

**AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANT
FOR THE VOLUNTARY DENSITY BONUS PROGRAM AFFORDABLE
HOUSING APPLICABLE TO EMERALD PLACE, A CONDOMINIUM**

THIS AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANT FOR THE VOLUNTARY DENSITY BONUS PROGRAM AFFORDABLE HOUSING APPLICABLE TO EMERALD PLACE, A CONDOMINIUM (the "Declaration") is made by SYMPHONY BUILDERS AT EMERALD PLACE, LLC ("Developer") as the current owner of the property described on Exhibit "A" attached hereto (the "Property").

RECITALS:

WHEREAS, the previous record owner of the Property recorded a Declaration of Restrictive Covenant for the Voluntary Density Bonus Program Affordable Housing (the "Original Declaration") on November 14, 1997 in Official Record Book 10084, at Page 1191, Public Records of Palm Beach County, Florida;

WHEREAS, the Original Declaration defined as the "Affordable Units", Units 1, 3 and 7 in a condominium which was never created;

WHEREAS, the Developer is developing a condominium to be known as Emerald Place, a Condominium ("Condominium"), which will contain four (4) Affordable Units, as are set forth in Section 2.C of this Declaration.

NOW THEREFORE, the Developer on its behalf and on behalf of the Condominium Association ("Condominium Association") to be incorporated for Emerald Place, a Condominium, agrees as follows:

Section 1. Priority. This Declaration amends and restates the Original Declaration in its entirety.

Section 2. Definitions. In this Declaration, the following words and phrases shall have the meanings indicated unless the context requires otherwise.

- A. "Affordable Housing" shall have the meaning contained in the Palm Beach County 1989 Comprehensive Land Use Plan's Housing Element, as of that date or as such term may be modified in future amendments to the Plan. As presently defined, Affordable Housing for an ownership project (Group B) means households with a total adjusted gross household income which is more than 50% but less than or equal to eighty (80%) percent of the median adjusted gross income for households within the County.

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- B. "Adjusted Gross Income" as defined by the Palm Beach County Comprehensive Plan (Section C, page 3-HE), means all wages, assets, regular cash or non-cash contributions or gifts from persons outside the household, and such other resources and benefits as may be determined to be income by the United States Department of Housing and Urban Development, adjusted for family size, less deductions allowable under Section 62 of the Internal Revenue Code.
- C. "Affordable Unit" means Units C-101, D-104, E-104 and E-201 in the Condominium.
- D. "Eligible Household" means one or more persons living together and sharing living expenses whose combined income does not exceed the limits of Group B households as identified in the guidelines of the U.S. Department of Housing and Urban Development (HUD), localized for Palm Beach County, and published annually by the Palm Beach County Department of Housing and Community Development. For purposes of this paragraph, one or more persons from this living arrangement will occupy an Affordable Unit in the Condominium on a year-round basis as the primary residence. The household income is calculated as per the Annual Income Limits for West Palm Beach, Boca Raton and Delray Beach Metropolitan Statistical Area Table prepared by Palm Beach County Housing and Community Development, which is amended annually.

Section 3. Covenant. An Affordable Unit subject to this Declaration shall be occupied only by one who qualifies as an Eligible Household on the date of occupancy of the Affordable Unit.

Section 4. Term of Declaration. The term of this Declaration shall be for a period of ten (10) years from the date that the first Certificate of Occupancy is issued for the Affordable Unit (the "Term"), and shall automatically expire thereafter.

Section 5. Section of Eligible Households. The County, the Developer, and the Condominium Association for the Condominium, their successors and assigns, agree that the procedures for selection of an occupant of an Affordable Unit under this Declaration shall not discriminate against any applicant based upon any protected class included in any federal, state or local fair housing law. For so long as the Developer is the owner of an Affordable Unit, selection of an Eligible Household, evaluation of its income and assignments of Affordable Units shall be performed exclusively by the Developer according to the expressed terms of the paragraph. Thereafter such selection shall be performed by the Condominium Association. The Developer and the

Condominium Association, as applicable, shall have the unrestricted right to screen all Eligible Household applicants. Such screening shall include, but not be limited to, credit-worthiness, employer references, income and ownership of assets and any other background checks usually made by the Developer or the Condominium Association on any prospective purchaser's application. Subject to the foregoing, the Developer and the Condominium Association shall retain the exclusive and absolute right to reject Eligible Household applicants. Once approved by the Developer or the Condominium Association the eligible household income information must be submitted to Palm Beach County for verification of income eligibility prior to closing on that unit.

Section 6. Occupancy of Affordable Units. It is the expressed intent of the Board of County Commissioners to provide an award of additional density beyond that authorized by its designated land use density for the Condominium, in exchange for the provision of affordable housing opportunities. It would not be acceptable, therefore, for the Developer to refuse to place Eligible Households in Affordable Units thereby leaving them vacant for extended periods. For purposes of this Declaration, an extended period shall be deemed to be longer than the average time needed to sell the Units not designated as Affordable Units. The Developer and the Condominium Association shall make available evidence that all Affordable Units have been sold at a rate of time equal to or less than the rate of time for the sale of the non-affordable units.

Section 7. Declaration Compliance. The County shall have access to inspect the Affordable Units at reasonable times and upon prior notice to the Developer and the Condominium Association of the intention to do so, and shall conduct such inspections when accompanied by the Developer, the Condominium Association or their designated agents.

Section 8. Annual Report. The Developer, and/or the Condominium Association shall provide information and documentation about the qualification of Eligible Households to occupy Affordable Units, as well as the maintenance of satisfactory occupancy rate for the Affordable Units for the purpose of assuring compliance with this Declaration.

Not later than June 1st of each year following the issuance of the first certificate of occupancy for an Affordable Unit, for the term of this Declaration, the Condominium Association shall furnish to the Planning Director, Palm Beach County Planning Division, an Annual Report, on a form provided by the County. This Annual Report shall contain, at a minimum, sufficient information and documentation to prove the compliance of the Owner with this paragraph for each sale or resale of the following:

- A. The identity of the Owner;
- B. The names of the members of the Eligible Households - identifying those members who are age 18 or older;

- C. The annual income of the members of the Eligible Households occupying the Affordable Unit;
- D. The location of and identification of the Affordable Unit within the Condominium;
- E. The compliance with the notice requirements explained below; and
- F. Identify any changes in ownership from the previous year's report.

Section 9. Covenant to Run with the Land. It is intended that the agreements, covenants and restrictions set forth in this Declaration shall run with the land constituting the Affordable Units.

Section 10. Modification. This Covenant shall not be extinguished, enlarged, modified or replaced during the Term except with written authorization of Palm Beach County Planning Director, together with the written consent of the Owners of the Assigned Units and shall be binding upon any owner(s), successor(s) and assign(s) for the benefit of and shall be enforceable by County and its successors and assigns during the Term.

Section 11. Enforcement. The County, its successors or assigns, in the event of any occupancy or vacancy of any Affordable Unit in violation of the provisions hereof, shall be entitled to seek specific performance or injunctive relief of the provisions hereof, in addition to any other relief or remedy to which the county may be entitled.

Section 12. Penalties; Remedies for Violations. Should there be found any violation of any of the restrictions, covenants and/or agreements set forth in this Declaration, the Developer or Condominium Association, as applicable, shall be liable to pay to Palm Beach County money damages equivalent to five (5) times the amount of income by which the household exceeds the eligibility requirement. Any damages payable under this Section shall be paid into the Palm Beach County Affordable Housing Trust Fund.

Section 13. Notices and Reports. All notices and reports required hereunder shall be sent to the Planning Director, Palm Beach County Planning Division, 100 Australian Avenue, West Palm Beach, Florida 33406.

Section 14. Guarantee. Two of the Affordable Units shall have two bedrooms containing at least two bathrooms, and two of the Affordable Units shall have three bedrooms containing at least two bathrooms.

Section 15. Restriction. The Developer or subsequent owner of the unit shall include in every deed of sale for a Required Affordable Group B (Low Income) Unit, a restriction stating as follows: "This property is to be sold and occupied by an Eligible Low Income Household only in accordance with the Amended and Restated Declaration of Restrictive Covenant for Affordable Housing recorded in Official Record Book

_____, Page ____ of the Public Records of Palm Beach County. Said Declaration requires verification by Palm Beach County of the eligible household prior to closing. This restriction shall be in effect for ten (10) years from the date of the Certificate of Occupancy for the first Required Affordable Low Income Unit.

Section 16. Covenant Compliance. The Developer and/or the Condominium Association, their successors and assigns, shall furnish to the County such information about the Required Group B (Low Income) Units as the County may request at each occasion of transfer of title, including, but not limited to the identity of the seller, the identity of the Eligible Group B (Low Income) Household, the condition of the unit, the identity of all of the Eligible Household occupants, and the household income of all of the Eligible Household occupants, all for the purpose of assuring compliance with this Declaration. The Developer shall include in each sales agreement the right of County to approve the sale of the unit to an Eligible Household, and the requirement to provide income and other necessary information to the County. The Developer, and their successors and assigns, shall include a reference to the Ten (10) Year Deed Restriction which guarantees the affordability of the unit, and which requires County verification on initial sale and verification of resales to an Eligible Group B (Low Income) Household before closing, and an explanation of the responsibilities resulting from the Ten (10) Year Deed Restriction upon any subsequent owners, successors and assigns, in any and all sales documents, agreements, etc., and in deeds or other instruments conveying an interest in the Required Group B (Low Income) Property or any part thereof. It is further agreed that the covenants and restrictions contained herein are for public purposes.

Section 17. Deed Restrictions. A deed restriction will be required for each ownership/for sale Required Group B (Low Income) Unit in order to guarantee the affordability of each of these units for a period of ten (10) years as required by ULDC Section 6.9. Specifically for the Emerald Place residential development, four (4) low income units will be required to be deed restricted for a period of ten (10) years from the date of the issuance of the final certificate of occupancy for each of the four (4) required Group B (low income) units.

Section 18. County Approval. The Board of County Commissioners for Palm Beach County, Florida hereby authorizes this modification of the Original Declaration.

IN WITNESS WHEREOF, SYMPHONY BUILDERS AT EMERALD PLACE, LLC, as Developer and the Palm Beach County Board of County Commissioners have caused the execution of this AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANT FOR THE VOLUNTARY DENSITY BONUS PROGRAM AFFORDABLE HOUSING APPLICABLE TO EMERALD PLACE, A CONDOMINIUM, on this 4 day of Nov, 2003.

WITNESSES:

SYMPHONY BUILDERS AT EMERALD PLACE, LLC, a Florida limited liability company by and through SYMPHONY

ATTEST:

DOROTHY H. WILKEN, Clerk

By: _____

Deputy Clerk
Print _____

PALM BEACH COUNTY BOARD
OF
COUNTY COMMISSIONERS

BY: _____

Karen Marcus, Chair

*APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
County Attorney

STATE OF FLORIDA)
) ss
COUNTY OF PALM BEACH)

I HEREBY CERTIFY that on this ___ day of _____, 200__, before me personally appeared KAREN MARCUS, as authorized signatory for PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS, who is personally known to me or who has produced _____ (if left blank, personal knowledge existed) as identification and who did not take an oath and who executed the aforesaid as her free act and deed as such duly authorized signatory; and that the official seal of the County is duly affixed and the instrument is the act and deed of the County.

WITNESS my signature and official seal at _____ in the County of Palm Beach, State of Florida, the day and year last aforesaid.

NOTARY PUBLIC:

Sign:
Print: