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GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
IVORY DEVELOPMENT LLC
978 E WOODOAK LN
SLC UT 84117
BY: EPM, DEPUTY - WI 31 P.

AFTER RECORDING PLEASE RETURN TO:
Ivory Development, LLC
Darin Haskell
978 East Woodoak Lane
Salt Lake City, Utah 84117
(801) 747-7440

NOTE TO RECORDER:
RECORD ONLY AGAINST THE PROPERTY
DESCRIBED IN EXHIBIT "A"

**NEIGHBORHOOD
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
THE TOWNHOMES AT Highbury Commons,
a part of the expandable Highbury Commons at Lake Park planned development**

This Neighborhood Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for The Townhomes at Highbury Commons, a part of the Highbury Commons at Lake Park expandable planned development (the "Declaration") is executed by Ivory Development, LLC, of 978 East Woodoak Lane, Salt Lake City, Utah 84117 (the "Declarant").

RECITALS

- A. This Declaration affects that certain real property located in the City of West Valley in Salt Lake County, Utah described with particularity in Article II below (hereinafter referred to as the "Property").
- B. The Property is an area featuring unique and distinctive terrain;
- C. The Property is subject to and bound by the Master Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Highbury Commons at Lake Park recorded in the official records of the County Recorder of Salt Lake County, Utah on October 6, 2006 as Entry No.9868362 in Book 9362 at Pages 804-846 (the "Master Declaration").
- D. By subjecting the Property to this Declaration and the Master Declaration, it is the desire, intent and purpose of Declarant to create a Neighborhood in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this Declaration and the Master Declaration, and which will increase and preserve the utility, attractiveness, quality and value of the lands and improvements therein.

E. Declarant is the owner of the Property.

F. Declarant has constructed or is in the process of constructing upon the Property a planned residential development which shall include certain Townhouse Lots, Common Area and Facilities, subject to the provisions of the Master Declaration. The construction will be completed in accordance with the plans contained in the Final Plat Map recorded concurrently with the Master Declaration, this Declaration and the Final Neighborhood Plat Map for this Property.

G. Declarant intends to sell to various purchasers the fee title to the individual Townhouse Lots contained in the Property, together with an appurtenant undivided ownership interest in the Common Areas and Facilities, subject to this Declaration and the Master Declaration.

H. Declarant desires, by filing this Declaration and Final Neighborhood Plat Map, to submit the property and all improvements now or hereafter constructed thereon to the provisions and protective covenants set forth herein and the Master Declaration.

I. The Project is to be known as "The Townhomes at Highbury Commons PUD."

J. Since the completion of the development of the Property may be in phases, the completed project will consist of the original phase and all subsequent phases.

COVENANTS, CONDITIONS, AND RESTRICTIONS

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below and the Master Declaration, Declarant hereby makes the following declarations.

I. DEFINITIONS

When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated. Terms defined in the Master Declaration shall have the same meaning as set forth therein unless the context clearly requires otherwise. In the event of any conflict between the definitions set forth in the Master Declaration and the definitions set forth herein, the former shall in all respects govern and control.

1. The term Area of Common Responsibility shall mean and refer to the area for which the Association is responsible.

2. The term Area of Personal Responsibility shall mean and refer to the area for which the Owner is responsible.

3. The term Articles of Incorporation shall mean and refer to the Articles of Incorporation of the Association.

4. The term Assessment shall mean and refer to any amount imposed upon, assessed or charged an Owner.

5. The term Association shall mean and refer to the Neighborhood Association.

6. The term Board of Directors shall mean and refer to the governing board of the Association.

7. The term Building shall mean and refer to any of the structures constructed in the Tract.

8. The term Bylaws shall mean and refer to the Bylaws of the Association.

9. The term Capital Improvement or Addition shall mean and refer to a permanent addition to or the betterment of real property that enhances its capital value and improves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs.

10. The term City shall mean and refer to the City of West Valley in Salt Lake County, Utah.

11. Common Areas shall mean and refer to all real property in the Tract owned in common by the Owners including but not limited to the following items:

(a) The real property and interests in real property submitted hereby, including the entirety of the Tract and all improvements constructed thereon, excluding the individual Townhouse Lots.

(b) All Common Areas and Facilities designated as such in the Final Plat;

(c) All Limited Common Areas designated as such in the Final Plat;

(d) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Owners, such as telephone, electricity, gas, water, cable television, and sewer;

(e) The Project's outdoor grounds including landscaping, open and green space, entry and monument;

(f) All portions of the Tract not specifically included within the individual Townhouse Lots; and

(g) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of the Owners.

Provided, however, utility installations such as telephone, electricity, gas, water, and sewer may be dedicated to the City and, if so, this definition shall not be construed to allow the Association to exclude the City from the ownership and control of the utility systems so dedicated.

12. The term Common Expense shall mean and refer to:

- (a) All sums lawfully assessed against the Owners;
- (b) Expenses of administration of the Association and the maintenance, repair or replacement of the Area of Common Responsibility not covered by the Master Operating Expenses;
- (c) Expenses allocated by the Association among the Owners;
- (d) Expenses agreed upon as common expenses by the Association;
- (e) Expenses declared common expenses by this Declaration; and
- (f) The Association's share of the Master Association's operating expenses.

13. The term Declaration shall mean and refer to this Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for The Townhomes at Highbury Commons.

14. The term Declarant shall mean and include Ivory Development, LLC and any person or persons who might acquire title from it to all or some of the unsold Townhouse Lots. The person acquiring any of such property from the Declarant shall be considered a Declarant with respect to that portion of the property so acquired and shall have the right to develop the property and/or sell such property in accordance with the terms and provisions of this Master Declaration and this Declaration; provided, however, a notice of succession shall be recorded in the Office of the County Recorder signed by both the current Declarant and by its successor in interest as the new Declarant.

15. The term Developmental Rights shall mean and refer to the right granted hereunder to the Declarant, its agents, representatives, employees, successors and assigns, to develop and improve the Tract.

16. The term Dwelling or Dwelling Unit shall mean and refer to a Townhouse Lot, dwelling, home or living unit in the Tract.

17. The term Eligible Guarantor shall mean and refer to a governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with the Declaration.

18. The term Eligible Insurer shall mean and refer to an insurer of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

19. The term Eligible Mortgagee shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

20. The term Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Association or the Board of Directors. A vote which is for any reason suspended is not an "eligible vote".

21. The term Final Plat shall mean and refer to the final recorded plat map for The Townhomes at Highbury Commons.

22. The term Guest shall mean and refer to a family member, guest, invitee, licensee, and any person or occupant of an Owner.

23. The term Improvement shall mean and refer to any physical change or addition to the Property to make it more valuable.

24. The term Individual Charge shall mean and refer to a charge levied against an Owner, Guest or Permittee for all expenses resulting from the act or omission of such Person, excepting the Owner's failure to pay any Assessment.

(a) The act or negligence of any Guest or Permittee shall be deemed to be the act or negligence of the Owner responsible for such Person.

(b) Individual Charges shall include, by way of illustration but not limitation, any expense resulting from the act or omission of any Owner, Guest or Permittee including:

(1) The cost of individual services, lessons, training and so forth requested by such Person during his use of the Swim and Tennis Club;

(2) The cost to repair any damage to any portion of the Tract, Swim and Tennis Club or to repair or replace any Club Furnishings on account of loss or damage caused by such Person; or

(3) The cost to satisfy any expense to any other Owner or the Association due to any intentional or negligent act or omission of such Person, or resulting from the breach by such Person of any provisions of the Project Documents; and

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While Individual Charges are not Assessments, they are secured by a lien in the same manner as Assessments, as set forth below. The Association also shall have all other remedies, both legal and equitable, described in the Project Documents available against any Owner for nonpayment.

25. The term Lender shall mean and refer to a Mortgagee.
26. The term Manager shall mean and refer to the Person managing or helping to manage the Association.
27. The term Map shall mean and refer to the Final Plat.
28. The term Master Assessment shall mean and refer to an assessment charged by the Master Association
29. The term Master Association shall mean and refer to the master association of owners acting as a group in accordance with the Master Declaration.
30. The term Master Declaration shall mean and refer to the Master Declaration of Covenants, Conditions and Restrictions for Highbury Commons at Lake Park.
31. The term Master Operating Expenses shall mean and refer to the common expenses incurred by the Master Association.
32. The term Mortgage shall mean and refer to any mortgage, deed of trust or other security instrument (including the seller's rights under a contract for deed) by which a Lot or any part thereof or interest therein is encumbered. A First Mortgage is a Mortgage having priority as to all other Mortgages encumbering a Lot, or any part thereof or interest therein.
33. The term Mortgagee shall mean and refer to any person or entity named as the mortgagee, beneficiary or holder of the seller's interest (so long as a copy of the contract for deed is given to the Association) under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage. A First Mortgagee shall mean and refer to any person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage. Any and all Mortgagee protections contained in the Declaration shall also protect the Declarant as the holder of a First Mortgage of a Lot, or any interest therein.
34. The term Neighborhood shall mean and refer to any residential area or parcel within Highbury Commons at Lake Park.
35. The term Neighborhood Association shall mean and refer to an association of property owners having jurisdiction, in whole or in part, over a specific Neighborhood concurrent with, but subordinate to, the Master Association.

36. The term Office of the County Recorder or County Recorder shall mean and refer to the Office of the County Recorder of Salt Lake County, Utah.

37. The term Owner shall mean and refer to a Person who is the owner of a fee or an undivided fee interest in a Townhouse Lot, excluding a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

38. The term Period of Declarant's Control shall mean and refer to the period of time during which there is Class B voting.

39. The term Permittee shall mean a tenant, resident occupant, visitor, guest, invitee or family member.

40. The term Person shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

41. The term Plat Map shall mean and refer to the Final Plat.

42. The term Project shall mean and refer to The Townhomes at Highbury Commons, unless the context clearly requires otherwise.

43. The term Project Documents shall mean and refer to the Master Declaration, this Declaration, Bylaws, Rules and Articles.

44. The term Property shall mean and refer to all of the land or real estate, improvements and appurtenances comprising The Townhomes at Highbury Commons submitted to this Declaration.

45. The term Recreational, Oversized, or Commercial Vehicle shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational or commercial transportation device of any kind.

46. The term Repair shall mean and refer to merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

47. The term Resident shall mean and refer to any person living or staying at the Neighborhood.

48. The term Single Family shall mean and refer to one of the following: (a) a single person, (b) a group of natural persons related to each other by blood or legally related to each other. The Townhomes at Highbury Commons Neighborhood Declaration and Bylaws

other by marriage or adoption, and an additional person as a caretaker or as domestic help, or (c) a group of not more than three unrelated persons who maintain a common household to be distinguished from a group occupying a boarding house, club, fraternity or hotel.

49. The term Single Family Residence shall mean and refer to both the architectural style of a Townhouse Lot and the nature of the residential use permitted.

50. The term Size shall mean and refer to the number of cubic feet, or the number of square feet of ground or floor space, within each Townhouse Lot as computed by reference to the Plat Map and rounded off to a whole number. Certain spaces within the Townhouse Lots, such as the attic, basement, or garage space, may be omitted from the calculation or be partially discounted by the use of a ratio if the same basis of calculation is employed for all Townhouse Lots in the Project and if that basis is described in the Project Documents.

51. The term Total Votes of the Association shall mean and refer to the total number of votes appertaining to all Townhouse Lots in the Project and the Declarant's votes.

52. The term Townhouse Lot shall mean and refer to a separate physical part of the Property intended for independent use. Each Lot shall be assigned a separate "parcel" or tax identification number by the appropriate governmental agency.

53. The term Townhouse Lot Number shall mean and refer to the number, letter or combination thereof designating a particular Lot.

54. The term Townhouse shall mean and refer to a residential Unit as shown on the Plat Map, with or without walls or roofs in common with another attached single family dwelling and which shall include fee title to the real property lying directly below said Unit and the air space lying directly above said Unit, and an undivided interest in the use of the appurtenant Common Area and Facilities.

55. The term Tract shall mean and refer to all of the real estate submitted to this Declaration.

56. The term Unit shall mean and refer to a separate physical part of the Property intended for independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a building. Mechanical equipment and appurtenances located within any one Unit, or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Unit; so shall all decorated surfaces of interior walls, floors and ceilings, including but not limited to all paint, wallpaper, wall coverings, windows and window frames, doors and door frames, trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Unit or serving only the Unit, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Unit, which are removable without jeopardizing the integrity, soundness, The Townhomes at Highbury Commons Neighborhood Declaration and Bylaws

safety or usefulness of the remainder of the Building within which the Unit is located shall be deemed to be part of the Unit.

57. The term Use Restrictions shall mean and refer to the rules, regulations and use restrictions described with particularity in Article 8 below and the Membership contract or agreement, as they may be modified, amended, repealed, canceled, limited, withdrawn or expanded from time to time.

SUBMISSION

The Property, described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference, is hereby resubmitted to the Declaration.

The Property is hereby again made subject to and shall be governed by the Master Declaration, this Declaration, and the covenants, conditions and restrictions set forth herein.

The Property is SUBJECT TO the described easements and rights of way.

TOGETHER WITH (a) all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property; and (b) all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the Highbury Commons at Lake Park properties.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Property or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Survey Maps or otherwise existing; an easement for each and every Common Area and Facilities improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Property; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such Common Area and Facilities improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

COVENANTS, CONDITIONS, AND RESTRICTIONS

The foregoing submission is made upon, under and subject to the Master Declaration and the following covenants, conditions, and restrictions. In the event of any conflict, incongruity or

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inconsistency between the provisions of the Master Declaration and the provisions of this Declaration, the former shall in all respect govern and control:

1. **Description of Improvements.** The significant improvements contained in The Townhomes at Highbury Commons will consist of certain residential Townhouse Lots and Common Area and Facilities, including the non-exclusive right to use the picnic areas (covered and uncovered), athletic court, tot lot, and other improvements of a less significant nature. Several floor plans will be available. The number of Townhouse Lots intended for the first phase of construction is 102 although this number may change. The location and configuration of the improvements referred to in the foregoing sentences are depicted on the Plat Map for the Property. The improvements shall be constructed strictly in accordance with the Design Guidelines established by the Declarant.

1.1 **Public Utilities and Drainage Easements.** All Common Area, Limited Common Area and private drives shown on the Final Plat are subject to public utilities and drainage easements for the installation and maintenance of improvements and such easements shall be subject to the right of the City to require the Association to assess its members to repair streets, landscaping, etc., and where needed to repair or replace the public utilities.

1.2 **Guest Parking.** Residents may not use guest or visitor parking spaces for permanent overnight parking. Guest and visitor parking spaces are exclusively for the use of guests, visitors and invitees. Unauthorized motor vehicles and trailers may be towed automatically without further notice or warning required, and at the owner's full risk and expense.

2. **Description and Legal Status of the Property.** The Plat Map shows the Common Area and Facilities as well as the type and location of each Townhouse Lot in the project and its Townhouse Lot Number. All Townhouse Lots shall be capable of being independently owned, encumbered, and conveyed, and shall have separate tax identification or parcel numbers.

3. **Membership in the Neighborhood Association, Classes of Membership and Voting Allocations.** By virtue of his acceptance of a deed or other document of conveyance to a Townhouse Lot, each Owner shall be a member of a Neighborhood Association designated by the Declarant. Membership in the Association is mandatory and may not be partitioned from the ownership of a Townhouse Lot. The Neighborhood Association shall have Class A and Class B Members. The Class B Member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale of Townhouse Lots, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall be entitled to three (3) votes per Townhouse Lot owned, but shall never be less than 51% of total votes. The Class B membership and the Class B Control Period shall terminate, and Class B membership shall convert to Class A membership upon the termination of the Period of Declarant's Control. Class A Members are all Members other than Class B Members. Each Class A Member shall have one (1) vote.

4. **Conveyancing.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Townhouse Lot shall describe the interest or estate involved substantially as follows:

All of [Townhouse Lot No _____] contained within THE TOWNHOMES AT Highbury Commons, Phase [____], a Utah planned residential development, as the same is identified in the Plat Map recorded in Salt Lake County, Utah as Entry No. _____ in Book _____ at Page _____ of the official records of the County Recorder of Salt Lake County, Utah (as said Plat Map may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions, and Restrictions of THE TOWNHOMES AT Highbury Commons, recorded in Salt Lake County, Utah as Entry No. _____ in Book _____ at Page _____ of the official records of the County Recorder of Salt Lake County, Utah (as said Declaration may have heretofore been supplemented), together with a non-exclusive right to use the Common Area and Facilities, subject to provisions hereof and the Master Declaration recorded in Salt Lake County, Utah as Entry No. 9868362 in Book 9362 at Pages 804-846 of the Official Records.

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Townhouse Lot. Neither the membership in the Association, nor percentage of ownership interest in the Common Area and Facilities, nor the right of non-exclusive use of the Common Area and Facilities shall be separated from the Townhouse Lot to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of exclusive use shall automatically accompany the transfer of the Townhouse Lot to which they relate.

5. **Common Expenses and Voting Rights.** Common Expenses shall be charged to, and the voting rights shall be available to, the Owners equally, regardless of the Size or Par Value of their Townhouse Lot, subject only to the rights of the Class B Members set forth herein.

6. **Neighborhood Board of Directors' Rights and Obligations.**

(a) **Neighborhood Board of Directors.** Subject to the rights of the Master Association, the unique business, property and affairs of the Neighborhood Association shall be managed by a Neighborhood Board of Directors composed of three (3) individuals. Until the first regular meeting of the Neighborhood Association is held after the termination of the Declarant's Period of Control, the Declarant alone shall be entitled to select the three (3) members of the Neighborhood Board of Directors. In the event a seat on the Neighborhood Board of Directors which was filled by Declarant becomes vacant, Declarant shall have the right to select a replacement member to sit on the Neighborhood Board of Directors for the balance of the term associated with the vacated seat. In all other cases of vacancy the remaining

Neighborhood Board of Directors members shall elect a replacement as provided in the Neighborhood Bylaws.

(b) **Right and Privilege.** The Neighborhood Board of Directors may exercise any right or privilege given to it expressly by this Declaration, or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

(c) **Obligations.** The Neighborhood Board of Directors shall have the rights and obligations set forth in the Neighborhood Bylaws.

(d) **Management.** Subject to the right of the Master Association, the Neighborhood Board of Directors shall be responsible for the management and control of the physical improvements unique and common to the Neighborhood, and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The Neighborhood Board of Directors shall be responsible for repair or replacement of such and shall have the right to contract for all goods, services, and insurance payments which are made for such repairs or replacement. The cost of such management, operation, maintenance, and repair by the Neighborhood Association shall be a Neighborhood Expense.

(e) **Neighborhood Expenses.** The Neighborhood Board of Directors may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Neighborhood Board of Directors shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Neighborhood Board of Directors or by any person or entity with whom or which it contracts. The Neighborhood Board of Directors may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property; the enforcement of this Declaration, the Neighborhood Bylaws, or any Rules and Regulations. The cost of unique services provided by the Neighborhood Association shall be a Neighborhood Expense.

(f) **Property, Machinery and Equipment.** The Neighborhood Board of Directors may acquire and hold, for the use and benefit of all Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners equally.

(g) **Rules and Regulations.** The Neighborhood Board of Directors may make Rules and Regulations governing the use of the Property.

(h) **Suspension of Rights.** The Neighborhood Board of Directors may suspend an Owner's voting rights for the period during which such Owner fails to comply with the governing documents. Notice of non-compliance will be sent to an Owner at least ten (10) days prior to any meeting at which action may be taken by the Owners.

(i) **Judicial Action.** The Neighborhood Board of Directors may also take judicial action against any Owner to enforce compliance with the Rules and Regulations, with other obligations, or to obtain damages for non-compliance, all to the extent permitted by law.

7. **Neighborhood Assessments.**

(a) **Independent Duty to Pay Neighborhood Assessments.** Each Owner, by the acceptance of a deed therefore, whether or not it be so expressed in the deed, hereby covenants and agrees with each other and with the Neighborhood Association to pay to his share of the Neighborhood Expenses and other fees as provided in the governing documents.

(b) **Declarant Exemption.** The Declarant is not required to pay Assessments on Townhouse Lots owned by him.

(c) **Basis for Annual Neighborhood Assessments.** The total Annual Neighborhood Assessments against all Townhouse Lots shall be based upon advance estimates of cash requirements by the Neighborhood Board of Directors to provide for the management of the Neighborhood Association and the maintenance, repair and replacement of physical improvements unique and common to the Neighborhood.

(d) **Apportionment.** Neighborhood Expenses shall be apportioned among all Townhouse Lots equally.

(e) **Notice of Annual Neighborhood Assessments.** Annual Neighborhood Assessments shall be made on a calendar year basis. The Neighborhood Board of Directors shall give written notice of each Annual Neighborhood Assessment with respect to an Townhouse Lot not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year. The first Annual Neighborhood Assessment shall be for the balance of the calendar year remaining after the date fixed by the Neighborhood Board of Directors. Each Annual Neighborhood Assessment shall be due and payable in monthly installments on the first day of each and every month and no separate notices of such monthly installment shall be required. Each monthly assessment shall bear interest at the rate of eighteen (18) percent per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

(f) **Special Neighborhood Assessments.** In addition to Annual Neighborhood Assessments, the Neighborhood Board of Directors may levy in any assessment year a Special Neighborhood Assessment, payable over such a period as the Neighborhood Board of Directors may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Property or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This paragraph shall not be construed as an independent source of authority for the Neighborhood Board of Directors to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other paragraphs of this Declaration. Any amounts assessed pursuant hereto shall be assessed to the Owners in proportion to their respective undivided interest in The Townhomes at Highbury Commons Neighborhood Declaration and Bylaws

Common Areas. Notice in writing of the amount of such Special Neighborhood Assessments and the time for their payment shall be given promptly to the Owners. Payment shall be due on the dates and in the manner provided in the notice. Any Special Neighborhood Assessment or part thereof shall bear interest at the rate of eighteen (18) percent per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

(g) **Lien Rights.** All sums assessed to any Townhouse Lot pursuant to this section, together with interest thereon as provided herein shall be secured by a lien on such Townhouse Lot in favor of the Neighborhood Association. Such lien shall have such priorities as established by law.

(h) **Notice of Lien.** To establish a lien for any unpaid assessment, the Neighborhood Board of Directors shall prepare a written notice of lien as set forth by statute. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Neighborhood Board of Directors as provided by law. The lien shall also secure, and the Owner shall also be required to pay to the Neighborhood Board of Directors any assessments against the Townhouse Lot which shall become due during the period of foreclosure sale or other legal sale. The Neighborhood Board of Directors may bid on the Townhouse Lot at foreclosure or other sale and may acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

(i) **Release of Lien.** A release of lien shall be executed by the Neighborhood Board of Directors and recorded in the office of the County Recorder of Salt Lake County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

(j) **Rights of Other Lienholders.** An encumbrancer holding a lien on an Townhouse Lot may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment such encumbrancer shall be subrogated to all rights of the Neighborhood Board of Directors with respect to such lien, including priority.

(k) **Personal Obligation of Owner.** The amount of any Annual or Special Neighborhood Assessment against any Townhouse Lot shall be the personal obligation of the Owner thereof to the Neighborhood Association. Suit to recover a judgment of such personal obligation shall be maintainable by the Neighborhood Board of Directors without foreclosing or waiving the lien securing the same. No Owner may void or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of an Townhouse Lot.

(l) **Statement of Assessments Due.** Upon payment of a reasonable fee not to exceed ten dollars (\$10) and upon written request of any Owner, or any Mortgagee, prospective Mortgagee or prospective purchaser of an Townhouse Lot, the Neighborhood Board of Directors shall issue a written statement setting forth the amount of unpaid assessments, if any, with respect to such Townhouse Lot; the amount of the current yearly assessment and the portion thereof which has theretofore been paid; and credit for advanced payments or prepaid items.

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Such statement shall be conclusive upon the Neighborhood Board of Directors in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within ten (10) days, all unpaid assessments which become due prior to the making of such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such a request, both the lien and unpaid assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within ten (10) days, and that purchaser subsequently acquires the Townhouse Lot.

(m) **Liability of Buyers and Sellers.** Subject to the provisions of subparagraph (m), a purchaser of an Townhouse Lot shall be jointly and severally liable with the seller for all unpaid assessments against the Townhouse Lot up to the time of the conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

(n) **Right to Suspend Privilege to Use Recreational Amenities or Voting Rights, and Assignment of Rents.** The Neighborhood Board of Directors may elect to (a) terminate utilities and the right to use amenities for non-payment of Assessments and/or (b) collect rents directly from a renter if the Townhouse Lot Owner who is renting the Townhouse Lot fails to pay any Assessment for a period of more than 60 days after it is due and payable,

(o) **Foreclosures and Past Due Accounts.** Anything to the contrary notwithstanding, any first mortgagee who obtains title to a Townhouse Lot pursuant to the remedies in the mortgage or trust deed or through foreclosure will not be liable for more than six (6) months of the unpaid regularly budgeted assessments, dues or charges accrued before acquisition of the title to the property by the mortgage, although the first mortgagee will also be liable for any reasonable attorneys fees or costs related to the collection of the unpaid dues. All other grantees who obtain title to a Townhouse Lot in a voluntary conveyance or pursuant to the remedies in a mortgage or trust deed or through foreclosure shall be jointly and severally liable with the trustor or mortgagor for all unpaid assessments, late fees, default interest and collection costs, including a reasonable attorneys fee, against the Townhouse Lot for its share of the Neighborhood Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the trustor or mortgagor the amounts paid by the grantee.

8. **Incorporation of Master Declaration.** It is to be understood that this Declaration is Neighborhood to the Master Declaration, which is by reference made a part hereof, and all the terms, conditions, covenants, restrictions, and provisions thereof, unless specifically modified herein, are to apply to the Property and are made a part of this Declaration as though they were expressly rewritten, incorporated, and included herein. The ownership and use of the Property is subject to the Master Declaration as it may be amended from time to time.

9. **Use Restrictions and Nature of the Project.** The Townhouse Lots are subject to the following use restrictions which shall govern both the architecture and the activities within the Project:

(a) **Private Residence.** No Townhouse Lot shall be used except for residential purposes.

(b) **Business Use.** No resident may operate a commercial trade or business in or from his Unit with employees of any kind or with customers who are not residents of the Project, or which create or maintain a nuisance. No commercial trade or business may store any inventory over 250 cubic feet, and it must be contained within the Unit. No commercial trade or business may be conducted in or from a Unit unless (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (b) the business activity conforms to all home occupation ordinances and zoning requirements for the Project; (c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project; and (d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the ARC and Board of Directors; (e) the operator has a city issued business license; and (f) the resident has obtained the prior written consent of the ARC and Board of Directors. Notwithstanding the foregoing, the leasing of a Townhouse Lot shall not be considered a trade or business within the meaning of this subsection.

(c) **Storage and Parking of Vehicles.** The driving, parking, standing, and storing of motor vehicles in, on or about the Project is governed and regulated by the Project Documents, including:

1) **Parking Rules.** The parking rules and regulations adopted by the ARC, as they may be amended from time to time;

2) **Denial of Access.** No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, or any other transportation device of any kind may be parked or stationed in such a manner so as to block access to any driveway or Dwelling or to create an obstacle or potentially dangerous condition.

3) **Repairs.** No Resident shall repair or restore any vehicle of any kind in, on or about any Townhouse Lot, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

4) **Garages.** No garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonably parked in the garage as originally designed and constructed. All garages shall be used primarily for the parking and storage of vehicles.

5) **Street Parking.** Any parking on Beckton Court, Brentford Court, Tower Hill Way, Crews Hill Court, and Hanworth Way is prohibited. Overnight parking on all streets and in the Visitor's parking areas is also prohibited.

6) **Damaged Vehicles.** All motor vehicles parked so as to be visible from the street or another Townhouse Lot must be undamaged (less than \$1,000.00 to repair), in good mechanical condition, registered, and licensed.

7) **Storage of Vehicles.** Except as otherwise expressly permitted, motor vehicles may not be "stored" so as to be visible from the street or another Dwelling. This includes by way of illustration but not limitation unregistered, unlicensed, abandoned, disabled, or damaged (\$1,000+) motor vehicles.

8) **Oversized Vehicles.** Except for purposes of loading or unloading passengers or supplies, for a period of time not to exceed twenty-four (24) hours, no Recreational, Commercial, and Oversized Vehicles may be parked or stored within the Property.

9) **Towing.** Vehicles parked in violation of this Declaration may be immobilized, impounded, or towed by the ARC or its designee without further notice and at the owner's sole risk and expense.

(d) **Garbage and Refuse Disposal.** No Townhouse Lot shall be used as a dumping ground. All trash, garbage, debris, rubbish or other waste shall be kept in a sealed, sanitary bag or container, and stored out of sight except for a twenty-four (24) hour period on pick-up days.

(e) **Aerials, Antennas, and Satellite Systems.** All exterior aerials, antenna and satellite dishes (collectively "antenna") must be positioned so that they are screened from view from the street. No antenna shall be erected, maintained or used in, on or about any Dwelling, outdoors and above ground, whether attached to or on top of any building, structure, Dwelling, or otherwise, within the Project without the prior written consent of the Declarant or ARC, which shall not be unreasonably withheld. If there is a conflict between this subsection and the FCC guidelines, the latter shall in all respects govern and control. In making its decisions, the Declarant and/or ARC shall abide by and be subject to all relevant local, state and federal laws, including but not limited to all FCC guidelines, rules and regulations as they may be amended or supplemented from time to time.

(f) **Animals and Pets.** Large animals as that term is defined by City Ordinance are not allowed. No pets, animals, livestock, or poultry of any kind may be commercially bred at the Project. Up to two (2) domestic pets as that term is defined by City Ordinance per Townhouse Lot are allowed; provided, however, pets must be properly licensed and registered. Pets may not create a nuisance. The following acts may constitute a nuisance: (1) causing damage to the property of anyone other than the pet owner; (2) causing unreasonable fouling of the air by odors; (3) causing unsanitary conditions; (4) running loose throughout the Project and not in a cage or on a leash and under the control of a responsible person; (5) barking, howling, whining, or making other disturbing noises in an excessive, continuous or untimely fashion; (6) molesting or harassing passersby by lunging at them or chasing passing vehicles; (7) attacking or threatening to attack people or other domestic

animals; (8) otherwise acting so as to bother, annoy or disturb the sensibilities of a reasonable person or interfering with the right of residents to the peaceful and quiet enjoyment of their property; or (9) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents.

(h) **Laws.** Nothing shall be done or kept in, on or about any Townhouse Lot or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

(i) **Damage or Waste.** Each Owner shall repair any damage he or any other residents, guests, or invitees of his Townhouse Lot may cause to another Owner, Townhouse Lot, or Dwelling, and promptly restore the property to its original condition.

(j) **Signs.** No signs, billboards or advertising structures or devices of any kind may be built, installed or displayed on the Property or any Townhouse Lot except for a single sign with a maximum size of 2' x 2' for specific purpose of advertising the sale of a Townhouse Lot; provided, however, this restriction does not apply to and is not binding upon the Declarant, who may use whatever signs it deems appropriate to market its Townhouse Lots. "For Rent" or "For Lease" signs in the Common Area, on a Townhouse Lot, or showing from a Townhouse Lot are strictly prohibited.

(k) **Zoning.** All land use and buildings shall be in compliance with all zoning and land use ordinances as well as all regulations of the municipalities and agencies governing the Project land use and buildings.

(l) **Nuisances.** No noxious or offensive activity shall be carried on, in or about the Property, nor shall anything be done or permitted thereon which may be or may become an annoyance, disturbance, bother or nuisance to the neighborhood, or which might interfere with the right of other residents to the quiet and peaceful enjoyment of their property.

(m) **Temporary Structures.** No structure of a temporary nature or character, including but not limited to any trailer, shack, shed, tent, garage, barn or other out-building shall be used on any Townhouse Lot at any time as a residence.

(n) **Chimes and Musical Sound Makers.** Chimes, dream catchers, bells, tubes or other objects hung vertically outside the Townhouse Lot which ring, strike or otherwise produce musical sounds or harmony heard by other residents are prohibited.

10. **Owner-Occupied.** In order to maintain the value of the purchased property and subdivision, a Townhouse Lot must be owner-occupied for a period of at least one (1) year after closing. The term "owner-occupied" shall mean a Townhouse Lot occupied by one of the following: (a) The vested owner (as shown on the records of the Salt Lake County Recorder); (b) The vested owner and/or his spouse, children or siblings; or (c) The shareholder, partner, member, trustor, beneficiary or other legal representative of an institutional owner (provided, such person holds a beneficial interest in such legal entity of at least 50.0%) and/or his spouse, The Townhomes at Highbury Commons Neighborhood Declaration and Bylaws

children or parents.

11. **Leases.** Each Owner agrees, by the acceptance of a deed or other document of conveyance to a Townhouse Lot, that in order to maintain the value of the purchased property and the subdivision, the leasing and renting of Townhouse Lots is subject to the following covenants, conditions and restrictions:

(a) **Rental Rules.** Renting rules and regulations adopted by the Board of Directors, as they may be amended from time to time.

(b) **Rental Moratorium.** No Owner may lease or rent his Townhouse Lot for a period of one (1) year from the date of the initial closing with the home builder.

(c) **Short Term Rentals.** No Owner shall be permitted to lease his Townhouse Lot for short term, transient, hotel, vacation, seasonal or corporate use purposes. For purposes of this section the term "short term" shall be considered to be any rental with an initial term of less than six (6) months. Daily or weekly rentals are expressly prohibited. No Owner may lease individual rooms to separate Persons or less than his entire Townhouse Lot, including by way of illustration but not limitation letting a room to domestic help or a caretaker, without the prior express written consent of the Board of Directors.

(d) **Signage.** "For Rent" or "For Lease" signs are prohibited.

(e) **Approvals.** The Board of Directors must approve in writing all lease and rental agreements as to form. Any lease or rental agreement not approved or in violation of the Project Documents shall be considered "non-conforming" and, as such, voidable by the Board of Directors.

(f) **Rental Agreements.** The Association may also require that Owners use lease forms or addenda, such as the Crime Free Addendum or the Project Addendum, approved by the Association (or include specific terms in their leases); and the ARC may impose a review or administration fee on the lease or transfer of any Townhouse Lot.

(g) **No Other Restrictions.** Other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to his Townhouse Lot.

12. **Transfer Fee.** Each Owner agrees, by the acceptance of a deed or other document of conveyance to a Townhouse Lot, that in order to maintain the value of the purchased property and the subdivision, to pay to the Association a sum equal to five percent (5%) of the gross sales price on the Townhouse Lot as a transfer fee if his Townhouse Lot is sold or if he enters into a lease/option or other similar agreement on the Townhouse Lot during the initial one (1) year period after the date of closing.

13. **View Impairment.** Neither the Declarant nor the ARC guarantees or represents that any view over and across any property, including any Townhouse Lot or Building will be preserved without impairment. Neither the Declarant nor the ARC shall have the obligation to prune or thin trees or other landscaping except as set forth herein. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

14. **Interpretation.** To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions or headings which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders.

15. **Severance.** The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof. If any covenant, condition, restriction, part, term or provision of this Declaration is deemed to be inconsistent, incongruent or in conflict with (the "Inconsistent Provision") any approval guidelines for the financing, insuring or the guaranty of the Property, or any part thereof (the "Required Provision"), then (a) the rights and obligations of the parties shall be construed and enforced as if the Declaration did not contain such Inconsistent Provision, and (b) the Required Provision shall be and is hereby incorporated herein by this reference, anything to the contrary notwithstanding.

16. **Covenants to Run with Land.** This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a Townhouse Lot or in the Project, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or occupant of a Townhouse Lot shall comply with, and all interests in all Townhouse Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Townhouse Lot in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration. The Declarant, Neighborhood Association, Master Association, Neighborhood Board of Directors or an aggrieved Owner may bring an action to enforce the governing documents, for injunctive relief or damages, including the recovery of a reasonable attorney's fee and costs, regardless of whether a lawsuit is filed.

17. **Term.** This Declaration shall continue for a term of forty (40) years from its date of recordation. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years unless and until a majority of all of the Owners determines that this Declaration shall terminate.

18. **Mortgagee Protection.** Nothing herein contained, and no violation of these covenants, conditions and restrictions, shall invalidate or impair the lien of any mortgage or deed of trust, given in good faith and for value.

The Townhomes at Highbury Commons Neighborhood Declaration and Bylaws

19. **Registered Agent.** The initial registered agent of the Neighborhood Association is Christopher P. Gamvroulas. The initial registered office of the Neighborhood Association is at 978 East Woodoak Lane, Salt Lake City, Utah 84121.

20. **Bylaws.** The Neighborhood Association shall be administered according to the Bylaws of the Master Association, which are referred to and incorporated herein by this reference, and where the context requires any references to the Master Association shall refer to the Neighborhood Association and any reference to the Board of Delegates shall refer to the Board of Directors.

21. **Amendment.** This Declaration may be amended as follows:

(a) **By The Owners.** Any amendment to this Declaration shall require the affirmative written vote or consent of at least ninety percent (66%) of the Total Votes of the Association cast either in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting.

(b) **Accomplishment of Amendment.** Any Amendment authorized pursuant to this Section shall be accomplished through the recordation in the Office of the County Recorder of an instrument executed by the Association. In such instrument an officer of the Association shall certify that the vote required by this Section for Amendment has occurred.

(c) **Initial Declarant Right to Amend.** The Declarant alone may amend or terminate this Declaration prior to the closing of a sale of the first Townhouse Lot.

(d) **Unilateral Right to Amend Under Certain Conditions.** Notwithstanding anything contained in this Declaration to the contrary, this Declaration may be amended unilaterally at any time and from time to time by Declarant if such Amendment is (i) necessary to correct typographical errors or inadvertent omissions; (ii) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (iii) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Townhouse Lots subject to this Declaration; provided, however, any such Amendment shall not materially adversely affect the title to any Townhouse Lot unless any such Owner shall consent thereto in writing.

(e) **Declarant's Right to Amend Unilaterally Prior to Termination of Declarant's Period of Control.** Prior to the expiration of the Period of Declarant's Control, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such Amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner.

(f) **To Satisfy Requirements of Lenders.** Anything to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Master Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration or approval of the sale of Townhouse Lots, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Townhouse Lot, or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of an Amendment duly signed by the Declarant, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all Townhouse Lots and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of hereof deletes, diminishes or alters such control in any manner whatsoever in the opinion of Declarant, Declarant shall have the unilateral right to amend this Declaration to restore such control.

(g) **Declarant's Rights.** No provision of this Declaration reserving or granting to Declarant the Developmental Rights shall be amended without the prior express written consent of Declarant, which consent may be withheld, conditioned or delayed for any reason or for no reason at Declarant's sole and exclusive discretion.

(h) **Conflict With Master Declaration.** No provision of the Master Declaration may be amended hereby either directly or indirectly.

22. **Insurance.** Nothing shall be done or kept in, on or about any Townhouse Lot or in the Common Areas which may result in the cancellation of the insurance on the Property or an increase in the rate of the insurance on the Property, over what the Neighborhood Board of Directors, but for such activity, would pay.

23. **Laws.** Nothing shall be done or kept in, on or about any Townhouse Lot or Common Areas, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

24. **Damage or Waste.** No damage to, or waste of, the Common Areas shall be committed by any Owner or resident, or their guests, visitors or invitees. Each Owner and Resident shall indemnify and hold the Neighborhood Board of Directors and the other Owners in the Project harmless against all loss resulting from any such damage or waste caused by that Owner or resident, or their guests, visitors or invitees; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee or any other Owner.

25. **Nuisance.** No Owner shall create or maintain or permit the creation or maintenance of a nuisance.

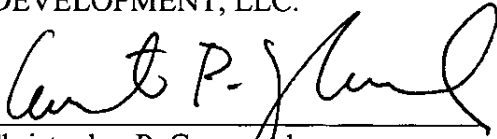
26. **Default.** A default of the Master Declaration shall be considered a material default of this Declaration. A default of this Declaration shall be considered a material default of the Master Declaration.

27. **Conflict.** In the event of any conflict, inconsistency or incongruity between the provisions of this Declaration and the provisions of the Master Declaration, the latter shall in all respects govern and control.

28. **Effective Date.** This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat Map shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

IN WITNESS WHEREOF, the Declarant has hereunto set his hand this November 20, 2007.


DECLARANT:
IVORY DEVELOPMENT, LLC.

By: 
Name: Christopher P. Gamvroulas
Title: President

ACKNOWLEDGMENT

STATE OF UTAH)
 ss:
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this November 20, 2007 by Christopher P. Gamvroulas, the President of IVORY DEVELOPMENT, LLC., a Utah limited liability company, and said Christopher P. Gamvroulas duly acknowledged to me that said IVORY DEVELOPMENT, LLC. executed the same.


NOTARY PUBLIC
Residing at:
My Commission Expires:

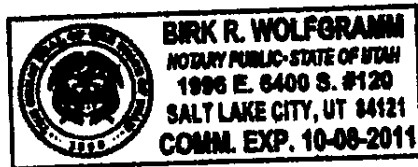


EXHIBIT "A"
LEGAL DESCRIPTION OF THE
THE TOWNHOMES AT Highbury Commons PROPERTY

The Land described in the foregoing document as the The Townhomes at Highbury Commons is located in Salt Lake County, Utah and is described more particularly as follows:

BOUNDARY DESCRIPTION

All of Lot 1 of Highbury Commons at Lake Park, recorded as Entry No 977408J in Book 2006P at Page 185. Said Lot 1 being more particularly described as follows.

Beginning at a point $S00^{\circ}06'35''E$ 1143.98 feet along the Section Line and East 948.30 feet from the Northwest Corner of Section 25, Township 1 South, Range 2 West, Salt Lake Base and Meridian said point being also on the Southerly Right-of-Way Line of Highbury Parkway; and running thence along said Southerly Right-of-Way Line the following four (4) courses: (1) $N89^{\circ}48'42''E$ 168.33 feet, (2) Northeasterly 40.80 feet along the arc of a 112.50 foot radius curve to the left, chord bears $N79^{\circ}25'23''E$ 40.57 feet, (3) Southeasterly 59.88 feet along the arc of a 70.00 foot radius curve to the right, chord bears $S86^{\circ}27'27''E$ 58.08 feet, (4) $S61^{\circ}56'57''E$ 5.34 feet to the Westerly Right-of-Way Line of Daybury Drive; thence along said Westerly Right-of-Way Line the following four (4) courses: (1) Southeasterly 88.32 feet along the arc of a 112.50 foot radius curve to the right, chord bears $S39^{\circ}27'35''E$ 86.07 feet, (2) Southeasterly 70.34 feet along the arc of a 237.50 foot radius curve to the right, chord bears $S08^{\circ}29'06''E$ 70.09 feet, (3) South 1303.25 feet, (4) Southwesterly 31.38 feet along the arc of a 20.00 foot radius curve to the right, chord bears $S44^{\circ}56'36''W$ 28.26 feet to the Northerly Right-of-Way Line of 3100 South Street; thence, along said Northerly Right-of-Way Line, $S89^{\circ}53'12''W$ 340.85 feet to the Easterly Boundary Line of The Shoppes at Lake Park recorded in Book 2004P at Page 76 in the Salt Lake County Records Office; thence along said Easterly Boundary Line the following eight (8) courses: (1) North 130.17 feet, (2) $N36^{\circ}25'57''E$ 63.19 feet (3) Northeasterly 87.06 feet along the arc of a 50.00 foot radius curve to the left, chord bears $N49^{\circ}53'00''E$ 76.47 feet, (4) North 380.02 feet, (5) Northwesterly 31.74 feet along the arc of a 50.00 foot radius curve to the left, chord bears $N18^{\circ}11'16''W$ 31.21 feet, (6) Northwesterly 31.68 feet along the arc of a 50.00 foot radius curve to the right, chord bears $N18^{\circ}13'26''W$ 31.15 feet, (7) $N00^{\circ}04'21''W$ 247.88 feet, (8) $S89^{\circ}09'57''W$ 50.30 feet to the Easterly Boundary Line of The Shoppes at Lake Park, Phase 2 recorded in Book 2007P at Page 229 in the Salt Lake County Records Office; thence, along said Easterly Boundary Line, $N00^{\circ}06'35''W$ 541.10 feet to the Point of Beginning.

EXHIBIT "B"
BYLAWS OF THE
THE TOWNHOMES AT Highbury Commons Association

ARTICLE I
NAME AND LOCATION

Section 1 .01 Name and Location. The name of the Association is the The Townhomes at Highbury Commons Association (the "Association"). The principal office of the corporation shall be located at 978 East Woodoak Lane, Salt Lake City, Utah 84117. Meetings of Members and Board of Directors may be held at such places within the State of Utah, as may be designated by Board of Directors.

ARTICLE II
DEFINITIONS

Section 2.01 Definitions. Except as otherwise provided herein or as may be required by context, all terms defined in Article 1 of the Declaration shall have such defined meanings when used in these Bylaws.

ARTICLE III
MEETINGS OF MEMBERS OF THE ASSOCIATION

Section 3.01 Annual Meeting. The Association shall meet as often as it deems reasonably necessary but not less than annually at a convenient time and place.

Section 3.02 Special Meetings. Special meetings of the Association may be called at any time by the President or by a majority of the Members of the Board of Directors.

Section 3.03 Notice of Meetings. Written notice of each meeting of the Association shall be given to each Owner by or at the direction of the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, no more than thirty (30) and at least ten (10) days before such meeting to said Owner addressed to the Owner's address last appearing on the books of the Association, or supplied by such Owner to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 3.04 Quorum. Twenty-five percent (25%) of the Owners present in person or by proxy shall constitute a quorum for any action except as otherwise expressly provided in Project Documents. If a quorum is not present, the meeting may be adjourned for a time not sooner than 24 hours, nor longer than one week and those Owners present at the reconvened meeting shall constitute a quorum for all purposes.

Section 3.05 Proxies. At all Association meetings, each Owner may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall

be revocable and shall expire, if not previously revoked, eleven (11) months after the date it is given by the Owner. Proxies delivered prior to the commencement of the meeting shall be considered valid.

ARTICLE IV BOARD OF DIRECTORS AND TERM OF OFFICE

Section 4.01 Number. The affairs of the Association shall be managed by a Board of Directors comprised of three (3) natural persons. Each Member must be duly qualified and appointed or elected. An objection to the qualification and appointment or election of a Member of the Board of Directors must be brought within one (1) year of the appointment or election or it is forever barred.

Section 4.02 Replacement. If a Member resigns or is otherwise unable or unwilling to serve, then the remaining Members shall appoint a replacement to complete his term of office.

Section 4.03 Term of Office. Each Member on the Board of Directors shall serve a term of at least one (1) year.

Section 4.04 Compensation. No Member shall receive compensation for any service he may render to the Association as a member of the Board of Directors, although he may be reimbursed for his actual expenses incurred in the performance of his duties and may enter into an independent contract to provide other services. A Member may enter into a separate and independent contract with the Association to provide additional services for a fee.

Section 4.05 Meetings. The Board of Directors shall meet as often as is necessary and appropriate. No Member shall receive compensation for any service he may render to the Association as a member of the Board of Directors, although he may be

Section 4.06 Action Taken Without a Meeting. The Board of Directors shall have the right to take any action in the absence of a meeting which it could take at a meeting by obtaining the written approval of all the Members. Any action so approved shall have the same effect as though taken at a meeting of the Board of Directors.

Section 4.07 Voting. Each Member shall have one (1) vote.

ARTICLE V POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 5.03 Powers. The Association shall have all of the powers of a Utah non-profit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and this Declaration. The Association shall have the power to perform any and all lawful acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association.

Without in any way limiting the generality of the foregoing, the Association may act through its Board of Directors and shall specifically have the powers and duties set out in this Article V, including:

Section 5.03.1 Assessments. The power, authority and right to charge Assessments and to collect payment in accordance with the Declaration.

Section 5.03.2 Association Property. The power, authority and right to own and/or lease property owned by the Neighborhood Association. The duty to maintain and manage the Common Areas and Facilities unique to this Neighborhood (or as requested by the Master Association), and improvements thereon, including:

a. Maintain and repair in an attractive, safe and functional condition the Common Areas and Facilities;

b. Pay all taxes and assessments levied upon the Common Areas and Facilities and all taxes and assessments payable by the Association;

c. Obtain any water, sewer, gas and electric services needed for the Common Areas and Facilities; and

d. Do each and every other thing reasonable and necessary to protect and preserve the Common Areas and Facilities, and to manage the Association.

Section 5.03.3 Rules. The power, authority and right to adopt, amend or repeal reasonable rules and regulations.

Section 5.03.4 Enforcement. The power, authority and right to enforce the governing documents.

Section 5.03.5 Fines and Sanctions. The power, authority and right to charge fines and levy sanctions.

Section 5.03.6 The power, authority and right to keep books and records.

Section 5.03.7 The power, authority and right to enter into contracts.

Section 5.03.8 The power, authority and right to sue or be sued.

Section 5.03.9 Other. The power, authority and right to do each and every other act necessary and appropriate to fulfill its obligations hereunder.

**ARTICLE VI
OFFICERS AND THEIR DUTIES**

Section 6.01 Enumeration of Officers. The officers of the Association shall be a President and Secretary, plus such other officers as the Board of Directors may from time to time by resolution create. The same individual may not concurrently hold the office of President and Secretary. The officers need not be Members of the Board of Directors.

Section 6.02 Election of Officers. The Board of Directors shall elect or appoint officers at the first meeting of the Board of Directors during each calendar year.

Section 6.03 Term. Each officer of the Association shall hold office for one (1) year unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

Section 6.04 Special Appointments. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may from time to time determine.

Section 6.05 Resignation and Removal. Any officer may be removed from office with or without cause by a majority vote of the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.06 Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 6.07 President. The President shall (a) preside at all meetings of the Board of Directors, (b) see that orders and resolutions of the Board of Directors are carried out and (c) sign all contracts.

Section 6.08 Secretary. The Secretary shall (a) record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Association, (b) keep the corporate seal of the Association and affix it on all papers requiring said seal, (c) serve notice of meetings of the Board of Directors and of the Association, (d) keep appropriate current records showing the Members of the Association together with their addresses and (e) perform such other duties as may required by the Board of Directors.

**ARTICLE VII
COMMITTEES**

Section 7.01 Committees. The Board of Directors may appoint such committees as deemed appropriate in carrying out its purpose.

ARTICLE VIII BOOKS AND RECORDS

Section 8.01 Books and Records. The books and records shall be kept with detailed accounts of the receipts and expenditures affecting the Tract, and the administration of the Tract, specifying the maintenance, repair and any other expenses incurred. The books and records, including any invoices, receipts, bills, proposals, documents, financial statements, and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices.

Section 8.02 Signatures. All checks, drafts, contracts, and legally binding agreements must be signed by at least two (2) persons, one of whom must be the president or secretary, and the other the professional property manager.

Section 8.03 Bookkeeping. The accounting and financial statements for Association must be kept and prepared by either the property manager or an independent bookkeeper or accountant, who may not be a member of the Board of Directors or an officer of the Association. A monthly profit and loss statement, balance sheet, and check register shall be sent or delivered designee by the bookkeeper or accountant to each Member and Association or their designee. The accountant or bookkeeper shall prepare and file all tax returns for the Association.

Section 8.04 Audit. A majority vote of either the Members of the Board of Directors or the Owners shall be necessary and sufficient to require either a Compilation Report, Reviewed Statement or Audited Statement of the Association.

ARTICLE IX AMENDMENTS

Section 9.01 Amendment to Bylaws. These Bylaws may be amended unilaterally by the Declarant until the expiration of the Period of Declarant's Control or thereafter by the affirmative vote of a majority of the Members of the Board of Directors.

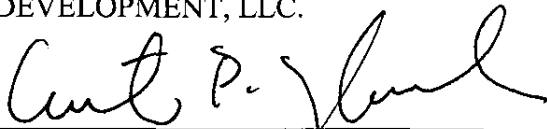
Section 9.02 Conflict Between Articles, Bylaws and Declaration. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall in all respects govern and control.

**ARTICLE X
MISCELLANEOUS**

Section 10.01 Miscellaneous. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of January of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, the Declarant has hereunto set his hand this November 20, 2007.


DECLARANT:
IVORY DEVELOPMENT, LLC.

By: 
Name: Christopher P. Gamvroulas
Title: President

ACKNOWLEDGMENT

STATE OF UTAH)
 ss:
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this November 20, 2007 by Christopher P. Gamvroulas, the President of IVORY DEVELOPMENT, LLC., a Utah limited liability company, and said Christopher P. Gamvroulas duly acknowledged to me that said IVORY DEVELOPMENT, LLC. executed the same.


NOTARY PUBLIC
Residing at:
My Commission Expires:

