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DECLARATION OF CONDOMINIUM

FOR

EDGEMOUNT HOMES, PHASE 1

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3  
RECORDED  
REBECCA GRAY

MAY 1 9 43 AM '95

KATHLEEN BIXON  
REGISTERED  
SALT LAKE COUNTY,  
UTAH

This Declaration of Condominium, hereinafter referred to as the "Declaration", is made and executed this 28<sup>th</sup> day of March, 1985, by ALAN F. HOLBROOK CO., INC., a Utah corporation, hereinafter referred to as the "Declarant."

RECITALS

A. Description of Land. The Declarant is the record owner of the following described land (hereinafter referred to as the "Land") situated in Salt Lake County, State of Utah:

Beginning on the East line of 2000 East Street at a point which is S 0 04'05" E along the section line 937.98 feet and N 88 30'00" E 33.01 feet from the Northwest corner of Section 27, T. 1 S., R. 1 E., S.L.B. & M. and running thence N 88 30'00" E 199.61 feet; thence N 77 45'27" E 80.48 feet; thence N 88 30'00" E 15.00 feet; thence S 1 30'00" E 1.00 feet; thence N 88 30'00" E 151.065 feet; thence N 3 00'00" W 118.80 feet; thence S 89 54' 00" E 294.00 feet; thence S 0 44'45" W 351.05 feet; thence N 89 15'00" W 256.19 feet; thence S 17 10' 00" E 27.10 feet; thence S 89 37' 36" W 225.69 feet; thence N 7 09' 15" W 232.06 feet; thence S 88 54' 00" W 224.72 feet to the East line of 2000 East Street; thence N 0 04'05" W along said East line 5.33 feet to the Point of Beginning.  
Contains 3.55 Acres, or 154,499 Sq. Feet.

Subject to all and any applicable easements and rights-of-way for water, sewer, power, telephone, and other utilities, all and any easements and rights-of-way shown on the Map, and all and any applicable easements, rights-of-way, and other matters of record or enforceable at law or in equity.

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B. Building and Improvements. The Declarant has constructed or will construct on the Land certain Buildings and other improvements, as shown on the Record of Survey Map referred to below.

C. Record of Survey Map. The Declarant intends to execute, acknowledge, and record in the office of the County Recorder of Salt Lake County, State of Utah, a certain instrument pertaining to the Project and entitled "Record of Survey Map for the Edgemount Homes, Phase 1," simultaneously herewith.

D. Intent and Purpose. The Declarant intends by recording this Declaration and the Map to submit the Land, the Buildings, and all other improvements situated in or upon the Land to the provisions of the Condominium Act as a fee simple Condominium Project and to impose upon said property mutually beneficial restrictions under a general plan of improvement for the benefit of all Condominiums in the Project and Owners thereof.

E. Expandable Project. The Declarant intends to reserve herein the right to expand the Project by adding thereto certain additional land and improvements in accordance with the provisions of this Declaration and the Condominium Act.

NOW, THEREFORE, the Declarant does hereby make the following Declaration.

#### ARTICLE I

#### DEFINITIONS

1.01. Defined Terms. Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article I.

1.02. "Association" shall mean the Edgemount Homes Home Owners Association, organized to be the Association referred to herein.

1.03. "Management Committee" or "Committee" shall mean the governing board of the Association, appointed or elected in accordance with this Declaration and Bylaws of the Association.

1.04. "Buildings" shall mean the Condominiums that have been or will be constructed on the Land, as such Condominium buildings are shown on the Map.

1.05. "Common Areas" shall mean all physical portions of the Project, except all Units.

1.06. "Common Expense Fund" shall mean the fund created or to be created pursuant to the provisions of Article X of this Declaration and to which the monies of the Association are

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to be credited.

1.07. "Common Facilities" shall mean all furniture, furnishings, equipment, facilities, and other property (real, personal, or mixed) and interests therein at any time leased, acquired, owned, or held by the Association for the use and benefit of all Owners and all other property (real, personal, or mixed) hereafter purchased in accordance with this Declaration with monies from the Common Expense Fund. Common Facilities shall be deemed to be part of the Common Areas, except to the extent otherwise expressly provided in this Declaration.

1.08. "Unit Owner" shall mean the person or persons owning a unit in fee simple and an undivided interest in the fee simple estate of the Common Areas and Facilities in the percentage specified and established in this Declaration.

1.09. "Condominium Act" shall mean the Utah Condominium Ownership Act and amendments thereto. (Title 57, Chapter 8, Utah Code Annotated).

1.10. "Declarant" shall mean ALAN F. HOLBROOK, COMPANY, INC., a Utah corporation.

1.11. "Land" shall mean the land upon which the Project is situated, as more particularly described in Paragraph A of the Recitals above.

1.12. "Limited Common Areas" shall mean any Common Areas designated for exclusive use by the Owner of a particular Unit. Structural separations between Units or the space which would be occupied by such structural separations may become Limited Common Areas for the exclusive use of the Owner or Owners of the Units on either side thereof as provided in Section 5.03 hereof. Any balconies, porches, or storage facilities that are identified on the Map with the same number of other designation by which a Unit is identified shall be Limited Common Areas for the exclusive use of the Owner of the Unit bearing the same number or designation.

1.13. "Manager" shall mean the person, firm, or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association, and the Project.

1.14. "Map" shall mean the Record of Survey Map for the Edgemount Homes, Project 1, pertaining to the Project and recorded or to be recorded in the office of the County Recorder of Salt Lake County, State of Utah, simultaneously herewith.

1.15. "Mortgage" shall mean any mortgage, deed of trust, or other security instrument by which a Condominium Unit or

any part thereof is encumbered.

1.16. "Mortgagee" shall mean (i) any person named as the mortgagee, beneficiary, or secured party under any Mortgage by which the interest of any Owner is encumbered, or (ii) any successor to the interest of any such person under such Mortgage.

1.17. "Project" shall mean the Land, the Buildings, and all improvements submitted by this Declaration and the Map to the provisions of the Condominium Act.

1.18. "Total Votes of the Association" shall mean the total number of votes appertaining to all Units in the Project, as shown in Exhibit A., attached hereto.

1.19. "Unit" shall mean an individual air space unit, consisting of enclosed rooms occupying part of one of the Buildings and bounded by the interior surfaces of the walls, floors, ceilings, windows, doors, and built-in fireplaces, if any, along the perimeter boundaries of the air space, as said boundaries are shown on the Map, together with all fixtures and improvements therein contained. Paint and other wall, ceiling, or floor coverings on interior surfaces shall be deemed to be a portion of the Unit. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit insofar as they are necessary for the support of for the use and enjoyment of another Unit: Bearing walls, floors, ceilings, and roofs (except the interior surfaces thereof), foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires, and other utility installations, except the outlegs thereof when located within the Unit. The interior surfaces of the window or door mean the points at which such surfaces are located when the window or door is closed.

## ARTICLE II

### SUBMISSION AND DIVISION OF PROJECT

2.01. Submission to Condominium. The Declarant hereby submits the Land, the Buildings, and all other improvements now or hereafter made in or upon the Land to the provisions of the Condominium Act. All of said property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used and improved as a fee simple Condominium Project to be known as Edgemount Homes. All of said property is and shall be subject to the covenants, conditions, restrictions, uses, limitations, and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of said Project and in furtherance of a plan for improvement of said property and division thereof into Condominium Units; further, each and all of

the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to the Declarant, and to any person acquiring, leasing, or owning an interest in the real property and improvements comprising the Project, and to their respective personal representatives, heirs, successors, and assigns.

2.02. Division into Condominiums. The Project is hereby divided into Condominiums, each such Condominium consisting of a Unit and for appurtenant undivided interest in the Common Areas, as set forth in Exhibit A attached hereto and by this reference made a part hereof.

### ARTICLE III

#### BUILDINGS AND IMPROVEMENTS

3.01. Buildings and Improvements. The Buildings and other improvements constructed or to be constructed on the Land are described on the Map. The Map indicates the number of stories, the number of Units which are to be contained in the buildings which comprise a part of such improvements, the dimensions of the Units, and other significant facts relating to such improvements. Edgemount Homes is divided into 23 Units contained in twelve (12) buildings. All of the buildings will be newly constructed, with eleven (11) of the buildings containing two (2) Units, and one (1) building containing one (1) Unit, all Units will contain a partial basement with a main floor, and an upper floor. The new Units will be constructed of 2"x6" stud walls with a brick wainscot and shake roof, fenced patios, which will be Limited Common Areas, will be located adjacent to each Unit. The buildings will be supplied with gas, electricity, water, and sewage services. The Units are individually heated by gas forced air furnaces, and cooled by electric air conditioning.

3.02. Description of Units. The Map contains the unit number, location, and dimensions of each Unit in the Project and all other information necessary to identify each Unit.

3.03. Description of Common Areas. The Map contains a description of the Common Areas of the Project. The Map also contains a description of the Limited Common Areas of the Project and designations of the particular Unit or Units to which use of such Limited Common Areas is reserved.

### ARTICLE IV

#### EXPANSION OF PROJECT

4.01. Reservation of Option to Expand. Declarant hereby reserves the option to expand the Condominium Project to include a maximum of 27 additional Units in the project. This option to expand shall expire seven (7) years from the effective

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date of this Declaration unless sooner terminated by Declarant's recorded waiver of such option, there being no other circumstances which will cause the option to expire prior to said seven (7) years. Such right may be exercised without first obtaining the consent or vote of Unit Owners, and shall be limited only as herein specifically provided. Such Unit shall be constructed on the portion of the entire tract not included in Phase 1. The total number of Units in the project, as expanded, shall not exceed 50 Units and the maximum number of Units per acre contained in any additional phase of the project shall not exceed eight (8) Units per acre.

4.02. Amended Declarations and Amended Maps. Such expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Salt Lake County, Utah, no later than seven (7) years from the date this Declaration is recorded, and amendment or amendments to this Declaration containing a legal description of the site or sites for new Units, together with a, amended Map or Maps containing the same information with respect to the new Units as was required on the Map with respect to the Phase 1 Units. The expansion may be accomplished in the Phases by successive amendments, or in one amendment.

4.03. Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Project as so expanded. The recordation in the office of the Salt Lake County Recorder of an amended Map incident to any expansion shall operate automatically to grant, transfer, and convey to then owners of Units in the Project as it existed before such expansion, undivided interests in the new Common Areas added to the Project as a result of such expansion. Such recordation shall also operate to rest in any then mortgagee of any Unit in the Project as it existed, the interest so acquired by the owner of the Unit encumbering the new Common Areas added to the Project as a result of such expansion.

4.04. Right of Declarant to Adjust Percentage of Common Areas. Each deed of a unit shall be deemed to irrevocably reserve to Declarant the power to appoint to Unit owners, from time to time, the percentages in the Common Areas set forth in the amended Declaration. The proportion of interest of each Unit owner in the Common Areas after any expansion of the Project shall be on the par value that this Unit bears to the total par value of all Units of the Project as expanded. A power coupled with an interest is hereby granted to the Declarant, its successors and assigns, as attorney in fact, to shift percentages of the Common Areas in accordance with the amended Declarations recorded pursuant hereto, and each deed of a Unit in the Project shall be deemed a grant of such power to said attorney in fact. Various provisions of this Declaration in deeds and mortgages of the Units may contain clauses designed to accomplish a shifting of the Common Areas. None of said provisions shall invalidate the other,

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but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Areas can be accomplished. Notwithstanding anything to the contrary herein, no change in the percentage of undivided interest in the Common Areas may be effected more than seven (7) years after the effective date of this Declaration.

Accordingly, upon recordation of an amended Declaration and amended Map incident to any expansion, the revised schedule of undivided interest in the Common Areas contained therein shall automatically become effective for all purposes and shall fully supercede any schedule which was contained in any Declaration associated with any prior phase. In the event the provisions of the separate instruments relating to the Project reflect irreconcilably the terms of that instrument which was recorded most recently shall control.

4.05. Additional Land. Additional land may be added to and merged with the existing Project at such time as Declarant executes and records an amendment to the Declaration reallocating undivided interests in the Common Areas between all Units in Phase 1 and the additional land added and depicting such additional units on an amended Map as required by the Utah Condominium Ownership Act, as amended.

## ARTICLE V

### NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP

5.01. Interior of Units. Each Owner shall have the exclusive right to paint, repaint, tile, wax, paper, carpet, or otherwise decorate the interior surfaces of the walls, ceilings, floors, and doors forming the boundaries of his Unit and the surfaces of all walls, ceilings, floors, and doors within such boundaries.

5.02. Maintenance of Units. Each Owner shall keep the interior of his Unit, including without limitation, interior walls, windows, ceilings, floors, and permanent fixtures and appurtenances thereto in a clean and sanitary condition and in a state of good repair. In the event that any such Unit shall fail to correct such condition or state of disrepair promptly following written notice from the Association, the Association shall have the right, but not the obligation, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary or unclean condition or state of disrepair.

5.03. Title. Title to a Unit in the Project may be held or

owned by any person or entity or any combination thereof and in any manner in which title to any other real property may be held or owned in the State of Utah, including without limitation joint tenancy or tenancy in common.

5.04. Ownership of Common Areas. The undivided interest in the Common Areas appurtenant to each Unit in the Project shall be as set forth in Exhibit A attached hereto and be this reference made a part hereof. Except as otherwise provided in Article IV hereof pertaining to expansion of the Project, the percentages appurtenant to each Unit as shown in said Exhibit A shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in an amendment to this Declaration duly recorded. Except as otherwise provided in this Declaration, any Owner shall be intitled to nonexclusive use of the Comon Areas (other than Limited Common Areas) in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any rules and regulations promulgated by the Association. Except as otherwise provided in this Declaration, each Owner shall have the exclusive right to use and enjoy any Limited Common Areas that may be designated for exclusive use by such Owner.

5.05. Inseparability. Title to no part of a Unit in the Project may be separated from any other part thereof during the period of Unit ownership hereunder, and each Unit and the undivided interest in the Common Areas appurtenant to each Unit shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Unit. Every devise, encumbrance, conveyance, or other disposition of a condominium, or any part thereof, shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Unit, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth.

5.06. No Subdivision. No Unit or portion thereof may be divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership.

5.07. No Partition. The Common Areas shall be owned in common by all of the Owners, and no Owner may bring any action for partition thereof.

5.08. Separate Mortgages by Owners. Each Owner shall have the right separately to mortgage or otherwise encumber his Unit. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part thereof, other than the undivided interest therein appurtenant to his Unit. Any Mortgage or other encumbrance of any Unit within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial

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foreclosure, or otherwise.

5.09. Separate Taxation. Each Unit in the Project, including each Unit and appurtenant undivided interest in the Common Areas, shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision or of any special improvement district or of any other taxing or assessing authority. For purposes of such assessment, the valuation of the Common Areas shall be apportioned among the Units in proportion to the undivided interests in Common Areas appurtenant to such Units. All such taxes, assessments, and other charges on each respective Unit shall be separately levied against the Owner thereof. No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Unit.

5.10. Mechanics Liens. No labor performed or material furnished for use in connection with any Unit with the consent or at the request of any Owner or his agent or subcontractor shall create any right to file a statement or notice of mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting the same or against any interest in the Common Areas (other than the undivided interest in the Common Areas appurtenant to the Unit of the Owner for whom such labor shall have been performed and such materials shall have been furnished).

5.11. Description of Unit. Every contract for the sale of a Unit and every other instrument affecting title to a Unit in the Project may describe a Unit by its identifying number or symbol as indicated in this Declaration or as shown on the Map. Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Areas, and to incorporate all the rights incident to ownership of a Unit in the Project and all of the limitations on such ownership as described in this Declaration and/or in the Bylaws of the Association.

## ARTICLE VI

### EASEMENTS

6.01. Easements for Encroachments. If any part of the Common Areas encroaches or shall hereafter encroach upon any Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of the Common Areas or any part of a Unit shall hereafter encroach on real property now owned by the Declarant outside the boundaries of the Land, an easement for such encroachment shall and does exist. Such encroachments shall not be considered to be encumbrances

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either on the Common Areas or the Units. Encroachments caused by error in the original construction of the Buildings or any improvements constructed or to be constructed in the Project, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position causes by repair or reconstruction of the Project, or any part thereof, in accordance with the provisions of this Declaration.

6.02 Easements for Maintenance, Cleaning, and Repair. Some of the common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Association shall have the irrevocable right to have access to each Unit and to all common Areas from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair, or replacement of any Common Areas or for making emergency repairs at any time therein necessary to prevent damage to the Common Areas or to any Unit. In addition, the Association or its agents may enter any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, landscaping, construction, or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association with funds from the Common Expense Fund.

6.03. Right to Ingress, Egress, and Support. Each Owner shall have the right to ingress and egress over, upon, and across the Common Areas as necessary for access to such Owner's Unit and to any Limited Common Areas appurtenant to such Unit and shall have the right to horizontal, vertical and lateral support of such Unit, and such rights shall be appurtenant to and pass with title to each Unit.

6.04. Association's Right to Use Common Areas. The Association shall have an easement to make such use of the Common Areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including without limitation the right to construct and maintain in the Common Areas (other than Limited Common Areas) facilities for use by Owners generally or by the Association and its agents exclusively.

6.05. Easement for Completion of Project. The Declarant shall have a transferable easement over and on the Common Areas for the purpose of completing construction of the project and making improvements therein as shown on the Map, for the purpose of completing construction of all and any improvements to be constructed on any portion or portions of the Additional Land added to the Project, and for the purpose of doing all things reasonably necessary or appropriate in connection therewith. To the extent that damage is inflicted on any part of the project by any person utilizing said easement, the Declarant and the person causing the damage shall be liable to the Association for the prompt repair of such damage.

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6.06. Easements Deemed Created. All conveyances of Units in the Project hereafter made, whether by the Declarant or otherwise shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

## ARTICLE VII

### RESTRICTIONS ON USE

7.01. Residential Uses. The Units in the Project shall be used exclusively for residential and lodging purposes, such purposes to be confined to Units in the Project. No Unit shall be used for business or commercial activity; provided, however, that nothing herein shall be deemed to prevent (a) the Declarant or its duly authorized agents from using any Units owned by the Declarant as sales models or property management offices or (b) any Owner or his duly authorized agent from freely renting or leasing his Unit from time to time.

7.02. No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on in or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or may cause disturbance or annoyance to Owners. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

7.03. Restriction on Signs. No signs, flags, or advertising devices of any nature, including without limitation commercial, political, informational or directional signs or devices shall be erected or maintained on any part of the Project, without the prior inspection and written approval of the Association, except as any be necessary temporarily to caution or warn of danger. If the Association consents to the erection of any such signs or devices, the same shall promptly be removed at the request of the Association.

7.04. Restriction on Animals. No animals, birds, fish, reptiles, or pets of any kind shall be brought or allowed to remain in or upon any part of the Project, unless and until written authorization is obtained from the Association. The Association shall, in the sole discretion of its Management Committee, have the right to revoke such authorization at any time, with or without cause.

7.05. No Structural Alterations. No owner shall, without the prior written consent of the Association, make or permit to be made any structural alteration, improvement, or addition in or to his Unit or to the Common Areas. No Owner shall without the prior

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written consent of the Association, do any act that would impair the structural soundness or integrity of the Buildings or the safety of property or impair any easement or hereditament appurtenant to the Project.

7.06. No Obstructions. No Owner shall obstruct the Common Areas or any part thereof. No Owner shall store or cause to be stored on the Common Areas any property what so ever, unless the Association shall consent thereto in writing.

7.07. Prohibition of Damage and Certain Activities. Except with the prior written consent of the Association, nothing shall be done or kept in any Unit, in the common Areas, or in any other part of the project or any part thereof, nor shall anything be done or kept in any Unit which would increase the rate of insurance on the Project or any part thereof over that which the Association, but for such activity, should pay. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority. No damage to or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest of any Owner, and each Owner shall indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or his guests, lessees, licensees, or invitees.

7.08. Rules and Regulations. The Owners shall comply with each and all of the rules and regulations governing use of the Units and /or Common Areas as such rules and regulations may from time to time be adopted, amended, or revised by the Association, in the sole discretion of its Management Committee.

7.09. Construction Period Exemption. During the course of actual construction of any permitted structures or improvements within the Project or on any portions of the Additional Land added to the Project, the provisions, covenants, conditions, and restrictions, contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however that during the course of such construction, nothing shall be done which will result in a violation of any of said provisions, covenants, conditions, or restrictions upon completion of the construction.

#### ARTICLE VIII

#### THE ASSOCIATION

8.01. Membership. Each Owner shall be entitled and required to be a member of the Association; such membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be

an owner. If title to a Unit is held by more than one person, the membership appurtenant to that Unit shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which title to the Unit is held. An Owner shall be entitled to one membership for each Unit owned by him. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of the Unit. Ownership of a Unit in the Project cannot be separated from membership in the Association appurtenant thereto, and any devise encumbrance, conveyance, or other disposition of a Unit shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the Owner's membership in the Association and rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Unit.

8.02. Management Committee. Until such time as the responsibility for electing the Management Committee of the Association is turned over to the Owners in accordance with Utah law, the Declarant shall have the exclusive right to appoint and to remove and replace all such Committee Members.

8.03. Voting Rights. The Association shall have one class of voting membership which shall be, with respect to each Unit in which the interest required for membership is held, one vote for each Unit owned. Neither the issuance nor the holding of membership certificates or shares of stock shall be necessary to evidence membership of the Association. However, the Committee is authorized to issue membership certificates if it deems such to be advisable or appropriate.

8.04. Amplification. The provisions of this Article VIII may be amplified by the Bylaws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration. The initial bylaws of the Association shall be in the form of Exhibit B attached hereto and by this reference made a part hereof.

8.05. Amendment of Article. This Article VIII shall not be amended unless the Owners of all Units in the Project unanimously consent and agree to such amendment by instruments duly recorded.

## ARTICLE IX

### CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

9.01. Common Areas. The Association, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including the Common

Facilities), and shall keep the same in a good, clean, attractive, safe, and sanitary condition, order, and repair; provided, however, that each Owner shall keep the Limited Common Areas, if any, designated for use in connection with his Unit in a good, clean, safe, sanitary, and attractive condition. The Association shall be responsible for the maintenance and repair of the exterior of the Buildings and the grounds, including without limitation painting, repair and replacement of exterior trim and roofs, and maintenance of landscape, walkways, and driveways. The Association shall also be responsible for maintenance, repair, and replacement of Common Areas within the Buildings, including without limitation hallways, elevators, utility lines, and all Common Facilities, improvements, and other items located in or used in connection with the Common Areas. The specification of duties of the Association with respect to particular Common Areas shall not be construed to limit its duties with respect to other Common Areas, as set forth in the first sentence of this Section. All goods and services procured by the Association in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund.

9.02. Flood Control and Maintenance. The Association, acting through the Management Committee, shall provide for such maintenance to the storm drainage systems and irrigation systems within the Project boundaries as may be necessary to keep them clean, functional, and generally in good condition and repair.

9.03. Manager. The Association may by written contract delegate in whole or in part to a professional Manager such of the Association's duties responsibilities, functions, and powers hereunder as are properly delegable. The services of any Manager retained by the Association shall be paid for with funds from the Common Expense Fund.

9.04. Miscellaneous Goods and Services. The Association may obtain and pay for the services of such personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. In addition to the foregoing, the Association may acquire, and pay for out of the Common Expense Fund, water, sewer, garbage collection, electrical, gas, and other necessary or desirable utility services for the common Areas (and for the Units to the extent not separately metered or billed), and insurance, bonds, and other goods and services common to the Units.

9.05. Real and Personal Property. The Association may acquire and hold real, personal, and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise. All such property, including

Common Facilities shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall be part of such Fund.

9.06. Rules and Regulations. The Association may make reasonable rules and regulations governing the use of the Units, the Common Areas, and the Limited Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Association may take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations of Owners arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. In the event of such judicial action the Association shall be intitled to recover its costs, including reasonable attorneys' fees, from the offending Owner.

9.07. Granting Easements. The Association may, without the vote or consent of the Owners or of any other person, grant or create, on such terms as it deems advisable, utility and similar easements and rights-of-way over, under, across, and through the Common Areas.

9.08. Statutory Duties and Powers. All duties responsibilities, rights, and powers imposed upon or granted to the "management committee" or the "manager" under the Condominium Act shall be duties, responsibilities, rights, and powers of the Association hereunder.

9.09. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration or by law and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## ARTICLE X

### ASSESSMENTS

10.01. Agreement to Pay Assessments. The Declarant, for each Unit in the Project owned by it and for and as the owner of the Project and every part thereof, hereby covenants and each Owner of any Unit by the acceptance of instruments of conveyance and transfer therefor whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the purposes provided in the Declaration. Such assessments shall be fixed, established, and collected from time to time as provided in this Article X.

10.02. Annual Assessments. Annual Assessments shall be computed and assessed against all Units in the Project as follows:

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(a) Common Expense. Annual Assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with maintenance and operation of the Common Areas and/or furnishing utility services and other common items to the Units. Such estimated expenses may include, among other things, the following: Expenses of management; real property taxes and special assessments (until the Units are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages for Association employees, including fees for a Manager (if any); utility charges, including charges for utility services to the Units to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve, surplus, and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of all the Owners under or by reason of this Declaration. Such shall constitute the Common Expense, and all funds received from assessments under this Section 10.02 shall be part of the Common Expense Fund.

(b) Apportionment. Expenses attributable to the Common Expense or to the Project as a whole shall be apportioned among and assessed to all Owners in proportion to their respective undivided interests in the Common Areas. The Declarant shall be liable for the amount of any assessments against completed Units owned by it.

(c) Annual Budget. Annual Assessments shall be determined on a January through December fiscal year bases; provided that the first fiscal year shall begin on the date this Declaration is recorded in the office of the County Recorder of Salt Lake County, State of Utah. On or before July 31, 1985, and on or before April 1 of each year thereafter, the Association shall prepare or cause to be prepared and furnished to each Owner an operating budget for the upcoming fiscal year. The budget shall itemize the estimated expenses of Common Expense for such fiscal year, anticipated receipts (if any), and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period. Such budgets shall be unnecessary for Annual Assessments relative to, or for operation of the Project during, any operating period ending prior to

(d) Notice and payment. Annual Assessments shall be levied on the basis of a fiscal year beginning JAN and ending on Dec. next following; provided that the first fiscal year shall begin on the date this Declaration is recorded in the office of the County Recorder of Salt Lake County, State of Utah. Except with respect to the first fiscal year, the Association shall notify each Owner as to the amount of the Annual Assessment with respect to his Unit on or before July 31 each year for the fiscal year commencing on Jan. 1 next following. Each Annual Assessment



shall be payable in twelve (12) equal monthly installments due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, that the Annual Assessment for the first fiscal year shall be based upon and shall be payable in equal monthly installments for the balance of such fiscal year remaining after the date of recording hereof. All unpaid installments of any Annual Assessment shall bear interest at the rate of one and one-half percent (1-1/2%) per month (or at such lesser rate equal to the maximum interest rate allowed by applicable law) from the date each such instalment is due until paid. The failure of the Association to give timely notice of any Annual Assessment as provided herein shall not be deemed to waive or modify in any respect the provisions of this Declaration, or to release any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the involved Owner.

(e) Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedure set forth in Section 10.03 hereof, except that the vote therein specified shall be unnecessary.

10.03. Special Assessments. In addition to the Annual Assessments authorized by this Article, the Association may, at any time and from time to time, upon the affirmative vote of at least fifty-one percent (51%) of the Total Votes of the Association, levy Special Assessments, payable over such periods as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including without limitation Common Expenses). This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interests in the Common Areas. Notice in writing of the amount of such Special Assessments and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of one and one-half percent (1-1/2%) per month (or at such lesser rate equal to the maximum interest rate allowed by applicable law) from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund.

10.04. Lien for Assessments. All sums assessed to Owners of

any condominium in the Project pursuant to the provisions of this Article X, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit, and a description of the Unit. Such a notice may be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the county Recorder of Salt Lake County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in the State of Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings (including reasonable attorneys' fees) and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Unit which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Association shall have the right and power to bid in at any foreclosure sale, and to hold, lease, mortgage, or convey the subject Unit. Such lien may also be enforced by sale in accordance with the provisions of the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or in any other manner permitted by the laws of the State of Utah then in effect.

10.05. Personal Obligation of Owner. The amount of any Annual or Special Assessment against any Unit shall be the personal obligation of the Owner of such Unit to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

10.06. Statement of Account. Upon payment of a reasonable fee not to exceed \$10.00 and upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, the Association shall issue a written statement setting forth the following: The amount of the unpaid assessments, if any, with respect to such Unit; the amount of the current Annual Assessment and the date or dates upon which installments thereof become due; credit for advanced payments or prepaid items, including without limitation the Owner's share of prepaid insurance premiums. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

10.07. Personal Liability of Purchaser. Subject to the provisions of Section 10.06 hereof, a purchaser of a Unit shall be

jointly and severally liable with the seller thereof for all unpaid assessments against such Unit up to the time of the grant or conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

10.08. Amendment of Article. This Article X shall not be amended unless the Owners of all Units in the Project unanimously consent and agree to such amendment by instruments duly recorded.

## ARTICLE XI

### INSURANCE

11.01. Types of Insurance. The Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Utah.

(a) Fire and Casualty Insurance. The Association shall obtain a policy or policies of insurance on the Project in such amounts as shall provide for replacement thereof in the event of damage or destruction from the casualty against which such insurance is obtained, which insurance shall be in accordance with coverage customarily maintained by other condominium projects similar in construction, design, and use. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice.

(b) Public Liability and Property Damage Insurance. The Association shall obtain a broad form of comprehensive liability insurance coverage, in such amounts and in such forms as it deems advisable to provide adequate protection against liability for personal injury, death, and property damage. Coverage shall include without limitation, liability for operation of automobiles on behalf of the Association and all activities in connection with the ownership, operation, maintenance, and other use of the project.

(c) Workmen's Compensation Insurance. The Association shall obtain and maintain workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(d) Fidelity Insurance or Bond. The Association shall

purchase, in such amounts and in such forms as it deems appropriate, fidelity insurance or a bond to cover against dishonesty of the Manager, Management Committee, officers, employees, and others having access to funds of the Association, destruction or disappearance of money or securities, and forgery.

11.02. Form of Insurance. Insurance coverage on the Project, insofar as possible, shall be in the following form:

(a) Casualty Insurance. Casualty insurance shall be carried in a form or forms naming the Association as the insured, as trustee for the Owners and for the Declarant (whether or not Declarant is an Owner), and such policy or policies shall specify the interest of each Owner (Owner's name, Unit number, and the appurtenant undivided interest in the Common Areas). Each policy shall provide a standard, noncontributory mortgagee clause in favor of each Mortgagee which from time to time shall give notice to the Association of its Mortgage. Each policy also shall provide that it cannot be cancelled either by the insured or by the insurance company until after fifteen (15) days prior written notice is first given to each Owner, to the Declarant, and to each Mortgagee which has requested such notice in writing. The Association shall cause the insurance company to furnish to each Owner, and to each Mortgagee requesting the same, a certificate of coverage, including an identification of the Owner's interest.

(b) Public Liability and Property Damage Insurance. Public liability and property damage insurance shall name the Association as the insured, as trustee for each Owner and for the Declarant (Whether or not Declarant is an Owner), and shall protect the Association, each Owner, and the Declarant against liability for acts or omissions of the Association and all other persons and entities in connection with the ownership, operation, maintenance, or other use of the Project. Each such policy shall provide that it cannot be cancelled either by the insured or by the insurance company until after fifteen (15) days prior written notice to the Association, to each Owner, and to the Declarant.

(c) Policies. The Association shall make every effort to secure insurance policies that will provide for the following:

(i) The insurer shall waive subrogation as to any claims against the Association, the Declarant, the Manager, the Owners, and their respective servants, agents, and guests:

(ii) The policy or policies on the project cannot be cancelled, invalidated, or suspended on account of the conduct of any one or more individual Owners;

(iii) The policy or policies on the Project cannot be cancelled, invalidated, or suspended on account of the conduct of any Trustee, officer, or employee of the Association, without a prior demand in writing that the Association cure the defect; and

(iv) Any "no other insurance" clause in the policy or policies on the project shall exclude individual Owners' policies from consideration.

11.03. Additional Coverage. The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration, in such amounts and in such forms as the Association may deem appropriate from time to time.

11.04. Adjustment and Contribution. Exclusive authority to adjust losses under policies hereafter in force on the Project shall be vested in the Association. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.

11.05. Owner's Own Insurance. Notwithstanding the provisions hereof, each Owner may obtain insurance at his own expense providing coverage on his Unit, his personal property, for his personal liability, and covering such other risks as he may deem appropriate; provided that each such policy shall age for liability arising under insurance policies obtained by the Association pursuant to this Article. All such insurance of the Owner's Unit shall waive the insurance company's right of subrogation against the Association, the Declarant, the Manager, other Owners, and their respective servants, agents, and guests, if such insurance can be obtained pursuant to industry practice without additional premium charge for the waiver of subrogation rights.

11.06. Review of Insurance. The Association shall review annually the coverage and policy limits of all insurance on the Project and adjust same at its discretion. Such annual review may include an appraisal of the improvements in the project by a representative of the insurance carrier or carriers providing the policy or policies on the Project or by such other qualified appraisers as the Association may select.

## ARTICLE XII

### DAMAGE OR DESTRUCTION

12.01. Association as Attorney in Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place, and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an appointment by

said grantee of the Association as his attorney in fact as herein provided. As attorney in fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted.

12.02 Definition of Repair and Reconstruction. Repair and reconstruction of the improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before.

12.03. Procedures. In the event any part of the Project is damaged or destroyed, the Association shall proceed as follows:

(a) Estimate of Costs. As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct that part of the Project damaged or destroyed.

(b) Sufficient Insurance. If the proceeds of the insurance maintained by the Association equal or exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out. In the event the proceeds of such insurance prove insufficient to pay the actual costs of such repair and reconstruction, the Association shall levy a Special Assessment sufficient to provide funds to pay such actual costs of repair and reconstruction. Such Special Assessment shall be allocated and collected as provided in Section 10.03 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) prove insufficient to pay all actual costs of such repair and reconstruction.

(c) Insufficient Insurance--Less than 75% Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Buildings are substantially damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a Special Assessment sufficient to provide the additional funds to pay the actual costs of such reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such special Assessment shall be allocated and collected as provided in Section 10.03 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

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(d) Insufficieint Insurance--75% or more Destruction.

If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if seventy-five percent (75%) or more of the Buildings are substantially damaged or destroyed, such damage or destruction shall be repaired and reconstructed as provided in Section 12.03 (c) hereof if, but only if, within one hundred (100) days following the damage or destruction, the Owners shall elect by a vote of at least seventy-five percent (75%) of the Total Votes of the Association to carry out such repair and reconstruction, the Association shall record in the office of the County Recorder of Salt Lake County, State of Utah, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

(i) The Project shall be deemed to be owned in common by the Owners;

(ii) The undivided interest in the Project owned in common which shall appertain to each Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Areas.

(iii) Any liens affecting any of the Units shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective owner in the Project; and

(iv) The Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance on the Project, if any, shall be considered as one fund and shall be divided among all Owners in a percentage equal to the percentage of undivided interest owned by each respective Owner in the Common Areas, as set forth in Exhibit A hereto, after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the Project owned by such Owner.

12.04. Repair or Reconstruction. If the Damage or destruction is to be repaired and reconstructed as provided above, the Association shall, as soon a practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of the part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney in fact for the owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having the same vertical and

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horizontal boundaries as before.

12.05. Disbursement of Funds for Repair and Reconstruction. If repair or reconstruction is to occur, the proceeds of all insurance collected or maintained by the Association and any amounts received from assessments made pursuant to Sections 12.03 (b) and (c) hereof shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to their respective percentages of ownership of the Common Areas.

12.06. Amendment of Article. This Article XII shall not be amended unless the Owners of all Units in the Project unanimously consent and agree to such amendment by instruments duly recorded.

### ARTICLE XIII

#### CONDEMNATION

13.01. Condemnation. If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain.

13.02. Proceeds. All compensation, damages, and other proceeds from any such taking by power of eminent domain (hereinafter the "condemnation award") shall be made payable to the Association and shall be distributed by the Association as herein provided.

13.03. Complete Taking. In the event the entire Project is taken by power of eminent domain, condominium unit ownership pursuant hereto shall terminate and the condemnation award shall be allocated among and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

13.04. Partial Taking. In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

(a) Allocation of Award. As soon as practicable, the Association shall, reasonably and in good faith, apportion the



condemnation award between compensation, severance damages, or other proceeds, and shall allocate such apportioned amounts and pay the same to the Owners as follows:

(i) The total amount apportioned to taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Units have been taken) in Proportion to their respective undivided interests in the Common Areas;

(ii) the total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Units that have not been taken, in proportion to their respective undivided interests in the Common Areas;

(iii) the respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit;

(iv) The total amount apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

(v) If apportionment or allocation is already established by negotiation, judicial decree, statute, or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable; and

(vi) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as appropriate.

(b) Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, condominium unit ownership pursuant hereto shall not terminate, but shall continue. In such event the project shall be reorganized as follows:

(i) If any partial taking results in the taking of an entire Unit, then the Owner thereof shall cease to be a member of the Association and all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reallocated to, and shall appertain to, the remaining Units in proportion to their respective undivided interests in the Common Areas.

(ii) If any partial taking results in the taking of a portion of a Unit and if there is no determination that such taking makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then the fair market value of such remaining portion of the Unit shall be determined and all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reduced in

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proportion to their respective undivided interests in the Common Areas, and the remaining portion of such Unit shall thenceforth be part of the Common Areas.

(iii) If any partial taking results in the taking of a portion of a Unit and if there is a determination that such taking makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then all voting rights and the entire undivided interest in the Common Areas appertaining to such Unit shall be reallocated to, and the remaining portion of such Unit shall thenceforth be part of the Common Areas.

(iv) The Association shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section 13.04 (b); provided however, that if any such determination shall have been made or such action taken by judicial decree, the Association shall defer thereto and proceed in accordance therewith.

(c) Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article XII hereof for cases of Damage or Destruction; provided, however, that the provisions of said Article dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

13.05. Amendment of Article. This Article XIII Shall not be amended unless the Owners of all Units in the Project unanimously consent and agree to such amendment by instruments duly recorded.

#### ARTICLE XIV

##### MORTGAGEE PROTECTION

14.01. Notice to Mortgagees. From and after the time a Mortgagee makes written request to the Association therefor, the Association shall notify such Mortgagee in writing in the event that the Owner of the Unit encumbered by the Mortgage held by such Mortgagee neglects for a period of thirty (30) days or more to cure any failure on the part of such Owner to perform any of his obligations under this Declaration.

14.02. Subordination of Assessment Lien. The lien or claim against a Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to a prior Mortgage or a deed or assignment in lieu of foreclosure shall take the same free of such lien or claim for unpaid assessments or charges resulting from a pro rata reallocation thereof to all Units including the Unit in which the Mortgagee is

interesteu). No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a Mortgage or as not a burden to a Mortgagee coming into possession pursuant to his Mortgage or a deed or assignment in lieu of foreclosure shall be collected or enforced against a mortgagee coming into possession pursuant to his Mortgage or a deed or assignment in lieu of foreclosure shall be collected or enforced against a Mortgagee, a successor in title to a Mortgagee, or the Unit affected or previously affected by the Mortgage concerned (to the extent any such collection or enforcement would prejudice the interests of the Mortgagee or sucessor in title to the mortgagee interested in such Unit).

14.03. Prior Written Approval of Mortgagees. Unless all of the first Morgagees of the individual Units have given their prior written approval, the Association shall not be entitled, by act, omission, or otherwise:

(a) To abandon or terminate the Project or to abandon or terminate the arrangement which is established by this Declaration and the Map except for abandonment provided by statute in case of substantial loss to the Units and Common Areas;

(b) To partition or subdivide any Unit;

(c) To abandon, partition, subdivide, encumber, alter the boundries of, sell, diminish, or transfer all or any of the Common Areas ( except for the granting of easements for utilities and similar purposes consistent with the intended use of the Common Areas, and except as provided in Section 15.03 (a) hereof, and except as provided in Article IV hereof pertaining to expansion;

(d) To use hazard insurance proceeds resulting from damage to any part of the Project (whether to Units or to the Common Areas) for purposes other than the repair, replacement, or reconstruction of such improvements;

(e) To change the pro rata interests or obligations of any Unit which apply for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (ii) determining the pro-rata share of ownership of each Unit in the Common Areas ( except in each case as provided in Article IV hereof pertaining to expansion);

(f) To alter the provisions hereof in such a way as to diminish the insurance protection required to be afforded to the parties designed to be protected thereby, or to fail to maintain the insurance coverage described therein;

(g) Subject any Unit to any unreasonable restraints on alienation which would adversely affect title or marketability of a Unit, or the ability of the Mortgagee to foreclose its mortgage lien and thereafter to sell or lease the mortgaged Unit;

(h) To allow any person or entity handling funds of the Association, including without limitation employees of any Manager, to do so without first obtaining therefor appropriate fidelity bond coverage.

14.04. Examination of Records. Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Association. From and after the time a Mortgagee makes written request to the Association therefor, the Association shall furnish to such Mortgagee at the Mortgagee's expense copies of such annual operating reports and other reports or writings summarizing or reflecting the financial position or history of the Project as may be prepared for distribution to or use by the Owners generally.

14.05. Revenue Fund and Working Capital Fund Required. The Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary repairs and replacements of the Common Areas and any component thereof and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Units, rather than by Special Assessments, to the extent reasonably possible.

14.06. Notification of Loss or Damage. From and after the time a Mortgagee makes written request to the Association therefor, the Association shall notify such Mortgagee in writing in the event that there occurs any damage or loss to, or taking or anticipated condemnation of: (a) The Common Areas involving an amount in excess of, or reasonably estimated to be in excess of, Ten Thousand Dollars (\$10,000.00); or (b) any Unit involving an amount in excess of, or reasonably estimated to be in excess of, One Thousand Dollars (\$1,000.00). Said notice shall be given within ten (10) days after the Association learns of such damage, loss, taking, or anticipated condemnation.

14.07. Article Supercedes All Others. In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article XIV, the provision or clause which results in the greatest protection and security for a mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

14.08. Amendment of Article. No amendment to this Article XIV which has the effect of diminishing the rights, protection, or security afforded to Mortgagees shall be accomplished or effective unless all of the first Mortgagees of the individual Condominiums have given their prior written approval to such amendments. Any amendment to this Article XIV shall be accomplished by an instrument executed by the Association and filed for record in the office of the County Recorder of Salt Lake County, State of Utah. In any such instrument, an officer of the

Association shall certify under penalties of perjury that any prior written approval of first Mortgagees required by this Article XV as a condition to amendment has been obtained.

14.09. Notices. Any notice to a Mortgagee under this Article XIV shall be in writing and shall be sufficient for all purposes if personally delivered or if sent by first class mail, postage prepaid, and addressed to the Mortgagee at the address for notices from time to time specified by the Mortgagee writing to the Association. Any such notice shall be deemed to have been given and received and shall be effective when personally delivered or when deposited in the U.S. mail in the form herein specified, whichever first occurs.

#### ARTICLE XV

##### COMPLIANCE WITH DECLARATION AND BYLAWS

15.01. Compliance. Each Owner shall comply strictly with the provisions of this Declaration and Bylaws of the Association, rules and regulations promulgated by the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended, modified or enacted from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief or for both, maintainable by the Association or, in a proper case, by an aggrieved Owner.

15.02. Enforcement and Remedies. The obligations, provisions, covenants, restrictions, and conditions contained in this Declaration, or in any Supplemental or Amended Declaration with respect to the Association or Units in the Project shall be enforceable by the Declarant or by any Owner of a Unit in the Project, subject to this Declaration, by proceeding for a prohibitive or mandatory injunction. The obligations, provisions, covenants, restrictions, and conditions contained in this Declaration, or in any Supplemental or Amended Declaration, with respect to a person or entity or property of a person or entity other than the Association or the Declarant shall be enforceable by the Declarant or by the Association or, in a proper case, by an aggrieved Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due and unpaid.

#### ARTICLE XVI

##### GENERAL PROVISIONS

16.01. Intent and Purpose. The provisions of this

Declaration, and any Supplemental or Amended Declaration, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a Condominium Project. Failure to enforce any provision, restriction, covenant, or condition of this Declaration, or of any Supplemental or Amended Declaration, shall not operate as a waiver of any such provision, restrictions, covenants, or conditions contained herein.

16.02. Construction. The provisions of this Declaration shall be in addition and supplemental to the Condominium Act and to all other provisions of law. Whenever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The Article and Section headings contained herein are for convenience and reference only and are not intended to describe, interpret, define, or otherwise affect the content, meaning, or intent of this Declaration or any Article, Section, or provision hereof. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

16.03. Notices and Registration of Mailing Address. Each Owner shall register from time to time with the Association his current mailing address. All notices, demands, and other communications to any owner as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally delivered or if sent by certified or registered U.S. mail, return receipt request, postage prepaid, and addressed to the Owner at his registered Mailing address or, if no address has been registered, to the Unit of such Owner. All notices, demands, and other communications to the Association as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally delivered or if sent by certified or registered U.S. mail return receipt requested, postage prepaid, and addressed to the Association at its offices at the Project, or at such other address as the Association may hereafter specify to the Owners in writing. Any notice, demand, or other communication under this Declaration shall be deemed to have been given and received and shall be effective when personally delivered or when deposited in the U.S. mail in the form provided for in this Section, as the case may be.

16.04. Audit. Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association. The Association, at the expense of the Common Expense Fund, shall obtain an audit, by certified public accountants, of all books and records pertaining to the Project at no greater than annual intervals, and copies thereof shall be furnished to the Owners.

16.05. Amendment. Except as otherwise provided herein this Declaration may be amended if Owners holding at least sixty percent (60%) of the Total Votes of the Association consent and agree to such amendment by instruments duly recorded in the office of the County Recorder of Salt Lake County, State of Utah.

16.06. Effective Date. This Declaration shall take effect upon recording thereof in the office of the County Recorder of Salt Lake County, State of Utah.

16.07. Agent for Service. The name and address of the person to receive service of process in all cases provided by the Condominium Act shall be the registered agent and address of the Association as shown on the official corporate records maintained in the office of the Lt. Governor/Secretary of State of the State of Utah. On the date of this Declaration, the registered agent of the Association is Alan F. Holbrook and his registered address is 948 Shirecliff Road, Salt Lake City, Utah 84108.

16.08. Owner's Obligations. All obligations of an Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing, renting, or selling under contract his Unit. The Owner of a Unit in the Project shall have no obligation for expenses or other obligations accruing after he conveys such Unit of record.

16.09. Limitation on Association's Liability. The Association shall not be liable for any failure of water service or other utility service (if any) to be obtained and paid for by the Association hereunder, or for injury to or damage of any person or property caused by the elements or by another Owner or person in the Project, or resulting from electricity, water, rain, snow, or ice which may leak or flow from outside or from any parts of the Buildings or their drains, pipes, conduits, appliances, conduits, or equipment, or from any other place, unless caused by the gross negligences or willful misconduct of the Association. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or thereof, or from any action taken to comply with the laws, ordinances, regulations, rules, or orders of any governmental authority.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of the day and year first above written.

DECLARANT:

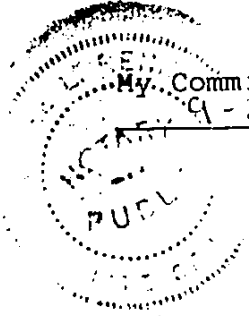
ALAN F. HOLBROOK COMPANY, INC.,  
a Utah corporation,

By

  
Alan F. Holbrook, President

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

On the 28<sup>th</sup> day of March, 1985, personally appeared before me ALAN F. HOLBROOK, who being by me duly sworn did say that he is the President of ALAN F. HOLBROOK COMPANY INC., a Utah corporation, and that the within and foregoing Declaration of Condominium for the EDGEMOUNT HOMES, Phase 1, an Expandable Condominium Project, was signed on behalf of said corporation by authority of its Bylaws or a resolution of its Board of Directors; said persons each duly acknowledged to me that said corporation executed the same.



My Commission Expires:  
9-23-87

Gene L. Bennett  
NOTARY PUBLIC  
Residing at: Salt Lake, Utah

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EXHIBIT A

(Attached to and forming a part of the Declaration of Condominium  
for the Edgemount Homes, an Expandable Condominium Project)

UNITS, UNDIVIDED OWNERSHIP INTERESTS, AND VOTES

<u>Unit No.</u>	<u>UNDIVIDED OWNERSHIP INTERESTS** (Percentage)</u>	<u>VOTES</u>
1	1/23	ONE
2	1/23	ONE
3	1/23	ONE
4	1/23	ONE
5	1/23	ONE
6	1/23	ONE
7	1/23	ONE
8	1/23	ONE
9	1/23	ONE
10	1/23	ONE
11	1/23	ONE
12	1/23	ONE
13	1/23	ONE
14	1/23	ONE
15	1/23	ONE
16	1/23	ONE
17	1/23	ONE
18	1/23	ONE
19	1/23	ONE
20	1/23	ONE
21	1/23	ONE
22	1/23	ONE
23	1/23	ONE

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EXHIBIT B

(Attached to and forming a part of the Declaration of Condominium for Edgemount Homes, an Expandable Condominium Project)

BYLAWS

OF

THE EDGEMOUNT HOMES HOME OWNERS ASSOCIATION

An Association of Unit Owners Under  
The Utah Condominium Ownership Act

The administration of EDGEMOUNT HOMES (the "property") and the EDGEMOUNT HOMES HOME OWNERS ASSOCIATION ("Association") shall be governed by these By-Laws, by the Utah Condominium Ownership Act, Utah Code Annotated, Sections 57-8-1 through 57-8-35 (Repl. Vol. 1973) (the "act") and by the Declaration thereto.

ARTICLE I

NAME AND PRINCIPAL OFFICE

1.01. Name. The name of the Association is The Edgemount Homes Home Owners Association, hereinafter the "Association."

1.02. Offices. The principal office of the association shall be at The Edgemount Homes, an Expandable Condominium Project, hereinafter the "Project", situated upon the Land as is fully described in the Declaration hereto at RECITAL A, and by reference is made a part of these By-Laws.

1.03. Expandable Project. Alan F. Holbrook Company Inc., a Utah corporation, will have the right, at its option, to expand the Project in accordance with the provisions of the Utah Condominium Ownership Act and the Declaration referred to in Section 2.01 hereof to include all or any part or parts of or interests in, such property or properties as may be stated in any amendment to the Declaration or Map as provided for therein.

ARTICLE II

DEFINITIONS

2.01. Definitions. Except as otherwise provided herein

or required by the context, all terms defined in Article I of the Declaration of Condominium for The Edgemount Homes, an expandable Condominium Project, hereinafter referred to as the "Declaration," shall have such defined meanings when used in these Bylaws.

### ARTICLE III

#### MEMBERS

3.01. Annual Meetings. The annual meeting of members shall be held on the second Tuesday of February each year at 7:00 P.M., beginning with the year following the year in which the Declaration is filed, for the purpose of electing a Management Committee and transacting such other business as may come before the meeting. If the election of the Committee shall not be held on the day designated herein for the annual meeting of the members, or at any adjournment thereof, the Management Committee shall cause the election to be held at a special meeting of the members to be convened as soon thereafter as may be convenient. The Management Committee may from time to time by resolution change the date and time for the annual meeting of the members.

3.02. Special Meetings. Special meetings of the members may be called by the Management Committee, the President, or upon the written request of members holding not less than twenty percent (20%) of the total votes of the Association, such written request to state the purpose or purposes of the meeting and to be delivered to the Management Committee or the President.

3.03. Place of Meetings. The Management Committee may designate any place in Salt Lake County, State of Utah as the place of meeting for any annual meeting or for any special meeting called by the Committee. A Waiver of Notice signed by all members may designate any place, either within or without the State of Utah, as the place for holding such meeting. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be at the principal office of the Association.

3.04. Notice of Meetings. The Management Committee shall cause written or printed notice of the time, place, and purpose of all meetings of the members (whether annual or special) to be delivered, not more than fifty (50) nor less than ten (10) days prior to the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his registered address, with first class postage thereon prepaid. Each member at his registered address, with first class postage thereon prepaid. Each member shall register with the Association such member's current mailing address for purposes of notice hereunder. Such registered address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, a member's Unit address shall be

deemed to be his registered address for purposes of notice hereunder.

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

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

3.07. Proxies. At each meeting of the members, each member entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the member himself or by his attorney thereunto duly authorized in writing. If a membership is jointly held, the instrument authorizing a proxy to act must have been executed by all holders of such membership or their attorneys thereunto duly authorized in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the Secretary of the Assocaitin or to such other officer or person who may be acting as secretary of the meeting. The secretary of the meeing shall enter a record of all such proxies in the minutes of the meeting.

3.08. Votes. With respect to each matter submitted to a vote of the members, each member entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Unit of such member, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum was initially present shall be

necessary for the adoption of any matter voted on by the members, unless a greater proportion is required by the these Bylaws, the Declaration, or Utah law. At each election of the Committee, each member entitled to vote at such election shall have the right to acumulate his votes by giving one candidate as many votes as shall equal the number of votes relating to his membership, or by distributing such votes on the same principle among any number of candidates. The election of the Committee shall be by secret ballot. If a membership is jointly held, all or any holders thereof may attend each meeting of the members, but such holders must act unanimously to cast the votes relating to their joint membership.

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

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

#### ARTICLE IV

##### MANAGEMENT COMMITTEE

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

4.02. Number, Tenure, and Qualifications. The number of the Management Committee of the Association shall be three (3). The initial Management Committee specified in the By-Laws and Declaration shall serve until the Declarant turns over to the members, in accordance with Utah law the responsibility for electing the Committee. At the first annual meeting of the members held after the Declarant turns over to the members responsibility for electing the Committee, the members shall elect, in accordance with principles of cumulative voting, three (3) Committee Members to serve as follows: The candidate receiving highest number of votes shall be elected to serve for a term of three (3) years; the candidate receiving the second highest number of votes shall be elected to serve for a term of two (2) years; and the candidate

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receiving the third highest number of votes shall be elected to serve for a term of one (1) year. At each annual meeting thereafter, the members shall elect one member to fill the then expiring term and to serve for a term of three (3) years. Except for the Committee member appointed by the Declarant, all the Committee must be members of the Association.

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

4.04. Special Meetings. Special meetings of the Management Committee may be called by or at the request of any Committee member. The person or persons authorized to call special meetings of the Management Committee may fix any place, within Salt Lake County, State of Utah, as the place for holding any special meeting of the Management Committee called by such person or persons. Notice of any special meeting shall be given at least five (5) days prior thereto by written notice delivered personally, or mailed to each Committee Member at his registered address, or by Telegram. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with first class postage thereon pre-paid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any Committee Member may waive notice of a meeting.

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

4.06. Compensation. No Committee Member shall receive compensation for any services that he may render to the Association as a Committee Member; provided, however, that a Committee Member may be reimbursed for expenses incurred in performance of his duties as a Committee Member to the extent such expenses are approved by the Board of Directors and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as a Committee Member.

4.07. Resignation and Removal. A Committee Member may resign at any time by delivering a written resignation to either the President or the Management Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Committee Member (other than a Committee Member appointed by

Declarant) may be removed at any time, for or without cause, by the affirmative vote of sixty percent (60%) of the Total Votes of the association at a special meeting of the members duly called for such purpose.

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

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

## ARTICLE V

### OFFICERS

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

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

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

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

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

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

5.06. The President. The President shall preside at meetings of the Management Committee and at meetings of the members. He shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts approved by the Management Committee, and shall do and perform all other acts and things that the Management Committee may require of him.

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

5.08. The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, or any resolution of the Management Committee may require him to keep. He shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same. He shall perform such duties as the Management Committee may require of him.

5.09. The Treasurer. The Treasurer shall have the



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

5.10. Compensation. No officer shall receive compensation for any services that he may render to the association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of his duties as an officer to the extent such expenses are approved by the Management Committee and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as an officer.

## ARTICLE VI

### COMMITTEES

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

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

6.03. Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Management Committee the presence of members constituting at least two-thirds of the authorization membership of such committee shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Management Committee hereunder shall act only as a committee, and the individual members thereof shall have no powers as such.

6.04. Resignation and Removal. Any member of any committee designated hereunder by the Management Committee may resign at any time by delivering a written resignation to the president, the Management Committee, or the presiding officer of the committee of which he is a member. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Management Committee may at any time, for or without cause, remove any member of any committee designated by it hereunder.

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

## ARTICLE VII

### INDEMNIFICATION

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

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

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

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

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

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

continue as to such persons who cease to be Committee Members, officers, employees, or agents of the Association and shall inure to the benefit of the heirs any personal representatives of all such persons may be entitled as a matter of law.

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

7.07. Payments and Premiums. All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this Article shall constitute expenses of the Association and shall be paid with funds from the Comon Expense Fund referred to in the Declaration.

#### ARTICLE VIII

##### FISCAL YEAR AND SEAL

8.01. Fiscal Year. The fiscal year of the Association shall begin on the 1st day of May each year and shall end on the 30th day of April next following, except that the first fiscal year shall begin on the date of incorporation.

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

#### ARTICLE IX

##### RULES AND REGULATIONS

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

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ARTICLE X

RULES AND REGULATIONS

10.01. Rules and Regulations. The Management Committee may from time to time adopt, amend, repeal, and enforce reasonable rules and regulations governing the use and operation of the Project, to the extent that such rules and regulations are not inconsistent with the rights and duties set forth in the Declaration, or these bylaws. The members shall be provided with copies of all rules and regulations adopted by the board of Committee, and with copies of amendments and revisions thereof.

ARTICLE XI

AMENDMENTS

11.01. Amendments. Except as otherwise provided by laws, by the Declaration, or these Bylaws, these Bylaws may be amended, altered, or repealed and new bylaws may be made and adopted by the members upon the affirmative vote of at least sixty percent (60%) of the Total Votes of the Association; provided, however, that such action shall not be effective unless and until a written instrument setting forth (i) the amended, altered, repealed, or new bylaw, (ii) the number of votes cast in favor of such action, and (iii) the Total Votes of the Association, shall have been executed and verified by the current President of the Association and recorded in the office of the County Recorder of Salt Lake County, State of Utah.

IN WITNESS WHEREOF, the undersigned, constituting all of the Management Committee of Edgemount Homes Home Owners Association have hereunto set their hands this 28<sup>th</sup> day of March, 1985.



ALAN F. HOLBROOK COMPANY, INC.  
Alan F. Holbrook, President &  
Declarant

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ACKNOWLEDGMENTS

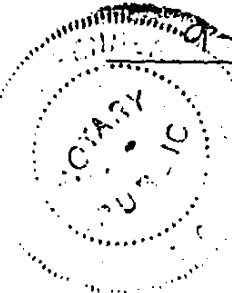
STATE OF UTAH                    )  
  ): ss.  
COUNTY OF SALT LAKE        )

On the 28<sup>th</sup> day of MARCH, 1985, personally appeared before me ALAN F. HOLBROOK, the signers of the within and foregoing Bylaws to The Edgemount Homes Home Owners Association, who duly acknowledged to me that he has read and executed the same, and that the same, and that the same are true.

Genee J. Renner  
NOTARY PUBLIC  
residing at: Salt Lake City, Utah

My Commission Expires:

OR-23-87



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