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Requested By Robert J. Irvine

AMENDED AND RESTATED

DECLARATION OF CONDOMINIUM

FOR

SWEETWATER PARK BEACH RESORT CONDOMINIUMS

(Formerly known as the Sweetwater Park  
Beach Resort Condominium Projects No. 1,  
No. 2, and No. 3, and Sweetwater Western  
America Condominiums)

This Amended and Restated Declaration of Condominium, hereinafter referred to as the "Declaration," is made this 26<sup>th</sup> day of July, 1988, by Ideal Beach Condominium Homeowners Association, Inc., a Utah nonprofit corporation (hereinafter referred to as the "Association" or the "Declarant"), which Association presently serves as the owners association for the following four condominium projects (herein collectively referred to as the "Projects"):

1. Sweetwater Park Beach Resort Condominium Project No. 1;
2. Sweetwater Park Beach Resort Condominium Project No. 2;
3. Sweetwater Park Beach Resort Condominium Project No. 3; and
4. Sweetwater Western America Condominiums.

RECITALS:

A. Purpose of Amendment. This Amended and Restated Declaration of Condominium has been prepared, approved, executed and recorded for the purpose of amending and consolidating the Projects into one single condominium project to be known as the Sweetwater Park Beach Resort Condominiums. To accomplish this amendment and consolidation, this Amended and Restated Declaration of Condominium amends, restates, and supercedes in their entirety the following Declarations and amendments to Declarations for the Projects:

1. Enabling Declaration of Sweetwater Park Beach Resort Condominium No. 1, dated September 20, 1972 and recorded September 22, 1972 as Filing No.

- F12,863, in Book H2, at Page 343, records of Rich County;
2. Amendment No. 1 to the Enabling Declaration of Sweetwater Park Beach Resort Condominium Project No. 1, dated November 30, 1985 and recorded December 10, 1985 as Filing No. 32896, in Book B5, at Page 456, records of Rich County;
  3. Enabling Declaration of Sweetwater Park Beach Resort Condominium Project No. 2, dated June 18, 1973 and recorded June 18, 1973 as Filing No. F13,676, in Book I2, at Page 532, records of Rich County;
  4. Amendment to Enabling Declaration of Sweetwater Park Beach Resort Condominium Project No. 2, dated June 3, 1975 and recorded June 27, 1975 as Filing No. F15,559, in Book N2, at Page 563, records of Rich County;
  5. Amendment No. 2 to the Enabling Declaration of Sweetwater Park Beach Resort Condominium Project No. 2, dated November 30, 1985 and recorded December 10, 1985 as Filing No. 32897, in Book B5, at Page 468, records of Rich County;
  6. Enabling Declaration of Sweetwater Park Beach Resort Condominium Project No. 3, dated April 22, 1974 and recorded April 29, 1974 as Filing No. F14,338, in Book K2, at Page 424, Records of Rich County;
  7. Revised Enabling Declaration of Sweetwater Park Beach Resort Condominium Project No. 3, dated May 1, 1974 and recorded May 10, 1974 as Filing No. F14,354 in Book K2, at Page 486, records of Rich County;
  8. Amendment No. 1 to the Enabling Declaration of Sweetwater Park Beach Resort Condominium Project No. 3, dated November 30, 1985 and recorded December 10, 1985 as Filing No. 32898, in Book B5, at Page 480, records of Rich County;
  9. Declaration of Condominium for Sweetwater Western America Condominiums dated September 26, 1979 and recorded October 5, 1979 as Filing No. F21,197 in Book I3, at Page 544, records of Rich County; and
  10. Amendment No. 1 to the Declaration of Condominium for Sweetwater Western America Condominiums, dated November 19, 1987 and recorded May 2, 1988 in six separate, original counterparts as Filing No.'s

36779, 36780, 36781, 36782, 36783, and 36784, all in Book P5, beginning at Page 554 and ending at Page 576, records of Rich County.

B. Description of Land. This Declaration pertains to, and the condominium project described herein is located upon, the real property described in Exhibit "A" attached hereto and incorporated herein by this reference (herein referred to as the "Parcel"), which Parcel is located in Rich County, State of Utah. The Parcel constitutes all of the real property subject to the Declarations for the Projects as described in Paragraph A above, except that the Association, as the owner thereof, has included in the description of the Parcel the remaining 65% undivided interest in the real property parcel described in the Declaration for Sweetwater Western America Condominiums, which Declaration previously only subjected to that project a 35% undivided interest in the real property parcel described in said Declaration.

C. Condominium Buildings and Improvements. Certain buildings and improvements have been constructed upon the Parcel, which buildings and improvements are shown on the "Amended and Restated Record of Survey Map of Sweetwater Park Beach Resort Condominiums," which will be recorded in the Office of the County Recorder for Rich County, State of Utah, concurrently herewith, and which Amended and Restated Record of Survey Map amends, restates and supercedes the following Record of Survey Maps for the Projects:

1. Record of Survey Map of Sweetwater Park Beach Condominium Project No. 1 recorded in Rich County on September 22, 1972 as Filing No. F12,853 in Book H2 of O.R., at Page 333.
2. Amended Plat of Beach Resort Condominium No. 2 recorded in Rich County on June 27, 1975 as Filing No. F15,558 in Book N2 at Page 562.
3. Plat of Sweetwater Park Beach Resort Condominium recorded in Rich County on April 29, 1974 as Filing No. F14,337, in Book K2, at Page 413.
4. First Amended Record of Survey Map of Sweetwater Western America Condominiums recorded in Rich County on October 5, 1979 as Filing NO. F21,196 in Book I3 at Page 542.

D. Association and Bylaws. The Ideal Beach Condominium Homeowners Association, Inc., a Utah nonprofit corporation, has been created by filing Articles of Incorporation therefor with the Utah Division of Corporations. Said Association shall henceforth be the governing body of the Sweetwater Park Beach Resort Condominiums (herein the "Project") and shall operate in accordance with the Bylaws attached hereto as Exhibit "C."

E. Intent and Purpose. In accordance with the provisions of the Utah Condominium Ownership Act, the Declarant desires and intends by recording this Declaration and the Bylaws to impose upon the real property constituting the Project mutually beneficial restrictions under a general plan of improvement and operation for the benefit of Condominiums within the Project and the Owners thereof.

F. Amendment. The Association is the owners association for the Projects and is authorized pursuant to the existing provisions of the Declarations of Condominium for each of the Projects to file amendments to said Declarations upon the due and proper approval and authorization of the members of each of the Projects. The Association held a meeting on August 18, 1987 at which the requisite number of members of each of the Projects duly approved this Amended and Restated Declaration as a total amendment and restatement of the existing Declaration for the Consolidated Projects, thereby resulting in this Declaration, upon execution and recording, being the Declaration for each of the Projects, and further resulting in the Projects being replaced by and becoming the Project known as Sweetwater Park Beach Resort Condominiums. Therefore, the Association, pursuant to the authority granted in the Declarations for each of the Projects prior to the amendment hereby, has prepared, executed and recorded this Amended and Restated Declaration. The owners of the various Condominiums in the Project continue to be and are as presently set forth in the records of the Rich County Recorder for each of the units in each of the Projects, with the numerical description of each of the units in each of the Projects being revised and amended to be as set forth in Exhibit "B" attached hereto and as shown on the Map, as hereafter defined.

NOW, THEREFORE, in accordance with the provisions of the Utah Condominium Ownership Act, the Association, as the Declarant and as agent for the Owners of the Project and the Condominiums therein, being duly authorized, hereby provides as follows:

#### ARTICLE I

#### DEFINITIONS

Unless the context clearly indicates otherwise, certain terms as used in this Declaration and the foregoing Recitals shall have the meanings set forth hereinafter in this Article I:

1.1 "Association" shall mean Ideal Beach Condominium Homeowners Association, Inc., a Utah nonprofit corporation, organized to be the Association referred to herein.

1.2 "Board of Trustees" shall mean the governing board of the Association, appointed or elected in accordance with this Declaration and the Articles of Incorporation and Bylaws of the Association.

1.3 "Bylaws" shall mean the Bylaws of the Association attached hereto as Exhibit "C."

1.4 "Commercial Condominium" shall mean Convertible Space Unit 107 and Unit 108 in the Project, and such resulting units as Unit 107 may be converted to, which Commercial Condominiums shall be subject to the rights, restrictions and limitations as set forth in this Declaration.

1.5 "Commercial Owner" shall mean any person or entity or combination thereof at any time owning a Commercial Condominium within the Project. The term "Commercial Owner" shall not include any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or any person or entity purchasing a Commercial Condominium under contract (until such contract is fully performed and legal title conveyed).

1.6 "Common Areas" shall mean all physical portions of the Project, except all Units. Without limiting the foregoing, Common Areas shall include all parking stalls designated on the Map with a "C".

1.7 "Common Facilities" shall mean all furniture, furnishings, equipment, facilities, fixtures, and other personal property within the Project for the use and benefit of all Owners, and all furniture, furnishings, equipment, facilities, fixtures, and other personal property hereafter acquired in accordance with this Declaration with the intent that the same be Common Facilities (it being understood that the Association may acquire personal property for the benefit of the Owners that does not constitute Common Facilities). Common Facilities shall be deemed to be part of the Common Areas, except as otherwise expressly provided in this Declaration.

1.8 "Condominium" shall mean a Unit and the equal undivided interest in the Common Areas appurtenant to such Unit.

1.9 "Condominium Act" shall mean the Utah Condominium Ownership Act and amendments thereto, as set forth in Title 57, Chapter 8, Utah Code Annotated.

1.10 "Convertible Unit" shall mean and refer to Unit 105 of the Project which is designated as a Convertible Space on the Map and in Exhibit "B" attached hereto (and incorporated herein by this reference), and which may in whole or part be converted into one or more Units and/or Common Areas and Common Facilities, including (but not limited to) Limited Common Areas, in accordance with the Act and Article XV of this Declaration. Until the Convertible Unit is converted it shall be treated for all purposes as, and shall be deemed to be, a single Unit and the Act and this Declaration shall be deemed applicable to any such Convertible Unit as though the same were a Unit.

1.11 "Convertible Space Number" shall mean and refer to the number, letter, or combination thereof which designates a Convertible Space in the attached Exhibit "B" and on the Map.

1.12 "Declarant" shall mean the Association, as the successor to the prior Declarants previously existing with respect to the Project.

1.13 "Limited Common Areas" shall mean any Common Areas designated herein or on the Map for the exclusive or non-exclusive use by the Owner of a particular Unit or by the Owners of a particular group of Units. 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 3.4. Limited Common Areas shall include, without limiting the generality of the foregoing, the following:

(a) That number of parking stalls which are included within the Project that are designated as appurtenant to each Unit as shown on the Map, which designation is shown by a "P" and the Unit number on each applicable parking space.

(b) Each area labelled "Deck" on the Map;

(c) Each area labelled "Balcony" on the Map; and

(d) That portion of the building in which are located Units 39 through 42 consisting of the two entrance and exit halls, the central fireplace area, and the community deck noted on the Map.

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

1.15 "Map" shall mean the Amended and Restated Record of Survey Map for Sweetwater Park Beach Resort Condominiums referred to in Paragraph C of the Recitals above, which Map has been recorded with the Rich County Recorder simultaneously with the recording of this Declaration.

1.16 "Mortgage" shall mean any mortgage, deed of trust, or other security instrument by which a Condominium or any part thereof is encumbered.

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

1.18 "Owner" shall mean any person or entity or combination thereof at any time owning a Condominium within the Project, including Commercial Owners and Residential Owners, as shown in the records of Rich County, State of Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or to any person or entity purchasing a Condominium under contract (until such contract is fully performed and legal title conveyed).

1.19 "Parcel" shall mean the real property in and upon which the Project is situated, as more particularly described in Exhibit "A" attached hereto.

1.20 "Project" shall mean the Parcel and all improvements subject to this Declaration and the Map.

1.21 "Residential Condominium" shall mean any Condominium in the Project that is not a Commercial Condominium.

1.22 "Residential Owner" shall mean any person or entity or combination thereof at any time owning a Residential Condominium within the Project. The term "Residential Owner" shall not include any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or any person or entity purchasing a Residential Condominium under contract (until such contract is fully performed and legal title conveyed).

1.23 "Unit" shall mean an individual air space unit, consisting of enclosed rooms 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 part 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 or 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 outlets thereof when located within the Unit. The interior surfaces of a 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

2.1 Submission to Condominiums. The Declarant hereby submits the Parcel and all other improvements now existing or hereafter made in or upon the Parcel to the provisions of the Condominium Act. All of said property is and shall hereafter be

held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied, improved, and otherwise affected as a Condominium Project to be known as Sweetwater Park Beach Resort Condominiums. All of said property is and shall hereafter 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 Condominiums; 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 the Owners, their successors and assigns, and to any person or entity acquiring or owning an interest in the real property and improvements comprising the Project, and the heirs, personal representatives, successors, and assigns of any such person or entity. The foregoing submission is made subject to all patent reservations and exclusions, all easements and rights-of-way of sight or record, an easement for each and every pipe, line, cable, wire, utility line, or similar facility which presently does, or in the future may with the consent of the Association, traverse or partially occupy the Parcel, and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

2.2 Division into Condominiums. The Project is hereby divided into Residential and Commercial Condominiums, each consisting of a fee interest in a Unit and an undivided fee interest in the Common Areas.

2.3 Interest in Common Areas. Convertible Unit 105 shall have a 5.7278% undivided interest in the Common Areas, which percentage is based upon said Unit's square footage vis-a-vis the square footage of all Units in the Project. Each and every other Condominium in the Project shall have an equal, undivided interest in the remaining 94.2722% undivided interest in the Common Areas, provided however, that at such time as Convertible Unit 105 is converted into Units, then at such time all Units in the Project shall have an equal, undivided interest in the Common Areas.

### ARTICLE III

#### NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP

3.1 Separate Ownership. Each Condominium in the Project is and shall hereafter be a parcel of real property, which may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied, improved, and otherwise affected in accordance with the provisions of this Declaration.

3.2 Use and Occupancy. Subject to the limitations contained in this Declaration, each Owner shall have the equal and nonexclusive right to use and enjoy the Common Areas and



certain Limited Common Areas, and the nonexclusive right to use and enjoy his Unit and any Limited Common Areas designated for exclusive use by such Owner.

3.3 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. 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 sanitary condition and in a state of good repair. In the event that any Unit should develop an unsanitary condition or fall into a state of disrepair, and in the event that the Owner of such Unit should fail to correct such condition or state of disrepair promptly following written notice from the Association, the Association shall have the right, 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 condition or state of disrepair.

3.4 Right to Combine Units. With the written consent of the Association, two or more Units owned by the same Owner may be utilized by such Owner as if the Units were one. To the extent permitted in the written consent of the Association, any walls, floors, ceilings, or other structural separations between any two such Units, or any space which would be occupied by such structural separations but for the utilization of the two Units as one Unit, may, for as long as the two Units are utilized as one Unit, be utilized by the Owner of the combined Units as Limited Common Areas, except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use, or enjoyment of other parts of the Project. At any time and in the event the combined Units are no longer owned by the same Owner, upon the request of the Owner of one of such adjoining Units, any opening between the combined Units which, but for joint utilization of the combined Units, would have been occupied by structural separations, shall be closed, at the equal expense of the Owners of the Units, and the structural separations between the Units shall thereupon once again become Common Areas.

#### ARTICLE IV

##### TITLE TO CONDOMINIUMS

4.1 Title. Title to a Condominium within 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.

4.2 Ownership of Common Areas. Each and every Condominium in the Project shall have an equal, undivided interest in the Common Areas. The undivided interest in the Common Areas appurtenant to each Unit in the Project shall have a permanent character and shall not be altered without a duly authorized amendment to this Declaration.

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

4.4 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.

4.5 Separate Mortgages by Owners. Each Owner shall have the right separately to mortgage or otherwise encumber his Condominium. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part thereof, except the undivided interest therein appurtenant to his Condominium. Any mortgage or other encumbrance of any Condominium 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 foreclosure, or otherwise.

4.6 Separate Taxation. Each Condominium in the Project 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 the purposes of assessment, if possible, the valuation of the Common Areas shall be apportioned among the Condominiums in proportion to the undivided interests in the Common Areas appurtenant to each such Condominium. The Association shall furnish to the assessor all necessary information with respect to such apportionment. No forfeiture or sale of any Condominium for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Condominiums.

4.7 Mechanics Liens. No labor performed or material furnished for use in connection with any Unit with the consent or at the request of an Owner or his agent or subcontractor shall create any right to file a mechanic's lien against the

Condominium of any other Owner not expressly consenting to or requesting the same or against any interest in the Common Areas, except the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed and/or such materials shall have been furnished.

4.8 Description of Condominium. Every contract for the sale of a Condominium and every other instrument affecting title to a Condominium within the Project may describe a Condominium by its identifying number or symbol as indicated in Exhibit "B" hereto and 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 Condominium within the Project and all of the limitations on such ownership as described in this Declaration and/or the Articles of Incorporation and Bylaws of the Association.

#### ARTICLE V

#### EASEMENTS

5.1 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 Declarant outside the boundaries of the Parcel, an easement for such encroachment shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Condominium buildings or any improvements constructed or to be constructed within the Project as shown on the Map, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

5.2 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. The Association shall also have the irrevocable right to have access to any Unit when necessary in connection with any maid service, cleaning, maintenance, repair, replacement, painting, landscaping, construction,

or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances, and any damage caused thereby shall be repaired by the Association with funds from the Common Expense Fund.

5.3 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 Condominium.

5.4 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 the Association is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain in the Common Areas (except Limited Common Areas) facilities for use by Owners generally or by the Association and its agents exclusively.

5.5 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 improvements therein as shown on the Map 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, Declarant and the person causing the damage shall be liable for the prompt repair of such damage.

5.6 Easements Deemed Created. All conveyances of Condominiums within the Project hereafter made, whether by 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 VI

### RESTRICTIONS ON USE

6.1 Residential Condominiums. The Residential Condominiums within the Project shall be used exclusively for residential and lodging purposes, with such purposes to be confined to Residential Condominiums within the Project. No Residential Condominium shall be used for business or commercial activity; provided, however, that nothing herein shall be deemed to prevent (a) the Association or its duly authorized agents from using any Residential Condominium owned by the Association as a property management office or for other Association purposes; (b) any Owner or his duly authorized agent from renting or leasing his

Condominium from time to time; or (c) any Residential Owner from using a Residential Condominium for any purpose approved by the Board of Trustees.

6.2 Commercial Condominiums. The Commercial Condominiums shall only be used for the commercial purposes for which they are being utilized as of the date of this Declaration. Such present uses include a conference room, restaurant, food and drug convenience store, and dry goods (novelty) store. The Commercial Condominiums may only be used for such other purposes and such other uses as are authorized by the Board of Trustees of the Association. Once the Board of Trustees consents to a specific use, in writing, it may not revoke or terminate said use, as long as the Owner of the Condominium otherwise abides by the reasonable restrictions and rules set forth in this Declaration and the Bylaws, and as otherwise promulgated by the Association from time to time. In considering whether to consent to a new use of a Commercial Condominium, the Board of Trustees may withhold its consent for any reason whatsoever, the Board of Trustees having total discretion as to any new uses that will be allowed in any Commercial Condominium.

6.3 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 embarrassment, 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.

6.4 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 may be temporarily necessary to caution or warn of danger. If the Association consents to the erection of any such signs or devices, the same shall be promptly removed at the request of the Association.

6.5 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.

6.6 No Subdivision. Except as otherwise allowed in this Declaration, no Unit, Common Areas, or portions thereof may be divided or subdivided or a fractional portion thereof sold, conveyed, or otherwise affected so as to be held in divided ownership.

6.7 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 written consent of the Association, do any act that would impair the structural soundness or integrity of the Condominium or building in which it is located, or the safety of property or impair any easement or hereditament appurtenant to the Project.

6.8 No Obstructions. There shall be no obstruction of the Common Areas by any Owner. Owners shall neither store nor leave any of their property in the Common Areas, except with the prior written consent of the Association.

6.9 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 which would result in cancellation of the insurance on 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, would pay. Nothing shall be done or kept in any Unit, in the Common Areas, or in any other part of the Project which would be in violation of any statute, ordinance, regulation, rule, 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 against all loss resulting from any such damage or waste caused by such Owner or his family, guests, tenants, licensees, or invitees.

6.10 Rules and Regulations. The Owners shall comply with each and all of the rules and regulations governing use of the Units, Common Areas, and/or Limited Common Areas, as such rules and regulations may from time to time be adopted, amended, or revised by the Board of Trustees.

6.11 Construction Period Exemption. During the course of actual construction of any permitted structures or improvements, 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 VII

### THE ASSOCIATION

7.1 Membership. Each Owner shall be entitled and required to be a member of the Association. 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 Condominium is held by more than one person, the membership appurtenant to that Condominium shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which title to the Condominium is held. An Owner shall be entitled to one membership for each Condominium owned by him. Each membership shall be appurtenant to the Condominium to which it relates and shall be transferred automatically by conveyance of that Condominium. Ownership of a Condominium within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, conveyance, or other disposition of a Condominium shall be construed to be a devise, 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 Condominium. However, nothing herein shall be construed to prohibit the Association from contracting with any other owners association or individual or entity for the Association to provide management or other services to said owners association, individual, or entity.

7.2 Board of Trustees. The Board of Trustees shall consist of such members who may serve for such time and shall have such rights and authority as set forth in the Articles of Incorporation and Bylaws of the Association. Not more than one Trustee shall have an ownership interest in any given Unit. No individual may serve as a Trustee who is an owner, partner, shareholder, officer, director, or employee (or spouse, child, sibling, or parent of any of the foregoing) in any business or commercial enterprise conducted on, about, or in the vicinity of, or in any way connected with or benefitting from, the Project or the property constituting the assets (or any part thereof) of the Association.

7.3 Votes. One vote shall be appurtenant to each Condominium, which voting right shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in a duly recorded amendment to this Declaration.

7.4 Amplification. The provisions of this Article VII may be amplified by the Articles of Incorporation and 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.

#### ARTICLE VIII

##### CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

8.1 Maintenance of 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, control, operation, and maintenance 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 also be responsible for the maintenance and repair of the exterior of the Condominium buildings, including without limitation, painting thereof, repair and replacement of exterior trim and roofs, and maintenance of landscape, walkways, and driveways. 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.

8.2 Miscellaneous Goods and Services. The Association may obtain and pay for out of the Common Expense Fund 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 also obtain and pay for out of the Common Expense Fund 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 and the Project.

8.3 Property Acquisition. The Association may acquire (by purchase, lease, or otherwise) and hold real, personal, and mixed property of all types for the use and benefit of all Owners, and may dispose of such property or any part thereof by sale or otherwise. The costs of acquiring all such property shall be paid for out of the Common Expense Fund, and all proceeds from disposition thereof shall be part of such Fund. Such acquisitions may be approved and made by the Board of Trustees without authorization of the Owners (being the Members of the Association), unless the cost of any such acquisition exceeds \$10,000, in which case such acquisition must be approved by Owners owning at least two-thirds of the Condominiums in the Project at a duly called and held special or annual meeting of the Members of the Association.

8.4 Rules and Regulations. The Association, through its Board of Trustees, may make reasonable rules and regulations governing the use of the Units, Common Areas, Limited Common Areas, and/or other property acquired by the Association for the benefit of the Owners; provided, however, that such rules and regulations shall be consistent with the rights and obligations



established by this Declaration. The Association or any aggrieved Owner may initiate and prosecute appropriate legal proceedings against any offending Owner to enforce compliance with such rules and regulations or to recover damages for noncompliance therewith, as permitted by law. In the event the Association shall initiate any such legal proceedings, the Association shall be entitled to recover from the offending Owner costs and expenses incurred by the Association in connection with such proceedings, including court costs and reasonable attorneys' fees.

8.6 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, privilege, or duty given to it herein or reasonably necessary to effectuate any such right, privilege, or duty.

8.7 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.

## ARTICLE IX

### ASSESSMENTS

9.1 Agreement to Pay Assessments. Each Owner of a Condominium, 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 Owner and with the Association, to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established, and collected from time to time as provided in this Article IX.

9.2 Regular Assessments. Regular Assessments shall be computed and levied against all Condominiums in the Project as necessary to pay the Common Expenses, which Regular Assessments shall be determined and assessed as follows:

(a) Common Expenses. All expenses and costs arising out of or connected with the maintenance and operation of the Common Areas, payment of utility services (to the extent not separately metered or billed), and other activities and expenses common to the Units shall be referred to herein as the "Common Expenses". The Common Expenses may include, among other things, the following: Expenses of management; governmental taxes and special assessments, unless and until Condominiums 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 for the Units to the extent not separately metered or billed); legal and accounting fees; any deficit remaining from previous estimated assessments; creation of a reasonable contingency reserve, surplus, and/or sinking fund; the Association's share of the Amenities Assessment as described in the Bylaws attached hereto as Exhibit "C"; and any other expenses and liabilities which may be incurred by the Association for the benefit of all of the Owners or by reason of this Declaration.

(b) Apportionment. The Common Expenses attributable to the Project as a whole shall be apportioned among and assessed to all Condominiums and Owners in such proportions as may be established by the Association's Board of Trustees from time to time. In determining the relative proportions of the assessments, all two-bedroom Residential Condominiums shall have an equal assessment, all three-bedroom Residential Condominiums shall have an equal assessment, and all remaining Condominiums shall be assessed, in relationship to the assessments made on the two and three bedroom Residential Condominiums, in a reasonable manner after taking into account the size, use, and impact on the Common Expenses of each of the different types of Condominiums. For example, a specific Commercial Condominium may incur a disproportionate amount of the insurance expenses as compared to a Residential Condominium and therefore a higher assessment might be justified. All reasonable factors and circumstances shall be considered by the Board of Trustees in establishing the relative and proportionate assessments to each Condominium. Further, in no event shall each two-bedroom Residential Condominium have an assessment that is greater than 90% or less than 75% of the assessment assessed to each three-bedroom Residential Condominium.

(c) Notice and Payment of Regular Assessment. The Association shall prepare an annual budget each year, and Regular Assessments may be estimated based on such budget. The shortfall or over-assessment resulting from the difference between the budget and actual expenditures shall be taken into account in establishing the Regular Assessment for the next year. Such assessment shall be payable in annual, quarterly or monthly installments, with such due dates as may be established by the Board of Trustees. All unpaid portions of each Regular Assessment shall bear interest at the rate of one and one-half percent (1-1/2%) per month from the date such portions become due until paid. Failure of the Association to give timely notice of any Regular Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, nor shall such failure affect the liability of the Owner of any Condominium for payment of such assessment. All funds received from Regular Assessments made under this Section 9.2 shall be part of the Common Expense Fund.

(d) Inadequate Funds. In the event that the Common Expense Fund proves inadequate during any fiscal year for whatever reason, including nonpayment of any Owners' assessments, the Association may either borrow funds and/or levy additional assessments in accordance with the procedure set forth in Section 9.3, except that the vote therein specified shall not be necessary.

9.3 Special Assessments. In addition to the Regular Assessments authorized by this Article, the Association may levy, at any time and from time to time, upon the affirmative vote of at least a majority of the total votes of the Association, 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 or costs incurred or to be incurred as provided in or allowed by this Declaration. 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 Condominiums and their Owners in the same proportions as their respective Regular Assessments are assessed. Notice in writing of the amount of any such Special Assessment and the time for payment thereof shall be given promptly to the Owners. All unpaid portions of any Special Assessment may bear interest at a rate specified by the Board of Trustees not to exceed one and one-half percent (1-1/2%) per month 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.

9.4 Expenditure of Funds. All funds received hereunder from assessments shall be expended, or accumulated in a reasonable contingency reserve, surplus, and/or sinking fund to be expended, exclusively for the respective purposes designated in this Declaration.

9.5 Lien for Assessments. All sums assessed to any Condominium and its Owner pursuant to the provisions of this Article IX, together with interest thereon as provided herein, shall be secured by a lien on such Condominium in favor of the Association. To evidence a lien for sums assessed pursuant to this Article IX but not timely paid, 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 Condominium, and a description of the Condominium. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the Office of the County Recorder for Rich 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 Utah. In any

such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, 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 Condominium which shall become due during the period of foreclosure. The Association shall have the right and power to bid in at any foreclosure sale, and to hold, lease, mortgage, or convey the subject Condominium.

9.6 Personal Obligation of Owner. The amount of each and every Regular Assessment and Special Assessment against any Condominium within the Project shall be the personal obligation of the Owner of such Condominium 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 Condominium 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 court costs and reasonable attorneys' fees.

9.7 Statement of Account. Upon payment of a reasonable fee and upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Condominium, the Association shall issue a written statement setting forth the following: The amount of any unpaid assessments with respect to such Condominium, and the amount of the current Regular Assessment, and any Special Assessment, and the date such assessments become or became due. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

9.8 Personal Liability of Purchaser. Subject to the provisions of Section 9.7, a purchaser of a Condominium shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Condominium 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.

## ARTICLE X

### INSURANCE

10.1 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 of the Units, Common Areas, Common Facilities, and all other parts of the Project 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 to the Project in construction, design, use, and location. Such insurance shall include coverage for fire, 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 may purchase, in such amounts and in such forms as it deems appropriate, fidelity insurance or a bond to cover against dishonesty of employees, destruction or disappearance of money or securities, and forgery.

10.2 Form of Insurance. Insurance coverage relating to 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 the Association. 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 shall also provide that it cannot be cancelled by either the insured or the insurance company until after ten (10) days prior written notice is first given to each Owner and to each Mortgagee who has requested such notice in writing. The Association shall 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, for the Manager (if any), and for the Association, whether or not the Association is an Owner, and shall protect the Association, each Owner, the Manager (if any) in connection with the ownership, operation, maintenance, or other use of the Project or any part thereof. Each such policy shall provide that it cannot be cancelled either by the insured or the insurance company until after ten (10) days written notice to the Association, to each Owner, and to the Manager (if any).

(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 Manager (if any), 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;

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

(v) The policy or policies can be cancelled and the insurance thereunder can be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence, or noncompliance with any provision of such policy or policies, including payment of the insurance premiums applicable to that Owner's interest, or who permits or fails to prevent the happening of any event (whether occurring before or after a loss) which under the provisions of such policy would otherwise invalidate or suspend the entire policy.

10.3 Insurance Proceeds. The Association shall receive the proceeds of any casualty insurance payments made under policies obtained and maintained by the Association pursuant to this Article. To the extent that reconstruction or repair is required herein, all proceeds of such insurance shall be made available as a fund for such reconstruction or repair and shall be disbursed by the Association as provided in Article XII. To the extent that reconstruction or repair is not required herein and there is a determination that the Project shall not be rebuilt, the proceeds shall be disbursed by the Association to the Owners as provided in Article XII.

10.4 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.

10.5 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.

10.6 Owner's Own Insurance. Notwithstanding the provisions hereof, each Owner may obtain insurance at his own expense providing coverage upon his Condominium, his personal property, for his personal liability, and covering such other risks as he may deem appropriate; provided that each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article. All such insurance of the Owner's Condominium shall waive the insurance company's right of subrogation against the Association, other Owners, the Manager (if any), and their respective employees, agents, and guests, if such insurance can be obtained in the normal practice without significant additional premium charge for the waiver of subrogation rights.

10.7 Review of Insurance. The Association shall review annually the coverage and policy limits of all insurance on the Project and adjust the 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 XI

### DAMAGE OR DESTRUCTION

11.1 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.

11.2 General Authority of Association. Repair and reconstruction of the improvements as used in this Article means restoring the Project to substantially the same condition in which it existed prior to destruction or damage, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries and Common Facilities as before. The proceeds of any casualty insurance collected shall be available to the Association for the purpose of repair or reconstruction, unless Owners holding at least seventy-five percent (75%) of the total votes of the Association agree, within one hundred (100) days after such destruction or damage, not to repair or rebuild in accordance with the provisions hereinafter set forth.

11.3 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 of repair or reconstruction of that part of the Project damaged or destroyed.

11.4 Repair or Reconstruction. As soon as practicable after receiving said estimates, the Association shall diligently pursue to completion the repair or reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection herewith. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the fire or other casualty, with each Unit and the Common Areas having the same vertical and horizontal boundaries and Common Facilities as before.

11.5 Funds for Reconstruction. The proceeds of any casualty insurance collected by the Association shall be available to the Association for the purpose of repair or reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Association may levy in advance a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such Special Assessment shall be allocated and collected as provided in Section 9.3, except that the vote therein specified shall not be necessary. Further levies may be made in like manner if the proceeds of insurance and the assessments collected prove insufficient to pay the costs of repair or reconstruction.

11.6 Disbursement of Funds for Repair or Reconstruction. The insurance proceeds received by the Association and any amounts received from assessments made pursuant to Section 11.5 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 or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such



balance shall be distributed to the Owners in the same proportion as they are assessed for Special Assessments, if there was one, or Regular Assessments if there was not a Special Assessment.

11.7 Partition and Distribution. In the event that Owners holding at least seventy-five percent (75%) of the total votes of the Association shall agree, within one hundred (100) days after destruction of or damage to at least one-half of the Condominium buildings, not to repair or rebuild, the Association shall file with the County Recorder for Rich County, State of Utah, a notice setting forth such facts. Upon filing of such notice, the following shall occur:

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

(b) The undivided interest in the Project so owned in common which shall appertain to each Owner shall be the fraction that results from dividing the square footage of the Owner's Unit by the total square footage of all Units in the Project. In calculating square footages, the Map shall be used to the extent possible.

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

(d) 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 funds in the Common Expense Fund and the net proceeds of the insurance on the Project, if any, shall be considered as one fund and shall be divided among all the Owners using the fractions calculated in Section 11.7(b) above, after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the Condominium (and/or the undivided interest in the Project) owned by such Owner.

## ARTICLE XII

### OBSOLESCENCE

12.1 Adoption of Plan. Owners holding seventy-five percent (75%) or more of the total votes of the Association may agree that the Project is obsolete and adopt a written plan for the renewal and reconstruction of the Project, provided that such plan has the unanimous approval of all first mortgagees of record at the time such plan is adopted. Written notice of adoption of such a plan, together with a copy of the plan, shall be given to all Owners.

12.1 Payment for Renewal and Reconstruction. The expense of renewal and reconstruction shall be payable by all of the Owners as assessments against their respective Condominiums. Such assessments shall be levied in advance and shall be allocated and collected as provided in Section 9.3, except that the vote therein specified shall not be necessary. Further levies may be made in a like manner if the amounts collected prove insufficient to pay all costs of renewal or reconstruction. In the event amounts collected pursuant hereto are in excess of the amounts required for renewal and reconstruction, the excess shall be returned to the Owners by the Association by a distribution to each Owner in an amount proportionate to the assessments levied by the Association.

12.3 Sale of Condominium Project. Notwithstanding all other provisions of this Declaration, the Owners may, by an affirmative vote of at least seventy-five percent (75%) of the total votes of the Association, at a meeting of Owners duly called for such purpose, elect to sell or otherwise dispose of the Project. Such action shall be binding upon all Owners and it shall thereupon become the duty of every Owner to execute and deliver such instruments and to perform all acts in such manner and form as may be necessary to effect such sale. The proceeds of any such sale shall be divided among all Owners in proportion to undivided interests calculated in the manner described in Section 11.7(b) above, after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the interest of such Owner in the Project.

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

### ARTICLE XIII

#### CONDEMNATION

13.1 Condemnation. If at any time or times during the continuance of condominium ownership pursuant to this Declaration 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.

13.2 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.

13.3 Complete Taking. In the event the entire Project is taken by power of eminent domain, condominium ownership pursuant hereto shall terminate and the condemnation award shall be allocated among and distributed to the Owners in proportions calculated in the manner described in Section 11.7(b) above. Such distribution shall be made by check payable jointly to each Owner and his respective Mortgagees, as appropriate.

13.4 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. If apportionment or allocation is established by applicable negotiations, judicial decree, or statute, the Association shall employ such apportionment and allocation to the extent appropriate. Otherwise, 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 proportions calculated in the manner described in Section 11.7(b) above;

(ii) The total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Condominiums that have not been taken, in proportions calculated in the manner described in Section 11.7(b) above;

(iii) The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of that 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) Distribution of allocated proceeds shall be made by check payable jointly to each Owner and his respective Mortgagees, as appropriate.

(b) Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, condominium ownership pursuant hereto shall not terminate, but shall continue. If any partial taking results in the taking of an entire Unit, the Owner thereof shall cease to be a Member of the Association.

(c) Reconstruction or Repair. Any reconstruction or repair necessitated by condemnation shall be governed by the

procedures specified in Article XI for cases of Damage or Destruction.

#### ARTICLE XIV

##### CONDOMINIUM BUILDINGS AND LIMITED COMMON AREAS

14.1 Condominiums Buildings. The buildings in which the Condominiums are located consist of up to three floors and sometimes a loft, containing the number of Units as shown on the Map. The Condominium buildings are constructed principally of wooden frame with both load bearing and non-bearing walls studded with wood; lower floors are concrete and all other floors are composed of wooden beams covered with plywood and mustical; roof is composed of wooden beams covered with plywood and surfaced with cedar shingles; interior walls are surfaced with gypsum board; and the exterior walls are surfaced with rough-cut cedar plank.

14.2 Limited Common Areas. Each Balcony and each Deck, as shown on the Map, shall be Limited Common Areas for exclusive use by the Owner of the particular Unit which is contiguous with such Balcony or Deck. Notwithstanding anything on the Map to the contrary, the parking spaces shown and designated on the Map with a "P" shall be Limited Common Areas for exclusive use by the Owner of the respective Unit which carries the same number as the number following the "P" on the parking space on the Map.

#### ARTICLE XV

##### CONVERTIBLE SPACE

15.1 Effective Date of Conversion and State of Title to New Units Produced by Conversion. Convertible Unit 105 is the only convertible space in the Project, and if converted shall be so done in one conversion only. Such conversion of Unit 105, if ever accomplished, shall be deemed converted into Unit(s) and/or Common Areas as set forth in this Article XV at such time as a supplement to this Declaration and to the Map containing the information, and executed or consented to by the parties, required by this Article XV and the Utah Condominium Ownership Act (the "Act") have been recorded with respect to such Convertible Unit. After the recordation of such supplements, title to each new Unit thereby created from the Convertible Unit and its appurtenant undivided ownership interest in the Common Areas shall be vested in and held by the person(s) who constituted the Owner(s) of the Convertible Unit at the time of such recordation (in the same manner in which such person(s) held title to such Convertible Unit at the time of such recordation), and none of the other Owners shall have any claim or title to or interest in such new Unit or its appurtenant undivided ownership interest in the Common Areas. If at the time conversion of the Convertible Unit occurs there is of record a mortgage, deed of trust, or other such instrument which covers such Convertible Unit, then

such mortgage, deed of trust, or other such instrument shall, upon the conversion of the Convertible Unit, and whether or not such mortgage, deed of trust, or other such instrument does so by its terms, automatically cover, encumber, and include each new Unit thereby created from the Convertible Unit, and such new Unit's appurtenant undivided ownership interest in the Common Areas. Nothing herein shall prevent the granting of a mortgage, deed of trust, or other such instrument on any new Condominium Unit produced by the conversion of the Convertible Unit, but any such mortgage, deed of trust, or other such instrument shall be subject and inferior to the lien on or interests in such Unit which are contemplated by the immediately preceding sentence.

15.2 Power to Convert. The Owner of the Convertible Unit shall have the sole power and authority to convert, and shall be deemed to be the Declarant for the purpose of converting, such Convertible Unit into Units and/or Common Areas as set forth in this Article, subject, however, to the limitations and provisions contained in this Article and in the Act. For purposes of this Article, the Owner of the Convertible Unit who undertakes any conversion of the Convertible Unit is referred to as the "Converter". Said right, power, and authority as regards the Convertible Unit shall be an appurtenance of the Convertible Unit, may not be separated from the ownership of such Convertible Unit, and shall be automatically transferred to and held by any successor in title who becomes the Owner of the Convertible Unit.

15.3 Conversion of the Convertible Unit. Subject to the limitations and provisions set forth in this Article XV and in the Act, the Converter of the Convertible Unit may at any time convert the Convertible Unit into one or more Units and/or into Common Areas (including Limited Common Areas) by executing, acknowledging, and recording (in the office of the County Recorder of Rich County, Utah) supplements to the Declaration and Map which comply with the following provisions and requirements and which, when taken together, contain all of the following information and other materials:

(a) Data sufficient to identify this Declaration (as initially constituted), as recorded, and the Map (as initially constituted), as recorded.

(b) The Number of the Convertible Unit which is being converted.

(c) The supplements to the Map and this Declaration shall be such as to comply with the requirements of the Act.

(d) The Unit number of each new Unit which is being created from the Convertible Unit and any other data necessary for the proper identification of each such new Unit.

(The Unit number ascribed to each such new Unit must be different than any number used to identify any of the Units then included in the Project, any Building in the Project, any Limited Common Area then included in the Project, and any Limited Common Area which is being created through the conversion in question.)

(e) A description of the Common Areas, if any, which are being created from the Convertible Unit.

(f) A description of the Limited Common Areas, if any, which are being created from the Convertible Unit. (Any number, letter, or other such label ascribed to any such newly created Limited Common Area must be different than any number used to identify any of the Units then included in the Project, any Limited Common Area then included in the Project, and any new Unit which is being created through the conversion.)

(g) A designation of the Unit or Units to which shall appertain exclusive use of each of the newly created Limited Common Areas contemplated by the preceding paragraph (f).

(h) The supplement to the Map and the supplement to this Declaration must each have appearing thereon and as a part thereof legend(s), executed and acknowledged by or on behalf of each and every person or entity contemplated by Sections 15.4 and 15.5 below, whereby each such person or entity consents to the conversion accomplished by such supplements and consents to the recordation of the supplements on which such legends appear.

Upon recordation of the supplements contemplated by the foregoing to the Declaration and Map, the information contained therein shall become effective for all purposes and such supplements shall automatically supplement this Declaration, the Map, and any other similar supplements previously recorded. At any point in time, the Declaration and Map for the Project shall consist of this Declaration and the Map initially effective hereunder, as amended, expanded, and supplemented by all supplements theretofore recorded pursuant to the terms hereof.

15.4 Need for Consent by Encumbrances Holders. In order for the conversion of the Convertible Unit to be

accomplished or effective, the supplements to the Map and to this Declaration which are recorded in order to effect such conversion must each have appearing thereon and as a part thereof legend(s), executed and acknowledged by or on behalf of each and every mortgagee and trust deed beneficiary which holds a recorded mortgage or a recorded deed of trust that covers the Convertible Unit whereby each such mortgagee or beneficiary consents to the conversion accomplished by such supplements and consents to the recordation of the supplements on which such legend(s) appear(s). If such supplements do not include such legends executed by or on behalf of all of such mortgagees and trust deed beneficiaries, then such supplements and the recordation thereof shall be a nullity for all purposes and shall be wholly and completely ineffective for any purpose, including accomplishment of the conversion in question. Except to the extent (if at all) that the terms of the mortgage held by such a mortgagee or the terms of the trust deed held by such a beneficiary expressly and specifically provide to the contrary, any such mortgagee or trust deed beneficiary: (i) shall be free, in its absolute and unfettered discretion, to give or withhold its consent to the conversion in question and to the recordation of the supplements by which such conversion is planned to be accomplished; (ii) shall have no obligation to act reasonably in determining whether to give or withhold such consent; and (iii) need have no particular reason for its giving or withholding such consent.

15.5 Need for Consent by Rich County. Notwithstanding anything in this Declaration to the contrary, any conversion of the Convertible Unit, including the required Supplements to the Declaration and the Map, shall be reviewed and approved by the Rich County Commission, and any other office, department or division of the Rich County government so designated by the Rich County Commission, or any successor governmental body to the Commission. Such review and approval shall be accomplished in a similar manner to the review and approval of a new condominium project.

15.6 Limitations and Restrictions. The conversion of the Convertible Unit shall be subject to the following limitations and restrictions, in addition to those limitations and restrictions which are set forth elsewhere in this Article XV:

(a) Unit Size. No Unit formed out of the Convertible Unit shall have a size of less than 100 square feet.

(b) Common Areas. No more than twenty-five percent (25%) of the total floor space contained in the Convertible Unit shall be converted to Common Areas (including Limited Common Areas), unless the Association shall consent to a higher percentage by executing a legend granting such consent on either the supplement to the Declaration or the supplement to the Map accomplishing the

conversion which increases the percentage of floor space so converted above the allowable percentage.

(c) Independent Use. Each Unit formed out of the Convertible Unit must be capable of independent use and must have direct access to Common Areas intended and sufficient for pedestrian access to such Unit.

15.7 Amendment of Article. None of the provisions of this Article may be amended without the consent of all Owners of, and of all persons and entities whose consent would be required under Sections 15.4 and 15.5 to accomplish the conversion of the Convertible Unit. All of the consents required by the preceding sentence must be in writing and must appear on and be a part of the instrument accomplishing the amendment in question.

## ARTICLE XVI

### GENERAL PROVISIONS

16.1 Intent and Purpose. The provisions of this Declaration, and any supplemental or subsequent 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 in this Declaration, or in any supplemental or subsequent Declaration, shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.

16.2 Interpretation. The provisions of this Declaration shall be in addition and supplemental to the Condominium Act and to all other provisions of law. Wherever used herein, unless the context shall otherwise provide, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include all other genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define, or otherwise limit or 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.

16.3 Compliance. Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation 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, revised, or adopted from time to time.



Failure on the part of any Owner to comply with any of the foregoing shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association or, in a proper case, by an aggrieved Owner. In the event of any action by the Association to recover assessments or any other amounts due hereunder or to enforce the provisions hereof, the Association shall be entitled to recover from the offending Owner all costs and expenses incurred by the Association in connection with such action, including court costs and reasonable attorneys' fees. The obligations, provisions, covenants, restrictions, and conditions contained in this Declaration, as the same may be lawfully amended or supplemented, with respect to the Association and/or Condominiums within the Project shall be enforceable by the Association, or by an Owner through a proceeding for a prohibitive or mandatory injunction. The rights and remedies herein provided shall be in addition to all other rights and remedies now or hereafter provided by law for enforcement of the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations promulgated by the Association, and decisions and resolutions of the Association adopted pursuant thereto.

16.4 Registration of Mailing Address. Each Owner shall register from time to time with the Association and with any Manager his current mailing address. All notices or demands intended to be served upon any Owner may be sent by first class U.S. Mail, postage prepaid, addressed to the Owner at his registered mailing address or, if no address has been registered, to the Unit of such Owner. All notices or demands intended to be served upon the Association may be sent by first class U.S. Mail, postage prepaid, addressed to the Association at its then current offices, or to such other address as the Association may hereafter furnish to the Owners in writing. Any notice or demand referred to in this Declaration shall be deemed given when deposited in the U.S. Mail, postage prepaid, and in the form provided for in this Section.

16.5 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.

16.6 Amendment. Except as otherwise provided herein, this Declaration may be amended if Owners holding at least two-thirds of the total votes of the Association consent and agree to such amendment, which amendment shall be duly executed by the Association and duly recorded in the Office of the County Recorder for Rich County, State of Utah.

16.7 Effective Date. This Declaration and every provision thereof shall take effect upon recording.

16.8 Agent for Service. The agent for service of process under the Condominium Act, shall be the registered agent and address of the Association. The Association shall have the right, at any time and from time to time, to appoint a successor or substitute agent for service of process. The name and address of each successor or substitute agent for service of process shall be set forth in an appropriate instrument duly filed with the Division of Corporations for the State of Utah.

16.9 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 Condominium. The Owner of a Condominium within the Project shall have no obligation for expenses or other obligations (except interest on prior obligations) accruing after he fully conveys such Condominium.

16.10 Mortgagee Protection. No breach of any of the covenants, conditions, restrictions, or limitations contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of said matters shall be binding upon any Owner whose title is derived through foreclosure or trustee's sale. No enforcement of any lien provision herein contained shall defeat or render invalid the lien of any mortgage or deed of trust. All sums assessed in accordance with the provisions hereof shall constitute a lien on each respective Condominium prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any recorded mortgage or deed of trust of record on such Condominium made in good faith and for value. However, notwithstanding the preceding to the contrary, once a Notice of Lien is filed of record pursuant to the provisions of this Declaration, such Notice of Lien shall be superior in priority to all Mortgages or other liens or encumbrances going of record after the date of the Notice of Lien was duly recorded. Whenever the mortgagee of a mortgage or beneficiary of a Deed of Trust of record obtains title to a Condominium, or anyone acquiring through such mortgagee or beneficiary, or deed in lieu thereof, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses or assessments collectible prospectively and pro rata from all of the Condominiums, including such acquirer, his successors and assigns.

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

ASSOCIATION:

IDEAL BEACH CONDOMINIUM  
HOMEOWNERS ASSOCIATION, INC.,  
a Utah nonprofit corporation

By *Robert D. Irvine*  
Robert D. Irvine, President

Attest:

*Dixie H. Hill*  
Dixie Hill, Secretary

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

On the 26<sup>th</sup> day of July, 1988, personally appeared before me Robert D. Irvine and Dixie Hill, who being by me duly sworn, did say that they are the President and Secretary, respectively, of IDEAL BEACH CONDOMINIUM HOMEOWNERS ASSOCIATION, INC., that said instrument was signed in behalf of said corporation by authority of a resolution of its members and its Board of Trustees, and said Robert D. Irvine and Dixie Hill acknowledged to me that said corporation executed the same.

**ROBERT C. HYDE**  
NOTARY PUBLIC  
STATE OF UTAH

*Robert C Hyde*  
NOTARY PUBLIC  
Residing at: *1010 Third Ave Salt Lake City, Utah*

My Commission Expires:  
1-17-90

270:073187A

Exhibit "A"

LEGAL DESCRIPTION

A part of Section 33 and Section 34, Township 14 North, Range 5 East, Salt Lake Base and Meridian, described as follows:

Beginning at a point which lies North 558.01 feet and East 503.75 feet from the Southeast corner of said Section 33 and running thence North 21°41'18" East 114.95 feet; thence South 68°18'42" East 367.57 feet; thence North 21°41'18" East 137.04 feet; thence North 68°18'42" West 23.00 feet; thence North 21°41'18" East 177.04 feet; thence North 45°00'00" East 175.07 feet; thence South 68°18'42" East 58.42 feet; thence South 12°51'00" West 22.21 feet; thence South 68°09'57" East 11.76 feet; thence South 21°50'03" West 11.04 feet; thence South 68°09'57" East 9.10 feet; thence South 21°50'03" West 30.77 feet; thence North 68°09'57" West 12.50 feet; thence South 21°50'03" West 11.09 feet; thence South 12°51'00" West 316.11 feet; thence North 77°05'32" West 21.73 feet; thence North 77°09'00" West 20.00 feet; thence South 12°51'00" West 42.91 feet; thence South 21°41'18" West 93.80 feet; thence North 68°18'42" West 25.27 feet; thence North 21°41'18" East 42.00 feet; thence North 68°18'42" West 91.82 feet; thence South 21°41'18" West 132.99 feet; thence North 68°18'42" West 63.00 feet; thence South 21°41'18" West 24.00 feet; thence North 68°18'42" West 144.00 feet; thence North 21°41'18" East 24.00 feet; thence North 68°18'42" West 72.75 feet; thence North 21°41'18" East 31.00 feet; thence North 68°18'42" West 101.00 feet to the point of beginning, containing 2.87 acres.

ALSO: Beginning at a point which lies North 629.29 feet and East 324.40 feet from the Southwest corner of said Section 34 and running thence North 21°41'18" East 115.00 feet; thence South 68°18'42" East 136.99 feet; thence South 21°41'18" West 115.00 feet; thence North 68°18'42" West 136.99 feet to the point of beginning, containing 0.36 acres.

ALSO: Beginning at a point which lies North 799.71 feet and East 401.33 feet from the Southwest corner of said Section 34 and running thence North 68°18'42" West 153.76 feet; thence North 21°41'18" East 42.72 feet; thence North 68°18'42" West 45.00 feet; thence North 21°41'18" East 24.73 feet; thence South 68°18'42" East 71.31 feet; thence North 21°41'18" East 15.00 feet; thence North 67°19'46" East 33.69 feet; thence South 68°18'42" East 103.36 feet; thence South 21°41'18" West 106.00 feet to the point of beginning, containing 0.37 acres.

ALSO: Beginning at a point which lies North 863.18 feet and East 241.73 feet from the Southwest corner of said Section 34 and running thence North 68°18'42" West 27.00 feet; thence North 21°41'18" East 24.72 feet; thence South 68°18'42" East 27.00 feet; thence South 21°41'18" West 24.72 feet to the point of beginning, containing 0.02 acres.

ALSO: Beginning at a point which lies North 726.48 feet and East 79.78 feet from the Southwest corner of said Section 34 and running thence North 68°18'42" West 552.00 feet; thence North 21°41'18" East 260.00 feet; thence South 68°18'42" East 64.72 feet; thence South 38°19'00" East 375.71 feet; thence North 81°20'00" East 154.00 feet; thence South 68°18'42" East 29.00 feet; thence South 21°41'18" West 150.00 feet to the point of beginning, containing 2.07 acres.

TOGETHER WITH: A non exclusive right-of-way for ingress and egress over the following described land: Beginning at a point which lies North 401.54 feet and East 365.38 feet from the Southeast corner of Section 33, Township 14 North, Range 5 East, Salt Lake Base and Meridian (said point also lies on the North line of State Highway No. 30) and runs thence North 15°54'30" East 81.52 feet; thence North 21°41'18" East 89.39 feet; thence North 68°18'42" West 476.85 feet; thence South 21°41'18" West 90.00 feet; thence North 68°18'42" West 172.00 feet; thence North 21°41'18" East 70.00 feet; thence North 41°30'00" West 101.98 feet to the South line of the "AMENDED AND RESTATED RECORD OF SURVEY MAP OF SWEETWATER PARK BEACH RESORT CONDOMINIUMS", thence South 68°18'42" East 57.66 feet; thence South 41°30'00" East 66.50 feet; thence South 21°41'18" West 59.99 feet; thence South 68°18'42" East 120.00 feet; thence North 21°41'18" East 90.00 feet; thence South 68°18'42" East 125.86 feet; thence North 21°41'18" East 229.50 feet; thence South 68°18'42" East 118.00 feet; thence South 21°41'18" West 42.72 feet; thence North 68°18'42" West 18.00 feet; thence North 21°41'18" East 24.72 feet; thence North 68°18'42" West 82.00 feet; thence South 21°41'18" West 211.50 feet; thence South 68°18'42" East 412.25 feet; thence North 21°41'18" East 114.95 feet; thence South 68°18'42" East 26.00 feet; thence South 21°41'18" West 114.95 feet; thence South 68°18'42" East 101.00 feet; thence South 21°41'18" West 31.00 feet; thence South 68°18'42" East 72.75 feet; thence South 21°41'18" West 24.00 feet; thence South 68°18'42" East 144.00 feet; thence North 21°41'18" East 24.00 feet; thence South 68°18'42" East 68.00 feet; thence South 21°41'18" West 6.33 feet; thence South 86°45'00" East 118.15 feet; thence North 21°41'18" East 153.75 feet; thence North 12°51'00" East 42.91 feet; thence North 77°09'00" East 20.00 feet; thence South 12°51'00" West 44.44 feet; thence South 21°41'18" West 169.75 feet; thence North 86°45'00" West 210.67 feet; thence North 68°18'42" West 154.23 feet; thence North 49°44'45" West 172.74 feet; thence North 68°18'42" West 55.96 feet; thence South 21°41'18" West 88.22 feet; thence South 15°54'30" West 80.31 feet to a point on the North line of State Highway 30; thence North 74°14'21" West along said line 23.00 feet to the point of beginning.

Together with a parking easement described as follows:

Beginning at a point on the easterly property line, said point lies North 670.00 feet and East 1086.53 feet from the Southwest corner of said Section 34 and running thence North 12°51'00" East

257.10 feet; thence North  $21^{\circ}50'03''$  East 11.09 feet; thence South  $68^{\circ}09'57''$  East 12.50 feet; thence North  $21^{\circ}50'03''$  East 30.77 feet; thence South  $65^{\circ}46'47''$  East 24.02 feet; thence South  $21^{\circ}07'30''$  West 294.84 feet to the point of beginning.

Exhibit "B"  
(Page 1 of 3)

<u>Unit No.</u>	<u>Type of Unit</u>	<u>Former Project and Unit No. Prior to Amendment to Declaration</u>	<u>Association Membership and Number of Votes</u>
		<u>Project III</u>	
1	Residential	37	1
2	Residential	35	1
3	Residential	33	1
4	Residential	31	1
5	Residential	29	1
6	Residential	27	1
7	Residential	25	1
8	Residential	23	1
9	Residential	21	1
10	Residential	19	1
11	Residential	17	1
12	Residential	15	1
13	Residential	13	1
14	Residential	11	1
15	Residential	9	1
16	Residential	7	1
17	Residential	5	1
18	Residential	3	1
19	Residential	1	1
20	Residential	38	1
21	Residential	36	1
22	Residential	34	1
23	Residential	32	1
24	Residential	30	1
25	Residential	28	1
26	Residential	26	1
27	Residential	24	1
28	Residential	22	1
29	Residential	20	1
30	Residential	18	1
31	Residential	16	1
32	Residential	14	1
33	Residential	12	1
34	Residential	10	1
35	Residential	8	1
36	Residential	6	1
37	Residential	4	1
38	Residential	2	1

Exhibit "B"  
(Page 2 of 3)

<u>Unit No.</u>	<u>Type of Unit</u>	<u>Former Project and Unit No. Prior to Amendment to Declaration</u>	<u>Association Membership and Number of Votes</u>
<u>Project I</u>			
(Building "A")			
39	Residential	4	1
40	Residential	3	1
41	Residential	2	1
42	Residential	1, 33, 34	1
(Building "B")			
43	Residential	5	1
44	Residential	7	1
45	Residential	9	1
46	Residential	11	1
47	Residential	13	1
48	Residential	15	1
49	Residential	17	1
50	Residential	19	1
51	Residential	21	1
52	Residential	23	1
53	Residential	25	1
54	Residential	27	1
55	Residential	29	1
56	Residential	31	1
57	Residential	6, 6A	1
58	Residential	8, 8A	1
59	Residential	10, 10A	1
60	Residential	12, 12A	1
61	Residential	14, 14A	1
62	Residential	16, 16A	1
63	Residential	18, 18A	1
64	Residential	20, 20A	1
65	Residential	22, 22A	1
66	Residential	24, 24A	1
67	Residential	26, 26A	1
68	Residential	28, 28A	1
69	Residential	30, 30A	1
70	Residential	32, 32A	1
<u>Project II</u>			
71	Residential	1	1
72	Residential	3	1



Exhibit "B"  
(Page 3 of 3)

<u>Unit No.</u>	<u>Type of Unit</u>	<u>Former Project and Unit No. Prior to Amendment to Declaration</u>	<u>Association Membership and Number of Votes</u>
73	Residential	34	1
74	Residential	6	1
75	Residential	8	1
76	Residential	10	1
77	Residential	12	1
78	Residential	14	1
79	Residential	16	1
80	Residential	18	1
81	Residential	20	1
82	Residential	22	1
83	Residential	24	1
84	Residential	26	1
85	Residential	28	1
86	Residential	30	1
87	Residential	32	1
88	Residential	2	1
89	Residential	4	1
90	Residential	5	1
91	Residential	7	1
92	Residential	9	1
93	Residential	11	1
94	Residential	13	1
95	Residential	15	1
96	Residential	17	1
97	Residential	19	1
98	Residential	21	1
99	Residential	23	1
100	Residential	25	1
101	Residential	27	1
102	Residential	29	1
103	Residential	31	1
104	Residential	33	1

Western America

Convertible Unit 105	Commercial	First Floor	1
106	Commercial	1	1
107	Residential	2	1
108	Residential	3	1
109	Residential	4	1
110	Residential	5	1
111	Residential	6	1
112	Residential	7	1

Exhibit "C"

BYLAWS  
OF  
IDEAL BEACH CONDOMINIUM HOMEOWNERS  
ASSOCIATION, INC.,  
a Utah Nonprofit corporation

Pursuant to the provisions of the Utah Nonprofit Corporation and Cooperative Association Act, the Board of Trustees of IDEAL BEACH CONDOMINIUM HOMEOWNERS ASSOCIATION, INC., a Utah Nonprofit corporation, hereby adopts the following Bylaws for such nonprofit corporation:

ARTICLE I

NAME AND PRINCIPAL OFFICE

1.01 Name. The name of the nonprofit corporation is IDEAL BEACH CONDOMINIUM HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as the "Association."

1.02 Office. The principal office of the Association shall be at P.O. Box 224, Garden City, Utah 84028.

1.03 Purpose. The purpose of the Association is to serve as the owners association for the Sweetwater Park Beach Resort Condominiums. The operations of the Association shall be governed by the Amended and Restated Declaration of Condominium for Sweetwater Park Beach Resort Condominiums (the "Declaration") and the Articles of Incorporation and these Bylaws of the Association.

ARTICLE II

DEFINITIONS

2.01 Definitions. Except as otherwise provided herein or required by the context hereof, all of the defined terms used in these Bylaws shall have the meanings given in the Amended and Restated Declaration for Sweetwater Park Beach Resort Condominiums.

ARTICLE III

MEMBERS

3.01 Annual Meetings. The annual meeting of Members shall be held on a day and at a time each year to be selected by the Board of Trustees for the purpose of electing Trustees.

3.02 Special Meetings. Special meetings of the Members may be called by the Board of Trustees, the President or

upon the written request of Members holding not less than ten percent (10%) of the total votes of the Association. Such written request shall state the purpose or purposes of the meeting and shall be delivered to the Board of Trustees or the President.

3.03 Place of Meetings. The Board of Trustees may designate any place within the State of Utah as the place of meeting for any annual meeting or for any special meeting called by the Board. If no designation is made, the place of the meeting shall be at the principal office of the Association.

3.04 Notice of Meetings. The Board of Trustees shall cause written or printed notice of the time, place and purposes 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 last known address, with first class postage thereon prepaid.

3.05 Members of Record. Upon purchasing a Condominium in the Project, each Owner shall promptly furnish to the Association a certified copy of the recorded instrument by which ownership of such Condominium 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 Board of Trustees 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 entities appearing in the records of the Association on such record date as the Owners of record of Condominiums in the Project who have paid all dues and fees current within 30 days of the record date as designated herein, shall be deemed to be the Members of record entitled to notice of and to vote their corresponding Membership interest 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, twenty-five percent (25%) or more 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 an annual or special meeting of Members, the meeting may be adjourned and rescheduled for a time no earlier than 48 hours, and no later than 30 days after the time set for the original meeting. No notice of such rescheduled meeting shall be required. 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 Association or to such other officer or person who may be acting as secretary of the meeting. The secretary of the meeting 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 allocated to each Condominium owned by that Member as set forth in Exhibit "B" to the Declaration and incorporated herein by this reference. 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 is present shall be necessary for the adoption of any matter voted on by the Members, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, the Declaration or Utah law. The election of Trustees may be by secret Ballot if requested by Members holding at least 10% of the votes present at the meeting. 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 vote(s) relating to their joint Membership. No Member who is not current in the payment of his or her assessments shall be entitled to vote at any meeting of the Members.

3.09 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.

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

## ARTICLE IV

### BOARD OF TRUSTEES

4.01 General Powers. The property, affairs and business of the Association shall be managed by its Board of Trustees. The Board of Trustees may exercise all of the powers of the Association, whether derived from law or the Articles of Incorporation, except such powers as are by law, by the Articles of Incorporation, by these Bylaws, or by the Declaration vested solely in the Members.

4.02 Number, Tenure and Qualifications. The initial number of Trustees of the Association shall be seven (7). Trustees shall be elected at the annual meeting and shall serve until their successors are elected and shall qualify. Trustees must be Members of the Association.

4.03 Regular Meetings. The regular annual meeting of the Board of Trustees shall be held immediately after, and at the same place as, the annual meeting of the Members without any additional notice required. The Board of Trustees may provide by resolution the time and place, within the State of Utah, for the holding of additional regular meetings without other notice than such resolution.

4.04 Special Meetings. Special meetings of the Board of Trustees may be called by or at the request of any Trustee. The person or persons authorized to call special meetings of the Board of Trustees may fix any place, within the State of Utah, as the place for holding any special meeting of the Board of Trustees called by such person or persons. Notice of any special meeting shall be given at least 24 hours prior thereto, orally by telephone, or by written notice delivered personally, or mailed to each Trustee 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 prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any Trustee may waive notice of a meeting.

4.05 Quorum and Manner of Acting. A majority of the then authorized number of Trustees shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees. The act of a majority of the Trustees shall be that of the Board of Trustees. The Trustees shall act only as a Board, and individual Trustees shall have no powers as such.

4.06 Compensation. A Trustee shall not receive compensation for services rendered to the Association as a Trustee except Trustees may be reimbursed up to \$50 per meeting and for

expenses incurred in the performance of their duties as Trustees provided such expenses are approved before incurrence by the Board. Except as otherwise provided in these Bylaws, Trustees may be compensated for services rendered to the Association other than in their capacities as Trustees.

4.07 Resignation and Removal. A Trustee may resign at any time by delivering a written resignation to either the President or the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Trustee may be removed at any time, with or without cause, by the majority vote of the total votes of the Association present at a special meeting of the Members duly called for such purpose at which a quorum is present.

4.08 Vacancies and Newly Created Trusteeships. If vacancies shall occur in the Board of Trustees by reason of the death, resignation or disqualification of a Trustee or if the authorized number of Trustees shall be increased, the Trustees then in office shall continue to act, and such vacancies or newly created Trusteeships shall be filled by a vote of the Trustees then in office, though less than a quorum, in any way approved by such Trustees at the meeting. Any vacancies in the Board of Trustees occurring by reason of removal of a Trustee may be filled by election by the Members at the meeting at which such Trustee is removed. Any Trustee 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 Trusteeship, as the case may be.

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

## ARTICLE V

### OFFICERS

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

5.02 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Board of Trustees. In the event of failure to choose officers at such regular annual meeting of the Board of Trustees, officers may be chosen at any other regular or any special meeting of the Board of Trustees. Each such officer (whether chosen at a regular annual meeting of the Board of Trustees or otherwise) shall hold his office until the next ensuing regular annual meeting of the Board of Trustees

and until his successor shall have been chosen and qualified or until his death or until his resignation or removal in the manner provided in these Bylaws, whichever first occurs. Any one person may hold any two or more of such offices, except that the President may not also be the Secretary. No person holding two or more offices shall act 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 Trustees of the Association during the entire term of their respective offices. No other officer need be a Trustee.

5.03 Subordinate Officers. The Board of Trustees 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 Board of Trustees may from time to time determine. The Board of Trustees 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 Trustees of the Association.

5.04 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to the President or to the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board of Trustees at any time, with 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 Board of Trustees at any regular or special meeting.

5.06 The President. The President shall preside at meetings of the Board of Trustees and at meetings of the Members. He shall sign on behalf of the Association all conveyances, mortgages, documents and contracts and shall do and perform all other acts and duties that the Board of Trustees 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 his absence or inability to act and shall do and perform such other duties as the Board of Trustees may require of him.

5.08 The Secretary. The Secretary shall keep minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, or the Board of Trustees may require him to keep. He shall do and perform such other duties as the Board of Trustees 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 Board of Trustees 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 Board of Trustees. He shall do and perform such other duties as the Board of Trustees 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 officers may be paid up to \$50 per meeting (provided that if the officer is also a Trustee, he or she shall not be paid for both capacities at the same meeting), and reimbursed for expenses incurred in the performance of their duties as officers provided such expenses are approved before incurrence by the Board. Further, except as otherwise provided in these Bylaws, officers may be compensated for services rendered to the Association other than in their capacities as officers.

## ARTICLE VI

### COMMITTEES

6.01 Designation of Committees. The Board of Trustees 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 one (1) Trustee. No committee member shall receive compensation for services that he may render to the Association as a committee member; provided, however, that committee members may be reimbursed for expenses incurred in performance of their duties as committee members and, except as otherwise provided in these Bylaws, may be compensated for services rendered to the Association other than in their capacities as committee members.

6.02 Proceedings of Committees. Each committee designated hereunder by the Board of Trustees may appoint its own presiding and recording officers and may meet at such places, within the State of Utah, and at such 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 Board of Trustees.

6.03 Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Board of Trustees the presence of members constituting at least a majority of the authorized 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 Board of Trustees 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 Board of Trustees may resign at any time by delivering a written resignation either to the President, to the Board of Trustees or to the presiding officer of the committee of which he is a member. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board of Trustees may at any time, with 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 Board of Trustees 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 when two or more members are remaining, they may continue to act. Such vacancy may be filled at any meeting of the Board of Trustees.

## ARTICLE VII

### INDEMNIFICATION

7.01 Specific Indemnification. The Association shall indemnify any Trustee or officer or any former Trustee or officer of the Association or any person who may have served at the request of the Association as a trustee, director or officer of another corporation or entity (whether for profit or not for profit), against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been such Trustee, director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty.

7.02 General Indemnification. In addition to the specific indemnification provided for in Section 7.01 hereof, the Association shall indemnify all Trustees and officers and all former Trustees and officers of the Association and all persons who may have served at the request of the Association as a Trustee, director or officer of another corporation or entity (whether for profit or not for profit), to the fullest extent permitted by Utah law, as the same may hereafter be amended, modified or adopted. The Association, its officers and Trustees, shall be fully protected in taking any action or making any payment or in refusing to do so in reliance upon the advice of counsel. The indemnification provided for in this Article VII shall not be deemed to be exclusive of any other right to which those indemnified or seeking indemnification may be entitled by

any bylaw, agreement, vote of the Members, vote of disinterested Trustees, or otherwise.

7.03 Insurance. The Association may purchase and maintain insurance on behalf of any person who was or is a Trustee or officer 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 or entity (whether for profit or not for profit), against any liability asserted against him or incurred by him in any 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 Utah law, as the same may hereafter be amended, modified or adopted.

#### ARTICLE VIII

##### FISCAL YEAR AND SEAL

8.01 Fiscal Year. The fiscal year of the Association shall begin on the 1st day of January each year and end on the immediately following 31st day of December.

8.02 Seal. The Board of Trustees may by if it si deemed necessary 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

##### HOUSE RULES AND REGULATIONS

9.01 House Rules and Regulations. The Board of Trustees may from time to time adopt, amend, repeal and enforce reasonable house rules and regulations governing the use and operation of the Project, including without limitation Units and Common Areas within the Project, to the extent that such rules and regulations are not inconsistent with the rights and duties set forth in the Articles of Incorporation, these Bylaws or the Declaration. The Members shall be provided with copies of all such rules and regulations adopted by the Board of Trustees and with copies of all amendments and revisions thereof.

9.02 Fines and Penalties. The Board of Trustees shall establish such fines and other penalties as are necessary to ensure compliance with the foregoing house rules and regulations. The Members shall be provided with a copy of all such fines and other penalties adopted by the Board of Trustees and with a copy of all amendments and revisions thereof.

## ARTICLE X

### ASSESSMENTS

10.01 Assessments. Members of the Association shall be subject to assessments by the Association from time to time in accordance with the provisions of the Declaration. Members shall be personally liable to the Association for payment of such assessments, together with interest thereon and costs of collection as provided in the Declaration.

10.02 No Liability. Members of the Association shall not be individually or personally liable for debts or obligations of the Association.

#### 10.03 Amenities Assessments.

(a) The Association has acquired, pursuant to authority granted in the Declaration and the Articles of Incorporation, certain real property and improvements contiguous to the Project (hereinafter the "Amenities"). Subject to certain limitations and restrictions to which the Amenities and/or the Association may be otherwise subject, the Association may sell, improve or otherwise deal with these Amenities, and may acquire other property to become a part of the Amenities. All of the Amenities are acquired for the benefit and use of the Owners of the Project, although such Amenities do not constitute a part of the Project.

(b) Assessments. The costs and expenses of operating, maintaining, and otherwise dealing with the Amenities shall include all of the costs described as Common Expenses in Section 10.03(c) below. Said Common Expenses, together with the costs of acquiring the Amenities, shall be assessed to and paid by the Members to the extent such expenses are not paid by others besides the Members. Because other individuals, entities, and/or owners associations may have rights to use the Amenities, or parts thereof, and therefore have obligations to pay their share of the Common Expenses and acquisition costs of the Amenities (herein the Common Expenses and acquisition costs shall be referred to jointly as the "Amenities Expenses"), the Association shall keep separate records and books for the Amenities Expenses. The Amenities Expenses shall be allocated between the Association and the other parties using the Amenities (or a part thereof) in a reasonable manner after taking into account all factors that may pertain to such a decision, including the extent of use (including both number of users and frequency of use), and other factors that may be relevant in making a proportionate, reasonable and fair division of the Amenities Expenses. As described in Section 9.2(a) of the Declaration, the Association's proportionate share of the Amenities Expenses shall be a part of the Regular Assessment to Owners made pursuant to the Declaration.

(c) Common Expenses. The expenses arising out of or connected with maintenance and operation of the Amenities shall constitute "Common Expenses" as used herein, and shall include, among other things, the following: Expenses of management; governmental taxes and special assessments, unless and until Condominiums are separately assessed; premiums for all insurance that the Association is required or permitted to maintain; repairs and maintenance; wages for Association employees, including fees for a Manager, if any; utility charges; 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 of the Owners.

#### ARTICLE XI

##### REPORTS AND CORPORATE RECORDS

11.01 Maintenance and Inspection of Corporate Records. The accounting books,, records and minutes of proceedings of the Members, the Board of Trustees and any committee established by the Board of Trustees shall be kept at such place or places designated by the Board of Trustees or, in the absence of such designation, at the principal office of the Association. The minutes shall be kept in written or typed form and the accounting books and minutes shall be kept either in written or typed form or in any other form capable of being converted into written, typed or printed form. The minutes and accounting books and records shall be open to inspection on the written demand of any Member, at any reasonable time during usual business hours, for a purpose reasonably related to the Member's interests as a Member. The inspection may be made in person or by an agent or attorney who has been authorized in writing by a Member to make such inspection and shall include the right to copy and make extracts. Each Trustee and Member shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection includes the right to make extracts and copies of documents.

11.02 Annual Report to Members. The Association shall provide to the Trustees and make available to the Members the financial reports referred to in the Declaration as follows:

(a) A pro forma operating statement (budget) for each fiscal year shall be distributed to the Trustees and Members not less than thirty (30) days before the beginning of each fiscal year.

(b) An annual report shall be distributed to the Trustees and made available to the Members within one hundred twenty (120) days after the end of each fiscal year, consisting of the following: (i) a balance sheet as of the last day of the

fiscal year; (ii) an operating (income) statement for such fiscal year; (iii) a statement of changes in financial position for the Association during the fiscal year; (iv) a statement of any transaction or transactions individually or in the aggregate, in which any Trustee or officer of the Association had a direct or indirect material financial interest; and (v) a list of the names, mailing addresses and telephone numbers of the current Members of the Board of Trustees and officers of the Association.

11.03 Roster of Members. The Association shall compile and keep current a roster of the names and addresses of the Members. Upon written request of a Member, the Association shall furnish such Member with a copy of the roster and may charge the Member a reasonable fee therefor. The roster is a corporate asset. Without the prior written consent of the Board of Trustees, the roster or any part thereof may not be used by a person for any purpose unrelated to a Member's interest as a Member. Without limiting the generality of the foregoing, without the prior written consent of the Board of Trustees, the roster or any part thereof may not be: (1) Used to solicit money or property unless such money or property will be used solely to solicit the vote of the Members in an election to be held by the Association; or (2) Used for any purpose which the user does not reasonably and in good faith believe will benefit the Association; or (3) Used for any commercial purpose or any purpose in competition with the Association; or (4) Sold to or purchased by any person. Any person who violates the provisions of this section shall be liable for any damage such violation causes the Association and shall account for and pay to the Association any profit derived as a result of said violation. In addition, a court, in its discretion, may award exemplary damages for a fraudulent or malicious violation of this section. Nothing in this section shall be construed to limit the right of the Association to obtain injunctive relief necessary to restrain misuse of the roster. In any action or proceeding under this section, a court may award the Association reasonable costs and expenses, including reasonable attorneys fees in connection with such action or proceedings.

## ARTICLE XII

### AMENDMENTS AND OTHER

12.01 Amendments. Except as otherwise provided in these Bylaws, in the Articles of Incorporation, or in the Declaration, these Bylaws may be amended, altered or repealed and new Bylaws may be made and adopted by the Trustees upon the affirmative vote of a majority of the votes cast with respect to such matter either at an annual or special meeting of the Trustees at which a quorum is present, if the proposed amendment, alteration, repeal or new Bylaw is set forth in the notice of such meeting.

12.02 Other. When used in these Bylaws, the words in the singular number shall include the plural and the masculine gender shall include the feminine, and visa versa.

IN WITNESS WHEREOF, the undersigned hereby certify and declare that these Bylaws of Ideal Beach Condominium Homeowners Association, Inc., were duly presented to and adopted by the Board of Trustees at a meeting of said Board duly called, convened and held on the 18th day of August, 1987, and that the undersigned, being duly authorized by a resolution of the Board of Trustees, hereby execute these Bylaws this 26<sup>th</sup> day of July, 1988.

IDEAL BEACH CONDOMINIUM  
HOMEOWNERS ASSOCIATION, INC.,  
a Utah nonprofit corporation

By

Robert Quinn  
Its President

By

Winnie H. Hill  
Its Secretary

270:081287E