



*Emerald Way Condominium Association*

DECLARATION OF CONDOMINIUM

BY-LAWS AND AMENDMENTS

DECLARATION OF CONDOMINIUM

EMERALD WAY CONDOMINIUM  
Southeast Corner of Strahle and Horrocks Streets  
County and City of Philadelphia  
Commonwealth of Pennsylvania

THIS DECLARATION is made this 5<sup>th</sup> day of *OCTOBER*, 1981, by EMERALD WAY CONDOMINIUM JOINT VENTURE, a partnership, as the owner in fee simple of the real estate herein described.

W I T N E S S E T H :

ARTICLE 1

SUBMISSION

1.1. Declarant; Property; Name; County: Emerald Way Condominium Joint Venture, a partnership (the "Declarant"), owner in fee simple of the Real Estate described in Exhibit "A" attached hereto, located in the 56th Ward of the City and County of Philadelphia, Commonwealth of Pennsylvania, hereby submits the Real Estate, including all easements, rights and appurtenances thereunto belonging, and the Buildings and improvements erected thereon (collectively, the "Property") to the provisions of the Pennsylvania Uniform Condominium Act, 68 PA. C.S. §3101 et. seq. (the "Act"), and hereby creates with respect to the Property a condominium, to be known as "Emerald Way Condominium" (the "Condominium").

1.2. Easements and Licenses: Included among the easements, rights and appurtenances referred to in Section 1.1 above, are the following easements and licenses and the Real Estate is hereby submitted to the Act:

a. SUBJECT TO rights granted to Philadelphia Electric Company and Bell Telephone Company in Deed Book MLS 421, page 381.

b. SUBJECT TO the covenants and restrictions set forth in Deed book CAD 902, page 230.

c. SUBJECT TO rights granted to Bell Telephone Company in Deed Book PLMcS 423, page 95.

## ARTICLE 2

### DEFINITIONS

2.1. Terms Defined or Used in the Act: Capitalized terms not otherwise defined herein or in the Plats and Plans shall have the meanings specified or used for such terms in §3103 or elsewhere in the Act, unless otherwise defined herein.

2.2 Specifically Defined Terms: The following terms are used or defined in general terms in the Act and shall have specific meanings herein as follows:

a. "Association" means the Unit Owners' Association of the Condominium and shall be known as "Emerald Way Condominium Association."

b. "Buildings" means any buildings included in the Property.

c. "Condominium" means the Condominium described in Section 1.1 above.

d. "Declarant" means the Declarant described in Section 1.1 above and all successors to any Special Declarant Rights.

e. "Declaration" means this document, as the same may be amended from time to time.

f. "Executive Board" or "Board" means the Executive Board of the Association.

g. "Limited Common Elements" means (i) the Common Elements described as such in the Act; (ii) the following Common Elements which shall be appurtenant to all Units within the particular Building in which they are located: the utility room, laundry room, stairs, halls and basements, as shown on the Plats and Plans; and (iii) the patios, each of which shall be appurtenant to the Unit to which it is adjacent.

h. "Limited Expenses" means the expenses described as such in Section 3314(c) of the Act as modified in Section 3.3 of this Declaration.

i. "Plats and Plans" means the Plats and Plans attached hereto and made a part hereof, as the same may be amended from time to time.

j. "Property" means the Property described in Section 1.1 above.

2.3. Non-Statutory Terms Defined: The following terms when used herein or in the Plats and Plans shall have the meanings set forth below:

a. "Percentage Interest" means each Unit Owner's undivided ownership interest in the Common Elements, share of surplus funds to be credited to Unit Owners and share of Common Expense Liability appurtenant to each Unit as set forth in Exhibit "B" attached, as the same may be amended from time to time.

b. "Permitted Mortgage" means a first mortgage to (i) the Declarant; (ii) the seller of a Unit; (iii) a bank, trust company, savings bank, savings and loan association, mortgage service company, insurance company, credit union, pension fund, or like institutional investor or lender; and (iv) any other mortgage approved by the Executive Board. "Permitted Mortgage" also means a second mortgage to the seller of a Unit or any mortgage from the Declarant. A holder of a Permitted Mortgage is referred to herein as a "Permitted Mortgagee."

c. "Reserved Common Elements" means portions of the Common Elements which the Executive Board may designate as such from time to time pursuant hereto or are designated as such herein.

### ARTICLE 3

#### UNIT IDENTIFICATION; BOUNDARIES; MAINTENANCE RESPONSIBILITIES

3.1. Plats and Plans; Units/Common Elements: The location and dimensions of the Buildings and the other improvements comprising the Property are shown on the Plats attached hereto and the location of Units, certain Common Elements and Limited Common Elements of the Condominium are shown on the Plans attached hereto. The Condominium will initially consist of 86 Units as follows:

<u>Building</u>	<u>2 Bedroom Townhouse</u>	<u>Deluxe</u>		<u>Deluxe</u>	
		<u>1 Bedroom Single Level</u>	<u>1 Bedroom Single Level</u>	<u>2 Bedroom Single Level</u>	<u>2 Bedroom Single Level</u>
A	18	-	-	-	-
B	-	10	2	10	2
C	2	10	2	-	-
D	4	-	-	10	2
E	2	10	2	-	-
	26	30	6	20	4

3.2. Unit Title Lines: The title lines or boundaries of each Unit are situated as shown on the Plats and Plans and described as follows: all perimeter walls, floors, ceilings, doors and windows within or comprising part of each Unit. Each Unit shall also consist of all spaces, interior partitions and other fixtures and improvements within the title lines

described above. Each Unit shall include the items within the title lines described in paragraphs (1) and (3) of §3202 of the Act which are appurtenant to the Unit.

3.3. Maintenance Responsibilities: Notwithstanding the ownership of the various portions of the Common Elements and the Units by virtue of the foregoing boundary descriptions, the Units and Common Elements shall be maintained and repaired by each Unit Owner and by the Association in accordance with the provisions of §3307 of the Act, except as expressly set forth to the contrary herein. All Common Expenses associated with the maintenance, repair and replacement of a Limited Common Element and the appliances, machinery and equipment therein or thereon shall be assessed against all Units in the same proportion as the Percentage Interests of all Units in the Condominium.

3.4. Relocation of Unit Boundaries; Subdivision and Conversion of Units: Relocation of boundaries between Units and subdivision or conversion of Units will be permitted subject to compliance with the provisions therefor in §§3214 and 3215 of the Act. Subdivision or conversion of Units by the Declarant pursuant to §3215(c) of the Act will not result in more than an aggregate of 86 Units in the Condominium. Exercise of these rights shall require prior written approval of all Permitted Mortgagees.

#### ARTICLE 4

##### DECLARANT'S RIGHTS

Control: (a) Until the 60th day after conveyance of 21 Units to Unit Owners other than Declarant, Declarant shall have the right to appoint and remove any and all officers and members of the Executive Board. Declarant may not unilaterally remove any members of the Executive Board elected by Unit Owners other than Declarant.

(b) Not later than 60 days after conveyance of 21 Units to Unit Owners other than Declarant, two (40%) of the five members of the Executive Board shall be elected by Unit Owners other than Declarant.

(c) Not later than the earlier of (i) five (5) years after the date of recording of this Declaration or (ii) 180 days after 64 of the Units have been conveyed to Unit Owners other than the Declarant, all members of the Executive Board shall resign, and the Unit Owners (including Declarant to the extent of Units owned by Declarant) shall elect a new five member Executive Board.

ARTICLE 5

IDENTIFICATION OF UNITS; ALLOCATION OF PERCENTAGE INTERESTS AND VOTES

Attached as Exhibit "B" hereto is a list of all Units by their Identifying Numbers and the Percentage Interest appurtenant to each Unit. The Condominium consists of only residential Units. The Percentage Interest appurtenant to each Unit is a fraction, the numerator of which is the "size" of the particular Unit and the denominator of which is the aggregate "sizes" of all Units located within the Condominium. The "size" of each Unit is the total number of square feet of floor space contained therein determined by reference to the dimensions shown on the Plats and Plans (exclusive of interior partitions). Each Unit is hereby allocated one (1) vote in the Association.

ARTICLE 6

DESCRIPTION, ALLOCATION AND RESTRICTION  
OF COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

6.1. Limited Common Elements: There are no portions of the Common Elements which may later be assigned as Limited Common Elements. Initial assignments or allocations are set forth in Section 2.2g above.

6.2. Designation of Reserved Common Elements: "Reserved Common Elements" are those portions of the Common Elements which the Executive Board may designate from time to time for use by less than all of the Unit Owners or by non-owners of any Units for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use as may be established by the Executive Board. Included in the Reserved Common Elements may be one Unit to be used as the residence of the Condominium manager, storage areas and such areas as the Executive Board may designate for any lawful use.

ARTICLE 7

EASEMENTS

Additional Easements: In addition to and in supplementation of the easements provided for by §§3216, 3217 and 3218 and the other provisions of the Act, the following easements are hereby created:

a. (1) Declarant shall have the right to maintain models, management offices and sales offices in any Units in the Buildings and to relocate such models, management offices

and sales offices from time to time anywhere within the Units in the Buildings.

(2) The models, sales offices and management offices maintained by the Declarant shall be in Units owned by the Declarant and not within the Common Elements.

b. Until the expiration of three (3) years after the completion of work required to be done by the Declarant pursuant to sales contracts for Units, the Declarant shall have an easement through the Units and the Common Elements for access or any other purpose necessary or desirable to complete any renovations or work to be performed by the Declarant.

c. The Units and Common Elements shall be, and are hereby, made subject to easements in favor of the Declarant, appropriate utility and service companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Property. The easements created in this Section 7.1.c. include, without limitation, rights of Declarant, or the providing utility or service company, or governmental agency or authority to install, lay, maintain, repair, relocate and replace gas line, pipes and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, television equipment and facilities (cable or otherwise); electrical wires, conduits and equipment and ducts and vents over, under, through, along and on the Units and Common Elements. Notwithstanding the foregoing provisions of this Section 7.1.c., unless approved in writing by the Unit Owner or Unit Owners affected thereby, any such easement through a Unit shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the Unit by the Declarant, or so as not to materially interfere with the use or occupancy of the Unit by its occupants.

## ARTICLE 8

### AMENDMENT OF DECLARATION

8.1. Amendment Generally: This Declaration may be amended only in accordance with the procedures specified in §3219 of the Act, the other Sections of the Act referred to in §3219 thereof and the express provisions of this Declaration.

8.2. Rights of Permitted Mortgagees: Subject to the limitations imposed by §3221 of the Act and except as set forth below, no amendment of this Declaration may be made without the prior written approval of all Permitted Mortgagees if and to the extent that such approval is required by the Act, or if and to the extent that such amendment is material or would have the effect of (i) terminating or abandoning the Condominium (except

for termination or abandonment as a result of a taking of all the Units by eminent domain); (ii) abandoning, encumbering, selling or transferring any or all of the Common Elements; (iii) partitioning or subdividing any Unit or the Common Elements or (iv) changing the Percentage Interests of any Unit Owners. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed to be a transfer within the meaning of this Section.

8.3. Rights of Declarant: No change, modification or amendment which affects the rights, privileges or obligations of the Declarant shall be effective without the prior written consent of the Declarant.

8.4. Other Amendments: If any amendment is necessary in the judgment of the Executive Board to cure any ambiguity or to correct or supplement any provision of this Declaration or the Plats and Plans which is defective or inconsistent with any other provision hereof or thereof or with the Act, or to change, correct or supplement anything appearing or failing to appear in the Plats and Plans which is incorrect, defective or similarly inconsistent, or if such amendment is necessary to conform to the then current requirements of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with respect to condominium projects, the Executive Board may, at any time and from time to time effect such amendment without the approval of the Unit Owners or Permitted Mortgagees, upon receipt by the Executive Board of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this sentence, together with a like opinion from an independent registered architect or licensed professional engineer in the case of any such amendment to the Plats and Plans. Each such amendment shall be effective upon the recording of an appropriate instrument setting forth the amendment and its due adoption, execution and acknowledgment by one or more officers of the Executive Board.

## ARTICLE 9

### USE RESTRICTIONS

9.1. Use and Occupancy of Units and Common Elements: The occupancy and use of the Units and Common Elements shall be subject to the following restrictions:

a. No part of the Property shall be used for other than housing and the related common purposes for which the Property was designed. Each Unit or any two or more adjoining Units used together shall be used as a residence for a single family or housekeeping unit or such other uses permitted by this Declaration and for no other purposes. Anything in the foregoing to the contrary notwithstanding, with the prior



consent of the Executive Board, portions of the Common Elements, may be used for any lawful commercial purposes, not inconsistent with applicable law, code or ordinance. If zoning regulations permit professional activities to be conducted within the Units, application may be made by a Unit Owner to the Executive Board for approval to commence such permitted use of his Unit. Each such application shall be considered by the Executive Board on an individual basis. Once the Executive Board has given its approval to a particular use of a Unit, it may not revoke such approval so long as the nature and scope of the approved use remains unchanged. No Unit Owner shall permit his Unit to be used or occupied for any prohibited purpose.

b. Except as set forth in subparagraph "a" above, no industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted on any part of the Property. Except for a single small, non-illuminated name sign on the door of a Unit, no signs, advertising or other displays shall be maintained or permitted on any part of the Property except at such location and in such form as shall be determined by the Executive Board. The right is reserved by the Declarant or its agent or agents to place "For Sale" or "For Rent" signs on any part of the Common Elements, and the right is hereby given to any Permitted Mortgagee, who may become the Owner of any Unit, to place such signs on any Unit owned by such Permitted Mortgagee. Anything in the foregoing or elsewhere in this Declaration to the contrary notwithstanding, the tenant of any commercial space may affix to the Common Elements signs advertising or identifying the business of the tenant of such commercial space pursuant to rules and regulations of the Executive Board. All such signs shall be maintained, repaired and replaced, as needed, by the tenant of the commercial space whose business is advertised or identified thereby.

c. There shall be no obstruction of the Common Elements nor shall anything be stored in the Common Elements without the prior consent of the Executive Board except as herein expressly provided. The use and the covering of the interior surfaces of windows, whether by draperies, shades or other items visible on the exterior of the Building, shall be subject to the rules and regulations of the Executive Board.

d. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on the Property, or contents thereof, applicable for residential use (and the possible commercial use of commercial space), without the prior written consent of the Executive Board, which consent may be conditioned upon the Unit Owner of such Unit being required to bear the full amount of such increase. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will violate any law, statute, ordinance or regulation of any governmental

body or which will result in the cancellation of any insurance maintained by the Executive Board. No waste shall be committed in the Common Elements.

e. Unit Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the Buildings or on the Property and no sign, awning, canopy, shutter, radio or television antenna (except as permitted by subparagraph "b" hereof, or except as installed as of the date this Declaration is recorded or as thereafter installed by the Declarant or the Executive Board) shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior written consent of the Executive Board. No air conditioning unit of whatever type other than those installed as of the date this Declaration is recorded or those thereafter installed by the Declarant may be installed without the prior written permission of the Executive Board.

f. No animals, livestock, fowl or poultry of any kind shall be raised, bred, or kept in any Unit or in the Common Elements, except that household pets including dogs or cats, may be kept in Units, subject to rules and regulations adopted by the Executive Board, which rules or regulations may exclude any kind of pet by type or category, provided that permitted household pets are not kept, bred, or maintained for any commercial purpose; and provided further that any such authorized pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days' written notice from the Executive Board. Pets owned by grantees of the Declarant who were residents of the Building on the date this Declaration is recorded and kept a pet in their apartment on such date may be kept in Units subject to the terms of this subparagraph, but once said pet dies, or is otherwise no longer kept in a Unit, the Unit Owner owning said pet may not replace it except as otherwise permitted hereunder.

g. No noxious or offensive activity shall be carried on in any Unit or in the Common Elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or occupants.

h. No clothes, sheets, blankets, laundry or other articles of any kind shall be hung out or exposed on any part of the Common Elements. The Common Elements shall be kept free and clear of rubbish, debris and other unsightly materials.

i. No benches, chairs or other personal property shall be left on, nor shall any playing, lounging, parking of baby carriages, playpens, bicycles, wagons, toys or vehicles be permitted on, any part of the Common Elements without the prior

consent of, and subject to any regulations of the Executive Board.

j. No Unit Owner shall overload the electric wiring in the Buildings, or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Executive Board, an unreasonable disturbance to others. Nor shall any Unit Owner connect any machine, appliance, accessory or equipment to the heating system or plumbing system without the prior written consent of the Executive Board. Installation, removal, reconstruction or repair of any electrical lighting and power circuit or electrical outlet box or terminal device included in such outlet box, or any item of heating or air conditioning equipment, any of which is located within an interior partition wall of a Unit; may be undertaken by the Unit Owner of such Unit only after application has been made to and written approval has been received from the Executive Board. Such approval shall be granted only if the work performed shall be of similar or superior quality to that present throughout the Buildings and shall be performed by qualified personnel. The cost of such installation, removal, reconstruction or repair whether undertaken by a Unit Owner or by the Executive Board (under the same procedures utilized for Common Elements) shall be borne by the Unit Owner of the Unit benefitted thereby.

k. This Article 9 shall not be construed to prevent or prohibit a Unit Owner from maintaining his personal professional library, keeping his personal business or professional records or accounts, or handling his personal business or professional telephone calls.

l. Reasonable Rules and Regulations, not in conflict with the provisions of this Declaration, concerning the use and enjoyment of the Property, may be promulgated from time to time by the Executive Board, subject to the right of the Association to change such Rules and Regulations. Copies of the then current Rules and Regulations and any amendments thereto shall be furnished to all Unit Owners by the Executive Board promptly after the adoption of such Rules and Regulations or any amendments thereto.

## ARTICLE 10

### RIGHTS OF PERMITTED MORTGAGEES

10.1. Reports and Notices: Upon the specific written request of a Permitted Mortgagee or its servicer to the Executive Board, the Permitted Mortgagee shall be entitled to receive some or all of the following as designated in the request:

a. Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Executive Board to the Owner of the Unit covered by the Permitted Mortgage;

b. Any audited or unaudited financial statements of the Association which are prepared for the Association and distributed to the Unit Owners;

c. Copies of notices of meetings of the Association and the right to be represented at any such meetings by a designated representative; notice of any proposed action which would require the consent of a specified percentage of Permitted Mortgagees;

d. Notice of the decision of the Association to make any material amendment to this Declaration;

e. Notice of substantial damage to or destruction of any Unit (in excess of \$2,000) or any part of the Common Elements (in excess of \$10,000);

f. Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Property;

g. Notice of any default of the owner of the Unit which is subject to the Permitted Mortgage, where such default is not cured by the Unit Owner within thirty (30) days after the giving of notice by the Association to the Unit Owner of the existence of the default;

h. The right to examine the books and records of the Association at any reasonable time;

i. Notice of any decision by the Executive Board to change from professional management to self-management of the Property, or vice versa; or

j. Notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

The request of a Permitted Mortgagee or its servicer shall specify which of the above items it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Executive Board. The Executive Board need not inquire into the validity of any request made by a Permitted Mortgagee hereunder.

Failure to comply with the requirements set forth above shall in no way invalidate otherwise proper actions of the Association and the Executive Board.

10.2 Condemnation and Insurance Proceeds: No provision of this Declaration shall give a Unit Owner, or any other party, priority over any rights of the Permitted Mortgagee(s) of a Unit pursuant to a Permitted Mortgagee(s) in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for loss to or a taking of one or more Units and/or Common Elements.

## ARTICLE 11

### REAL ESTATE TAXES

Real Estate Taxes: It is understood that real estate taxes are to be separately assessed and taxed to each Unit Owner for his Unit and its corresponding Percentage Interest in the Common Elements, as provided in the Act. For the year in which this Declaration is first recorded, real estate taxes shall be apportioned between Declarant and each Unit Owner on a calendar year basis. In the event that real estate taxes for any year are not separately assessed against each Unit Owner, but rather are assessed against the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective Percentage Interest in the Common Elements, and, in said event, such taxes shall be a Common Expense. The Executive Board shall have authority to advance Association funds in payment of all or a portion of such taxes pending receipt from the respective Unit Owners of their proportionate share thereof.

## ARTICLE 12

### EXECUTIVE BOARD POWERS

12.1. Powers. In addition to the powers set forth in the Act, the Executive Board shall have the following additional powers:

a. To appoint committees of the Board (which need consist of only one (1) Board Member) and to delegate to such committees the Executive Board's authority to carry out certain duties of the Executive Board, subject to the approval and control of the Executive Board.

b. To engage the services of a manager or managing agent, who may be any person, firm or corporation, upon such terms and compensation as the Executive Board deems fit, and to remove such manager or managing agent at any time.

c. To engage the services of any persons (including, but not limited to, accountants and attorneys) deemed necessary by the Executive Board at such compensation as is deemed reasonable by the Executive Board, in the operation, repair,

maintenance and management of the Property, or in connection with any duty, responsibility or right of the Executive Board and to remove, at any time, any such personnel.

d. To pay any amount necessary to discharge any mechanic's lien or other encumbrance levied against the Property or any part thereof which may in the opinion of the Executive Board constitute a lien against the Property or against the Common Elements, rather than merely against the interest therein of particular Unit Owners. Where one or more Unit Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Executive Board by reason of said lien or liens shall be specially assessed to said Unit Owners.

e. To expend funds for the maintenance and repair of any Unit or any other portion of the Property which a Unit Owner is obligated to maintain or repair under the terms hereof or the Act, if such maintenance or repair is necessary, in the discretion of the Executive Board, to protect the Common Elements, or any other portion of the Property, and the owner of said Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Executive Board to said Unit Owner; provided that the Executive Board shall levy a special assessment against such Unit for the cost of said maintenance or repair.

f. To establish user charges with respect to the use of any parking spaces, the swimming pool and other amenities. Such charges shall be billed to the Unit Owner who, or whose guest, makes use of such facilities. Nothing herein contained shall require the establishment of user charges with respect to all or any one or more of such amenities. Use of all such amenities shall be subject to the rules and regulations of the Executive Board.

g. In the event two or more Units share a common utility meter or if a portion of the Common Elements and one or more Units share a common utility meter, to determine the proper allocation of the cost of the utility service between or among the recipients of such utility service which determination shall be conclusive and binding.

h. In exercising its rights and obligations to make repairs and replacements, the Executive Board shall place any Unit damaged by reason of such work in the same condition as existed prior to such work being done, unless the need for such repairs or replacements is caused by the Owner of such Unit. The costs of compliance by the Executive Board with this paragraph shall be Common Expenses.

i. The power of the Executive Board to borrow money on behalf of the Association when required in connection with any one instance relating to the operation, care and upkeep and maintenance of the Common Elements is subject to the requirement (except as otherwise expressly set forth herein) that the consent of the Unit Owners of at least two-thirds of all Units, obtained at a meeting duly called and held for such purpose, shall be required to borrow any sum in excess of 20% of the then current annual Common Expense budget.

12.2. Disputes. In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any questions of interpretation or application of the provisions of this Declaration, the Plats and Plans, the Bylaws or the Rules and Regulations, the determination thereof by the Executive Board shall be final and binding on each and all such Unit Owners. The Executive Board shall have the authority to seek a declaratory judgment or other appropriate judicial relief or order to assist it in carrying out its responsibilities under this §12.2. All costs of obtaining such a judgment shall be borne by the disputants, or in the absence of disputants, by the Association as a Common Expense.

12.3 Validity of Contracts with Interested Executive Board Members. No contract or other transaction between the Association and one or more of its Executive Board members or between the Association and any corporation, firm, or association in which one or more of the Executive Board members of the Association are directors or officers, or are financially interested, shall be void or voidable because such Executive Board members are present at any meeting of the Executive Board or a committee thereof which authorized or approved the contract or transaction or because his or their votes are counted, if the circumstances specified in either of the following subparagraphs exists:

(a) The fact that an Executive Board member is also such a director or officer or has such financial interest is disclosed or known to the Executive Board or committee and is noted in the minutes hereof, and the Executive Board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such Executive Board member or members; or

(b) The contract or transaction is made in good faith and is not unconscionable to the Association at the time it is authorized, approved or ratified.

12.4 Inclusion of Interested Executive Board Members in the Quorum. Any Executive Board member holding such director or officer position or having such financial interest in another corporation, firm or association may be counted in determining the presence of a quorum at a meeting of the

Executive Board or a committee thereof which authorizes, approves or ratifies a contract or transaction of the type described in §13.3 hereof.

### ARTICLE 13

#### MORTGAGES

Permitted Mortgages: A Unit Owner other than the Declarant or the Executive Board may not voluntarily encumber or subject his or its Unit to any lien, other than the lien of a Permitted Mortgage. All such Permitted Mortgages and the obligations secured thereby shall be deemed to provide, generally, that the Permitted Mortgage and the rights and obligations of the parties thereto shall be subject to the terms and conditions of the Act and this Declaration, and shall be deemed to provide specifically, but without limitation, that the Permitted Mortgagee shall have no right (a) to participate in the adjustment of losses with insurers or in the decision as to whether or not or how to repair or restore damage to or destruction of the Property, or (b) to accelerate the mortgage debt or to have any other remedies by virtue of waste or alleged waste or other conditions occurring anywhere on the Property other than within the affected Unit, and the obligation secured shall be prepayable, without penalty, upon the happening of any termination of the Condominium or determination not to restore or replace the affected Unit in the event of a casualty. No Unit Owner shall deliver any Permitted Mortgage, or any obligation to be secured thereby, unless it has first notified the Executive Board of the name and address of the proposed Permitted Mortgagee and of the amount of the debt proposed to be so secured. When such a Permitted Mortgage is delivered to the Permitted Mortgagee, the Unit Owner shall simultaneously provide executed or conformed copies to the Executive Board. Upon receipt of such copy of a Permitted Mortgage, the Secretary of the Association shall instruct the insurer of the Property to add the name of the Permitted Mortgagee to the mortgagee loss payable provision of the hazard insurance policy or policies covering the Property and to provide such Permitted Mortgagee with a Certificate of Insurance showing that the Permitted Mortgagee's name has been so added. The lien of any purported mortgage which does not comply with all the requirements of this Article 14 shall not attach to or affect the Property or any part thereof or interest therein and shall be of no force and effect as and to the extent that it purports to relate thereto. The Secretary shall maintain a register of such Permitted Mortgages, showing the names and addresses of the Permitted Mortgagees and the amounts secured thereby.



## ARTICLE 14

### BUDGETS; COMMON EXPENSES; ASSESSMENTS AND ENFORCEMENT

14.1. Monthly Payments: All Common Expense assessments made in order to meet the requirements of the Association's annual budget shall be deemed to be adopted and assessed on a monthly basis (rather than on an annual basis payable in monthly installments) and shall be due and payable in advance, on the first day of each month. Special assessments shall be due and payable in one or more monthly assessments, in advance, on the first day of each month, as determined by the Executive Board.

14.2. Subordination of Certain Charges: Any fees, charges, late charges, fines and interest which may be levied by the Executive Board pursuant to §§3302(a)(10), (11) and (12) of the Act, shall be subordinate to the lien of a Permitted Mortgage on a Unit.

14.3. Limitation on Expenditures: There shall be no structural alterations, capital additions to, or capital improvements on, the Common Elements (other than for purposes of repairing, replacing or restoring portions of the Common Elements) requiring an expenditure in excess of twenty (20) percent of the then current annual Common Expense budget without the prior approval of the Unit Owners entitled to cast 66-2/3 percent of the votes of all Unit Owners.

14.4. Acceleration: If a Unit Owner is in default in the payment of the aforesaid charges or monthly assessments for sixty (60) days, the Executive Board may, in addition to all other remedies in the Act or this Declaration contained, accelerate all other monthly payments of charges and monthly assessments due for the fiscal year in which such default occurs; provided, however, a foreclosing Permitted Mortgagee shall be entitled to automatic subordination of such sums in excess of the amounts given priority over mortgage liens as set forth in the Act.

14.5. Interest and Charges: All sums assessed by the Executive Board against any Unit Owner as a regular or special monthly assessment shall bear interest thereon at the then current announced prime rate of Philadelphia National Bank (but not more than the then maximum legal rate from the tenth (10th) day following default in payment of any monthly assessment when due. Any delinquent Owner shall also be obligated to pay (i) all expenses of the Executive Board, including reasonable attorneys' fees, incurred in the collection of the delinquent assessments by legal proceedings or otherwise, and (ii) any amounts paid by the Executive Board for taxes or on account of superior liens or otherwise to protect its lien, which expenses

and amounts, together with accrued interest, shall be deemed to constitute part of the delinquent assessments and shall be collectible as such, subject to §15.2 above.

## ARTICLE 15

### LEASING

Restrictions: A Unit Owner may lease or sublease his Unit (but not less than his entire Unit) at any time and from time to time provided that (except for a lease or sublease made by (i) a Declarant or (ii) a Permitted Mortgagee which is either in possession or is a purchaser at judicial sale): (1) no Unit may be leased or subleased for transient or hotel purposes or for an initial term of less than ninety (90) days; (2) ~~no Unit may be leased or subleased without a written lease or sublease, and a copy of such lease or sublease shall be furnished to the Executive Board within ten (10) days after execution thereof;~~ and (4) the rights of any lessee or sublessee of the Unit shall be subject to, and each such lessee or sublessee shall be bound by, the covenants, conditions and restrictions set forth in this Declaration, Bylaws and Rules and Regulations and a default thereunder shall constitute a default under the lease or sublease; provided, however, that the foregoing shall not impose any direct liability on any lessee or sublessee of a Unit to pay any Common Expense assessments on behalf of the Owner of that Unit.

*OWNER PAYS CONDO FEE - OWNER PAYS LICENSE*

## ARTICLE 16

### INSURANCE AND RESTORATION

16.1. Generally: The Executive Board shall acquire and pay for insurance as required by the Act in addition to and subject to the following:

a. The Executive Board shall carry such insurance as the Executive Board deems advisable in the operation, and for the protection, of the Common Elements and the Units.

b. The amount of property insurance obtained pursuant to the Act shall be equal to the full insurable replacement value of the insured property, without deduction for depreciation, and in no event shall be less than the aggregate principal amount of all Permitted Mortgages. Such insurance policy(ies) may, at the option of the Board, contain a "deductible" provision in an amount determined by the Board but not to exceed Twenty-Five Thousand (\$25,000.00) Dollars.

c. Each Unit Owner and the Executive Board hereby waives and releases any and all claims which he or it may have against any other Unit Owner, the Association, the Executive

Board and members thereof, the Declarant and their respective employees and agents, for damage to the Common Elements, the Units, or to any personal property located in the Units or Common Elements, caused by fire or other casualty or any act or omission of any such party to the extent that such damage is covered by fire or other form of hazard insurance.

d. If the act or omission of a Unit Owner, or of a member of his family, a household pet, guest, occupant or visitor of such Unit Owner, shall cause damage to the Common Elements or to a Unit or Units owned by others so that maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Executive Board, to the extent such payment is not waived or released under the provisions of subparagraph "c" above.

e. Any release or waiver referred to in subparagraphs "c" and "d" hereof shall be valid only if such release or waiver does not affect the right of the insured under the applicable insurance policy to recover thereunder. The Unit Owners and the Executive Board, with regard to the insurance carried by each of them, shall use their best efforts to see that their insurance carriers agree that such release or waiver does not affect their rights to recover.

f. If the Executive Board fails within sixty (60) days of an insured loss to initiate a claim for damages recoverable under the property insurance policy(ies) obtained pursuant to the Act or hereunder, the holder of any Permitted Mortgage may initiate such a claim on behalf of the Board. At least once every three (3) years, but more frequently if in the Executive Board's judgment the Property is rapidly appreciating in value, the Executive Board shall cause an appraisal of the Property to be made for the purpose of determining the current full insurable replacement value of the insured property, without considering depreciation, and the Board shall change the amount of property insurance on the Property to the amount of the then current full insurable replacement value of the Property as established by such appraisal, provided that such insurance shall not be decreased below the aggregate principal amount of all Permitted Mortgages.

g. Each Unit Owner, other than the Declarant, shall notify the Executive Board in writing of any additions, alterations or improvements to his Unit and he shall be responsible for any deficiency in any insurance loss recovery resulting from his failure so to notify the Association. The Board shall use its reasonable efforts to obtain insurance on any such additions, alterations or improvements if such Unit Owner requests it to do so and if such Unit Owner shall make arrangements satisfactory to the Board to reimburse it for any additional premiums attributable thereto; and in the absence of

insurance on such additions, alterations or improvements, the Board shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements.

h. Comprehensive public liability and property damage insurance as required by the Act shall be in such limits as the Board shall deem desirable provided that such limit shall not be less than One Million (\$1,000,000.00) Dollars per occurrence, for personal injury and/or property damage, insuring the Association, the Board members, the managing agent, if any, and their respective agents, officers and employees, and the Unit Owners from any liability to the public or to the Unit Owners, their tenants or invitees, relating in any way to the ownership and/or use of the Property or any part thereof. Such liability insurance policies shall also name as an insured the Declarant if feasible to do so, until the expiration of two (2) years following the voluntary or required resignation of all Declarant appointed members of the Executive Board; any increase in premiums by reason of naming such party as an insured shall be reimbursed promptly to the Association by such party.

i. The Board may obtain such other forms of insurance as the Board shall elect to effect including Board members and officers liability insurance and such Workmen's Compensation insurance as may be necessary to comply with applicable laws.

j. The Board shall obtain a fidelity bond or bonds or insurance to protect against dishonest acts on the part of the Board members, officers, agents, employees, volunteers and all others who handle, or are responsible for handling, funds of the Association. Such bond or bonds or insurance shall name the Association as an obligee or named insured and shall be in such amount as the Board deems appropriate, but not less than 150% of the Association's estimated annual Common Expenses including reserves. Notwithstanding the foregoing, in the event that the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation reduces the required amount of the fidelity bond or insurance which the Association must maintain to less than the amount set forth above, the Board may decrease the amount of the fidelity bond or insurance to the minimum amount required by such entities. Such bond or bonds or insurance shall contain a waiver of defense based upon the exclusion of persons who serve without compensation from the definition of "employee" or such other appropriate provisions or endorsements to assure coverage of persons who so serve.

k. Except as otherwise provided in this Declaration, premiums for all insurance obtained or maintained by the Board, fees and expenses of the insurance trustee, if any, and the cost of any appraisal which the Board deems advisable in connection with any insurance, shall be Common Expenses.

l. The Board shall use its best efforts to secure policies providing that the policies cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Unit Owners or any officer or employee of the Board or managing agent, if any, without a prior demand in writing that the Board or managing agent, as the case may be, cure the defect and without a reasonable period of time thereafter in which to cure the same.

m. Insurance coverage on the furnishings and other items of personal property belonging to a Unit Owner and insurance for his personal liability to the extent not covered by insurance maintained by the Board shall be the responsibility of each such Unit Owner.

n. All physical damage insurance policies purchased by the Executive Board shall be for the benefit of the Association, the Unit Owners and their Permitted Mortgagees, as their interests may appear, and shall provide that, with respect to any single loss, if the proceeds thereof exceed \$100,000, then all such proceeds shall be paid in trust to such lending institution in the metropolitan Philadelphia area with trust powers as may be designated by the Executive Board (which trustee is herein referred to as the Insurance Trustee). If such proceeds do not exceed \$100,000, then all such proceeds shall be paid to the Executive Board to be applied pursuant to the Act. If proceeds are payable to the Insurance Trustee, the Executive Board shall enter into an Insurance Trust Agreement with the Insurance Trustee which shall provide that the Insurance Trustee shall not be liable for payment of premiums, the renewal of the policies, the sufficiency of coverage, the form of contents of the policies, the correctness of any amounts received on account of the proceeds of any insurance policies nor for the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purposes elsewhere stated in this Declaration and the Act, for the benefit of the insureds and their beneficiaries thereunder.

16.2 Repairs and Reconstruction After Fire or Other Casualty.

a. When Repair and Reconstruction are Required.  
Except as otherwise provided in subparagraph d of this §16.2, in the event of damage to or destruction of the Building or any part thereof as a result of fire or other casualty, the Executive Board, under the direction of the Insurance Trustee if an Insurance Trustee is required, shall arrange for and supervise the prompt repair and restoration of the Building as required by the Act. Notwithstanding the foregoing, each Unit Owner shall have the right to supervise the redecorating of his own Unit.

b. Procedure for Reconstruction and Repair.

(i) Cost Estimates. Immediately after a fire or other casualty causing damage to the Building, the Executive Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the Building as required by the Act to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Executive Board or Insurance Trustee (if any) determines to be necessary.

(ii) Assessments. If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve for replacement funds and/or shall be deemed a Common Expense and special monthly assessments therefor shall be levied.

(iii) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the construction of the Property as it existed immediately prior to the casualty.

c. Disbursements of Construction Funds.

(i) Construction Fund and Disbursement. The proceeds of insurance collected on account of casualty, and the sums received by the Executive Board or Insurance Trustee from collections of assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

(A) If the estimated cost of reconstruction and repair is less than \$100,000, then the construction fund shall be disbursed in payment of such costs upon order of the Executive Board.

(B) If the estimated cost of reconstruction and repair is \$100,000, or more, then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Pennsylvania and employed by the Insurance Trustee to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and other persons who have rendered services or furnished materials in connection with the work and stating that: (a) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and materials

furnished; (b) there is no other outstanding indebtedness known to such architect for the services and materials described; and (c) the cost as estimated by such architect for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(ii) Surplus. It shall be presumed that the first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds and, if there is a balance in the construction fund after the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall be divided among all Unit Owners in proportion to their Percentage Interests and shall be distributed in accordance with the priority of interests at law or in equity in each Unit.

(iii) Common Elements. When the damage is to both Common Elements and Units, the insurance proceeds shall be applied first to the cost of repairing those portions of the Common Elements which enclose and service the Units, then to the costs of repairing the other Common Elements and thereafter to the cost of repairing the Units.

(iv) Certificate. The Insurance Trustee shall be entitled to rely upon a certificate executed by the President or Vice President, and the Secretary, certifying: (i) whether the damaged Property is required to be reconstructed and repaired; (ii) the name of the payee and the amount to be paid with respect to disbursement from any construction fund or whether surplus funds to be distributed are less than the assessments paid by the Unit Owners; and (iii) all other matters concerning the holding and disbursing of any construction fund. Any such certificate shall be delivered to the Insurance Trustee promptly after request.

d. When Reconstruction Is Not Required. In the event of insubstantial damage to the Common Elements and if the Executive Board shall elect not to repair the same or in the event there is to be no repair or replacement pursuant to Section 3312(g) of the Act (the votes of Unit Owners thereunder to be accompanied by the approval of Permitted Mortgagees holding Permitted Mortgages on such Units), then in either such event any insurance proceeds received on account of such damage shall be expended and/or distributed in accordance with Section 3312 of the Act. If the Condominium shall be terminated pursuant to Section 3320 of the Act, the provisions of Section 3320 of the Act shall apply.

## ARTICLE 17

### INDEMNIFICATION

Generally: 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 Board or Association) by reason of the fact that he is or was a Board member or officer, against expenses (including attorneys' 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 Board and 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 judgment, order, settlement, 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 Board or the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

The Association may 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 Board to procure a judgment in its favor by reason of the fact that he is or was a Board member or an officer against expenses (including attorneys' 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 Board or 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 Board or the Association.

To the extent that a Board member or officer has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in the foregoing two paragraphs, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Any indemnification under the first two paragraphs of this Article shall be made by the Board on behalf of the Association only as authorized in the specific case, upon a determination that indemnification of the Board member or officer is proper in the circumstances because he has met the applicable standard of conduct set forth in the first two paragraphs of this Article. Such determination shall be made (1) by the Board by a majority vote of a quorum consisting of Board members who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable, if a



quorum of disinterested Board members so directs, by independent legal counsel in a written opinion, or (3) by a vote of the Association.

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Board on behalf of the Association in advance of the final disposition of such action, suit or proceeding, as authorized by the Board in the specific case, upon receipt of an undertaking by or on behalf of the Board member or officer to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article.

The sums necessary to discharge the obligations of the Association under this Article shall be Common Expenses.

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of members of the Association or disinterested members of the Board, or otherwise, both as to action in his official capacity and to action in other capacities while holding such office, and shall continue as to a person who has ceased to be a Board member or an officer.

IN WITNESS WHEREOF, the said Declarant has caused its name to be signed to these presents by its joint venturers on the day and year first above written.

EMERALD WAY CONDOMINIUM JOINT VENTURE  
by its partners

Baker Investment Corporation

By: \_\_\_\_\_

Attest: \_\_\_\_\_

Liberty Service Corp.

By: \_\_\_\_\_

Attest: \_\_\_\_\_