

RECORDED BY THE REQUEST OF  
*R. L. Tooke*

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CONDOMINIUM DECLARATION  
FOR  
BEN-DICK ARMS CONDOMINIUMS

This Condominium Declaration for BEN-DICK ARMS CONDOMINIUMS (the "Declaration") made this 10 day of July, 1980, by BEN-DICK ARMS CONDOMINIUMS (the "Declarant"), acting by and through its Owner, R.L. Tooke.

WITNESSETH:

Whereas the Declarant is the owner of certain real property in Utah County, Utah, which is more particularly described as:

Commencing at a point which is West 132.04 Feet from the South East corner of Block 7, Plat D, Provo City Survey of Building Lots; Thence West 157.00 Feet thence North 198.00 Feet, thence East 157.00 Feet thence South 198.00 Feet, to the point of beginning.

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such land and improvements thereon being hereafter collectively referred to as the "Project;" and

Whereas the Declarant desires to provide for the preservation of the values and amenities in said Project and for the maintenance of open spaces; and to this end, desires to subject the real property described herein to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and the subsequent owners thereof; and

Whereas the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said Project, to create an Association to which all will be delegated and assigned the powers and duties of maintaining and administering open spaces and other commonly owned facilities, administering and enforcing the within covenants and disbursing the charges and assessments hereinafter created; and

Whereas the Declarant has formed the Ben-Dick Arms Condominiums Homeowners Association.

NOW, THEREFORE, the Declarant does hereby declare the Project to be a condominium regime pursuant to the Utah Condominium Act, Chapter 57-8, et seq., Utah Annotated Code, which shall be known as BEN-DICK ARMS CONDOMINIUMS. The project shall hereafter be subject to the covenants, restrictions, limitations, conditions and uses of this Declaration, which shall run with the land, and which shall be enforceable equitable servitudes, where reasonable, and shall be binding upon Declarant, its successors and assigns, and any person or entity acquiring an interest in the Project, their grantees, heirs, devisees, personal representatives, successors and assigns.

ARTICLE I

DEFINITIONS

When used in this Declaration, each of the following terms shall have the meaning indicated. Any term used herein which is defined by the Utah Condominium Ownership Act shall, to the extent permitted by the context hereof, have the meaning ascribed by the Act.

1.1 Association. Shall mean and refer to the Ben-Dick Arms Condominiums Homeowners Association, Inc., and its successors and assigns.

1.2 Board of Directors. Shall mean the Governing Board of the Association.

1.3 Building. Shall mean a single building containing Units as shown on the Map.

1.4 Common Areas. Shall mean the entire Project, except for those portions thereof which lie within the boundaries of any Unit. Common Areas shall also include:

(a) All foundations and roofs constituting a portion of or included in the improvements which comprise a part of the Project.

(b) All installations for and all equipment connected with the furnishings of the Project with Utility Services, such as electricity, gas, water and sewer.

(c) The Project outdoor lighting, fences, landscaping, sidewalks, parking spaces and driveways.

1.5 Common Assessment. Shall mean an assessment levied to offset Common Expenses.

1.6 Common Expenses. Shall mean any of the following:

(a) The expenses of, or reasonable reserves for, the maintenance, management, operation, repair and replacement for the Common Areas, including the cost of unpaid Special Assessments.

(b) The cost of capital improvements to the Common Areas which the Association may from time to time authorize.

(c) The expenses of management and administration of the Association, including compensation paid by the Association to a manager, accountant, attorney or other employees or agents.

(d) Any other item or items designated by this Declaration or the Bylaws of the Association to be Common Expenses, and any other expenses reasonably incurred by the Association on behalf of all Owners.

1.7 Condominium. Shall mean an estate in real property consisting of the separate ownership of a Unit and the fee ownership of an undivided interest as a tenant in common of the Common Areas.

1.8 Limited Common Areas. Shall mean those portions of the Common Areas which are limited to and reserved for the exclusive use of individual owners, specifically the parking spaces and storage units.

1.9 Map. Shall mean the plat map of the Ben-Dick Arms Condominiums, recorded at the County Recorder's Office, County of Utah, State of Utah.

1.10 Member. Shall mean a member of the Association.

1.11 Owner. Shall mean and refer to the owner of record (in the County Recorder's Office, County of Utah, State of Utah), whether one or more persons or entities, of a Condominium. The term "Owner" shall not mean or include mortgagee or beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.12 Rules and Regulations. Shall mean the Rules and Regulations governing the use of the Common Areas and the recreational facilities thereon, duly adopted by the Association.

1.13 Special Assessment. Shall mean an assessment for Special Expenses.

1.14 Special Expenses. Shall mean any of the following:

(a) The expenses incurred by the Association for the repair of damage or loss to the Common Areas or the property of other Owners caused by the act or neglect of an Owner which is not covered by insurance.

(b) The expenses of repair or reconstruction of a building damaged or destroyed by fire or other casualty for which there shall be no insurance coverage and the repair or reconstruction of which will directly benefit less than all of the Owners.

(c) Any other item or items designated by other provisions of the Declaration or the By-Laws of the Association to be Special Expenses.

1.15 Unit. Shall mean and refer to the elements of the Project which are not used in common with Owners of other Units. The boundaries of a Unit shall be the interior surfaces of its perimeter walls, floors, ceilings, and the exterior surfaces of the balconies and/or terraces appurtenant to the Unit. The Unit shall include both portions of the Building so described and the airspace so encompassed.

## ARTICLE II

### PROPERTY RIGHTS

2.1 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Unit remains unpaid; and for a period not to exceed 60 days for any infraction of its Rules and Regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of the Owners has been recorded.

2.2 Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Areas to the members of his family who reside with him in his Condominium, or to his tenants or contract purchasers who reside in his Condominium. The rights and privileges of such delagee shall be subject to suspension in the same manner and to the same extent as those of the Owner.

2.3 Owner's Rights Within Unit. An Owner shall have the right to change coverings(including carpeting, tile, wallpaper, paint and so forth) of the floors, walls, and ceilings of his Unit without the permission of the Association. Such coverings shall be the property of an Owner and may be removed from his Unit by such Owner, provided that such removal does not cause damage to the Common Areas.

2.4 Fixtures and Appliances. An Owner shall be the Owner of the light fixtures, plumbing fixtures, washing machine, clothes dryer, refrigerator, stove, oven, dishwasher and cabinets located within his Unit. Such fixtures and appliances may be removed by the Owner, provided that such removal does not cause damage to the Common Areas.

## ARTICLE III

### PROJECT ADMINISTRATION

3.1 Administration of Project. The Project shall be administered

by the Association, acting by and through its Board of Directors, who shall be elected in accordance with the By-Laws of the Association, and whose duties will be governed by the terms of the Act, this Declaration, and the Articles of Incorporation and By-Laws of the Association. The Association may employ a professional management agent to perform, subject to the supervision of the Board of Directors, such duties and services as the Board of Directors shall direct, including, but not limited to, management of the Common Areas and the collection of and accounting for assessments made by the Association.

3.2 Rules and Regulations. The Association shall have the power to establish and enforce compliance with the Rules and Regulations and to amend same from time to time. A copy of such Rules and Regulations shall be delivered or mailed to each Member promptly upon the adoption thereof.

3.3 Common Utilities. The Association shall be responsible for the monthly payment of the common utility services that are provided by Public Utilities, specifically the sewer and water assessments. The Association shall prorate those costs to the Unit Owners on an equitable basis. Non payment of utility bills by the Association may result in loss of utility service.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS

4.1 Membership. Each Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of a Condominium. Ownership of a Condominium shall be the sole qualification for membership. The membership held by an Owner shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Condominium, and then only to the purchaser or Mortgagee of such Condominium.

4.2 Class of Voters. The Association shall have two classes of voting membership:

Class A. Class A members shall all be Owners, with the exception of the Declarant, and shall be entitled to one vote for each Unit owned.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on July 1, 1982.

4.3 Voting - Multiple Ownership. The vote attributable to and exercisable in connection with a Unit shall be the percentage of undivided ownership interest in the Common Areas and Facilities which is appurtenant to each Unit. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves.

4.4 Suspension of Voting Rights. The voting rights of any Member shall automatically be suspended during any period in which he shall be delinquent in the payment of assessments due the Association and for any period during which his right to use the recreational facilities upon the Common Areas shall have been suspended by the Board of Directors.

#### ARTICLE V

##### MAINTENANCE OF PROJECT

5.1 Duties of Association. The Association shall have the responsibility

of maintaining, repairing, replacing and otherwise keeping in a first-class condition all portions of the Project not required in this Article to be maintained by the Owners, specifically the Common Areas and Building facades.

(a) Access to Units. The Association's agents and employees shall have the right to enter each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas therein or accessible therefrom; provided, however, that such right of access shall be immediate for making emergency repairs therein in order to prevent damage to the Common Areas or to another Unit.

(b) Damage to Units. Damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Areas or as a result of emergency repairs within another Unit shall be Common Expenses; provided, however, that if such damage is caused by the negligent or tortious acts of an Owner, member of his family, his agent, employees, invitees, licensees or tenants, then such Owner shall be responsible and liable for all of such damage, which shall be considered a Special Expense.

5.2 Duties of Owners. An Owner shall be obligated to repair, replace and maintain in good repair and condition (a) the Fixtures (as hereinafter defined) within his Unit; (b) the finished interior surfaces of the perimeter walls, ceilings, floors, doors and windows within his Unit; (c) the Limited Common Areas of his Unit to the exterior surfaces of same. An Owner shall also have the responsibility of replacing all broken windows and repairing and replacing (and painting the exterior surfaces of) all doors in the perimeter wall of his Unit. Provided, however, the repair, replacement and maintenance required by this Section of those areas which are exposed to public view shall be done in a manner consistent with the decor of the Project and shall be subject to the control and direction of the Association. No Owner shall disturb or relocate any Utilities (as hereinafter defined) running through his Unit nor shall any Owner do any act which will impair the structural soundness of the Building or impair any easement herein granted or reserved.

(a) Definition of Utilities. By the term "Utilities" as used in this Article is meant the lines, wires, conduits or systems located within the walls of a Building, which are a part of the Common Areas.

(b) Definition of Fixtures. By the term "Fixtures" as used in this Article is meant the fixtures and equipment within a Unit commencing at a point where they connect with the Utilities.

## ARTICLE VI

### ASSESSMENTS

6.1 Annual Budget. Not less than thirty (30) days prior to the commencement of each fiscal year (which shall commence on the first day of the month in which the sale of the first Condominium by Declarant is closed), the Board of Directors (or those named herein as constituting the original Board of Directors in the event the Association has not been formed at such time) shall establish an annual budget for such fiscal year, including therein all anticipated items of Common Expense together with a reasonable reserve for contingencies.

6.2 Annual Common Assessment. By the adoption of the annual budget by the Board of Directors there shall be established an annual Common Assessment for the payment of which each Owner (including Declarant) shall be personally liable in the same percentage as his percentage ownership in the Common Areas. Each Owner shall pay his percentage share in even monthly installments of one-twelfth (1/12) thereof on the first day of each month during the fiscal year. The first monthly installment, or pro rata portion thereof, of such annual Common Assessment shall be due and payable by an Owner upon delivery of his deed to a Condominium. In addition, each Owner (other than

Declarant), may be required to deposit and to maintain up to three (3) monthly installments of his share of the annual Common Assessment, for purchase of equipment or supplies and for working capital. Such advance payment shall not relieve an Owner from making the regular monthly payment. Upon the sale of his Condominium, an Owner shall be entitled to a credit from his grantee for any unused portion thereof. If the annual budget is not adopted as here in required, the previous fiscal year monthly payment shall continue to be due until such time as the annual budget for the current year is established, at which time the annual Common Assessment shall become retroactive to the commencement of such current fiscal year.

6.3 Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be 60 dollars (\$ 60 ) per Unit.

(a) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

6.4 Additional Common Assessments. Should the Board of Directors at any time determine, in their sole discretion, that the annual Common Assessment is insufficient to pay the Common Expenses for the current fiscal year, the Board of Directors may at any time and from time to time levy such Additional Common Assessments as they shall deem necessary for such purposes. Each Owner (including Declarant) shall be personally liable for the payment of such Additional Common Assessments in the same proportionate share as he shall have personal liability for the payment of the annual Common Assessment. Such Additional Common Assessments shall be due and payable at such time and in the manner as the Board of Directors, in their sole discretion, shall determine. Provided, however, in the event an Additional Common Assessment shall be for the purpose of making additions, alterations or capital improvements to the Common Areas costing more than Five Thousand Dollars (\$5,000.00), such additional Common Assessment shall require the approval by two-thirds (2/3) of the votes of both Class A and Class B members, present and entitled to vote at an annual or special meeting of the Members called for such purpose at which a quorum is present.

6.5 Special Assessments. Special Assessments may be levied by the Board of Directors against particular Owners for the payment of Special Expenses. Such Special Assessments shall be due and payable to the Association upon demand. Provided, however, no Special Assessments shall be levied against an Owner until he shall have been given the opportunity to present evidence on his behalf at a hearing, and no such hearing shall be held until such Owner shall have received at least ten (10) days written notice specifying the reason for the proposed Special Assessment and the exact time and place of the hearing.

6.6 Remedies For Non-payment. Should an Unit Owner fail to pay when due his share of the Common Expenses, the delinquent payment shall bear interest at the rate of eighteen (18) percent per annum and the Association may enforce any remedy provided in the Act or otherwise available for collection of delinquent Common Assessments. Regardless of the terms of any agreement to the contrary, liability for the collection of Common Assessments shall be joint and several, and any remedy for the collection of such assessments may be enforced against an Owner .

## ARTICLE VII

### INSURANCE

7.1 Property Insurance. The Association shall obtain and pay the premiums upon, as a Common Expense, a policy of insurance on all

improvements in the Project and all personal property within the Common Areas (except the personal property individually owned by one or more Owners and improvements to Units added by the Owners thereof) in an amount equal to the maximum insurable replacement value thereof, affording protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as may from time to time be customarily insured against with respect to improvements similar in construction, location and use, including by way of example, vandalism and malicious mischief. Such policy shall be issued in the name of the Association, as insured, with loss payable in favor of the Association, as Trustee for each Owner and his Mortgagee, if any, who shall be beneficiaries thereof (even though not named therein) in the percentages of Common Area Ownership established as to each Unit. Certificates of insurance shall be issued to each Owner and Mortgagee upon request. Such policy shall not be cancellable until after thirty (30) days' notice to each Owner and Mortgagee. The proceeds of such policy shall be received by the Association and held in a separate account for distribution to the Owners and their Mortgagees (subject to the provisions of the Act, this Declaration and the Association By-Laws) as their interests may appear; provided, however when repair or reconstruction of the Project shall be required as provided in Article VIII hereof, such proceeds shall be applied to such repair or reconstruction.

7.2 Public Liability and Property Damage. The Association shall purchase broad form Comprehensive Liability coverage in such amounts and in such forms deemed appropriate by it. This coverage shall be issued in the name of the Association and shall include Owners in their capacity as Members of the Association as additional insureds and evidence thereof shall be furnished to each additional insured. Coverage under this policy shall include, but not be limited to, legal liability of the Association for bodily and personal injuries, property damage, operation of automobiles on behalf of the Association and activities of the Association in connection with the operation, maintenance or use of the Common Areas.

7.3 Owner's Insurance. Each Owner, and not the Association, shall have responsibility of obtaining and keeping in full force and effect, at his sole expense, (a) standard fire and extended risk insurance on the personal property and furnishings contained in his Unit or located on his respective Limited Common Areas, and on any improvements added to his Unit by an Owner thereof; (b) broad form Comprehensive Liability coverage for his Unit and Limited Common Areas (which shall be in addition to and not in lieu of the Comprehensive liability coverage required to be purchased by the Association); and (c) such other insurance as he may elect to purchase in addition to the insurance coverage purchased by the Association; provided, however, that in no event is the insurance coverage purchased by the Association to be brought into contribution with insurance purchased by Owners.

7.4 Waiver of Subrogation. In the event of loss or damage to the Common Areas or the property of an Owner which shall be covered by insurance, the insurance company paying such claim shall have no right of subrogation against the Association, its agents and employees, nor the Owners, their tenants, or members of their respective households.

7.5 Power of Attorney. Each Owner hereby irrevocably names, constitutes and appoints the Association as his true and lawful attorney-in-fact and for the purposes of maintaining such insurance policies. Without limiting and generality of the foregoing, the Association, as said attorney-in-fact, shall have full power and authority, in the name, place and stead of each Owner, to purchase and maintain such insurance, to collect and remit the premiums thereof (which shall be considered Common Expenses) to collect the proceeds thereof, and to distribute the same to the Association, the Owners and their respective Mortgagees (subject to the provisions of the Act and this Declaration) as their interests may appear, to execute releases of liability and to execute all documents and to do all things on behalf of the Association and such Owners as shall be necessary or convenient to accomplish the powers herein granted, and any insurer may deal exclusively with the Association in regard to such matters. The Association shall not be responsible for procurement or maintenance of any insurance covering the contents or the interior of any Unit nor the liability of any Owner for occurrences therein not caused by or connected with the Association's operation,

maintenance or use of the Condominium Project.

## ARTICLE VIII

### RECONSTRUCTION OR REPAIR OF IMPROVEMENTS

8.1 When Reconstruction is Required. If less than two-thirds (2/3) of the Buildings and the other Common Area improvements in the Project shall be damaged by fire or other casualty, then the Project shall be repaired or reconstructed. If more than two-thirds (2/3) of such improvements shall be destroyed, then reconstruction or repair shall be effected only with the unanimous consent of all Owners. The extent of damage shall be determined solely by the Board of Directors, and its decision in this regard shall be final and conclusive.

8.2 Restoration of Common Areas. When reconstruction or repair of the Common Areas shall be required, the same shall be accomplished by the Association, and each Owner does hereby irrevocably name, constitute and appoint the Association as his true and lawful attorney-in-fact for the purpose of accomplishing such reconstruction or repair, hereby granting to such Association, acting by and through its duly authorized officers and agents, full and complete authorization, right and power to make, execute and deliver, in his name, place and stead, any contract, and any other instrument with respect to the interest of such Owner which is necessary and appropriate to accomplish the powers herein granted. Such reconstruction or repair shall be substantially in accordance with this Declaration and the original plans and specifications of the Project unless the Owners shall unanimously decide otherwise.

8.3 Repair of Units. Each Owner shall be responsible for the reconstruction, repair or replacement of the interior of his Unit and Limited Common Areas, including, but not limited to, the floor coverings wall coverings, window shades, draperies, interior walls, furniture, furnishings, decorative light fixtures, and all appliances located therein. Each Owner shall also be responsible for the costs, not otherwise covered by insurance carried by the Association, of any reconstruction, repair or replacement of any portion of the Project necessitated by his negligence or misuse or the negligence or misuse of his guests, agents, employees or contractors, which shall be considered Special Expenses. In the event damage to all or any part of the interior of a Unit is covered by insurance held by the Association for the benefit of such Owner, then such Owner shall begin construction, repair or replacement of his Unit upon receipt of the insurance proceeds, or any portion thereof, from the Association. In the event of such damage is not covered by insurance held by the Association for the benefit of such Owner, then such Owner shall begin reconstruction, repair or replacement of his Unit within sixty (60) days after the date of such damage. All reconstruction, repair or replacement of the interior of a Unit required under this paragraph shall be subject to the control and supervision of the Association during the course thereof.

#### 8.4. Cost of Repairs.

(a) Estimate of Repairs. As soon as possible after the occurrence of a casualty which causes damage to any part of the Project for which the Association has insurance coverage (hereinafter referred to as the "Casualty"), the Association shall obtain reliable and detailed cost estimates of (1) the cost of restoring all damage caused by the Casualty to the Common Areas (hereinafter referred to as the "Common Area Costs") and (2) the cost of restoring that part of the damage caused by the Casualty to each Unit or Limited Common Area which is or would be covered by insurance held by the Association without regard to the policy limits of such insurance (hereinafter referred to as the "Unit Costs")

(b) Application of Insurance Proceeds. All insurance proceeds available to the Association with respect to the Casualty shall first be applied to the payment of the actual Unit Costs. However, if such insurance proceeds are not sufficient to cover such estimated costs, then an assessment shall be made against the Owners by the Association



in the following manner:

(1) All Owners shall be assessed on the basis of their percentage of ownership in the Common Areas for the payment of the estimated Common Area Costs not otherwise paid for by insurance held by the Association, which shall be considered Common Expenses.

(2) Each Owner of a damaged Unit shall be assessed an amount equal to the difference between his estimated Unit Costs and a sum calculated by multiplying the amount, if any, of the remaining insurance proceeds held by the Association with respect to the Casualty by a fraction, the numerator of which is his estimated Unit Costs and the denominator of which is the total of all of the estimated Unit Costs, which shall be considered Special Expenses.

8.5 Eminent Domain. In the event of a taking by eminent domain of part or all of the Common Area, the award for such taking shall be payable to the Association, which shall represent the Owners named in the condemnation proceedings. Said award shall be utilized to the extent possible for the repair, restoration, replacement and/or improvement of the remaining Common Areas. Any funds not so utilized shall be applied in payment of Common Expenses otherwise assessable to the Members of the Association. In the event of a taking by eminent domain of all or a part of a Unit, the award made for such taking shall be payable to the Owner and his Mortgagee if any, as their interests may appear.

## ARTICLE IX

### MORTGAGES

9.1 Notices. Any Owner who mortgages his Condominium shall furnish the Association the name and address of such Mortgagee, and the Association shall maintain such information in a book entitled "Mortgages of Condominium". The Association shall report to such Mortgagee any unpaid assessments due from the Owner of such Condominium at the same time as the Association makes demand on the Owner thereof for the payment of such assessment. Each Mortgagee shall also be entitled to written notification from the Association of any other default by its Owner-Mortgagor in the performance of such Owner's obligations under the terms and provisions of this Declaration which shall not have been cured within thirty (30) days after written notice to such Owner-Mortgagor by the Association specifying such default.

9.2 Delinquent Assessments. A Mortgagee may, but shall not be required to, pay any delinquent assessments due upon the mortgaged Condominium, and the amount of such payment shall be added to the mortgage indebtedness. Failure to pay any assessment when due and payable by an Owner-Mortgagor shall constitute a default under the terms and provisions of the mortgage instrument, authorizing foreclosure of the lien created therein, at the option of the Mortgagee.

9.3 Right to Examine. The mortgagee shall have the right to examine the books and records of the Association upon request and to require annual reports of the financial status of the Association.

## ARTICLE X

### ARCHITECTURAL CONTROL

10.1 Creation of Committee. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Project, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE XI  
RESTRICTIONS

11.1 Residential Use. Each Unit may be occupied and used by its Owner only as a private dwelling for the Owner, his family, tenants and social guests, or for such commercial purposes as may be allowed by the respective zoning laws then in effect which govern the property upon which the Project is located.

11.2 Alterations. Notwithstanding the above, no Owner shall make structural alterations or modifications to his Unit or to any of the Common Areas or Limited Common Areas, including, but not limited to, the erection of antennas, aerials, awnings, the placement of any reflective or other materials in the windows of his Unit or other exterior attachments and signs or other advertising devices without the written approval of the Association. The Association shall not approve any alterations, decorations or modifications which would jeopardize or impair the soundness, safety or appearance of the Project.

11.3 Improper Activities. No immoral, improper, unlawful or offensive activities shall be carried on in any Unit or upon the Common Areas, nor shall anything be done which may be or become an annoyance or nuisance to the Owners. No Owner shall store any dangerous explosives or inflammable materials either in his Unit or upon the Common Areas, or permit anything to be done or keep or permit to be kept in his Unit or on the Common Areas anything that will increase the rate of insurance on the Project.

11.4 Signs. No signs or other advertising devices shall be displayed which are visible from the exterior of any Unit or on the Common Areas, including "For Sale" signs, except in conformity with the Rules and Regulations promulgated by the Board of Directors.

11.5 Use of Common Areas. The Common Areas shall not be used for storage of supplies, personal property or trash or refuse of any kind except common trash receptacles placed at the discretion of the Association, nor shall the Common Areas be used in any way for the drying, shaking or airing of clothes or other fabrics. Stairs, entrances, sidewalks, yards, driveways or parking areas shall not be obstructed in any way nor shall unauthorized persons use them for other than their intended purposes. In general, no activities shall be carried on nor condition maintained by any Owner either in his Unit or upon the Common Areas which despoils the appearance of the Project.

11.6 Pets. No animals shall be kept in the Project except household pets. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint so as not to be obnoxious or offensive on account of noise, odor or unsanitary conditions. No savage or dangerous animals shall be kept. No more than one household pet may be kept in any Unit without the written permission of the Association. No pets shall be permitted to run loose upon the Common Areas, and any Owner who causes any animal to be brought upon the Project shall indemnify and hold harmless the Association and/or the Owners from and against any loss, damage or liability which they may sustain as the result of the presence of such animal on the premises, whether or not the Association has given its permission therefore.

11.7 Parking. One parking space shall be assigned by the Board of Directors of the Association for each Unit. These parking spaces shall be considered Limited Common Area. Any remaining stalls shall be considered a part of the Common Area. There will be no parking of recreational vehicles or boats in the Project and such preclusion shall be strictly enforced by the management.

ARTICLE XII  
DEFAULT

12.1 Definition. Failure to comply with any of the terms of this

Declaration, the Articles of Incorporation or By-Laws of the Association or the duly adopted Rules and Regulations of the Association, shall constitute an event of default and shall be grounds for relief, which may include without limitation an action to recover sums due for damages and injunctive relief, or any combination thereof.

12.2 Remedies. In addition to all other remedies herein contained or as may be provided by law, the Association may discontinue the furnishing of any utilities or other services to an Owner who is in default of his obligations to the Association or other Owners as set forth herein upon thirty (30) days' written notice to such Owner and to any Mortgagee of such Owner's Unit of its intent to do so.

12.3 Costs. In any proceeding arising because of any alleged default by any Owner, the Association, if successful, shall be entitled to recover the costs of the proceedings and reasonable attorneys' fees from such Owner.

12.4 No Waiver. The failure of the Association or of any Owner to enforce any right, provision, covenant or condition which may be granted by the Act, this Declaration, the Articles of Incorporation or By-Laws of the Association, or the Rules and Regulations shall not constitute a waiver of the right of the Association or of any such Owner to enforce such right, provision, covenant or condition in the future.

12.5 Rights Cumulative. All rights, remedies and privileges granted to the Association or any Owner pursuant to the provisions of the Act, this Declaration, the Articles of Incorporation or By-Laws of the Association, or the Rules and Regulations, shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies and privileges shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other additional rights, remedies or privileges, as may be available to such party at law or in equity.

### ARTICLE XIII

#### GENERAL PROVISIONS

13.1 Acceptance of Governing Rules. The Association, all present or future Owners, tenants or future tenants, or any other persons using the facilities of the Project are subject to and shall comply with the Act, this Declaration, the Articles of Incorporation and By-Laws of the Association, and the Rules and Regulations, and the acquisition, occupancy or rental of a Unit shall signify that all such documents are accepted and ratified. In the event of a conflict in any of the provisions of any such documents, the documents shall govern or control in the following order or preference: (a) the Act; (b) this Declaration; (c) the Articles of Incorporation of the Association; (d) the By-Laws of the Association; and (e) the Rules and Regulations.

13.2 Delivery of Notices. All notices or other documents required herein to be delivered by the Association to Owners may be delivered either personally or by mail. If delivered personally, same shall be deemed to have been delivered when actually received by the Owner or when left at the front door of his Unit. If mailed, same shall be deemed delivered when deposited in the United States Mail addressed to the Owner at his address as it appears on the records of the Association with postage thereon prepaid.

13.3 Severability. If any of the provisions of the Declaration or any paragraph, sentence, clause, phrase or work, or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any provisions, paragraph, sentence, clause, phrase or work in any other circumstances shall not be affected thereby.

13.4 Paragraph Titles. Paragraph titles are used in this Declaration for convenience of reference and are not intended to limit, enlarge or change the meaning of the contents of the various paragraphs.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration on the day and year herein first above written.

BEN-DICK ARMS CONDOMINIUMS

ATTEST:

BY: BEN-DICK ARMS CONDOMINIUMS PROPERTY OWNERS' ASSOCIATION, INC.

E. Dennis Oldroyd  
Secretary

R. L. Tooke  
President & Owner

Carol A. Tooke  
Owner

STATE OF UTAH )  
                          :  
COUNTY OF UTAH )

Subscribed and sworn to before me, a Notary Public, in and for Utah County, State of Utah, personally appeared R. L. Tooke, President of Ben-Dick Arms Condominiums Property Owners' Association, Inc., a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledge to me that the same was the act of the said Ben-Dick Arms Condominiums Property Owners' Association, Inc., a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed and in the capacity therein stated.

WITNESS my hand and official seal this 10<sup>th</sup> day of July, 1980.



E. Dennis Oldroyd  
Notary Public

Residing At:  
Quinn, Utah

BY-LAWS  
OF  
BEN-DICK ARMS HOMEOWNERS ASSOCIATION

ARTICLE I

**NAME AND LOCATION.** The name of the corporation is Ben-Dick Arms Homeowners Association, hereinafter referred to as the "Association". The principal office of the corporation shall be located at 899 North 200 West, Provo, Utah, but meetings of members and directors may be held at such places within the State of Utah, County of Utah, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

**Section 1.** "Association" shall mean and refer to Ben-Dick Arms Homeowners Association, its successors and assigns.

**Section 2.** "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**Section 3.** "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

**Section 4.** "Unit" shall mean and refer to the elements of the Project which are not used in common with Owners of other Units. The boundaries of a Unit shall be the interior surfaces of its perimeter walls, floors, ceilings and the exterior surfaces of the balconies and/or terraces appurtenant to the Unit. The Unit shall include both portions of the Building so described and the airspace so encompassed.

**Section 5.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Unit which is a part of the Project, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 6.** "Declarant" shall mean and refer to R.L. Tooke, his successors and assigns if such successors or assigns should acquire more than one-third (1/3) of the Units for the purpose of investment.

**Section 7.** "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the Office of the Utah County Recorder.

**Section 8.** "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

ARTICLE III

MEETING OF MEMBERS

**Section 1. Annual Meetings.** The first annual meeting of the members shall be held within one year from the date of incorporation of the Association, and each subsequent regular meeting of the members shall be held on the same day of the same month of each year thereafter, at the hour of 7:00 o'clock P.M. If the day of the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on

the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the members may be called any time by the president or by the Board of Directors, or ( $\frac{1}{3}$ ) of all the votes of the Class A membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Unit.

#### ARTICLE IV

##### BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of three (3) directors, who shall be members of the Association.

Section 2. Term of Office. At the first annual meeting the members shall elect one director for a term of one year, one director for a term of two years, and one director for a term of three years; and at each annual meeting thereafter the members shall elect one director for a term of three years.

Section 3. Removal. Any director may be removed from the Board with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

#### ARTICLE V

##### NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting

of the members, to serve from the close of such annual meeting until the close of the next meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## ARTICLE VI

### MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two Directors, after not less than three (3) days notice to each Director.

Section 3. Quorum. Two Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by the two Directors present at a duly held meeting shall be regarded as the act of the Board.

## ARTICLE VII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

- (a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;
- (b) suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;
- (c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;
- (d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and
- (e) employ a manager, an independent contractor or such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors to:

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth ( $\frac{1}{4}$ ) of the Class A members who are entitled to vote;
- (b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- (c) as more fully provided in the Declaration, to:
  - (1) fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each

annual assessment period;

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) foreclose the lien against any property for which assessment are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Area to be maintained.

## ARTICLE VIII

### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

#### President

(a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.



Vice-President

(b) The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy of each to the members.

ARTICLE IX

COMMITTEES

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE X

BOOKS AND RECORDS

The Books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI

ASSESSMENTS

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 6 percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waiver or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Unit.

ARTICLE XII

AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy.

Section 2. In the event of a conflict in any of the provisions of any such documents, the documents shall govern or control in the following order or preference: (a) the Act; (b) this Declaration; (c) the Articles of Incorporation of the Association; (d) by By-Laws of the Association; and (e) the Rules and Regulations.

ARTICLE XIII

MISCELLANEOUS

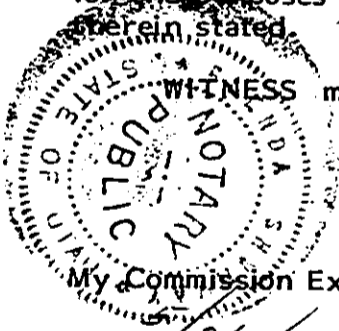
The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we, being all of the Directors of the Ben-Dick Arms Homeowners Association, have hereto set our hands this 10 day of July, 1980.

R. L. Tooke  
Edwin Oldroyd  
Clara B. B...

STATE OF UTAH       )  
                              :  
COUNTY OF UTAH    )

Subscribed and sworn to before me, a Notary Public, in and for Utah County, State of Utah, personally appeared R. L. Tooke, President of Ben-Dick Condominiums Property Owners Association, Inc., a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledge to me that the same was the act of the said Ben-Dick Condominiums Property Owners Association, Inc., a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed and in the capacity therein stated.



WITNESS my hand and official seal this 10<sup>th</sup> day of July, 1980.

Shirley Murray  
Notary Public

My Commission Expires: 12/31/81

Residing At: Carm, Utah