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AMENDED AND RESTATED  
CONDOMINIUM DECLARATION  
FOR  
IVY TERRACE CONDOMINIUMS  
A Utah Condominium Community

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THIS AMENDED AND RESTATED CONDOMINIUM DECLARATION (hereafter "Declaration") is made on the date evidenced below by the Ivy Terrace Homeowners Association, Inc., a Utah non-profit corporation (hereafter "Association"), pursuant to the provisions of the Utah Condominium Ownership Act, for itself, its successors, grantees and assigns.

### RECITALS

A. This Declaration supersedes and replaces in its entirety the previously recorded Condominium Declaration for Ivy Terrace ("Original Declaration") that was recorded as Entry No. 8304379 on July 29, 2002, Salt Lake County Recorder's Office, and any amendment thereto.

B. The Bylaws attached hereto supersede and replace any previous Bylaws and any amendments thereto.

C. The Association is the authorized representative of the Owners of certain real property known as the Ivy Terrace Condominiums, located in Salt Lake County, State of Utah and more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Property").

D. This Property consists of forty-one (41) Units and certain Common Area, Limited Common Area, and Facilities. The name by which the Condominium Project shall be known is Ivy Terrace Condominiums.

E. These covenants, conditions, restrictions, easements, reservations, and limitations shall run with the said real property and Units and shall be binding on all parties having or acquiring any right, title or interest in the described real property or any part thereof and shall inure to the benefit of each Owner thereof and are imposed upon said real property and Units and every part thereof as a servitude in favor of each and every Unit thereof as the dominant tenement or tenements.

F. It is the intention of the Association, as has already been established, that the Property and all Units contained therein shall be subject to the provisions of the Utah Condominium Ownership Act as contained in Utah Code Ann. §§ 57-8-1 *et seq.*, as may be amended from time to time.

G. Pursuant to Article XXVII of the Original Declaration, this Declaration has been voted on and approved by the record Owners of at least sixty six and two-thirds (66-2/3%) of the undivided interest in the Common Areas and Facilities.

NOW, THEREFORE, for the benefit of the Property and the Unit Owners thereof, the Association hereby executes this Amended and Restated Condominium Declaration for the Association, for and on behalf of all Unit Owners. All of the terms and representations in the above Recitals are made a part of this Declaration and are incorporated herein by reference.

## ARTICLE I DEFINITIONS

The following words when used in this Declaration and the attached Bylaws (unless the context otherwise requires) shall have the following meanings:

**1.1 “Act”** shall mean and refer to the Utah Condominium Ownership Act, Utah Code Ann. §§ 57-8-1 through 57-8-39, as the same now exists and as it may be amended from time to time.

**1.2 “Assessment”** shall mean and refer to any charge imposed or levied by the Association on or against an Owner or Unit pursuant to the terms of this Declaration, the Bylaws, or applicable law.

**1.3 “Association”** shall mean and refer to Ivy Terrace Homeowners Association, Inc., a Utah nonprofit corporation formed to manage the affairs of the Project in accordance with this Declaration, the Articles of Incorporation, and the Bylaws of the Association attached hereto, which Articles and Bylaws are hereby made a part hereof by this reference.

**1.4 “Board of Trustees” or “Board”** shall mean and refer to the body responsible for the administration of the Association, elected as provided in the Bylaws and generally serving the same role as a Board under the Revised Non-Profit Corporations Act.

**1.5 “Bylaws”** shall mean and refer to the Bylaws of the Association and recorded simultaneously with this Declaration as **Exhibit “C”**, as they may be amended from time to time.

**1.6 “Common Areas and Facilities” or “Common Area”** shall mean and refer to:

- a. The land described in **Exhibit “A”** attached hereto;
- b. That portion of the Property not specifically included in the respective Units as herein defined;
- c. All foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, stairs, stairways, yards, landscaping, fences, service and parking areas and in general all other apparatus, installations and other parts of the Property necessary or convenient to the existence, maintenance and safety of the foregoing or normally in common use;
- d. Elements of the plumbing and electrical systems, as well as all appliance areas outside of individual units which service or are appurtenant to more than one unit.
- e. Those areas specifically set forth and designated in the Map as Common Area or Limited Common Area; and,

f. All Common Areas and Facilities as defined in the Act, whether or not expressly listed herein.

**1.7 “Common Expenses” shall mean and refer to:**

a. All sums described in the Act, this Declaration, the Bylaws or in the Association Rules as promulgated by the Board of Trustees which are lawfully assessed against the Unit Owners or any of them in accordance with the Act, this Declaration, the Bylaws or such Rules;

b. All expenses of operation, administration, maintenance, repair and replacement of the Common Areas and Facilities, including but not limited to, such aggregate sum as the Board of Trustees shall from time to time estimate, in its best judgment, is needed during each year or other appropriate time period to pay all budgeted expenses and other cash requirements arising out of or in connection with operation, administration, maintenance, repair and/or replacement of the Common Area, including but not limited to:

i. All costs and expenses of operation of the Association, all costs of management of the Common Areas and Facilities, all costs of enforcement of the Act, this Declaration, the Bylaws and the Rules, all costs of repair and reconstruction of the Common Areas and Facilities, all insurance premiums, all Utility Services, all wages and salaries, all legal and accounting fees, all management fees and all other expenses and liabilities incurred by the Association under or by reason of this Declaration;

ii. The payment of any deficit remaining from any previous year or time period;

iii. The creation, maintenance or expansion of an adequate reserve or contingency fund for maintenance, repairs and/or replacement of those Common Areas and Facilities that must be replaced on a periodic basis, and/or for unforeseen emergencies; and,

iv. All other costs and expenses relating to the Project;

c. Expenses agreed upon as Common Expenses by the Association; and,

d. All other expenses declared to be Common Expenses by the Act, this Declaration, the Bylaw or the rules and regulations promulgated by the Board of Trustees.

**1.8 “Condominium” shall mean and refer to a single Unit in this Condominium Project together with an undivided interest in common with other Unit Owners in the Common Areas and Facilities of the Property and together with all other appurtenances belonging thereto, as described in this Declaration.**

A Unit includes mechanical equipment and appurtenances located within anyone unit or located without said unit but designated and designed to serve only the unit, such as appliances, electrical receptacles and outlets, air conditioners, fixtures and the like, as well as all decorated interiors, all surfaces of interior structural walls, floors and ceilings, both inside and outside surfaces of windows and window frames, both inside and outside surfaces of doors and door frames, and trim, consisting of, among other things and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the unit and serving only the unit, and any structural members of any other Property of any kind, including fixtures and appliances within any unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the building within which the unit is situated shall be considered part of the Unit.

**1.9 “Condominium Project”** or sometimes the **“Project”** shall mean and refer to the entire Property, as defined below, together with all rights, obligations and organizations established by this Declaration.

**1.10 “Declaration”** shall mean and refer to this instrument by which the within-described Project is established as a Condominium Project.

**1.11 “Fines”** shall mean and refer to fines levied against a Unit Owner for violations of the Declaration, Bylaws and/or Rules of the Association. Fines shall be collected in the same manner as an unpaid assessment.

**1.12 “HOA”** shall mean Ivy Terrace Homeowners Association, a nonprofit Utah Corporation, the owner of the Common and Limited Common Property as described on the Record of Survey Map, and the authoritative body, which has amended and executed this Declaration and/or any successor to or assignee of HOA which, either by operation of law or through a voluntary conveyance, transfer or assignment, comes to stand in the same relation to the Project as did its predecessor.

**1.13 “Limited Common Area”** shall mean and refer to those portions of the Common Areas and Facilities reserved for the exclusive use of certain Unit Owners, as specified herein and as more particularly identified in the Map. Some Limited Common Areas, at present, would include, but not be limited to:

- a. “Storage Units” in the basements; and,
- b. “Parking Stalls” reserved for the exclusive use of designated Unit Owners.

**1.14 “Manager”** shall mean and refer to the person, persons, or corporation, if any, selected by the Association to manage the affairs of the Condominium Project, subject to the provisions of Article V, Section 5.11 hereof.

**1.15 “Map”** shall mean and refer to the Record of Survey Map of the within described Project as previously recorded.

1.16 **“Mortgage”** shall mean and include any mortgage, deed of trust, or other security instrument by which a Unit or any part thereof is encumbered. **“First Mortgage”** shall mean a Mortgage, the lien of which is prior and superior to the lien of any other Mortgage on the same Unit.

1.17 **“Mortgagee”** shall mean and include both the mortgagee under a mortgage and the beneficiary under a deed of trust on any Unit. **“First Mortgagee”** shall mean the Mortgagee under a First Mortgage on any Unit.

1.18 **“Percentage Interest”** shall mean and refer to the percentage of undivided interest of each Unit in the Common Areas as set forth in **Exhibit “B”** attached hereto.

1.19 **“Property”** shall mean and include the land described in **Exhibit “A”**, the buildings, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

1.20 **“Rules and Regulations”** or **“Rules”** shall mean and include those rules and regulations adopted from time to time by the Board of Trustees that are deemed necessary for the enjoyment of the Project; provided they are not in conflict with the Act, Declaration, Bylaws, or Articles of Incorporation of the Association.

1.21 **“Unit”** shall mean and refer to a separate physical part of the Property intended for independent use, consisting of rooms or spaces located in a building. Units are shown in the appropriate Map, as recorded in the Salt Lake County Recorder’s Office. Mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only the Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, fixtures and the like, shall be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows, and window frames, doors and door frames, and trim, consisting of, inter alia and as appropriate, wallpaper, paint flooring, carpeting and tile. All pipes, wires, conduits, or public utility lines or installations constituting a part of the Unit and serving only the Unit, and any structural members or any other property of any kind, including fixtures and appliances within any Unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the building within which the Unit is situated shall be considered part of the Unit.

1.22 **“Unit Owner”** or **“Owner”** shall mean the entity, person or persons owning a Unit in the Condominium Project in fee simple the percentage of undivided interest in the Common Areas and Facilities which is appurtenant thereto. The term Unit Owner or Owner shall not mean or include a Mortgagee or beneficiary or trustee under a deed of trust unless and until such a party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, but, in the event a Unit is the subject of an executory contract of sale, the contract purchaser shall, unless the seller and the purchaser have otherwise agreed and have informed the Board in writing of such agreement, be considered the Unit Owner for purposes of voting and Board membership.

**1.23 "Utility Services"** shall include, but not be limited to, water, sewage disposal, and garbage disposal and all other similar services provided to the Project which are not separately billed or metered to the individual Units by the utility or party furnishing such service.

**1.24 Additional Definitions.** Those definitions contained in the Act, to the extent they are applicable hereto and not inconsistent herewith, shall be and are hereby incorporated herein by reference and shall have the same effect as if expressly set forth herein and made a part hereof.

## **ARTICLE II SUBMISSION AND DESCRIPTION OF PROPERTY**

**2.1 Submitted Property.** Ivy Terrace Condominiums, a Utah Condominium Project, is hereby submitted to Utah Code Ann. §§ 57-8-1 through 57-8-39 ("Act"), and any amendments thereto, as a condominium style community with the rights, privileges and obligations of condominium ownership as set forth herein and in the Act.

The real property which is, and shall be, transferred, held, sold, conveyed and occupied subject to this Declaration is located in Salt Lake County, Utah, and is described on **Exhibit "A"** attached hereto, all of which real property is referred to herein as the "Property."

**2.2 Description of Improvements.** The significant improvements included in the Association will be located on the Property described in said **Exhibit "A"**, and all such improvements are described on the appropriate Map. The Association contains other improvements of a less significant nature such as outdoor lighting and landscaping. The appropriate Map indicates the structures, the number of buildings, and the number of Units which are contained within the Association.

### **2.3 Description of Buildings.**

a. Each of the three buildings has two levels and a basement. The buildings were erected in 1950.

b. There are forty (40) Units in the buildings numbered 1-41 with the exclusion of number 13. The East and West buildings have thirteen (13) Units each, and the South building has fourteen (14).

c. The buildings are constructed primarily of concrete, brick, wood, and plaster. The interior unit floors are hardwood. The ceilings are approximately nine (9) feet high. The interior partitions are made up of wood studding covered by lathe and plaster. The buildings are supplied with electricity, water, and sewage services.

**2.4 Description and Legal Status of Units.** The Map shows the Units and building designations, their locations, dimensions from which its areas may be determined, those Limited Common areas which are reserved for such use, and the Common Areas to which it has

immediate access. All Units are residential Units. All Units shall be capable of being independently owned, encumbered, and conveyed.

**2.5 Contents of Exhibit "B".** Exhibit "B" to this Declaration furnishes the following information with respect to each Unit: (a) The Unit designation; (b) The square footage of each Unit; and (c) The Percentage Interest of undivided ownership interest in the common areas which is appurtenant to the Unit. With respect to Percentage Interest, to avoid a perpetual series of digits and to obtain a total of one hundred percent (100%), the last digit has been adjusted, and rounded up or down to a value that is most nearly correct.

**2.6 Ownership Interest in Common Areas.** Neither the Percentage Interest in the Common Areas nor the right of exclusive use of the Limited Common Areas shall be separated from the Unit to which it appertains; and even though not specifically mentioned in the instrument of transfer, the Percentage Interest and such right of exclusive use shall automatically accompany the transfer of the Unit to which they related.

**2.7 Computation of Percentage Interests.** The proportionate share of the Unit Owners in the Common Areas is based on the square footage that each of the Units bears to the total square footage of all Units. For all purposes under this Declaration and Bylaws, however, each Unit shall have the same voting rights, pay an equal assessment (except for individual assessments defined below), and share equally in the common profits and expenses of the Association.

**2.8 Covenants Run with the Land.** It is hereby declared that all of the Property shall be owned, conveyed hypothecated, encumbered, used, occupied and improved subject to this Declaration. The easements, covenants, conditions, restrictions and charges, described in this Declaration shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of the Association, and each Owner thereof.

### **ARTICLE III STATEMENT OF PURPOSE AND RESTRICTION ON USE**

**3.1 Purpose.** The purpose of the Condominium Project is to provide residential housing space for Unit Owners, their families, guests, lessees and tenants, and the family and guests of such lessees and tenants, and to provide parking for use in connection therewith, all in accordance with the provisions of the Act.

**3.2 Restrictions and Requirements.** The following restrictions and requirements are in addition to all other restrictions and requirements contained in this Declaration and the Bylaws. Moreover, the Board shall adopt a schedule of fines which may be amended from time to time and distributed to the Owners.

a. Residential Use. Units shall be used for residential purposes in accordance with, and subject to, the other provisions of this Declaration and the Bylaws and rules and regulations adopted pursuant thereto.



Except as provided in this subsection, no trade, craft, business, profession, commercial, or similar activities that causes additional pedestrian or vehicular traffic, creates a sight or noise nuisance, shall be conducted on any Unit or in any other portion of the Property.

b. Offensive Activities. No noxious, offensive or unsightly conditions, including, but not limited to, the placement or storage of inoperable vehicles, car parts and appliances, or activities shall be permitted on any Unit or other portion of the Common Areas, nor shall anything be done in or placed upon any Common Area which interferes with or jeopardizes the enjoyment of other Units or which is a source of annoyance to residents. Smoking has been classified as a nuisance, and rights of ownership do not grant exclusive right to smoke inside Units or in any Common Areas, where drifting smoke becomes a nuisance to any other person. In such cases, smoking within a Unit may be prohibited by further Rules of the Association and as set forth in this Declaration.

c. Unlawful Activities; Assault and Harassment. No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Assault and harassment of the members, the property manager and/or the Board of Trustees is strictly prohibited and is a violation of this Declaration and Utah law. Assault is defined as: (a) an attempt, with unlawful force or violence, to do bodily injury to another; (b) a threat, accompanied by a show of immediate force or violence, to do bodily injury to another; or (c) an act, committed with unlawful force or violence, that causes bodily injury to another or creates a substantial risk of bodily injury to another. A person is guilty of harassment if, with intent to frighten or harass another, he communicates a written or recorded threat to commit any violent felony. Any owners, guests, tenants or invitees who violate this Section shall subject the Owner to fines and all other remedies provided by law.

d. Animals. No animals, livestock, or poultry of any kind may be raised, bred, kept or permitted within any Unit, Owners are permitted, however, to have one dog and/or one cat not exceeding 20 pounds provided that they are not kept, bred, or maintained for any commercial purpose. The Owner of any dog must keep such dog on a leash when outside of the Unit or keep it confined within the Unit and no cat or dog shall be allowed to run free on the Property.

Those animals which are permitted shall not cause any noise or disturbance that would be deemed a nuisance to other Owners or residents within the Property. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective Owners thereof and Owners shall be responsible for removal of the waste of their animals from their Unit, the Common Areas and Limited Common Areas.

An Owner may be required to remove a pet upon receipt of a written notice from the Board given pursuant to a resolution relating to rules and regulations governing pets

within the Property and enforcement of such rules and regulations and provisions of this subsection. The Board may apply for appropriate judicial relief in the event that Owners violate this Article or otherwise refuse to comply with additional Rules of the Association.

e. Rubbish and Trash. No part of the Property may be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No garbage, trash, or other waste may be kept or maintained on any part of the Property except in a sanitary container as specified by the Association or within a trash enclosure screened from public view. All such waste and garbage must be promptly and periodically removed.

f. Vehicles in Disrepair. No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any part of the Property. A vehicle shall be deemed in an "extreme state of disrepair" when the Board reasonably determines that its presence offends the occupants of the other Units; it is not in an operating or functional condition; or not properly licensed and registered.

If an Owner fails to remove a vehicle deemed to be in an extreme state of disrepair within seventy-two (72) hours after the date and time on which written notice is securely placed on such vehicle or delivered to the responsible Owner by the Board, the Board may have such vehicle removed from the Property (i.e. towed) and assess the Owner the expense of such removal and any storage necessitated thereby.

g. Noise Disturbance. Residents shall exercise extreme care about making noises or the use of musical instruments, radios, televisions, or amplifiers and may not disturb other residents may be fined for this, and other, offensive behavior.

h. Increase in Insurance Cost. Nothing shall be done or kept within any Unit or on the Common Areas, including Limited Common Areas, which will increase the cost of insurance to the Association or to other Owners. No Owner shall permit anything to be done or kept within his or her Unit or Common Areas which will result in cancellation of insurance on any Unit.

i. Common Areas; Limited Common Areas; Parking Restrictions. The Common Areas and Facilities shall be used only for the purposes for which they are intended. Each Unit Owner shall at his own cost keep the Limited Common Areas designated in connection with his unit in a clean, sanitary, and attractive condition at all times.

Each parking space shall be used for the parking of currently licensed, registered (as evidenced by a valid and clearly displayed registration sticker) and operable motor vehicles of a size no larger than a standard automobile or a three-quarter (3/4) ton truck and for no other purpose. No more than one (1) vehicle may be parked in any parking space at one time. Repairing of motor vehicles in parking spaces is strictly prohibited at all times.

Due to the limited number of available parking spaces within the Property, each Unit within the Association is entitled to one (1) assigned parking space for the use of its Owners and their guests and invitees. Additional parking is available along 100 South adjacent to the Property, on a first come, first served basis. Additional spaces may be available for rent from the Association, subject to the Rules and Regulations implemented by the Board concerning parking. In addition to other remedies available in this Declaration, any violation of this subsection may result in the violating vehicle being towed at the Owner's expense, subject to Utah law and local ordinances on towing.

j. Visible Changes; Signs. No Unit Owner shall cause or permit anything to hang, be displayed, be visible or otherwise be placed on the exterior walls or roof of any building or any part thereof, or on the outside of windows or doors, or within any Limited Common Areas appurtenant to such Owner's Unit, without the prior written consent of the Association. Except for one "For Sale" or "For Rent" sign, of a size no greater than five (5) square feet, no sign of any kind shall be displayed to the public view on or from any Unit or the Common Areas and Facilities without the prior written consent of the Association. In addition, all blinds and/or window coverings shall be white in color. Worn, torn door mats, exterior wreaths and other exterior decorations are not allowed.

k. Structural Integrity. Nothing shall be done in any Unit or in, on or to the Common Areas and Facilities which will impair the structural integrity of the building or any part thereof or which would structurally change the building or any part thereof except as is otherwise provided herein.

l. Debris. The Common Areas and Facilities shall be kept free and clear of all rubbish, debris and other unsightly materials.

m. Admission Fees. No admission fees, charges for use, leases or other income-generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas and Facilities without the prior written consent of the Association.

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

o. No Structural Alterations. No Owner shall, without the prior written consent of the Board, make or permit to be made any structural alteration, improvement, or addition in or to the Project, including within their Unit. No Owner shall do any act that would impair the structural soundness or integrity of any buildings within the Project or the safety of property or impair any easement or hereditament appurtenant to the Project.

**3.3 Leasing and Rentals of Units.** It is the intent of the Association to be a majority "owner occupied" community. The leasing and renting of Units is strictly prohibited except in accordance with this subsection.

For purposes of this subsection, "leasing" or "renting" of a Unit shall mean the granting of a right to use or occupy a Unit for a specific term or indefinite term (with rent stated on a periodic basis), in exchange for the payment of rent (money, property or other goods or services of value); but shall not mean or include joint ownership of a Unit by means of joint tenancy, tenancy-in-common or other forms of co-ownership. Owners and Units shall be subject to the following restrictions:

a. Owners and Units shall be subject to the following restrictions:

i. No Owner may lease or rent less than the entire Unit (that is, no individual rooms or partial Unit rentals are permitted) and no Owner may lease or rent any Unit for a period of less than twelve (12) consecutive months.

ii. No Unit may be rented or leased if the rental or lease results in more than thirty percent (30%) of the Units ("Rental-Lease Limit") being rented or leased, except as provided in subsection "c" of this Section.

iii. Every permitted Owner shall deposit \$500 to the Association to be used as a security deposit against potential damage to the Common Areas. If the tenant remains in the Unit for at least one (1) year, then \$400 shall be returned to the Owner, less any violation/fines owed. The remaining \$100 shall be retained by the Association as a non-refundable security deposit against future damage

b. Prior to renting or leasing any Unit, an Owner shall apply to the Board of Trustees. The Board shall review the application and make a determination of whether the rental or lease will exceed the Rental-Lease Limit and shall have the opportunity to approve the prospective tenant. The Board shall:

i. Approve the application if it determines that the rental or lease will not exceed the Rental-Lease Limit and the prospective tenant has been approved by the Board and has paid any and all applicable deposits or fees required in this Declaration; or,

ii. Deny the application if it determines that the rental or lease of the Unit will exceed the Rental-Lease Limit or the prospective tenant has not been approved by the Board for any reason that does not violate the Fair Housing Act.

c. Notwithstanding subsection "b" of this Section, to avoid undue hardships or practical difficulties such as the Owner's job relocation, extended vacation, disability, military service, charitable service, or difficulty in selling a Unit due to market conditions in the area or other similar circumstances, the Board of Trustees shall have discretion to approve an Owner's application to temporarily rent or lease the Owner's Unit provided the approval would not result in more than, cumulatively (including hardships), forty-five percent (45%) of the Units being rented or leased. The Board may not approve an

application to rent or lease less than the Owner's entire Unit or to rent or lease the Unit for a period of less than twelve (12) consecutive months.

d. An Owner is not eligible to rent more than one Unit until the pending applications of:

i. All Owners who are not currently renting or leasing a Unit have been approved; and,

ii. All Owners who are currently renting or leasing fewer Units than the applicant have been approved.

e. Applications from an Owner for permission to rent or lease shall be reviewed and approved or denied by the Board as set forth in this subsection, as follows:

i. The Board of Trustees shall review applications for permission to rent or lease in chronological order based upon the date of receipt of the application. Within fifteen (15) business days of receipt, the Board shall approve or deny an application as provided in subsection b. of this Section and shall notify the Owner within twenty (20) business days of receipt of the application if permission is not given and the reason for the denial.

ii. If an Owner's application is denied, the applicant may be placed on a waiting list according to the date the application was received so that the Owner whose application was earliest received will have the first opportunity to rent or lease, subject to subsection d. of this Section.

f. An application form, the application and approval process, a waiting list, and any other rules deemed necessary by the Board to implement this Section shall be established by Rules adopted by resolution of the Board consistent with the Declaration.

g. All Owners shall use and provide the Board with a copy of either: (1) the official Ivy Terrace Approved Residential Lease Agreement, which may exist from time to time ("Approved Lease Agreement"); or, (2) any other lease form approved by the Board, which shall be kept on file with the books and records of the Association so that the Association may determine the number of Units rented or leased. The Approved Lease Agreement, or its equivalent, shall be on a form prescribed by resolution of the Board.

h. If an Owner fails to submit the required application, fails to use and submit a copy of the Approved Lease Agreement and rents or leases any Unit, and/or rents or leases any Unit after the Board has denied the Owner's application, the Board may assess fines against the Owner and the Owner's Unit in an amount to be determined by the Board pursuant to a schedule of fines adopted by resolution. In addition, regardless of whether any fines have been imposed, the Board may proceed with any

other available legal remedies, including but not limited to an action to, terminate the rental or lease agreement and removal of any tenant or lessee.

i. The Association shall be entitled to recover from the offending Owner its costs and attorney's fees incurred for enforcement of this Section, regardless of whether any lawsuit or other action is commenced. The Association may assess such costs and attorney's fees against the Owner and the Unit as an Assessment pursuant to the provisions of the Declaration.

j. As of the date of recording this Declaration, any Owner that is currently renting or leasing a Unit ("Grandfathered Owner") may continue to rent or lease their Unit until such time as the Unit is sold or title is otherwise transferred to a new Owner of record or the Unit is re-occupied as a residence by the Owner. If any of the above shall occur, this Amendment shall then be applied and enforced against such Unit and Owner.

k. Rental and lease agreements shall comply with this subsection, as follows:

i. The Owner shall provide the tenant or lessee with a copy of the Declaration, the Bylaws, including any relevant amendments to such documents, and all Rules and Regulations then in effect and shall take a receipt for delivery of the documents. In the event any such documents are amended, revised, changed, or supplemented by the Association, the Owner shall provide the tenant or lessee with a copy of the amendments, revisions, changes, or supplements within ten (10) calendar days of adoption by the Association, its Board, or its membership.

ii. Upon the commencement of the rental or lease period, the Owner shall provide the Association with a signed copy of the Approved Lease Agreement.

l. In addition to any other remedies available to the Association, the Board may require the Owner to terminate a lease or rental agreement if the Board determines that any lessee or tenant has violated any provision of this Declaration, the Articles of Incorporation, the Bylaws, the Rules and Regulations, or any amendments thereto, including drug use/activity, gang activity and other acts or threats of violence within the community or other violations of Utah law. Each lease or rental agreement shall include the express language of this subsection, either in the agreement itself or as an addendum thereto, expressly granting the Association, as a third-party beneficiary, the right to evict the tenant.

m. If an Owner is permitted under this Section to rent or lease their Unit and such Owner fails to pay any Assessment levied against such Unit within sixty (60) days after the Assessment is due, the Board may, pursuant to and in compliance with the provisions of Utah Code Ann. § 57-8-20(6), as may be amended, and Article VII, Section 7.20 of this Declaration, as may be amended from time to time, demand that the tenant of such Unit pay to the Association all future lease payments due to the Owner,

beginning with the next monthly or periodic payment, until the amount due to the Association is paid in full.

**3.4 Association Rules and Regulations.** In addition to the restrictions and requirements as contained in this Article III above, the Board from time to time may, by resolution, adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of the Units and Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. Reasonable fines may be levied and collected as an Assessment for violations of said Rules.

#### **ARTICLE IV OWNERSHIP, USE, AND EASEMENTS**

**4.1 Ownership of a Unit.** Except with respect to any of the Common Areas and Facilities located within the bounds of a Unit, each Unit Owner shall be entitled to the exclusive ownership and possession of his Unit and to the ownership of an undivided Percentage Interest in the Common Areas and Facilities.

**4.2 Nature of and Restrictions on Ownership and Use.** Each Unit Owner shall have and enjoy the rights and privileges of fee simple ownership of their Unit. There shall be no requirements concerning who may own Units, it being intended that they may and shall be owned as any other property rights by persons, corporations, partnerships or trusts and in the form of common or joint tenancy. The Unit Owners may lease or rent their Units with their appurtenant rights subject to terms and conditions chosen solely by the Unit Owner and his lessee or tenant, except that all Unit Owners, their tenants and other occupants or users of the Project, shall be subject to the Act, this Declaration, the Bylaws, and all Rules of the Association.

**4.3 Prohibition against Subdivision of Unit.** Except otherwise expressly provided for herein, no Unit Owner, by deed, plat or otherwise, shall subdivide or in any other manner cause his Unit to be separated into physical tracts or parcels smaller than the whole Unit as shown on the Map, nor shall any Unit Owner cause, suffer, or permit the fee ownership of his Unit to be separated or divided in annually recurring or any other time periods for which the Unit will be separately owned.

**4.4 Ownership of Common Areas and Facilities.** The Common Areas and Facilities contained in the Project are described and identified in Article II and **Exhibit "A"** of this Declaration. Said Common Areas and Facilities shall be owned by the Unit Owners as tenants in common. No Percentage Ownership Interest in the Common Areas and Facilities shall be separated from the Unit to which it appertains; and even though not specifically mentioned in the instrument of transfer, such percentage of undivided ownership interest shall automatically accompany the transfer of the Unit to which it relates. Each Unit Owner shall have an ownership interest in the Common Areas and Facilities within the Project for all purposes, including but not limited to voting, equal to the Percentage Interest in Common Areas (**Exhibit "B"**).

**4.5 Use of Common Areas and Facilities.** The Common Areas and Facilities shall be used only in a manner which is consistent with their community nature and with the use restrictions applicable to the Units contained in the Project, subject to this Declaration, the Bylaws, and any Rules promulgated by the Association. This right of use shall be appurtenant to and run with each Unit.

**4.6 Limited Common Areas.** Each Unit Owner shall be entitled to the exclusive use and occupancy of the Limited Common Areas reserved to their Unit as set forth herein and/or as shown on the Map, subject, however, to the same restrictions on use which apply generally to the Common Areas and Facilities and to any Rules promulgated by the Association. Such right to use the Limited Common Areas shall be appurtenant to and contingent upon ownership of the Unit associated therewith, and even though not specifically mentioned in the instrument of transfer, shall automatically pass to the grantee or transferee of such Unit. Such right of use shall not be revocable, nor may it be voluntarily or involuntarily relinquished, waived, or abandoned.

**4.7 Easements Reserved.** In addition to the easements shown on the Map or provided for under this Declaration, the Bylaws or applicable law, the following easements are hereby reserved for the benefit of the Owners and the Association:

a. Right of Entry. The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Unit for the purpose of performing maintenance referred to in Article IX below and determining whether or not the Unit is in compliance with this Declaration and Bylaws or whether the use of the Unit is causing damage or harm to the Common Areas or Limited Common Areas. Requests for entry shall be made in advance and at a time convenient to the Owner, except in the case of an emergency, when such right shall be immediate. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Unit.

b. Right of Ingress, Egress. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to their Unit, and to the Limited Common Areas designated for use in connection with their Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

c. Utility Easements. The Association or any public utility provider shall have an easement through all Units and the Common Areas for the installation, maintenance and development of utilities and drainage facilities, as may be necessary. The easement area within each Unit and all improvements therein shall be maintained continuously by the Owner of the Unit of the Association in accordance with Article IX below, except for those improvements for which a public authority or utility provider is responsible. Each Unit Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other Units and serving his or her Unit. Owners all entitled to, and shall receive from the Association, key(s) necessary to access the water connections located within a storage unit servicing their Unit.



d. Common Areas. All Owners are hereby granted a non-exclusive right and easement of enjoyment to the Common Areas, subject to the provisions of this Declaration.

**4.8 No Encroachment.** No Unit shall encroach upon an adjoining Unit without the express written consent of the Board. If, however, an encroachment occurs due to the settlement or shifting of a structure/building or any other reason whatsoever beyond the control of the Association, the Board, or any Owner, there shall forthwith arise, without the necessity of any further or additional act or instrument, a good and valid easement for the maintenance of such encroachment, for the benefit of the Owner, its heirs, personal representatives and assigns, to provide for the encroachment and non-disturbance of the structure. Such easement shall remain in full force and effect so long as the encroachment shall continue.

## ARTICLE V ASSOCIATION

**5.1 Organization.** The Association has been organized as a nonprofit corporation under the nonprofit corporation laws of the State of Utah (Utah Code Ann. §§ 16-6a-101 through 16-6a-1705, as may be amended from time to time). The name of the association is the "Ivy Terrace Homeowners Association".

The Articles of Incorporation of the Association provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. All of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association.

Such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association. However, the Board, upon its own motion, may re-incorporate the Association without a vote of the Owners.

To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation, Declaration, and Bylaws (as the same may be amended from time to time) as if they had been drafted to constitute the governing documents of the unincorporated association. The affairs of the Association shall be governed by a Board of Trustees as provided in the Bylaws.

**5.2 The Association.** The business, property and affairs of the Project shall be managed, operated and maintained by the Association as agent for the Unit Owners. All duties, responsibilities, rights and powers imposed upon or granted to the Board of Trustees or to the "manager" under the Act shall be duties, responsibilities, rights and powers of the Association hereunder.

**5.3 Powers and Authority of the Association.** In addition such powers and duties as may be granted to it or imposed by this Declaration, the Articles of Incorporation, the Bylaws

and the Act, as the same may be amended to expand the scope of Association powers, the Association shall have, and is hereby granted, the following authority and powers:

a. The authority, without the vote or consent of the Unit Owners or of any other person(s), to grant or create, on such terms as it deems advisable, utility and similar easements, over, under, across and through the Common Areas and Facilities;

b. The authority to execute and record, on behalf of all Unit Owners, any amendment to the Declaration or Map which has been approved by the vote or consent necessary to authorize such amendment;

c. The power to sue and be sued;

d. The authority to enter into contracts which in any way concern the Project, so long as any vote or consent of the Unit Owners necessitated by the subject matter of the agreement has been obtained;

e. The power and authority to convey or transfer any interest in real property, so long as any vote or consent necessary under the circumstances has been obtained;

f. The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with the interests of the Unit Owners;

g. The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as such action has been authorized by any vote or consent which is necessary under the circumstances.

h. Any instrument executed by the Board that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

i. The power to incorporate or reincorporate the Association as a nonprofit corporation under the laws of the State of Utah.

j. The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Association to perform its functions as agent for the Unit Owners. Any instrument executed by the Association that recites facts which, if true, would establish the Association's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

**5.4 Duties of the Association.** Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation, Declaration, Bylaws, or applicable statute; the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

- a. The Association shall accept all Owners as members of the Association;
- b. The Association shall maintain the Common Areas;
- c. Subject to Section 7.21 below, to the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Property, provided that the Association shall have the right to contest or compromise any such taxes or assessments;
- d. The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration;
- e. The Association may employ a responsible corporation, partnership, firm, person or other entity as the Manager of the Association to manage and control the Property, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Manager by the Board.

**5.5 Change in Ownership of a Unit.** The Association shall maintain up-to-date records showing the name of each Owner, the address of such Owner, and the Unit which is owned by them and any renters or tenants that may be occupying a Unit. In the event of any transfer of a fee or undivided fee interest in a Unit either the transferor or transferee shall furnish the Association with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the recorder of the county where the Project is located. The Association may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Association may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the county recorder of the county where the Project is located. The address of an Owner shall be deemed to be the address of the Unit owned by such Owner unless the Association is otherwise advised in writing. An Owner who fails to so furnish the above information shall continue to be liable for monthly Assessments of Common Expenses even after transferring ownership of the Unit.

**5.6 Responsibility and Duties of the Board.** The Board of Trustees shall be responsible for the control, operation and management of the Project in accordance with the provisions of the Act, this Declaration, such administrative, management and operational Rules as it may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by said Board of Trustees.

**5.7 Personal Liability of Board Members.** No member of the Board or of any committee of the Association, or any officer of the Association, or the Manager, if any, shall be

personally liable to any Owner, or to any other party, including the Association, for any damage or loss suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, Manager or any other representative or employee of the Association, or any other committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, and without willful or intentional misconduct. The Association shall indemnify and hold all such persons harmless in the proper discharge of their duties.

**5.8 Approval Required.** The Board of Trustees shall not, without the prior favorable vote or the written consent of the Owners of a majority interest in the undivided ownership of the Common Areas and Facilities have the authority to purchase or sell any real property or add any property to the Common Areas and Facilities, except for property used in the management of the Project.

**5.9 Additional Facilities.** The Board of Trustees shall, subject to any necessary approval, have the authority to provide such facilities, in addition to those for which provision has already been made, as it may deem to be in the best interests of the Unit Owners and to effect the necessary amendment of documents and maps in connection therewith.

**5.10 Person to Receive Service of Process.** The person to receive service of process on behalf of the Association shall be that person named in the corporate records of the State of Utah. Said person may be changed by the recordation by the Association of an appropriate instrument.

**5.11 Manager; Manager Authority.** The Board of Trustees may carry out through a Manager any of its functions which are properly the subject of delegation. Any Manager so engaged shall be responsible for managing the Project for the benefit of the Association and the Unit Owners, and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Board of Trustees itself. Any agreement for professional management of the Project, and any management contract, employment contract or lease of recreational or parking areas or facilities, and any other contract providing for services of the HOA, and any lease to which HOA is a party which may be entered into by the Board of Trustees or the Association shall call for a term not exceeding two (2) years and shall provide that such agreement or lease may be terminated by either party thereto without cause and without payment of a termination fee upon not in excess of thirty (30) days written notice. The Manager shall not make any non-budget expenditure in excess of \$1,000.00 without the approval of the Board.

## **ARTICLE VI MEMBERSHIP**

**6.1 Qualifications.** Each Owner of a Unit by virtue of being such an Owner, and for so long as they are such an Owner, shall be deemed a member of the Association. Ownership of such Unit shall be the sole qualification for membership. If a given Unit is owned by more than one Owner, all such Owners shall be members of the Association.

**6.2 Transfer of Membership.** The Association membership of each Owner and the right to vote shall be appurtenant to the Unit and shall not be transferred, pledged or alienated in any way except upon the transfer of title of the Unit and then only to the transferee of title to such Unit. Any transfer of title to a Unit shall operate automatically to transfer said membership to the new Owner thereof.

**6.3 Membership Rights.** The rights, duties, privileges and obligations incidental to membership in the Association shall be exercised and imposed in accordance with this Declaration and the Bylaws of the Association.

**6.4 Termination of Membership.** An Owner's membership in the Association shall cease upon the termination of his status as an Owner, whether by sale, assignment or conveyance, either voluntarily or involuntarily, of the Unit giving rise to such membership.

**6.5 Voting Rights.** Voting rights within the Association shall be allocated as follows:

a. Units. The vote attributable to and exercisable in connection with a Unit shall be the percentage of undivided ownership interest in the Common Areas and Facilities which is appurtenant to such Unit.

b. Joint Ownership. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any meeting by any of such Owners shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

c. Method of Voting. The method of voting shall be as provided in the Bylaws.

d. Designation of Voting Rights. The Owner of each Unit in the Association may, by written notice to the Association, designate a person (who need not be an Owner) to exercise the vote for such Unit by proxy. Said designation shall be revocable at any time by notice to the Association by the Owner giving the proxy. Such powers of designation and revocation may be exercised by the guardian of an Owner's estate or by their executor, or in the case of a minor having no guardian, by the parent entitled to custody, or during the administration of an Owner's estate, by the executor or administrator where the latter's interest in said property is subject to administration in the estate; or, in the case of a corporate Owner, by the President or by any Vice President thereof, or by any officer, or by any other person authorized by its board of directors.

**ARTICLE VII  
BUDGETS, EXPENSES, AND ASSESSMENTS**

**7.1 Covenant for Assessments.**

a. Each Owner, by acceptance of a deed hereafter conveying any such Unit, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments:

i. Annual assessments ("Annual Assessment") as provided in Section 7.2 below.

ii. Special assessments ("Special Assessments") as provided in Section 7.7 below.

iii. Emergency assessments ("Emergency Assessments") as provided in 7.10 below.

iv. Individual assessments ("Individual Assessments") as provided in Section 7.11 below.

b. Assessments shall be established and collected as provided in this Article.

c. No member may exempt itself from liability for Assessments by abandonment of any Unit owned by such member.

**7.2 Annual Budget and Assessment.**

a. Adoption of Budget. The Board shall prepare, or cause the preparation of, an annual budget for the Association, which shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management and operation of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

b. Determination of Annual Assessment.

i. The Board of the Association shall fix the amount of the annual assessment ("Annual Assessment") against each Unit for each assessment period at least thirty (30) days in advance of the beginning of the period. Written notice of the Annual Assessments shall be sent to all members of the Association at least thirty (30) days in advance of the beginning any assessment period.

ii. The omission by the Board, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any member from the obligation to pay the Annual

Assessment, or any installment thereof, for that or any subsequent assessment period. In the event of such omission, the Annual Assessment fixed for the preceding period shall continue until a new assessment is fixed.

**7.3 Apportionment of Assessments.** Subject to Subsections (d) and (e) of this section, Assessments shall be apportioned as follows:

a. Annual, Special and Emergency Assessments. All Units shall pay a pro rata share of the Annual Assessment, Special Assessments and Emergency Assessments commencing upon the date the Units are made subject to this Declaration. All amounts shall be an amount based on the percentage interest for each Unit as contained in **Exhibit "B."**

b. Individual Assessments. Individual Assessments shall be apportioned exclusively against the Units or Units benefitted or to which the expenses are attributable as provided for below. For example, if damage, plumbing clogs, plumbing maintenance, line breakage or other expenses are directly attributable to the fault of an identified Owner or group of Owners, such expenses shall be charged as an Individual Assessment against such Owner or Owners within the building so affected.

c. Payment of Assessments. Upon resolution of the Board, installments of Annual Assessments may be levied and collected on a monthly, quarterly, semi-annual or annual basis, as determined from time to time by the Board. Any member may prepay one or more installments of any Assessment levied by the Association, without premium or penalty.

**7.4 Lien.** The Annual Assessment and all other Assessments imposed shall be a charge and continuing lien upon each of the Units against which the assessment is made in accordance with the terms and provisions of this Article VII and shall be construed as a real covenant running with the land.

**7.5 Personal Obligation and Costs of Collection.**

a. Assessments imposed under this Declaration, together with interest at a rate to be established by resolution of the Board, not to exceed the maximum permitted by law, and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof (whether or not a lawsuit is initiated), shall also be the personal obligation of the Owner holding title to any Unit at the time when the Assessment became due.

b. In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments, together with interest, costs and reasonable attorneys' fees, if any, against the latter for his share of any Assessments authorized by this Article up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the Board or Manager

setting forth the amounts of the unpaid Assessments against the grantor, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid Assessments against the grantor in excess of the amount set forth. Otherwise, the personal obligation for any delinquent Assessment, together with interest, costs and reasonable attorneys' fees, however, shall not pass to the Owner's successor or successors in title unless expressly assumed by such successor or successors.

**7.6 Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Project, including, but not limited to:

- a. The improvement and maintenance, operation, care, and services related to the Common Areas;
- b. The payment of insurance premiums;
- c. The costs of utilities and other services which may be provided by the Association for the Project;
- d. The cost of labor, equipment, insurance, materials, management, legal and administrative fees incurred or expended in performing the duties under this Declaration or the Bylaws;
- e. The cost of funding all reserves established by the Association, including a general operating excess and a reserve for replacements in accordance with Section 5.16 below; and,
- f. Any other items properly chargeable as a Common Expense of the Association.

**7.7 Special Assessments.** In addition to the Annual Assessments authorized in this Article, the Association may levy in any Assessment year, a Special Assessment ("Special Assessment"), applicable for that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Common Areas. The Board may authorize a Special Assessment for any lawful purpose in any given calendar year provided, however, that such Assessment shall be first voted on and approved by Unit Owners having ownership of not less than sixty-six and two-thirds percent (66-2/3%) of the undivided interest in the Common Areas and Facilities of the Association, voting in person or by proxy at a meeting duly called for such purpose. Notwithstanding the foregoing, the Management Committee may levy a special Assessment in an amount not to exceed \$5,000.00 without approval of the members.

**7.8 Notice and Quorum for any Action Authorized Under Section 7.7 and 7.10.**

- a. Written notice of any meetings of members of the Association called for the purpose of taking any action authorized under Sections 7.7 and 7.10 of this Article



shall be sent to all members not less than thirty (30) days, or more than sixty (60) days, in advance of the meeting. If the required quorum is not present, the Members who are present in person or by proxy, may immediately adjourn the meeting and reconvene is as few as thirty (30) minutes or up to forty-eight (48) hours later, as determined at the original meeting. At the adjourned meeting, the quorum requirements at the time it shall reconvene, any number of Members present at such subsequent meeting shall constitute a quorum. The adjournment provisions of this subsection (a) do not apply to action taken by written ballot in lieu of a meeting.

b. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at any subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting, provided that no subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

#### **7.9 Due Date of Assessments.**

a. The Annual Assessments shall be due and payable on a monthly basis on the first (1st) calendar day of each month ("due date"), unless otherwise provided by resolution of the Board, and shall be deemed late if not paid by the tenth (10<sup>th</sup>) of each month. Thereafter, finances charges and other penalties may be levied if the assessment account is not paid in full within thirty (30) days after the due date. At ninety (90) days delinquency, the account shall be turned over for formal collections.

b. The due date of any Special Assessment, Emergency Assessment or other Assessment shall be fixed in the resolution authorizing the Assessment.

#### **7.10 Emergency Assessments.**

a. If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board shall, as soon as practicable, determine the approximate amount of the inadequacy and adopt a resolution which establishes a supplemental budget and levies the additional Assessment ("Emergency Assessment"). The resolution shall specify the reason for the Emergency Assessment.

b. Any Emergency Assessment, which in the aggregate for any fiscal year would exceed an amount equal to five percent (5%) of the budgeted expenses of the Association for the fiscal year, may be levied only if approved by not less than a majority of the members voting in person or by proxy, at a meeting duly called for such purpose.

c. Emergency Assessments shall be apportioned as provided in Section 7.3 above.

**7.11 Individual Assessments.** Any expenses benefitting or attributable to fewer than all of the Units may be assessed exclusively against the Units affected or benefitted (“**Individual Assessment**”). Individual Assessments shall include, but are not limited to:

a. Assessments levied against any Unit to reimburse the Association for costs incurred in bringing the Unit or its Owner into compliance with the provisions of this Declaration or Rules and Regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation of this Declaration, the Bylaws or any Rules and Regulations of the Association.

b. Expenses relating to the cost of maintenance, repair replacement and reserves of the Units.

**7.12 Nonpayment of Assessments.** Any Assessment or portion thereof not paid within thirty (30) days after the due date (which shall be established by resolution of the Board):

a. Shall be delinquent and shall bear interest from the date of delinquency at the rate, established by resolution of the Board, not to exceed the maximum rate permitted by law; and,

b. Shall be subject to a monthly late charge until paid in full, in an amount to be determined by the Board, or ten percent (10%) of the Assessment, whichever is greater; and,

c. If paid by installments, may, in the discretion of the Board, be accelerated (including interest as provided for above) and the entire balance declared due and payable upon not less than ten (10) days written notice to the Owner.

**7.13 Subordination of Lien to Mortgages.**

a. The lien of the Assessments provided for in this Article shall be subordinate to the lien of any first Mortgagees or deeds of trust now or hereafter placed upon the Unit subject to Assessment, except as provided in subsection (b) of this section.

b. The sale or transfer of any Unit pursuant to Mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Unit from liability for any Assessments thereafter becoming due, or from the lien of any future Assessment.

**7.14 Enforcement of Lien.** The Association may establish and enforce the lien for any Assessment, including Annual, Special, Individual or otherwise, pursuant to the provisions of this Declaration. The lien is imposed upon the Unit against which the Assessment is made. The lien may be established and enforced for damages, interest, costs of collection, late charges permitted by law, and attorneys' fees provided for in this Declaration (whether or not a legal proceeding is initiated) or by law or awarded by a court for breach of any provisions of this

Declaration, the Bylaws or any Rules and Regulations of the Association. The lien may be foreclosed judicially or non-judicially consistent with the laws of the State of Utah for the non-judicial foreclosure of Deeds of Trusts. In such an event, the Owner, by acceptance of the deed to their Unit, hereby irrevocably appoints the Association, or its authorized agent, to act as Trustee for purposes of foreclosing any lien hereunder.

**7.15 Rent During Redemption Period.** In the event of foreclosure, the Unit Owner, if he is an owner-occupied and desires to remain in the Unit during any redemption period, shall be required to pay a reasonable rental for the Unit and the plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the security.

**7.16 Exempt Property.** All Units owned by the Association or dedicated to and accepted by a public authority and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Utah shall be exempt from the Assessments created under this Declaration.

**7.17 Reserve Funds.**

a. The Association shall establish and maintain a reserve fund for repairs and replacement of the Common Areas by the allocation and payment monthly to such reserve fund of in an amount to be designated from time to time by the Board. The fund shall be conclusively deemed to be a Common Expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

b. The Association may establish such other reserves for such other purposes as the Board may from time to time consider to be necessary or appropriate, including for costs relating the maintenance, repair and replacement of Units.

c. The proportional interest of any member of the Association in any reserve fund established under this section shall be considered an appurtenance of such Owner's Unit and shall not be separated from the Unit to which it appertains and shall be deemed to be transferred with the Unit.

d. The Board's reasonable determination with respect to the amount of the reserve fund contribution shall be conclusively deemed appropriate absent intentional misconduct or gross mismanagement of Association funds. Except in such instances, individual Board members shall not be held liable for any potential or alleged "under-funding" of the reserve account.

**7.18 Initial Capital Contribution.** At settlement for each Unit, an amount equal to two (2) months of the current monthly Assessment amount for that type of Unit shall be paid from each prospective member of the Association, for the purpose of building expenses and

operating contingencies. Such amount shall be in addition and not in lieu of any pro rata share of Assessments due and adjusted at settlement.

**7.19 Certificate of Assessment.** The Association shall, upon demand at any time, furnish to any Owner liable for Assessment a certificate in writing signed by an officer of the Association setting forth whether Assessments have been paid. The certificate shall be conclusive evidence of payment of any Assessment therein stated as having been paid. A reasonable charge, determined by resolution of the Board, may be levied in advance by the Association for each certificate so requested.

**7.20 Unpaid Assessments and Future Lease Payments.** As authorized by this section, if an absentee Owner fails to pay any Assessment levied against such Unit within sixty (60) days after the Assessment is due, the Board may, pursuant to and in compliance with the provisions of Utah Code Ann. § 57-8-20(6), as may be amended, as may be amended from time to time, demand that the tenant of such Unit pay to the Association all future lease payments due to the Owner, beginning with the next monthly or periodic payment, until the amount due to the Association is paid in full.

**7.21 Owner Tax Liability.** It is understood that under the Act each Unit, together with its Percentage Interest in the Common Areas and Facilities in the Project, is deemed a parcel and subject to separate Assessment and taxation by each assessing Unit and special district for all types of taxes authorized by law. Each Unit Owner will, accordingly, pay and discharge any and all taxes which may be assessed against their Condominium.

## **ARTICLE VIII COMPLIANCE AND ENFORCEMENT**

**8.1 Compliance.** Each Owner, tenant or occupant of a Unit shall comply with the provisions of this Declaration, the Bylaws and the Rules and Regulations adopted pursuant thereto and any applicable statute. Failure to comply therewith shall be grounds for an action or suit maintainable by the Association or an aggrieved Owner. Owners shall receive a "Notice of Violation Letter" in substantially similar form to the attached **Exhibit "D"** for violations. Monetary fines may be assessed for all violations.

**8.2 Remedies.** Violation of any provisions of this Declaration, the Bylaws, or any Rules or Regulations adopted pursuant thereto, or of any decision of the Association made pursuant to such documents, shall give the Board, acting on behalf of the Association, the right, in addition to any other rights set forth in this Declaration or the Bylaws, or under law, to do, any or all of the following after giving notice:

- a. Subject to the provisions of this Declaration, to enter the Unit which or as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Board shall not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished;

b. To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

c. To levy reasonable fines pursuant to a schedule of fines adopted by resolution of the Board, a copy of which has been delivered to each Owner, mailed to the mailing address of Unit, or mailed to the mailing address designated by the Owner in writing to the Association;

d. To terminate the right to receive utility services paid for out of Assessments, if any, or, except for the right to an assigned parking space and access to the Unit, to terminate the right of access to and use of recreational and service facilities of the Association, if any, until the correction of the violation has occurred; or,

e. The right of the Association to suspend the voting rights after notice and an opportunity to be heard for any period not to exceed sixty (60) days for any infraction of any of the published Rules and Regulations of the Association or of this Declaration.

f. Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any Rules or Regulations adopted pursuant thereto.

**8.3 Action by Owners.** Subject to any limitation imposed under this Declaration, the Bylaws or Utah law, an aggrieved Owner may bring an action against such other Owner or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

**8.4 Injunctive Relief.** Nothing in this section shall prevent an Owner, the Association, or other interested party from resort to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

**8.5 Notification of First Mortgagee.** The Board shall notify in writing any first Mortgagee of any individual Unit of any default in performance of the terms of this Declaration by the Unit Owner which is not cured within sixty (60) days, provided such Mortgagee has requested in writing to be so notified pursuant to the provisions of this Declaration.

## ARTICLE IX ASSOCIATION AND OWNER MAINTENANCE OBLIGATIONS

### 9.1 Owner's Responsibility.

a. Units. Maintenance of the Units, as defined in this Declaration, shall be the sole responsibility of the Owner(s) thereof, who shall maintain such Unit in good repair so as to not interfere with other Owner's Units or the Common Areas. Each Owner at his or her sole expense shall maintain, repair, paint, re-paint, tile, paper or otherwise re-finish or decorate the interior surfaces of the walls, ceilings, floors, interior

and exterior windows including all glass, and interior and exterior door frames forming the boundaries of his or her Unit and all walls, ceilings, floors, windows and doors within such boundaries. In addition to decorating and keeping the interior of their Unit in good repair and in a clean and sanitary condition, Owners shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heaters, heating equipment, air conditioners, lighting fixtures, refrigerators, dishwasher, disposal equipment, ranges, toilets, or other appliances or fixtures that may be in, or connected with, their Unit. Each Unit shall be maintained so as to not detract from the appearance of the Project and so as to not adversely affect the value or use of any other Unit.

b. Limited Common Area. Each Unit Owner shall, at its own cost, keep the Limited Common Areas in a clean, sanitary and attractive condition at all times. Each Unit Owner shall be responsible for the cost of maintenance, repair, and replacement of all Limited Common Areas, as shown on the Map.

**9.2 Maintenance by Association.** The Association shall maintain the Common Areas of the Property including Limited Common Area, unless otherwise stated in this Declaration. However, if the Common Areas are damaged by the willful misconduct of an Owner, their guests, tenants, or invitees, the Owner shall be responsible for all such damage.

Additionally, the Association, by and through the Board, may assume the Owner's general maintenance responsibility over a Unit and Limited Common Area if, in the opinion of the Board, the Owner is unwilling or unable to adequately provide such maintenance. Before assuming such maintenance responsibility, the Board shall provide notice to the Owner of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action with thirty (30) days after mailing of such written notice, then the Association may proceed to maintain the Unit. The expenses of such maintenance incurred by the Association shall be charged as an Individual Assessment and reimbursed to the Association by the Owner. Such expenses shall be levied and collected in the same manner as Assessments pursuant to this Declaration and the Bylaws.

## ARTICLE X DESTRUCTION, DAMAGE, OR CONDEMNATION

In the event of destruction, damage, or condemnation to part or all of the improvements in the Condominium Project, the procedures of this Section shall apply.

**10.1 Insurance Proceeds are Sufficient.** If the proceeds of the insurance maintained by the Association are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out.

**10.2 Insurance Proceeds are Insufficient and Less Than 75% Destruction.** If less than seventy-five percent (75%) of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all of the Unit Owners shall be assessed for any deficiency on the basis of their respective appurtenant percentages of

undivided ownership interest in the Common Areas and Facilities, said assessment becoming a lien on the Units as provided in the Act.

**10.3 Insurance Proceeds are Insufficient and 75% Destruction.** If seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish restoration, and if the Unit Owners within one hundred (100) days after the destruction or damage by a vote of at least seventy-five percent (75%) of the entire undivided ownership interest in the Common Areas and Facilities of the Project elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under section b above.

**10.4 Insurance Proceeds Are Insufficient, 75% Destruction and Owners Elect Not to Reconstruct.** If seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Association are insufficient to accomplish restoration, and if the Unit Owners do not, within one hundred (100) days after the destruction or damage and by a vote of at least seventy-five percent (75%) of the entire undivided ownership interest in the Common Areas and Facilities of the Project, elect to not repair or reconstruct the affected improvements, the Association shall promptly record with the recorder of the county where the Project is located a notice setting forth such facts. Upon the recording of such notice the provisions of subsections (1) through (4) of Section 57-8-31 of the Act shall apply and shall govern the rights of all parties having an interest in the Project or any of the Units.

**10.5 Supervision by Board of Trustees; Appraisers.** Any reconstruction or repair which is required to be carried out by this Article shall be accomplished at the instance and direction of the Board of Trustees. Any determination which is required to be made by this Article regarding the extent of damage to or destruction of Project improvements shall be made as follows: The Board of Trustees shall select three (3) appraisers; each appraiser shall independently estimate the percentage of Project improvements which have been destroyed or substantially damaged; the percentage which governs the application of the provisions of this Section shall be the median of the three (3) estimates.

**10.6 Eminent Domain.** In the event that eminent domain proceedings are commenced against the Project or any portion thereof, the provisions of Utah Code Ann. § 57-8-32.5, as may be amended, shall apply. The Board of Trustees shall give written notice of such proceedings to all Mortgagees of record. No first lien priority of any Mortgagee shall be diminished or otherwise disturbed by virtue of such proceedings.

## **ARTICLE XI INSURANCE**

**11.1 Hazard Insurance.** The Association shall at all times maintain in force hazard insurance meeting the following requirements:

a. A multi-peril type policy covering the entire Condominium Project (Common Areas and Facilities, including, without limitation, fixtures, machinery, equipment and supplies maintained for the service of the Project) shall be maintained. Such policy shall provide coverage against loss or damage by fire and other hazards covered by the standard extended coverage blanket "all risk" endorsement and by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage. As a minimum, such policy shall provide coverage on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage specified in the policy, but not less than one hundred percent (100%) of the full insurable value of the Project (based upon replacement cost). Deductibles shall not exceed the lower of \$10,000.00 or one percent of the applicable amount of coverage. Funds for such deductibles shall be included in the Association's reserves and shall be so designated. Such policy shall include an "Agreed Amount Endorsement" or its equivalent, and, if necessary or appropriate, an "Increased Cost of Construction Endorsement" or its equivalent.

b. If a steam boiler is or comes to be contained in the Project, there shall be maintained boiler explosion insurance and a broad form policy of repair and replacement boiler and machinery insurance, evidenced by the standard form of boiler and machinery insurance policy. The insurer's minimum liability per accident under boiler and machinery coverage shall equal the insurable value of the building housing such boiler or machinery or Two Million Dollars (\$2,000,000), whichever is less. Deductibles shall not exceed the lower of \$10,000.00 or one percent of the applicable amount of coverage. Funds for such deductibles shall be included in the Association's reserves and shall be so designated.

c. If the Project is or comes to be situated in a locale identified by the Secretary of Housing and Urban Development (HUD) or the Director of the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area, flood insurance on the Condominium Project shall be obtained and maintained providing coverage at least equivalent to that provided under the National Flood Insurance Program (NFIP) for buildings (including equipment and machinery), detached Common Areas and Facilities, and contents not part of buildings (including equipment and machinery owned by the Association) in an amount at least equal to the lesser of (i) one hundred percent (100%) of their insurable value, or (ii) the maximum coverage available under the NFIP with deductibles not to exceed the higher of \$1,000 or one percent of the applicable amount of coverage, subject to the maximum deductible amount allowed under NFIP. Funds for such deductibles shall be included in the Association's reserves and shall be so designated.

d. The named insured under each policy required to be maintained by the foregoing items a, b, and c shall be in form and substance essentially as follows: "Ivy Terrace Homeowners Association, Inc. for the use and benefit of the individual Owners."

e. Each such policy shall provide that notwithstanding any provision thereof which gives the carrier the right to elect to restore damage in lieu of making cash settlement, such option shall not be exercisable if it is in conflict with any requirement of law or without the prior written approval of the Association.



**11.2 Fidelity Insurance.** The Association shall maintain in force fidelity insurance covering losses resulting from dishonest or fraudulent acts committed by the Association's managers, trustees, employees, officers, committee members, or volunteers who manage the funds collected and held for the benefit of the Association. The fidelity insurance shall name the Association as the insured and shall be in an amount at least equal to the maximum amount of funds in the Association's custody at any one time, but in no event less than the sum of three (3) months of assessments on the entire Project plus reserves. An appropriate endorsement to the policy shall be secured to cover persons who serve without compensation if the policy would not otherwise cover volunteers. Any professional management firm retained by the Association shall also maintain in force such fidelity insurance at said firm's sole cost and expense.

**11.3 Liability Insurance.** The Association shall at all times maintain in force comprehensive general liability (CGL) insurance covering all of the Common Areas and Facilities. Such insurance shall include "Severability of Interest Endorsement" or its equivalent which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of other Owners, the Board of Trustees, or the Association of Unit Owners. The Association shall also maintain in force any additional coverage commonly required by private mortgage investors for developments similar to the Project in construction, location and use, including the following where applicable and available: contingent liability from operation of building laws, comprehensive automobile liability, bailee's liability, elevator collision liability, garage keeper's liability, host liquor liability, worker's compensation and employer's liability and contractual liability. The limits of liability under such insurance shall not be less than one million dollars (\$1,000,000.00) for personal injury, bodily injury or property damage arising out of a single occurrence.

**11.4 General Requirements Concerning Insurance.** Each insurance policy maintained pursuant to the foregoing Article XI, Sections 11.1 through 11.3 shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a general policyholders rating of B+ or better and a financial category rating of Class XII or better in Best's Insurance Guide and shall contain the standard mortgagee clause commonly used by private institutional mortgage investors. No such policy shall be maintained where:

a. Under the terms of the carrier's charter, bylaws or policy, contributions may be required from, or assessments may be made against, a Unit Owner, a Mortgagee, the Board of Trustees, the Association, a Unit, the Common Areas, or the Project;

b. By the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members;

c. The policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled from collecting insurance proceeds. Each such policy shall provide that:

i. Coverage shall not be prejudiced by any act or neglect of the Unit Owners when such act or neglect is not within the control of the Association of Unit Owners or the Board of Trustees;

ii. Coverage shall not be prejudiced by any failure by the Association or Board of Trustees to comply with any warranty or condition with regard to any portion of the Project over which the Association and Board of Trustees have no control;

iii. Coverage may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to any and all insureds named therein, including any Mortgagee named as an insured; and,

iv. The insurer waives any right of subrogation it might have to any and all claims against the Association, the Board of Trustees, any Unit Owner, and/or their respective agents, employees or tenants, and any defense it might have based upon co-insurance or upon invalidity arising from acts of the insured.

d. If, due to changed circumstances, excessive cost, or any other reason, any of the Insurance coverage required to be obtained and maintained under Sections 11.1 through 11.3 of this Article cannot reasonably be secured, with respect to such coverage the Association or the Board of Trustees shall obtain and maintain such substitute, different or other coverage as may be reasonable and prudent under the circumstances as they then exist.

**11.5 Insurance Claims.** The following are responsibilities of Unit Owners and other parties in regards to filing claims:

a. In the event of duplicated coverage of loss, the Unit Owners policy is primary.

b. The deductible on the Association's insurance policy shall not exceed the lower of \$10,000.00 or one percent of the applicable amount of coverage per incident. Any loss falling within the deductible portion of the policy will be borne entirely by the person or entity that is responsible for the damage. If the loss is greater than the deductible, and therefore an "insurable loss" when the Association's master policy will apply, the payment of the deductible will be borne entirely by the person/persons or entity/entities that are responsible for the damage or by the owner(s) of the unit from which the loss originates. If multiple parties are responsible, then payment will be based upon percentage of responsibility.

c. The "person or entity that is responsible for the damage" will be determined solely at the discretion of the Board of Trustees, who will make such determination after careful review of the circumstances surrounding the loss. The Board of Trustees may determine that a loss resulted from an act or negligence of an

Owner/occupant. Upon said determination by the Board of Trustees, any loss, or portion thereof, may be assessed to the Owner(s) in question, and the Association may collect the amount from said Owner(s) in the same manner as any regular assessment.

d. Should the Board of Trustees, after reviewing the circumstances, determine that no one person or entity should bear the responsibility for the damage, the deductible shall be borne equally by all persons or entities realizing any payment of proceeds from the Association's master insurance policy.

e. **It is strongly recommended that every homeowner purchase a policy of insurance specifically designed to protect owners of condominiums, their unit, their contents and potential liability for the deductible on the master insurance policy. It is also recommended that owners who rent their units also have a "landlords" policy and encourage their renters to purchase a policy of insurance specifically designed to protect renters. By doing so, owners and renters are helping protect themselves against out-of-pocket payments (deductibles) should any disaster befall their units).**

f. Immediately upon determining that you have damage which may be covered by insurance, contact your private insurance agent. At the same time, notify the Association's Board or Managing Agent. **You should never assume that your damages will be covered by your own insurance or by the Association's insurance or by the Association's policy. Always keep in mind that you may be responsible to pay for repairs.**

g. **Make every effort to mitigate your damages.** Turnoff valves, clean up water, debris, etc.

h. If your insurance company denies the claim, let the Board or Managing Agent know as soon as possible and be prepared to furnish them with the name of your insurance agent's name and phone number and why the claim was denied. With Board approval, the Managing Agent will submit the claim to the Association's insurance carrier. **No claim will be submitted to the Association's master insurance carrier unless and until it has been denied by your private carrier. No claim will be accepted by the Association's insurance unless it is submitted by the Board or Managing Agent.**

## ARTICLE XII MORTGAGEE PROTECTION

**12.1 Requests to Notify Mortgagees.** From and after the time a Mortgagee makes written request to the Board of Trustees or the Association of Unit Owners therefore, the Board of Trustees or the Association shall notify such Mortgagee in writing in the event that the Owner of the Unit encumbered by the Mortgage held by such Mortgagee neglects for a period of sixty (60) or more days to cure any failure on his part to perform any of his obligations under this Declaration.

**12.2 Priority of First Mortgages Over Assessment Liens.** The lien or claim against a Unit for unpaid Assessments or charges levied by the Board of Trustees or by the Association of Unit Owners pursuant to this Declaration or the Act shall be subordinate to a First Mortgage affecting such Unit. A First Mortgagee who obtains title to a Unit pursuant to his First Mortgage or a deed or assignment in lieu of foreclosure shall not be liable for such Unit's unpaid Assessments which accrue prior to the acquisition of title to such Unit by the First Mortgagee and shall take the same free of such lien or claim for unpaid Assessments or charges, but only to the extent of Assessments or charges which accrue prior to the acquisition of title to such Unit by the First Mortgagee (except for claims for a pro rata share of such prior assessments or charges resulting from a pro rata reallocation thereof to all Units including the Unit in which the First Mortgagee is interested). No Assessment, charge, lien or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not a burden to a First Mortgagee coming into possession pursuant to his First Mortgage or a deed or assignment in lieu of foreclosure shall be collected or enforced by either the Board of Trustees or the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Unit affected or previously affected by the First Mortgage concerned (to the extent any such collection or enforcement would prejudice the interests of the First Mortgagee or successor in title to the First Mortgagee interested in such Unit).

**12.3 Approval of First Mortgagees Required to Take Certain Actions.** Without the prior written approval of at least two-thirds (2/3) of the First Mortgagees (based on one vote for each First Mortgage owned), neither the Board of Trustees nor the Association of Unit Owners shall be entitled, by act, omission, or otherwise:

- a. To seek to abandon or terminate the Condominium Project or to abandon or terminate the arrangement which is established by this Declaration and the Record of Survey Map (except as provided in Article X hereof in the event of certain destruction or damage);
- b. To partition or subdivide any Unit;
- c. To seek to abandon, partition, subdivide, encumber, sell or transfer all or any of the Common Areas and Facilities (except for the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas and Facilities, and except as provided in Article X hereof in the event of certain destruction or damage);
- d. To use hazard insurance proceeds resulting from damage to any part of the Condominium Project (whether to Units or to the Common Areas) for purposes other than the repair, replacement, or reconstruction of such improvements, except as provided by statute in the event of substantial loss to the Units and/or Common Areas and Facilities;
- e. To change the pro rata interests or obligations of any Unit which apply for: (1) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or, (2) determining the pro rata share of ownership of each Unit in the Common Areas and Facilities; or,

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

**12.4 Rights of Mortgagees to Records.** Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Board of Trustees, or the Association of Unit Owners, or of the Condominium Project. From and after the time a Mortgagee makes written request to the Board of Trustees or the Association of Unit Owners therefore, the Board of Trustees or the Association shall furnish to such Mortgagee copies of such annual operating reports and other reports or writings summarizing or reflecting the financial position or history of the Condominium Project as may be prepared for distribution to or use by the Board of Trustees, the Association, or the Unit Owners.

**12.5 Reserves to be Funded from Regular Assessments.** The Board of Trustees and the Association shall establish an adequate reserve fund, pursuant to Article VII, Section 7.17 hereof, to cover the deductibles under all hazard insurance policies maintained by the Association (which reserve shall be so designated) and the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and Facilities and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Units rather than by special assessments.

**12.6 Notice to Mortgagees of Damage or Loss.** From and after the time a Mortgagee makes written request to the Board of Trustees or the Association of Unit Owners therefore, the Board of Trustees or the Association shall notify such Mortgagee in writing in the event that there occurs any damage or loss to, or any taking or anticipated condemnation of: (a) the Common Areas and Facilities involving an amount in excess of, or reasonably estimated to be in excess of, Ten Thousand Dollars (\$10,000.00); or, (b) any Unit involving an amount in excess of, or reasonably estimated to be in excess of, one thousand dollars (\$1,000.00). Said notice shall be given within ten (10) days after the Board of Trustees or said Association learns of such damage, loss, taking or anticipated condemnation.

**12.7 No Priority in Distributions.** Nothing contained in this Declaration shall give a Unit Owner, or any other party, priority over any rights of a First Mortgagee pursuant to its First Mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of condominium Units and/or Common Areas and Facilities.

**12.8 Greater Mortgagee Protection Provisions Control.** In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article, the provision or clause which results in the greater protection and security for a Mortgagee shall control the rights, obligations, or limits of authority as the case may be, applicable to the Board of Trustees and Association of Unit Owners with respect to the subject concerned.

**12.9 No Diminishment of Protection Without Mortgagee Approval.** Except with respect to combination of Units pursuant to Article IV, Section 4.3 which may be accomplished without consent of any Mortgagee, no amendment to this Article which has the effect of diminishing the rights, protection, or security afforded to Mortgagees shall be accomplished or effective unless all of the Mortgagees of the individual Units have given their prior written approval to such amendment. Any amendment to this Article shall be accomplished by an instrument executed by the Board of Trustees and filed for record in the office of the County Recorder of the county where the Project is located. In any such instrument the Board of Trustees shall certify that any prior written approval of Mortgagees required by this Article as a condition to amendment has been obtained.

**ARTICLE XIII  
MISCELLANEOUS PROVISIONS**

**13.1 Indemnification of Board.** Each member of the Board of Trustees shall be indemnified and held harmless by the Association of Unit Owners against all costs, expenses and liabilities whatsoever, including, without limitation, attorney's fees reasonably incurred by him in connection with any proceeding in which he may become involved by reason of his being or having been a member of the Board of Trustees; provided, however, the foregoing indemnification shall not apply if the loss, expense or liability involved resulted from the willful misconduct or gross negligence of the member.

**13.2 Amendment.** This Declaration and/or the Map may be amended upon the affirmative vote or approval of Unit Owners having ownership of not less than sixty-six and two-thirds percent (66-2/3%) of the undivided interest in the Common Areas and Facilities, except in circumstances where the Act requires a greater affirmative vote or approval and consent, in which event the provisions of the Act shall be controlling. Any amendment so authorized shall be accomplished by recordation of an instrument executed by the Board of Trustees. In said instrument the Board of Trustees shall certify that the vote required by this Article has occurred. Notwithstanding any other provision contained herein.

**13.3 Consent in Lieu of Vote.** In any case in which the Act or this Declaration requires the vote of a stated percentage of the Project's undivided ownership interest for authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, without a meeting, unanimous consents in writing to such transaction from all Unit Owners. The following additional provisions shall govern any application of this section:

a. **Maximum of 120 Days Allowed.** All necessary consents must be obtained prior to the expiration of one hundred twenty (120) days after the first consent is given by any Owner;

b. **Subsequent Ownership Changes Ignored.** Any change in ownership of a Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose; and,

c. **Consent of all Owners of Each Unit Required.** Unless the consents of all Owners having an interest in the same Unit are secured, the consent of none of such Owners shall be effective.

**13.4 Severability.** The invalidity of anyone or more phrases, sentences, subparagraphs, paragraphs, sections or articles hereto shall not affect the remaining portions of this instrument nor any part thereof, and in the event that any portion or portions of this instrument should be invalid or should operate to render this instrument invalid, this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraphs or paragraphs, section or sections, or article or articles had not been inserted.

**13.5 Gender.** The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

**13.6 Waiver.** No provision contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

**13.7 Topical Headings.** The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

**13.8 Availability of Documents.** The Association shall make available for inspection, upon request, during normal business:

a. To Owners and Mortgages. To Unit Owners and Mortgagees and the holders, insurers and guarantors of any First Mortgage, current copies of this Declaration, the Articles of Incorporation and Bylaws of the Association, Rules and Regulations adopted by the Board of Trustees, and other books, records, and financial statements of the Association.

b. To Prospective Purchasers. To prospective purchasers, current copies of this Declaration, the Articles of incorporation and Bylaws of the Association, rules and regulations adopted by the Board of Trustees and the most recent annual financial statement, if such financial statement is prepared.

**13.9 Conflicts.** This Declaration is set forth to comply with the requirements of the Act. In the event of any conflict between this Declaration and the provisions of the Act, the provisions of the latter shall control.

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

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed on its behalf this 13 day of April 2010.

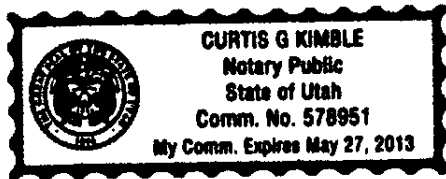
Ivy Terrace Homeowners Association Inc.,  
a Utah Nonprofit Corporation

BY: \_\_\_\_\_

ITS: President  
By: Allen Chantry

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

The foregoing instrument was acknowledged before me this 13 day of April 2010, by Allen Chantry as a Member of the Board of Directors of the Ivy Terrace Homeowners Association, a Utah Nonprofit Corporation.



*Curtis G Kimble*  
NOTARY PUBLIC



**EXHIBIT "A"**  
**(LEGAL DESCRIPTION)**

All Units in all Phases in Ivy Terrace Condominiums, including

IVY TERRACE CONDO  
Units 1 - 41

Parcels 16-06-207-001 thru 16-06-207-041

## EXHIBIT "B"

Unit Number	Square Feet of Unit	Percentage Interest in Common Area
1	657	.0257
2	657	.0257
3	657	.0257
4	657	.0257
5	659	.0258
6	659	.0258
7	659	.0258
8	659	.0258
9	657	.0257
10	657	.0257
11	657	.0257
12	657	.0257
14	643	.0251
15	674	.0263
16	476	.0186
17	674	.0263
18	476	.0186
19	659	.0258
20	660	.0258
21	660	.0258
22	660	.0258
23	660	.0258
24	674	.0263
25	476	.0186
26	674	.0263
27	476	.0186
28	659	.0258
29	657	.0257
30	657	.0257
31	657	.0257
32	657	.0257
33	643	.0251
34	659	.0258
35	659	.0258
36	659	.0258
37	659	.0258
38	657	.0257
39	657	.0257
40	657	.0257
41	657	.0257

**EXHIBIT "C"**

**BYLAWS  
OF  
IVY TERRACE HOMEOWNERS  
ASSOCIATION, INC.**

**A UTAH NONPROFIT CORPORATION**

## BYLAWS

Pursuant to the provisions of the Utah Nonprofit Corporation and Cooperative Association Act, the Board of Trustees of Ivy Terrace Homeowners Association, Inc., a Utah nonprofit corporation, hereby adopts the following Bylaws for such nonprofit corporation.

### ARTICLE I PLAN OF UNIT OWNERSHIP

**1.1 Name and Type of Ownership.** The name of the nonprofit corporation is the IVY TERRACE HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as the "Association".

The Association is a condominium community of Owners that has been subjected to the attached Declaration and the provisions of the Utah Condominium Ownership Act, as may be amended from time to time.

**1.2 Principal Office.** The Principal office of the Association shall be at 450 East 100 South, Salt Lake City, Utah 84111.

**1.3 Purposes.** This Association is formed to serve as a means through which the Unit Owners may take action with regard to the administration, management, and operation of the Association, maintain the Common Areas, and enforce the use restrictions affecting all Units and Common Areas.

**1.4 Applicability of Bylaws.** The Association, all Unit Owners, and all persons using the Property, shall be subject to these Bylaws and to all Rules and Regulations which may be adopted pursuant to the Declaration and these Bylaws.

**1.5 Composition of Association.** The Association shall be composed of all Unit Owners and the Association itself; to the extent any of these own any Unit or Units in the Property.

**1.6 Incorporation of Association.** The Association shall be incorporated under the Utah Revised Nonprofit Corporation Act. The Articles of Incorporation of the Association shall be consistent with the Declaration and these Bylaws, and these Bylaws shall constitute the Bylaws of the incorporated association.

**1.7 Definitions.** Except as otherwise provided herein or as may be required by the context, all terms defined in the Declaration for Ivy Terrace Condominiums shall have such defined meanings when used in these Bylaws.

## ARTICLE II MEMBERS

**2.1 Annual Meetings.** The annual meeting of Members shall be held in November of each year, the specific date, time, and place to be fixed by the Board of Trustees, for the purpose of electing Board members, presenting for ratification an itemized budget for the coming fiscal year with estimated allocation thereof to each unit owner, presenting professionally reviewed statements of the Common Expenses itemizing receipts and disbursements for the previous and current fiscal year, together with the allocation thereof to each Unit Owner, and transacting such other business as may come before the meeting. If the election of Board members shall not be held on the day designated herein for the annual meeting of the Members, or at any adjournment thereof, the Board of Trustees shall cause the election to be held at a special meeting of the Members to be convened as soon thereafter as may be convenient. The Board of Trustees may from time to time by resolution change the date and time for the annual meeting of the Members.

**2.2 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 twenty five percent (25%) of the voting power of the Members of Association, such written request to state the purpose or purposes of the meeting and to be delivered to the Board of Trustees or the President.

**2.3 Place of Meetings.** The Board of Trustees may designate any place in Salt Lake County, State of Utah as the place of meeting for any annual meeting or for any special meeting called by the Board. A waiver of notice signed by all of the Members may designate any place, either within or without the State of Utah, as the place for holding such meeting. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be at the principal office of the Association.

**2.4 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 sixty (60) nor less than thirty (30) 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 U.S. mail addressed to the Member at his registered address, with first-class postage thereon prepaid. Each Member shall register with the Association such Member's current mailing address for purposes of notice hereunder. Such registered address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, a Member's Lot address shall be deemed to be his registered address for purposes of notice hereunder.

**2.5 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 shall be deemed to be the Members of record entitled to notice of and to vote at the meeting of the Members.

## **2.6 Quorum.**

a. Except as otherwise provided in the Declaration or these Bylaws, the presence in person or by proxy, or absentee ballot if permitted under Section 2.7(b) below, at any meeting of the Association of thirty percent (30%) of the Unit Owners shall constitute a quorum.

b. The subsequent ratification of an Owner, in the action taken at a meeting, shall constitute the presence of the person for the purpose of determining a quorum. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal of an Owner or Owners.

c. If any meeting of members cannot be organized because of lack of a quorum, the Members who are present, either in person or by proxy, may immediately adjourn the meeting and reconvene in as few as thirty (30) minutes or up to forty-eight (48) hours later, as determined at the originally attempted meeting. At the adjourned meeting, any number of Members present at such subsequent meeting shall constitute a quorum. The adjournment provisions of this subsection "c" do not apply to action by written ballot in lieu of a meeting.

## **2.7 Proxies, Absentee Ballots, and Rights of Mortgagees.**

### **a. Proxies.**

i. A vote may be cast in person or by proxy. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated and signed by such Owner and shall be filed with the secretary in accordance with procedures adopted by resolution of the Board.

ii. No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than eleven (11) months after the date of execution.

iii. No proxy shall be valid if it purports to be revocable without notice.

iv. An Owner may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting of the Association or to the Board of Directors if a vote is being conducted by written ballot in lieu of a meeting pursuant to Section 2.13 below.

v. Every proxy shall automatically cease upon sale of the Unit.

b. **Absentee Ballots.** At the discretion of the Board of Directors, a vote may be cast by absentee ballot.

c. **Mortgagee Rights.**

i. An Owner may pledge or assign the Owner's voting rights to a Mortgagee. In such a case, the Mortgagee or its designated representative shall be entitled to receive all notices to which the Owner is entitled hereunder and to exercise the Owner's voting rights from and after the time that the Mortgagee shall have given written notice of the pledge or assignment to the Board.

ii. Any first Mortgagee may designate a representative to attend all or any meetings of the Association.

**2.8 Votes.** With respect to each matter submitted to a vote of the Members, each Member entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Condominium of such Member, as set forth in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Members, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, the Declaration, or Utah law. The election of Board members shall be by written ballot or voice vote.

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

**2.10 Fiduciaries and Joint Owners.**

a. **Fiduciaries.** An executor, administrator, guardian, or trustee may vote in person or by proxy, at any meeting of the Association with respect to any Unit owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided, that the person shall satisfy the secretary that he or she is the executor, administrator, guardian, or trustee holding the Unit in such capacity.

b. **Joint Owners.** Whenever any Unit is owned by two or more persons jointly, according to the records of the Association, the vote of the Unit may be exercised by any one of the Owners then present, in the absence of protest by a co-owner. In the event of a protest, no one co-owner shall be entitled to vote without the approval of all co-owners. In the event of disagreement among the co-owners, the vote of the Unit shall be disregarded completely in determining the proportion of votes given with respect to the matter.

**2.11 Order of Business.**

a. The order of business at annual meetings of the Association shall be:

- i. Calling of the roll and certifying of proxies;
- ii. Proof of notice of meeting or waiver of notice;
- iii. Reading of minutes of preceding meeting;
- iv. Reports of officers;
- v. Reports of committees, if any;
- vi. Election of directors;
- vii. Unfinished business;
- viii. New business; and,
- ix. Adjournment.

## **2.12 Meeting Procedure.**

Unless other rules of order are adopted by resolution of the Board of Directors:

- a. Meeting of the Association shall be conducted according to the latest edition of Robert's Rules of Order published by the Robert's Rules Association.
- b. A decision of the Association may not be challenged because the appropriate rules of order were not used unless a person entitled to be heard was denied the right to be heard and raised an objection at the meeting in which the right to be heard was denied.
- c. A decision of the Association is deemed valid without regard to procedural errors related to the rules of order one year after the decision is made unless the error appears on the face of a written instrument memorializing the decision.

## **2.13 Action By Written Ballot In Lieu of a Meeting.**

- a. Action By Written Ballot. At the discretion of the Board, any action, except election or removal of trustees, that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every Owner that is entitled to vote on the matter not less than twenty (20) days prior to the date on which the ballots must be received by the Association in order to be counted.
- b. Form and Effect of Ballot.
  - i. The written ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.



ii. A written ballot may not be revoked.

c. Information Required in Ballot Solicitations. All solicitations for votes by written ballot must:

i. State the number of responses needed to meet any applicable quorum requirements and the total percentage of votes needed for approval.

ii. Specify the period during which the Association will accept written ballots for counting, which period shall end on the earliest of the following unless the vote is pursuant to the secrecy procedure described in Subsection d of this section:

1. The date on which the Association has received a sufficient number of approving ballots to pass the proposal;

2. The date on which the Association has received a sufficient number of disapproving ballots to render the proposal impossible of passage; or,

3. A date certain on which all ballots must be returned to be counted.

d. Secrecy Procedure. The Board may elect to conduct a vote pursuant to this section by a secrecy procedure whereby a written ballot is accompanied by:

i. A secrecy envelope;

ii. A return identification envelope to be signed by the owner; and,

iii. Instructions for marking and returning the ballot.

e. Determination of Vote. The outcome of a vote by written ballot in lieu of a meeting shall be determined by the Board within forty-eight (48) hours of the deadline for return of ballots, or in the event the ballot return date is postponed, within forty-eight (48) hours of the postponed date. Matters that may be voted on by written ballot shall be deemed approved or rejected as follows:

i. If approval of a proposed action would otherwise require a meeting at which a certain quorum must be present and at which a certain percentage of total votes cast is required to authorize the action, the proposal will be deemed to be approved when the date for return of ballots has passed, a quorum of owners has voted and the required percentage of approving votes has been received. Otherwise, the proposal shall be deemed to be rejected.

ii. If approval of a proposed action otherwise would require a meeting at which a specified percentage of Owners must authorize the action, the proposal shall be deemed to be approved when the percentage of total votes cast in favor of the proposal equals or exceeds such required percentage. The proposal shall be deemed to

be rejected when the number of votes cast in opposition renders approval impossible or when both the date for return of ballots has passed and such required percentage has not been met.

iii. Except as provided below, votes may be counted from time to time before the final return date to determine whether the proposal has passed or failed by the votes already cast on the date they are entered.

iv. Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

f. **Owner Notification of Ballot Results.** Each Owner shall be notified within ten (10) days after the ballots have been counted, by mail or other delivery of written notice, of the results of the ballot meeting or that a quorum of ballots was not returned.

#### **2.14 Action Without a Meeting.**

a. Any action that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting and without solicitation of written ballots pursuant to these Bylaws, if the action is taken by all of the owners entitled to vote on the action.

b. The action must be evidenced by one or more written consents describing the action taken, signed by all of the owners entitled to vote on the action, and delivered to the Association for inclusion in the minutes or filing with the Association records.

c. Action taken under this section is effective when the last owner signs the consent, unless the consent specifies an earlier or later effective date. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

### **ARTICLE III BOARD OF TRUSTEES**

**3.1 General Powers and Duties.** The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law, the Declaration, or by these Bylaws, directed to be exercised and done by the Owners.

**3.2 Specific Powers.** In addition to powers imposed by the Declaration, these Bylaws or by resolutions of the Association, the Utah Revised Nonprofit Corporation Act or other applicable law, the Board shall have the power to:

- a. Adopt and publish Rules and Regulations governing the use of the Common Area, including any improvements and amenities located thereon, and the personal conduct of the members and their guests on the Property, and to establish penalties for the infraction thereof.

- b. Declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board.
- c. Employ a Manager, independent contractor, or such other individuals, entities or employees as they deem necessary and to prescribe their duties. However, any agreement for professional management of the Project shall call for a term not exceeding two (2) years and shall provide that such agreement or lease may be terminated by either party thereto without cause and without payment of a termination fee upon not in excess of thirty (30) days written notice.

**3.3 Specific Duties.** In addition to duties imposed by the Declaration, these Bylaws or by Rules of the Association, the Utah Revised Nonprofit Corporation Act or other applicable law, the Board shall have the duty to:

- a. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the Members, or at any special meeting when such a statement is requested in writing by twenty-five percent (25%) of the members who are entitled to vote;
- b. Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- c. As more fully provided in the Declaration, to:
  - i. Fix the amount of the Annual Assessment against each Unit at least thirty (30) days in advance of each Annual Assessment period;
  - ii. Send written notice of each Assessment to every Owner subject thereto at least thirty (30) days in advance of each Annual Assessment period;
- d. Procure and maintain adequate liability and hazard insurance on property Owned by the Association or maintained by the Association if required by the Declaration.
- e. Cause all officers or employees having fiscal responsibilities to be bonded as it may deem appropriate.
- f. Cause to be maintained the Common Area and any other areas shown on the Map that may be owned by governmental entities who are not maintaining such areas and any other property required to be maintained by the Declaration.
- g. Establish and maintain the financial accounts of the Association.
- h. Establish a budget for payment of all Common Expenses of the Association, and institute and maintain a voucher system for payment, which shall require a sufficient number of signatories thereon as may be reasonably necessary to prevent any misuse of the Association's funds.

- i. Prepare and distribute annual financial statements for the Project to each Owner.
- j. At least annually, cause the review of the insurance coverage of the Association as provided in the Declaration.
- k. File the Annual Report with the Utah Secretary of State, Department of Corporations and Commercial Code.
- l. Prepare or cause to be prepared and filed any required income tax returns or forms.

**3.4 Number, Tenure and Qualifications.** The affairs of the Association shall be managed by a Board of Trustees, consisting of not less than three (3) or more than seven (7) Trustees. Trustees must be Members of the Association. The Owners may increase or decrease to an odd number, the number of Trustees within the aforesaid limits, by a majority vote, at any meeting of Association members. Trustees may be elected to serve for a term of one (1) to two (2) years. At no time should all Trustee terms expire in the same year.

**3.5 Regular Meetings.** The regular annual meeting of the Board of Trustees shall be held without other notice than this Bylaw after the annual meeting of the Members. The Board of Trustees may provide by resolution the time and place for holding of additional regular meetings without other notice than such resolution.

**3.6 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 or without 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 five (5) days prior thereto by written notice delivered personally, or mailed to each Trustee at his registered address, or by electronic mail. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail so addressed, with first-class postage thereon prepaid. If notice is given by e-electronic mail, such notice shall be deemed to have been delivered upon the return of a "read receipt" or other written confirmation from the Trustee. Any Trustee may waive notice of a meeting.

**3.7 Meeting Procedure.** Unless other rules of order are adopted by resolution of the Board:

- a. Unless other rules of procedure have been adopted, meetings of the Board shall be conducted according to the latest edition of Robert's Rules of Order published by the Robert's Rules Association.

- b. A decision of the Board may not be challenged because the appropriate rules of order were not used unless a person entitled to be heard was denied the right to be heard and raised an objection at the meeting in which the right to be heard was denied.

c. A decision of the Board is deemed valid without regard to procedural errors related to the rules of order one year after the decision is made unless the error appears on the face of a written instrument memorializing the decision.

### **3.8 Open Meetings; Executive Sessions.**

a. **Open Meetings.** Except as provided in below, all meetings of the Board of Trustees shall be open to Unit Owners. However, no Owner shall have a right to participate in the meeting unless the Owner is also a member of the Board. The president shall have the authority to exclude an Owner who disrupts the proceedings at a Board meeting.

b. **Executive Sessions.** In the discretion of the Board, the following matters may be considered in executive session:

i. Consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation or criminal matters;

ii. Personnel matters, including salary negotiations and employee discipline;

iii. The negotiation of contracts with third parties; and,

iv. Collection of unpaid assessments.

c. **Executive Session Procedure.**

i. Except in the case of an emergency, the Board shall vote in an open meeting whether to meet in executive session. If the Board votes to meeting in executive session, the president or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to Owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

ii. A contract or an action considered in executive session does not become effective unless the Board, following the executive session, reconvenes in open meeting and votes on the contract or action, which must be reasonably identified in the open meeting and included in the minutes.

**3.9 Meetings by Telephonic or Electronic Communication.** In the event of an emergency, meetings of the Board may be conducted by telephonic communication or by the use of a means of communication that allows all members of the Board of Trustees participating to hear each other simultaneously or otherwise to be able to communicate during the meeting.

**3.10 Notice to Owners of Meetings of the Board.** For other than emergency meetings, notice of each Board meeting must be posted at a place or places on the property at least three (3)

days prior to the meeting, or notice must be provided by a method otherwise reasonably calculated to inform the Owners of the meeting.

**3.11 Waiver of Notice.** Any Board member may, at anytime, waive notice of any meeting of the Board in writing, and the waiver shall be deemed equivalent to the giving of the notice. Attendance by a Board member at any meeting of the Board of Trustees shall constitute a waiver of notice by the Board member, except where the Board member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If all Board members are present at any meeting of the Board of Trustees, no notice to Board members shall be required and any business may be transacted at the meeting.

**3.12 Quorum and Acts.** At all meetings of the Board a majority of the existing Board members shall constitute a quorum for the transaction of business and the acts of the majority of the Board members present shall be the acts of the Board of Trustees. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

**3.13 Action Without a Meeting.** In the case of any emergency, the Board members shall have the right to take any action in the absence of a meeting which they could take at a regular or special meeting by obtaining the written approval of all the Board members in accordance with U.C.A. 16-6a-813, as may be amended from time to time. Any action so approved shall have the same effect as though taken at a meeting of the Board.

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

**3.15 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, for or without cause, by the affirmative vote of seventy-five percent (75%) of the voting power of the Members of the Association at a special meeting of the Members duly called for such purpose.

**3.16 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 next meeting of Trustees. Any vacancy in the Board of Trustees occurring by reason of removal of a Trustee by the Members may be filled by election 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.

## **ARTICLE IV OFFICERS**

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

**4.2 Election, Tenure and Qualifications.** The officers of the Association shall be chosen by the Board of Trustees annually at the regular annual meeting of 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 regular or 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, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Anyone 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 in or execute any instrument in the capacity of more than one office. The President, Vice President, Secretary and Treasurer shall be and remain Trustees of the Association during the entire term of their respective offices. No other officers need be a Trustee.

**4.3 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.

**4.4 Resignation and Removal.** Any officer may resign at any time by delivering a written resignation to the President of 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, for or without cause.

**4.5 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.

**4.6 The President.** The President shall be the chief executive officer of the Association and shall exercise general supervision over its property and affairs. The President shall preside at meetings of the Board of Trustees and at meetings of the Members. The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things that the Board of Trustees may require of him. The President

shall be invited to attend meetings of each committee, but his attendance at committee meetings shall be optional and within his discretion.

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

**4.8 The Secretary.** The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, or any resolution of the Board of Trustees may require him to keep. The Secretary shall also act in the place and stead of the President in the event of the President's and the Vice President's absence or inability or refusal to act. The Secretary shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same. Furthermore, the Secretary shall perform such other duties as the Board of Trustees may require.

**4.9 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. The Treasurer shall perform such other duties as the Board of Trustees may require.

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

## **ARTICLE V COMMITTEES**

**5.1 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 a committee member may be reimbursed for expenses incurred in performance of his duties as a committee member to the extent that such expenses are approved by the Board of Trustees and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as a committee member.

**5.2 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 and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board of Trustees.



**5.3 Quorum and Manner of Action.** 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 (but in no event less than two members) 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.

**5.4 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 to the President, the Board of Trustees, or the presiding officer of the committee of which he is a member. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board of Trustees may at any time, for or without cause, remove any member of any committee designated by it hereunder.

**5.5 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 two or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board of Trustees.

## **ARTICLE VI INDEMNIFICATION**

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

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

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

**6.3 Determinations.** To the extent that a person has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Sections 6.1 or 6.2 hereof, or in defense of any claim, issue, or matter therein, they shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by them in connection therewith. Any other indemnification under Sections 6.1 or 6.2 hereof shall be made by the Association only upon a determination that indemnification of the person is proper in the circumstances because they have met the applicable standard of conduct set forth respectively in Sections 6.1 or 6.2 hereof. Such determination shall be made either: (i) by the Board of Trustees by a majority vote of disinterested Trustees; (ii) by independent legal counsel in a written opinion; or, (iii) by the Members by the affirmative vote of at least fifty percent (50%) of the voting power of the Members of the Association at any meeting duly called for such purpose.

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

**6.5 Scope of Indemnification.** The indemnification provided for by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Association's Articles of Incorporation, Bylaws, agreements, vote of disinterested Members or Trustees, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. The indemnification authorized by this Article shall apply to all present and future Trustees, officers, employees, and agents of the Association and shall continue as to such persons who cease to be Trustees, officers, employees, or agents of the Association and shall inure to the benefit of the heirs and personal representatives of all such persons and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

**6.6 Insurance.** The Association may purchase and maintain insurance on behalf of any person who was or is a Trustee, officer, employee, or agent or was or is serving at the request of the Association as a trustee, director, officer, employee, or agent of another corporation, entity, or enterprise (whether for profit or not for profit).

**6.7 Payments and Premiums.** All indemnification payments made and all insurance premiums for insurance maintained, pursuant to this Article shall constitute expense of the Association and shall be paid with funds from the Assessments referred to in the Declaration.

## **ARTICLE VII RECORDS AND AUDITS**

The Association shall maintain within the State of Utah all documents, information and other records of the Association in accordance with the Declaration, these Bylaws, and the Utah Revised Nonprofit Corporation Act in the manner prescribed by a resolution adopted by the Board.

### **7.1 General Records.**

a. The Board or Manager, if any, shall keep detailed records of the actions of the Board of Trustees and managing agent or manager; minutes of the meetings of the Board; and minutes of the meeting of the Association.

b. The Board shall maintain a Book of Resolutions containing the rules, regulations, and policies adopted by the Association and Board.

c. The Board shall maintain a list of Owners and a list of all Mortgagees of Units. The list of Owners shall specify whether the Owner is an Owner in "Good Standing" or a "Suspended Owner."

d. The Association shall retain within the State of Utah all records of the Association for not less than the period specified in applicable law, except that:

i. Documents of a permanent nature such as the following, if available, must be maintained as permanent records of the Association:

1. The as-built architectural, structural, engineering, mechanical, electrical and plumbing plans;

2. The original specifications, indicating all subsequent material changes;

3. The plans for underground site service, site grading, drainage and landscaping together with cable television drawings;

4. Any other plans and information relevant to future repair or maintenance of the property; and,

5. A list of the general contractor and the electrical, heating and plumbing subcontractors responsible for construction or installation of common areas.

ii. Proxies and ballots must be retained for one year from the date of determination of the vote.

**7.2 Records of Receipts and Expenditures.** The Board of Trustees or its designee shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Property, itemizing the maintenance and repair expenses of the Common Area or Association property and any other expenses incurred.

**7.3 Assessment Roll.** The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Unit. The account shall designate the Unit number, the name and address of the Owner or Owners, the amount of each Assessment against the Owners, the dates and amounts in which the Assessment comes due, the amounts paid upon the account, and the balance due on the Assessments.

**7.4 Payment of Vouchers.** The Treasurer shall pay all vouchers up to one thousand dollars (\$1,000.00) signed by the President or Manager, if Manager is authorized by resolution of the Board. Any voucher in excess of \$1,000 shall require the signature of both the President and another member of the Board.

**7.5 Financial Reports and Audits.**

a. An annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board to all Owners and to all mortgagees of Units who have requested the same in writing within ninety (90) days after the end of each fiscal year.

b. From time to time the Board, at the expense of the Association, may obtain an audit by a certified public accountant or other financial review of the books and records pertaining to the Association and furnish copies thereof to the Owners and Mortgagees of Units. At any time any Owner or Mortgagee may, at such Owner's or Mortgagees own expense, cause an audit or inspection to be made of the books and records of the Association.

**7.6 Inspection of Records by Owners.**

a. Except as otherwise provided in Section 7.7 below, all records of the Association shall be reasonably available for examination by an Owner and any Mortgagee of a Unit pursuant to Rules adopted by resolution of the Board.

b. The Board shall maintain a copy, suitable for the purposes of duplication, of the following:

i. The Declaration, Bylaws and any amendments in effect or supplements thereto, and Rules and Regulations of the Association.

ii. The most recent financial statement prepared pursuant to Section 7.5 above.

iii. The current operating budget of the Association.

c. The Association, within five (5) business days after receipt of a written request by an Owner, shall furnish the requested information required to be maintained under subsection b. of this Section.

d. The Board, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs incurred to furnish the information.

**7.7 Records Not Subject to Inspection.** Records kept by or on behalf of the Association may be withheld from examination and duplication to the extent the records concern:

a. Personnel matters relating to a specific identified person or a person's medical records.

b. Contracts, leases, and other business transactions that are currently under negotiation to purchase or provide goods or services.

c. Communications with legal counsel that relate to matters specified in subsections a. and b. of this section.

d. Disclosure of information in violation of law.

e. Documents, correspondence or management or Board reports compiled for or on behalf of the Association or the Board by its agents or committees for consideration by the Board in executive session held in accordance with Section 3.8c above.

f. Documents, correspondence or other matters considered by the Board in executive session held in accordance with Section 3.8c above.

g. Files of individual Owners, other than those of a requesting Owner or requesting Mortgagee of an individual Owner, including any individual Owner's file kept by or on behalf of the Association.

**7.8 Notice of Listing, Sale or Mortgage.** Immediately upon the listing of a Unit for sale, the selling Owner or Real Estate Agent shall notify the Association that the Unit is for sale. Immediately upon the sale or Mortgage of any Unit, the Owner or Real Estate Agent shall

promptly inform a Board member or the Manager of the name and address of the purchaser, vendee and/or Mortgagee.

## **ARTICLE VIII ASSESSMENTS**

**8.1 Member Obligation.** Each member is obligated to pay to the Association Assessments specified in the Declaration which are secured by a continuing lien upon the Unit against which the Assessment is made.

**8.2 Delinquent Assessments.** Any Assessments or portions thereof which are not paid when due shall be delinquent and subject to the remedies specified in the Declaration. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Unit, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such Assessment.

**8.3 No Waiver.** No Owner may waive or otherwise escape liability for the Assessment provided for in the Declaration by non-use of the Common Area or abandonment of the Owner's Unit.

## **ARTICLE IX AMENDMENTS**

**9.1 How Proposed.** Amendments to the Bylaws shall be proposed by either a majority of the Board or by Owners holding at least thirty percent (30%) of the voting rights. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon.

**9.2 Adoption.** Amendments may be approved by the Association at a duly constituted meeting or by written ballot in lieu of a meeting conducted pursuant to Section 2.13 above for such purpose. These Bylaws may be amended, altered, or repealed and new Bylaws may be made and adopted by the members upon the affirmative vote or approval of Unit Owners having ownership of not less than sixty-six and two-thirds percent (66-2/3%) of the undivided interest in the Common Areas and Facilities.

**9.3 Execution and Recording.** An amendment shall not be effective until certified by the President and Secretary of the Association as being adopted in accordance with these Bylaws, acknowledged and recorded with the Recorder's Office of Salt Lake County, Utah.

**9.4 Challenge to Validity.** No action to challenge the validity of an adopted amendment may be brought more than one (1) year after the amendment is recorded.

**ARTICLE X  
MISCELLANEOUS**

**10.1 Notices.**

a. Association. All notices to the Association or the Board of Trustees shall be sent care of the Manager or, if there is no Manager, to the principal office of the Association or to such other address as the Board may hereafter designate from time to time.

b. Owners.

i. Except as otherwise provided in the Declaration, these Bylaws or law, all notices to any Owner shall be sent to such address as may have been designated by them, from time to time, in writing to the Board, or if no address has been designated, then to the Owner's Unit.

ii. If a Unit is jointly owned or the Unit has been sold under a land sale contract, notice shall be sent to a single address, of which the secretary has been notified in writing by such parties. If no address has been given to the secretary in writing, then mailing to the Unit shall be sufficient.

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

**10.3 Waiver, Precedent, and Estoppel.** No restriction, condition, obligation, or provision contained in these Bylaws or Rules and Regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association as to any similar matter.

**10.4 Invalidity; Number; Captions.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

**10.5 Fiscal Year.** The fiscal year of the Association shall begin on the first day of October each year and end on the last day of September next following.


**10.6 Conflicts.** In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

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

### CERTIFICATION

I, THE UNDERSIGNED, do hereby certify on this 13 day of April, 2010, that I am the duly elected and acting Secretary of the Ivy Terrace Homeowners Association, Inc., a Utah nonprofit corporation, and that the foregoing Bylaws constitute the new and amended Bylaws of said Corporation, as duly adopted by unanimous written consent of the Board of Directors thereof and by the affirmative vote or approval of Unit Owners having ownership of not less than sixty-six and two-thirds percent (66-2/3%) of the undivided interest in the Common Areas and Facilities.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Corporation this 13 day of April, 2010.

  
\_\_\_\_\_  
Secretary  
PRESIDENT



**EXHIBIT "D"**  
**SAMPLE VIOLATION LETTER**

DATE

Jane Doe  
ADDRESS  
ADDRESS  
ADDRESS

**Re: Notice of Violation - Ivy Terrace Condominiums**  
Unit No. \_\_\_\_\_

Dear Ms. Doe:

We, the Board of Trustees of the Ivy Terrace Homeowners Association, have received a written complaint from another owner regarding the following alleged offensive activities which are in violation of our covenants, restrictions rules and/or policies:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

We have reviewed the complaint and evidence supporting the claim and have concluded that your behavior does, in fact, (or that of your tenants and/or guests) violate the governing provisions of the Association.

The purpose of this letter is to request that the above-described behavior immediately cease and remedied within 48 hours of receipt of this letter or you be fined in the amount of \$ \_\_\_\_\_ for this first violation pursuant to our Schedule of Fines. If the violation is one that has already occurred and stopped (excessive noise, etc.) the fine is hereby implemented immediately. You are welcome to submit a written explanation describing the situation in detail and request an informal hearing with the Board to explain why the policies and rules of the Association do not apply to you. Nevertheless, we require that you cease and desist with the offending behavior even if you dispute the claim.

Failure to follow this request will result in further enforcement action which we desire to avoid.

It is our objective to make our community an enjoyable, safe and comfortable place to live. This is only possible when the rules and guidelines of the community are strictly followed. Your prompt attention to this important matter is appreciated.

Sincerely,

Board of Trustees