by the Declarant or its agents for a period of four years from the date of recordation of the Original Declaration for the purpose of developing, selling and improving Units within the Development. However, one sign of customary and



## Declaration 15

reasonable dimensions advertising a Unit for sale or for rent may be placed within each Unit or within the Common Area immediately adjacent thereto by the Owner of such Unit, the location and size of which shall be subject to approval by the Association.

**10.6 Offensive Conduct, Nuisances.** No Owner shall use or allow anyone else to use his Unit in such a manner so as to unduly or unreasonably infringe upon the right of other Owners to peacefully enjoy their Units and the Common Areas. No obnoxious or offensive activities, including but not limited to repair of automobiles or other motorized vehicles (other than emergency repairs), shall be carried on within the Development. Nothing shall be done on or within the Development that may be or may become an annoyance or nuisances to the residence of the Development, or that in any way interferes with the quiet enjoyment of the occupants of the Units. No Owner shall store any dangerous explosive or inflammable materials either in his Unit or upon the Common Areas, or permit anything to be done or keep or permit to be kept in his Unit or on the Common Areas anything that will increase the rate of insurance, or increase the possibility of danger or injury to any persons or to the Development.

**10.7 Restricted Use of Recreational Vehicles.** No boat, truck, trailer, camper, recreational vehicle or tent shall be used as a living area while located on or within the Development. However, trailers or temporary structures for use incidental to the initial construction of the Development or any subsequent construction thereto, or the initial sale of Units may be maintained within the Development, but shall be promptly removed on completion of all initial construction and all initial sales.

**10.8 Use of Common Areas.** The common picnic and recreation areas of the Development shall be used exclusively by the Owners and their immediate families, guests and invitees subject to Association Rules and Regulations. Use and consumption of alcoholic beverages in or on the Common Areas is strictly prohibited. The Common Areas shall not be used for storage of supplies or personal property. Stairs, entrances, sidewalks, yards, driveways or parking areas shall not be obstructed in any way nor shall unauthorized persons use them for other than their intended purposes. In general, no activities shall be carried on nor condition maintained by any Owner either in his Unit or upon the Common Areas which despoils the appearance of the Development.

**10.9 Animals.** Homeowners may have domestic pets of their choice so long as they keep them confined in their Units, or on leashes or similar control devices or in cages while outside on or in Common Areas of the Development; keep them reasonably quiet between the hours of 10:00 p.m. and 8:00 a.m.; and either replace or repair, at their own expense, damage done by their pets. The Association can prohibit or modify this restriction on the maintenance of pets or any animal in the sole and exclusive discretion of the Association. Each person bringing or keeping a pet on the Development shall be liable pursuant to the laws of

## Declaration 16

the State of Utah to other Owners, their family members, guests, invitees, tenants, and their respective family members, guests, and invitees for any damage to persons or property caused by any pet brought on or kept on the Development by such person or by members of his family, his guests or invitees.

**10.10 Trash Disposal.** Trash, garbage or other waste shall be kept only in sanitary containers or receptacles, which containers or receptacles, unless otherwise directed by Provo City, shall be placed at the discretion of the Association. No Owner of a Unit or tenant thereof shall permit or cause any trash or refuse to be kept on any portion of the Development other than in the receptacles customarily used for it, which shall be located only in places specifically designed for such purpose or within the Owner's Unit (except on the scheduled day for trash pick-up).

**10.11 Outside Drying and Laundering.** No exterior clothes lines shall be erected or maintained and there shall be no exterior drying or laundering of clothes or other items of personal property on patios, porches, railings or other areas.

**10.12 Structural Alterations.** No structural alterations to the interior of any Unit shall be made and no plumbing or electrical work within any bearing or common walls shall be made, or permitted to be made, by any Owner without the prior written consent of the Association.

**10.13 Exterior Alterations.** No Owner shall at his expense or otherwise make or permit to be made any alterations for modifications (including painting) to the exterior of the buildings, or to Units, fences, railings, walls or landscaping situated within the Development without the prior written consent of the Association (who shall consider harmony with external design, color and location with the Development as a whole).

**10.14 Limited Common Areas.** Included in the Common Areas of the Development shall be open patios, storage Units and parking spaces appurtenant to Units. Notwithstanding any provision in this Declaration to the contrary, the Owner of each such Unit shall have an exclusive appurtenant easement to use such Limited Common Areas whether or not specifically describe in the deed for such Unit or shown upon any Map. Each such area shall be subject to the terms of this Declaration. Each such Owner shall have the right to place furniture and potted plants upon his patio, if any. Except as provided in this section, nothing contained herein shall give any Owner the right to paint, decorate, remodel or alter said Limited Common Area without the prior written consent of the Association.

**10.15 Parking Restrictions; Use of Parking Area.** Unless otherwise permitted by the Association, no automobile, boat, trailer or recreational vehicle, camper, truck or commercial vehicle shall be parked or left on any street or any part of the Development other than in any parking area designated by the Association for the parking and storage of such vehicles, including Limited Common Areas, except that unmarked parking

## Declaration 17

areas parallel to the curbs of roadways within the Development shall be reserved for the exclusive use of the guests and invitees of Owners. However, parking by commercial vehicles for the purpose of making deliveries shall be permitted in accordance with Association rules. Except with the written consent of the Association, no owner shall park anywhere in the Development more motor vehicles than there are parking spaces owned by or assigned to such Owner.

10.16 **Speed Limit.** Users of the roadways within the Development shall at all times operate their vehicles in a reasonable and safe manner, but shall in no event operate vehicles so as to exceed 10 miles per hour while driving on said roadways.

10.17 **Compliance with Laws.** Nothing shall be done or kept in any Unit or in the Development that might increase the rate of, or cause the cancellation of, insurance on the Development or any portion of the Development, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his Unit that violates any permanent law, ordinance, statute, rule or regulation of any local, county, state or federal body. No Owner shall allow any furniture, furnishings or other personal property belonging to such Owner to remain within any portion of the Development except in such Owner's Unit or exclusive use area and except as may otherwise be permitted by the Association.

## ARTICLE XI

## DEFAULT

11.1 **Definition.** Failure of an Owner or any tenant or agent of any Owner to comply with any of the terms of this Declaration, the Articles of Incorporation or Bylaws of the Association, or the duly adopted Rules and Regulations of the Association, shall constitute an event of default and shall be grounds for relief, which may include, without limitation, an action to recover sums due for damages and injunctive relief, any combination thereof, or any other right allowed by law.

11.2 **Remedies.** Except as may be limited by law, in addition to all other remedies herein contained or as may be provided by law, the Association may discontinue the furnishing of any utilities or other services to an Owner who is in default of his obligations to the Association or other Owners as set forth herein upon thirty (30) days written notice to such Owner and to any Mortgagees of such Owner's Unit of its intent to do so.

11.3 **Costs.** In any proceeding arising because of any alleged default by any Owner, the Association, if successful, shall be entitled to recover all amounts allowed by law including the costs of the proceedings and reasonable attorney's fees from such Owner.

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11.4 No Waiver. The failure of the Association or of any Owner to enforce any right, provision, covenant or condition which may be granted by the Act, this Declaration, the Articles of Incorporation, Bylaws, or the Rules and Regulations of the Association shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies and privileges shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other additional rights, remedies or privileges, as may be available to such party at law or in equity.

## ARTICLE XII

## GENERAL PROVISIONS

## CONDEMNATION, DESTRUCTION OR LIQUIDATION

12.1 Association as Representative. The Association shall represent Unit Owners in any condemnation proceedings or in negotiations, settlements and agreements with any condemning authority for acquisition of Common Areas or any part thereof. Each Owner hereby irrevocably names, constitutes and appoints the Association as his true and lawful attorney-in-fact for the purposes of allowing the Association to represent such Owner in any such proceedings.

12.2 Distribution of Condemnation Award. In the event of a taking or acquisition of part or all of the Common Areas by condemning authority, or if the development or a portion of it is not sold but is instead taken, the award shall be distributed among the Owners and their respective Mortgagees pursuant to Section 7-8-32.5 of the Utah Code.

12.3 Acceptance of Governing Rules. The Association, all present or future Owners, tenants or future tenants, or any other persons using the Common Areas of the Development are subject to and shall comply with the Act, this Declaration, the Articles of Incorporation, Bylaws, and the Rules and Regulations of the Association, and the acquisition, occupancy or rental of a Unit shall signify that all such documents are accepted and ratified. In the event of a conflict in any of the provisions of any such document, the documents shall govern or control in the following order of preference: (a) the Act, (b) this Declaration, (c) the Articles of Incorporation of the Association, (d) the Bylaws of the Association, and (e) the Rules and Regulations.

12.4 Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

## Declaration 19

12.5 **Delivery of Notices.** All notices or other documents required herein to be delivered by the Association or Owners may be delivered either personally or by mail. If delivered personally, the same shall be deemed to have been delivered when actually received by the Owner or when left at the front door of his Unit. If mailed, the same shall be deemed delivered when deposited in the United States Mail addressed to the Owner at his address as it appears on the records of the Association with postage thereon prepaid.

12.6 **Service of Process.** Alan B. Sevison, 927 S. 200 W. Unit 1, Provo, Utah 84601 or, as changes occur from time to time, the name and address registered with the Utah Department of Business Regulation.

12.7 **Severability.** If any of the provisions of the Declaration or any paragraph, sentence, clause, phrase or work, or the application thereof in any circumstances shall be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any provisions, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

12.8 **Covenants and Restrictions.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date the Original Declaration was recorded, after which time they shall be automatically extended for successive periods of ten (10) years each.

12.9 **Amendment.** The Association shall have the right to amend this Declaration, the Articles of Incorporation of Peachtree Estates Condominium Owners Association, and Bylaws of Peachtree Estates Condominium Owners Association (the "Development Documents") as set forth herein. Amendments of a material nature must be agreed to by Owners representing at least sixty-seven percent (67%) of the total votes in the Association. In addition, approval must be obtained from eligible mortgage holders representing at least fifty-one percent (51%) of the votes of Units that are subject to mortgages held by eligible holders. For purposes of this section, a change to any of the following shall be considered material:

- (a) Voting Rights;
- (b) Assessments, assessment liens, or subordination of assessment liens;
- (c) Reserves for maintenance, repair and replacement of Common Areas;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in a general or Limited Common Areas, or rights to their use;
- (f) Boundaries of any Unit;

- (g) Convertibility of Units into Common Areas or vice-versa;
- (h) Expansion or contraction of the Development, or the addition, annexation or withdrawal of property to or from the Development;
- (i) Insurance or fidelity bonds;
- (j) Amendment to the provisions governing the leasing or renting of Units;
- (k) The placing of any restriction on a Unit Owner's right to sell or transfer his Unit;
- (l) A decision by the Association to establish self management when professional management has been required previously by an eligible mortgage holder;
- (m) Restoration or repair of the Development (after a hazard damage or partial condemnation) in a manner other than that specified in the Development documents;
- (n) Any action to terminate the legal status of the Development after substantial destruction or condemnation occurs, or any provision or provisions that expressly benefit mortgage holders, insurers or guarantors.

Except as otherwise limited by Utah law, if the Owners desire to terminate the legal status of the Development for reasons other than substantial destruction or condemnation thereof, the eligible mortgage holders representing at least sixty-seven percent (67%) of the votes of the mortgaged Units must agree.

In addition, an amendment to the Development Documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. The Development Documents may provide that an eligible mortgage holder who receives a written request to approve additions or amendments who does not delivery or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

**12.10 Section Titles.** Section titles are used in this Declaration for convenience of reference and are not intended to limit, enlarge or change the meaning of the contents of the various provisions hereof.

**12.11 Number and Gender.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural; the plural, the singular; and the use of any gender shall include all genders.

## ARTICLE XIII

## RIGHTS AND RESPONSIBILITIES OF DECLARANT

13.1 **Rights of Action.** The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with the provisions of the Development Documents, or decisions or actions made or taken by the Association. Owners shall have the same right(s) of action against the Association.

13.2 **Lease; Rental.** Notwithstanding any other provision of this Declaration to the contrary, no Owner may lease or rent a Unit or enter into an agreement to lease or rent a Unit for a period of less than thirty (30) days. Any such lease or rental agreement must be in writing and shall in all respects be subject to the requirements of the Development Documents and the Association.

13.3 **Easements; Voting Rights.** Declarant is granted hereby an easement over the Common Areas for completion of improvements and for making repairs to improvements and for purposes of marketing unsold Units. As more fully set forth in Article V hereof, Declarant shall retain voting rights for any unsold Units at the time control of the Development is transferred to the Association.

13.4 **Prior Contracts.** Declarant is hereby given the right to execute professional management contracts for the management of the Development prior to transfer of control over the Development from Declarant to the Association, except that the Association is hereby given a right of termination of any such contract, without cause, which right of termination is exercisable without penalty at any time after transfer and control, upon not more than thirty (30) day's notice to the other party thereto. Except as otherwise provided in the preceding sentence, such right of termination shall not require the payment of any penalty for the exercise thereof.

13.5 **Provisions for Expansion.** Declarant hereby explicitly reserves an option to expand the Development and to add additional Units to the Development in the future. Any such expansion shall be in accordance with the Act and Veterans Administration regulations concerning expandable condominiums. The following conditions shall apply to exercise of said option.

(a) It is hereby granted unto Declarant and Declarant hereby reserves the absolute right and option to expand the Development at any time (within the limits herein prescribed) and from time to time by adding to the Development the Additional Land or a portion thereof.

(b) Notwithstanding any provision of the Act or this Declaration which might be construed to the contrary, such right and option may be exercised without obtaining the vote or consent of any other person (including any Unit Owner) and shall be limited only as provided in the Act and in this Declaration.

## Declaration 22

(c) The Declarant's right to expand the Development shall cease after five (5) years from the date of recordation of the Original Declaration. There are no circumstances which will terminate the Declarant's option to expand the Development prior to the expiration of the time limit specified herein above.

(d) The Development may be expanded under the provisions of this Declaration and of the Act and shall be deemed to have occurred at such time as this Declaration, duly executed and acknowledged by the Declarant, and a new or supplemental Map containing the information required by the Act has been recorded with respect to the portion of the Additional Land concerned.

(e) All of the Additional Land need not be added to the Development. Rather, a portion of the Additional Land may be added to the Development at any time (within the limits herein prescribed) and from time to time.

(f) Except for the limitations and requirements set forth in the following subparagraph (g), there are no limitations or requirements relative to the size, location or configuration of any given portion of the Additional Land which can be added to the Development or relative to the order in which particular portions of the Additional Land can be added to the Development, and no assurances are made in that regard.

(g) Assuming that the entirety of the Additional Land is added to the Development, the maximum number of Units which may be created on the Additional Land is eighteen (18) and the maximum number of Buildings in which those Units may be located is nine (9). The maximum number of Units per acre which may be created on any portion of the Additional Land added to the condominium Development is 9.25 Units per acre.

(h) Any Building or other structure erected on any such additional Land shall be constructed in a good and workmanlike manner and shall, in general, be constructed of the same principal materials and of a quality and standard at least equal to those comprising Buildings in the present Phases of the Development. Declarant makes no assurances that such Buildings or structures to be erected on the Additional Land will be identical in nature or architectural style or size to those Buildings or Units in prior Phases of the Development.

(i) In addition to the Buildings created on the Additional Land added to the Development, the significant improvements made thereto may include asphalt roadways, open parking spaces, concrete sidewalks or walkways, fences, landscaping, any other related improvements. All of the mentioned improvements may be of the type and in the location reasonably determined to be appropriate by Declarant, so long as such determination is not inconsistent with any limitation imposed by this Declaration.



(j) In conjunction with the addition to the Development of the Additional Land, Declarant shall have the right to reserve, in the instruments through which the addition is accomplished, reasonable rights-of-way and or easements for purposes of enabling access to, furnishing utilities to, and facilitating or enabling development of, such of the Additional Land as has then not been added to the Development.

(k) Each Unit created on any portion of the Additional Land which is added to the Development shall be used only for residential purposes.

(l) Any expansion of the Development through the addition thereto of the Additional Land or portions thereof and through the creation of additional Units shall be such that the percentage of undivided Owner's interest in the Common Areas which at any point in time is appurtenant to any Unit then in the Development shall be reallocated.

(m) No expansion of the Project shall adversely affect the rights of the Association, the Committee, any Mortgagee, or any Owner in any Unit or the Common Areas and Facilities created hereunder.

(n) Declarant shall purchase (at Declarant's own expense) a general liability insurance policy in an amount to be determined by the Administrator of Veterans Affairs of the Veterans Administration to cover any liability to which Owners of previously sold Units are exposed as a result of further expansion of the Development.

(o) The Development may not be amended or merged with a successor condominium regime without the prior written approval of the Administrator of Veterans Affairs of the Veterans Administration.

13.6 Procedure for Expansion. Any supplements to this Declaration and the Map by which the Additional Land is added to the Development shall be executed by Declarant, shall be in recordable form, must be filed for record in the office of the County Recorder of Utah County, State of Utah, on or before five (5) years from the date that the Original Declaration is recorded, and, when taken together, shall contain the following information for that portion of the Additional Land which is being added to the Development.

(a) Data sufficient to identify this Declaration and the Map.

(b) The legal description of the portion of the Additional Land being added to the Development.

(c) A description of the Buildings located or to be located on the Additional Land concerned and all other significant improvements located or to be located on such Additional Land.

## Declaration 24

(d) The Unit number of each Unit being created within the portion of the Additional Land concerned and other data necessary for the proper identification thereof.

(e) A description of any Limited Common Areas being created within the portion of the Additional Land concerned, together with a designation of the Unit to which each is appurtenant.

(f) Such rights-of-way and/or easements as are being reserved by Declarant pursuant to subparagraph (j) of the foregoing Section 13.5

(g) An amendment to Exhibit "D" of this Declaration setting forth the percentage of undivided interest which, after addition of that portion of the Additional Land concerned, shall appertain to each Unit in the Development.

(h) The Map information required to be furnished by Section 57-8-13(2) of the Act.

(i) Such other matters as may be necessary, desirable, or appropriate and as are not inconsistent with any limitation imposed by this Declaration.

Upon the recordation of any supplements contemplated above, the revised schedule of undivided ownership interest contained therein shall automatically become effective for all purposes and shall completely supercede any similar schedule which was contained in any Declaration or supplement previously recorded in connection with the Development or any portion of the Additional Land. Upon recordation of such supplements, they shall automatically supplement this Declaration, the Map, and any supplements previously recorded. At any point in time, the Declaration and Map for the Development shall consist of this Declaration and the Map initially effective hereunder, as amended and expanded by all supplements therefore recorded pursuant to the terms hereof.

**13.7 Additional Land; Miscellaneous.** Such parts of the Additional Land which is added to the Development as do not become Units shall be and remain Common Areas. Until such time as any given portion of the Additional Land added to the Development has been fully developed and improved in the manner contemplated by the instruments through which such portion was added, unless Declarant gives its prior written consent thereto, no easement, right-of-way, or similar matter affecting any portion thereof shall be granted or created, no improvement to or work on any part of such portion shall occur, and no other action shall be taken with respect to such portion which would or might impair Declarant's ability to exercise its rights concerning the same.

**13.8 No Obligation to Expand.** Except to the extent specifically indicated herein, this Declaration is not intended and shall not be construed so as to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to:

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- (a) The addition to the Development of any or all of the Additional Land;
- (b) The creation or construction of any Unit, Building, or other improvements;
- (c) The carrying out in any particular way or within any particular time of any development or addition to the Development which may be undertaken; or
- (d) The taking of any particular action with respect to the Development, or any portion of the Additional Land.

Except to the extent specifically indicated herein, no covenant, restriction, limitation, representation, or commitment in this Declaration concerning anything that is or is not to occur, apply, or be done on or relative to the Additional Land or any portion thereof shall be binding as to such of the Additional Land as is never added to the Development.

#### ARTICLE XIV

##### AVAILABILITY OF DEVELOPMENT DOCUMENTS

The Association shall at all times maintain current copies of the Development documents as well as its own books, records and financial statements available for inspection by Owners or by holders, insurers and guarantors of first mortgages that are secured by Units in the Development. Such documents shall be available during normal business hours, or upon reasonable prior request.

IN WITNESS WHEREOF, Declarant has duly executed this Amended and Restated Declaration the day and year first written above.

BRYCE C. NELSON CONSTRUCTION, INC.

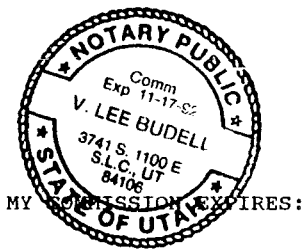
By: Bryce C. Nelson  
Bryce C. Nelson, President

ACKNOWLEDGEMENT ON PAGE FOLLOWING

ACKNOWLEDGEMENT

STATE OF UTAH )  
: SS  
COUNTY OF UTAH)

I, the undersigned, a Notary Public, hereby certify that on the 20th day of March, 1989, personally appeared before me Bryce C. Nelson, who being duly sworn did say that he is the President of Bryce C. Nelson Construction, Inc. and that the foregoing instrument was signed pursuant to a resolution of the Board of Directors of said Corporation and that the Corporation executed the same as its official act.




  
\_\_\_\_\_  
NOTARY PUBLIC  
RESIDING IN UTAH COUNTY  
STATE OF UTAH

EXHIBIT "A"  
TO  
AMENDED AND RESTATED DECLARATION OF  
COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS  
ESTABLISHING A PLAN OF OWNERSHIP FOR  
PEACHTREE ESTATES, A CONDOMINIUM DEVELOPMENT (EXPANDABLE)

TOTAL PARCEL  
PEACHTREE ESTATES PHASE I  
PROVO, UTAH  
3-21-89

Commencing at a point located North 89°46'21" East along the section line 816.36 feet and North 1338.93 feet from the South one-quarter corner of Section 12, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence North 0°12'16" East 317.76 feet; thence South 89°00'00" East 69.22 feet; thence North 0°16'10" East 34.93 feet; thence South 89°34'10" East 393.84 feet; thence South 0°00'10" East 52.55 feet; thence North 89°44'39" West 0.60 feet; thence South 0°05'39" East 242.30 feet; thence South 0°10'03" West 105.00 feet; thence North 89°49'57" West 232.66 feet; thence North 59°20'57" West 97.17 feet; thence North 89°34'10" West 147.58 feet to the point of beginning.

AREA = 4.00 ACRES

TOTAL PARCEL  
PEACHTREE ESTATES PHASE II  
PROVO, UTAH  
3-21-89

Commencing at a point located North 89°46'21" East along the Section line 816.40 feet and North 1032.35 feet from the South one-quarter corner of Section 12, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence North 0°15'48" West 139.07 feet; thence North 0°12'16" East 167.52 feet; thence South 89°34'10" East 147.58 feet along Phase I Peachtree Estates; thence South 59°20'57" East 97.17 feet along Phase I Peachtree Estates; thence along the arc of a 333.00 foot radius curve to the right 61.71 feet (chord bears South 5°34'19" East 61.62 feet); thence South 0°15'48" East 196.40 feet; thence North 89°34'10" West 238.02 feet to the point of beginning.

AREA = 1.617 ACRES

TOTAL PARCEL  
PEACHTREE ESTATES PHASE III  
PROVO, UTAH  
3-21-89

Commencing at a point located North 89°46'21" East along the Section line 817.49 feet and North 794.35 feet from the South one-quarter corner of Section 12, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence North 0°15'48" West 238.00 feet; thence South 89°34'10" East 238.02 feet; thence South 0°15'48" East 82.30 feet; thence North 89°34'01" West 17.00 feet; thence South 0°15'48" East 155.71 feet; thence North 89°34'01" West 221.02 feet to the point of beginning.

AREA = 1.240 ACRES

EXHIBIT "B"  
TO  
AMENDED AND RESTATED DECLARATION OF  
COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS  
ESTABLISHING A PLAN OF OWNERSHIP FOR  
PEACHTREE ESTATES, A CONDOMINIUM DEVELOPMENT (EXPANDABLE)

TOTAL PARCEL  
PEACHTREE ESTATES PHASE IV  
PROVO, UTAH  
2-21-89

Commencing at a point in the East boundary of 200 West Street, Provo, Utah said point being located North 89°46'21" East along the Section line 1054.79 feet and North 947.31 feet from the South one-quarter corner of Section 12, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence North 0°15'48" West along said street boundary 278.71 feet; thence along the arc of a 333.00 foot radius curve to the left 61.71 feet (chord bears North 5°34'18" West 61.62 feet; thence South 89°49'57" East 232.66 feet; thence South 0°10'03" West 341.05 feet; thence North 89°34'01" West 224.41 feet to the point of beginning.

AREA = 1.767 ACRES

EXHIBIT "C"  
TO  
AMENDED AND RESTATED DECLARATION OF  
COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS  
ESTABLISHING A PLAN OF OWNERSHIP FOR  
PEACHTREE ESTATES, A CONDOMINIUM DEVELOPMENT (EXPANDABLE)

BYLAWS  
OF  
PEACHTREE ESTATES CONDOMINIUM OWNERS ASSOCIATION

Nonprofit Corporation

BYLAWS  
OF  
PEACHTREE ESTATES CONDOMINIUM OWNERS ASSOCIATION  
Nonprofit Corporation

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OFFICERS' CONSENT	
ACKNOWLEDGEMENT	



Pursuant to the provisions of the Utah Nonprofit Corporation and Co-operative Association, Act, the Board of Trustees of Peachtree Estates Condominium Owners Association, a Utah nonprofit corporation, hereby adopts the following Bylaws for such nonprofit corporation.

#### ARTICLE I

##### NAME AND PRINCIPAL OFFICE

1.01 Name. The name of the nonprofit corporation is Peachtree Estates Condominium Owners Association, Inc., hereinafter referred to as the "Association."

1.02 Office. The principal office of the Association is located at 927 S. 200 West, Unit 1, Provo, Utah 84601 or as may be changed from time to time and registered with the Utah Department of Business Regulation.

#### ARTICLE II

##### DEFINITIONS

2.01 Definitions. Except as otherwise provided herein or as may be required by the context, all terms defined in Article I of the Amended and Restated Declaration of Covenants, Easements, Conditions and Restrictions Establishing a Plan of Ownership for Peachtree Estates, a condominium Development (Expandable), hereinafter referred to as the "Declaration", shall have such defined meanings when used in these Bylaws.

#### ARTICLE III

##### MEMBERS

3.01 Annual Meetings. The annual meeting of Members shall be held on the last Friday of September of each year at the hour of 10:00 a.m., beginning with the year following the year in which the Articles of Incorporation are filed, for the purpose of electing Trustees and transacting such other business as may come before the meeting. If the election of Trustees shall not be held on the day designated herein for the annual meeting of the Members, or at any adjournment thereof, the Board of Trustees shall cause the election to be held at a special meeting of the Members to be convened as soon thereafter as may be convenient. The Board of Trustees may from time to time by resolution change the date and time for the annual meeting of the Members.

3.02 Special Meetings. Special meetings of the Members may be called by the Board of Trustees, the President, or upon the written request of Members holding not less than ten percent (10%) of the total votes of the Association, such written request to state the purpose or purposes of the meeting and to be delivered to the Board of Trustees or the President.

**3.03 Place of Meetings.** The Board of Trustees may designate any place in Utah County, State of Utah as the place of meeting for any annual meeting or for any special meeting called by the Board. A waiver of notice signed by all of the Members may designate any place, either within or without the State of Utah, as the place for holding such meeting. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be at the principal office of the Association.

**3.04 Notice of Meetings.** The Board of Trustees shall cause written or printed notice of the time, place, and purpose of all meetings of the Members (whether annual or special) to be delivered, not more than fifty (50) or less than ten (10) days prior to the meeting, to each Member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail addressed to the Member at his registered address, with first class postage thereon prepaid. Each Member shall register with the Association such Member's current mailing address for purposes of notice hereunder. Such registered address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, a Member's Unit address shall be deemed to be his registered address for purposes of notice hereunder.

**3.05 Members of Record.** Upon purchasing a Condominium in the Project, each Owner shall promptly furnish to the Association a certified copy of the recorded instrument by which ownership of such Condominium has been vested in such Owner, which copy shall be maintained in the records of the Association. For the purpose of determining Members entitled to notice of or vote at any meeting of the members, or any adjournment thereof, the Board of Trustees may designate a record date, which shall not be more than fifty (50) nor less than ten (10) days prior to the meeting, for determining Members entitled to notice of or vote at any meeting of the Members. If no record date is designated, the date on which notice of the meeting is mailed shall be deemed to be the record date for determining Members entitled to notice of or to vote at the meeting. The persons or entities appearing in the records of the Association on such record date as the Owners of record of condominiums in the Project shall be deemed to be the Members of record entitled to notice of and to vote at the meeting of the Members.

**3.06 Quorum.** At any meeting of the Members, the presence of Members holding, or holders of proxies entitled to cast, more than fifty percent (50%) of the Total Votes of the Association shall constitute a quorum for the transaction of business. In the event a quorum is not present at a meeting, the Members present (whether represented in person or by proxy), though less than a quorum, may adjourn the meeting to a later date. Notice thereof shall be delivered to the Members as provided above. At the reconvened meeting, the Members and proxy holders present shall constitute a quorum for the transaction of business.

3.07 Proxies. At each meeting of the Members, each Member entitled to vote shall be entitled to vote in person or by proxy, provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Member himself or by his attorney thereunto duly authorized in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the Secretary of the Association or to such other office or person who may be acting as secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

3.08 Votes. With respect to each matter submitted to a vote of the Members, each Member entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Condominium of such Member, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Members, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, the Declaration, or Utah law. The election of Trustees shall be by secret ballot. If a membership is jointly held, all or any holders thereof may attend each meeting of the Members, but such holders must act unanimously to cast the votes relating to their joint membership.

3.09 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, form of proxies, and method of ascertaining Members present shall be deemed waived if no objection thereto is made at the meeting.

3.10 Informal Action by Members. Any action that is required or permitted to be taken at a meeting of the Members may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof.

#### ARTICLE IV

##### BOARD OF Trustees

4.01 General Powers. The property, affairs, and business of the Association shall be managed by its Board of Trustees. The Board of Trustees may exercise all of the powers of the Association whether derived from law or the Articles of Incorporation, except such powers as are by law, by the Articles of Incorporation, by these Bylaws, or by the Declaration vested solely in the Members. The Board of Trustees may by written contract delegate, in whole or in part, to a professional management organization or person(s) such of its duties, responsibilities, functions, and powers as are properly delegable.

4.02 **Number, Tenure, and Qualifications.** The number of Trustees of the Association shall be at least three (3), but not more than nine (9). The initial Board of Trustees specified in the Articles of Incorporation shall serve until the Declarant turns over to the Members, in accordance with Utah law, the responsibility for electing Trustees. At the first annual meeting of the Members held after the Declarant turns over to the members responsibility for electing Trustees, the Members shall elect at least three (3) Trustees to serve for a term of one (1) year. At each annual meeting thereafter, the Members shall vote to elect the appropriate number of Trustees for the next succeeding term. All Trustees, except Trustees appointed by the Declarant, shall be Members of the Association.

4.03 **Regular Meetings.** The regular meeting of the Board of Trustees shall be held without other notice than this Bylaw immediately after, and at the same place as, the annual meeting of the Members. The Board of Trustees may provide by resolution the time and place, within Utah County, State of Utah, for the holding of additional regular meetings without other notice than such resolution.

4.04 **Special Meetings.** Special meetings of the Board of Trustees may be called by or at the request of any Trustee. The person or persons authorized to call special meetings of the Board of Trustees may fix any place, within Utah County, State of Utah, as the place for holding any special meeting of the Board of Trustees called by such person or persons. Notice of any special meeting shall be given at least five (5) days prior thereto by written notice delivered personally, or mailed to each Trustee at his registered address, or by telegram. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail so addressed, with first-class postage thereon prepaid. If notice is given by telegram, such notice shall be deemed to have been delivered when the telegram is delivered to the telegraph company. Any Trustee may waive notice of a meeting.

4.05 **Quorum and Manner of Acting.** A majority of the then authorized number of Trustees shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees. The act of a majority of the Trustees present at any meeting at which a quorum is present shall be the act of the Board of Trustees. The Trustees shall act only as a Board, and individual Trustees shall have no powers as such.

4.06 **Compensation.** No Trustee shall receive compensation for any services that he may render to the Association as a Trustee provided, however, that a Trustee may be reimbursed for expenses incurred in performance of his duties as a Trustee to the extent such expenses are approved by the Board of Trustees and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as a Trustee. Notwithstanding the foregoing, the Incorporator's costs incurred in organizing, incorporating and establishing the Association shall be reimbursed by the Association without requiring approval by the Board of Trustees.

4.07 Resignation and Removal. A Trustee may resign at any time by delivering a written resignation to either the President or the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Trustee, except a Trustee appointed by the Declarant, may be removed at any time, for or without cause, by the affirmative vote of seventy-five percent (75%) of the Total Votes of the Association at a special meeting of the Members duly called for such purpose.

4.08 Vacancies and Newly Created Trusteeships. If vacancies shall occur in the Board of Trustees by reason of the death, resignation, or disqualification of a Trustee (other than a Trustee appointed by Declarant), or if the authorized number of Trustees shall be increased, the Trustees then in office shall continue to act, and such vacancies or newly created Trusteeships shall be filled by a vote of the Trustees then in office, though less than a quorum, in any way approved by such Trustee at the meeting. Any vacancy in the Board of Trustees occurring by reason of removal of a Trustee by the Members may be filled by election at the meeting at which such Trustee is removed. If vacancies shall occur in the Board of Trustees by reason of death, resignation, or removal of a Trustee appointed by the Declarant, such vacancies shall be filled by appointment to be made by the Declarant. Any Trustees elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor or for the term of the newly created Trusteeship, as the case may be.

4.09 Informal Action by Trustees. Any action that is required or permitted to be taken at a meeting of the Board of Trustees may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Trustees.

## ARTICLE V

### OFFICERS

5.01 Officers. The officers of the Association shall be a President, a Vice President, a Secretary, a Treasurer, and such other officers as may from time to time be appointed by the Board of Trustees.

5.02 Election, Tenure, and Qualifications. The officers of the Association shall be chosen by the Board of Trustees annually at the regular annual meeting of the Board of Trustees. In the event of failure to choose officers at such regular annual meeting of the Board of Trustees, officers may be chosen at any regular or special meeting of the Board of Trustees. Each such officer (whether chosen at a regular annual meeting of the Board of Trustees or otherwise) shall hold his office until the next ensuing regular annual meeting of the Board of Trustees and until his successor shall have been chosen and qualified, or until his death, or until his resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any

one person may hold any two or more of such offices, except that the President may not also be the Secretary. No person holding two or more offices shall act in or execute any instrument in the capacity of more than one office. The President, Vice president, Secretary, and Treasurer shall be and remain Trustees of the Association during the entire term of their respective offices. No other officer need be a Trustee.

5.03 **Subordinate Officers.** The Board of Trustees may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board of Trustees may from time to time determine. The Board of Trustees may from time to time delegate to any officer or agent the power to appoint any such subordinate officers or agents and to prescribe their respective titles, terms of office, authorities, and duties. Subordinate officers need not be Members or Trustees of the Association.

5.04 **Resignation and Removal.** Any officer may resign at any time by delivering a written resignation to the President or the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board of Trustees at any time, for or without cause.

5.05 **Vacancies and Newly Created Offices.** If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board of Trustees at any regular or special meeting.

5.06 **The President.** The President shall preside at meetings of the Board of Trustees and at meetings of the Members. He shall sign on behalf of the Association all conveyances, mortgages, documents, instruments and contracts, and shall do and perform all other acts and things that the Board of Trustees may require of him.

5.07 **The Vice President.** The Vice President shall act in the place and stead of the President in the event of the President's absence or inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board of Trustees.

5.08 **The Secretary.** The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, or any resolution of the Board of Trustees may require him to keep. The Secretary shall also act in the place and stead of the President in the event of the President's or Vice President's absence or inability or refusal to act. He shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same. He shall perform such other duties as the Board of Trustees may require of him.

5.09 **The Treasurer.** The Treasurer shall have the custody and

## BYLAWS 7

control of the funds of the Association, subject to the action of the Board of Trustees, and shall, when requested by the President to do so, report the state of the finances of the Association at each annual meeting of the Members and at any meeting of the Board of Trustees. He shall perform such other duties as the Board of Trustees may require of him.

5.10 Compensation. No officer shall receive compensation for and services that he may render to the Association as an officer, provided, however, that an officer may be reimbursed for expenses incurred in performance of his duties as an officer to the extent such expenses are approved by the Board of Trustees and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as an officer. Notwithstanding the foregoing. The incorporator's costs incurred in organizing, incorporating and establishing the Association shall be reimbursed by the Association without requiring approval by the Board of Trustees.

## ARTICLE VI

## COMMITTEES

6.01 Designation of Committees. The Board of Trustees may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such committee designated hereunder shall include at least two (2) Trustees. No committee member shall receive compensation for services that he may render to the Association as a committee member, provided, however, that a committee member may be reimbursed for expenses incurred in performance of his duties as a committee member to the extent that such expenses are approved by the Board of Trustees and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as a committee member.

6.02 Proceedings of Committees. Each committee designated hereunder by the Board of Trustees may appoint its own presiding and recording officers and may meet at such place and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board of Trustees.

6.03 Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Board of Trustees, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event less than two members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board of Trustees hereunder shall act only as a committee, and the individual members thereof shall have no powers as such.

6.04 **Resignation and Removal.** Any member of any committee designated hereunder by the Board of Trustees may resign at any time by delivering a written resignation to the President, the Board of Trustees, or the presiding officer of the committee of which he is a member. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board of Trustees may at any time, for or without cause, remove any member of any committee designated by it hereunder. Failure to deliver said resignation shall not act to prevent said member from resigning.

6.05 **Vacancies.** If any vacancy shall occur in any committee designated by the Board of Trustees hereunder, due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy, constitute the then total authorized membership of the committee and, provided that two or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board of Trustees.

## ARTICLES VII

### INDEMNIFICATION

7.01 **Indemnification, Third Party Actions.** The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was the Declarant, a Trustee or officer of the Association, or is or was serving at the request of the Association as a Trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by an adverse judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

7.02 **Indemnification, Association Actions.** The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment



in its favor by reason of the fact that he is or was the Declarant, a Trustee or officer of the Association, or is or was serving at the request of the Association as a Trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorney's fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

**7.03 Determinations.** To the extent that a person has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Section 7.01 or 7.02 hereof, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Sections 7.01 or 7.02 hereof shall be made by the Association only upon a determination that indemnification of the person is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Sections 7.01 or 7.02 hereof. Such determination shall be made either (i) by the Board of Trustees by a majority vote of disinterested Trustees or (ii) by independent legal counsel in a written opinion, or (iii) by the Members by the affirmative vote of at least fifty percent (50%) of the Total Votes of the Association at any meeting duly called for such purpose.

**7.04 Advances.** Expenses incurred in defending a civil or criminal action, suit, or proceeding as contemplated in this Article may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon a majority vote of a quorum of the Board of Trustees and upon receipt of an undertaking by or on behalf of the person to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by this Article or otherwise.

**7.05 Scope of Indemnification.** The indemnification provided for by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Association's Articles of Incorporation, Bylaws, agreements, vote of disinterested Members or Trustees, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. The indemnification authorized by this Article shall apply to all present and future Trustees, officers, employees, and agents of the Association and shall continue as to such persons who cease to be Trustees, officers, employees, or agents of the Association and shall

insure to the benefit of the heirs and personal representatives of all such persons and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

7.06 Insurance. The Association may purchase and maintain insurance on behalf of any person who was or is a Trustee, officer, employee, or agent of the Association, or who was or is serving at the request of the Association as a Trustee, officer, employee, or agent of another corporation, entity, or enterprise (whether for profit or not for profit), against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the laws of the State of Utah, as the same may hereafter be amended or modified.

7.07 Payments and Premiums. All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this Article shall constitute valid and justified expenses of the Association and shall be paid with funds of the Association.

#### ARTICLE VIII

##### FISCAL YEAR AND SEAL

8.01 Fiscal Year. The fiscal year of the Association shall begin on the 1st day of January each year and shall end on the 31st day of December next following, except that the first fiscal year shall begin on the date of incorporation.

8.02 Seal. The Board of Trustees may by resolution provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association, the state of incorporation, and the words "Corporate Seal."

#### ARTICLE IX

##### RULES AND REGULATIONS

9.01 Rules and regulations. The Board of Trustees may from time to time adopt, amend, repeal, and enforce reasonable rules and regulations governing the use and operation of the Project, to the extent that such rules and regulations are not inconsistent with the rights and duties set forth in the Articles of Incorporation, the Declarations, or these Bylaws. The Members shall be provided with copies of all rules and regulations adopted by the Board of Trustees, and with copies of all amendments and revisions thereof.

ARTICLE X  
AMENDMENTS

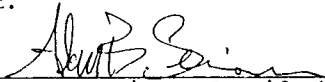
10.01 Amendments. Except as otherwise provided by law, by the Articles of Incorporation, by the Declarations, or by these Bylaws, these Bylaws may be amended, altered, or repealed and new bylaws may be made and adopted by the Members upon the affirmative vote of at least fifty-one percent (51%) of the Total Votes of the Association, provided, however, that such action shall not be effective unless and until a written instrument setting forth (i) the amended, altered, repealed, or new bylaw, (ii) the number of votes cast in favor of such action, and (iii) the Total Votes of the Association, shall have been executed and verified by the current President of the Association and recorded in the office of the County Recorder of Utah County, State of Utah, and provided that the prior written approval of at least seventy-five percent (75%) of all institutional holders which have a first mortgage lien on and unit in the Project, based on one vote for each mortgage, shall be required before making and material amendment to the Declaration, the Articles, or the Bylaws, including but not limited to any amendment which would change the percentage interests of the Unit owners in the Project.

10.02 Abandonment. Unless otherwise provided by law, the prior written approval of at least seventy-five percent (75%) of all institutional holders which have a first mortgage lien on any unit in the Project, based on one vote for each mortgage, shall be required before the Project may be abandoned or termination provided by 1a in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain.

OFFICERS' CONSENT AND ACKNOWLEDGEMENT ON FOLLOWING PAGE

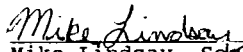
TRUSTEES' CONSENT

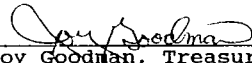
On this <sup>22</sup>~~21~~ day of <sup>MARCH</sup>~~February~~ 1989, the undersigned trustees of Peachtree Estates Condominium Owners Association, Inc., as trustees, do hereby consent to and execute these Bylaws in accordance with the provisions of the Utah Nonprofit Corporation and Co-operative Association Act.

  
 Alan B. Sevison, President

  
 Alan G. Leal, Vice President

  
 Dave Crowther, Vice President

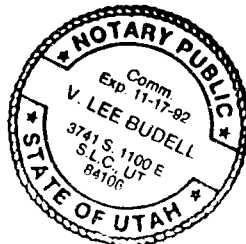
  
 Mike Lindsay, Secretary

  
 Joy Goodman, Treasurer

ACKNOWLEDGMENT

STATE OF UTAH )  
 : SS  
 COUNTY OF UTAH)

On the <sup>22nd</sup> day of March, 1989, personally appeared before me the above-named individuals as trustees of Peachtree Estates Condominium Owners Association, each of whom being duly sworn did say that he is a trustee of Peachtree Estates Condominium Owners Association, Inc., and that the foregoing instrument was signed pursuant to a resolution of the Board of Trustees of said Association and that the Association executed the same as its official act.



  
 Notary Public

EXHIBIT "D"  
TO  
AMENDED AND RESTATED DECLARATION OF  
COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS  
ESTABLISHING A PLAN OF OWNERSHIP FOR  
PEACHTREE ESTATES, A CONDOMINIUM DEVELOPMENT (EXPANDABLE)

ALLOCATION OF UNDIVIDED OWNERSHIP INTEREST

<u>Building and Unit Designation</u>	<u>Phase</u>	<u>Unit Description</u>	<u>Percentage Interest</u>
927 South 200 West #1	I	A	2.083
927 South 200 West #2	I	C	2.083
927 South 200 West #3	I	B	2.083
927 South 200 West #4	I	C	2.083
927 South 200 West #5	I	B	2.083
927 South 200 West #6	I	A	2.083
933 South 200 West #7	I	A	2.083
933 South 200 West #8	I	C	2.083
933 South 200 West #9	I	B	2.083
933 South 200 West #10	I	A	2.083
939 South 200 West #11	I	A	2.083
939 South 200 West #12	I	C	2.083
939 South 200 West #13	I	B	2.083
939 South 200 West #14	I	C	2.083
939 South 200 West #15	I	B	2.083
939 South 200 West #16	I	A	2.083
945 South 200 West #17	I	C	2.083
945 South 200 West #18	I	B	2.083
945 South 200 West #19	I	C	2.083
945 South 200 West #20	I	A	2.083
936 South 200 West #21	I	A	2.083
936 South 200 West #22	I	C	2.083
936 South 200 West #23	I	A	2.083
936 South 200 West #24	I	B	2.083
936 South 200 West #25	I	C	2.083
936 South 200 West #26	I	A	2.083
966 South 200 West #1	II	A	2.083
968 South 200 West #2	II	A	2.083
974 South 200 West #3	II	A	2.083
976 South 200 West #4	II	A	2.083
986 South 200 West #5	II	A	2.083
988 South 200 West #6	II	A	2.083
238 West 1020 South #7	II	A	2.083
236 West 1020 South #8	II	A	2.083

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224 West 1020 South #9	II	A	2.083
222 West 1020 South #10	II	A	2.083
994 South 200 West #11	II	A	2.083
992 South 200 West #12	II	A	2.083
237 West 1020 South #1	III	D	2.083
237 West 1020 South #2	III	D	2.083
237 West 1020 South #3	III	D	2.083
237 West 1020 South #4	III	D	2.083
1072 South 200 West #5	III	D	2.083
1072 South 200 West #6	III	D	2.083
1072 South 200 West #7	III	D	2.083
1048 South 200 West #8	III	D	2.083
1048 South 200 West #9	III	D	2.083
1048 South 200 West #10	III	D	2.083

CONSENT OF OWNERS

The following Owners hereby consent to the foregoing Amended and Restated Declaration of Covenants, Easements, Conditions and Restrictions of Peachtree Estates Condominiums and collectively comprise at least sixty-seven percent (67%) of the total votes of the Association as required in the Original Declaration:

OWNER(S)	PHASE	Unit NO.	VOTES
<u>Alan B. Sevison</u> Alan B. Sevison	I	1	1
<u>Dixie R. Sevison</u> Dixie R. Sevison			
<u>Leticia Y. Leal</u> Leticia Y. Leal	I	4	1
<u>Alan G. Leal</u> Alan G. Leal			
<u>Susan Lee Chrysler</u> Susan Lee Chrysler	I	6	1
<u>Ila Kump</u> Ila Kump	I	7	1
<u>Gary B. Brown</u> Gary B. Brown	I	8	1
<u>Jacqueline W. Brown</u> Jacqueline W. Brown			
<u>Rochelle Blumel</u> Rochelle Blumel	I	9	1
<u>Joy V. Goodman</u> Joy V. Goodman	I	10	1
<u>Craig von Wright</u> Craig von Wright	I	11	1
<u>Karla Wright</u> Karla Wright			
<u>H. Jeffrey Blum</u> H. Jeffrey Blum	II	9	1

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CONSENT OF OWNERS  
Page 2

<u>Michael D. Lindsay</u> Michael D. Lindsay	)	I	12	1
<u>Lisa Lindsay</u> Lisa Lindsay	)			
<u>A. Paul Lyman</u> A. Paul Lyman	)	I	18	1
<u>Barbara A. Lyman</u> Barbara A. Lyman	)			
<u>Michael Jones</u> Michael Jones	)	I	19	1
<u>Lisabeth Jones</u> Lisabeth Jones	)			
<u>Bill Wren</u> Bill Wren	)	I	20	1
<u>Sharyl Bean Wren</u> Sharyl Bean Wren	)			
<u>Jay M. Williams</u> Jay M. Williams	)	I	21	1
<u>Christine Milligan</u> Christine Milligan	)	I	22	1
<u>Ernest M. Brenner</u> Ernest M. Brenner	)	I	23	1
<u>Patricia S. Brenner</u> Patricia S. Brenner	)			
<u>Andrew T. Staples</u> Andrew T. Staples	)	I	24	1
<u>Seija S. Staples</u> Seija S. Staples	)			



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CONSENT OF OWNERS  
Page 3

<u>Donald D. Bliss</u> Donald D. Bliss	)			
<u>Laurel B. Bliss</u> Laurel B. Bliss	)	I	25	1
<u>David T. Crowther</u> David T. Crowther	)			
<u>Tammi J. Crowther</u> Tammi J. Crowther	)	I	26	1
<u>Eric L. Rutland</u> Eric L. Rutland	)			
<u>Sharlene M. Rutland</u> Sharlene M. Rutland	)	II	3	1
<u>Randy J. Borchardt</u> Randy J. Borchardt	)			
<u>Maria A. Borchardt</u> Maria A. Borchardt	)	II	5	1
<u>Christopher B. Adams</u> Christopher B. Adams	)			
<u>Kathy L. Adams</u> Kathy L. Adams	)	II	6	1
<u>Barbara Morrell</u> Barbara Morrell	)			
<u>Bradley T. Burr</u> Bradley T. Burr	)			
<u>Cynthia K. Burr</u> Cynthia K. Burr	)	II	8	1

CONSENT OF OWNERS  
Page 4

Carole Irene Sheeley  
Carole Irene Sheeley

II 10 1

Sylvia J. Wilcox  
Julia Wilterwood  
Julia Wilterwood

II 11 1

Harold R Perkins

Harold R. Perkins  
Ingrid Perkins  
Ingrid Perkins

III 1 1

Bryce C. Nelson Construction, Inc.

By: Bryce C. Nelson  
Bryce C. Nelson, President

I 5, 13 )  
I 14, 17 )  
III 19, 2, 3 ) 27  
III 4, 5, 6 )  
III 7, 8, 9 )

TOTAL VOTES 51

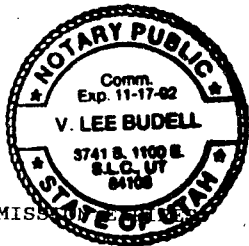
DATED AS OF 20th MARCH, 1989.

ACKNOWLEDGEMENTS ON FOLLOWING PAGE

ACKNOWLEDGMENTS

STATE OF UTAH )  
                  : SS.  
COUNTY OF UTAH )

I, the undersigned, a Notary Public, hereby certify that on the 20<sup>th</sup> day of March, 1989, personally appeared before me each of the above-named Owners, who, being by me first duly sworn, severally declared that they were the persons who signed the foregoing Consent of Owners as Owners and that the statements therein contained are true.

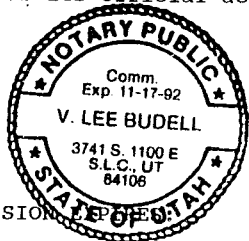


*V. Lee Buell*  
\_\_\_\_\_  
NOTARY PUBLIC  
RESIDING IN UTAH COUNTY  
STATE OF UTAH

MY COMMISSION

STATE OF UTAH )  
                  : SS  
COUNTY OF UTAH)

I, the undersigned, a Notary Public, hereby certify that on the 20<sup>th</sup> day of March, 1989, personally appeared before me Bryce C. Nelson, who being duly sworn did say that he is the President of Bryce C. Nelson Construction, Inc. and that the foregoing instrument was signed pursuant to a resolution of the Board of Directors of said Corporation and that the Corporation executed the same as its official act.



*V. Lee Buell*  
\_\_\_\_\_  
NOTARY PUBLIC  
RESIDING IN UTAH COUNTY  
STATE OF UTAH

MY COMMISSION

CONSENT OF MORTGAGEES

The following Mortgagees hereby consent to the foregoing Amended and Restated Declaration of Covenants, Easements, Conditions and Restrictions of Peachtree Estates and collectively comprise at least fifty-one percent ( 51% ) of the votes of Units that are subject to Mortgages as required in the Original Declaration:

<u>MORTGAGEE</u>	<u>PHASE</u>	<u>UNIT No.</u>	<u>VOTES</u>
First Security Bank of Utah, N.A.	I	5, 14, 17, )	} 34
	I	10, )	
	II	3, 5, 12, )	
	III	2, 3, 4, )	
	III	5, 6, 7, )	
	III	8, 9, 10, )	
By: <u>Frank Leifson</u> Frank Leifson, Vice Pres, Regional Supv.			

Dated as of 21 March 1989

ACKNOWLEDGMENT

STATE OF UTAH )  
: SS  
COUNTY OF UTAH.)

I, the undersigned, A Notary Public, hereby certify that on the 21st day of March, 1989, personally appeared before me, Mr. Frank Leifson, who being duly sworn did say that he is the Vice President of First Security Bank of Utah, N.A., and that the foregoing instrument was signed pursuant to a resolution of the Board of Directors of said Corporation and that the Corporation executed the same as its official act.

Zoetta Papman  
NOTARY PUBLIC  
RESIDING IN UTAH COUNTY  
STATE OF UTAH

MY COMMISSION EXPIRES:

8/20/89

7295

