

CROSS REFERENCE

GEORGIA, FULTON COUNTY
Filed and Recorded
01/10/1997 03:05P
JUANITA HICKS
Clerk, Superior Ct

R. MANSELL McCORD, JR.
Attorney At Law
POST OFFICE BOX 56149
ATLANTA, GEORGIA 30343-0149

Return to:

STATE OF GEORGIA
COUNTY OF FULTON

CROSS REFERENCE: Deed Book 7768
Page 163

AMENDMENT TO THE DECLARATION OF CONDOMINIUM FOR
PEACHTREE TOWERS, A CONDOMINIUM

WHEREAS, the Declaration of Condominium for Peachtree Towers, A Condominium was recorded on February 9, 1981, in Deed Book 7768, Page 163, et seq., Fulton County, Georgia Records ("Declaration"); and

WHEREAS, the Declaration has been previously amended by amendments recorded in the Fulton County, Georgia records as follows:

<u>Recording Date</u>	<u>Deed Book/Page</u>
July 28, 1981	7910/ 13, <u>et seq.</u> ;
November 27, 1989	12985/244, <u>et seq.</u> ;
November 27, 1989	12985/247, <u>et seq.</u> ;
June 26, 1990	13505/304, <u>et seq.</u> ;
October 5, 1990	13756/010, <u>et seq.</u> ;
June 5, 1995	19630/221, <u>et seq.</u> ; and

WHEREAS, Article VIII, Section 1 of the Declaration provides for amendment of the Declaration by the assent of owners of units to which at least two-thirds (2/3) of the votes in the Peachtree Towers Condominium Association, Inc. ("Association") pertain; and

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

WHEREAS, this amendment is not material with respect to first mortgagees in that it does not materially and adversely affect the security title or interest of any first mortgagee; provided, however, in the event a court of competent jurisdiction determines that this amendment does materially and adversely affect the security title or interest of any first mortgagee without such first mortgagee's consent to this amendment, then this amendment shall not be binding on the first mortgagee so involved, unless such first mortgagee consents to this amendment; and if such consent is not forthcoming, then the provisions of the Declaration prior to this amendment shall control with respect to the affected first mortgagee;

NOW THEREFORE, the Declaration of Condominium for Peachtree Towers, A Condominium is hereby amended as follows:

1.

Article II, Section 11 of the Declaration shall be amended by deleting that section in its entirety and substituting the following therefor:

Section 11. Upkeep of the Condominium

(a) By the Owner. Supplementing the provisions of the Georgia Condominium Act (O.C.G.A. § 44-3-75) and except to the extent otherwise provided in subsection 11(b) below, each owner shall have the obligation to maintain and keep in good repair all portions of his or her unit and all limited common elements assigned to his or her unit. This maintenance responsibility shall include, but not be limited to the following: maintenance, repair and replacement of the air conditioning unit serving the unit; maintenance, repair and replacement of any and all pipes, lines, conduits, or other apparatus which serve only the unit, whether located within or without a unit's boundaries (including all gas, electricity, water, sewer, or air conditioning pipes, lines, ducts, conduits, or other apparatus serving only the unit); maintenance of the balcony area in a neat, clean and sanitary condition and maintenance and repair of the locks that are a part of the entry system of the unit. All maintenance, repair, renovation, restoration and replacement of such specialized equipment, if any, as may be located within the common elements in accordance with Section 10 of this Article shall be the responsibility of the respective commercial unit owners and not the responsibility of the Association. Except to the extent otherwise provided below, each owner shall maintain all parts of the unit and all limited common elements assigned to his unit. The owner or occupant shall promptly report to the Association or its agent any defect or need for repairs, for which the Association is or may be responsible.

The unit owners may contract with the Association for maintenance of the unit interior or limited common elements which are the maintenance responsibility of the unit owner as provided herein.

(b) By the Association. The Association shall maintain and keep in good repair as a Common Expense the "Area of Common Responsibility," which includes all common elements and portions of the units and limited common elements as provided in this subsection. The Area of Common Responsibility shall include, but not be limited to maintenance, repair, replacement and improvement of the following: exterior surfaces of the building, roofs and roof supports; exterior glass surfaces, windows, window frames and casings (including exterior windows enclosing commercial units); all doors, doorways, door frames, and hardware that are part of the entry system of the unit (excluding maintenance and repair of locks, painting of the interior surfaces of doors and maintenance and repair of the doors from the commercial units to the area outside the building); the balconies or any other structural components of the condominium which are limited common elements (except as provided in subsection 11(a) above); all common corridors and passageways, lobbies, stairs, stairways, elevators and shafts, and entrances to and exits from the building (excluding exits from commercial units); maintenance of the boiler which provides heat to

the units and all mechanical, electrical and plumbing elements and equipment serving more than one unit except as provided in subsection (a). Except to the extent that insurance required to be maintained or maintained by the Association covers any damage or loss and except as otherwise provided herein, the Association shall not be responsible for any maintenance or repair to any unit or to any limited common element.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the common elements by an owner or occupant which is the responsibility of the Association hereunder shall be performed at the sole expense of such owner or occupant, and the owner or occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the owner of any unit, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the common elements or from any pipe, drain, conduit, appliance or equipment or other property which the Association is responsible to maintain hereunder. The Association shall not be liable to any owner, or any owner's occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this subsection where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

The Association shall repair incidental damage to any unit resulting from performance of work or negligent failure to perform work which is the responsibility of the Association.

In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board.

2.

Article II, Section 12 of the Declaration shall be amended by deleting that section in its entirety and renumber Section 13 as Section 12 and Article III, Section 2 shall be amended by deleting the third sentence of that section regarding convertible space. Exhibit "C" shall be amended by deleting the last two paragraphs of that exhibit regarding convertible space and incorporating the information regarding the second floor space in Exhibit "B" to the amendment to

the Declaration recorded in Deed Book 7910, Page 18 of the Fulton County, Georgia records. Exhibit "C" shall be further amended by adding the following thereto:

Commercial Space:

The areas shown on the plats as CS1, CS2, CS3, CS4 and CS5 having a total area of approximately 14,403 square feet.

Also, Exhibit "D" shall be amended by deleting the reference to convertible space from that exhibit and substituting the information set forth on Exhibit "B" to the amendment to the Declaration recorded in Deed Book 7910, Page 18 of the Fulton County, Georgia records.

3.

Article IV, Section 1 shall be amended by adding the following before the last sentence of that section:

Such amounts shall also be the personal obligation of the person who was the owner of such unit at the time when the assessment fell due. Each owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance.

4.

Article IV, Section 2 shall be amended by adding the following subsection (c) thereto:

; and (c) which benefit less than all of the units except for expenses which are the maintenance responsibility of the Association.

5.

Article IV, Sections 3 and 4 shall be amended by deleting those sections in their entirety and substituting therefor the following:

Section 3. Routine and Extraordinary Common Expenses. Each owner of a unit shall be liable for and shall pay a share, on the basis of the allocation made as provided in Section 4(b) of this Article IV, of the routine and extraordinary common expenses not specially assessed. Routine common expenses shall include all charges for taxes (except ad valorem taxes and other such taxes specially assessed separately on each condominium unit or on the property or any other interest of the unit owner), insurance (including fire and other casualty and liability insurance), wages, accounting fees, legal fees, management fees, and other current expenses for upkeep, maintenance and management actually incurred by the Association, the costs of current operation of the common elements, and the current costs of and a reserve for maintenance, repair and replacement of the common elements, which reserve shall be replaced on a periodic basis payable in regular installments rather than by extraordinary assessments and all similar current expenses of the Association. Extraordinary common expenses shall include all long-term

expenditures for the repair, replacement or refurbishment of, or any addition to, the common elements, including specifically, but not limited to all expenditures for capital improvements which, but for the Association's exemption from income taxation under §528 of the Internal Revenue Code of 1986, as amended, would be required under such Code (other than \$179 thereof) to be deducted over a period in excess of one year. Notwithstanding the foregoing regularly scheduled expenditures from Capital Reserve (as that term is defined in Section 8 of this Article IV) shall be deemed to be routine rather than extraordinary expenses to the extent that such expenditure can be accomplished within the respective amounts reserved therefor.

Section 4. Allocation of Liability for Common Expenses. For the purpose of determining the assessments for routine common expenses to be made as hereinabove provided, the Board of Directors shall determine for each year, as soon as practicable but prior to the beginning of such year, the estimated aggregate amount of routine common expenses for such year together with the resulting annual assessments determined pursuant to Section 4(b) hereunder. Any increase in the annual assessment in excess of the increase in the Consumer Price Index may be disapproved by a majority of the total Association vote. For the purposes of such determination, each year shall be the calendar year. Assessments for the estimated amount of common expenses for each year, as determined by the Association, shall be allocated and assessed by the Association as follows:

(a) The estimated common expenses to be specially assessed shall be allocated to and assessed equitably among the units in proportion to the benefits of the related services provided to such units as may be determined by the Board of Directors or such person or persons as may be selected by the Board of Directors for such purpose.

(b) The estimated routine common expenses not specially assessed shall be allocated to and assessed among the units as set forth in Exhibit "D" attached hereto.

(c) Assessments for extraordinary expenditures shall be proposed by the Board of Directors, from time to time as the necessity arises, and shall be presented to the unit owners for approval at any regular or special meeting of the unit owners or by written consent. Any assessment for an extraordinary expenditure in excess of \$200.00 shall be made in accordance with O.C.G.A. § 44-3-82(g) (1) and requires the approval of a majority of the unit owners.

6.

Article IV shall be further amended by adding a new Section 8 thereto which shall read as follows:

Section 8. Reserve Budget. The Board shall prepare an annual reserve budget for maintenance and capital expenditures which takes into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required contribution to the capital reserve and the maintenance reserve, if any, in an amount sufficient to permit meeting the Association's projected needs both as to amount and timing by equal annual assessments over the period of the budget. Any required reserve contribution shall be included within the budget and assessment as provided in Section 4 above. Separate

books of account shall be maintained for the maintenance and the reserve accounts and shall reflect a separate account segregated by each item reserved and shall indicate a cumulative total for each item. No expenditure may be made from a reserve account other than for the specific item reserved for unless: (a) provision is made by the Board of Directors for replacement of the reserve; or (b) owners holding two-thirds of the votes present in person or by proxy at a duly called meeting have approved the expenditure.

7.

Article VII, Section 1 shall be amended by deleting the first four sentences of that section and substituting therefor the following:

Each Residential Unit shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Residential Unit, including business uses ancillary to a primary residential use, except that the owner or occupant residing in a Residential Unit may conduct such ancillary business activities within the unit so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the unit; (b) the business activity does not involve visitation of the unit by employees, clients, customers, suppliers or other business invitees; (c) the business activity conforms to all zoning requirements for the condominium; (d) the business activity does not increase traffic in the condominium (other than by deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services); (e) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage; (f) the business activity is consistent with the residential character of the noncommercial portion of the condominium and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the condominium, as may be determined in the sole discretion of the Board; and (g) the business activity does not result in a materially greater use of common element facilities or Association services.

The terms "business" and "trade," as used herein, shall have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Leasing of Residential Units otherwise in compliance with the Declaration shall not be considered a business in violation of this Section.

8.

Article VII shall be further amended by adding new Sections 15 and 16 which shall read as follows:

Section 15. Limitation on Ownership of Units. No person, corporation, trust, partnership, any other entity or related entity shall be permitted to own more than ten (10) units at any one time.

- 6 -

In addition, no person or entity who owns a unit or units in the condominium and who is delinquent in payment of assessments or other charges on unit(s) owned shall have the right to acquire another unit(s) in the condominium so long as such owner remains delinquent in payment of any assessment due the Association for any unit(s) owned.

Section 16. Architectural Controls. No alteration of any common elements (including the limited common elements), or any additions or improvements thereto shall be made by any unit owner, occupant, or their agents, or any other person without the prior written approval of the Board. All requests shall be subject to the Declaration and procedures established by the Board. In addition, no unit owner, occupant, their agents or any other person may make any addition, alteration or improvement within a unit or a limited common element which affects the structural integrity of the unit or other portion of the condominium or which involves connecting to common element pipes, lines, conduits and/or other apparatus without first obtaining the written approval of the Board or its designee. As a condition of approval, an owner on behalf of himself and his successors in interest, shall assume all responsibilities for maintenance, repair, replacement and insurance of anything added pursuant thereto. All applications shall include detailed plans and specifications showing the nature, kind, shape, and height of proposed changes and materials to be used and such other information as may be specifically required in the procedures established by the Board. All building code requirements must be complied with.

In the event that the Board fails to approve or disapprove an application and plans for alterations, additions or improvements within forty-five (45) days after receipt of all information and materials reasonably requested by the Board, the application shall be deemed approved. Requests by the Board or its designee for modifications to submitted plans or specifications shall be deemed to be a disapproval of the plans as submitted. Revised plans shall be subject to review and approval as provided above. After the final plans and specifications have been approved, no changes to the approved plans may be made without the prior written consent of the Board and all alterations, additions, or improvements shall be made in strict compliance with the approved plans.

Nothing herein shall require the Board or its designee to approve any requested architectural change; provided, however, if the Board elects to approve a requested alteration, addition or improvement, the Board may require the unit owner to verify that the conditions of this Section 16 have been met and the Board and/or its designee shall have the right to inspect the addition, alteration or improvement during and after construction to ensure that there has been no interference with access to the common elements or portions of the unit for which the Association has maintenance responsibility. In addition, the unit owner may be required to verify such conditions of approval by recordable instrument acknowledged by such unit owner on behalf of himself and his successors-in-interest.

Notwithstanding any other provision of this Section 16, no decision of the Board or its designee shall be interpreted as a determination with respect to compliance with any building code, regulation or ordinance, or any other code, regulation, ordinance or law, nor shall any decision under this Section be interpreted as a certification as to the structural integrity of any proposed alteration, addition or improvement.

No decision by the Board or its designee shall constitute a binding precedent with respect to subsequent decisions of the Board or its designee.

9.

Article VIII, Section 1 shall be amended by adding the following thereto:

In addition to the above, material amendments to this Declaration must be approved by eligible mortgage holders (those holders of a first mortgage on a unit who have submitted a written request that the Association notify them on any proposed action requiring the consent of a specified percentage of eligible mortgage holders) who represent at least fifty-one (51%) percent of the votes of units that are subject to mortgages held by eligible mortgage holders. Notwithstanding the above, the approval of any proposed amendment by an eligible mortgage holder shall be deemed implied and consented to if the eligible mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the eligible mortgage holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

10.

Article VIII, Section 4, shall be amended by deleting that section in its entirety and substituting therefor the following:

Section 4. Rights of First Mortgagees.

(a) Unless at least two-thirds (2/3) of the first mortgagees or unit owners give their consent, the Association or the membership shall not:

i) by act or omission seek to abandon or terminate the condominium;

ii) change the pro rata interest or obligations of any individual unit for the purpose of (1) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (2) determining the pro rata share of ownership of each unit in the common elements;

iii) partition or subdivide any unit;

iv) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the common elements (the granting of easements or licenses or the entering of leases, as authorized herein, shall not be deemed a transfer within the meaning of this clause); or

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

The provisions of this subsection shall not be construed to reduce the percentage vote that must be obtained from mortgagees or unit owners where a larger percentage vote is otherwise required by the Act or the condominium Instruments for any of the actions contained in this Section.

(b) Where the mortgagee holding a first mortgage of record or other purchaser of a unit obtains title pursuant to judicial or nonjudicial foreclosure of the first mortgage, it shall not be liable for the share of the common expenses or assessments by the Association chargeable to such unit which became due prior to such acquisition of title. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from owners of all the units, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.

(c) Upon written request to the Association, identifying the name and address of the holder and the unit number or address, any eligible mortgage holder will be entitled to timely written notice of:

i) any condemnation loss or any casualty loss which affects a material portion of the condominium or any unit on which there is a first mortgage held by such eligible mortgage holder;

ii) any delinquency in the payment of assessments or charges owed by an owner of a unit subject to a first mortgage held by such eligible mortgage holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual owner of any other obligation under the condominium Instruments which is not cured within sixty (60) days;

iii) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

iv) any proposed action which would require the consent of a specified percentage of eligible mortgage holders, as specified herein.

(d) Any holder of a first mortgage shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the mortgagee so requesting.

(e) Notwithstanding anything to the contrary herein contained, no provision of this Declaration governing sales and leases shall apply to impair the right of any first mortgagee to: (i) foreclose or take title to a unit pursuant to remedies contained in its mortgage; (ii) take a deed or assignment in lieu of foreclosure; or (iii) sell, lease, or otherwise dispose of a unit acquired by the mortgagee.

11.

Article VIII shall be amended by adding new Sections 12 and 13 which shall read as follows:

Section 12. Security. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety in the condominium; however, each owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to

provide security in the condominium. It shall be the responsibility of each owner to protect his or her person and property, and all responsibility to provide such security shall lie solely with each unit owner.

The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or the ineffectiveness of safety measures undertaken.

Section 13. Dispute Resolution. Prior to filing a lawsuit against the Association, the Board, or any officer, director, or property manager of the Association, a unit owner or occupant must request and attend a hearing with the Board. Any such request shall be in writing and shall be personally delivered to the President or Secretary of the Board or the property manager, if any, of the Association. The owner or occupant shall, in such request and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the owner's or occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. Written notice of the hearing shall be sent to the owner or occupant by certified mail, return receipt requested. The hearing shall be set at a reasonable location, time and date (which shall be at least ten (10) days from the giving of the notice and not more than thirty (30) days from the date of receipt of the request, unless otherwise consented to by the owner or occupant).

12.

A new article was added to the Declaration by that amendment recorded on October 5, 1990 in the Fulton County Records. That amendment specifies that a new Article IX is being added to the Declaration regarding rental management; however, the text of the amendment is labeled Article VIII. The article titled "Rental Management" is amended to correct the title to Article IX. The Declaration shall also be amended by changing all statutory references to the Georgia Condominium Act from Ga. Code Ann. references to the Official Code of Georgia references and by deleting all references to the rights and duties of the Declarant and by capitalizing all defined terms throughout the Declaration.

13.

The Declaration shall be amended by restating the Declaration in its entirety to include all amendments approved by the members as of the date this amendment is recorded in the Fulton County, Georgia records.

IN WITNESS WHEREOF, the undersigned officers of Peachtree Towers Condominium Association, Inc., hereby certify that the above Amendment to the Declaration was duly adopted by the required majority of the Association and its membership.

This 31st day of December, 1996.

PEACHTREE TOWERS CONDOMINIUM
ASSOCIATION, INC.

By: [Signature] [SEAL]
President

Attest: [Signature] [SEAL]
Secretary

[CORPORATE SEAL]

Sworn to and subscribed to
before me this 31st day of
December, 1996.



[Signature]
Witness

[Signature]
Notary Public

My Commission Expires:

7/97

[NOTARY SEAL]