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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
EMERALD HEIGHTS CONDOMINIUM DEVELOPMENT

BK 7132 PG 2236

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
EMERALD HEIGHTS CONDOMINIUM DEVELOPMENT**

THIS DECLARATION is made and executed this 30th day of March, 1995, by Linda Secrist and Keith H. Sieber, individuals residing in the State of Utah (hereinafter individually and collectively referred to as "Declarant").

RECITALS

A. Declarant is the record owner of that certain tract of property more particularly described in Article II of this Declaration.

B. Declarant desires to provide for the preservation of the value and amenities of the Property and for the maintenance of the Common Areas. To this end, and for the benefit of the Property and of the Owners thereof, Declarant desires to subject the Property described in Article II of this Declaration and the various Units now or hereafter contained within said property to the covenants, restrictions, easements, charges and liens hereinafter set forth.

C. Declarant deems it desirable for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charge hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Declarant has, in conjunction with recordation of this Declaration, caused or will cause to be incorporated under the laws of the State of Utah, a nonprofit corporation, EMERALD HEIGHTS HOMEOWNERS' ASSOCIATION.

NOW THEREFORE, Declarant hereby covenants, agrees and declares that all of the Property described in Article II hereof shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, obligations, and liens hereinafter set forth.

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I. DEFINITIONS

When used in this Declaration (including that portion hereof headed "Recitals"), the following terms shall have the meaning indicated:

1. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.
2. Parcel shall mean and refer to the Property which is subject to this Declaration, which is filed for record in the office of the County Recorder of Salt Lake County, Utah is separately subjected to the terms of this Declaration with the intention that it shall thereby comprise the Condominium. The real property described in Article II of this Declaration constitutes the Parcel.
3. Plat shall mean and refer to the Emerald Heights Condominium Development Plat or any plat or map (a) which covers the Property; (b) which describes or creates one or more Units; (c) or an instrument recorded in conjunction therewith where the intent is expressed that the Condominium created by the Plat shall comprise the Development; and (d) which is filed for record in the office of the County Recorder of Salt Lake County, Utah or recorded concurrently with this Declaration of the Emerald Heights Condominium Development, and executed and acknowledged by Declarant on March 30, 1995, and creating separately numbered Units. Said condominium plat constitutes a Plat.
4. Property shall mean and refer to all of the real property which is covered by a Plat.
5. Unit shall mean and refer to any of the separately numbered and individually described plots of land described on the Plat: (a) which is intended to be owned individually, rather than by an association of Owners or in common by Owners of different Units; and (b) which is intended to be used as the site of a single Living Unit. The definition of Unit shall include an equal undivided one-sixteenth interest in the Common Areas described in Article I, Paragraph 8 hereof.
6. Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on or with respect to the Unit concerned which are used in connection with such residence.
7. Owner shall mean and refer to the person who is the Owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided interest in any Unit. Notwithstanding any applicable theory relating to a mortgage, deed of trust or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to

foreclosure or any arrangement or proceeding in lieu thereof.

8. Common Areas shall mean and refer to that part of the Property which is not included with the Units, including all improvements other than utility lines now or hereafter constructed or located thereon.

9. Restrictive Common Areas shall mean and refer to the driveway and the porch adjacent to the Unit owned and used by the Unit owner.

10. Association shall mean and refer to the Emerald Heights Homeowners' Association, a Utah nonprofit corporation.

11. Member shall mean and refer to every person who holds a membership in the Association.

12. Mortgagee shall mean any person named as a mortgagee or beneficiary under or holder of a deed of trust.

II. PROPERTY DESCRIPTION

Beginning at a point South 00°14'40" West along the section line 1321.893 feet from the North quarter corner of Section 27, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence along the section line South 00°14'40" West, a distance of 230.28 feet; thence West, a distance of 382.11 feet; thence North 0°14'40" East, a distance of 230.28 feet; thence East, a distance of 382.11 feet to the POINT OF BEGINNING. Containing 87278 square feet or 2.00 acres.

EXCLUDING all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, and related facilities to the extent that they are located outside the Units included within the above-described tract.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across and through and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration) to improve the Common Areas; with such facilities, including, but not limited to, roads, recreational facilities, walkways and various landscaped areas, designed for the use and enjoyment of all the Members as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservation, the above-described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility

line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservation hereby effected shall, unless sooner terminated in accordance with its terms, expire seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described tract or any portion thereof, including without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; and all easements and rights-of-way of record.

III. MEMBERSHIP, VOTING RIGHTS AND ELECTION OF DIRECTORS

1. **Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Unit in which the Owner has the necessary interest, and shall not be separated from the Unit to which it appertains.

2. **Voting Rights.** The Association shall have the following-described two classes of voting membership:

Class A. Class A Members shall be all Owners other than the Declarant. Class A Members shall be entitled to one vote for each Unit in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Unit.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to Three (3) votes for each Unit in which it holds the interest required for Membership in the Association. The Class B membership shall automatically cease and be converted to a Class A membership upon the occurrence of the following event:

(a) When all of the Units in the Development are sold and conveyed to Owners by Declarant.

3. **Multiple Ownership Interests.** In the event there is more than one Owner of a Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is

immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

4. **Quorum Requirements and Notice of Meetings.** The quorum required for any action by the Members hereunder shall be fifty percent (50%) of all outstanding votes. Written notice setting forth the purpose of meetings shall be sent to all members at least ten (10) but not more than thirty (30) days prior to the meeting date.

5. **Election of Board Directors.** The Board of Directors of the Association shall consist of three (3) Directors. At the first election of the Board of Directors, one Director for each of a one, two and three year term shall be elected. Thereafter one Director shall be elected annually to the Board of Directors for a three year term. A Director must receive fifty percent (50%) of the votes of all Members in order to be elected.

IV. PROPERTY RIGHTS IN COMMON AREAS

1. **Easement of Enjoyment.** Each Member shall have a right and easement of use and enjoyment in and to the Common Areas and the Restrictive Common Areas adjacent to the particular owners Unit. Such right and easement shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any tenant, lessee or contract purchaser who resides on such Member's Unit.

2. **Form for Conveying.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Unit shall describe the interest or estate involved substantially as follows:

Unit No. _____, contained within the Emerald Heights Condominium Development as the same is identified in the Plat recorded in Book _____, at Page _____, and in the "Declaration of Covenants, Conditions and Restrictions of Emerald Heights Condominium Development", recorded in Book _____ at Page _____, of the official records of the Salt Lake County Recorder. TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas and the Restrictive Common Areas of said Unit described and provided for in said Declaration of Covenants, Conditions and Restrictions and in the Record of Survey Map in the official record of the Salt Lake County Recorder.

Whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration

shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit.

3. **Transfer of Title.** Declarant agrees: (a) that it shall, on or before six (6) months from the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, convey to the Association title to the Common Areas and the Restrictive Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities).

4. **Limitation of Easement.** A Member's right and easement of use and enjoyment concerning the Common Areas and the Restrictive Common Areas shall be subject to the following:

(a) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

(b) The right of the County of Salt Lake and any other governmental or quasi-governmental body having jurisdiction over the property to access and rights of ingress and egress over and across any street, parking areas, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

(c) The right of the Association to dedicate or transfer all or any part of the Common Areas, the Restrictive Common Areas, and any sewer, water and storm drain trunk lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by at least fifty percent (50%) of the vote of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for that purpose written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

V. ASSESSMENTS

1. **Personal Obligation and Lien.** Each Owner shall, by acquiring or in any way becoming vested with his interest in a Unit, be deemed to covenant and agree to pay to the Association the monthly and the special assessments described in this Article, together with the hereinafter provided for interest and costs of collection. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Unit with respect to

which such assessment is made; and (b) the personal obligation of the person who is the Owner of such Unit at the time the assessment falls due. No Owner may exempt himself or his Unit from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Unit.

2. **Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of residents of the Property. The use made by the Association of funds obtained from assessments may include, but is not limited to, payment of the cost of: Taxes and insurance on the Common Areas and Restrictive Common Areas; maintenance, repair and improvement of the Common Areas and Restrictive Common Areas; management and supervision of the said Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas and Restrictive Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation.

3. **Maximum Monthly Assessment.** As of the date set under Section 6 of this Article, each Unit shall be subject to a monthly assessment of not more than One Hundred Dollars (\$100). From and after September 1, 1994, the maximum monthly assessment may be increased or decreased so long as the change is assented to by at least fifty percent (50%) of all votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purposes. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The Board of Directors of the Association may from time to time and in its discretion set the amount of the monthly assessment at any sum not in excess of the then applicable maximum amount.

4. **Special Assessments.** The Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonable capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction or unexpectedly required repair or replacement in connection with the Common Areas and the Restrictive Common Areas. Any such special assessment in excess of \$10,000 must be assented to by at least fifty percent (50%) of all of the Members. The Board of Directors shall notice a meeting of the Members to discuss and consider any proposed special assessment. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

5. **Uniform Rate of Assessment.** Both monthly and special assessments shall be fixed at a uniform rate for all Units.

Declarant, for each unsold Unit owned by it in the development, shall pay both monthly and special assessments as herein provided for all Unit Owners.

6. **Monthly Assessment Due Dates.** The monthly assessments provided for herein shall commence as to all Units on the date a deed is delivered to the purchaser of a Unit, or if the sale is by way of a contract of sale, on the date the contract is executed by the parties thereto, or the date of occupancy under an occupancy agreement, or the date the Owner actually takes possession of a Unit, whichever first occurs. The first monthly assessment shall be adjusted according to the number of days remaining in the month of conveyance, contract or occupancy, as the case may be. At least fifteen (15) days prior to the effective date of any change in the amount of the monthly assessment, the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned.

7. **Certificate Regarding Payment.** Upon the request of any Owner or prospective purchaser or encumbrancer of a Unit, the Association shall issue a certificate stating whether or not all assessments respecting such Unit are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

8. **Effect of Nonpayment; Remedies.** Any assessment not paid when due, together with the hereinafter provided for interest and costs of collection, shall be, constitute and remain a continuing lien on the Unit; provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on the Unit recorded prior to the date any such assessments became due. The person who is the Owner of the Unit at the time the assessment falls due shall be and remain personally liable for payment. Such personal liability shall not pass to the Owner's successors in title unless expressly assumed by them. If the assessment is not paid within sixty (60) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum and the Association may bring an action either against the Owner who is personally liable or to foreclose the lien against the Unit. Any judgment obtained by the Association shall include reasonable attorneys' fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.

9. **Tax Collection by County Authorized.** It is recognized that under the Declaration the Association will own the Common Areas and the Restrictive Common Areas and that it may be obligated to pay property taxes to Salt Lake County. Each Owner of a Unit as a Member of the Association will be required to reimburse the Association for his pro rata share of such taxes paid. Notwithstanding anything to the contrary contained in the Declaration, Salt Lake County shall be authorized to collect such

pro rata share of taxes directly from each Owner by inclusion of said share with the tax levied on each Unit.

VI. OPERATION AND MAINTENANCE

1. **Maintenance of Living Units.** The interior and exterior of each Living Unit and the real property which comprises each Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Unit or Living Unit. The Association shall have no obligation regarding maintenance except as herein elsewhere provided.

2. **Operation and Maintenance by Association.** The Association shall provide for such maintenance and operation of the Common Areas, the Restrictive Common Areas, the curbs, gutters and sidewalks as may be necessary or desirable to make them appropriately usable in conjunction with the Units and to keep them clean, functional, attractive, and generally in good condition and repair. In recognition of County flood control requirements imposed on the Development, the Association shall maintain the storm water detention areas called for by Salt Lake County and designated on the Map recorded herewith. Said maintenance shall include all steps reasonably necessary to prevent said detention areas from losing their capacity to retain storm run-off water. In this regard, the Association shall maintain the contours of the earth in said detention areas in the configuration established and described on the Map, and shall not allow structures of any type to be placed or erected in said areas which may cause a significant reduction in the water detention capacity thereof. Notwithstanding anything contained in this Declaration to the contrary, the Declarant, the Owners, or mortgagees shall not have the power or authority to change, by vote, or alienation, transfer, sale or otherwise, the use of the detention areas designated on the Map unless the consent of the Salt Lake County Flood Control Division has first been obtained in writing. In connection with this covenant by the Association to maintain the storm water detention areas, Salt Lake County is hereby made a party to the covenants set forth herein. The County shall have no vote in the affairs of the Association, but it shall have the right to protect, as a party to this Declaration, the use of the storm water detention areas for that purpose.

3. **Utilities.** The Association shall pay for all utility services furnished to each Unit except telephone, electricity, gas, sewer, and any other services which are separately billed or metered to individual Units by the utility or other party furnishing such services.

4. **Insurance.** The Association shall secure and at all times

maintain the following insurance coverages:

(a) Policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas and the Restrictive Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "The Emerald Heights Homeowners' Association for the use and benefit of the individual Unit Owners and Mortgagees, as their interests may appear."

(b) A policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas and the Restrictive Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall be not less than \$250,000 for any one person injured; \$1,000,000 for all persons injured in any one accident; and \$100,000 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced.

The following additional provisions shall apply with respect to insurance:

(1) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature and use.

(2) All policies shall be written by a company holding a rating of "AA" or better from Best's Insurance Reports.

(3) The Association shall have the authority to adjust losses.

(4) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual owners or their mortgagees.

(5) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: a waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be cancelled, suspended or invalidated due to the conduct of any particular Owner or Owners; that it cannot be cancelled, suspended or invalidated due to the conduct of the Association or of any

director, officer, agent or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by Owners.

5. **Manager.** The Association may carry out through a Property Manager any of its functions which are properly the subject of delegation. Any Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Property for the benefit of the Association and the Owners, and shall to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

6. **Terms of Agreement.** Any agreement for professional management of the Project which may be entered into by the Association shall call for a term not exceeding one (1) year, renewable by agreement of the parties for successive one-year periods and shall provide that for cause such management agreement may be terminated by the Association upon not in excess of Thirty (30) days' written notice.

VII. USE RESTRICTIONS

1. **Use of Common Areas.** The Common Areas and the Restrictive Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Units and Living Units. No admission fees, charges for use, leases, or other income-generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas. Notwithstanding the foregoing, this Section shall not preclude the Association from placing vending machines and equipment on or in any Common Area, should the Association elect to do so.

2. **Use of Unit.** No buildings shall be erected or placed upon any Unit other than a family residence which shall include an attached garage, and may not include attached or detached storage or shop facilities. No Unit or Living Unit shall be used, occupied or altered in violation of law, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance. No Unit shall be used for any commercial, manufacturing, mercantile, vending or other non-residential purposes.

3. **Pets.** Whenever a pet is allowed to leave a Unit, it shall be either on a leash or in a cage. No animal or fowl may be kept on any Unit or allowed in any part of the Common Areas or Restrictive Common Areas which constitutes a nuisance to other Owners in the Subdivision by noise or otherwise.

4. **No Leasing of Common Areas.** None of the Common Areas, the Restrictive Common Areas, parking space or other amenities contemplated as a part of the development shall be leased to the Owners nor shall the same be subject to any other restrictions in favor of the Declarant, except as herein expressly provided.

5. **Exception for Declarant.** Notwithstanding the restrictions contained in this Article VII, for the five (5) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, Declarant shall have the right to use any Unit or Living Unit owned by it, and any part of the Common Areas or Restrictive Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional or other activities designed to accomplish or facilitate improvement of said Areas or improvement and/or sale of all Units owned by Declarant.

6. **Buried Utilities.** All water, gas, electrical, telephone, cable television and other utility lines within the limits of the individual Units and the Property in general, with the exception of meter and junction boxes shall be buried underground wherever possible.

7. **Signs.** No sign or billboard of any kind shall be displayed to the public view on any Unit or on the Property generally, except one sign for each Unit on not more than eighteen (18) inches by twenty-four (24) inches, advertising the property for sale or rent. Notwithstanding the foregoing, Declarant shall be exempted from the provisions of this Section in order to facilitate the advertising, marketing, and sale of the Units.

8. **Motor Vehicles.** All automobiles, pickup trucks or motorcycles shall be kept in the Owner's garages. No other types of trucks, or boats, trailers, campers or recreational vehicles shall be kept on Owner's Unit, the Common or Restrictive Common Areas.

9. **Slope Protection.** All slopes or terraces on any Unit shall be maintained so as to prevent any erosion or encroachment thereof upon adjoining property or adjacent streets and roadways.

10. **Boundary Fences.** Each Unit Owner is and shall be responsible for the maintenance and repair of so much of the Subdivision boundary fencing installed by Declarant as runs along that Owner's property line. Such maintenance and repair shall be performed so as to keep the boundary fence in its original state. Alternate or replacement fencing which differs from the original boundary fencing must be approved by the Architectural Review Committee prior to its installation.

11. **Condominium Fences.** Individual Unit fences which border

roadways or sidewalks, shall be of the same materials and construction as the boundary and perimeter fences.

12. **Trees and Shrubs.** None of the existing living trees or shrubs on the Property which are planted by Declarant as part of the Development landscaping, shall be removed for any reason by any Owner from his Unit, unless he shall have first obtained written consent for such removal from the Board of Directors of the Association, or the Architectural Review Committee, which consent shall not be unreasonably withheld. The provisions of this Section relating to the removal of trees and shrubs shall not be applicable or binding upon Declarant with respect to the initial clearing, grading and landscaping of the project Common Areas and the installation of utilities serving the Subdivision.

13. **Garbage Removal.** All rubbish, trash and garbage shall be regularly removed from each Unit, and shall not be allowed to accumulate thereon. All clotheslines, refuse containers, woodpiles, storage areas, and machinery and equipment, including TV antenna "dishes" shall be prohibited upon any Unit unless obscured from view of adjoining Units and Common Areas by a fence, building or appropriate screen.

VIII. ARCHITECTURAL REVIEW COMMITTEE

1. **Architectural Review Committee.** The Board of Directors of the Association shall appoint a three-member Committee, the function of which shall be to insure that all improvements and landscaping within the Property harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such a Committee is not appointed, the board itself shall perform the duties required of the Committee.

2. **Submission to Committee.** No Living Unit, accessory or addition to a Living Unit, including walls, fences, antennas, porches, or patios, which is visible from the Common Areas, landscaping, or other improvement of a Unit which is visible from the Common Areas shall be constructed, or accomplished, and no alteration, or refurbishing of the exterior of any Living Unit shall be performed, unless complete construction and landscape plans and specifications as well as a plot plan showing location and the surrounding topography, shall have first been submitted to and approved by the Architectural Review Committee.

3. **Standards.** In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all improvements, construction, landscaping and alterations on Units within the Property conform to and harmonize with existing surroundings and structures. In this regard, the following design, building and materials restrictions shall govern the construction of any Living Unit and/or any other

structure visible from any Common Area or Restrictive Common Area:

(a) Minimum Living Unit size, excluding garage, unfinished interior space, porch and open patio areas:

(1) Living Units with multiple levels above grade shall not be less than 1,950 square feet in size on said multiple above grade levels.

(b) Exterior building materials shall be restricted to brick, glass, wood or stone. No aluminum, steel, vinyl, or any other type of sheet siding shall be used, nor shall concrete block or cinder block materials be used on any Living Unit or other building on any Unit in the Development unless written approval is first obtained from the Board of Directors of the Association or the Architectural Review Committee.

(c) Roofing materials shall be restricted to asphalt or wood shingles.

(d) All Living Units shall provide enclosed garage space for two vehicles unless approved otherwise by the Architectural Review Committee.

(e) The improvement of any Unit, and the construction of a Living Unit, or any other structure thereon, shall comply fully with applicable County ordinances and zoning regulations, including, without limitation, County front, back and side yard setbacks or as otherwise approved by the Architectural Review Committee.

4. **Approval Procedure.** Any plans and specifications submitted to the Committee shall be approved or disapproved in writing within fifteen (15) days after submission.

5. **No Liability For Damages.** The Committee shall not be held liable for damages by reason of any action, inaction, approval or disapproval by it with respect to any request made pursuant to this Article VIII.

6. **Exception for Declarant.** The foregoing provisions of this Article VIII shall not apply to any improvement, construction, landscaping or alteration which is carried out by Declarant on any Unit or on any part of the Common Areas or the Restrictive Common Areas, and which occurs at any time during the five (5) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

IX. RIGHTS OF FIRST MORTGAGEES

Notwithstanding anything to the contrary contained herein, the

following provisions shall apply:

1. **Notice of Default.** In the event an Owner neglects for a period of thirty (30) days or more to cure any failure on his part to perform any of his obligations under this Declaration, the Association shall give written notice of such fact to the holder of any first mortgage covering such Owner's Unit.

2. **Abandonment, Termination, Etc.** Unless all of the holders of first mortgages on the individual Units have given their prior written approval, neither the Association nor the Owners acting as a group shall be entitled by act, omission or otherwise:

(a) To abandon or terminate the project or to abandon or terminate the arrangement which was established by the Declarant and the Plat of the Project;

(b) To partition or subdivide any Unit or the Common Areas.

(c) To abandon, partition, subdivide, encumber, sell, hypothecate, transfer or otherwise encumber all or any part of the Common Areas or the Restrictive Common Areas, except for the creating of easements and similar purposes consistent with their intended use of the said Areas; or

(d) To use hazard insurance proceeds received because of damage to any part of the development for any purposes other than the repair, replacement, or reconstruction of such improvements.

3. **Notice of Substantial Damage or Destruction.** The Association shall notify all institutional holders of any first mortgage lien or equivalent security interest on a Unit in writing in the event that there occurs any substantial damage to or destruction of any Living Unit or any part of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of \$15,000. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction.

4. **Condemnation or Eminent Domain Proceedings.** The Association shall give written notice to all institutional holders of any first mortgage lien or equivalent security interest of any condemnation proceedings or proposed acquisition of a Living Unit or of any portion of the Common Areas within ten (10) days after the Association learns of the same.

5. **Hazard Policy to Include Standard Mortgagee Clause.** Each hazard policy of the insurance shall be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interests may appear, or shall be otherwise endorsed to fully protect the interest of mortgagees. In

addition, the mortgagee clause shall provide that the insurance carrier shall notify each mortgagee at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

6. **Rights Upon Foreclosure of Mortgage.** Each holder of a first mortgage (or deed of trust) on a Unit who comes into possession of the Unit by virtue of foreclosure of the mortgage, or by deed or assignment, in lieu of foreclosure, or any purchaser at a foreclosure sale, will take the Unit free of any claims for unpaid assessments and charges against the Unit which accrue prior to the time such holder comes into possession of the Unit, except for claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Units including the mortgaged lot.

7. **Mortgagees' Rights Concerning Amendments.** No material amendment to this Declaration, the By-Laws or the Articles of Incorporation or the Association shall be accomplished or effective unless at least two-thirds (2/3) of the mortgagees (based on one vote for each mortgagee) of the individual Units have given their prior written approval to such amendment.

8. **No Right of First Refusal.** Neither the Association nor the Owners acting as a group, shall enforce, assert, or claim any right of first refusal to purchase a Unit, or any option to buy a Unit in this Development.

X. MISCELLANEOUS

1. **Notices.** Any notice required or permitted to be given to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly furnished if mailed, postage prepaid, to the person who appears as a Member or Owner, at the latest address for such period appearing in the records of the Association at the time of mailing.

2. **Rules and Regulations.** The Association shall have authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interests of the Owners.

3. **Amendment.** Subject to the provisions of Section 7 of Article IX of this Declaration any amendment hereto shall require: (i) the affirmative vote of at least sixty percent (60%) of all Class A membership votes, which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose; and, so long as the Class B membership exists, (ii) the written consent of the Declarant. Written notice setting

forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the President or Vice President of the Association, and by the Declarant if the Class B Membership exists. In such instrument the President or Vice President of the Association shall certify that the vote required by this Section for amendment has occurred.

4. **Consent in Lieu of Voting.** In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Class of membership considered. The following additional provisions shall govern any application of this Section 4.

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this Section 4 shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a Unit which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

(d) Unless the consent of all Members whose memberships are appurtenant to the same Unit are secured, the consent of none of such Members shall be effective.

5. **Reserve Fund.** To the extent the same is reasonably possible and practicable and is not inconsistent with the significant interest of the Unit Owners, the Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas or the Restrictive Common Areas, and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Unit Owners rather than by special assessments.

6. **Lease Provisions.** Any Owner may lease his Unit and such buildings as are situated thereon; provided, however, that any lease agreement between a Unit Owner and a Lessee must be in writing, and must provide, inter alia, that:

(a) The terms of the lease shall in all respects be subject to the provisions of the Declaration, Articles of Incorporation of the Association and the By-Laws; and

(b) Any failure by the Lessee to comply with the terms of such documents shall constitute a default under the lease.

7. **Declarant's Rights Assignable.** All or any portion of the rights of Declarant under this Declaration or in any way relating to the property may be assigned.

8. **Information Concerning Transfer of Unit and Transfer Fee.** Any Owner who sells, leases for a term (including extensions) in excess of one (1) year, or otherwise transfers or conveys his Unit shall submit to the Association pertinent information concerning

the transferee within ten (10) days of said transfer of title or possession, and in the event of sale, the selling Owner, or the purchaser, as agreed between them, shall pay the Association a transfer fee of Fifty Dollars (\$50.00).

9. **Transfer of Common Areas.** The Board of Directors of the Association may, in connection with dissolution of the Association or otherwise, dedicate or transfer all or any part of the Common Areas, the Restrictive Common Areas, or any sewer, water and storm drainage trunklines within the Emerald Heights Condominium, to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Board. Any such dedication or transfer must, however, be assented to by sixty percent (60%) of the votes of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10), but not more than thirty (30) days prior to the meeting date.

10. **Dissolution.** Subject to the restrictions set forth in Article IX of this Declaration pertaining to mortgagee protection, the Association may be dissolved by the affirmative assent in writing of sixty percent (60%) of the votes of each class membership. Upon dissolution of the Association all of its assets (including the Common Areas) may be dedicated or transferred to an appropriate public agency or authority to be used for purposes similar to those provided for in the By-Laws, the Articles of Incorporation or this Declaration. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a non profit corporation, trust, or other

entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Areas, the Restrictive Common Areas, curbs, gutters and sidewalks on a pro rata basis which conforms substantially with the assessment procedure, terms and conditions set forth in Article V of this Declaration.

11. **Registered Office and Agent.** The registered office of the Association shall be located in Salt Lake County, Utah. The name and address of the initial registered agent and the registered office of the Association is as follows:

EMERALD HEIGHTS HOMEOWNERS' ASSOCIATION
2369 East Dayspring Lane
Salt Lake City, Utah 84124
Attention: Linda Secrist, Registered Agent

12. **Declarant's Covenant to Construct Common Areas.** Declarant hereby covenants to construct all the improvements on the Common and Restrictive Common Areas indicated on the Plat within one (1) year of the filing of this Declaration in the office of the County Recorder of Salt Lake County, Utah.

13. **Enforcement by County.** If the Association fails to maintain the Common Areas, the Restrictive Common Areas, along with the curbs, gutters and sidewalk, in good order and condition, Salt Lake County shall have the right, but not the obligation, to step in and do the necessary maintenance and management with the same right to lien the Units and collect the costs thereof against the Owners as the Association has under this Declaration shall not affect the validity or enforceability of the remainder hereof.

14. **Interpretation.** The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include the other gender. The invalidity or enforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

15. **Property Part of Development.** The Property shall comprise the Emerald Heights Condominium.

16. **Covenants to Run With Land.** This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Declarant, and all parties who hereafter acquire any interest in a Unit or in the Common Areas shall be subject to the terms of this Declaration and

the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration; and failure to comply with any of the foregoing shall be grounds for an action by the Association or an aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Unit or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

17. **Effective Date.** This Declaration and any Amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

EXECUTED the day and year first above written:
SECRETIST AND SIEBER DEVELOPMENT CORPORATION, INC.

BY Linda Secrist
Linda Secrist, President

Keith H. Sieber
Keith H. Sieber, Vice President

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this 31st day of March, 1995, personally appeared before me Linda Secrist and Keith H. Sieber, who being by me duly sworn, did say that they duly executed the foregoing Declaration of Covenants, Conditions and Restrictions of the Emerald Heights Condominium.

[Signature]
NOTARY PUBLIC
Residing at Salt Lake County, Utah

My Commission Expires:

2-25-96

