Regular Meeting of the

Board of Trustees of the Utah Transit Authority

Wednesday, June 17, 2020, 10:30 a.m.
Remote Electronic Meeting – No Anchor Location – Live-Stream at
https://www.youtube.com/results?search_query=utaride

NOTICE OF SPECIAL MEETING CIRCUMSTANCES DUE TO COVID-19 PANDEMIC:

In keeping with recommendations of Federal, State, and Local authorities to limit public gatherings in order to control the continuing spread of COVID-19, and in accordance with Utah Governor Gary Herbert's Executive Order on March 18, 2020 suspending some requirements of the Utah Open and Public Meetings Act, the UTA Board of Trustees will make the following adjustments to our normal meeting procedures.

- All members of the Board of Trustees and meeting presenters will participate electronically via phone or video conference.
- **Public Comment** will not be taken during the meeting but may be submitted through the means listed below. Comments submitted before 4:00 p.m. on Tuesday, June 16th will be distributed to board members prior to the meeting:
  - online at https://www.rideuta.com/Board-of-Trustees
  - via email at boardoftrustees@rideuta.com
  - by telephone at 801-743-3882 option 5 (801-RideUTA option 5) – specify that your comment is for the board meeting.
- Meeting proceedings may be viewed remotely through YouTube live-streaming. https://www.youtube.com/results?search_query=utaride

1.	**Call to Order & Opening Remarks**	**Chair Carlton Christensen**
2.	**Safety First Minute**	**Sheldon Shaw**
3.	**Consent**	**Chair Carlton Christensen**
	a. Approval of June 3, 2020 Board Meeting Minutes	
4.	**Agency Report**	**Carolyn Gonot**
	a. FTA Funding	
5.	**Resolutions**	
	a. R2020-03-02 (Amended) – Resolution Approving a Revised Interlocal Agreement for the Maintenance of Park and Ride Lots near Big and Little Cottonwood Canyons with Salt Lake County; Utah Department of Transportation; and the City of Cottonwood Heights	Carolyn Gonot
	b. R2020-06-02 – Resolution Authorizing Actions Necessary to Amend Certain Bond Documents, Releasing Certain Debt Reserve Fund Monies and Replacing them with Surety Instruments	Bob Biles, Brian Baker (Zions Public Finance), Blake Wade (Gilmore and Bell)

Website: https://www.rideuta.com/Board-of-Trustees
Live Streaming: https://www.youtube.com/results?search_query=utaride

c.	R2020-06-03 – Resolution Approving the Interlocal Cooperation Agreement with Clearfield City for the Construction of a Pedestrian/Bike Trail	Mary DeLoretto, Hal Johnson
d.	R2020-06-04 – Resolution Approving the Execution of an Interlocal Cooperation Agreement with the Utah Department of Transportation for the Vineyard FrontRunner Station and Northern Utah Double Tracking Project	Mary DeLoretto
6.	**Contracts, Disbursements, and Grants**	
a.	Contract: CAD/AVL Software Development Services (Software Technology Group)	Dan Harmuth
b.	Pre-Procurements	Todd Mills
i.	Federal and State or Local Government Relations Lobbyist Services	
ii.	Joint Bus Procurement with Park City Transit	
c.	Grant Application: Federal Railroad Administration (FRA) Research Transportation Innovation Grant Consolidated Rail Infrastructure and Safety Improvements (CRISI) – Sharp-Tintic Railroad Connection Project	Mary DeLoretto
7.	**Service and Fare Approvals**	
a.	Hive Pass Program Agreement (Salt Lake City Corporation)	Monica Morton
8.	**Discussion Items**	
a.	Sandy East Village 3 Transit Oriented Development Financial Analysis and Proposed Associated Agreements	Paul Drake
9.	**Other Business**	**Chair Carlton Christensen**
a.	Next meeting: June 24, 2020 at 9:00 a.m.	
10.	**Adjourn**	**Chair Carlton Christensen**

Special Accommodation: Information related to this meeting is available in alternate format upon request by contacting calldredge@rideuta.com or (801) 287-3536. Request for accommodations should be made at least two business days in advance of the scheduled meeting.

Website: https://www.rideuta.com/Board-of-Trustees
Live Streaming: https://www.youtube.com/results?search_query=utaride

Returning to work safely

UTA
SAFETY & SECURITY

JUNE 2020

MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
FROM: Jana Ostler, Board Manager

BOARD MEETING DATE: June 17, 2020

SUBJECT:	**Approval of June 3, 2020 Board Meeting Minutes**
AGENDA ITEM TYPE:	**Consent**
RECOMMENDATION:	Approve the minutes of the June 3, 2020 Board of Trustees meeting
BACKGROUND:	A regular meeting of the UTA Board of Trustees was held electronically and broadcast live on YouTube on Wednesday, June 3, 2020 at 9:00 a.m. Minutes from the meeting document the actions of the Board and summarize the discussion that took place in the meeting. A full audio recording of the meeting is available on the Utah Public Notice Website and video feed is available on You Tube at https://www.youtube.com/results?search_query=utaride
ATTACHMENTS:	1) 2020-06-03_BOT_Minutes_unapproved

Minutes of the Meeting
of the
Board of Trustees of the Utah Transit Authority (UTA)
held remotely via phone or video conference
and broadcast live for the public via YouTube
June 3, 2020

Board Members Participating:

Carlton Christensen, Chair
Beth Holbrook
Kent Millington

Also participating were members of UTA staff.

Call to Order and Opening Remarks. Chair Christensen welcomed attendees and called the meeting to order at 9:00 a.m.

Public Comment. It was noted that online comment was solicited prior to the meeting but none was received.

In Memory of Martin "Marty" Beaver. Chair Christensen mentioned the passing of UTA maintenance of way employee Marty Beaver, expressed condolences to his family and coworkers, and stated today's board meeting would be adjourned in Mr. Beaver's memory.

Safety First Minute. Kent Muhlestein, UTA Safety Administrator – Transit System, provided a brief safety message.

Consent Agenda. The consent agenda was comprised of:

a. Approval of May 20, 2020 Board Meeting Minutes

A motion to approve the consent agenda was made by Trustee Holbrook and seconded by Trustee Millington. The motion carried unanimously.

Agency Report.

Federal Transit Administration (FTA) Allocation for Ogden-Weber State University (WSU) Bus Rapid Transit (BRT). Carolyn Gonot, UTA Executive Director, mentioned the award of a $64.5 million grant from the FTA for the Ogden-WSU BRT project.

Protests. Ms. Gonot mentioned UTA has been taking a proactive, flexible approach to service adjustments necessitated by recent protests in Salt Lake City.

Discussion ensued. Chair Christensen suggested a review of UTA's practices related to equitable treatment.

Financial Report – April 2020. Bob Biles, UTA Chief Financial Officer, reviewed the April 2020 financial dashboard; passenger revenues; sales tax revenues; cumulative revenue loss and Coronavirus Aid, Relief, and Economic Security Act (CARES) drawdown; revenue loss and CARES funding estimates; Federal Emergency Management Agency (FEMA) eligible expenses; expense variance by mode; expense variance by chief officer; and expense variance by type.

Discussion ensued. Questions on the timeline for receiving sales tax projections, reserve funds status, and FEMA-eligible expense limits were posed by the board and answered by Mr. Biles.

Resolutions.

R2020-06-02 Resolution Approving the Second Amendment of the Authority's 2020 Budget. Mr. Biles explained the resolution, which approves adjustments to the 2020 operating and capital budgets as follows:

- Operating budget

	2020 Budget after Budget Amendment #1	Operating Budget Changes	2020 Budget after Budget Amendment #2
Other Revenues	$3,640,000	$250,000	$3,890,000
Total Revenues	492,354,000	250,000	492,604,000
Paratransit Service	24,637,000	250,000	24,887,000
Operations Support	50,331,000	22,000	50,353,000

Contingency	1,660,000	(660,000)	1,000,000
Transfer to Capital	18,427,000	638,000	19,065,000
Total Expense	$492,354,000	$250,000	$492,604,000

- Capital budget

	2020 Budget after Budget Amendment #1	Proposed Amendment #2	2020 Budget after Proposed Budget Amendment #2
Depot District	$40,937,000	$(15,937,000)	$25,000,000
Ogden/Weber BRT	28,197,000	(12,947,000)	15,250,000
Airport Station Relocation	13,000,000	(2,000,000)	11,000,000
Provo-Orem TRIP		5,211,000	5,211,000
State of Good Repair	59,898,000	15,069,500	74,967,500
Other Capital Projects	53,062,000	38,401,900	91,463,900
Contingency	940,000	28,000	968,000
Totals	**$196,034,000**	**$27,826,400**	**$223,860,400**

A motion to approve R2020-06-01 was made by Trustee Millington and seconded by Trustee Holbrook. The motion carried unanimously, with aye votes from Trustee Millington, Trustee Holbrook, and Chair Christensen.

Service and Fare Approvals.

ECO Trip Rewards Agreement (Salt Lake City Corporation). Monica Morton, UTA Fares Director, summarized the contract for the provision of transit passes to Salt Lake City employees. Salt Lake City will be invoiced monthly based on the number of trips taken, the one-way base fares, and any fuel surcharge, if applicable. The city current qualifies for a 5% discount based on the number of trips taken (~68,000/year) as part of UTA's trip rewards program. Discussion ensued. A question on the contract pricing model was posed by the board and answered by Ms. Morton.

A motion to approve the agreement was made by Trustee Holbrook and seconded by Trustee Millington. The motion carried unanimously.

Discussion Items.

Enterprise Risk Management Plan. Dave Pitcher, UTA Claims & Insurance Manager, was joined by Bill Dysktra and Mark Maraccini with Crowe, LLP. Staff delivered a presentation that included UTA's enterprise risk management background, a summary of the reporting on previous project phases, reporting on the current project phases, and next steps. Ms. Gonot mentioned plans to establish an enterprise risk management policy and form a risk management committee.

Discussion ensued. Questions on the timeframe for hiring a risk and compliance manager, organizational structure needed to support a risk management program, and risk management prioritization strategies were posed by the board and answered by staff.

Central Wasatch Commission (CWC). Laura Hanson, UTA Director of Planning, was joined by Ralph Becker, Executive Director of the Central Wasatch Commission; Chris Robinson, Chair of the Central Wasatch Commission; and Blake Perez, Deputy Executive Director of the Central Wasatch Commission. Mr. Perez spoke about the CWC's current involvement in a public process to solicit feedback on the Central Wasatch mountain transportation initiative. He said the CWC has recently assembled a technical working group and will be hosting a summit in the fall with the objective of identifying a consensus on a preferred mountain transportation system.

Mr. Becker reiterated the need for consensus. He then went on to explain that the CWC was formed and operates through an interlocal agreement (ILA). Brighton City will be joining the CWC as a member, which requires an amendment to the ILA. As part of the amendment, the CWC would also like to include the option to grant ex officio status to up to four non-elected entities, including UTA.

Discussion ensued. Questions on the how recommendations from the public process will be implemented and the progress of the CWC's work were posed by the board and answered by representatives of the CWC.

Other Business.

Next Meeting. The next meeting of the board will be on Wednesday, June 17, 2020 at 10:30 a.m.

Adjournment. The meeting was adjourned by motion in memory of Martin "Marty" Beaver at 10:33 a.m.

Transcribed by Cathie Griffiths
Executive Assistant to the Board Chair
Utah Transit Authority
cgriffiths@rideuta.com
801.237.1945

This document is not intended to serve as a full transcript as additional discussion may have taken place; please refer to the meeting materials, audio, or video located at https://www.utah.gov/pmn/sitemap/notice/608401.html for entire content.

This document along with the digital recording constitute the official minutes of this meeting.

MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
FROM: Carolyn Gonot, Executive Director
PRESENTER(S): Carolyn Gonot, Executive Director

BOARD MEETING DATE: June 17, 2020

SUBJECT:	**Agency Report**
AGENDA ITEM TYPE:	**Report**
RECOMMENDATION:	Informational report for discussion
DISCUSSION:	Carolyn Gonot, UTA Executive Director will report on recent activities of the agency and other items of interest. - FTA Funding

MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
THROUGH: Carolyn Gonot, Executive Director
FROM: Eddy Cumins, Chief Operating Officer
PRESENTER(S): Carolyn Gonot, Executive Director

BOARD MEETING DATE: June 17, 2020

SUBJECT:	**Resolution R2020-03-02 (Amended) Approving the Revised Interlocal Cooperation Agreement for the Maintenance of Park and Ride Lots Near Big and Little Cottonwood Canyons with Salt Lake County; the Utah Department of Transportation; and City of Cottonwood Heights**
AGENDA ITEM TYPE:	**Resolution**
RECOMMENDATION:	Adopt R2020-03-02 Amended to authorize execution of the Interlocal Cooperation Agreement with Salt Lake County; Utah Department of Transportation; and City of Cottonwood Heights. This interlocal agreement will ensure continued maintenance of park and ride lots located at the mouth of Big and Little Cottonwood Canyons.
BACKGROUND:	UTA has had a long standing relationship with the above mentioned partners to maintain the park and ride lots at the mouth of Big and Little Cottonwood Canyons. The proposed interlocal agreement will ensure continued maintenance and upkeep of the park and ride lots with emphasis on safety, improved canyon transportation and aesthetic quality of the area. These park and ride lots are critical to the continued success of the ski bus service UTA provides to the Cottonwood Canyons. Salt Lake County will concurrently enter into a separate agreement with Solitude Mountain Ski Area, LLC; Boyne USA, Inc., dba Brighton Ski Resort; Snowbird Resort, LLC; and Alta Ski Lifts Company for the same purpose of continuing to maintain park and ride lots.
DISCUSSION:	UTA Staff is requesting approval of this resolution in support of the interlocal agreement for the maintenance of the park and ride lots at the mouth of Big and Little Cottonwood Canyons. UTA was originally at the Board in March for approval of a resolution for this agreement. However, the agreement was modified after approval to exclude Solitude Mountain Ski Area, LLC; Boyne USA, Inc., dba Brighton Ski Resort; Snowbird Resort, LLC; and Alta Ski Lifts Company. Salt Lake County will have a separate agreement with the above listed resorts. This is a two-year agreement with three one-year options. Under the terms of this agreement, all identified partners will contribute financially to Salt Lake County. Salt

	Lake County will be responsible for the majority of the required maintenance identified in Attachment B of the agreement. UTA's financial commitment will be $22,000 per year for a total five-year amount of $110,000. In addition to the annual payment, UTA will continue to have bus platform maintenance and snow removal responsibility.	
CONTRACT SUMMARY:	Contractor Name: Salt Lake County	
	Contract Number: 20-P00005	Existing Contract Value: N/A
	Base Contract Effective Dates: January 1, 2020 to December 31, 2024	Extended Contract Dates: N/A
	Amendment Amount: N/A	New/Total Amount Contract Value: $110,000
	Procurement Method: N/A	Funding Sources: Local
ALTERNATIVES:	Decline participation in the interlocal agreement and potentially lose ability to serve the park and ride lots with ski bus service	
FISCAL IMPACT:	The annual agreement amount is $22,000 per year for a five year total of $110,000.	
ATTACHMENTS:	1) Resolution R2020-03-02 Amended, including Interlocal Cooperation Agreement (UTA Contract #20-P00005)	

RESOLUTION OF THE BOARD OF TRUSTEES OF THE UTAH TRANSIT AUTHORITY APPROVING THE REVISED INTERLOCAL COOPERATION AGREEMENT FOR THE MAINTENANCE OF PARK AND RIDE LOTS NEAR BIG AND LITTLE COTTONWOOD CANYONS WITH SALT LAKE COUNTY; THE UTAH DEPARTMENT OF TRANSPORTATION; AND THE CITY OF COTTONWOOD HEIGHTS

R2020-03-02 Amended June 17, 2020

WHEREAS, Utah Transit Authority (the "Authority") is a large public transit district organized under the laws of the State of Utah and was created to transact and exercise all of the powers provided for in the Utah Limited Purpose Local Government Entities – Local Districts Act and the Utah Public Transit District Act; and

WHEREAS, Salt Lake County ("County"), the Utah Department of Transportation ("UDOT"), City of Cottonwood ("Cottonwood Heights"), and the Authority are "public agencies" as defined by the Utah Interlocal Cooperation Act, UTAH CODE §§ 11-13- 101 *et seq*. (the "Cooperation Act"), and, as such, are authorized by the Cooperation Act to each enter into an interlocal cooperation agreement to act jointly and cooperatively on the basis of mutual advantage; and

WHEREAS, the Authority, UDOT, Cottonwood Heights and the County desire to enter into an Interlocal Cooperation agreement with each other for maintenance of the Park & Ride Lots at the mouths of Big Cottonwood Canyon and Little Cottonwood Canyon; and

WHEREAS the term of the Agreement is for two (2) years, with three (3) additional one (1) year options, which will automatically renew absent an objection by one of the Parties; and

WHEREAS, the Agreement establishes a set dollar amount for each of the Parties to contribute to a maintenance fund managed by the County for the maintenance of the Park and Ride Lots; and

WHEREAS, the Agreement fixes UTA's monetary obligations at $22,000 per year, for a total of $110,000, if the Agreement runs the full five (5) year period.

WHEREAS, the Board previously approved an Agreement with the County, UDOT, and Cotton Wood Heights, as well as additional private parties in Resolution R2020-03-02 on March 25, 2020; and

WHEREAS, the County, UDOT, Cottonwood Heights, and the Authority wish to amend the agreement, removing the private parties from it. NOW, THEREFORE, BE IT RESOLVED by the Board of the Authority:

1. That the Board hereby approves the revised Interlocal Cooperation Agreement with

Salt Lake County, Utah Department of Transportation, and the City of Cottonwood Heights in substantially the same form as the Agreement attached as Exhibit A.

2. That the Board authorizes the Executive Director and her designee(s) to execute the Interlocal Cooperation Agreement in substantially the same form as the Agreement attached as Exhibit A.

3. That the Resolution hereby rescinds and replaces R2020-03-02, approved by the Board on March 25, 2020.

4. That the Board hereby ratifies any and all actions previously taken by the Authority's management, staff, and counsel in preparing the Interlocal Cooperation Agreement attached as Exhibit A.

5. That the corporate seal be attached hereto.

Approved and adopted this 17th day of June 2020.

_____
Carlton Christensen, Chair
Board of Trustees

ATTEST:

_____
Robert K. Biles, Secretary/Treasurer

(Corporate Seal)

Approved As To Form:

_____
Legal Counsel

Exhibit A

(Interlocal Cooperation Agreement)

INTERLOCAL AGREEMENT
BETWEEN
SALT LAKE COUNTY
AND
UTAH DEPARTMENT OF TRANSPORTATION; UTAH TRANSIT AUTHORITY; CITY OF COTTONWOOD HEIGHTS
FOR PARK AND RIDE LOT MAINTENANCE

THIS AGREEMENT (the "Agreement") is made and entered into by and between Salt Lake County, on behalf of its Department of Public Works ("County); and Utah Department Of Transportation ("UDOT"); Utah Transit Authority ("UTA"); and the City of Cottonwood Heights ("Cottonwood Heights). Collectively, these entities are sometimes referred to in this Agreement as the "Parties."

RECITALS

WHEREAS, the Parties to this agreement previously entered into various agreements concerning the design, construction, and maintenance of park and ride facilities located at 3815 E. Big Cottonwood Canyon Rd., Cottonwood Heights, UT 84121; 8101 South 3500 East, Cottonwood Heights, UT 84121; and 4385 E Little Cottonwood Cyn Rd., Sandy, UT 84092 (collectively referred to as "Park and Ride Lots"), and

WHEREAS, the continued maintenance of said Park and Ride Lots will promote public safety, improve canyon transportation systems, and enhance the aesthetic quality of the area; and

WHEREAS, the parties to this agreement desire to apportion among themselves the costs and responsibilities for the maintenance of said Park and Ride Lots and deem it expedient and proper to enter into a written agreement whereby their respective responsibilities are particularly set forth;

WHEREAS, County will concurrently enter into a separate Agreement with) Solitude Mountain Ski Area, LLC ("Solitude"); Boyne USA, Inc, dba Brighton Ski Resort ("Brighton");

Snowbird Resort, LLC ("Snowbird"); and Alta Ski Lifts Company ("Alta") for the same purpose of continuing to maintain the Park and Ride Lots; and

NOW, THEREFORE**,** in consideration of the mutual covenants and promises of the Parties, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1.1 PRIOR AGREEMENTS. All prior agreements between the Parties named above with respect to the designated Park and Ride Lots are hereby terminated and replaced by this Interlocal Agreement and a concurrent agreement to be executed between County, Solitude, Brighton, Snowbird, and Alta, attached as Attachment "A." In the event that the concurrent agreement is not fully executed or is terminates for any reason, this Interlocal Agreement shall be deemed to have terminated and any funds held by County thereunder shall be returned to the Parties in accordance with the terms of this Interlocal Agreement.

2.1 SCOPE OF SERVICES. Upon execution of this Interlocal Agreement, County shall, through its Department of Public Works, furnish services as defined in Attachment "B," which is incorporated by reference and made a part of this Agreement.

2.2 County shall perform the Services in a professional, reasonable and responsive manner in compliance with all applicable laws, ordinances and regulations (including but not limited to all applicable environmental and safety regulations) and consistent with the Interlocal Agreement, and such other applicable requirements and standards of performance.

2.3 County shall only be responsible to provide services for which funding is available. In the event that the cost of providing all or some of the services in Attachment B exceed the funding available, County shall not be required to provide those services until sufficient funding has been secured. County shall have sole discretion in determining which

services shall be provided in the event of insufficient funds are available, with safety related services having priority.

2.4 UDOT shall provide snow removal services at the Little Cottonwood Canyon Lot (4385 E Little Cottonwood Cyn Rd., Sandy, UT 84092). UDOT shall receive an annual refund equal to their actual costs for snow removal. UDOT shall submit an invoice for their snow removal costs for no later than May 1 of each year each month such costs are incurred, which shall be paid by County within 30 days of receipt. UDOT's annual refund for snow removal services shall not exceed $8,000.00.

2.5 County shall account for costs for work performed under this Interlocal Agreement and provide accounting reports to any Party upon request.

3.1 CONSIDERATION. The Parties will pay County for the services rendered under this Interlocal Agreement according to the payment schedule attached as Attachment "C," which is incorporated by reference and made a part of this Interlocal Agreement, in annual installments, with payments due on March 31 of each year the Agreement is in effect.

3.2 County shall place all funds collected under this Interlocal Agreement in an interest bearing account. All funds deposited in this account and the accrued interest shall be dedicated to providing services under this Agreement.

3.3 Upon termination of this Interlocal Agreement, the balance of the funds remaining in the account shall be divided on a pro rata basis between the Parties the time the Agreement terminates.

4.1 TERM. This Interlocal Agreement shall come into effect on January 1, 2020. The Agreement will remain in effect for two years. It shall then automatically renew for no more

than three (3) additional one-year terms unless a Party gives prior written notice of its intent to withdraw from the Agreement as required in Section 5.1.

4.2 Any Party may request a meeting to review Attachments B and C and propose any changes thereto. This request must be made in writing and specify a date and place for the Parties to meet, as well as state the specific issues to be addressed at the meeting. The written notice shall give at least 30 days advance notice to all Parties, including those parties to the concurrent agreement in Attachment A. The Parties shall meet no later than six (6) months prior to the end of the last term of this Agreement, or within two (2) months of written notice of any Party's intent to withdraw from the Agreement.

5.1 TERMINATION. Any Party to this Interlocal Agreement may terminate their participation by providing all other Parties with written notice of their intent to terminate no less than six months prior to the end of the current term of the Agreement. The effective date for withdraw shall be the end of the next full term of the Agreement.

6.1 LIABILITY AND INDEMNIFICATION. County, UDOT, UTA, and Cottonwood Heights are governmental entities under the Utah Governmental Immunity Act. Consistent with the terms of the Act, and as provided herein, it is mutually agreed that each is responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officers or employees. None of the aforementioned parties waives any defenses otherwise available under the Act nor does any party waive any limits of liability currently provided by the Act.

6.2 The Parties agree, subject to the Utah Governmental Immunities Act, to indemnify each other and hold each other harmless from any damages or claims for damages occurring to persons or property as a result of the negligence or fault of their own officers, employees or agents involved in the matter pertaining to this agreement.

7.1 ADMINISTRATION. No separate entity is created by this Agreement; however, to the extent that any administration of this Agreement becomes necessary, then each party shall appoint a designee to a joint board for such purpose.

8.1 INTERLOCAL COOPERATION ACT. The parties acknowledge that this Agreement is subject to the provisions and procedures contained in the Interlocal Cooperation Act and they agree to process, approve, manage and archive this Agreement in accordance with the provisions of that Act.

9.1 ENTIRE AGREEMENT AND AMENDMENT. This Agreement constitutes the entire agreement between the parties, and no other promises or understandings, express or implied, shall be binding upon the parties. No amendment to this Agreement shall be effective unless made in writing and signed by the parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the _____ day of _____, 2020.

SALT LAKE COUNTY

By:_____
Mayor or Designee

Administrative Approvals

By:_____
Scott Baird, Department Director

By: _____
Kevyn Smeltzer, Division Director

UTAH DEPARTMENT OF TRANSPORTATION

By:_____

Title:_____

AATF:_____

UTAH TRANSIT AUTHORITY

By:_____

Title:_____

AATF:_____

AATF: Ryan Lambert Digitally signed by Ryan Lambert Date: 2020.05.27 10:20:54 -06'00'

CITY OF COTTONWOOD HIEGHTS

By: _____

Title: _____

AATF: _____

Attachment A
Concurrent Agreement
between
Salt Lake County, Alta, Brighton, Snowbird, and Solitude

AGREEMENT
BETWEEN
SALT LAKE COUNTY
AND
SOLITUDE MOUNTAIN SKI AREA, LLC; BOYNE USA, INC, DBA BRIGHTON SKI RESORT; SNOWBIRD RESORT, LLC; AND ALTA SKI LIFTS COMPANY
FOR PARK AND RIDE LOT MAINTENANCE

THIS AGREEMENT (the "Agreement") is made and entered into by and between Salt Lake County, on behalf of its Department of Public Works ("County); Solitude Mountain Ski Area, LLC ("Solitude"); Boyne USA, Inc, dba Brighton Ski Resort ("Brighton"); Snowbird Resort, LLC ("Snowbird"); and Alta Ski Lifts Company ("Alta"). Collectively, these entities are sometimes referred to in this Agreement as the "Parties."

RECITALS

WHEREAS, the Parties to this agreement previously entered into various agreements concerning the design, construction, and maintenance of park and ride facilities located at 3815 E. Big Cottonwood Canyon Rd., Cottonwood Heights, UT 84121; 8101 South 3500 East, Cottonwood Heights, UT 84121; and 4385 E Little Cottonwood Cyn Rd., Sandy, UT 84092 (collectively the "Park and Ride Lots"), and

WHEREAS, the continued maintenance of the Park and Ride Lots will promote public safety, improve canyon transportation systems, and enhance the aesthetic quality of the area; and

WHEREAS, County will concurrently enter into a separate Interlocal Agreement with and Utah Department of Transportation ("UDOT"); Utah Transit Authority ("UTA"); City of Cottonwood Heights ("Cottonwood Heights") for the same purpose of continuing to maintain the Park and Ride Lots; and

WHEREAS, Solitude, Brighton, Snowbird, and Alta as major beneficiaries of the Park and Ride Lots desire to provide financial assistance for the maintenance of the Park and Ride Lots; and

WHEREAS, the parties to this agreement desire to apportion among themselves the costs and responsibilities for the maintenance of said Park and Ride Lots and deem it expedient and proper to enter into a written agreement whereby their respective responsibilities are particularly set forth;

NOW, THEREFORE**,** in consideration of the mutual covenants and promises of the Parties, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1.1 PRIOR AGREEMENTS. All prior agreements between the Parties named above with respect to the designated Park and Ride Lots are hereby terminated and replaced by this Agreement and a concurrent Interlocal Agreement to be executed between County, UDOT, UTA, and Cottonwood Heights, attached as Attachment "A." In the event that the concurrent Interlocal Agreement is not fully executed or is terminates for any reason, this Agreement shall be deemed to have terminated and any funds held by County thereunder shall be returned to the Parties in accordance with the terms of this Agreement.

2.1 SCOPE OF SERVICES. Upon execution of this Agreement, County shall, through its Department of Public Works, furnish services as defined in Attachment "B," which is incorporated by reference and made a part of this Agreement.

2.2 County shall perform the Services in a professional, reasonable and

responsive manner in compliance with all applicable laws, ordinances and regulations (including but not limited to all applicable environmental and safety regulations) and consistent with the Agreement, and such other applicable requirements and standards of performance.

2.3 County shall only be responsible to provide services for which funding is available. In the event that the cost of providing all or some of the services in Attachment B exceed the funding available, County shall not be required to provide those services until sufficient funding has been secured. County shall have sole discretion in determining which services shall be provided in the event of insufficient funds are available, with safety related services having priority.

2.5 County shall account for costs for work performed under this Agreement and provide accounting reports to any Party upon request.

3.1 CONSIDERATION. The Parties will pay County for the services rendered under this Agreement according to the payment schedule attached as Attachment "C," which is incorporated by reference and made a part of this Agreement, in annual installments, with payments due on March 31 of each year the Agreement is in effect.

3.2 County shall place all funds collected under this Agreement in an interest bearing account. All funds deposited in this account and the accrued interest shall be dedicated to providing services under this Agreement.

3.3 Upon termination of this Agreement, the balance of the funds remaining in the account shall be divided on a pro rata basis between the Parties to this Agreement and the parties to the concurrently enacted Interlocal Agreement at the time either this Agreement or the Interlocal Agreement terminates.

4.1 TERM. This Agreement shall come into effect on January 1, 2020. The Agreement will remain in effect for two years. The Agreement shall then automatically renew for no more than three (3) additional one-year terms unless a Party gives prior written notice of its intent to withdraw from this Agreement or the concurrent Interlocal Agreement as required in Section 5.1.

4.2 Any Party may request a meeting to review Attachments B and C and propose any changes thereto. This request must be made in writing and specify a date and place for the Parties to meet, as well as state the specific issues to be addressed at the meeting. The written notice shall give at least 30 days advance notice to Parties to this Agreement as well as the concurrent Interlocal Agreement. The Parties shall meet no later than six (6) months prior to the end of the last term of this Agreement, or within two (2) months of written notice of any Party's intent to withdraw from the Agreement.

5.1 TERMINATION. Any Party to this Agreement may terminate their participation by providing all other Parties with written notice of their intent to terminate no less than six months prior to the end of the current term of the Agreement. The effective date for withdraw shall be the end of the next full term of the Agreement.

6.1 LIABILITY AND INDEMNIFICATION. County is an governmental entity under the Utah Governmental Immunity Act. Consistent with the terms of the Act, and as provided herein, County is responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officers or employees. The County does not waives any defenses otherwise available under the Act nor does it waive any limits of liability provided by the Act.

6.2 The Parties agree to indemnify each other and hold each other harmless, subject to section 6.1, from any damages or claims for damages occurring to persons or property as a result

of the negligence or fault of their own officers, employees or agents involved in the matter pertaining to this agreement.

7.1 ENTIRE AGREEMENT AND AMENDMENT. This Agreement constitutes the entire agreement between the parties, and no other promises or understandings, express or implied, shall be binding upon the parties. No amendment to this Agreement shall be effective unless made in writing and signed by the parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the _____ day of _____, 2020.

SALT LAKE COUNTY

By:_____
Mayor or Designee

Administrative Approvals

By:_____
Scott Baird, Department Director

By: _____
Kevyn Smeltzer, Division Director

AATF:_____

SOLITUDE MOUNTAIN SKI AREA LLC

By:_____

Title:_____

BOYNE USA, INC

By:_____

Title:_____

SNOWBIRD RESORT LLC

By:_____

Title:_____

ALTA SKI LIFTS COMPANY

By:_____

Title:_____

Attachment A
Concurrent Interlocal Agreement

Attachment B
Scope of Work

ATTACHMENT B
Salt Lake County Public Works - Operations Division
Available Services for Park and Ride Lots

Service Item	Comments
Concrete Maintenance	Includes ramps, curbs, gutters and sidewalks
General Maintenance	Graffiti Removal
General Maintenance	Site Cleanup
Landscaping	
Pavement Maintenance	Includes pot hole repairs, crack sealing, slurry seals, etc.
Pavement Maintenance	Milling and overlays as needed.
Pavement Maintenance	Street sweeping.
Pavement Management	Inspections and tracking as needed.
Pavement Marking	Striping, stalls, logos, etc.
Restroom Maintenance	
Signs	Fabrication and installation.
Snow Removal	Snow plowing
Storm Drain Maintenance	Includes maintenance of storm water inlets and piping.
Street Light Maintenance	
Additional Services not performed by Salt Lake County Public Works	
Trash Pickup	By others - WFWRD
Law Enforcement	By others - UPD/Cott. Hts.
UTA Platform & Shelter	By others - UTA

NOTES:

1. Services are billed on a time and materials basis and may vary depending upon location, quantity of work, fuel costs, material costs, etc.

2. Actual costs include mobilization and travel.

3. Specific work estimates are available as needed.

December 2019

Attachment C
Payment Schedule

ATTACHMENT C

Contributions by park-and-ride lot

	LCC	BCC	Hillsborough	TOTAL
Salt Lake County	$ 45,000	$ 20,833	$ 11,667	$ 77,500
Cottonwood Heights	$ -	$ 20,833	$ 11,667	$ 32,500
UDOT	$ 45,000	$ 41,667	$ -	$ 86,667
UTA	$ 45,000	$ 41,667	$ 23,333	$ 110,000
Solitude	$ -	$ -	$ -	$ 50,000
Brighton	$ -	$ -	$ -	$ 50,000
Snowbird	$ -	$ -	$ -	$ 50,000
Alta	$ -	$ -	$ -	$ 50,000
	$ -			
TOTALS	$ 135,000	$ 125,000	$ 46,667	$ 506,667

Contributions by year

	2020	2021	2022	2023	2024	TOTAL
Salt Lake County	$ 15,500	$ 15,500	$ 15,500	$ 15,500	$ 15,500	$ 77,500
Cottonwood Heights	$ 6,500	$ 6,500	$ 6,500	$ 6,500	$ 6,500	$ 32,500
UDOT	$ 17,333	$ 17,333	$ 17,333	$ 17,333	$ 17,333	$ 86,667
UTA	$ 22,000	$ 22,000	$ 22,000	$ 22,000	$ 22,000	$ 110,000
Solitude	$ -	$ 12,500	$ 12,500	$ 12,500	$ 12,500	$ 50,000
Brighton	$ -	$ 12,500	$ 12,500	$ 12,500	$ 12,500	$ 50,000
Snowbird	$ -	$ 12,500	$ 12,500	$ 12,500	$ 12,500	$ 50,000
Alta	$ -	$ 12,500	$ 12,500	$ 12,500	$ 12,500	$ 50,000
				TOTAL		$ 506,667

Attachment B
Scope of Work

ATTACHMENT B
Salt Lake County Public Works - Operations Division
Available Services for Park and Ride Lots

Service Item	Comments
Concrete Maintenance	Includes ramps, curbs, gutters and sidewalks
General Maintenance	Graffiti Removal
General Maintenance	Site Cleanup
Landscaping	
Pavement Maintenance	Includes pot hole repairs, crack sealing, slurry seals, etc.
Pavement Maintenance	Milling and overlays as needed.
Pavement Maintenance	Street sweeping.
Pavement Management	Inspections and tracking as needed.
Pavement Marking	Striping, stalls, logos, etc.
Restroom Maintenance	
Signs	Fabrication and installation.
Snow Removal	Snow plowing
Storm Drain Maintenance	Includes maintenance of storm water inlets and piping.
Street Light Maintenance	
Additional Services not performed by Salt Lake County Public Works	
Trash Pickup	By others - WFWRD
Law Enforcement	By others - UPD/Cott. Hts.
UTA Platform & Shelter	By others - UTA

NOTES:

1. Services are billed on a time and materials basis and may vary depending upon location, quantity of work, fuel costs, material costs, etc.

2. Actual costs include mobilization and travel.

3. Specific work estimates are available as needed.

December 2019

Attachment C
Payment Schedule

ATTACHMENT C

Contributions by park-and-ride lot

	LCC	BCC	Hillsborough	TOTAL
Salt Lake County	$ 45,000	$ 20,833	$ 11,667	$ 77,500
Cottonwood Heights	$ -	$ 20,833	$ 11,667	$ 32,500
UDOT	$ 45,000	$ 41,667	$ -	$ 86,667
UTA	$ 45,000	$ 41,667	$ 23,333	$ 110,000
Solitude	$ -	$ -	$ -	$ 50,000
Brighton	$ -	$ -	$ -	$ 50,000
Snowbird	$ -	$ -	$ -	$ 50,000
Alta	$ -	$ -	$ -	$ 50,000
	$ -			
TOTALS	$ 135,000	$ 125,000	$ 46,667	$ 506,667

Contributions by year

	2020	2021	2022	2023	2024	TOTAL
Salt Lake County	$ 15,500	$ 15,500	$ 15,500	$ 15,500	$ 15,500	$ 77,500
Cottonwood Heights	$ 6,500	$ 6,500	$ 6,500	$ 6,500	$ 6,500	$ 32,500
UDOT	$ 17,333	$ 17,333	$ 17,333	$ 17,333	$ 17,333	$ 86,667
UTA	$ 22,000	$ 22,000	$ 22,000	$ 22,000	$ 22,000	$ 110,000
Solitude	$ -	$ 12,500	$ 12,500	$ 12,500	$ 12,500	$ 50,000
Brighton	$ -	$ 12,500	$ 12,500	$ 12,500	$ 12,500	$ 50,000
Snowbird	$ -	$ 12,500	$ 12,500	$ 12,500	$ 12,500	$ 50,000
Alta	$ -	$ 12,500	$ 12,500	$ 12,500	$ 12,500	$ 50,000
				TOTAL		$ 506,667

MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
THROUGH: Carolyn Gonot, Executive Director
FROM: Bob Biles, Chief Financial Officer
PRESENTER(S): Bob Biles, Chief Financial Officer
Brian Baker, Zions Public Finance (Financial Advisor)
Blake Wade, Gilmore & Bell (Bond Counsel)

BOARD MEETING DATE: June 17, 2020

SUBJECT:	**Resolution R2020-06-02 Authorizing Actions Necessary to Amend Certain Bond Documents, Releasing Certain Debt Reserve Fund Monies and Replacing them with Surety Instruments**
AGENDA ITEM TYPE:	**Resolution**
RECOMMENDATION:	Adopt Resolution 2020-06-02
BACKGROUND:	Concurrent with recent bonds refundings, UTA's bond counsel and financial advisor reviewed the required bond reserve, the amount of bond reserves UTA maintains through cash or surety instruments, and minimum requirements for cash and surety instruments. In the Board of Trustees meeting of April 8, 2020, UTA's Financial Advisor, Bond Counsel, and Chief Financial Officer presented two opportunities to substitute bond sureties for bond proceeds held in bond reserves: • Senior bond debt reserve – Under the Tenth Supplement to the bond indenture, the reserve is comprised of $19.2 million of bond proceeds and $26.6 million of sureties. Since UTA holds a total of $69 million in sureties for these bonds, UTA's financial team recommended substituting the sureties for the bond proceeds. • Subordinate bond debt reserve – This reserve is comprised of $14 million of bond proceeds and $13 million of sureties. Unlike the senior bonds, UTA holds no additional sureties for the subordinate bonds. However, the finance team recommended that UTA seek pricing for purchasing additional sureties which could be substituted for the bond proceeds. After the presentation, the Board of Trustees directed the finance team to explore the two opportunities and bring back results for Board of Trustee consideration and action.
DISCUSSION:	For the senior bonds, UTA's finance team contacted Assured Guaranty Municipal Corp. (formerly known as Financial Security Assurance, Inc.), the firm that holds the current

	sureties, and determined that they were willing to substitute the sureties for the bond proceeds. The Federally Taxable Subordinate Sales Tax Revenue Bonds, Series 2010 Build America Bonds included a $10 million deposit into the subordinate bond reserve. UTA's Financial Advisor contacted firms that provide sureties and received two quotes with Build America Mutual ("BAM") being the low quote at $160,000 for a $10 million surety. The other surety quote was priced at $350,000. In order to effect the substitution, Bond Counsel prepared Resolution 2020-06-02 which authorizes the Board of Trustees Chair, the Executive Director, and the Secretary or Treasurer to execute and deliver the Addendum to the Tenth Supplemental Indenture and the Addendum to the Fifth Supplemental Subordinate Indenture and to take other actions which may be needed to carry out the matters authorized in the resolution. Staff recommends proceeding with surety for cash substitutions and that the Board of Trustees approve the resolution.
ALTERNATIVES:	• Undertake only the senior bond cash reserve substitution • Undertake only the subordinate bond cash reserve substitution • Leave the both bond reserves as currently comprised
FISCAL IMPACT:	Substituting the sureties for the bond proceeds makes the bond proceeds available for current year debt service payments and/or qualifying project costs. Revenues which might have been spent on debt service payments and/or qualifying project costs would be retained within undesignated reserves until designated for use.

ATTACHMENTS:	• Resolution 2020-06-02, including:
	  • Addendum to 10th Supplemental Indenture
	  • Addendum to 5th Supplemental Indenture
	• BAM Commitment Letter

RESOLUTION OF THE BOARD OF TRUSTEES OF THE UTAH TRANSIT AUTHORITY AUTHORIZING ACTIONS NECESSARY TO AMEND CERTAIN BOND DOCUMENTS, RELEASING CERTAIN DEBT RESERVE FUND MONIES AND REPLACING THEM WITH SURETY INSTRUMENTS

R2020-06-02 June 17, 2020

WHEREAS, the Utah Transit Authority (the "Authority") is a large public transit district organized under the laws of the State of Utah and was created to transact and exercise all of the powers provided for in the Utah Limited Purpose Local Government Entities-Local Districts Act and the Utah Public Transit District Act; and

WHEREAS, the Utah Transit Authority (the "Authority") has previously issued its Sales Tax Revenue Refunding Bonds, Series 2005A, Sales Tax Revenue Bonds, Series 2005B, Sales Tax Revenue Refunding Bonds, Series 2006C, Sales Tax Revenue Bonds, Series 2008A, Sales Tax Revenue Bonds, Series 2009B (Federally Taxable—Issuer Subsidy—Build America Bonds) and Sales Tax Revenue Refunding Bonds, Series 2013 (the "2005 through 2013 Bonds") pursuant to an Amended and Restated General Indenture of Trust Dated as of September 1, 2002 (the "Senior General Indenture"), as supplemented by various supplemental indentures (collectively with the Senior General Indenture, the "Senior Indenture"), each between the Authority and Zions Bancorporation, National Association (formerly known as Zions First National Bank), as trustee; and

WHEREAS, Section 3.2(b) of the Tenth Supplemental Indenture dated as of February 1, 2015 (the "Tenth Supplemental Indenture") provided how the Debt Service Reserve Requirement for the 2005 through 2013 Bonds would be met; and

WHEREAS, since that time, certain of the 2005 through 2013 Bonds have been retired and the current Debt Service Reserve Requirement is $42,562,600.31 (the "2005 through 2013 DSRR") and the Authority desires to fulfill the 2005 through 2013 DSRR with a reserve fund surety bond or other similar reserve instrument (the "Senior Reserve Instrument") of Assured Guaranty Municipal Corp. (formerly known as Financial Security Assurance, Inc.), in compliance with the Senior Indenture; and

WHEREAS, in order to accomplish the foregoing, the Authority desires to amend the Tenth Supplemental Indenture and authorize the execution of an Addendum to the Tenth Supplemental Indenture (the "Addendum to Tenth Supplemental Indenture"), in substantially the form attached hereto as Exhibit B, all in compliance with the Senior Indenture; and

WHEREAS, the Authority has previously issued its Federally Taxable Subordinated Sales Tax Revenue Bonds, Series 2010 (Issuer Subsidy—Build America Bonds) (the "Series 2010 Bonds") pursuant to a Subordinate General Indenture of Trust, dated as of July 1, 2006 (the "Subordinate General Indenture") and a Fifth Supplemental Subordinate Indenture of Trust, dated as of October 1, 2010 (the "Fifth Supplemental Subordinate Indenture") and collectively with the Subordinate General Indenture, the "Subordinate Indenture"), each between the Authority and Zions Bancorporation, National Association (formerly known as Zions First National Bank), as trustee; and

WHEREAS, in connection with the issuance of the Series 2010 Bonds, there was established a certain debt service reserve fund (the "2010 Reserve Fund"), which 2010 Reserve Fund was funded with proceeds of the Series 2010 Bonds; and

WHEREAS, the Authority desire to replace the cash currently on deposit in the 2010 Reserve Fund with a reserve fund surety bond or other similar reserve instrument (the "Subordinate Reserve Instrument") in compliance with the Subordinate Indenture; and

WHEREAS, in order to accomplish the foregoing, the Authority desires to authorize the execution of an Addendum to the Fifth Supplemental Subordinate Indenture (the "Addendum to Fifth Supplemental Subordinate Indenture"), in substantially the form attached hereto as Exhibit C, all in compliance with the Subordinate Indenture; and

WHEREAS, following the execution of the Addendum to Tenth Supplemental Indenture and the Addendum to Fifth Supplemental Subordinate Indenture, the Authority desire to apply the cash released from the related debt service reserve funds to (i) the principal and interest due on various bonds the Authority has previously issued and/or (ii) qualifying project costs;

NOW, THEREFORE, it is hereby resolved by the Board of Trustees of the Utah Transit Authority, that:

Section 1. The Addendum to Tenth Supplemental Indenture and the Addendum to Fifth Supplemental Subordinate Indenture in substantially the forms presented to this meeting and attached hereto as Exhibits B and C, respectively, are hereby authorized, approved, and confirmed. The Chair of the Board (the "Chair"), the Executive Director (the "Executive Director"), and the Secretary (the "Secretary") or the Treasurer (the "Treasurer") are hereby authorized to execute and deliver the Addendum to Tenth Supplemental Indenture and Addendum to Fifth Supplemental Subordinate Indenture in substantially the forms and with substantially the content as the forms presented at this meeting for and on behalf of the Authority, with final terms as may be established by the Board, and with such alterations, changes or additions as may be necessary or as may be authorized by Section 3 hereof. The approval of such final documents shall be conclusively

established by the execution of the Addendum to Tenth Supplemental Indenture and Addendum to Fifth Supplemental Subordinate Indenture by the Chair, the Executive Director, and the Secretary or the Treasurer.

Section 2. The Chair, Executive Director, Secretary, Treasurer and other appropriate officials of the Authority, and each of them, are hereby authorized and directed to execute and deliver for and on behalf of the Authority any or all reserve agreements, reserve instruments, additional certificates, documents and other papers and to perform all other acts they may deem necessary or appropriate in order to implement and carry out the matters authorized in this Resolution and the documents authorized and approved herein.

Section 3. The Chair, Executive Director, Secretary, Treasurer and other appropriate officials of the Authority are authorized to make any alterations, changes or additions to the Addendum to Tenth Supplemental Indenture and the Addendum to Fifth Supplemental Subordinate Indenture or any other document herein authorized and approved which may be necessary to correct errors or omissions therein, to complete the same, to remove ambiguities therefrom, or to conform the same to other provisions of said instruments, to the provisions of this Resolution or any resolution adopted by the Board, or the provisions of the laws of the State of Utah or the United States and to update such documents with current information and practices provided that the obligations of the Authority are limited to the sources pledged under the respective indentures.

Section 4. All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Resolution shall be in full force and effect immediately upon its approval and adoption.

APPROVED AND ADOPTED this June 17, 2020.

_____
Carlton Christensen,
Chair Board of Trustees

ATTEST: (Corporate Seal)

_____
Robert K. Biles, Secretary/Treasurer

Approved As To Form:

_____
Legal Counsel

CERTIFICATE

The undersigned duly qualified Chair of the Board of Trustees of the Utah Transit Authority certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the Board of Trustees held on the June 17, 2020.

_____
Chair

ATTEST:

_____
Secretary/Treasurer

APPROVED AS TO FORM:

_____
Legal Counsel

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

I, Robert K. Biles, the duly qualified and acting Secretary/Treasurer of the Board of Trustees (the "Board") of the Utah Transit Authority (the "Authority") do hereby certify according to the records of the Board in my official possession that the foregoing constitutes a true and correct excerpt of the minutes of the meeting of the Board held on the June 17, 2020, including a resolution (the "Resolution") adopted at said meeting as said minutes and Resolution are officially of record in my possession.

I further certify that the Resolution, with all exhibits attached, was deposited in the principal offices of the Authority on June 17, 2020.

IN WITNESS WHEREOF, I have hereunto subscribed my signature and impressed hereon the official seal of the Authority, this June 17, 2020.

_____
Secretary/Treasurer

(SEAL)

EXHIBIT A

CERTIFICATE OF COMPLIANCE WITH
OPEN MEETING LAW

I, Robert K. Biles, the undersigned Secretary/Treasurer of the Board of Trustees (the "Board") of the Utah Transit Authority (the "Authority"), do hereby certify, according to the records of the Authority in my official possession, and upon my own knowledge and belief, that in accordance with the requirements of Section 52-4-202, Utah Code Annotated, 1953, as amended, not less than twenty-four (24) hours public notice of the agenda, date, time and place of the June 17, 2020, public meeting held by the Board was given as follows:

(a) by causing a Notice, in the form attached hereto as Schedule 1 to be posted at the Authority's principal offices at least twenty-four (24) hours prior to the convening of the meeting, said Notice having continuously remained so posted and available for public inspection until the completion of the meeting;

(b) by causing a copy of such Notice, in the form attached hereto as Schedule 1 to be delivered at least twenty-four (24) hours prior to the convening of the meeting to the persons, newspapers (at least one of which is a newspaper of general circulation within the geographic jurisdiction of the Authority), and media representatives shown on Schedule 1 attached hereto, as well as to those requesting such notices; and.

(c) by causing a copy of such Notice to be published on the Utah Public Notice Website (http://pmn.utah.gov) at least twenty-four (24) hours prior to the convening of the meeting.

In addition, the Notice of 2020 Annual Meeting Schedule for the Board (attached hereto as Schedule 2) was given specifying the date, time and place of the regular meetings of the Board to be held during the year, by causing said Notice to be (i) posted in December 2019 at the principal office of the Authority, (ii) provided to local media correspondents, or to newspapers of general circulation

within the geographic jurisdiction of the Authority, at least once during the calendar year 2020 and (iii) published on the Utah Public Notice Website (http://pmn.utah.gov) during the current calendar year.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature this June 17, 2020.

_____
Secretary/Treasurer

(SEAL)

SCHEDULE 1

NOTICE AND AGENDA OF THE JUNE 17, 2020 MEETING

SCHEDULE 2

2020 ANNUAL MEETING NOTICE

Toleafoa, Felila (Sr Office Spec- Board)

From: support@utah.gov
Sent: Wednesday, January 22, 2020 6:22 PM
To: Ostler, Jana (Board Manager)
Subject: Public Notice for Board of Trustees

Utah Public Notice

Board of Trustees

Notice of 2020 Meetings of the Utah Transit Authority Board of Trustees

Notice Date & Time: 1/15/20 9:00 AM

Description/Agenda:

NOTICE OF ANNUAL MEETING SCHEDULE
BOARD OF TRUSTEES OF THE UTAH TRANSIT AUTHORITY
In accordance with the provisions of the Open and Public Meetings Act, public notice is hereby given that the Utah Transit Authority, a public transit district organized under the laws of the State of Utah, will hold its regular meetings at the hour of 9:00 a.m. at the location of 669 West 200 South, Salt Lake City, Utah 84101 on the following dates:
January 15, 2020
January 22, 2020
January 29, 2020
February 12, 2020
February 26, 2020
March 4, 2020
March 11, 2020
March 25, 2020
April 8, 2020
April 15, 2020
April 29, 2020
May 6, 2020
May 20, 2020
June 3, 2020
June 17, 2020
June 24, 2020
July 1, 2020
July 15, 2020
July 22, 2020
August 5, 2020
August 12, 2020
August 26, 2020
September 2, 2020
September 23, 2020
October 7, 2020
October 21, 2020
October 28, 2020
November 4, 2020
November 11, 2020
December 2, 2020

December 9, 2020
December 16, 2020
The agenda of each Board meeting, together with the date, time and place of each Board meeting shall be posted in compliance with the requirements of the Utah Open and Public Meetings Act.
The Board of Trustees invites brief comments or questions from the public during its regularly scheduled Board meetings. The Chair of the Board shall determine the duration and timing of the public comment period. Persons desiring to address the Board at a regularly scheduled meeting will be given a limited amount of time to speak. A spokesperson who has been asked by a group to summarize their comments may be allowed additional time.

Notice of Special Accommodations:

Special Accommodation: Information related to this meeting is available in alternate format upon request by contacting calldredge@rideuta.com or (801) 287-3536. Request for accommodations should be made at least two business days in advance of the scheduled meeting.

Notice of Electronic or telephone participation:

Meetings will be broadcast live at https://www.youtube.com/user/UTAride . Trustees of the Board may participate electronically.

Other information:

Location:

669 W 200 S, Salt Lake City, 84101

Contact information:

Board of Trustees , boardoftrustees@rideuta.com, (801)262-5626

To stop receiving email notifications for this public body, please click this link:

Unsubscribe

EXHIBIT B

FORM OF ADDENDUM TO TENTH SUPPLEMENTAL INDENTURE

ADDENDUM TO TENTH SUPPLEMENTAL INDENTURE OF TRUST

by and between

UTAH TRANSIT AUTHORITY

and

ZIONS BANCORPORATION, NATIONAL ASSOCIATION
(FORMERLY KNOWN AS ZIONS FIRST NATIONAL BANK)

DATED AS OF
JUNE 1, 2020

TABLE OF CONTENTS

ADDENDUM TO TENTH SUPPLEMENTAL INDENTURE OF TRUST

This ADDENDUM TO TENTH SUPPLEMENTAL INDENTURE OF TRUST (the "Addendum to Tenth Supplemental Indenture") dated as of June 1, 2020 amends and supplements that certain TENTH SUPPLEMENTAL INDENTURE OF TRUST dated as of February 1, 2015 (the "Tenth Supplemental Indenture") by and between the UTAH TRANSIT AUTHORITY, a public transit district duly organized and existing under the Constitution and laws of the State of Utah (the "Issuer"), and ZIONS BANCORPORATION, NATIONAL ASSOCIATION (formerly known as Zions First National Bank), a national bank duly organized and existing under the laws of the United States of America, authorized by law to accept and execute trusts and having its principal office in Salt Lake City, Utah, as trustee (the "Trustee");

W I T N E S S E T H:

WHEREAS, the Issuer has entered into an Amended and Restated General Indenture of Trust, dated as of September 1, 2002 as heretofore amended and supplemented (the "Senior General Indenture" and collectively with the Tenth Supplemental Indenture, the "Senior Indenture") with the Trustee, pursuant to which the Issuer has issued its Sales Tax Revenue Refunding Bonds, Series 2005A, Sales Tax Revenue Bonds, Series 2005B, Sales Tax Revenue Refunding Bonds, Series 2006C, Sales Tax Revenue Bonds, Series 2008A, Sales Tax Revenue Bonds, Series 2009B (Federally Taxable—Issuer Subsidy—Build America Bonds) and Sales Tax Revenue Refunding Bonds, Series 2013 (the "2005 through 2013 Bonds"); and

WHEREAS, pursuant to the Senior General Indenture and Section 3.2 of the Tenth Supplemental Indenture, the 2005 through 2013 Bonds are secured in part by funds currently on deposit in the Debt Service Reserve Fund in the amount of $[19,376,459.32][Trustee Update] (the "Senior DSR Funds") ; and

WHEREAS, the Senior Indenture allows for the funding of the Debt Service Reserve Requirement with funds, a Reserve Instrument (as defined in the Senior Indenture), or a combination of the foregoing; and

WHEREAS, certain of the 2005 through 2013 Bonds have been retired and the current combined Debt Service Reserve Requirement for the 2005 through 2013 Bonds is now $[42,562,600.31][Trustee Update](the "2005 through 2013 DSRR"); and

WHEREAS, the Issuer currently has a Reserve Instrument issued by Assured Guaranty Municipal Corp. (formerly known as Financial Security Assurance, Inc.) Policy Number: _____ (the "2005 through 2013 Reserve Instrument") in the amount of $45,988,383.00 and not expiring until June 15, 2038, sufficient to fully satisfy the 2005 through 2013 DSRR: and

WHEREAS, the Issuer desires to release all other Reserve Instruments under the Senior Indenture other than the 2005 through 2013 Reserve Instrument and apply the

Senior DSR Funds to the payment of Outstanding Bonds [ZBPF verify timing and structure] (the "Bond Payments"); and

WHEREAS, in order to effectuate the actions described in the foregoing recitals, the Issuer and the Trustee desire to enter into this Addendum to Tenth Supplemental Indenture; and

WHEREAS, the execution and delivery of this Addendum to Tenth Supplemental Indenture has in all respects been duly authorized to make this Addendum to Tenth Supplemental Indenture a valid and binding agreement.

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. All terms which are defined in the Senior General Indenture and the Tenth Supplemental Indenture, shall have the meanings, respectively, when used herein (including the use thereof in the recitals and the granting clauses thereof) unless expressly given a different meaning or unless the context clearly otherwise requires. All terms used herein which are defined in the recitals hereto shall have the meanings therein given to the same unless the context requires otherwise and, in addition, the following terms shall have the meanings specified below:

"Bond Payments" means those payments on Outstanding Bonds to be made with the Senior DSR Funds as described in Exhibit B attached hereto [ZBPF to structure and finalize, including timing].

"Senior DSR Funds" means funds currently on deposit in the Debt Service Reserve Fund in the amount of $[19,376,459.32][Trustee Update] to be released to the Senior DSR Funds Account.

"Senior DSR Funds Account" means the account to be established by the Trustee for the purpose of holding the Debt Service Reserve Funds released from the Debt Service Reserve Fund upon the delivery of the 2005 through 2013 Reserve Instrument, until disbursed upon the order of the Issuer to the Bond Payments as provided herein.

"2005 through 2013 Reserve Instrument" means the surety bond Reserve Instrument issued by Assured Guaranty Municipal Corp. (formerly known as Financial Security Assurance, Inc.) Policy Number: _____ currently on deposit in the Debt Service Reserve Fund in an amount sufficient to meet the Debt Service Reserve Requirement with respect to the 2005 through 2013 Bonds.

"2005 through 2013 Reserve Instrument Provider" means Assured Guaranty Municipal Corp. (formerly known as Financial Security Assurance, Inc.).

ARTICLE II

CERTIFICATIONS AND AMENDMENTS TO THE INDENTURE

Section 2.1 Representations, Covenants and Warranties of the Issuer. The Issuer represents, covenants and warrants for the benefit of the 2005 through 2013 Reserve Instrument Provider and the Trustee as follows:

(a) The Senior Indenture, and the Issuer's representations, covenants and warranties contained therein, remain in full force and effect. No Event of Default under the Indenture has occurred or is continuing.

(b) No use shall be made of the Senior DSR Funds that would jeopardize the tax status of the Outstanding Bonds.

ARTICLE III

DELIVERY OF 2005 THROUGH 2013 RESERVE INSTRUMENT AND APPLICATION OF DEBT SERVICE RESERVE FUNDS

Section 3.1 2005 through 2013 Debt Service Reserve Fund. For purposes of the 2005 through 2013 Bonds, the combined Debt Service Reserve Requirement shall be funded by the 2005 through 2013 Reserve Instrument in the Debt Service Reserve Fund. The Senior DSR Funds shall be applied pursuant to Section 3.2 hereof.

Section 3.2 Establishment and Application of Debt Service Reserve Funds. The Trustee is hereby directed to establish a Senior DSR Funds Account in the name of the Issuer to be held under the Indenture. Upon the execution and delivery of this Addendum to Tenth Supplemental Indenture, the Trustee will transfer the Senior DSR Funds currently on deposit therein Senior DSR Funds Account to be used by the Issuer, as follows:

(a) $_____ shall be used upon deposit therein to pay the closing costs as set forth in the closing memo dated _____ prepared by Zions Bank Public Finance, Inc.; and

(b) the balance shall be held by the Trustee and disbursed to or upon the written order of the Issuer for the Bond Payments.

Funds held in the Senior DSR Funds Account may be invested by the Trustee as directed by the Issuer in the same manner and governed by the same provisions of the Indenture as for the investment of other funds.

ARTICLE IV

MISCELLANEOUS

Section 4.1 Severability. If any provision of this Addendum to Tenth Supplemental Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections in this Second Supplemental Indenture contained, shall not affect the remaining portions of this Second Supplemental Indenture, or any part hereof.

Section 4.2 Counterparts. This Addendum to Tenth Supplemental Indenture may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when so executed and delivered, shall constitute but one and the same instrument.

Section 4.3 Applicable Law. This Addendum to Tenth Supplemental Indenture shall be governed by and construed in accordance with the laws of the State of Utah.

Section 4.4 Effective Date. This Addendum to Tenth Supplemental Indenture shall become effective immediately upon execution and delivery to the Trustee.

IN WITNESS WHEREOF, the Issuer and the Trustee have caused this Addendum to Tenth Supplemental Indenture of Trust to be executed as of the date first written above.

UTAH TRANSIT AUTHORITY

By:_____
Chair

(S E A L)

Countersigned:

By: _____
Secretary/Treasurer

APPROVED AS TO FORM:

By:_____
UTA Legal Counsel

ZIONS BANCORPORATION,
NATIONAL ASSOCIATION, as Trustee

By: _____

Title: _____

EXHIBIT A

2005 THROUGH 2013 RESERVE INSTRUMENT PROVIDER CONSENT

The undersigned officer of Assured Guaranty Municipal Corp. (formerly known as Financial Security Assurance, Inc.) ("Assured") hereby consents to the execution and delivery of that ADDENDUM TO TENTH SUPPLEMENTAL INDENTURE OF TRUST (the "Addendum to Tenth Supplemental Indenture") dated as of June 1, 2020 amending s and supplementing that certain TENTH SUPPLEMENTAL INDENTURE OF TRUST dated as of February 1, 2015 (the "Tenth Supplemental Indenture") by and between the UTAH TRANSIT AUTHORITY, a public transit district duly organized and existing under the Constitution and laws of the State of Utah (the "Issuer"), and ZIONS BANCORPORATION, NATIONAL ASSOCIATION (formerly known as Zions First National Bank), a national bank duly organized and existing under the laws of the United States of America, authorized by law to accept and execute trusts and having its principal office in Salt Lake City, Utah, as trustee (the "Trustee")

The undersigned is authorized to execute this consent for and on behalf of Assured.

IN WITNESS WHEREOF, the undersigned has executed this consent for and on behalf of National on June ___, 2020.

ASSURED GUARANTY MUNICIPAL CORP.

By: _____

Its: _____

EXHIBIT B

BOND PAYMENTS

EXHIBIT C

FORM OF ADDENDUM TO FIFTH SUPPLEMENTAL SUBORDINATE INDENTURE

ADDENDUM TO FIFTH SUPPLEMENTAL SUBORDINATE INDENTURE OF TRUST

by and between

UTAH TRANSIT AUTHORITY

and

ZIONS BANCORPORATION, NATIONAL ASSOCIATION
(FORMERLY KNOWN AS ZIONS FIRST NATIONAL BANK)

DATED AS OF
JUNE 1, 2020

TABLE OF CONTENTS

ADDENDUM TO FIFTH SUPPLEMENTAL SUBORDINATE INDENTURE OF TRUST

This ADDENDUM TO FIFTH SUPPLEMENTAL SUBORDINATE INDENTURE OF TRUST (the "Addendum to Fifth Supplemental Subordinate Indenture") amends and supplements that certain FIFTH SUPPLEMENTAL SUBORDINATE INDENTURE OF TRUST dated as of October 1, 2010 (the "Fifth Supplemental Subordinate Indenture") by and between the UTAH TRANSIT AUTHORITY, a public transit district duly organized and existing under the Constitution and laws of the State of Utah (the "Issuer"), and ZIONS BANCORPORATION, NATIONAL ASSOCIATION (formerly known as Zions First National Bank), a national bank duly organized and existing under the laws of the United States of America, authorized by law to accept and execute trusts and having its principal office in Salt Lake City, Utah, as trustee (the "Trustee");

W I T N E S S E T H:

WHEREAS, the Issuer has entered into a Subordinate General Indenture of Trust, dated as of July 1, 2006, as heretofore amended and supplemented (the "Subordinate General Indenture" and collectively with the Fifth Supplemental Subordinate Indenture, the "Subordinate Indenture") with the Trustee, pursuant to which the Issuer has issued its Federally Taxable Subordinated Sales Tax Revenue Bonds, Series 2010 (Issuer Subsidy—Build America Bonds) (the "2010 Subordinate Bonds"); and

WHEREAS, the 2010 Subordinate Bonds are secured by funds currently on deposit in the Debt Service Reserve Fund in the amount of $[10,000,000][Trustee Update] (the "Subordinate DSR Funds"); and

WHEREAS, the Subordinate Indenture allows for the funding of the Debt Service Reserve Requirement with funds, a Reserve Instrument (as defined in the Subordinate Indenture), or a combination of the foregoing; and

WHEREAS, Issuer desires to replace all of the Subordinate DSR Funds with a Reserve Instrument (the "2010 Subordinate Reserve Instrument") to be issued by Build America Mutual Assurance Company (the "Series 2010 Reserve Instrument Provider") and apply the Subordinate DSR Funds to the payment of Outstanding Bonds [ZBPF verify timing and structure] (the "Bond Payments"); and

WHEREAS, upon the deposit of the 2010 Subordinate Reserve Instrument into the Debt Service Reserve Fund, the Debt Service Reserve Requirement for the 2010 Subordinate Bonds will be satisfied by the 2010 Subordinate Reserve Instrument; and

WHEREAS, in order to effectuate the actions described in the foregoing recitals, the Issuer and the Trustee desire to enter into this Addendum to Fifth Supplemental Subordinate Indenture; and

WHEREAS, the execution and delivery of this Addendum to Fifth Supplemental Subordinate Indenture has in all respects been duly authorized to make this Addendum to Fifth Supplemental Subordinate Indenture a valid and binding agreement.

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. All terms which are defined in the Subordinate General Indenture and the Fifth Supplemental Subordinate Indenture, shall have the meanings, respectively, when used herein (including the use thereof in the recitals and the granting clauses thereof) unless expressly given a different meaning or unless the context clearly otherwise requires. All terms used herein which are defined in the recitals hereto shall have the meanings therein given to the same unless the context requires otherwise and, in addition, the following terms shall have the meanings specified below:

"Bond Payments" means those payments on Outstanding Bonds to be made with the Subordinate DSR Funds as described in Exhibit B attached hereto [ZBPF to structure and finalize, including timing].

"Subordinate DSR Funds" means funds currently on deposit in the Debt Service Reserve Fund in the amount of $[10,000,000][Trustee Update] to be released to the Subordinate DSR Funds Account.

"Subordinate DSR Funds Account" means the account to be established by the Trustee for the purpose of holding the Subordinate DSR Funds released from the Debt Service Reserve Fund upon the delivery of the 2010 Subordinate Reserve Instrument, until disbursed upon the order of the Issuer to the Bond Payments as provided herein.

"2010 Subordinate Reserve Instrument" means the surety bond issued by Build America Mutual Assurance Company for deposit into the Debt Service Reserve Fund in an amount sufficient to meet the Debt Service Reserve Requirement with respect to the 2010 Subordinate Bonds.

"2010 Subordinate Reserve Instrument Agreement" means the Debt Service Reserve Agreement by and between the Issuer and the 2010 Subordinate Reserve Instrument Provider in the form attached hereto as Exhibit A and pursuant to which the 2010 Subordinate Reserve Instrument Provider will issue the 2010 Subordinate Reserve Instrument.

"2010 Subordinate Reserve Instrument Provider" means Build America Mutual Assurance Company.

ARTICLE II

CERTIFICATIONS AND AMENDMENTS TO THE INDENTURE

Section 2.1 Representations, Covenants and Warranties of the Issuer. The Issuer represents, covenants and warrants for the benefit of the 2010 Subordinate Reserve Instrument Provider and the Trustee as follows:

(a) The Subordinate Indenture, and the Issuer's representations, covenants and warranties contained therein, remain in full force and effect. No Event of Default under the Indenture has occurred or is continuing.

.

(b) No use shall be made of the Debt Service Reserve Funds that would jeopardize the status of the 2010 Subordinate Bonds as Build America Bonds.

ARTICLE III

DELIVERY OF 2010 SUBORDINATE RESERVE INSTRUMENT AND APPLICATION OF DEBT SERVICE RESERVE FUNDS

Section 3.1 2010 Subordinate Debt Service Reserve Fund. For purposes of the 2010 Subordinate Bonds, the Debt Service Reserve Requirement shall be funded by the deposit of the 2010 Subordinate Reserve Instrument in the 2010 Subordinate Account of the Debt Service Reserve Fund. Upon such deposit, the Subordinate DSR Funds shall be applied pursuant to Section 3.2 hereof.

Section 3.2 Establishment and Application of Subordinate DSR Funds. The Trustee is hereby directed to establish a Subordinate DSR Fund Account in the name of the Issuer to be held under the Indenture. Upon deposit of the 2010 Subordinate Reserve Instrument in the 2010 Subordinate Account of the Debt Service Reserve Fund, the Trustee will transfer the Subordinate DSR Funds currently on deposit therein into the Subordinate DSR Funds Account to be used by the Issuer as follows:

(a) $_____ shall be used upon deposit therein to pay the closing costs and costs of delivery of the 2010 Subordinate Reserve Instrument as set forth in the closing memo dated _____ prepared by Zions Public Finance, Inc.; and

(b) the balance shall be held by the Trustee and disbursed for the Bond Payments.

Funds held in the Subordinate DSR Funds Account may be invested by the Trustee as directed by the Issuer in the same manner and governed by the same provisions of the Indenture as for the investment of other funds relating to the 2010 Subordinate Bonds.

ARTICLE IV

2010 SUBORDINATE RESERVE INSTRUMENT AND AGREEMENT

The 2010 Subordinate Reserve Instrument shall constitute a Reserve Instrument and the 2010 Subordinate Reserve Instrument Provider shall constitute a Reserve Instrument Provider and the 2010 Subordinate Reserve Instrument Agreement shall constitute a Reserve Instrument Agreement for all purposes of the Indenture and all of the covenants and rights relating to such documents and the security provided therefor under the Indenture shall apply.

ARTICLE V

MISCELLANEOUS

Section 5.1 Severability. If any provision of this Addendum to Fifth Supplemental Subordinate Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections in this Second Supplemental Indenture contained, shall not affect the remaining portions of this Second Supplemental Indenture, or any part hereof.

Section 5.2 Counterparts. This Addendum to Fifth Supplemental Subordinate Indenture may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when so executed and delivered, shall constitute but one and the same instrument.

Section 5.3 Applicable Law. This Addendum to Fifth Supplemental Subordinate Indenture shall be governed by and construed in accordance with the laws of the State of Utah.

Section 5.4 Effective Date. This Addendum to Fifth Supplemental Subordinate Indenture shall become effective immediately upon execution and delivery to the Trustee.

IN WITNESS WHEREOF, the Issuer and the Trustee have caused this Addendum to Fifth Supplemental Subordinate Indenture of Trust to be executed as of the date first written above.

UTAH TRANSIT AUTHORITY

By:_____
Chair

(S E A L)

Countersigned:

By: _____
Secretary/Treasurer

APPROVED AS TO FORM:

By:_____
UTA Legal Counsel

ZIONS BANCORPORATION,
NATIONAL ASSOCIATION, as Trustee

By: _____

Title: _____

EXHIBIT A

2010 SUBORDINATE RESERVE INSTRUMENT AGREEMENT

EXHIBIT B

BOND PAYMENTS

REVISED
MUNICIPAL BOND DEBT SERVICE RESERVE
INSURANCE COMMITMENT (STAND ALONE)

ISSUER:	Utah Transit Authority	EFFECTIVE DATE:	June 1, 2020
		EXPIRATION DATE:	August 08, 2020
MEMBER:	Utah Transit Authority		
BONDS:	Federally Taxable Subordinated Sales Tax Revenue Bonds, Series 2010 (Issuer Subsidy-Build America Bonds)		

INSURANCE PAYMENT: 1.60% of Policy Limit

POLICY LIMIT: $10,000,000.00. The Policy Limit shall automatically and irrevocably be reduced from time to time by the amount of each reduction in the Reserve Account Requirement for the Bonds.

BUILD AMERICA MUTUAL ASSURANCE COMPANY ("BAM") hereby commits, subject to the terms and conditions contained herein or added hereto, to issue its Municipal Bond Debt Service Reserve Insurance Policy (the "Policy") relating to the Bonds referenced above (the "Bonds") issued by or on behalf of the Member. A form of such Policy is attached as **Exhibit 1**. To keep this Commitment in effect after the Expiration Date set forth above, a written request for renewal must be submitted to BAM prior to such Expiration Date. BAM reserves the right to grant or deny a renewal in its sole discretion.

THE POLICY SHALL BE ISSUED IF THE FOLLOWING CONDITIONS ARE SATISFIED OR WAIVED BY BAM, AND THE ISSUER AND MEMBER AGREE AS FOLLOWS:

1. The documents to be, or that have been, executed and delivered in connection with the issuance and sale of the Bonds (collectively, the "Security Documents") are in full force and effect and no default, breach or events of default (or event which with notice or the lapse of time would constitute an event of default) has occurred and is continuing under any of the Security Documents. The Security Documents shall not contain any untrue or misleading statement of a

material fact and shall not fail to state a material fact necessary in order to make the information contained therein not misleading.

2. The Policy shall expire on the earlier of (a) final maturity date of the Bonds and (b) the date the Bonds are no longer outstanding under the Security Documents.

3. The Agreement (as hereinafter defined) shall contain the document provisions set forth in **Exhibit A** hereto. No variation shall be permitted therefrom except as specifically approved by BAM in writing.

4. BAM shall be provided with:

(a) A No-Litigation Certificate or a description of all material pending litigation relating to the Member or the Bonds and any opinions BAM shall request in connection therewith.

(b) A description of any material change in the Member's financial position from and after the date of the financial statements provided to BAM.

(c) A copy of the Debt Service Reserve Agreement between the Member and BAM (the "Agreement"), substantially in the form of **Exhibit B**, duly executed by the Member, subject only to such changes as shall be agreed to by BAM, as evidenced by BAM's execution thereof.

(d) Executed copies of all Security Documents, and a letter from counsel to the Member permitting BAM to rely on the unqualified approving opinion of counsel to the Member, in form and substance satisfactory to BAM and legal opinion(s) of counsel to the Member as to due authorization, validity and enforceability of the Security Documents, which legal opinion(s) shall be addressed to BAM. The foregoing shall be in form and substance acceptable to BAM. (For your information, the form of legal opinion to be delivered by BAM upon issuance of the Policy is attached hereto as **Exhibit C**.)

(e) An opinion(s) of counsel to the Member or other counsel acceptable to BAM, addressed and in form and substance satisfactory to BAM, (i) as to the due authorization, validity and enforceability of the Agreement, (ii) that the repayment of draws under the Policy and all Policy Costs are secured by and payable from Net Revenues in accordance with the terms of the Agreement, (iii) if applicable, that the Reserve Policy constitutes an instrument eligible for deposit to the credit of the debt service reserve fund or account (the "Reserve Fund") under the Security Documents, and (iv) as to such other matters as BAM shall reasonably request.

(f) Evidence of wire transfer in federal funds of an amount equal to the Insurance Payment, unless alternative arrangements for the payment of such amount acceptable to BAM have been made prior to the issuance of the Policy. Procedures for premium payment to BAM are set forth in **Exhibit 3** hereto.

5. The Security Documents shall secure repayment of draws under the Policy and all Policy Costs consistent with the terms of the Agreement.

6. Bonds must have an underlying, long-term rating of at least:

A+	Standard and Poor's
A1	Moody's Investors Service

7. Promptly, but in no event more than thirty (30) days after the issuance of the Policy, BAM shall receive two (2) CD-ROMs, which contain the final closing transcript of proceedings with respect to the Bonds and the issuance of the Policy or if CD-ROMs are not available, such other electronic form as BAM shall accept.

8. To maintain this commitment until the Expiration Date set forth above, BAM must receive a copy of the signature page of this Commitment fully executed by an authorized officer of the undersigned within ten (10) days after the date of this Commitment.

REPRESENTATION AND AGREEMENT BY BAM

(a) BAM is a mutual insurance corporation organized under the laws of, and domiciled in, the State of New York.

(b) BAM covenants that it will only insure obligations of states, political subdivisions, an integral part of states or political subdivisions or entities otherwise eligible for the exclusion of income under Section 115 of the Internal Revenue Code of 1986, as amended, or any successor thereto.

(c) BAM covenants that it will not seek to convert to a stock insurance corporation.

(d) The issuance of the Policy qualifies the Member as a member of BAM until the Bonds are no longer outstanding. As a member of BAM, the Member is entitled to certain rights and privileges as provided in BAM's charter and by-laws and as may otherwise be provided under New York law. The Policy is non-assessable and creates no contingent mutual liability.

BUILD AMERICA MUTUAL ASSURANCE COMPANY

Authorized Officer

June 1, 2020

Date

AGREED AND ACCEPTED

The undersigned agrees and accepts the conditions set forth above and further agrees that (i) if the debt service reserve fund requirement for the Bonds is met by a credit instrument, such credit instrument shall be a Reserve Policy provided by BAM in accordance with the terms of this Commitment; (ii) it has made an independent investigation and decision as to whether to obtain the Policy and whether the Policy is appropriate or proper for it based upon its judgment and upon advice from such legal and financial advisers as it has deemed necessary; (iii) BAM has not made, and therefore it is not relying on, any recommendation from BAM that the Policy be obtained, it being understood and agreed that any communications from BAM (whether written or oral) referring to, containing information about or negotiating the terms and conditions of the Policy, and any related insurance document or the documentation governing the Bonds, do not constitute a recommendation to obtain the Policy; (iv) the undersigned acknowledges that BAM has not made any representation, warranty or undertaking, and has not given any assurance or guaranty, in each case, expressed or implied, as to its future financial strength or the rating of BAM's financial strength by the rating agency; (v) the undersigned acknowledges that a credit or claims-paying rating of BAM assigned by a rating agency reflects only the views of, and an explanation of the significance of any such rating may be obtained only from, the assigning rating agency, any such rating may change or be suspended, placed under review or withdrawn by such rating agency if circumstances so warrant, and BAM compensates a rating agency to maintain a credit or claims-paying ability rating thereon, but such payment is not in exchange for any specific rating or for a rating within any particular range; (vi) the undersigned acknowledges that BAM may in its sole and absolute discretion at any time request that a rating agency withdraw any rating maintained in respect of BAM. Notwithstanding anything to the contrary set forth herein, upon issuance of the Policy, the provisions set forth under subparagraphs (i) through (vi) above and the representations and agreements of BAM shall survive the expiration or termination of this Commitment.

The undersigned member hereby appoints Jeffrey Fried, General Counsel of Build America Mutual Assurance Company ("Build America"), as proxy with the power to appoint his substitute, and hereby authorizes him to represent and to cast all of the votes to which the undersigned is entitled to cast as of the record date for the annual meeting of Build America members to be held on Tuesday, April 27, 2021, or at any adjournment or postponement thereof. This proxy is solicited on behalf of the management of Build America and will empower the holder to vote on the undersigned member's behalf for the election of members of the Board of Directors and such other business as may properly come before said annual meeting. This proxy can be revoked by giving Build America written notice of revocation (by email to generalcounsel@buildamerica.com, or by U.S. mail or private carrier to General Counsel, Build

America, 200 Liberty Street, New York, NY 10281) received by Build America on or before April 23, 2021. This proxy may also be revoked if the undersigned member attends the annual meeting and chooses to vote in person.

UTAH TRANSIT AUTHORITY, UTAH

By: _____

Title: _____

Date: _____

EXHIBIT A

DOCUMENT PROVISIONS

With respect to the Municipal Bond Debt Service Reserve Insurance Policy, notwithstanding anything to the contrary set forth in the Authorizing Documents the Issuer and the Trustee agree to comply with the following provisions:

(a) The Issuer shall repay any draws under the Municipal Bond Debt Service Reserve Insurance Policy (the "Reserve Policy") and pay all related reasonable expenses incurred by BAM (the "Reserve Insurer"). Interest shall accrue and be payable on such draws and expenses from the date of payment by the Reserve Insurer at the Late Payment Rate. "Late Payment Rate" means the lesser of (A) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in the City of New York, as its prime or base lending rate ("Prime Rate") (any change in such Prime Rate to be effective on the date such changes are announced by JPMorgan Chase Bank) plus 5%, and (ii) the then applicable highest rate of interest on the Bonds, and (B) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event JPMorgan Chase Bank ceases to announce its Prime Rate publicly, Prime Rate shall be the publicly announced prime or base lending rate of such bank, banking association or trust company bank as the Reserve Insurer in its sole and absolute discretion shall specify.

Repayment of draws and payment of expenses and accrued interest thereon at the Late Payment Rate (collectively, the "Policy Costs") shall commence in the first month following each draw, and each such monthly payment shall be in an amount at least equal to 1/12 of the aggregate of Policy Costs related to such draw.

Amounts in respect of Policy Costs paid to the Reserve Insurer shall be credited first to interest due, then to the expenses due and then to principal due. As and to the extent that payments are made to the Reserve Insurer on account of principal due, the coverage under the Reserve Policy will be increased by a like amount, subject to the terms of the Reserve Policy.

All cash and investments in the debt service reserve fund or account established for the Bonds (the "Reserve Fund") and all other available amounts in any funds available to pay debt service on the Bonds shall be transferred to the Debt Service Fund for payment of the debt service on the Bonds before any drawing may be made on the Reserve Policy or any other credit facility on deposit in the Reserve Fund in lieu of cash ("Reserve Fund Credit Instrument").

Payment of any Policy Cost shall be made prior to replenishment of any cash amounts. Draws on all Reserve Fund Credit Instruments (including the Reserve Policy) on which there is available coverage shall be made on a pro-rata basis (calculated by reference to the coverage then available thereunder) after applying all available cash and investments in the Reserve Fund. Payment of Policy Costs and reimbursement of amounts with respect to other Reserve Fund Credit Instruments shall be made on a pro-rata basis prior to replenishment of any cash drawn from the Reserve Fund. For the avoidance of doubt, "available coverage" means the coverage then available for disbursement pursuant to the terms of the applicable Reserve Fund Credit Instrument without regard to the legal or

financial ability or willingness of the provider of such instrument to honor a claim or draw thereon or the failure of such provider to honor any such claim or draw.

The Policy Limit shall automatically and irrevocably be reduced from time to time by the amount of each reduction in the Reserve Requirement.

(b) Draws under the Reserve Policy may only be used to make payments on Bonds covered under the Reserve Policy.

(c) If the Issuer shall fail to pay any Policy Costs in accordance with the requirements of paragraph (a) above, the Reserve Insurer shall be entitled to exercise any and all legal and equitable remedies available to it, including those provided under this [Indenture], the [Lease/Loan Agreement], or any other document executed in connection with the Bonds (collectively, the "Security Documents").

(d) The Security Documents shall not be discharged until all Policy Costs owing to the Reserve Insurer shall have been paid in full. The Issuer's oblgation to pay such amount shall expressly survive payment in full of the Bonds.

(e) The Reserve Policy shall expire and terminate in accordance with the terms and provisions of the Reserve Policy [and Debt Service Reserve Agreement].

(f) Any amendment, supplement, modification to, or waiver of any of the Security Documents that requires the consent of the Owners of the Bonds or adversely affects the rights or interest of the Reserve Insurer shall be subject to the prior written consent of the Reserve Insurer.

(g) The Reserve Insurer is recognized as and shall be deemed to be a third party beneficiary of the Security Documents and may enforce the provisions of the Security Documents as if it were a party thereto.

(h) Policy Costs due and owing shall be included in debt service requirements for purposes of calculation of the additional bonds test [anti-dilution test] in the Security Documents.

(i) The [Trustee] [Paying Agent] shall ascertain the necessity for a claim upon the Reserve Policy in accordance with the provisions of paragraph (a) hereof and shall provide notice to the Reserve Insurer in accordance with the terms of the Reserve Policy at least five business days prior to each date upon which interest or principal is due on the Bonds. Where deposits are required to be made by the Issuer with the Trustee to the debt service fund for the Bonds more often than semi-annually, the Trustee shall give notice to the Reserve Insurer of any failure of the Issuer to make timely payment in full of such deposits within two business days of the date due.

(j) The Issuer agrees unconditionally that it will pay or reimburse the Reserve Insurer on demand any and all reasonable charges, fees, costs, losses, liabilities and expenses that the Reserve Insurer may pay or incur, including, but not limited to, fees and expenses of the Reserve Insurer's agents, attorneys, accountants, consultants, appraisers and auditors and reasonable costs of investigations, in connection with the administration (including waivers

and consents, if any), enforcement, defense, exercise or preservation of any rights and remedies in respect of this [Indenture] or any other Security Document ("Administrative Expenses"). For purposes of the foregoing, costs and expenses shall include a reasonable allocation of compensation and overhead attributable to the time of employees of the Reserve Insurer spent in connection with the actions described in the preceding sentence. The Issuer agrees that failure to pay any Administrative Expenses on a timely basis will result in the accrual of interest on the unpaid amount at the Late Payment Rate, compounded semi-annually, from the date that payment is first due to the Reserve Insurer until the date the Reserve Insurer is paid in full.

(k) Payments made by the Reserve Insurer under the Reseve Policy with respect to claims for interest on or principal of the Bonds shall not discharge the obligation of the Issuer with respect to such Bonds, and BAM shall become the owner of such unpaid Bonds and claims for the interest thereon. The Issuer and the Trustee recognize and agree that to the extent the Reserve Insurer makes payments directly or indirectly (e.g., by paying through the Trustee), on account of principal of or interest on the Bonds, the Reserve Insurer will be subrogated to the rights of such holders to receive the amount of such principal and interest from the Issuer, with interest thereon.

(l) In order to secure the Issuer's payment obligations with respect to Policy Cost, there is hereby granted and perfected in favor of the Reserve Insurer a security interest (subordinate only to that of the owners of the Bonds) in all revenues and collateral pledged as security for the Bonds. Policy Costs shall be paid to the Reserve Insurer immediately following the payment of principal of and interest on the Bonds, including following the occurrence of a default or event of default.

(m) [The [Obligor] shall be obligated to pay, as an additional [loan, lease or rental] payment, to the Trustee for deposit to the Reserve Fund an amount equal to the debt service reserve fund replenishment under the [Indenture], including amounts required to repay draws and Policy Costs under the Reserve Policy.]

(n) Notice and Other Information to be given to the Reserve Insurer.

(1) The Issuer will provide the Reserve Insurer with all notices and other information it is obligated to provide (i) under its Continuing Disclosure Agreement and (ii) to the holders of Bonds or the Trustee under the Security Documents.

(2) In addition, the Issuer shall provide the Reserve Insurer with the following notices and other information: (i) notice of any draw upon the Reserve Fund within two (2) business days after knowledge thereof, other than in connection with withdrawals of amounts in excess of the Reserve Requirement; and (ii) prior written notice of the advance refunding or redemption of any of the Bonds, including the principal amount, maturities and CUSIP numbers thereof.

(3) The Reserve Insurer shall be entitled to receive such additional information as it may reasonably request.

(4) The notice address of Reserve Insurer is:

Build America Mutual Assurance Company
200 Liberty Street, 27th Floor
New York, NY 10281
Attention: Surveillance, Re: Policy No. _____
Telephone: (212) 235-2500
Telecopier: (212) 235-1542
Email: notices@buildamerica.com

In each case in which notice or other communication refers to an event of default or a claim on the Reserve Policy, then a copy of such notice or other communication shall also be sent to the attention of the General Counsel at the same address and at claims@buildamerica.com or at Telecopier: (212) 235-5214 and shall be marked to indicate "URGENT MATERIAL ENCLOSED."

EXHIBIT B

FORM OF DEBT SERVICE RESERVE AGREEMENT

DEBT SERVICE RESERVE AGREEMENT

DEBT SERVICE RESERVE AGREEMENT, dated as of June _, 2020 (the "Agreement"), by and [between] [among] Utah Transit Authority (the "Obligor") [_____ (the "Issuer")] and BUILD AMERICA MUTUAL ASSURANCE COMPANY ("BAM").

In consideration of the issuance by BAM of its Municipal Bond Debt Service Reserve Insurance Policy No. _____ (the "Reserve Policy") with respect to the Federally Taxable Subordinated Sales Tax Revenue Bonds, Series 2010 (Issuer Subsidy-Build America Bonds) [Bonds] (the "Bonds") issued under the [Indenture/Resolution/Ordinance] dated as of _____, between the [Obligor] [Issuer] and the [Trustee] (the "Trustee") (the "Authorizing Document") [, which bonds are secured by the [Lease/Loan] payments of the Obligor under the [Lease/Loan] Agreement dated as of _____ [the "[Lease/Loan] Agreement"] between the Issuer and the Obligor and the other revenue and collateral described in the Authorizing Document,] and the payment to BAM of the Insurance Payment for the Reserve Policy, the Obligor[, Issuer] and BAM hereby covenant and agree as follows:

1. The Obligor shall repay BAM any draws under the Reserve Policy and pay all Administrative Expenses (as defined below) incurred by BAM. Interest shall accrue and be payable on such draws and expenses from the date of payment by BAM at the Late Payment Rate. "Late Payment Rate" means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in the City of New York, as its prime or base lending rate ("Prime Rate") (any change in such Prime Rate to be effective on the date such change is announced by JPMorgan Chase Bank) plus 5%, and (ii) the then applicable highest rate of interest on the Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event JPMorgan Chase Bank ceases to announce its Prime Rate, the Prime Rate shall be the prime or base-lending rate of such national bank as BAM shall designate.

2. Repayment of draws and payment of Administrative Expenses (as defined below) and the interest accrued thereon at the Late Payment Rate (collectively, "Policy Costs") shall commence in the first month following each draw and each such monthly payment shall be in an amount at least equal to 1/12th of the aggregate of Policy Costs related to such draw*[; provided, however, that all such payments shall be due prior to termination of the [Lease] Agreement dated as of _____ between the Issuer and Obligor]*. Amounts in respect of Policy Costs paid to BAM shall be credited first to interest due, then to the expenses due and then to principal due. *[For Ca. RDA add: The Obligor shall include the repayment of Policy Costs in its Recognized Payment Obligation Schedule.]*

3. As and to the extent that payments are made to BAM on account of principal due, the coverage under the Reserve Policy will be reinstated by a like amount, subject to the terms of the Reserve Policy.

4. All cash and investments in the debt service reserve fund or account securing the Bonds (the "Reserve Fund") and any surplus fund or account shall be transferred to the debt service fund for payment of debt service on the Bonds before any drawing may be made on the Reserve Policy or on any alternative credit instrument on deposit in the Reserve Fund ("Alternative Credit Instrument"). Payment of any Policy Costs shall be made prior to replenishment of any such cash amounts. Draws on all Alternative Credit Instruments (including the Reserve Policy) on which there is available coverage shall be made on a pro rata basis (calculated by reference to available coverage under each such Alternative Credit Instrument) after applying available cash and investments in the Reserve Fund. Payment of Policy Costs and reimbursement of amounts with respect to Alternative Credit Instruments shall be made on a pro-rata basis prior to replenishment of any cash drawn from the Reserve Fund. For the avoidance of doubt, "available coverage" means the coverage then available for disbursement pursuant to the terms of the applicable Alternative Credit Instrument without regard to the legal or financial ability or willingness of the provider of such instrument to honor a claim or draw thereon or the failure of such provider to honor any such claim or draw.

   The Policy Limit shall automatically and irrevocably be reduced from time to time by the amount of each reduction in the Reserve Requirement.

   Draws under the Reserve Policy may only be used to make payments of principal of and interest on the Bonds.

5. The Reserve Policy shall terminate on the earlier to occur of _____, ___ and the date the Bonds are no longer outstanding under the Authorizing Document.

6. If the Obligor shall fail to pay any Policy Costs in accordance with the requirements of the Authorizing Document and this Agreement, BAM shall be entitled to exercise any and all legal and equitable remedies available to it, including those provided under the Authorizing Document, the [Lease/Loan] Agreement or any other document executed in connection with the Bonds (collectively, the "Security Documents").

7. Any amendment, supplement, modification to, or waiver of, any of the Security Documents that requires the consent of holders of the Bonds or adversely affects the rights or interests of BAM shall be subject to the prior written consent of BAM.

8. The Security Documents shall not be discharged until all Policy Costs owing to BAM shall have been paid in full. The Obligor's obligation to pay such amounts shall expressly survive payment in full of the Bonds.

9. In order to secure the Obligor's payment obligations with respect to the Policy Costs, there is hereby granted and perfected in favor of BAM a security interest (subordinate only to that of the owners of the Bonds) in all revenues and collateral pledged as security for the Bonds ("Pledged Collateral"). Policy Costs shall be paid to BAM immediately following the payment of principal of and interest on the Bonds, including following the occurrence of a default or event of default. The Obligor shall not make payments from or pledge,

assign or grant a security interest in the Pledged Collateral to any provider of an Alternate Credit Instrument that is senior or prior to the payments or security interest granted to BAM by this Paragraph 9.

10. The Obligor shall fully observe, perform and fulfill each of the provisions, covenants and agreements (as each of those provisions, covenants and agreements may be amended, supplemented, modified or waived with, if required by Paragraph 7 above, the prior written consent of BAM) of the Security Documents applicable to it, with each of such provisions, covenants and agreements being expressly incorporated into this Agreement by reference solely for the benefit of BAM as if set forth directly herein.

11. Policy Costs due and owing shall be included in debt service requirements for purposes of calculation of the additional bonds test and the rate covenant in the Security Documents.

12. The Trustee shall ascertain the necessity for a claim upon the Reserve Policy in accordance with the provisions of paragraph 4 hereof and shall provide notice to BAM in accordance with the terms of the Reserve Policy at least five business days prior to each date upon which interest or principal is due on the Bonds. Where deposits are required to be made by the Obligor with the Trustee to the debt service fund for the Bonds more often than semi-annually, the Trustee shall give notice to BAM of any failure of the Obligor to make timely payment in full of such deposits within two business days of the date due.

13. Payments made by BAM under the Reserve Policy with respect to claims for interest on or principal of the Bonds shall not discharge the obligation of the [Issuer] [Obligor] with respect to such Bonds, and BAM shall become the owner of such unpaid Bonds and claims for the interest thereon. The [Issuer] [Obligor] and the Trustee recognize and agree that to the extent BAM makes payments directly or indirectly (e.g., by paying through the Trustee), on account of principal of or interest on the Bonds, BAM will be subrogated to the rights of such holders to receive the amount of such principal and interest from the [Issuer] [Obligor], with interest thereon.

14. The Obligor agrees unconditionally that it will pay or reimburse BAM on demand any and all reasonable charges, fees, costs, losses, liabilities and expenses that BAM may pay or incur, including, but not limited to, fees and expenses of BAM's agents, attorneys, accountants, consultants, appraisers and auditors and reasonable costs of investigations, in connection with the administration (including waivers and consents, if any), enforcement, defense, exercise or preservation of any rights and remedies in respect of this Agreement, the Authorizing Document or any other document executed in connection with the Bonds ("Administrative Expenses"). For purposes of the foregoing, costs and expenses shall include a reasonable allocation of compensation and overhead attributable to the time of employees of BAM spent in connection with the actions described in the preceding sentence. The Obligor agrees that failure to pay any Administrative Expenses on a timely basis will result in the accrual of interest on the unpaid amount at the Late Payment Rate, compounded semi-annually, from the date that payment is first due to BAM until the date BAM is paid in full.

15. The obligation of the Obligor to pay all amounts (including Policy Costs and Administrative Expenses) due under this Agreement shall be an absolute and unconditional obligation of the Obligor and will be paid or performed strictly in accordance with this Agreement but solely from the availability of Net Revenues as described in the Authorizing Document.

16. So long as a default or event of default has occurred and is continuing under this Agreement, the Authorizing Document or any other document executed in connection with the Bonds, the Obligor shall not be eligible for a dividend or any other economic benefit under BAM's organizational documents.

17. Notice and Other Information to be given to the Reserve Insurer.

    a. The Obligor will provide the Reserve Insurer with all notices and other information it is obligated to provide (i) under its Continuing Disclosure Agreement and (ii) to the holders of Bonds or the Trustee under the Security Documents.

    b. In addition, the Trustee shall provide the Reserve Insurer with the following notices and other information: (i) notice of any draw upon the Reserve Fund within two (2) business days after knowledge thereof, other than in connection with withdrawals of amounts in excess of the Reserve Requirement; and (ii) prior written notice of the advance refunding or redemption of any of the Bonds, including the principal amount, maturities and CUSIP numbers thereof.

    c. The Reserve Insurer shall be entitled to receive such additional information as it may reasonably request.

18. Notices to BAM shall be sent to the following address (or such other address as BAM may designate in writing): Build America Mutual Assurance Company, 200 Liberty Street, 27th Floor, New York, NY 10281, Attention: Surveillance, Re: Policy No. _____, Telephone: (212) 235-2500, Telecopier: (212) 235-1542, Email: notices@buildamerica.com; with a copy of such notice or other communication sent to the attention of the General Counsel at the same address and at claims@buildamerica.com or at Telecopier: (212) 235-5214.

19. The Obligor [and Issuer] agrees that any disclosure document or other document relating to the issuance or sale of the Bonds shall not contain any reference to BAM or the Reserve Policy, except as may be approved by BAM.

20. If any one or more of the agreements, provisions or terms of this Agreement shall be for any reason whatsoever held invalid, then such agreements, provisions or terms shall be deemed severable from the remaining agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement. In the event of any conflict in the terms of this Agreement and the Authorizing Document, the terms of this Agreement shall control.

21. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Authorizing Document.

22. This Agreement may be executed in counterparts, each of which alone and all of which together shall be deemed one original Agreement.

23. This Agreement and the rights and obligations of the parties to the Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, each of the parties hereto has duly executed and delivered this Agreement as of the date first above written.

[OBLIGOR]

By: _____
Title:

BUILD AMERICA MUTUAL ASSURANCE COMPANY

By: _____
Title:

EXHIBIT C

FORM OF OPINION

[CLOSING DATE]

[ADDRESSEES (ISSUER, MEMBER AND TRUSTEE)]

Re:

DSR Policy: Debt Service Reserve Insurance Policy No. [POLICY NO.]
Member:
Bonds:

Ladies and Gentlemen:

I am Counsel of Build America Mutual Assurance Company, a New York mutual insurance company ("BAM"). You have requested my opinion in such capacity as to the matters set forth below in connection with the issuance by BAM of its above-referenced DSR Policy (the "Policy"). In that regard, and for purposes of this opinion, I have examined such corporate records, documents and proceedings as I have deemed necessary and appropriate.

Based upon the foregoing, I am of the opinion that:

1. BAM is a mutual insurance company duly organized and validly existing under the laws of the State of New York and authorized to transact financial guaranty insurance business therein.

2. The Policy has been duly authorized, executed and delivered by BAM.

3. The Policy constitutes the valid and binding obligation of BAM, enforceable in accordance with its terms, subject, as to the enforcement of remedies, to bankruptcy, insolvency, reorganization, rehabilitation, moratorium and other similar laws affecting the enforceability of creditors' rights generally applicable in the event of the bankruptcy or insolvency of BAM and to the application of general principles of equity.

4. The issuance of the Policy qualifies the Member as a member of BAM until the Policy is no longer outstanding. As a member of BAM, the Member is entitled to certain rights and privileges as provided in BAM's charter and by-laws and as may otherwise be provided under New York law. The Policy is non-assessable and creates no contingent mutual liability.

I am a member of the Bar of the State of New York, and do not express any opinion as to any law other than the laws of the State of New York.

This letter and the legal opinions herein are intended for the information solely of the addresses hereof and solely for the purposes of the transaction described above and are not to be relied upon by any other person or entity (including, without limitation, any person or entity that acquires bonds from an addressee of this letter.) I do not undertake to advise you of matters that may come to my attention subsequent to the date hereof that may affect the conclusions expressed herein.

Very truly yours,

EXHIBIT 1

Specimen Municipal Bond Debt Service Reserve Insurance Policy

MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE POLICY (SA)

ISSUER: [NAME OF ISSUER]

MEMBER: [NAME OF MEMBER]

BONDS: [Bonds]

MAXIMUM POLICY LIMIT: $_____

Policy No: _____

Effective Date: _____

Risk Premium: $_____

Member Surplus Contribution: $_____

Total Insurance Payment: $_____

BUILD AMERICA MUTUAL ASSURANCE COMPANY ("BAM"), for consideration received, hereby UNCONDITIONALLY AND IRREVOCABLY agrees to pay to the trustee (the "Trustee") or paying agent (the "Paying Agent") for the Bonds named above under the Security Documents, subject only to the terms of this Policy (which includes each endorsement hereto), that portion of the principal of and interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer.

BAM will make payment as provided in this Policy to the Trustee or Paying Agent on the later of (i) the Business Day on which such principal and interest becomes Due for Payment and (ii) the first Business Day following the Business Day on which BAM shall have received a completed Notice of Nonpayment in a form reasonably satisfactory to it. A Notice of Nonpayment will be deemed received on a given Business Day if it is received prior to 1:00 p.m. (New York time) on such Business Day; otherwise, it will be deemed received on the next Business Day. If any Notice of Nonpayment received by BAM is incomplete, it shall be deemed not to have been received by BAM for purposes of this paragraph, and BAM shall promptly so advise the Trustee or Paying Agent who may submit an amended Notice of Nonpayment.

Payment by BAM to the Trustee or Paying Agent for the benefit of the Owners shall, to the extent thereof, discharge the obligation of BAM under this Policy. Upon disbursement under this Policy in respect of a Bond and to the extent of such payment, (a) BAM shall become the owner of such Bond, any appurtenant coupon to such Bond and right to receipt of payment of principal of or interest on such Bond and shall be fully subrogated to the rights of the Owner, including the Owner's right to receive payments under such Bond and (b) BAM shall become entitled to reimbursement of the amount so paid (together with interest and expenses) pursuant to the Security Documents and Debt Service Reserve Agreement.

The amount available under this Policy for payment shall not exceed the Policy Limit. The amount available at any particular time to be paid to the Trustee or Paying Agent under the terms of this Policy shall automatically be reduced by and to the extent of any payment under this Policy. However, after such payment, the amount available under this Policy shall be

reinstated in full or in part, but only up to the Policy Limit, to the extent of the reimbursement of such payment (after taking into account the payment of interest and expenses) to BAM by or on behalf of the Issuer. Within three (3) Business Days of such reimbursement, BAM shall provide the Trustee or the Paying Agent with Notice of Reinstatement, in the form of Exhibit A attached hereto, and such reinstatement shall be effective as of the date BAM gives such notice.

Payment under this Policy shall not be available with respect to (a) any Nonpayment that occurs prior to the Effective Date or after the end of the Term of this Policy or (b) Bonds that are not outstanding under the Security Documents. In no event shall BAM incur duplicate liability for the same amounts owing with respect to the Bonds that are covered under this Policy and any other BAM issued insurance policy.

Except to the extent expressly modified by an endorsement hereto, the following terms shall have the meanings specified for all purposes of this Policy. "**Business Day**" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the State of New York or the Insurer's Fiscal Agent (as hereinafter defined) are authorized or required by law or executive order to remain closed. "**Debt Service Reserve Agreement**" means the Debt Service Reserve Agreement, dated as of the effective date hereof, in respect of this Policy, as the same may be amended or supplemented from time to time. "**Due for Payment**" means (a) when referring to the principal of a Bond, payable on the stated maturity date thereof or the date on which the same shall have been duly called for mandatory sinking fund redemption and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity (unless BAM shall elect, in its sole discretion, to pay such principal due upon such acceleration together with any accrued interest to the date of acceleration) and (b) when referring to interest on a Bond, payable on the stated date for payment of interest. "**Nonpayment**" means, in respect of a Bond, the failure of the Issuer to have provided sufficient funds to the Trustee or, if there is no Trustee, to the Paying Agent for payment in full of all principal and interest that is Due for Payment on such Bond. "Nonpayment" shall also include, in respect of a Bond, any payment made to an Owner by or on behalf of the Issuer of principal or interest that is Due for Payment, which payment has been recovered from such Owner pursuant to the United States Bankruptcy Code in accordance with a final, nonappealable order of a court having competent jurisdiction. "**Notice**" means delivery to BAM of a notice of claim and certificate, by certified mail, email or telecopy or other acceptable electronic delivery, from and signed by the Trustee or the Paying Agent, which notice shall be in a form and substance satisfactory to BAM and shall specify and include (a) the person or entity making the claim, (b) the Policy Number, (c) the claimed amount, (d) payment instructions, (e) the date such claimed amount becomes or became Due for Payment, (f) representations and agreements regarding the assignment and subrogation rights of BAM, and (g) such other provisions as BAM may reasonably require. A form of such Notice can be obtained from BAM upon request. "**Owner**" means, in respect of a Bond, the person or entity who, at the time of Nonpayment, is entitled under the terms of such Bond to payment thereof, except that "Owner" shall not include the Issuer, the Member or any person or entity whose direct or indirect obligation constitutes the underlying security for the Bonds. "**Policy Limit**" means the lesser of (i) Maximum Policy Limit set forth above and (ii) the dollar amount of the debt service reserve fund (or the portion thereof) required to be maintained for the Bonds by

the Security Documents from time to time (the "Reserve Account Requirement"). The Policy Limit shall automatically and irrevocably be reduced from time to time by the amount of each reduction in the Reserve Account Requirement applicable to the Bonds, as provided in the Security Documents. "**Security Documents**" means any resolution, ordinance, trust agreement, trust indenture, loan agreement and/or lease agreement or any similar document and any additional or supplemental document executed in connection with the Bonds. "**Term**" means the period from and including the Effective Date until the Termination Date. "**Termination Date**" means the earlier to occur of (i) the date on which the Bonds are no longer outstanding under the Security Documents and (ii) _____ [date].

BAM may appoint a fiscal agent (the "Insurer's Fiscal Agent") for purposes of this Policy by giving written notice to the Trustee and the Paying Agent specifying the name and notice address of the Insurer's Fiscal Agent. From and after the date of receipt of such notice by the Trustee and the Paying Agent, (a) copies of all notices required to be delivered to BAM pursuant to this Policy shall be simultaneously delivered to the Insurer's Fiscal Agent and to BAM and shall not be deemed received until received by both and (b) all payments required to be made by BAM under this Policy may be made directly by BAM or by the Insurer's Fiscal Agent on behalf of BAM. The Insurer's Fiscal Agent is the agent of BAM only, and the Insurer's Fiscal Agent shall in no event be liable to the Trustee, Paying Agent or any Owner for any act of the Insurer's Fiscal Agent or any failure of BAM to deposit or cause to be deposited sufficient funds to make payments due under this Policy.

To the fullest extent permitted by applicable law, BAM agrees not to assert, and hereby waives, only for the benefit of each Owner, all rights (whether by counterclaim, setoff or otherwise) and defenses (including, without limitation, the defense of fraud), whether acquired by subrogation, assignment or otherwise, to the extent that such rights and defenses may be available to BAM to avoid payment of its obligations under this Policy in accordance with the express provisions of this Policy. This Policy may not be canceled or revoked.

This Policy sets forth in full the undertaking of BAM and shall not be modified, altered or affected by any other agreement or instrument, including any modification or amendment thereto. Except to the extent expressly modified by an endorsement hereto, any premium paid in respect of this Policy is nonrefundable for any reason whatsoever, including payment, or provision being made for payment, of the Bonds prior to maturity. THIS POLICY IS NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 76 OF THE NEW YORK INSURANCE LAW. THIS POLICY IS ISSUED WITHOUT CONTINGENT MUTUAL LIABILITY FOR ASSESSMENT.

In witness whereof, BUILD AMERICA MUTUAL ASSURANCE COMPANY has caused this Policy to be executed on its behalf by its Authorized Officer.

BUILD AMERICA MUTUAL
ASSURANCE COMPANY

By: _____
Authorized Officer

Notices (Unless Otherwise Specified by BAM)

Email:
claims@buildamerica.com
Address:
200 Liberty Street, 27th floor
New York, New York 10281
Telecopy: 212-235-1524 (attention: Claims)

NOTICE OF REINSTATEMENT

[DATE]

[TRUSTEE][PAYING AGENT]
[INSERT ADDRESS]

Reference is made to the Municipal Bond Debt Service Reserve Insurance Policy, Policy No. _____ (the "Policy"), issued by Build America Mutual Assurance Company ("BAM"). The terms which are capitalized herein and not otherwise defined shall have the meanings specified in the Policy, or if not defined therein, in the Debt Service Reserve Agreement.

BAM hereby delivers notice that it is in receipt of payment from the [Issuer], or on its behalf, pursuant to the Debt Service Reserve Agreement and, as of the date hereof, the Policy Limit is $_____, subject to reduction as the Reserve Account Requirement for the Bonds is reduced in accordance with the terms set forth in the Security Documents.

BUILD AMERICA MUTUAL
ASSURANCE COMPANY

By: _____
Name:
Title:

EXHIBIT 2

IF THE ISSUER ELECTS TO INCLUDE DISCLOSURE ABOUT BAM IN THE OFFICIAL STATEMENT, THE FOLLOWING SHOULD BE USED TO BE PRINTED IN THE BODY OF THE OFFICIAL STATEMENT OR AS AN EXHIBIT

MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE POLICY

Concurrently with the issuance of the Bonds, Build America Mutual Assurance Company ("BAM") will issue its Municipal Bond Debt Service Reserve Insurance Policy relating to the Bonds (the "Reserve Policy") in the form attached hereto as [Exhibit __].

The Reserve Policy is not covered by any insurance security or guaranty fund established under New York, California, Connecticut or Florida insurance law.

BUILD AMERICA MUTUAL ASSURANCE COMPANY

BAM is a New York domiciled mutual insurance corporation and is licensed to conduct financial guaranty insurance business in all fifty states of the United States and the District of Columbia. BAM provides credit enhancement products solely to issuers in the U.S. public finance markets. BAM will only insure obligations of states, political subdivisions, integral parts of states or political subdivisions or entities otherwise eligible for the exclusion of income under section 115 of the U.S. Internal Revenue Code of 1986, as amended. No member of BAM is liable for the obligations of BAM.

The address of the principal executive offices of BAM is: 200 Liberty Street, 27th Floor, New York, New York 10281, its telephone number is: 212-235-2500, and its website is located at: www.buildamerica.com.

BAM is licensed and subject to regulation as a financial guaranty insurance corporation under the laws of the State of New York and in particular Articles 41 and 69 of the New York Insurance Law.

BAM's financial strength is rated "AA/Stable" by S&P Global Ratings, a business unit of Standard & Poor's Financial Services LLC ("S&P"). An explanation of the significance of the rating and current reports may be obtained from S&P at www.standardandpoors.com. The rating of BAM should be evaluated independently. The rating reflects the S&P's current assessment of the creditworthiness of BAM and its ability to pay claims on its policies of insurance. The above rating is not a recommendation to buy, sell or hold the Bonds, and such rating is subject to revision or withdrawal at any time by S&P, including withdrawal initiated at the request of BAM in its sole discretion. Any downward revision

or withdrawal of the above rating may have an adverse effect on the market price of the Bonds. BAM does not guarantee the market price or liquidity of bonds (including the Bonds), nor does it guarantee that the rating on bonds (including the Bonds) will not be revised or withdrawn.

Capitalization of BAM

BAM's total admitted assets, total liabilities, and total capital and surplus, as of December 31, 2019 and as prepared in accordance with statutory accounting practices prescribed or permitted by the New York State Department of Financial Services were $534.9 million, $132.5 million and $402.4 million, respectively.

BAM is party to a first loss reinsurance treaty that provides first loss protection up to a maximum of 15% of the par amount outstanding for each policy issued by BAM, subject to certain limitations and restrictions.

BAM's most recent Statutory Annual Statement, which has been filed with the New York State Insurance Department and posted on BAM's website at www.buildamerica.com, is incorporated herein by reference and may be obtained, without charge, upon request to BAM at its address provided above (Attention: Finance Department). Future financial statements will similarly be made available when published.

BAM makes no representation regarding the Bonds or the advisability of investing in the Bonds. In addition, BAM has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding BAM, supplied by BAM and presented under the heading "MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE POLICY".

Exhibit 3

PROCEDURES FOR PREMIUM PAYMENT TO
BUILD AMERICA MUTUAL ASSURANCE COMPANY
("BAM")

BAM's issuance of its municipal bond debt service reserve insurance policy is contingent upon payment and receipt of the Insurance Payment. NO POLICY MAY BE RELEASED UNTIL PAYMENT OF SUCH AMOUNT HAS BEEN CONFIRMED BY BAM. Set forth below are the procedures to be followed for confirming the amount of the premium to be paid and for paying such amount:

Confirmation of Amount to be Paid:	**Upon determination of the Policy Limit, fax or email such calculation to BAM** Attention: Alexander Vaisman Email: avaisman@buildamerica.com Phone No.: 415-858-1004 Fax No.: 212-962-1524

Confirm with BAM's credit analyst that you are in agreement with respect to the Policy Limit and the Insurance Payment on the transaction prior to the closing date.

Payment Dates:	Date of Delivery of the Reserve Policy
Method of Payment:	Wire transfer of Federal Funds.

Wire Transfer Instructions:

Bank: First Republic Bank
ABA#: 321081669
Acct. Name: Build America Mutual Assurance Company
Account No.: 80001613703
Reserve Policy No.: POLICY# _____(Include in OBI Field)

CONFIRMATION OF PREMIUM WIRE NUMBER AT CLOSING

BAM will accept as confirmation of the Insurance Payment a wire transfer number and the name of the sending bank, to be communicated on the closing date to Patrice James, Closing Coordinator, 212-235-2559, email: pjames@buildamerica.com.

EXHIBIT 4

BAM DIRECTORY

Name	Title	Telephone	Email
BAM ATTORNEYS			
Jeffrey Fried	**Deputy Counsel**	**212-235-2514**	**jfried@buildamerica.com**
CLOSING COORDINATORS			
Patrice James		**212-235-2559**	**pjames@buildamerica.com**
BAM ANALYST			
Alexander Vaisman		**415-858-1004**	**avaisman@buildamerica.com**

MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
THROUGH: Carolyn Gonot, Executive Director
FROM: Mary DeLoretto, Chief Service Development Officer
PRESENTER(S): Mary DeLoretto, Chief Service Development Officer, and Hal Johnson, Manager of Project Development

BOARD MEETING DATE: June 17, 2020

SUBJECT:	**R2020-06-03 Resolution Approving the Interlocal Cooperation Agreement with Clearfield City for the Construction of a Pedestrian/Bike Trail**
AGENDA ITEM TYPE:	**Resolution**
RECOMMENDATION:	Approve Resolution 2020-06-03 approving the Interlocal Cooperative Agreement with Clearfield City for the construction of a Pedestrian/Bike Trail connecting to the Clearfield FrontRunner Station.
BACKGROUND:	UTA has been working with Clearfield City to implement a trail system to improve the pedestrian and bike connection to the Clearfield FrontRunner Station. UTA has been awarded $1.65 million from a Construction Mitigation/Air Quality (CMAQ) grant to construct a trail from the FrontRunner Station to the nearby, existing D&RGW Trail. The City has agreed to provide $120,000 in local match for the project.
DISCUSSION:	The Interlocal Agreement between Clearfield City and UTA details the funding commitments for the trail project and defines the roles and responsibilities for trail construction and ongoing trail maintenance. UTA will be responsible for trail construction. UTA will also be responsible for maintaining the segments of the trail within UTA property, and the City will be responsible for maintaining all other segments of the trail.
ALTERNATIVES:	Without funding from the city, UTA will have to provide the local match for the project or find other funding sources.
FISCAL IMPACT:	The CMAQ grant funding is currently available and included in the UTA 2020 capital budget. The city will be providing all of the local match. This project will have no cost to UTA.
ATTACHMENTS:	• Resolution 2020-06-03

RESOLUTION OF THE BOARD OF TRUSTEES OF THE UTAH TRANSIT AUTHORITY APPROVING THE INTERLOCAL COOPERATION AGREEMENT WITH CLEARFIELD CITY FOR THE CONSTRUCTION OF A PEDESTRIAN/BIKE TRAIL

R2020-06-03 June 17, 2020

WHEREAS, Utah Transit Authority (the "Authority") is a large public transit district organized under the laws of the State of Utah and was created to transact and exercise all of the powers provided for in the Utah Limited Purpose Local Government Entities – Local Districts Act and the Utah Public Transit District Act; and

WHEREAS, Clearfield City ("Clearfield") and the Authority are "public agencies" as defined by the Utah Interlocal Cooperation Act, UTAH CODE §§ 11-13- 101 *et seq*. (the "Cooperation Act"), and, as such, are authorized by the Cooperation Act to each enter into an interlocal cooperation agreement to act jointly and cooperatively on the basis of mutual advantage; and

WHEREAS, the Authority has been working with Clearfield to implement a trail system to improve access to the Clearfield FrontRunner Station; and

WHEREAS, the Authority was awarded $1.65 million from a Construction Mitigation/Air Quality (CMAQ) grant to construct a trial from the Clearfield FrontRunner station to the nearby, existing D&RGW Trail; and

WHEREAS, Clearfield has agreed to provide $120,000 in local match monies for the project; and

WHEREAS, entering into an Interlocal Cooperation Agreement with Clearfield City would define the role and responsibilities between the Parties; and

WHEREAS, under the terms of the interlocal cooperation agreement, the Authority would only be responsible for maintenance and upkeep on trail sections contained within the boundaries of Authority property, with Clearfield responsible for the remainder.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Authority:

1. That the Board hereby approves the Interlocal Cooperation Agreement with Clearfield City in substantially the same form as the Agreement attached as Exhibit A.

2. That the Board authorizes the Executive Director and her designee(s) to execute

the Interlocal Cooperation Agreement in substantially the same form as the Agreement attached as Exhibit A.

3. That the Board hereby ratifies any and all actions previously taken by the Authority's management, staff, and counsel in preparing the Interlocal Cooperation Agreement attached as Exhibit A.

4. That the corporate seal be attached hereto.

Approved and adopted this 17th day of June 2020.

_____
Carlton Christensen, Chair
Board of Trustees

ATTEST:

_____
Robert K. Biles, Secretary/Treasurer

(Corporate Seal)

Approved As To Form:

_____
Legal Counsel

Exhibit A

(Interlocal Cooperation Agreement)

INTERLOCAL COOPERATIVE AGREEMENT BETWEEN CLEARFIELD CITY AND THE UTAH TRANSIT AUTHORITY FOR THE CONSTRUCTION OF A PEDESTRIAN/BIKE TRAIL

THIS INTERLOCAL AGREEMENT is entered into this ___ day of _____ 2020 between Clearfield CITY, a political subdivision of the State of Utah (the "CITY"), and the Utah Transit Authority ("UTA"). The CITY and UTA are hereafter collectively referred to as the "Parties", or individually as the "Party".

RECITALS

WHEREAS, The Parties agree that construction of a pedestrian/bike trail in Clearfield between the Clearfield Frontrunner Station, the Denver Rio Grande Western Rail Trail and the Freeport Center. (hereinafter the "Trail") will be of significant mutual benefit to the citizens of Clearfield and UTA, and

WHEREAS, UTA selected the Clearfield FrontRunner Station as a site for future Transit-Oriented Development which will create even greater utilization for the Trail; and

WHEREAS, CITY desires to collaborate with UTA by providing matching funding for the Trail and assuming responsibility for maintenance of the non-UTA owned segments; and

WHEREAS, UTA has been awarded Congestion Mitigation and Air Quality (CMAQ) funding to be used for establishment of the Trail; and

AGREEMENT

1. UTA agrees to utilize CMAQ grant funding in the amount of $1,650,000, with a minimum local match of $119,817 for a total of $1,769,817, to construct the Trail.

2. CITY agrees to provide $120,000 in matching funds to UTA for construction of the Trail.

3. CITY agrees to allow siting of the Trail within CITY property or CITY held right of ways.

4. Although UTA proposes having the trail run north and south of the FrontRunner Station and parallel to the railroad right of way, the Parties agree that final alignment will be refined through final design and subject to mutual concurrence.

5. UTA will act as the Project Manager for design and construction of the Trail with support from the CITY. UTA will procure the services of the final design consultant

and also the construction contractor. UTA will include a representative(s) from the CITY on the selection committee.

6. UTA will coordinate with UDOT on construction of the Trail where it runs adjacent to UDOT roads (Antelope Drive & 700 S).

7. UTA, in coordination with CITY, shall work with management of the Freeport Center to improve access to their facility along the Denver Rio Grande Rail Trail in order to maximize the usefulness of the Trail.

8. UTA will integrate the Trail into its plans for any Transit Oriented Development (TOD) Projects planned for the Clearfield FrontRunner Station.

9. Current plans for the Clearfield Station TOD includes the extension of Depot Street from the north into UTA's property. This will require an easement on or acquisition of private property. This effort is taking place separate from this Interlocal agreement; however, the acquisition is necessary in order to allow the trail to extend northward.

10. The CITY, dependent on the Clearfield Station Master Development Agreement, shall lead the effort in acquiring the property or right of way needed to extend Depot Street to existing UTA property.

11. UTA shall be responsible for maintaining the Trail which lies on UTA property; CITY shall be responsible for maintaining those segments of the Trail not situated on UTA property.

12. Each party agrees to indemnify and hold the other Parties and their respective officers, trustees, agents, employees, and permitted assigns harmless against any claims, losses, liabilities, damages, costs, deficiencies, or expenses affecting any persons or property as a result of the indemnifying Party's actions or from any misrepresentation, material omission, or non-fulfillment of any covenant or agreement on the part of the indemnifying Party under or relating to this Agreement, and any and all actions, suits, proceedings, demands, assessments, judgments, costs, and other expenses incident to any of the foregoing.

13. This agreement shall not constitute a joint venture of the Parties. No Party is or shall be the legal representative or agent of any other Party for any purpose. A Party shall have no power to assume or create, in writing or otherwise, any obligation or responsibility of any kind, express or implied, in the name of or on behalf of any other Party. No Party shall have any obligation with respect to any other Party's debts or other liabilities.

14. Each Party shall, to the extent needed, supply at its own cost all personnel, equipment, supplies, and materials necessary to perform it obligations and intended actions as set forth in this agreement.

15. This agreement may be cancelled upon a declaration of default as provided in this agreement, or if the Parties agree to cancel the Agreement.

16. No Party may assign or transfer its rights or obligations under this agreement without prior written consent of the other Parties.

17. The provisions of this agreement shall bind and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

18. This agreement shall be governed by and construed in accordance with the laws of the State of Utah. If an ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this agreement. The paragraph headings contained herein are for purposes of reference only and shall not limit, expand, or otherwise affect the interpretation of any provision hereof. Whenever the context requires, the singular shall include the plural; the plural shall include the masculine, feminine, and neutral gender.

19. In the event of a dispute arising out of this agreement, the Parties shall attempt to resolve the dispute first through mediation, equally sharing in the costs of the mediation process. If that process does not resolve the dispute, and the Parties resort to court action, then each Party shall be responsible for its own costs and attorney fees.

20. If any provision of this agreement, or the application thereof to any person or circumstance, shall be invalid or unenforceable to any extent, then the remaining provisions of the agreement shall remain in full force and effect, unless the invalidation of the provision materially alters the agreement by interfering with the purpose of the agreement or by resulting in non-compliance with applicable law. If the invalidation of the provision materially alters the agreement, then the Parties shall negotiate in good faith to modify the agreement to match, as closely as possible, the original intent of the Parties.

21. This agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and all prior negotiations, understandings, representations, inducements, and agreements, whether oral or written and whether made by a Party hereto or by anyone acting on behalf of a Party, shall be deemed to be merged in this agreement and shall be of no further force or effect.

22. No amendment to this agreement shall be valid or binding unless reduced to writing and signed by all Parties.

23. This agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of this agreement may be detached from any counterpart and reattached to any other counterpart hereof.

24. The transmission of a signed original of this agreement or any counterpart hereof by facsimile or by other electronic means, and the retransmission of any signed transmission hereof, shall be the same as delivery of an original.

25. Each individual signing this agreement on behalf of a Party hereby represents and warrants, through his or her signature, that the execution of this agreement has been duly approved by the governing authority of such Party.

26. Additional Interlocal Cooperation Act provisions. In satisfaction of the requirements of the Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 et seq., the Parties agree as follows:

a. This agreement shall be authorized and adopted by resolution of the legislative body of each Party, pursuant to Section 11-13-202.5.
b. This agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each Party, pursuant to Section 11-13-202.5.
c. A duly executed original counterpart of this agreement shall be filed immediately with the keeper of records of each Party, pursuant to Section 11-13-219.
d. This agreement shall become effective upon (a) its approval and execution by each Party and (b) the filing of an executed copy of this agreement with the keeper of records of each of the Parties.
e. Immediately after the execution of this agreement by all Parties, each Party shall cause to be published notice regarding this agreement, pursuant to Section 11-13-219.
f. The Parties agree that they do not, by this agreement, create an Interlocal entity or any separate entity.
g. CITY appoints _____, its _____, as its administrator for all matters relating to CITY's participation in this agreement. UTA appoints _____, its _____, as its administrator for all matters relating to UTA's participation in this agreement. If an administrator ceases to be employed by the represented Party, then the person who replaces the prior administrator shall become the new administrator of that Party for purposes of this agreement, unless that Party otherwise notifies the other Parties in writing. Any Party may, at any time, change the designation of its administrator by providing written notice to the other Parties. To the extent that any administration of this agreement becomes necessary, then the Parties' administrators named above, or their designees or successors, shall constitute a joint board for such purpose, and each party shall have an equal vote in any decision that needs to be made.
h. There shall be no joint acquisition or ownership of property, and it will not be necessary to dispose of property on the termination of this agreement.
i. There is no joint budget; each Party will be responsible for maintaining its own financial budget for both income and expenditures arising under this agreement.

27. GRAMA. The Parties acknowledge that disclosure of records pursuant to this agreement is subject to the Utah Government Records Access and Management Act, Utah Code Ann. §63G-7-101, et seq.

28. Notices. Any notice or certification required or permitted to be delivered under this agreement shall be deemed to have been given when personally delivered, of if mailed, three business days after deposit of the same in the United States Mail, postage prepaid, certified, or registered, return receipt requested, properly addressed to following respective addresses:

CITY OF CLEARFIELD

_____

_____

_____

Utah Transit Authority
669 West 200 South,
Salt Lake CITY, UT 84101

IN WITNESS WHEREOF, the above-identified parties have entered into this agreement effective the date first set forth herein.

(Remainder of this Page Intentionally Blank)

SIGNATURE PAGE FOR AGREEMENT

UTAH TRANSIT AUTHORITY

_____

Executive Director

Date:_____

_____

Chief Service Development Officer

Date:_____

Approved as to Form

_____

UTA Legal Counsel

SIGNATURE PAGE FOR AGREEMENT

CITY OF CLEARFIELD

Mayor

Date:_____

Date:_____

Approved as to Form

CITY ATTORNEY

ATTEST:

CITY Recorder

MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
THROUGH: Carolyn Gonot, Executive Director
FROM: Mary DeLoretto, Chief Service Development Officer
PRESENTER(S): Mary DeLoretto, Chief Service Development Officer

BOARD MEETING DATE: June 17, 2020

SUBJECT:	**R2020-06-04 Resolution Approving the Execution of an Interlocal Cooperation Agreement with the Utah Department of Transportation for the Vineyard FrontRunner Station and Northern Utah Double Tracking Project**
AGENDA ITEM TYPE:	**Resolution**
RECOMMENDATION:	Approve Resolution R2020-06-04 authorizing execution of an Interlocal Cooperation Agreement with the Utah Department of Transportation (UDOT) for the Design, Construction, Oversight, and Management of the Vineyard FrontRunner Station and FrontRunner Northern Utah County Double Tracking Project.
BACKGROUND:	During the 2018 Legislative Session, $4 Million dollars was appropriated for the design and construction of the Vineyard FrontRunner Station. Due to the nature of the funds, UDOT has taken the lead on managing the project and procuring a designer. Over the past several years, UTA has been implementing Positive Train Control (PTC) systems as required by the Federal Railroad Administration along the FrontRunner corridor. The impacts of PTC on train operations was modeled and it was determined that an additional 1.8 miles of double track would be needed north of the new station at Vineyard in order to address operational constraints caused by PTC. Therefore, the Northern Utah County double track project, which includes approximately 1.8 miles of new track north of the new Vineyard Station, was included in UTA's 2020 capital budget. It was subsequently decided that it would be beneficial to have just one contractor construct both project elements (i.e. the station and the double tracking). This agreement details how UTA and UDOT will work together during design and construction of the overall project. Design for the station and double-track components is currently 70% complete and a selection process to bring on the Construction Manager/General Contractor is underway.
DISCUSSION:	This interagency agreement addresses the following: • procurement procedures • design and construction processes

	• systems testing and activation • funding / invoicing • quality and contractor warranty • ownership of the system
ALTERNATIVES:	Without this interagency cooperative agreement between UTA and UDOT, there would not be a clear definition of what each agency is responsible for and how each agency would interact with both the design consultant and construction contractor. UTA could take over the double tracking, but it would be more efficient and practical to have one contractor construct both project elements.
FISCAL IMPACT:	The Northern Utah Double Track project is included in the UTA 2020 Capital Budget. The Vineyard station component is funded through a legislative appropriation.
ATTACHMENTS:	• Resolution R2020-06-04

RESOLUTION OF THE BOARD OF TRUSTEES OF THE UTAH TRANSIT AUTHORITY APPROVING THE EXECUTION OF AN INTERLOCAL COOPERATION AGREEMENT WITH THE UTAH DEPARTMENT OF TRANSPORTATION FOR THE VINEYARD FRONTRUNNER STATION AND NORTHERN UTAH COUNTY DOUBLE TRACKING PROJECT

R2020-06-04 June 17, 2020

WHEREAS, Utah Transit Authority (the "Authority") is a large public transit district organized under the laws of the State of Utah and was created to transact and exercise all of the powers provided for in the Utah Limited Purpose Local Government Entities – Local Districts Act and the Utah Public Transit District Act; and

WHEREAS, the Utah Department of Transportation ("UDOT") and the Authority are "public agencies" as defined by the Utah Interlocal Cooperation Act, UTAH CODE §§ 11-13- 101 *et seq*. (the "Cooperation Act"), and, as such, are authorized by the Cooperation Act to each enter into an interlocal cooperation agreement to act jointly and cooperatively on the basis of mutual advantage; and

WHEREAS, during the 2018 Legislative Session, the Utah Legislature appropriated money to UDOT for the construction of the Vineyard FrontRunner station ("Vineyard Station Project");

WHEREAS, the Utah Legislature tasked UDOT with oversight and management of the construction of the Vineyard Station project;

WHEREAS, the Authority will receive ownership of the Vineyard Station Project upon its completion;

WHEREAS, the Authority has budgeted money for the construction of double track to the FrontRunner system for a 1.8 mile stretch of track directly north of the site of the new Vineyard FrontRunner station ("Vineyard Doubletracking Project");

WHEREAS, the Authority has statutory responsibility for the construction and management of public transit projects within its transit district boundaries;

WHEREAS, the Authority and UDOT wish to combine both the Vineyard Station Project and the Vineyard Doubletracking Project into a single project, sharing a common design and construction contract;

WHEREAS, the Authority and UDOT wish to enter into an Interlocal Cooperation Agreement to define respective roles and responsibilities for the combination of the Vineyard Station Project and the Vineyard Doubletrack Project.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Authority:

1. That the Board hereby approves the Interlocal Cooperation Agreement with the Utah Department of Transportation in substantially the same form as the form attached as “Exhibit A” to this Resolution.

2. That the Board authorizes the Executive Director or her designee(s) to execute the Interlocal Cooperation Agreement with the Utah Department of Transportation in substantially the same form as attached as Exhibit A.

3. That the Board hereby ratifies any and all actions previously taken by the Authority’s management, staff, and counsel to prepare the Interlocal Cooperation Agreement with the Utah Department of Transportation.

4. That the corporate seal be attached hereto.

Approved and adopted this 17 day of June 2020.

_____
Carlton Christensen, Chair
Board of Trustees

ATTEST:

_____
Robert K. Biles, Secretary/Treasurer

(Corporate Seal)

Approved As To Form:

_____
Legal Counsel

Exhibit A

(Interlocal Cooperation Agreement)

INTERAGENCY COOPERATIVE AGREEMENT

This INTERAGENCY COOPERATIVE AGREEMENT ("Agreement") is effective as of the last signature date below between the Utah Department of Transportation (UDOT), an agency of the State of Utah, and Utah Transit Authority (UTA), a Utah Public Transit District.

RECITALS

WHEREAS, UDOT has been provided certain funding by the Utah Legislature designated for use in the construction/upgrade of the Vineyard Front Runner Station.

WHEREAS, UTA has budgeted funding for the construction of Front Runner double tracking for a 1.8 mile stretch of track directly north of the Vineyard Station and

WHEREAS, the Parties have elected to include the design and construction of the Vineyard Front Runner Station and Front Runner double tracking as a single "Project" under one design contract and one construction contract; and

WHEREAS, UDOT has been instructed by the Utah Legislature to exercise oversight and management of the Vineyard Station portion of the Project; and

WHEREAS, UTA has statutory responsibility for construction and management of public transit projects within its transit district;

WHEREAS, UTA shall receive ownership and responsibility for maintenance of the Project upon its completion; and

WHEREAS, UTA and UDOT desires to cooperate in the management of the design and construction of the Project;

WHEREAS, the Parties desire to enter in this Agreement to define their respective roles and responsibilities with respect to the Project;

AGREEMENT

NOW THEREFORE, on the stated recitals and for good and valuable consideration, the Parties agrees as follows:

1. PROJECT DEFINED: In this Agreement, "Project" means the design and construction of the Vineyard Front Runner Station and also the design and construction of double tracking for a 1.8 mile stretch of Front Runner track directly north of the Vineyard Front

Runner Station. Other off-station amenities may be constructed like parking facilitates, pathways, bus stops, etc. for which project funds may be used. If project funds are used for off-station amenities then UTA and UDOT will work together to ensure that UTA will maintain a vested interest in these amenities. The details of the interest in these amenities will be covered by a separate agreement between UDOT, UTA, Vineyard City and/or any necessary 3rd parties.

2. WORK DEFINED: In this Agreement, "Work" means design, construction, construction management, professional services and any other tasks, expenditures, and acquisitions necessary to complete the Project.

3. PROCUREMENT: UDOT has selected a qualified design firm to prepare final design drawings for the Project and shall, in conjunction with UTA, select a qualified CM/GC contractor to construct the Project. UDOT has provided UTA with a meaningful opportunity to review and comment on the CM/GC Requests for Proposal and other solicitation documents before they have been released and shall include two UTA representatives on the source selection committee. UDOT shall engage an independent cost estimator to assist UDOT and UTA in negotiating prices with the CM/GC contractor.

4. DESIGN: Throughout the design process, UDOT shall cause the design firm to provide UTA with the opportunity to review and comment on all design submittals, including the final design documents. UTA may provide comments to any design submittal and UDOT will direct the design firm to incorporate UTA's comments into the design of the Project. Although UDOT will have final approval authority over the design of the Project, UDOT agrees to incorporate UTA specifications into the design of the Project and into the Contract Documents.

5. CONSTRUCTION: Throughout the construction process, UTA will have continuous access to the Project site to monitor Project construction and to ensure that construction meets UTA specifications and is performed in accordance with the final design documents. UDOT will appoint a Resident Engineer to oversee construction activities and approve payment requests and field changes with concurrence from UTA. UDOT shall not grant or certify substantial completion or final completion of the Project without the concurrence of UTA. Final acceptance shall not be granted by UDOT until testing and activation has occurred to the satisfaction of UTA in accordance with UTA's Hold Point review process (Project Commissioning).

    - UDOT will order long lead items before construction begins.

        - UTA will provide at least one field engineer / inspector to the construction site to provide rail construction expertise and to provide inspection, testing, and approval/rejection of installed rail, station, communications, and signal components for which UDOT field crews do not typically have expertise. UTA

will provide a qualified inspector to the project site as requested by UDOT. UDOT will provide at least one day of notice when a UTA inspector is needed on site.

- UDOT field crews will inspect, test, and approve/reject construction items for which they have expertise such as gradations, compaction, concrete, drainage pipe, etc. UDOT will perform necessary measurement of all construction items (including rail items after UTA acceptance) and enter them into UDOT's Masterworks system.

- UDOT shall seek input from UTA at the beginning and throughout the Project regarding the schedule of construction. This includes the initial baseline schedule and any current or look-ahead schedules provided by the Contractor during the duration of the Project.

- Change orders will be managed through UDOT's Masterworks system and approved by the UDOT Resident Engineer and the UDOT Project Manager with concurrence from the UTA Project Manager.

- UDOT shall ensure that the contractor provide sufficient time in the construction schedule to allow for the contractor to perform and assist UTA in UTA's Hold Point review process that includes activities related to the performance of UTA's system integration and safety testing and certification of the project to allow for revenue operations.

6. FUNDING: UDOT shall provide the $4 million appropriated by the state legislature for the design and construction of the Vineyard Station and other amenities as described in Section 1 above, provided sufficient funding is available. The property acquisition costs for the Vineyard Station and other amenities, which does not include the double tracking, will be included in the $4 million. . UTA shall provide $10 million for the design and construction of the double tracking section, including the right-of-way or acquisition costs associated with the property required for the double tracking. UTA will pay one-half of the CMGC Pre-Construction and ICE costs. If UDOT and UTA decide to hire a public involvement consultant, UTA will pay one-half of the costs for public involvement. These costs will be paid from the $10 million. UDOT will not use any of its own funds for this Project. In the event the cost for the Vineyard Station and additional required amenities as described in Section 1 above exceeds the $4 million allotted by the State Legislature, or the cost of the double tracking portion of the Project exceeds the $10 million budgeted by UTA, the Parties will work together to identify potential additional sources of funding and work cooperatively to obtain such funding. UDOT shall ensure that all UTA funds are expended appropriately and shall provide UTA the ability to review expenditures of the UTA funds.

7. BILLING:

    a. CONTRACTOR INVOICES: Prior to payment of Contractor invoices, UDOT shall give UTA fifteen (15) days to review and approve each invoice.

    b. UDOT INVOICES: UDOT shall submit invoices to UTA on a monthly basis for actual costs for the double tracking work incurred during the previous month. Invoices shall contain reasonable and sufficient supporting documentation for the payment requested and shall be submitted to UTA no later than 15 days after the start of the succeeding month. Within two weeks of having received an invoice from UDOT, UTA shall evaluate supporting documentation, make physical inspection of the work performed, and pay the invoiced amount to UDOT. For the long lead items, UDOT will bill UTA for these items when UDOT pays for them. UTA will pay the invoices for the long lead items within 15 days from receiving the invoices from UDOT.

8. QUALITY:
    - UTA shall provide construction quality oversight as required by the UTA Construction Quality Management Plan. UDOT shall support this Quality effort and shall instruct Contractor to take those actions requested by UTA which are in compliance with contract requirements. Contractor shall provide evidence of compliance with the Contract Documents to both UDOT and UTA.
    - UDOT shall ensure that UTA will have sufficient and reasonable time to inspect and test all Work. UDOT shall ensure that Contractor is required to cooperate with any inspection and testing performed by UTA.
    - Any inspection and testing performed by UTA shall be for the sole and exclusive benefit of UTA. Neither inspection nor testing of Work, nor the lack of same by UTA, shall relieve Contractor from any of its obligations under the Contract Documents nor relieve UDOT of its Project oversight responsibility.
    - At any time prior to Final Acceptance, UTA may reject Work which fails to conform to the Contract Documents. UDOT shall ensure that Contractor shall, at its sole expense, promptly re-perform or correct any Work so as to conform to the requirements of the Contract. Contractor shall not be entitled to an adjustment to the Contract Price and/or Contract Times with respect to any corrective action necessary to rectify non-conforming Work.

9. CONTRACTOR CONTRACT:

    UDOT will modify its standard construction contract as needed to meet the needs of this transit project. UDOT will not sign the construction contract until UTA approves the form.

10. ASSUMPTION OF OWNERSHIP: UTA shall assume ownership of the Project after Final Completion has occurred. From this point forward, all risks and responsibilities associated

with ownership of the Project including both the station and the tracks shall be borne by UTA.

11. GENERAL PROVISIONS:

a. MUTUAL INDEMNITY:
   - UTA, to the fullest extent permitted by law, shall indemnify, hold harmless and defend UDOT, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction to the extent resulting from the negligent acts or omissions of UTA, it's consultants and subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.
   - UDOT shall indemnify, hold harmless and defend UTA, its officers, directors, and employees from and against third party claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction to the extent resulting from the negligent acts or omissions of UDOT, its employees, consultants and contractors in the construction of the Project.
   - The obligation to indemnify is limited to the amounts stated in the Utah Governmental Immunity Act ("Act"). Nothing in this Agreement shall be construed as a waiver of the requirements of the Act.

b. DISPUTES: Disputes arising under this Agreement shall be resolved by discussion at successive levels of management culminating with the respective Executive Directors. If resolution doesn't occur through good faith discussion at the Executive Director level, the Parties shall submit the matter to the Attorney General Chief Civil Deputy for a binding opinion on the merits of the controversy.

c. WAIVER. Failure of either Party at any time to require performance of any provision of this Agreement shall not limit the other Agency's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision of a waiver of the provision itself or any other provision.

d. GOVERING LAW. The Agreement and all Contract Documents are governed by the laws of the State of Utah, without giving effect to its conflict of law principles. Actions to enforce the terms of this Agreement may only be brought in the Third District Court for Salt Lake County, Utah.

e. ENTIRE AGREEMENT. This Agreement supersedes and replaces all written and oral agreements previously made or existing between the Agencies regarding the

subject matter hereof. Any amendment to this Agreement must be in writing and executed by an authorized representative of each Party.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the last date written below.

UTAH TRANSIT AUTHORITY	UTAH DEPARTMENT OF TRANSPORTATION
_____	_____
Carolyn Gonot Title: Executive Director	Robert Clayton Title: Region Three Director
Date: _____	Date: _____
	Recommended for Approval
_____	_____
Mary DeLoretto Title: Chief Service Development Ofc	Eric Mason Title: Project Manager
Date: _____	Date: _____
AATF:	Comptroller's Office:
_____	_____
Title: UTA Legal Counsel	Title:

MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
THROUGH: Carolyn Gonot, Executive Director
FROM: Dan Harmuth, Director of Information Technology
PRESENTER(S): Dan Harmuth, Director of Information Technology

BOARD MEETING DATE: June 17, 2020

SUBJECT:	**CAD/AVL Software Development Services (Software Technology Group)**	
AGENDA ITEM TYPE:	**Contract**	
RECOMMENDATION:	Approve award and authorize Executive Director to execute a Sole Source contract and associated disbursements with Software Technology Group in the amount of $750,000.	
BACKGROUND:	UTA has had a relationship with Software Technology Group (STG) for over 15 years. Specifically, we have contracted software development services utilizing one contractor from STG, Troy Fillerup. Mr. Fillerup has been a key resource in developing our bus software systems and our Computer Aided Dispatch/Automatic Vehicle Location (CAD/AVL). He developed those systems from scratch and supported them for all enhancements over the last 15 years.	
DISCUSSION:	UTA is currently redeveloping the bus/train software systems and the CAD/AVL system. Mr. Fillerup's 15 years intimate knowledge of those systems is necessary for UTA to continue the redevelopment of these systems within the project timeframe. During this project he will also educate and train UTA internal resources on the new development as it progresses, which will allow UTA to then service and support the new development at the end of the STG contract. This contract is approved as a sole source contract. Without the STG Contractor Troy Fillerup's technical expertise these systems and projects will be prolonged, causing increased project costs and significant delays. The contract term is for three years, but it is expected that the work will be completed in less time. The contract allows for early termination once the work is completed according to UTA requirements.	
CONTRACT SUMMARY:	Contractor Name: Software Technology Group (STG)	
	Contract Number: 20-03251	Contract Value: $250,000 (Year 1)

	Base Contract Effective Dates: 6/17/2020 – 6/30/2023	Extended Contract Dates: NA
		New/Total Amount Contract Value: $750,000
	Procurement Method: Sole Source	Funding Sources: Local – ICI001
ALTERNATIVES:	Conduct RFP bid solicitation. This would result in duplication of costs and significant project delays.	
FISCAL IMPACT:	Current 2025 Transit Management System has budget allowance of $800,000.	
ATTACHMENTS:	• Contract with STG	

UTA CONTRACT NO. UT 20-03251

PROFESSIONAL SERVICES

CAD-AVL PROGRAMMER SERVICES

This Professional Services Agreement is entered into and made effective as of the date of last signature below (the "Effective Date") by and between UTAH TRANSIT AUTHORITY**,** a public transit district organized under the laws of the State of Utah ("UTA"), and **SOFTWARE TECHNOLOGY GROUP (STG)**, a Corporation, located at 555 South 300 East, Salt Lake City, UT 84111 ("Consultant").

RECITALS

A. UTA desires to hire professional services for CAD-AVL Programmer Services.

B. Consultant is qualified and willing to perform the Work as set forth in the Scope of Services.

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits to the parties to be derived herefrom, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

1. SERVICES TO BE PROVIDED

a. Consultant shall perform all Work as set forth in the Scope of Services (Exhibit A). Except for items (if any) which this Contract specifically states will be UTA-provided, Consultant shall furnish all the labor, material, and incidentals necessary for the Work.

b. Consultant shall perform all Work under this Contract in a professional manner, using at least that standard of care, skill and judgment which can reasonably be expected from similarly situated professionals.

c. All Work shall conform to generally accepted standards in the transit industry. Consultant shall perform all Work in compliance with applicable laws, regulations, rules, ordinances, permit constraints and other legal requirements including, without limitation, those related to safety and environmental protection.

d. Consultant shall furnish only qualified personnel and materials necessary for the performance of the Work.

e. When performing Work on UTA property, Consultant shall comply with all UTA work site rules including, without limitation, those related to safety and environmental

protection.

2. MANAGEMENT OF WORK

a. Consultant's Project Manager will be the day-to-day contact person for Consultant and will be responsible for all Work, as well as the coordination of such Work with UTA.

b. UTA's Project Manager will be the day-to-day contact person for UTA and shall act as the liaison between UTA and Consultant with respect to the Work. UTA's Project Manager shall also coordinate any design reviews, approvals or other direction required from UTA with respect to the Work.

3. PROGRESS OF WORK

a. Consultant shall prosecute the Work in a diligent and continuous manner and in accordance with all applicable notice to proceed, critical path schedule and guaranteed completion date requirements set forth in (or developed and agreed by the parties in accordance with) the Scope of Services.

b. Consultant shall conduct regular meetings to update UTA's Project Manager regarding the progress of the Work including, but not limited to, any unusual conditions or critical path schedule items that could affect or delay the Work. Such meetings shall be held at intervals mutually agreed to between the parties.

c. Consultant shall deliver monthly progress reports and provide all Contract submittals and other deliverables as specified in the Scope of Services.

d. Any drawing or other submittal reviews to be performed by UTA in accordance with the Scope of Services are for the sole benefit of UTA and shall not relieve Consultant of its responsibility to comply with the Contract requirements.

e. UTA will have the right to inspect, monitor and review any Work performed by Consultant hereunder as deemed necessary by UTA to verify that such Work conforms to the Contract requirements. Any such inspection, monitoring and review performed by UTA is for the sole benefit of UTA and shall not relieve Consultant of its responsibility to comply with the Contract requirements.

f. UTA shall have the right to reject Work which fails to conform to the requirements of this Contract. Upon receipt of notice of rejection from UTA, Consultant shall (at its sole expense and without entitlement to equitable schedule relief) promptly re-perform, replace, or re-execute the Work so as to conform to the Contract requirements.

g. If Consultant fails to promptly remedy rejected Work as provided in Section 3.f, UTA may (without limiting or waiving any rights or remedies it may have) perform necessary corrective action using other contractors or UTA's own forces. Any costs reasonably incurred by UTA in such corrective action shall be chargeable to Consultant.

4. PERIOD OF PERFORMANCE

This Contract shall commence as of the Effective Date. This Contract shall remain in full force and effect until all Work is completed in accordance with this Contract, as reasonably determined by UTA. Consultant shall complete all Work no later than June 30, 2023. This guaranteed completion date may be extended if Consultant and UTA mutually agree to an extension evidenced by a written Change Order. The rights and obligations of UTA and Consultant under this Contract shall at all times be subject to and conditioned upon the provisions of this Contract.

5. COMPENSATION

a. For the performance of the Work, UTA shall pay Consultant in accordance with the payment's provisions described in Exhibit B. Payments shall be made in accordance with the milestones or other payment provisions detailed in Exhibit B. If Exhibit B does not specify any milestones or other payment provisions, then payment shall be made upon completion of all Work and final acceptance thereof by UTA.

b. To the extent that Exhibit B or another provision of this Contract calls for any portion of the consideration to be paid on a cost-reimbursement basis, such costs shall only be reimbursable to the extent allowed under 2 CFR Part 200 Subpart E. Compliance with federal cost principles shall apply regardless of funding source for this Contract.

c. To the extent that Exhibit B or another provision of this Contract calls for any portion of the consideration to be paid on a time and materials or labor hour basis, then Consultant must refer to the not-to-exceed amount, maximum Contract amount, Contract budget amount or similar designation (any of these generically referred to as the "Not to Exceed Amount") specified in Exhibit B (as applicable). Unless and until UTA has notified Consultant by written instrument designated or indicated to be a Change Order that the Not to Exceed Amount has been increased (which notice shall specify a revised Not to Exceed Amount): (i) Consultant shall not be obligated to perform services or incur costs which would cause its total compensation under this Contract to exceed the Not to Exceed Amount; and (ii) UTA shall not be obligated to make payments which would cause the total compensation paid to Consultant to exceed the Not to Exceed Amount.

d. UTA may withhold and/or offset from payment any amounts reasonably reflecting: (i) items of Work that have been rejected by UTA in accordance with this Contract; (ii) invoiced items that are not payable under this Contract; or (iii) amounts Consultant owes to UTA under this Contract.

6. INCORPORATED DOCUMENTS

a. The following documents hereinafter listed in chronological order, with most recent document taking precedence over any conflicting provisions contained in prior documents (where applicable), are hereby incorporated into the Contract by reference and made a part hereof:

1. The terms and conditions of this Goods and Services Supply Agreement (including

any exhibits and attachments hereto).

b. The above-referenced documents are made as fully a part of the Contract as if hereto.

7. ORDER OF PRECEDENCE

The Order of Precedence for this contract is as follows:

- UTA Contract including all attachments
- UTA Terms and Conditions
- UTA Solicitation Terms
- Contractor's Bid or Proposal including proposed terms or conditions

Any contractor proposed term or condition which is in conflict with a UTA contract or solicitation term or condition will be deemed null and void.

8. CHANGES

a. UTA's Project Manager or designee may, at any time, by written order designated or indicated to be a Change Order, direct changes in the Work including, but not limited to, changes:

   A. In the Scope of Services;

   B. In the method or manner of performance of the Work; or

   C. In the schedule or completion dates applicable to the Work.

   To the extent that any change in Work directed by UTA causes an actual and demonstrable impact to: (i) Consultant's cost of performing the work; or (ii) the time required for the Work, then (in either case) the Change Order shall include an equitable adjustment to this Contract to make Consultant whole with respect to the impacts of such change.

b. A change in the Work may only be directed by UTA through a written Change Order or (alternatively) UTA's expressed, written authorization directing Consultant to proceed pending negotiation of a Change Order. Any changes to this Contract undertaken by Consultant without such written authority shall be at Consultant's sole risk. Consultant shall not be entitled to rely on any other manner or method of direction.

c. Consultant shall also be entitled to an equitable adjustment to address the actual and demonstrable impacts of "constructive" changes in the Work if: (i) subsequent to the Effective Date of this Contract, there is a material change with respect to any requirement set forth in this Contract; or (ii) other conditions exist or actions are taken by UTA which materially modify the magnitude, character or complexity of the Work from what should have been reasonably assumed by Consultant based on the information included in (or referenced by) this Contract. In order to be eligible for equitable relief for "constructive" changes in Work, Consultant must give UTA's Project Manager or designee written notice stating:

   A. The date, circumstances, and source of the change; and

B. That Consultant regards the identified item as a change in Work giving rise to an adjustment in this Contract.

Consultant must provide notice of a "constructive" change and assert its right to an equitable adjustment under this Section within ten (10) days after Consultant becomes aware (or reasonably should have become aware) of the facts and circumstances giving rise to the "constructive" change. Consultant's failure to provide timely written notice as provided above shall constitute a waiver of Consultant's rights with respect to such claim.

d. As soon as practicable, but in no event longer than 30 days after providing notice, Consultant must provide UTA with information and documentation reasonably demonstrating the actual cost and schedule impacts associated with any change in Work.Equitable adjustments will be made via Change Order. Any dispute regarding the Consultant's entitlement to an equitable adjustment (or the extent of any such equitable adjustment) shall be resolved in accordance with Article 21 of this Contract.

9. INVOICING PROCEDURES

a. Consultant shall submit invoices to UTA's Project Manager for processing and payment in accordance with Exhibit B. If Exhibit B does not specify invoice instructions, then Consultant shall invoice UTA after completion of all Work and final acceptance thereof by UTA. Invoices shall be provided in the form specified by UTA. Reasonable supporting documentation demonstrating Consultant's entitlement to the requested payment must be submitted with each invoice.

b. UTA shall have the right to disapprove (and withhold from payment) specific line items of each invoice to address non-conforming Work or invoicing deficiencies. Approval by UTA shall not be unreasonably withheld. UTA shall have the right to offset from payment amounts reasonably reflecting the value of any claim which UTA has against Consultant under this Contract. Payment for all invoice amounts not specifically disapproved by UTA shall be provided to Consultant within thirty (30) calendar days of invoice submittal.

10. OWNERSHIP OF DESIGNS, DRAWINGS, AND WORK PRODUCT

Any deliverables prepared or developed pursuant to the Contract including without limitation drawings, specifications, manuals, calculations, maps, sketches, designs, tracings, notes, reports, data, computer programs, models and samples, shall become the property of UTA when prepared, and, together with any documents or information furnished to Contractor and its employees or agents by UTA hereunder, shall be delivered to UTA upon request, and, in any event, upon termination or final acceptance of the Goods and Services. UTA shall have full rights and privileges to use and reproduce said items. To the extent that any deliverables include or incorporate preexisting intellectual property of Contractor, Contractor hereby grants UTA a fully paid, perpetual license to use such intellectual property for UTA's operation, maintenance, modification, improvement, and replacement of UTA's assets. The scope of the license shall fully be necessary to accomplish those purposes, including the right to share same with UTA's contractors, agent, officers, directors, employees, joint owners, affiliates and consultants.

11. USE OF SUBCONTRACTORS

a. Consultant shall give advance written notification to UTA of any proposed subcontract (not indicated in Consultant's Proposal) negotiated with respect to the Work. UTA shall have the right to approve all subcontractors, such approval not to be withheld unreasonably.

b. No subsequent change, removal or substitution shall be made with respect to any such subcontractor without the prior written approval of UTA.

c. Consultant shall be solely responsible for making payments to subcontractors, and such payments shall be made within thirty (30) days after Consultant receives corresponding payments from UTA.

d. Consultant shall be responsible for and direct all Work performed by subcontractors.

e. Consultant agrees that no subcontracts shall provide for payment on a cost-plus-percentage-of-cost basis. Consultant further agrees that all subcontracts shall comply with all applicable laws.

12. KEY PERSONNEL

Consultant shall provide the key personnel as indicated in Consultant's Proposal (or other applicable provisions of this Contract) and shall not change any of said key personnel without the express written consent of UTA.

13. SUSPENSION OF WORK

a. UTA may, at any time, by written order to Consultant, require Consultant to suspend, delay, or interrupt all or any part of the Work called for by this Contract. Any such order shall be specifically identified as a "Suspension of Work Order" issued pursuant to this Article. Upon receipt of such an order, Consultant shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of further costs allocable to the Work covered by the order during the period of Work stoppage.

b. If a Suspension of Work Order issued under this Article is canceled, Consultant shall resume Work as mutually agreed to in writing by the parties hereto.

c. If a Suspension of Work Order is not canceled and the Work covered by such order is terminated for the convenience of UTA, reasonable costs incurred as a result of the Suspension of Work Order shall be considered in negotiating the termination settlement.

d. If the Suspension of Work causes an increase in Consultant's cost or time to perform the Work, UTA's Project Manager or designee shall make an equitable adjustment to compensate Consultant for the additional costs or time, and modify this Contract by Change Order.

14. TERMINATION

a. FOR CONVENIENCE: UTA shall have the right to terminate the Contract at any time by providing written notice to Contractor. If the Contract is terminated for convenience, UTA shall pay Contractor: (i) in full for Goods delivered and Services fully performed prior to the effective

date of termination; and (ii) an equitable amount to reflect costs incurred (including Contract close-out and subcontractor termination costs that cannot be reasonably mitigated) and profit on work-in-progress as of to the effective date of the termination notice. UTA shall not be responsible for anticipated profits based on the terminated portion of the Contract. Contractor shall promptly submit a termination claim to UTA. If Contractor has any property in its possession belonging to UTA, Contractor will account for the same, and dispose of it in the manner UTA directs.

b. FOR DEFAULT: If Contractor (a) becomes insolvent; (b) files a petition under any chapter of the bankruptcy laws or is the subject of an involuntary petition; (c) makes a general assignment for the benefit of its creditors; (d) has a receiver appointed; (e) should fail to make prompt payment to any subcontractors or suppliers; or (f) fails to comply with any of its material obligations under the Contract, UTA may, in its discretion, after first giving Contractor seven (7) days written notice to cure such default:

1. Terminate the Contract (in whole or in part) for default and obtain the Goods and Services using other contractors or UTA's own forces, in which event Contractor shall be liable for all incremental costs so incurred by UTA;

2. Pursue other remedies available under the Contract (regardless of whether the termination remedy is invoked); and/or

3. Except to the extent limited by the Contract, pursue other remedies available at law.

c. CONTRACTOR'S POST TERMINATION OBLIGATIONS: Upon receipt of a termination notice as provided above, Contractor shall (i) immediately discontinue all work affected (unless the notice directs otherwise); and (ii) deliver to UTA all data, drawings and other deliverables, whether completed or in process. Contractor shall also remit a final invoice for all services performed and expenses incurred in full accordance with the terms and conditions of the Contract up to the effective date of termination. UTA shall calculate termination damages payable under the Contract, shall offset such damages against Contractor's final invoice, and shall invoice Contractor for any additional amounts payable by Contractor (to the extent termination damages exceed the invoice). All rights and remedies provided in this Article are cumulative and not exclusive. If UTA terminates the Contract for any reason, Contractor shall remain available, for a period not exceeding 90 days, to UTA to respond to any questions or concerns that UTA may have regarding the Goods and Services furnished by Contractor prior to termination.

15. **INFORMATION, RECORDS and REPORTS; AUDIT RIGHTS**

Consultant shall retain all books, papers, documents, accounting records and other evidence to support any cost-based billings allowable under Exhibit B (or any other provision of this Contract). Such records shall include, without limitation, time sheets and other cost documentation related to the performance of labor services, as well as subcontracts, purchase orders, other contract documents, invoices, receipts or other documentation supporting non-labor costs. Consultant shall also retain other books and records related to the performance, quality or management of this Contract and/or Consultant's compliance with this Contract. Records shall be retained by Consultant for a period of at least six (6) years after completion of the Work, or until any audit initiated within that six-year period has been completed (whichever

is later). During this six-year period, such records shall be made available at all reasonable times for audit and inspection by UTA and other authorized auditing parties including, but not limited to, the Federal Transit Administration. Copies of requested records shall be furnished to UTA or designated audit parties upon request. Consultant agrees that it shall flow-down (as a matter of written contract) these records requirements to all subcontractors utilized in the performance of the Work at any tier.

16**. FINDINGS CONFIDENTIAL**

Any documents, reports, information, or other data and materials available to or prepared or assembled by Consultant or subcontractors under this Contract are considered confidential and shall not be made available to any person, organization, or entity by Consultant without consent in writing from UTA.

a. It is hereby agreed that the following information is not considered to be confidential:

A. Information already in the public domain;

B. Information disclosed to Consultant by a third party who is not under a confidentiality obligation;

C. Information developed by or in the custody of Consultant before entering into this Contract;

D. Information developed by Consultant through its work with other clients; and

E. Information required to be disclosed by law or regulation including, but not limited to, subpoena, court order or administrative order.

17. PUBLIC INFORMATION.

Contractor acknowledges that the Contract and related materials (invoices, orders, etc.) will be public documents under the Utah Government Records Access and Management Act (GRAMA). Contractor's response to the solicitation for the Contract will also be a public document subject to GRAMA, except for legitimate trade secrets, so long as such trade secrets were properly designated in accordance with terms of the solicitation.

18. GENERAL INDEMNIFICATION

Contractor shall indemnify, hold harmless and defend UTA, its officers, trustees, agents, and employees (hereinafter collectively referred to as "Indemnitees") from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys' fees and costs (hereinafter referred to collectively as "claims") related to bodily injury, including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of the failure of such Contractor to conform to federal, state, and local laws and regulations. If an employee of Contractor, a subcontractor, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable brings a claim against UTA or another Indemnitee, Contractor's indemnity obligation set forth above will not be limited by any limitation on the amount of damages, compensation or benefits payable under any employee benefit acts,

including workers' compensation or disability acts. The indemnity obligations of Contractor shall not apply to the extent that claims arise out of the sole negligence of UTA or the Indemnitees.

19. INSURANCE REQUIREMENTS

a. Contractor and subcontractors shall procure and maintain until all of its obligations have been discharged insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

b. The insurance requirements herein are minimum requirements for the Contract and in no way limit the indemnity covenants contained in the Contract. UTA in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under the Contract by the Contractor, its agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

c. Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements. provided that the coverage is written on a "following form" basis.

i. Professional Liability insurance with the following limits and coverages:

Minimum Limits:

$1,000,000 each claim

$2,000,000 annual aggregate

Coverages:

1. Insured's interest in joint ventures
2. Punitive damages coverage (where not prohibited by law)
3. Limited contractual liability
4. Retroactive date prior to date
5. Extended reporting period of 36 months

Coverage which meets or exceeds the minimum requirements will be maintained, purchased annually in full force and effect until 3 years past completion of the Work unless such coverage becomes unavailable to the market on a commercially reasonable basis, in which case Consultant will notify UTA. If UTA agrees that such coverage is not reasonably available in the commercial market, Consultant may elect not to provide such coverage.

ii. Automobile insurance covering owned, if any, non-owned, and hired automobile with limits not less than $1,000,000 combined single limit of coverage. The policy shall be endorsed to include the following additional insured language: "The Utah Transit Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including

automobiles owned, leased, hired or borrowed by the Contractor."

iii. Workers' Compensation insurance conforming to the appropriate states' statutory requirements covering all employees of Consultant, and any employees of its subcontractors, representatives, or agents as long as they are engaged in the work covered by this Contract or such subcontractors, representatives, or agents shall provide evidence of their own Worker's Compensation insurance. The policy shall also cover Employers Liability with limits no less than $500,000 each accident, and each employee for disease. The policy shall contain a waiver of subrogation against UTA.

d. On insurance policies where UTA is named as an additional insured, UTA shall be an additional insured to the full limits of liability purchased by the Consultant. Insurance limits indicated in this agreement are minimum limits. Larger limits may be indicated after Consultant's assessment of the exposure for this contract; for its own protection and the protection of UTA. Consultant's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

e. The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. UTA is no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees, or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

f. Consultant warrants that this Contract has been thoroughly reviewed by its insurance agent, broker or consultant, and that said agent/broker/ consultant has been instructed to procure for Consultant the insurance coverage and endorsements required herein.

g. Consultant shall furnish UTA with certificates of insurance (ACORD form or equivalent approved by UTA) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and any required endorsements are to be received and approved by UTA before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

h. All certificates required by this Contract shall be emailed directly to Utah Transit Authority's insurance email address at insurancecerts@rideuta.com. The Utah Transit Authority project/contract number and project description shall be noted on the certificate of insurance. The Utah Transit Authority reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE UTAH TRANSIT AUTHORITY'S CLAIMS AND INSURANCE DEPARTMENT.

i. UTA, as a self-insured governmental entity, shall not be required to provide insurance coverage for the risk of loss to UTA premises and improvements or equipment owned by UTA.

20. OTHER INDEMNITIES

a. Consultant shall protect, release, defend, indemnify and hold harmless UTA and the other Indemnitees against and from any and all Claims of any kind or nature whatsoever on account of infringement relating to Consultant's performance under this Contract. If notified promptly in writing and given authority, information and assistance, Consultant shall defend, or may settle at its expense, any suit or proceeding against UTA so far as based on a claimed infringement and Consultant shall pay all damages and costs awarded therein against UTA due to such breach. In case any portion of the Work is in such suit held to constitute such an infringement or an injunction is filed that interferes with UTA's rights under this Contract, Consultant shall, at its expense and through mutual agreement between the UTA and Consultant, either procure for UTA any necessary intellectual property rights, or modify Consultant's services or deliverables such that the claimed infringement is eliminated.

b. Consultant shall: (i) protect, release, defend, indemnify and hold harmless UTA and the other Indemnitees against and from any and all liens or Claims made or filed against UTA or upon the Work or the property on which the Work is located on account of any labor performed or labor, services, and equipment furnished by subcontractors of any tier; and (ii) keep the Work and said property free and clear of all liens or claims arising from the performance of any Work covered by this Contract by Consultant or its subcontractors of any tier. If any lien arising out of this Contract is filed, before or after Work is completed, Consultant, within ten (10) calendar days after receiving from UTA written notice of such lien, shall obtain a release of or otherwise satisfy such lien. If Consultant fails to do so, UTA may take such steps and make such expenditures as in its discretion it deems advisable to obtain a release of or otherwise satisfy any such lien or liens, and Consultant shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA in obtaining such release or satisfaction. If any non-payment claim is made directly against UTA arising out of non-payment to any subcontractor, Consultant shall assume the defense of such claim within ten (10) calendar days after receiving from UTA written notice of such claim. If Consultant fails to do so, Consultant shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA to satisfy such claim.

21. INDEPENDENT CONTRACTOR

Consultant is an independent contractor and agrees that its personnel will not represent themselves as, nor claim to be, an officer or employee of UTA by reason of this Contract. Consultant is responsible to provide and pay the cost of all its employees' benefits.

22. PROHIBITED INTEREST

No member, officer, agent, or employee of UTA during his or her tenure or for one year thereafter shall have any interest, direct or indirect, including prospective employment by Consultant in this Contract or the proceeds thereof without specific written authorization by UTA.

23. CLAIMS/DISPUTE RESOLUTION

a. "Claim" means any disputes between UTA and the Contractor arising out of or relating to the Contract Documents including any disputed claims for Contract adjustments that cannot be resolved in accordance with the Change Order negotiation process set forth in Article 6. Claims must be made by written notice. The responsibility to substantiate claims rests with the party making the claim.

b. Unless otherwise directed by UTA in writing, Contractor shall proceed diligently with performance of the Work pending final resolution of a Claim, including litigation. UTA shall continue to pay any undisputed payments related to such Claim.

c. The parties shall attempt to informally resolve all claims, counterclaims and other disputes through the escalation process described below. No party may bring a legal action to enforce any term of this Contract without first having exhausted such process.

d. The time schedule for escalation of disputes, including disputed requests for change order, shall be as follows:

Level of Authority	Time Limit
UTA's Project Manager/Contractor's Project Manager	Five calendar days
UTA's IT Manager/Contractor's Department Manager	Five calendar days
UTA's Executive Director/Contractor's CEO	Five calendar days

Unless otherwise directed by UTA's Project Manager, Contractor shall diligently continue performance under this Contract while matters in dispute are being resolved.

If the dispute cannot be resolved informally in accordance with the escalation procedures set forth above, then either party may commence formal mediation under the Juris Arbitration and Mediation (JAMS) process using a mutually agreed upon JAMS mediator. If resolution does not occur through Mediation, then legal action may be commenced in accordance the venue and governing law provisions of this contract.

24. GOVERNING LAW

This Contract shall be interpreted in accordance with the substantive and procedural laws of the State of Utah. Any litigation between the parties arising out of or relating to this Contract will be conducted exclusively in federal or state courts in the State of Utah and Consultant consents to the jurisdiction of such courts.

25. ASSIGNMENT OF CONTRACT

Consultant shall not assign, sublet, sell, transfer, or otherwise dispose of any interest in this Contract without prior written approval of UTA, and any attempted transfer in violation of this restriction shall be void.

26. NONWAIVER

No failure or waiver or successive failures or waivers on the part of either party in the enforcement of any condition, covenant, or article of this Contract shall operate as a discharge of any such condition, covenant, or article nor render the same invalid, nor impair the right of either party to enforce the same in the event of any subsequent breaches by the other party.

27. NOTICES OR DEMANDS

a. Any formal notice or demand to be given by one party to the other shall be given in writing by one of the following methods: (i) hand delivered; (ii) deposited in the mail, properly stamped with the required postage; (iii) sent via registered or certified mail; or (iv) sent via recognized overnight courier service. All such notices shall be addressed as follows:

If to UTA:
Utah Transit Authority
ATTN: Pat Postell
669 West 200 South
Salt Lake City, UT 84101

with a required copy to:
Utah Transit Authority
ATTN: Legal Counsel
669 West 200 South
Salt Lake City, UT 84101

If to Consultant:
Software Technology Group
555 South 300 East
Salt Lake City, UT 84111

b. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice. Either party may change the address at which such party desires to receive written notice by providing written notice of such change to any other party.

c. Notwithstanding Section 23.1, the parties may, through mutual agreement, develop alternative communication protocols to address change notices, requests for information and similar categories of communications. Communications provided pursuant to such agreed means shall be recognized as valid notices under this Contract.

28. CONTRACT ADMINISTRATOR

UTA's Contract Administrator for this Contract is Pat Postell, or designee. All questions and correspondence relating to the contractual aspects of this Contract should be directed to said Contract Administrator, or designee.

29. INSURANCE COVEREAGE REQIREMENTS FOR CONSULTANT EMPLOYEES

a. The following requirements apply to the extent that: (i) the initial value of this Contract is equal to or in excess of $2 million; (ii) this Contract, with subsequent modifications, is reasonably anticipated to equal or exceed $2 million; (iii) Consultant has a subcontract at any tier that involves a sub-consultant that has an initial subcontract equal to or in excess

of $1 million; or (iv) any subcontract, with subsequent modifications, is reasonably anticipated to equal or exceed $1 million:

b. Consultant shall, prior to the effective date of this Contract, demonstrate to UTA that Consultant has and will maintain an offer of qualified health insurance coverage (as defined by Utah Code Ann. § 17B-2a-818.5) for the Consultant's employees and the employee's dependents during the duration of this Contract.
c. Consultant shall also demonstrate to UTA that subcontractors meeting the above-described subcontract value threshold have and will maintain an offer of qualified health insurance coverage (as defined by Utah Code Ann. § 17B-2a-818.5for the subcontractor's employees and the employee's dependents during the duration of the subcontract.

30. COSTS AND ATTORNEYS FEES

If any party to this Agreement brings an action to enforce or defend its rights or obligations hereunder, the prevailing party shall be entitled to recover its costs and expenses, including mediation, arbitration, litigation, court costs and attorneys' fees, if any, incurred in connection with such suit, including on appeal

31. NO THIRD PARTY BENEFICIARY

The parties enter into this Contract for the sole benefit of the parties, in exclusion of any third party, and no third party beneficiary is intended or created by the execution of this Contract.

32. FORCE MAJEURE

Neither party to the Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which are beyond that party's reasonable control. UTA may terminate the Contract after determining such delay or default will reasonably prevent successful performance of the Contract.

33. SEVERABILITY

Any provision of this Contract prohibited or rendered unenforceable by operation of law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Contract.

34. ENTIRE AGREEMENT

This Contract shall constitute the entire agreement and understanding of the parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto. The terms of the Contract supersede any additional or conflicting terms or provisions that may be preprinted on Vendor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of Vendor that may subsequently be used to implement, record, or invoice Goods and/or Services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of UTA. The terms of the Contract prevail in any dispute between the terms of the Contract and the terms printed on any such standard forms or documents, and such standard forms or documents will not be considered written amendments of the Contract.

35. AMENDMENTS

Any amendment to this Contract must be in writing and executed by the authorized representatives of each party.

36. COUNTERPARTS

This Contract may be executed in any number of counterparts and by each of the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of the Contract may be detached from any counterpart and reattached to any other counterpart hereof. The electronic transmission of a signed original of the Contract or any counterpart hereof and the electronic retransmission of any signed copy hereof shall be the same as delivery of an original.

37. SURVIVAL

Provisions of this Contract intended by their nature and content to survive termination of this Contract shall so survive including, but not limited to, Articles 5, 7, 8, 10, 14, 15, 17, 18, 19, 20, 23, 29 and 30.

IN WITNESS WHEREOF, the parties have made and executed this Contract as of the day, month and year of the last signature contained below.

SOFTWARE TECHNOLOGY GROUP:

By_____

Name DaLon Loertscher

Title: Account Manager

UTAH TRANSIT AUTHORITY:

_____

Carolyn M. Gonot
Executive Director

_____

Daniel Harmuth
IT Manager

Approved as to Form and Content

_____

Michael Bell
Assistant Attorney General
UTA Counsel

EXHIBIT A

Scope of Work

UTA CAD/AVL (Computer Aided Dispatching) and MDC (Mobile Data Computer) Software Development

Background and Objective

The Utah Transit Authority uses a custom-developed mobile data computer (MDC) software as the primary interface between the coach operator and various technologies on UTA transit vehicles. UTA also utilizes a custom-developed computer aided dispatching and automated vehicle location system (CAD/AVL) to communicate with MDCs and other peripheral hardware on its fleet of vehicles.

The objective of this task is to find vendors with prior CAD/AVL and mobile data computer software development expertise who can assist UTA with software development. Additionally, UTA is seeking software development firms who have extensive proven and current expertise in the field of software development in transit dispatching, Automated Vehicle Location and transit on-board computer software development.

This software development task will be performed on-site using UTA computer system, on-site mobile development lab, Azure Cloud Services, and existing software tools using Microsoft Visual Studio and third party tools.

Software Development Technology Stacks

UTA uses the following software development technology stacks in CAD/AVL and MDC environments.

CAD/AVL (back office systems):
C#, ASP.Net, MVC, HTML/CSS, TypeScript/JavaScript, AngularJS, BootStrap, SQL, Microsoft SQL Server 2014+, SSIS, SSRS, WebAPI, WCF, XML, SignalR, Azure DevOps

MDC/MCD/MDT (on-board mobile systems):
C#, WinForms, Xamarin, .Net Compact Framework, Windows CE, SQL, Microsoft SQL Server 2014+, SQL CE, SSIS, WebAPI, WCF, XML, Azure DevOps

Tasks:

Task 1:
On site Mobile Data Computer application support and development consisting of greenfield development of new software systems to run on new hardware systems for all UTA vehicles.

Task 2:
On site Computer Aided Dispatching and Automated Vehicle Location application support and development consisting greenfield development of CAD/AVL features (map layers for natural disasters, call/contact trees and notifications, Bus Rapid Transit (BRT) second phase features and enhancement for CAD/AVL including BRT specific simple route/stop pop out display, algorithm enhancements for headway timing calculations, and others as defined in project plan.
Development of Account based relational database and related systems.

Schedule

The expected timeline for both tasks is 12 to 24 months with 12 additional months for support.

EXHIBIT B

PRICING

1.	CAD- AVL Programmer	$120.00 per hour	NTE $250,000.00 Year 1
2.	CAD-AVL Programmer	$125.20 per hour	NTE $250,000.00 Year 2
3.	CAD-AVL Programmer	$130.20 per hour	NTE $250,000.00 Year 3

- Year 2 and 3 rate will be based on the beginning rate of $120.00 plus a 4% cost of living increase, using Global Insights. The rates above are an estimate and could be subject to change.

MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
THROUGH: Carolyn Gonot, Executive Director
FROM: Bob Biles, Chief Financial Officer
PRESENTER(S): Todd Mills, Senior Supply Chain Manager

BOARD MEETING DATE: June 17, 2020

SUBJECT:	**Pre-Procurements**
AGENDA ITEM TYPE:	**Contract Pre-Procurement**
RECOMMENDATION:	Informational report for discussion
BACKGROUND:	Utah's Public Transit District Act requires all contracts valued at $200,000 or greater be approved by the UTA Board of Trustees. This informational report on upcoming procurements allows Trustees to be informed and provide input on upcoming procurement projects. Following the bid solicitation and contract negotiation process, final contracts for these projects will come before the board for approval.
DISCUSSION:	The following projects, services, or products have an approved requisition by the Executive Director and are ready for bid solicitation: • *Federal and State or Local Government Relations Lobbyist Services* - This is a procurement to solicit proposals from individuals or firms who are interested and qualified to provide Federal and State or Local Government Relations Services. It is the intent of the Authority to select one or more individuals or firms to accomplish all the services outlined in the solicitation. This will be procured using an RFP procurement with selection based on Technical criteria in addition to price. (Req. 8140) • *Joint Bus Procurement with Park City Transit* - This is a joint procurement between the Utah Transit Authority and Park City Transit agencies to purchase electric buses and accompanying charging equipment. The Park City Transit agency will procure 8 replacement buses and 6 expansion buses, for a total of 14 buses, as well as 5 bus depot chargers. UTA will purchase 10 buses for the Ogden BRT, and 20 replacement buses for Salt Lake County, for a total of 30 buses, as well as 11 bus depot chargers, and 4 on-route chargers. Funding for these buses and chargers is made up of various grants, including the NoLo Grant, Volkswagen settlement award, and misc. local and remaining grant funds. This will be procured as a competitive RFP procurement, with selection based on Technical criteria in addition to price. (Req. 8045)

MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
THROUGH: Carolyn Gonot, Executive Director
FROM: Mary DeLoretto, Chief Service Development Officer
PRESENTER(S): Mary DeLoretto, Chief Service Development Officer

BOARD MEETING DATE: June 17, 2020

SUBJECT:	**Federal Railroad Administration Research Transportation Innovation Grant Consolidated Rail Infrastructure and Safety Improvements (CRISI) – Sharp-Tintic Railroad Connection Project**
AGENDA ITEM TYPE:	**Grant Application**
RECOMMENDATION:	Informational report for discussion
BACKGROUND:	The Federal Railroad Administration offers a grant opportunity through their Consolidated Rail infrastructure and Safety Improvements (CRISI) program. This grant opportunity funds innovative safety enhancements and general improvements to infrastructure for both intercity passenger and freight railroads. Minimum match is 80/20 but preference is given to applications where the proposed Federal share of total project costs is 50 percent or less. Applications are due June 19, 2020.
DISCUSSION:	The purpose of Sharp-Tintic Railroad Connection project is to construct a new connector railroad line between the UTA right-of-way along the Sharp Subdivision rail line and the Tintic Industrial Lead rail line in Springville City and Spanish Fork. Construction of this new rail connection will require acquisition of right-of-way. The project will also entail exempting six existing railroad crossings on the Tintic line by removing the tracks at those at-grade crossings. The new alignment will allow current Union Pacific Railroad routes to bypass a section of the Tintic line through a residential area. This project will build approximately 7,400 linear feet of new railroad tracks connecting the Sharp and Tintic Railroad corridors. Project partners include Utah Transit Authority, Utah Department of Transportation, Union Pacific Railroad, Mountainland Association of Governments, Springville City, and Spanish Fork City. This connection will enable key public transit objectives while improving local community accessibility and safety. This project will: • Provide a route for future expansion of the UTA Frontrunner to southern Utah County. • Re-route Union Pacific freight trains from the Tintic Railroad Line to the Sharp Railroad Line, bypassing the current route through Springville residential areas, increasing safety by eliminating train traffic from six highway/rail crossings.

	• Allow Springville City to access the areas currently used for the Tintic Railroad corridor for future trail opportunities. • Provide a safer walking route for children to a local elementary school and reduce bus routes. The project has already secured $6.3M in grants/local match. However, due to scope changes required by Union Pacific, an additional $3.8M in federal funding and $180,000 in local funding is required. This grant, if awarded, would cover that funding gap.
ALTERNATIVES:	If grant funds are not pursued this project will be delayed until alternative resources are found.
FISCAL IMPACT:	The total federal request is for $3.8M. Spanish Fork City and Springville City are each contributing $30,000. UTA's local match commitment is approximately $120,000.
ATTACHMENTS:	None

MEMORANDUM TO THE BOARD

TO: Utah Transit Authority Board of Trustees
THROUGH: Carolyn Gonot, Executive Director
FROM: Robert Biles, Chief Financial Officer
PRESENTER(S): Monica Morton, Fares Director

BOARD MEETING DATE: June 17, 2020

SUBJECT:	**Hive Pass Program Agreement**
AGENDA ITEM TYPE:	**Fare Approval**
RECOMMENDATION:	Approve and authorize the Executive Director to execute the contract with Salt Lake City Corporation for the Hive Cooperative Pass Purchase and Administration Agreement in the amount of $825,000.
BACKGROUND:	The Hive Cooperative Pass Purchase and Administration Agreement is a transit pass program that gives Salt Lake City residents access to a discounted Monthly Standard Adult Local transit pass. Each Pass is in the form of an electronic fare card and users are required to Tap-On and Tap-Off the system when riding UTA services. This specific program has been in place since June 2015 The price of the Local Monthly Pass through the Hive Pass Program is $67.00 per month which is a 20% discount off the retail monthly pass price. Of that $67.00, Salt Lake City pays $25.00, and the resident pays $42.00 Passes can be purchased from the Salt Lake City County Building, Public Utilities Office, and the Sorenson Unity Center. Prior to selling a pass, Salt Lake City verifies that the resident seeking to purchase a pass lives within the boundaries of Salt Lake City proper. This verification process is outlined in Section 3 of the contract.
DISCUSSION:	Staff recommends continuing to partner with Salt Lake City Corporation to offer the Hive Pass to Salt Lake City Residents. The Voucher Program will be removed from The Hive Cooperation Pass Purchase and Administration Agreement and put into a separate Low Income Fare Pilot contractual agreement. The Voucher Program allowed Salt Lake City to purchase annual Hive passes for Human Service Providers to issue to the clients whom they served. The price of the pass was $360. Prior to 2020, UTA did not offer a Low Income Program. It was determined and agreed upon by all parties that the Low Income Fare Pilot Program,

	put into place by UTA in February 2020, would be a better solution for Salt Lake City to purchase Low Income Transit Passes than the previous Hive Voucher Program.	
CONTRACT SUMMARY:	Contractor Name: Salt Lake City Corporation	
	Contract Number: 20-F00048-2	Existing Contract Value:
	Base Contract Effective Dates: July 1, 2020-June 30, 2021	Extended Contract Dates:
	Amendment Amount: NA	New/Total Amount Contract Value: $825,000
	Procurement Method: NA	Funding Sources: NA
ALTERNATIVES:	Eliminate the pass offering, foregoing any anticipated revenue and ridership	
FISCAL IMPACT:	It is estimated that the contract revenue will be $825,000. This estimate is based on total revenue received July 2019- March 2020 and forecasted revenue for April-June 2020.	
ATTACHMENTS:	1) Contract	

HIVE COOPERATIVE
PASS PURCHASE AND ADMINISTRATION AGREEMENT

This Hive Cooperative Pass Purchase and Administration Agreement (the "Agreement") is made this first day of July, 2020 ("Effective Date") between the UTAH TRANSIT AUTHORITY, a public transit district organized under the laws of the State of Utah ("UTA"), and SALT LAKE CITY CORPORATION, a Utah municipal corporation whose address is 349 S. 200 E, STE 150, Salt Lake City, Utah 84111 ("Administrator").

RECITALS

WHEREAS, UTA is a public transit district providing public transit service within the State of Utah;

WHEREAS, Both Administrator and UTA recognize the benefits of public transit to individuals, businesses and the community in reducing congestion, improving the quality of air and the environment, and limiting the amount of real property set aside or dedicated to motor vehicle uses and parking in urban locations;

WHEREAS, Administrator desires to encourage transit ridership by administering a program whereby Administrator shall be responsible for selling and issuing transit passes to Salt Lake City residents for use on certain UTA transit services pursuant to the terms and conditions set forth in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, and for other good and valuable consideration, the parties hereby agree as follows:

SECTION I: DEFINITIONS

1.1 The term **"Administrator"** shall mean Salt Lake City Corporation.

1.2 The term **"Agreement"** shall mean this Agreement and all exhibits.

1.3 The term **"Authorized Services"** shall mean those UTA transit services and service types listed in Paragraph 4 and Exhibit "A," the Pass Program Configuration Form.

1.4 The term **"Authorized User"** shall mean an individual who is a current resident of Salt Lake City, Utah and who has provided sufficient documentation to Administrator as set forth in Paragraph 3 to verify his or her residency.

1.5. The term **"Electronic Fare Collection Rules"** or **"EFC Rules"** shall mean UTA's EFC Rules located in Exhibit B

1.6 The term **"Trip"** shall mean each occasion an active Pass issued to an Authorized User is presented as fare to board a UTA vehicle in service.

1.7. The term **"Pass"** shall mean an electronic fare card issued in compliance with this Agreement that is electronically enabled and valid on Authorized Services when used in accordance with UTA's EFC Rules. The term Pass shall include Standard Adult Local Passes.

SECTION II: TERMS AND CONDITIONS

1) PURPOSE OF AGREEMENT. The purpose of this Agreement is to allow Administrator to sell and issue Passes to Authorized Users. Administrator is responsible for selling and issuing Passes to Authorized Users in accordance with this Agreement and UTA's EFC Rules.

2) TERM OF AGREEMENT. This Agreement shall begin upon recording by the Salt Lake City Recorder and end on June 30, 2021, and may be extended for an additional one-year term upon the written authorization of both parties, which shall occur at least ninety (90) days before the scheduled termination of the Agreement.

3) PASS APPLICATION AND VERIFICATION OF RESIDENCE. Prior to selling a Pass, Administrator shall verify the individual seeking to purchase a Pass is a resident of Salt Lake City, Utah. Administrator shall require each individual seeking to purchase a Pass to present a valid Utah Driver's License, State-Issued Identification Card, or other document showing credible evidence of City residency. Administrator shall also require each individual seeking to purchase a Pass to present one of the following: (1) a lease or rental agreement, (2) a county tax bill, or (3) two pieces of formal mail such as a utility bill or bank statement with the individual's name and home address printed on it. Individuals seeking to purchase Passes for minors shall provide the preceding documentation as well as one other document showing credible evidence establishing the minor's residency, including, but not limited to, the minor's valid Utah Driver's License or State-Issued Identification Card.

4) AUTHORIZED SERVICES. Administrator agrees and acknowledges that Authorized Services are public transit services, which may be altered from time to time as UTA modifies its public routes. Subject to the foregoing, Passes shall be valid on the following Authorized Services:

   A. Standard Adult Local Pass. The Standard Adult Local Pass shall be valid for regular fare bus routes, TRAX light rail, and Streetcar light rail. The Standard Adult Local Pass shall not be valid on Ski Service, Paratransit Service, Special Services, Park City-Salt Lake City Connect Service, express bus routes, and FrontRunner commuter rail service. The Pass may be used for a $2.50 transfer credit on express bus routes, FrontRunner commuter rail service, or any other special service. Authorized Users must pay for additional station costs for FrontRunner commuter rail service and additional transfer costs for express bus routes prior to boarding.

5) FORM OF PASS. Each Pass shall take the form of a unique electronic micro-chip embedded in an electronic fare card media, which shall be activated by UTA. Prior to issuing a Pass, Administrator shall print the name of the purchasing Authorized User on the Pass. Administrator shall issue a receipt for each Pass issued.

6) TERM OF PASS AND PASS EXPIRATION. Standard Adult Local Monthly Passes

shall be recognized as full fare for Authorized Services for one calendar month.

7) PASS ADMINISTRATION, SALE, AND DISTRIBUTION. Administrator is responsible for the marketing, promotion, sale, distribution, and management of Passes to Authorized Users as well as the collection of payments from Authorized Users for Passes. Each Authorized User is eligible to have one active Pass at any time. In the event an Authorized User fails to pay for a Pass, Administrator shall deactivate the Pass by the third calendar day of the month of the non-payment.

8) PRE-AUTHORIZATION. The completed Pass Program Configuration Form is attached hereto as Exhibit "A" and is incorporated herein by reference. The parties hereby ratify the elections contained in the Pass Program Configuration Form and agree to be bound by the terms designated therein. All terms used in the Pass Program Configuration Form shall have the same meaning as used in this Agreement.

9) PURCHASE PRICE AND PAYMENT. UTA agrees to sell and Administrator agrees to purchase Standard Adult Local Monthly Passes from UTA at a twenty percent (20%) discount off the standard price for such Passes as advertised on UTA's website. Administrator agrees to further discount the Passes an additional thirty percent (30%) and sell UTA's Passes to Authorized Users at a fifty percent (50%) discount off the cost of the Passes as advertised on UTA's website. Dollar amounts owed under this Agreement shall be rounded to the nearest $1.00. UTA reserves the right to change the price for its Passes at any time in its sole discretion. UTA shall give Administrator sixty (60) days' advance written notice of any price increase. The percentage discounts set forth in this Paragraph shall remain in effect regardless of any variation in Pass price.

   A. As of the date of this Agreement, the amount owed to UTA by Administrator for the sale of each Standard Adult Local Monthly Pass shall be $67.00 per month. Of that $67.00, Administrator shall pay $25.00, and each Authorized User shall pay $42.00, which amount shall be collected by Administrator.

   B. On the last Saturday of each month, UTA shall run an Active Card Report. On a monthly basis, UTA shall invoice Administrator $67.00 for each Local Pass that is active on the last Saturday of the month as established by the Active Card Report. Administrator shall also pay the amount of $67.00 for each Local Pass to UTA for each Pass that has accrued ten (10) or more Trips during the month even if the Pass does not appear on the Active Card Report. Administrator shall pay the amount invoiced within thirty (30) days of receipt of invoice.

      i. Notwithstanding the provisions of paragraph 9, at Administrator's option, it may further discount the price it charges Authorized Users for Standard Adult Monthly Passes if it correspondingly increases the amount Administrator paid to UTA for each Standard Adult Monthly Pass. Administrator shall give UTA sixty (60) days' advanced written notice of any change in the amount Administrator will contribute and the corresponding change in the amount to be paid by the Authorized Users.

10) HANDLING OF PASSES/FARE MEDIA. Administrator shall not furnish, provide, assign, sell or resell, or otherwise transfer a Pass to any person who is not an Authorized User. Issuance records for each issued Pass will be maintained by Administrator. At all times

during the term of this Agreement, Administrator must be able, upon reasonable request of UTA, to account for all Passes distributed to Administrator under this Agreement. The obligation under the preceding sentence shall include: (a) Administrator being able to identify the unique identification number of each issued Pass and the corresponding person issued such Pass; (b) Administrator being able to produce for inspection, upon request during regular business hours, any Passes delivered to Administrator that have not been issued to an Authorized User; and (c) Administrator being able to identify, by number, any Passes identified as lost or stolen for which replacement Passes have been issued. UTA maintains the right, upon reasonable notice, to inspect during regular business hours, all records maintained by Administrator in connection with this Agreement at all times during the term of this Agreement and for a period of one year after the expiration or termination of this Agreement.

11) CONFISCATION OF PASS/UNAUTHORIZED USE OF PASS. UTA has the right to confiscate a Pass at any time (without notice to the Administrator) from any person who UTA reasonably believes is not an Authorized User. UTA has the right to confiscate any Pass that UTA reasonably believes has been duplicated or altered. UTA reserves the right to pursue claims or demands against, or seek prosecution of any person who duplicates, alters or uses a Pass in any unauthorized way. Administrator shall not re-issue or replace a Pass confiscated by UTA so long as UTA informs Administrator of the confiscation of the Pass. UTA shall not pursue any claims or suits against the Administrator for any unauthorized use of a Pass, unless: (a) the unauthorized use results from counterfeiting a Pass and the Administrator had actual or constructive knowledge of such action and Administrator failed to report such action to UTA within three (3) business days; (b) the Administrator falsely certified to UTA the name of a person who is not an Authorized User; or (c) the unauthorized use resulted from Administrator's acts or omissions or misconduct. UTA shall have the right to confiscate any and all Passes or electronic fare cards if UTA believes that the information provided has been falsified, or a Pass has been given by the Administrator or its authorized representatives to a person who is not an Authorized User.

12) ISSUANCE OF PASSES. Administrator shall be solely responsible for issuing Passes to Authorized Users.

13) COST FOR LOST, REPLACEMENT OR STOLEN PASSES. At its discretion, Administrator may charge a card replacement fee to Authorized Users.

14) NON-TRANSFERABLE. A Pass is not transferable to any other Authorized User, a member of the Authorized User's household, or any other person.

15) DELIVERY OF PASSES. Inactive Passes shall be furnished to Administrator's representative at its primary address listed below on a monthly basis, or as often as needed, for issuance to Authorized Users.

16) SECURITY TERMS. Administrator agrees to be responsible for all Passes delivered to Administrator by UTA and to treat unissued Passes with the same care and safeguards as cash. Administrator agrees to pay any expenses of UTA in deactivating and/or replacing the unissued Passes and pay any fees associated with the use of the unissued Passes, whether occasioned by loss, theft or forgery. UTA agrees that if a receipt is presented to Administrator by an Authorized User, a Pass can be re-issued using the UTA Partner Web Application, unless the Pass was confiscated by UTA.

17) RECONCILIATION. Administrator shall cooperate with and permit UTA to examine the unissued Passes distributed to Administrator and to inspect and reconcile all records and accounts pertaining to this Agreement on a monthly basis, if requested, during regular business hours.

18) PROMOTION AND ADVERTISING. The parties shall work together in good faith to develop an overall marketing strategy for the sale of Passes. Administrator shall be responsible for promoting, advertising, and direct marketing for Passes, as well as educating its residents and Authorized Users regarding the use of Passes. UTA shall supply supplemental marketing for the Pass on its website, social media, and its other marketing efforts as appropriate.

19) TERMINATION OF AGREEMENT. Either Party may terminate this Agreement at any time for any reason by giving sixty (60) days' written notice of its intent to terminate the Agreement. Upon termination, Administrator shall make an accounting and reconciliation as described in Paragraph 17, if requested by UTA.

20) THIRD PARTY INTERESTS. No person not a party to this Agreement shall have any rights or entitlements of any nature under it.

21) NON-DISCRIMINATION. Administrator agrees that it shall not exclude any individual from participation in or deny any individual the benefits of this Agreement on the basis of race, color, national origin, disability, sex, sexual orientation, or age in accordance with the requirements of 49 U.S.C. 5332 and other applicable state and federal laws.

22) ENTIRE AGREEMENT. This Agreement and the Exhibits attached hereto contain the entire agreement between the parties hereto for the term stated and cannot be modified except by written agreement signed by both parties. Neither party shall be bound by any oral agreement or special arrangements contrary to or in addition to the terms and condition as stated herein. This Agreement also supersedes any and all other agreements or contracts, whether oral or written, between the parties with respect to the subject matter hereof.

23) INTENT TO BE LEGALLY BOUND. The undersigned parties have duly caused this Agreement to be executed, and the signatories are duly authorized by his or her respective governmental entity to execute this Agreement.

24) GOVERNING LAW. This Agreement and all transactions contemplated hereunder and/or evidenced hereby shall be governed by and construed under and enforced in accordance with the laws of the State of Utah without giving effect to any choice of law or conflict of law rules or provisions.

25) WAIVER. The waiver by either party of any of the covenants as contained in this Agreement shall not be deemed a waiver of such party's rights to enforce the same or any other covenant herein, and the rights and remedies of the parties hereunder shall be in addition to, and not in lieu of, any right or remedy as provided by law.

26) PRIVACY. UTA shall not disclose Authorized Users' personal information or travel data to Administrator, except as required by law.

27) NOTICES. Except as otherwise indicated, notices to be given hereunder shall be sufficient if given in writing in person or by personal delivery, U.S. mail, or electronic mail. All notices shall be addressed to the respective party at its address shown below or at such other address or addresses as each may hereafter designate in writing. Notices shall be deemed effective and complete at the time of receipt, provided that the refusal to accept delivery shall be construed as receipt for purposes of this Agreement.

If to UTA:	**If to Administrator:**	
Kensey Kunkel	Name:	Lara Handwerker
669 West 200 South	Company:	Salt Lake City Division of Transportation
Salt Lake City, UT 84101	Address:	349 South 200 East, Suite 150
Tel: (801) 741-8806		Salt Lake City, Utah 84114
E-mail: kkunkel @ rideuta.com	Tel:	801-535-7175
	Email:	Lara.handwerker@slcgov.com

Either party may change the address at which such party desires to receive written notice by giving written notice of such change to the other party. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed, provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice.

28) NO WAIVER OF IMMUNITY. Both Administrator and UTA are governmental entities under the Utah Governmental Immunity Act of the Utah Code, Section 63G-7-101 et seq. 1953 (as amended) (hereinafter, the "Act"). Nothing in this Agreement shall be construed to be a waiver by either UTA or Administrator of any protections, rights, or defenses applicable under the Act. It is not the intent of either party to incur by contract any liability for the negligent operations, acts, or omissions of the other party or any third party and nothing in this Agreement shall be so interpreted or construed.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement to be effective as of the Effective Date.

SALT LAKE CITY CORPORATION

By: _____Date:_____
Erin Mendenhall
Mayor
Salt Lake City

Approved as to Form:

By:_____Date:_____
Senior City Attorney

Attest:

By:_____Date:_____
City Recorder

UTAH TRANSIT AUTHORITY

By: _____Date:_____
Carolyn Gonot
Executive Director

By: _____Date:_____
Robert K. Biles
Chief Financial Officer

Approved as to Form:

By: _____Date:_____
Michael Bell
Assistant Attorney General
Counsel for UTA

Exhibit A
Pass Program Configuration Form

A. **Authorized UTA Services**

Standard Adult Local Pass. The Standard Adult Local Pass shall be valid for regular fare bus routes, TRAX light rail, and Streetcar light rail. The Standard Adult Local Pass shall not be valid on Ski Service, Paratransit Service, Special Services, Park City-Salt Lake City Connect Service, express bus routes, and FrontRunner commuter rail service.

B. Form of Passes

☐ **UTA-Printed Passes:** Complete, Table 1 "Initial Pass Order Quantity" below:

Initial Pass Order Quantity

UTA Printed Pass Product Electronic Fare Card	**Quantity** *(Total Authorized User Count)*
HIVE 2.0 Standard Adult Local Pass	

☐ **Administrator-Printed Passes**

C. Administrator Personnel

UTA will be contacting the following Authorized User(s) to set up logins for UTA web interface purposes. List of Authorized Users who need access for card replacements and card lookups:

First & Last Name	**Email Address**
Randy Buckley	Randy.Buckley@slcgov.com
Rob Hughes	Rob.Hughes@slcgov.com
Philip Lynch	Philip.Lynch@slcgov.com
Marisela Alvarado	Marisela.Alvarado@slcgov.com
Mandy Heywood	Mandy.Heywood@slcgov .com
Julianne Sabula	Julianne.sabula@slcgov.com
Amy Pufahl	Amy.Pufahl@slcgov.com
Cherise Vernon	Cherise.vernon@slcgov.com
Ashlee Sprouse	Ashlee.Sprouse@slcgov.com
Lara Handwerker	Lara.Handwerker@slcgov.com

EXHIBIT B:
ELECTRONIC FARE COLELCTION RULES

ADMINISTRATION RULES

Transit Coordinator

Administrator must designate a Transit Coordinator ("TC") that will oversee the pass program administration. The TC will be trained by UTA staff on how to use the UTA Partner Web Site where card management functions are to be performed. TC's are responsible for training staff how to issue, activate, deactivate and replace cards. Please provide the designated TC contact information in your application.

Procurement of Passes

Initial pass order: fill out the program application and indicate the type in quantity of each fare product you would like to receive.

Additional Passes: send an email to passprograms@rideuta.com and indicate the quantity and type of passes.

Issuance of Passes

Administrator is responsible for issuing cards and is responsible to complete the following upon issuance:

- Confirm the recipient qualifies under this agreement
- Print the recipient's name on the card in permanent ink
- Record the recipient name and the card number issued to them (see record keeping below)
- Review the Cardholder Rules with each recipient

Record Keeping

Administrator is required to maintain the following card issuance records:

- The card number of each issued card, including replacement cards, and the corresponding person issued such pass
- The card number of each unissued card

Card Replacements

Administrator is responsible for replacing cards that are lost, stolen, defective, or otherwise require replacement. All card replacements must be done using the "replace card" functionality on UTA's partner website: www.tap2rideuta.com. For more information on how to replace a card, refer to the

UTA Partner Web Site User Guide provided during training. Only 30-day passes are eligible for card replacement.

Tapping

Administrator is responsible for ensuring that cardholders are made aware of UTA's requirement to "tap-on" and "tap-off" at designated readers when riding UTA services. Failure to do so may result in a citation or fine to the cardholder pursuant to UTA Ordinances. Pass is only valid fare when cardholder has tapped the card and it is properly validated (green light) by an electronic reader. A red light indicates the pass has expired or is no longer valid.

Requests for Electronic Tap Data

According to Utah Code 17B-2a-815(3)(a), UTA can only provide limited tap data to administrators. To access reports currently available, go to UTA's partner website: www.tap2rideuta.com, and click on "Reports." If you need data not provided on the partner website, email passprograms@rideuta.com with your request, and someone will contact you.

Customer Service

TC's are supported by UTA's Business Development and Sales team and are assigned a specific sales representative to assist as needed. TC's are expected to be the primary contact for cardholders.

If a cardholder experiences card related issues and contacts UTA's customer service team, they will be directed back to the TC for assistance. UTA's customer service team can assist and help cardholders with issues such as basic trouble shooting and answering questions about riding UTA service.

CARDHOLDER RULES

Tapping

Cardholder is required to "tap-on" and "tap-off" at designated readers when riding UTA services. Failure to do so may result in a citation or fine to the cardholder pursuant to UTA Ordinances. Pass is only valid fare when cardholder has tapped the card and it is properly validated (green light) by an electronic reader. A red light indicates the pass has expired or is no longer valid.

Non-Transferable

Passes are not transferable and should not be shared with any other person.

Card Care

It is important to protect the cards from damage. The card will not work if sensitive wires inside are broken. Do not punch holes, bend, keep in excessive heat or do anything to the card that could damage it. In order for the card to be read properly on electronic card readers, ensure that your card is not against other plastic cards, metal objects or electronic devices. Otherwise, it will interfere with the card signal causing the card not to be read or to be read improperly.

MEMORANDUM TO THE BOARD

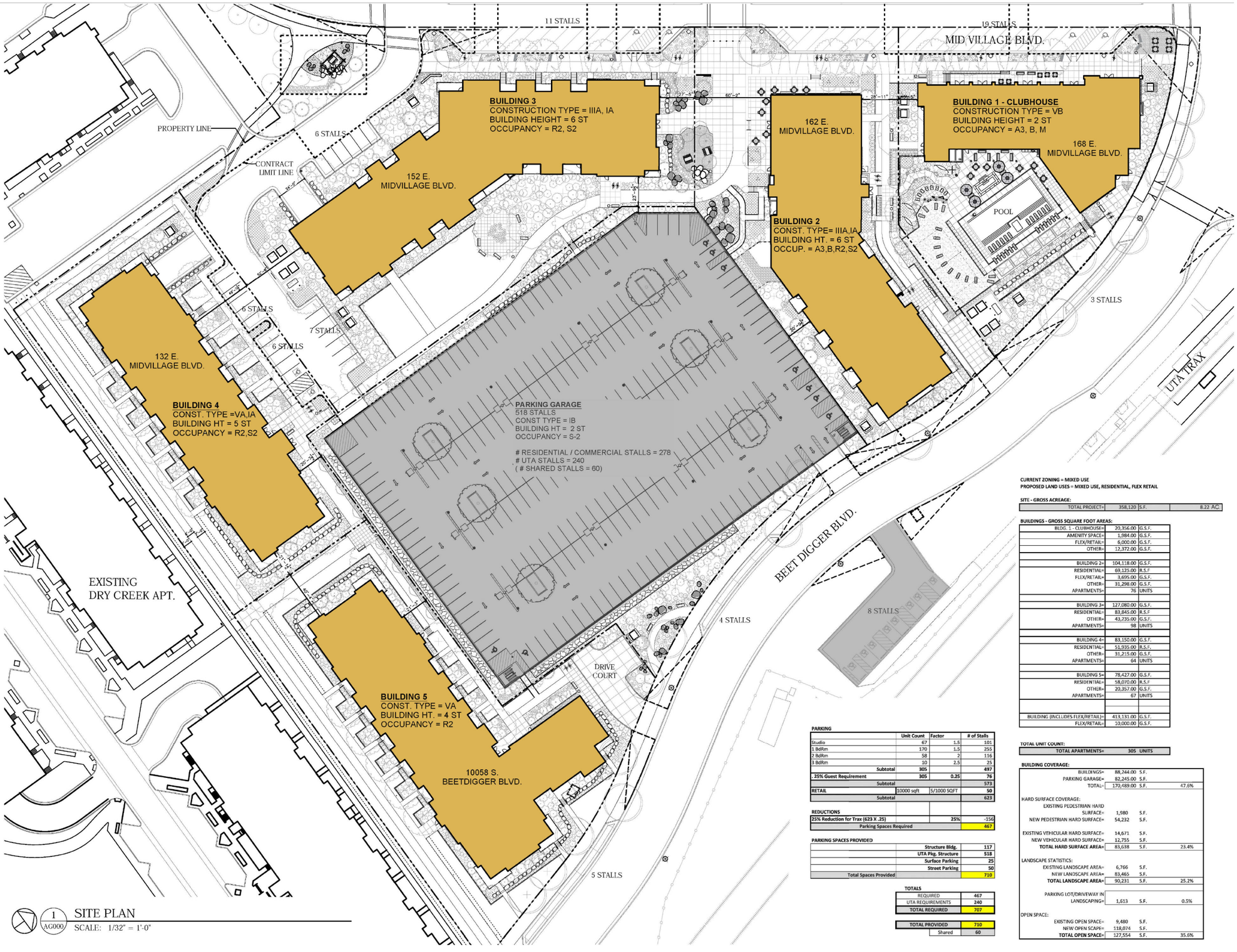
TO: Utah Transit Authority Board of Trustees
THROUGH: Carolyn Gonot, Executive Director
FROM: Mary DeLoretto, Chief Service Development Officer
PRESENTER(S): Paul Drake, Director of Real Estate and TOD

BOARD MEETING DATE: June 17, 2020

SUBJECT:	**Sandy East Village 3 Transit-Oriented Development Financial Analysis and Proposed Associated Agreements**
AGENDA ITEM TYPE:	**Discussion**
RECOMMENDATION:	Informational report for discussion
BACKGROUND:	In 2014, UTA and Hamilton Partners executed a Development Agreement to implement a joint venture transit-oriented development at the Sandy Civic Center TRAX Station ("SCC"). UTA initially owned 33 acres of property that was partially funded by the Federal Transit Administration ("FTA"). Through their Joint Development program, FTA granted UTA the ability to convey parcels to a joint venture entity on a phase by phase basis. The value of UTA's land contribution would determine its equity share in the joint venture. Since then, UTA and Hamilton Partners have successfully completed four phases of development, including several hundred residential units, over 200,000 square feet of office space, and some flex retail.
DISCUSSION:	The proposed East Village 3 phase of development will be constructed on 6 acres and include 305 residential units, 10,000 square feet of retail, and a shared parking garage to provide 300 stalls for UTA patrons, 60 of which will be shared on a time-restricted basis. The contract to construct the parking garage has already been approved by the UTA Board of Trustees and has been on hold pending selection of equity partners and construction financing for the accompanying development phase. The Financial Analysis includes (1) an Operating Agreement, (2) a Joint Venture Agreement, and (3) a pro forma. The Operating Agreement forms a partnership entity between Hamilton Partners and UTA named HPUTA East Village 3 LLC ("HPUTA"). The Limited Liability Company Agreement ("EV3 Joint Venture Agreement") forms the principal development entity, named East Village 3 LLC ("EV3"). Cash flows will be distributed to HPUTA via the terms of the EV3 Joint Venture Agreement, and cash flows to UTA will be determined by the HPUTA Operating Agreement.

	The associated agreements govern the terms under which the development property will be contributed and the parking structure will be constructed, operated, managed, and maintained. Additionally, this phase of development will bring over 300 more households and commercial space immediately adjacent to the TRAX platform, increasing potential ridership. It will also allow UTA to move forward with its plans to construct a permanent parking facility for its patrons. The Board of Trustees' approval of the Financial Analysis and associated agreements will allow UTA and its partners to move forward with this phase of development. When approved, UTA will convey the associated property and receive ownership in the joint venture and claim to its share of the development proceeds.
ALTERNATIVES:	Should the Board of Trustees choose to disapprove the current Financial Analysis and associated agreements, the property will remain vacant. UTA patrons will continue to access the station via temporary parking arrangements. UTA's development partners would lose their investment, and UTA would forego a significant opportunity to create a high-quality origin/destination at its station, increase ridership, and generate revenue.
FISCAL IMPACT:	UTA would convey roughly $1.6 million in land to the development entity. Current projections estimate UTA's return to be $4.3 million within four years.
ATTACHMENTS:	1) Site Plan 2) Zions Public Finance, Inc. Review Letter – Sandy EV3 3) Proposed Associated Agreements pending future Board Approval (drafted as exhibits to Resolution R2020-06-05 to be considered in a future meeting): a. Operating Agreement of HPUTA East Village 3 LLC b. Limited Liability Company Agreement of East Village 3 LLC c. Pro Forma d. Contribution Agreement e. Ground Lease f. Parking Structure Construction, Operation and Easement Agreement ("COREA") g. Parking Structure Management Agreement ("PSMA")

Site Plan - East Village 3



1 AG000 SITE PLAN
SCALE: 1/32" = 1'-0"

CURRENT ZONING = MIXED USE
PROPOSED LAND USES = MIXED USE, RESIDENTIAL, FLEX RETAIL

SITE - GROSS ACREAGE:

TOTAL PROJECT=	358,120	S.F.	8.22 AC

BUILDINGS - GROSS SQUARE FOOT AREAS:

BLDG. 1 - CLUBHOUSE=	20,356.00	G.S.F.
AMENITY SPACE=	1,984.00	G.S.F.
FLEX/RETAIL=	6,000.00	G.S.F.
OTHER=	12,372.00	G.S.F.
BUILDING 2=	104,118.00	G.S.F.
RESIDENTIAL=	69,125.00	R.S.F
FLEX/RETAIL=	3,695.00	G.S.F.
OTHER=	31,298.00	G.S.F.
APARTMENTS=	76	UNITS
BUILDING 3=	127,080.00	G.S.F.
RESIDENTIAL=	83,845.00	R.S.F
OTHER=	43,235.00	G.S.F.
APARTMENTS=	98	UNITS
BUILDING 4=	83,150.00	G.S.F.
RESIDENTIAL=	51,935.00	R.S.F.
OTHER=	31,215.00	G.S.F.
APARTMENTS=	64	UNITS
BUILDING 5=	78,427.00	G.S.F.
RESIDENTIAL=	58,070.00	R.S.F
OTHER=	20,357.00	G.S.F.
APARTMENTS=	67	UNITS
BUILDING (INCLUDES FLEX/RETAIL)=	413,131.00	G.S.F.
FLEX/RETAIL=	10,000.00	G.S.F.

TOTAL UNIT COUNT:

TOTAL APARTMENTS=	305	UNITS

PARKING

	Unit Count	Factor	# of Stalls
Studio	67	1.5	101
1 BdRm	170	1.5	255
2 BdRm	58	2	116
3 BdRm	10	2.5	25
Subtotal	305		497
.25% Guest Requirement	305	0.25	76
Subtotal			573
RETAIL	10000 sqft	5/1000 SQFT	50
Subtotal			623

REDUCTIONS		
25% Reduction for Trax (623 X .25)	25%	-156
Parking Spaces Required		467

PARKING SPACES PROVIDED

Structure Bldg.	117
UTA Pkg. Structure	518
Surface Parking	25
Street Parking	50
Total Spaces Provided	710

TOTALS

REQUIRED	467
UTA REQUIREMENTS	240
TOTAL REQUIRED	707

TOTAL PROVIDED	710
Shared	60

BUILDING COVERAGE:

BUILDINGS=	88,244.00	S.F.	
PARKING GARAGE=	82,245.00	S.F.	
TOTAL=	170,489.00	S.F.	47.6%
HARD SURFACE COVERAGE:			
EXISTING PEDESTRIAN HARD SURFACE=	1,980	S.F.	
NEW PEDESTRIAN HARD SURFACE=	54,232	S.F.	
EXISTING VEHICULAR HARD SURFACE=	14,671	S.F.	
NEW VEHICULAR HARD SURFACE=	12,755	S.F.	
TOTAL HARD SURFACE AREA=	83,638	S.F.	23.4%
LANDSCAPE STATISTICS:			
EXISTING LANDSCAPE AREA=	6,766	S.F.	
NEW LANDSCAPE AREA=	83,465	S.F.	
TOTAL LANDSCAPE AREA=	90,231	S.F.	25.2%
PARKING LOT/DRIVEWAY IN LANDSCAPING=	1,613	S.F.	0.5%
OPEN SPACE:			
EXISTING OPEN SPACE=	9,480	S.F.	
NEW OPEN SCAPE=	118,074	S.F.	
TOTAL OPEN SPACE=	127,554	S.F.	35.6%

ZIONS PUBLIC FINANCE, INC.

June 5, 2020

Utah Transit Authority
Attn: Paul Drake
669 West 200 South
Salt Lake City, Utah 84101

Re: Review of Documentation for Proposed Apartment and Garage Construction

Dear Paul:

Zions Public Finance Inc. (ZPFI) has reviewed the provided documentation regarding the proposed apartment and parking garage development in Sandy, Utah. It is our understanding that the project will contain 305 apartments and 517 parking stalls. ZPFI's role has been to review the project documentation and proforma to verify that agreements are in accordance with market conventions. For this assignment, we have most recently reviewed the following documents provided by UTA:

- Project Proforma labeled "2020 05 20 EV3 Proforma"
- Operating Agreement labeled "2020 05 28 – HPUTA East Village 3 LLC – OP Agmt – FINAL"
- Joint Venture Agreement labeled "2020 05 26 – Alta Vue JV Agreement – FINAL"

In addition, ZPFI reviewed previous draft versions of the noted documentation (including an appraisal) and furthermore participated in phone calls and virtual meetings to discuss the project with representatives of UTA. Our initial analysis highlighted potential questions regarding project valuation, deferred payments, specific partner returns, development fees, appraisal methodologies, and other issues. It appears that the documentation noted above has been updated to address key issues. Consequently, the current agreements do appear to be in conformance with market conventions. Furthermore, it appears that the relationship structure for UTA allows for an appropriate return and a partnership agreement that would be defined by the market as fair. Consequently, it is our opinion that UTA's participation in the development plan is structured such as to allow for a potential market return and partnership that is commensurate with other development activity in the market.

ZPFI has no relationship with UTA or any of the development agreements that would cause an inability to provide an unbiased and fair assessment of the proposed project. Our stated conclusions were reached independently, without direction or coercion from any of the interested parties. Please feel free to give us a call if you have any questions. We appreciate the opportunity to work with you on this assignment.

Best Regards,

Benj Becker
Vice President, Zions Public Finance Inc.

One South Main Street, 18th Floor, Salt Lake City UT 84133-1904 Telephone: 801.844.7373 Fax: 801.844.4484

Sandy East Village 3 Transit-Oriented Development

Financial Analysis and Proposed Associated Agreements

Exhibits:

A. Operating Agreement of HPUTA East Village 3 LLC
B. Limited Liability Company Agreement of East Village 3 LLC
C. Pro Forma
D. Contribution Agreement
E. Ground Lease
F. Parking Structure Construction, Operation and Easement Agreement ("COREA")
G. Parking Structure Management Agreement ("PSMA")

Exhibit A
(Operating Agreement of HPUTA East Village 3, LLC)

OPERATING AGREEMENT

OF

HPUTA EAST VILLAGE 3 LLC,

a Utah limited liability company

by and between

UTAH TRANSIT AUTHORITY,

a large public transit district of the State of Utah

and

EAST VILLAGE APARTMENT INVESTMENTS 3 LLC,

a Utah limited liability company

Dated as of June __, 2020

NEITHER THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE REGULATORY AUTHORITY NOR THE REGULATORY AUTHORITY OF ANY OTHER COUNTRY HAS APPROVED OR DISAPPROVED THIS OPERATING AGREEMENT OR THE MEMBERSHIP INTERESTS ("INTERESTS") PROVIDED FOR HEREIN. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

THE INTERESTS HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), NOR UNDER THE SECURITIES LAWS OF ANY OTHER COUNTRY, AND THE LIMITED LIABILITY COMPANY IS UNDER NO OBLIGATION TO REGISTER THE INTERESTS UNDER THE SECURITIES ACT OR ANY OTHER SUCH LAWS IN THE FUTURE.

AN INTEREST MAY NOT BE SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED WITHIN THE UNITED STATES OR TO A "U.S. PERSON", WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, IN THE ABSENCE OF AN EFFECTIVE REGISTRATION UNDER THE SECURITIES ACT OR AN OPINION OF COUNSEL SATISFACTORY TO MANAGER OF THE LIMITED LIABILITY COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED. HEDGING TRANSACTIONS INVOLVING AN INTEREST MAY NOT BE CONDUCTED UNLESS IN COMPLIANCE WITH THE SECURITIES ACT. ADDITIONAL RESTRICTIONS ON THE TRANSFER OF INTERESTS ARE CONTAINED IN ARTICLE XII OF THIS OPERATING AGREEMENT. BASED UPON THE FOREGOING, EACH ACQUIRER OF AN INTEREST MUST BE

PREPARED TO BEAR THE ECONOMIC RISK OF INVESTMENT THEREIN FOR AN INDEFINITE PERIOD OF TIME.

TABLE OF CONTENTS

Page

Table of Contents
(continued)

Page

Table of Contents
(continued)

Page

Table of Contents
(continued)

OPERATING AGREEMENT
OF
HPUTA EAST VILLAGE 3 LLC
a Utah limited liability company

THIS OPERATING AGREEMENT is made and entered into as of the ___ day of June, 2020, by and between UTAH TRANSIT AUTHORITY ("UTA"), a large public transit district organized under the Utah Public Transit District Act, Utah Code Ann. §§ 17B-2a-801 et. seq. (the "Utah Public Transit District Act"), and EAST VILLAGE APARTMENT INVESTMENTS 3 LLC, a Utah limited liability company ("EVAI3"), as the members (the "Members") of HPUTA EAST VILLAGE 3 LLC, a Utah limited liability company (the "Company").

RECITALS

WHEREAS, UTA and EAST VILLAGE. INVESTMENTS LLC, a Utah limited liability company ("Master Developer") executed that certain Development Agreement as of the September 30, 2014 (the "Development Agreement") to develop approximately thirty (30) acres in the City of Sandy, County of Salt Lake, State of Utah, (the "Original Property") as a transit oriented development in conjunction with the development of the adjacent Transit Property. As used herein, "Transit Property" shall have its meaning as defined in the Development Agreement and is to contain a light rail station, bus loop, kiss and ride and the Parking Structure (defined below);

WHEREAS, UTA is the owner of that certain unimproved parcel of land located in the City of Sandy, County of Salt Lake City, State of Utah, and more particularly described on **Exhibit A** (the "Development Parcel"), a portion of which is part of the Original Property and a part of which is part of the Transit Property;

WHEREAS, UTA and the Company seek to improve the Development Parcel as part of a transit-oriented development, which development will include, among other things, the Residential Project, the UTA Property (which consists of the a station, platforms and other improvements as part of the construction of the TRAX Line, which is the light rail line, currently operated between the Salt Lake City Central Station in Salt Lake City and the Draper TRAX Station in Draper, Utah) and a Parking Structure for the benefit of the public in the use of the TRAX Line and the Residential Project's residential occupants and their invitees;

WHEREAS, the Development Parcel is to be contributed to the Company by UTA and in turn contributed to the Joint Venture (defined below) for construction of the Residential Project, but as of the Effective Date portions of the Development Parcel for the Residential Project and the Parking Structure have not been re-platted to allow conveyance of the Residential Parcel to the Company;

WHEREAS, pursuant to that certain Contribution Agreement of even date herewith by and between the Company and UTA, UTA is contributing the Development Parcel which in turn will be contributed to the Joint Venture. In the Contribution Agreement the Company has agreed to cause the Joint Venture to re-plat the Development Parcel into two separate parcels, one for the Residential Project and other for the Parking Structure, and upon the recording of such plat, the Company will cause the Joint Venture to re-convey the portion of the Development Parcel on

which the Parking Structure is to be built to UTA and as part of such conveyance to UTA the Parking Structure COREA will be recorded;

WHEREAS, Master Developer is contributing its development rights associated with the Development Property (as more particularly referenced in section 4(b) of the Development Agreement) to the Company and in turn the Company is assigning such development rights to the Joint Venture (the "Development Rights");

WHEREAS, UTA and EVAI3 formed a limited liability company as contemplated by the Development Agreement for the purposes set forth in this Operating Agreement and to adopt and approve this Operating Agreement for the limited liability company; and

WHEREAS, upon the Effective Date, each party will enter into the transactions, make the capital contributions and perform the obligations described in this Operating Agreement;

NOW THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound hereby, the Members agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions. The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein):

"Affiliate" means, when used with reference to a specific Person, any other Person directly or indirectly controlling, controlled by or under common control with, such Person. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlling", "controlled by" and "under common control with"), as applied with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person whether through the ownership of voting securities or by contract or otherwise, provided (but without limiting the foregoing) that no pledge of voting securities of any Person without the current right to exercise voting rights with respect thereto shall by itself be deemed to constitute control over such Person.

"***Additional Capital Contributions***" means all payments required to be made to the Company pursuant to Section 5.2(a), except Unreimbursed UTA Additional Capital Contributions, if any, contributed by EVAI3, provided that upon any payment to EVAI3 of any Unreimbursed UTA Additional Capital Contributions as provided in Section 5.2(b) (but not under Section 8.1(d)), the Additional Capital Contributions of UTA shall be increased in a like amount as of the date of such repayment.

"***Agreed Land Value***" means One Million Five Hundred Eighty Thousand Three Hundred Sixteen Dollars ($1,580,316).

"Buy Out Event" shall have the meaning set forth in Section 14.1 hereof.

"Buy-Sell Notice" shall have the meaning set forth in Section 14.5(b).

"Capital Account" shall have the meaning set forth in Article VI hereof, as further elaborated in the Capital Accounting and Tax Addendum.

"Capital Accounting and Tax Addendum" means the Capital Accounting and Tax Addendum that is attached to this Operating Agreement and fully incorporated herein by this reference and other multiple references throughout this Operating Agreement.

"Capital Contributions" means, with respect to any Member, the total of all capital contributions, whether in cash or in-kind (to include contributed real or personal property), including Development Rights, Initial Capital Contributions, Additional Capital Contributions, and any Unreimbursed UTA Additional Capital Contribution.

"Capital Transaction" shall mean (a) any sale, exchange, taking by eminent domain, damage, destruction or other disposition of all or any part of the assets of the Company or the Joint Venture, as applicable, other than tangible personal property disposed of in the ordinary course of business; or (b) any financing or refinancing of any Company's indebtedness of the Joint Venture's indebtedness, as applicable.

"Cause Dispute Notice" shall have the meaning set forth in Section 9.11(b) hereof.

"Cause Removal Notice" shall have the meaning set forth in Section 9.11(a) hereof.

"Company" means HPUTA East Village 3 LLC, a Utah limited liability company. The Company will be a manager-managed company as defined in URLLCA Section 483 a-407.

"Company Accountant" means the third party independent accounting firm then retained by the Joint Venture to prepare financial statements of the Joint Venture.

"Company Available Cash Flow" means, with respect to the Company, the excess of (i) all revenues and receipts of the Company from all sources , including distributions from the Joint Venture, for the period in question, whether arising from a Capital Transaction or otherwise, determined in accordance with the cash receipts and disbursements method of accounting, including any amounts expended from any of the Company's reserve accounts which were deemed an expenditure when deposited pursuant to clause (ii) (whether utilized to pay costs and expenditures of the Company or distributed to the Members), over (ii) all expenditures for the period in question, including actual costs incurred in connection with a Capital Transaction, determined in accordance with the cash receipts and disbursements method of accounting, including all cash operating expenses, capital expenditures, debt service payments on third party debt and any Company loan and reasonable deposits to the Company's reserve accounts (including reserves for taxes and insurance), all as determined in accordance with this Operating Agreement.

"Contribution Agreement" shall mean that certain agreement of even date herewith by and between UTA and the Company pursuant to which, among other matters addressed therein, fee ownership of Development Parcel is being transferred to the Company and then to the Joint Venture.

"Deposit" shall have the meaning set forth in Section 14.5(d).

"Default Notice" shall have the meaning set forth in Section 5.2(c).

"Defaulting Member" shall have the meaning set forth in Section 5.2(c).

"***Developer***" means the Company as the "Developer" under the Joint Venture Agreement.

"***Development Parcel***" has the meaning set forth in the Recitals.

"***Development Rights***" has the meaning set forth in the Recitals.

"Due Care" means, within the resources available to the Company, (a) to act in good faith, within the scope of one's authority and with the reasonable care, skill, prudence and diligence (including diligent inquiry) under the circumstances then prevailing that a similarly situated manager of comparable properties would exercise if wholly owned by such manager, and (b) to deal with the assets of the Company with the interest of the Company coming before the best interest of that Person on an individual basis.

"Effective Date" shall mean the last date on which all of the Members have signed this Operating Agreement.

"Electing Member" shall have the meaning set forth in Section 9.11(a) hereof.

"Election Notice" has the meaning set forth in Section 14.5(b).

"Entity" means any general partnership, limited partnership, limited liability company, limited liability partnership, for-profit corporation, non-profit corporation, joint venture, trust, business trust, estate, cooperative association or other entity.

"EVAI3" shall have the meaning set forth in the initial paragraph hereof. **"**

"***EVAI3 Additional Capital Contributions***" shall have the meaning set forth in Section 5.2(a) hereof.

"Family" means spouse and descendants, including adopted persons of any generation and descendants of adopted persons of any generation, as well as blood descendants, the estate of any of them, or a trustee of an *inter vivos* trust or custodian for the benefit of any of them.

"Financial Insolvency" of a Person means:

(a) the making of an assignment for the benefit of creditors by such Person;

(b) the filing of a voluntary petition in bankruptcy by such Person;

(c) the adjudication of such Person as bankrupt or insolvent;

(d) the filing by such Person of a petition or answer seeking for such Person any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

(e) the filing of an answer or other pleading by such Person admitting or failing to contest the material allegations of a petition filed against such Person in any proceeding described in subsection (iv) above;

(f) the seeking, consent to, or acquiescence in by such Person of the appointment of a trustee, receiver or liquidator of such Person or of all or any substantial part of such Person's properties;

(g) the failure of any proceeding against such Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation to be dismissed within one hundred eighty (180) days after its commencement; or the failure of any appointment, made without such Person's consent or acquiescence, of a trustee, receiver or liquidator of such Person or of all or any substantial part of such Person's properties to be vacated or stayed within ninety (90) days after such appointment, or the failure of any such appointment to be vacated within ninety (90) days after the expiration of any such stay; or

(h) the imposition of a charging order against the interest of such Person.

"Financing Documents" means the loan documents executed by the Joint Venture with respect to any "Financing" as such term is defined in the Joint Venture Agreement.

"Fiscal Year" means the Company's fiscal and taxable year, which is January 1 to December 31, or any portion of such period ending on the date on which the Certificate of Organization is cancelled in accordance with the URULLCA.

"IRC" or ***"Code"*** means the Internal Revenue Code of 1986, as amended, and all references to specific sections thereof shall include any amended or successor provisions thereto.

"Impasse" shall have the meaning set forth in Section 14.5(a).

"Impasse Notice" shall have the meaning set forth in Section 14.5(a.

"Incompetency" of an individual Person means a determination of such individual's incompetency, whether for insanity, age, disability or other reason. For this purpose, such determination shall be made by a duly licensed physician chosen by Manager. If the competency of an individual Manager is questioned, the Members (not including said Manager if he/she is also a Member) may select the determining physician. If such individual disputes such declaration, he may choose a second physician, and said two physicians shall choose a third physician, and the decision of the majority of said physicians as to the competency of such individual shall be binding on all parties. Each party shall bear the cost of the physician chosen by it and the parties shall split the cost of the third physician.

"Infrastructure Costs" means the unreimbursed costs associated with the Development Rights previously incurred prior to the date hereof (which do not include Pre-Development Costs), which, solely for purposes of Section 8.1(a) and (b), shall have a value of One Million Seven Hundred Thousand and _____($_____), such value being credited to the Capital Account of EVAI3 as part of EVAI3's contribution of its Development Rights**.**

"Initial Capital Contributions" are the contributions made by the Members as provided in Section 5.1 hereof, but excluding the Development Rights. In all events, the parties acknowledge and agree that the Residential Parcel shall be deemed to have been contributed by UTA to the Company as of the Effective Date. Accordingly, the Initial Capital Contribution of UTA (and, as of the date of execution of this Operating Agreement, the Unreturned Capital Contribution of UTA) shall be in the amount of the Agreed Land Value.

"Intra-family Transfer" shall have the meaning set forth in Section 13.2 hereof.

"Internal Rate of Return" or ***"IRR"*** means with respect to any Member, the annual discount rate compounded monthly, that causes (i) the present value of all distributions made by the Company to such Member under Sections 8.1(g) and (h), to equal (ii) the present value of such Member's aggregate Initial Capital Contributions.

"Joint Venture" means East Village 3 LLC, a Delaware limited liability company and any entity substantially owned by it.

"Joint Venture Additional Capital" means any capital contributed by the Company to the Joint Venture which is a not a Required Capital Contribution or a Shared Cost Contribution.

"Joint Venture Agreement" means the Limited Liability Company Agreement of the Joint Venture dated June __, 2020.

"Joint Venture Capital Calls" means all capital calls issued pursuant to the Joint Venture Agreement.

"Liquidating Member" shall have the meaning set forth in Section 14.1 hereof.

"Liquidation" means the liquidation of the Company or the liquidation of a Member's interest in the Company, as the context may require, and has the meaning set forth in Regulations §1.704-1(b)(2)(ii)(g).

"Manager" means the Person designated as Manager in accordance with the provisions hereof. EVAI3 is hereby designated as "Manager."

"Member" means each of the parties who executes a counterpart of this Operating Agreement as a Member and those Persons admitted to the Company with all the rights of a Member.

"Membership Interest" shall mean the entire ownership interest of a Member in the Company at any particular time, including all rights as a member and owner under applicable law and the Company's governing documents and filed records, subject to restrictions or conditions under applicable law and such governing documents and filed records.

"Minimum Gain" shall have the meaning set forth in Section 7.1 hereof.

"Operating Agreement" shall mean this Operating Agreement as originally executed and as amended from time to time in accordance with its terms.

"Ownership Percentage" has the meaning set forth in the Joint Venture Agreement.

"Parking Structure" means a two level parking garage to provide the necessary off-street parking for the Residential Project and for UTA patrons and personnel arriving at or departing from the TRAX Line located at the station adjoining the Development Parcel.

"Parking Structure COREA" means that certain Parking Structure Construction, Operation and Easement Agreement by and between Utah Transit Authority, a large public transit district organized pursuant to Utah law, and the Joint Venture, which pursuant to the Contribution Agreement is to be execute by the Joint Venture upon conveyance by the Joint Venture to UTA of the portion of the Development Parcel upon which the Parking Structure is to be built.

"Percentage Interest" of each Member shall be the percentage obtained by the fraction, the numerator of which is such Member's Unreturned Capital Contributions and the denominator of which is the aggregate Unreturned Capital Contributions of all the Members, in each case as of such date, up to and including the date of Substantial Completion (after the reconciliation of the amounts contributed as of such Substantial Completion). After reconciliation of the aggregate Capital Contributions by each Member at the time of Substantial Completion the Members agree to memorialize in writing such Member's Percentage Interest, which for all purposes shall be the Percentage Interest going forward.

"Permitted Exceptions" shall have the meaning set forth in the Joint Venture Agreement.

"Permitted Transfers" shall have the meaning set forth in Section 13.1(c).

"Person" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so implies.

"Pre-Development Expenses" means those third-party costs incurred by or on behalf of the Developer prior to the Effective Date relative to the development of the Residential Project, including costs pertaining to the Parking Structure, all as listed on **Exhibit D**, but do not include those pre-development expenses advanced by East Village Investments LLC shown on **Exhibit G**, which are to be reimbursed by the Joint Venture.

"Profits" or ***"Losses"*** means, for each Fiscal Year or other period, an amount equal to the Company's taxable income or loss for such year or period, as the case may be, as determined under IRC §703(a) (except that for this purpose all items of income, gain, loss or deduction required to be separately stated pursuant to IRC §703(a)(1) shall be included in the computation of taxable income or loss, notwithstanding IRC §703(a)(2)), with the following adjustments:

(a) any income of the Company that is exempt from federal income tax which would not otherwise be taken into account in computing Profits or Losses shall be added to such taxable income or loss;

(b) any expenditures of the Company described in IRC §705(a)(2)(B), or treated as IRC §705(a)(2)(B) expenditures pursuant to Regulations §1.704-1(b)(2)(iv)(b), which would not otherwise be taken into account in computing Profits or Losses shall be subtracted from such taxable income or loss; and

(c) any items of income, gain, loss or deduction which are specially allocated pursuant to Paragraphs C.1(d) and C.2 of the Capital Accounting and Tax Addendum attached hereto shall not be included in the computation of Profits or Losses.

"Property" shall have the meaning set forth in the Joint Venture Agreement.

"Purchase Electing Respondents" shall have the meaning set forth in Section 14.4(b) hereof

"Regulations" refers to the income tax regulations promulgated under the IRC, as amended from time to time (including corresponding revisions of successor regulations).

"Removal" shall have the meaning set forth in Section 9.11(a) hereof.

"Required Capital Contributions" shall have the meaning set forth in the Joint Venture Agreement.

"Residential Parcel" means that certain real property described on **Exhibit C** hereto, which is currently part of the Development Parcel.

"Residential Project" shall have the meaning attributed to the "Project" as set forth in the Joint Venture Agreement, which is to be developed on the Residential Parcel.

"Resignation" shall have the meaning set forth in Section 9.8 hereof.

"Respondents" shall have the meaning set forth in Section 14.4 hereof.

"Safe Harbor" means the method under which the fair market value of a Safe Harbor Partnership Interest is treated as being equal to the liquidation value of that interest, as defined in the Safe Harbor Regulation.

"Safe Harbor Election" means the election by the Company of the Safe Harbor, as described in the Safe Harbor Regulation and Internal Revenue Service Notice 2005-43, issued on June 13, 2005.

"Safe Harbor Partnership Interest" means an interest in the Company that is issued to a service provider in connection with services provided to the Company during such time as a Safe Harbor Election is in effect.

"Safe Harbor Regulation" means Proposed Treasury Regulations §1.83-3(l).

"Second Cause Removal Notice" shall have the meaning set forth in Section 9.11(c) hereof.

"Shared Cost Overruns" has the meaning set forth in the Joint Venture Agreement.

"Specified Valuation Amount" has the meaning set forth in Section 14.5(b).

"Substantial Completion" shall have the meaning set forth in the Joint Venture Agreement.

"Substituted Member" means any Person admitted to the Company with all the rights of a Member pursuant to Article XII hereof.

"Transfer" as a verb, means to, directly or indirectly, sell, exchange, assign or otherwise transfer, mortgage, pledge, hypothecate, encumber, or in any way alienate property, whether voluntarily or involuntarily, by operation of law, order of any court, contract, gift, will, intestacy, Financial Insolvency, division of property in the context of a divorce or separation proceeding, or otherwise, and as a noun, the act of doing so.

"Transfer Event" shall mean any actual, contemplated or threatened Transfer of all or a portion of a Member's Membership Interest, whether directly or indirectly, whether voluntary or involuntary, and whether or not for consideration, including, but not limited to, sales, gifts, pledges, assignments, bequests, exchanges, levies, attachments and an action or proceeding of any kind (including, but not limited to, any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) which has been commenced which might affect a Member's Membership Interest.

"***Unreimbursed UTA Additional Capital Contributions***" shall have the meaning set forth in Section 5.2(a) hereof, which amount shall be reduced by any principal payments made by UTA to EVAI3 under section 5.2(b).

"***Unreimbursed UTA Additional Capital Contribution Return***" shall have the meaning set forth in Section 5.2(b) hereof, which amount shall be reduced by any payments made by UTA to EVAI3 under section 5.2(b) as a return on but not of Unreimbursed UTA Additional Capital Contributions.

"Unreturned Capital Contributions" means, as to each Member, the aggregate of all Initial Capital Contributions of each Member as decreased by distributions to a Member under Section 8.1(g). The Company shall maintain for each Member a separate account and accounting record of each Member's Unreturned Capital Contributions.

"URULLCA" means the Utah Revised Uniform Limited Liability Company Act (Title 48, Chapter 3a, Utah Code Annotated of 1953, as amended), and all references to specific sections thereof shall include any amended or successor provisions thereto.

"UTA" shall have the meaning set forth in the initial paragraph hereof.

"Utah Public Transit District Act" shall have the meaning set forth in the initial paragraph hereof.

ARTICLE 2
FORMATION AND NAME; PRINCIPAL OFFICE; TERM

2.1 Formation and Name. The Company was formed as a limited liability company under the name of HPUTA East Village 3 LLC, by the filing of a Certificate of Organization on

September 23, 2019 pursuant to the provisions of URULLCA §48-3a-201. The Members desire to govern the affairs of the Company by entering into this Operating Agreement.

2.2 Principal Office. The principal office of the Company shall initially located at 222 South Main, Suite 1760, Salt Lake City, Utah 84101.

2.3 Registered Office and Registered Agent. The Company's initial registered office is 222 South Main Street, Suite 1760, Salt Lake City, Utah 84101, and the name of its initial registered agent appointed pursuant to the Utah Model Registered Agents Act, Title 16, Chapter 17 of the Utah Code Annotated, as amended, at such address is Bruce Bingham. Manager may change the registered office and/or the registered agent from time to time.

2.4 Term of the Company. The term of the Company shall have perpetual existence.

ARTICLE 3
PURPOSES AND POWERS OF THE COMPANY

3.1 Company Purposes. The Company is organized to acquire and own a membership interest in the Joint Venture, which in turn will own the Residential Parcel and all other property related to the Residential Project, including the rights to the Parking Structure under the Parking Structure COREA, and to engage in all activities which the Manger determines are related or incidental thereto. The Members acknowledge and agree that the scope and content of the lawful purposes of the Company shall, at all times, comply with applicable provisions of the URULLCA (or any successor statute or any amendments or modifications to the same) and the Utah Public Transit District Act (or any successor statute or any amendments or modifications to the same), as applicable.

3.2 Company Powers. The Company shall have and may exercise all powers necessary to the accomplishment of its purposes without the necessity of their specific enumeration.

3.3 Relation to Manager General Powers. Other than as specifically prescribed in the foregoing two sections of this Article III and in other portions of this Operating Agreement, nothing herein shall be an infringement on, derogation of or other reduction of the general and ordinary powers of Manager under this Operating Agreement and the URULLCA to manage and run the day-to-day operations and business of the Company as more fully hereinafter provided. Manager shall have and may exercise all powers necessary to the accomplishment of its purposes without the necessity of their specific enumeration herein.

ARTICLE 4
TAX AND ACCOUNTING MATTERS

4.1 Characterization as a Partnership. It is the intent of the Members that the Company be classified as a partnership for federal and state income tax purposes. Accordingly, this Operating Agreement is written and shall be construed in a manner consistent with such intent and Manager shall take no action inconsistent with such intent.

4.2 Fiscal Year. The Fiscal Year of the Company shall end on the last day of December of each year.

4.3 Accounting Method. The Company's books of account shall be maintained and its income, gains, losses, deductions and credits shall be reported, for both financial and tax accounting purposes, on the accrual basis method of accounting, applied consistently and in accordance with sound accrual basis accounting principles. Manager may at any time change the financial and tax accounting method of the Company, subject to any applicable limitation of law or regulation.

4.4 Tax Information. As soon as reasonably practicable after the end of the Company Fiscal Year and consistent with the requirements of applicable federal income tax law, Manager shall cause each Member to be furnished with a Schedule K-1 for such year and any other schedule or statement required by federal income tax law.

4.5 Tax Elections. Manager in its discretion may cause the Company to make any and all tax elections available to the Company, including without limitation the election provided for in IRC §754. Without limiting the provisions of the foregoing sentence, the Members agree that, in the event the Safe Harbor Regulation is finalized, the Company, at the discretion of Manager, shall be authorized to make the Safe Harbor Election and the Company and each Member (including any Member to whom an interest in the Company is issued in connection with the performance of services) agrees to comply with all requirements of the Safe Harbor with respect to all interests in the Company issued in connection with the performance of services during such time as a Safe Harbor Election is in effect. In the event the Safe Harbor Regulation is finalized, the Tax Representative (as defined in Section 4.6 below) is authorized to and may prepare, execute and file the Safe Harbor Election.

4.6 Tax Representative.

(a) The Manager shall be the Company's initial designated "partnership representative" within the meaning of Code Section 6223 (the "Tax Representative") with sole authority to act on behalf of the Company for purposes of Subchapter C of Chapter 63 of the Code and any comparable provisions of state or local income tax laws.

(b) If the Company is eligible to elect pursuant to Code Section 6221(b) (or successor provision) to have Subchapter C of Chapter 63 of the Code not apply to any federal income tax audits and other proceedings for any taxable year, the Tax Representative may cause the Company to make such election.

(c) If any partnership adjustment (as defined in Code Section 6241(2)) is determined or proposed with respect to the Company, the Tax Representative shall notify the Members of the receipt of a notice of final or proposed partnership adjustment, and may make such elections and take such other actions as it deems appropriate, including causing the Company to pay the amount of any such adjustment under Code Section 6225, making an election under Code Section 6226, or filing a petition in the Tax Court. If an election under Code Section 6226(a)(1) is made, the Company shall determine each current and former Member's share of adjustments (as contemplated by Section 6226(a)(2), as so in effect) in a fair and equitable manner, based on the allocations that would have been made to each such Member in the reviewed year (as defined in Code Section 6225(d)) (and any subsequent year) if the adjustments were taken into

account by the Company in such year(s), subject to any future guidance promulgated under the Code.

(d) If the Company receives a notice of a proposed partnership adjustment with respect to the Company and the Tax Representative has not caused the Company to make the election under Code Section 6226, then (A) the Members (including former Members) shall take such actions as may be requested by the Tax Representative, including filing amended tax returns and paying any tax due in accordance with Code Section 6225(c)(2) and provided such information as the Tax Representative may request to substantiate Company level modifications under Code Section 6225(c); and (B) the Tax Representative shall use commercially reasonable efforts to make any modifications available under Code Sections 6225(c)(3), (4) and (5). Any imputed underpayment (as determined in accordance with Code Section 6225) paid (or payable) by the Company as a result of an adjustment with respect to any Company item, including any interest or penalties with respect to any such adjustment (collectively, an "Imputed Underpayment Amount") and any partnership adjustment that does not result in an imputed underpayment shall be allocated among each Member and former Members based on the allocations that would have been made to each such Person in the reviewed year (and any subsequent year) if the adjustments were taken into account by the Company in such year(s), subject to any future guidance promulgated under the Code. Each current and former Member that is allocated a portion of an Imputed Underpayment Amount shall pay to the Company such Member's share of the Imputed Underpayment Amount upon thirty (30) days written notice from the Tax Representative or any Member requesting the payment on behalf of the Company. Any amounts so requested and not timely paid shall bear interest, commencing on the expiration of such thirty (30) day period, compounded monthly on unpaid balances, at an annual rate equal to the lesser of (i) eighteen percent (18%) per annum, or (ii) the maximum rate permitted by applicable law as of such expiration date. At the reasonable discretion of the Tax Representative, with respect to the current Members, the Company may alternatively allow some or all of a Member's obligation pursuant to the preceding sentence to be applied to and reduce the next distribution(s) otherwise payable to such Member under this Operating Agreement; provided, however, that this alternative shall be applied equitably to all Members. The portion of the Imputed Underpayment Amount that the Company allocates to a former Member shall be treated as allocable to both such former Member and such former Member's transferee(s), as applicable, and the Company's rights pursuant to this Operating Agreement may be exercised in respect of either or both of the former Member and its transferee(s).

(e) If any entity in which the Company owns an equity interest (i) pays any partnership adjustment under Code Section 6225, (ii) requires the Company to file an amended tax return and pay associated taxes to reduce the amount of a partnership adjustment imposed on such other entity, or (iii) makes an election under Code Section 6226, the Tax Representative may cause the Company to make the request for an administrative adjustment provided for in Code Section 6227 consistent with the principles and limitations set forth above for partnership adjustments of the Company, and the Members shall take such actions as may be requested by the Tax Representative in furtherance of such request for an administrative adjustment. Imputed Underpayment Amounts treated as withholding payments also shall include any imputed underpayment within the meaning of Code Section 6225 paid (or payable) by any entity treated as a partnership for U.S. federal income tax purposes in which the Company holds (or has held) a direct or indirect interest, other than through entities treated as corporations for U.S. federal income

tax purposes, to the extent that the Company bears the economic burden of such amounts, whether by law or agreement.

(f) The Company shall indemnify and reimburse the Tax Representative for all expenses, including legal and accounting fees, claims, liabilities, losses, and damages incurred in connection with any administrative or judicial proceeding at the Company level, except for any liability created or imposed by law for fraud, bad faith, willful neglect or gross negligence or any breach of duty, act or omission by reason of which the Tax Representative personally gained in fact a financial profit or other advantage to which the Tax Representative was not legally entitled. The payment of all such expenses shall be made before any distributions are made to Members or any discretionary reserves are set aside by the Members. The taking of any action and the incurring of any expense by the Tax Representative in connection with any such proceeding, except to the extent required by law, is a matter in the sole discretion of the Tax Representative and the provisions on limitations of liability and indemnification set forth herein shall be fully applicable to the Tax Representative in its capacity as such.

(g) The provisions of this Section 4.6 shall survive the termination of the Company or the termination of any Member's Interest in the Company and shall remain binding on the Members for as long a period of time as is necessary to resolve with the Internal Revenue Service any and all matters regarding the federal income taxation of the Company or the Members.

ARTICLE 5
CAPITAL STRUCTURE; CAPITAL CONTRIBUTIONS
PERCENTAGE INTERESTS IN PROFITS; LOANS

5.1 Initial Capital Contributions — Pre-Organization Venture Expenses. UTA acknowledges EVAI3's contribution to the Company of the Development Rights and the credit to EVAI3's Capital Account in the amount of the Infrastructure Costs. On the Effective Date, UTA has conveyed the Development Parcel to the Joint Venture on behalf of the Company free and clear of all liens claims and encumbrances other than the Permitted Exceptions. Such conveyance shall be deemed a Capital Contribution by UTA to the Company and UTA shall receive a credit to its Capital Account in the amount of the Agreed Land Value and in turn, Company is receiving credit to its capital account in the Joint Venture in a like amount. (No credit is being given to the Capital Account of UTA for the portion of the Development Parcel on which the Parking Structure is to be built because the Parties agree that such land parcel to be re-conveyed to UTA upon filing on the re-subdivision plat.) EVAI3 is concurrently herewith assigning to the Company, which is then being assigned by the Company to the Joint Venture, all right, title, and interest with respect to any and all existing contract rights and other property related to the Residential Project to which EVAI3 has a legal interest, and EVAI3 in return for such assignment is receiving credit to its Capital Account in the amount of the Pre-Development Costs. In turn, Company is receiving a credit to its capital account in the Joint Venture in a like amount. From and after the Effective Date, EVAI3, shall make Capital Contributions in an amount equal to the Company's share of additional Required Capital Contributions and the capital contributions required to pay the Company's share of Shared Cost Overruns, which funds upon receipt are to be paid to the Joint Venture as part of capital calls under the Joint Venture Agreement and until Substantial Completion to pay the operating expenses and taxes of the Company. Any payments to the Joint Venture to cover 'Developer Responsible Cost Overruns" (as such term is defined in the Joint

Venture Agreement) will be paid by EVAI3 from outside the Company and EVAI3 shall receive no credit to its Capital Account for such payments.

5.2 Additional Capital Needs.

(a) Each Member acknowledges that after Substantial Completion the Company may, if requested by the Joint Venture, contribute additional cash from time to time as and when a call for capital is made under the Joint Venture Agreement. EVAI3 shall contribute (within five (5) business days of the written request therefor) as an additional capital contribution in accordance with its Percentage Interest (the "***EVAI3 Additional Capital Contributions***"), and EVAI3 shall also contribute as additional capital the amount to be contributed by UTA in accordance with UTA's Percentage Interest (the ***"Unreimbursed UTA Additional Capital Contributions***") to (i) permit the Company to make the capital contributions under the Joint Venture Agreement, if the Joint Venture requests such capital contributions and the Manager, in the exercise of Due Care, determines to pay the Company's share of such capital contributions, (ii) pay the operating expenses and taxes of the Company from time to time to the extent the Company has insufficient revenues to pay such costs or (iii) pay such additional Capital Contributions to the Company which are approved by unanimous consent, of the Members, all of which when made shall be included as Additional Capital Contributions.

(b) UTA may, at its sole discretion, reimburse EVAI3 all, but not less than all, of the then outstanding Unreimbursed UTA Additional Capital Contributions plus a return thereon equal to the sum of (i) ten percent (10%) plus (ii) the then current yield on ten (10) year U.S. Treasury Bonds, per annum, compounded monthly (such return on being the "***Unreimbursed UTA Additional Capital Contribution Return***"). The total amount received shall be paid to EVAI3, and the principal amount so paid to EVAI3 shall be treated as an Additional Capital Contribution by UTA. If such UTA payment is made within thirty (30) days after the date the Unreimbursed UTA Additional Capital Contribution is received by the Company, the Unreimbursed UTA Additional Capital Contribution Return payable to EVAI3 shall be reduced by the then current yield on ten (10) year U.S. Treasury Bonds per annum which would otherwise be payable. (The books of the Company shall reflect a Capital Contribution by UTA in the amount paid by UTA to EVAI3 and a reduction in the Capital Contributions of EVAI3 in a like amount, notwithstanding the direct payment of UTA to EVAI3.)

(c) Except as required pursuant to Section 5.1 and Section 5.2(a), no Member shall be obligated to make any additional contributions to Company capital or loans to the Company without the consent of all the Members.

5.3 Return of Capital. No Member shall be entitled to the return of its Capital Contribution to the Company except as specifically provided in this Operating Agreement.

5.4 Interest on Contributions. No interest shall accrue or be paid on the balance in the Capital Account of any Member.

ARTICLE 6
CAPITAL ACCOUNTS

"Capital Account" means, with respect to each Member, the account established or to be established and maintained by the Company for each Member as herein provided for specific tax and entity accounting purposes. A Capital Account shall be maintained for each Member. In general, a Member's Capital Account shall be credited in the amount of such Member's Capital Contributions (including EVAI3 receiving credit for any Unreimbursed UTA Additional Capital Contributions, unless and until repaid as provided in Section 5.2(b), in which event such repaid amount shall then become an Additional Capital Contribution of UTA) and such Member's allocated share of the Profits of the Company and shall be debited in the amount of any distributions to such Member and such Member's allocated share of the Losses of the Company, in accordance with IRC §704(b) and the Regulations promulgated thereunder, as more particularly set forth in Article VII, the Capital Accounting and Tax Addendum attached hereto and made a part hereof by this reference and otherwise, as specifically set forth in this Operating Agreement.

ARTICLE 7
ALLOCATION OF PROFITS AND LOSSES

7.1 Allocation of Profits and Losses. Subject to the special tax allocation rules set forth in the Capital Accounting and Tax Addendum attached hereto and made a part hereof by this reference, Profits and Losses for any Fiscal Year shall be allocated to the Members' Capital Accounts in a manner such that, as of the end of such period, the Capital Account of each Member (which may be either a positive or negative balance, after taking into account all Capital Contributions and distributions during the period) shall be equal to (a) the amount which would be distributed to such Member, determined as if the Company were to liquidate all of its assets for the Book Value (as defined in the Capital Accounting and Tax Addendum) thereof and distribute the proceeds thereof (after payment of all Company debts, liabilities and obligations) pursuant to Section 15.3, minus (b) the sum of such Member's share of Company "Minimum Gain" (as determined according to Regulations §1.704-2(d) and (g)) and Member "Minimum Gain" (as determined according to Regulations §1.704-2(i). Allocations to the Members pursuant to this Section 7.1 shall be comprised of a proportionate share of each item of Profit and Loss for such Fiscal Year.

7.2 Allocation of Taxable Income and Losses. Subject to the special tax allocation rules set forth in the Capital Accounting and Tax Addendum attached hereto and made a part hereof by this reference, the income, gains, losses, deductions and expenses of the Company shall be allocated, for federal, state and local income tax purposes, among the Members in accordance with and in proportion to the allocation of such income, gains, losses, deductions and expenses among the Members for computing their Capital Accounts, except that if any such allocation is not permitted by the IRC or other applicable law, the Company's subsequent income, gains, losses, deductions and expenses shall be allocated among the Members so as to reflect as nearly as possible the allocation set forth herein in computing their Capital Accounts.

7.3 Allocations in the Event of Transfer or Liquidation. In the event of the transfer or Liquidation of a Member's entire interest in the Company, such Member's allocable share of Profits, Losses and any specially allocated items pursuant to the Capital Accounting and Tax

Addendum attached hereto for the current taxable year of the Company through the date of transfer or Liquidation shall be calculated on the basis of an interim closing of the Company books as of such date, or on the basis of a daily proration through such date of Profits, Losses and any specially allocated items for the entire year, as Manager may determine.

ARTICLE 8
DISTRIBUTIONS

8.1 Distribution of Company Available Cash Flow. Subject to Sections 8.2 through 8.3 below, Company Available Cash Flow will be distributed to the Members in accordance with the provisions of this Section 8.1, at appropriate times and except as otherwise expressly provided in this Operating Agreement, as Manager shall reasonably determine. The priority of distributions set out below shall apply with respect to the Members. The distributions described in each subsection below must be paid in full before moving on to the next category of distributions:

(a) First, to EVAI3 until it has received a return on the unpaid Infrastructure Costs of five percent (5%) per annum, not compounded, from the Effective Date;

(b) Second, to EVAI3 in the amount of Infrastructure Costs until they are paid in full;

(c) Third, to EVAI3 until it has received in full the Unreimbursed UTA Additional Capital Contribution Return, either by payment from UTA as provided in Section 5.2(b) or by the Company under this Section 8.1(c);

(d) Fourth, to EVAI3 until it has received in full the return of the Unreimbursed UTA Additional Capital Contributions, either by payment from UTA as provided in Section 5.2(b) or by the Company under this Section 8.1(d);

(e) Fifth, to the Members until the Members have received a return on their Additional Capital Contributions equal to ten percent (10%) per annum, compounded monthly, such amounts to be repaid in proportion to their respective outstanding ten percent (10%) return on their Additional Capital Contributions;

(f) Sixth, to the Members in proportion to their respective Additional Capital Contributions until their Additional Capital Contributions have been reduced to zero;

(g) Seventh, to the Members of their Unreturned Capital Contributions in proportion to their combined Unreturned Capital Contributions until such Unreturned Capital Contributions have been reduced to zero;

(h) Eighth, to the Members in proportion to their respective Initial Capital Contributions until each Member receives a ten percent (10%) IRR on its Initial Capital Contributions;

(i) Ninth, until such Member has received the following amount (which is based on the agreed past Residential Parcel appreciation): (i) to EVAI3, Nine Hundred Forty Four Thousand and Three Hundred Eighty Four Dollars ($944,384); and (ii) to UTA, Eight Hundred

Fifty Six Thousand and Eight Hundred Sixty Eight Dollars ($856,868), in each case payable pro-rata based on the relative unpaid amounts;

(j) Tenth, to EVAI3 in the amount of Nine Hundred Four Thousand One Hundred and Ten Dollars ($904,110), which is the agreed value-add for zoning and entitlement; and

(k) The balance, if any, (i) as to any additional amounts received or deemed received from the Joint Venture which are paid in accordance with Ownership Percentages under the Joint Venture Agreement, to the Members in accordance with Percentage Interests and (ii) all other distributions or deemed distributions from the Joint Venture which pursuant to the Joint Venture Agreement are paid solely to the Developer, to EVAI3.

An example of the calculation of the distributions of Available Cash Flow under this Section 8.1 is set forth in **Exhibit F.**

8.2 Timing of Distributions. Company Available Cash Flow, if any, shall be paid quarterly to the Members to the extent received by the Company under the Joint Venture Agreement or otherwise. Manager shall use commercially reasonable efforts to make such quarterly payments by the end of each calendar month.

8.3 Distribution of Proceeds from Dissolution. Notwithstanding anything to the contrary contained in this Section 8, in the event that the Company is dissolved, Manager shall liquidate the assets of the Company, and distribute the proceeds thereof in accordance with Section 15.3.

8.4 Withholding. All amounts withheld or paid pursuant to the Code or any provision of any state or local tax law with respect to any payment, distribution or allocation to the Company or to the Members associated with the Company shall be treated as amounts distributed to the Members pursuant to this Article VIII for all purposes of this Operating Agreement. The Manager is authorized to withhold from distributions, or with respect to allocations associated with the Company and to pay over to any federal, state or local government any amounts required to be so withheld pursuant to the Code or any provision of any other federal, state or local law and will allocate the amounts to those Members with respect to which the amounts were withheld.

ARTICLE 9
RIGHTS AND DUTIES OF MANAGER

9.1 Management. As provided in the Certificate of Organization, the management of the Company shall be vested in a single Manager. EVAI3 is, by the agreement of all the Members, designated as the initial Manager of the Company. Subject to the provisions of Section 9.3, Manager shall direct, manage and control the business of the Company and shall have full and complete authority, power and discretion to make any and all decisions and to do any and all things which Manager shall deem to be reasonably required in light of the Company's business and objectives, without the necessity of its specific enumeration herein. Except as provided in Section 9.3 and elsewhere in this Operating Agreement, the other Members of the Company shall have no right or authority to act for or on behalf of the Company and shall not interfere or participate in the management of the Company except as expressly provided herein.

9.2 Tenure and Succession. EVAI3, or any successor Manager selected to serve as Manager, shall serve as Manager of the Company until (i) Resignation, (ii) Financial Insolvency of EVAI3 or Buy-Out Event resulting in EVAI3's liquidation from the Company (in either of which event either EVAI3, if serving as Manager, shall be removed as Manager), or (iii) removal pursuant to the provisions of Section 9.11, in any of which events the remaining Member, other than EVAI3, shall select the successor Manager. Any subsequent Manager of the Company shall serve until death (if an individual), Resignation, Incompetency (if an individual), Financial Insolvency or Removal as provided in Section 9.11.

9.3 Duties and Powers of Manager. Manager shall have all powers necessary to conduct the business of the Company without the need for specifically setting them forth herein, including the right and authority to exercise all rights or options of the Company pursuant to the Joint Venture Agreement. Unless authorized to do so by this Operating Agreement or by Manager, no Member, agent or employee of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable monetarily for any purpose. Manager shall have the responsibility for achieving all of the objectives and purposes of the Company described in Article III of this Operating Agreement. The Manager may exercise all of the powers of the Company under the URULLCA and do any and all other things not contrary to law or this Operating Agreement provided, however, that the Manager may not, without the prior written consent of UTA, do any of the following:

(a) do any act in contravention of this Operating Agreement;

(b) possess Company assets or property or assign the rights of the Company in specific assets or property for other than a Company purpose;

(c) incur any financing, refinancing or other indebtedness secured by any assets of the Company;

(d) acquire additional assets or sell substantially all of the assets of the Company;

(e) confess a judgment against the Company or any other assets of the Company;

(f) enter into any agreement which obligates the Company in an amount that exceeds One Hundred Thousand Dollars ($100,000), except as expressly permitted within this Operating Agreement, the Joint Venture Agreement and agreements executed on behalf of the Joint Venture; or

(g) invest Company assets or property, except as expressly permitted within this Operating Agreement, including the Joint Venture Agreement.

9.4 Liability for Certain Acts. Manager shall exercise Due Care in managing the business, operations and affairs of the Company. Manager shall not be liable or obligated to the Company or the Members for any mistake of fact or judgment or for the doing or failure to do any act in conducting the business, operations and affairs of the Company which causes or results in any loss or damage to the Company or its Members unless (I) intentional material breach of its

obligations under this Operating Agreement for fraud, gross negligence, willful misconduct or breach of the Duty of Care shall be proven by a court order, judgment, decree or decision, (II) a Manager resigns or is forced to resign pursuant to the provision of subsections 9.11(b) after a Cause Removal Notice has been sent alleging that a Manager has engaged in or been involved in an act described in Section 9.11(a)(i), (ii) or (iii) or (III) the arbitrators appointed pursuant to Section 9.12 uphold a determination that a Manager has engaged in or been involved in an act described in Section 9.11(a)(i), (ii) or (iii) which is the subject of a Cause Removal Notice.

9.5 Company Books. The Manager shall maintain and preserve at the Company's principal office, during the term of the Company and for six (6) years thereafter, all accounts, books, and other documents and records, including those required to be maintained by URLLCA Section 48-2c-113. Upon reasonable request, each Member shall have the right, upon ten (10) business days' prior written request for the same and during ordinary business hours, to inspect and obtain copies of such Company documents at the Member's expense. Such audit shall be conducted at such Member's cost and expense during normal business hours in such a manner as not to disrupt Manager's business operations and shall be performed by an independent qualified accountant of such Member's choice experienced in auditing the books and records of a real estate limited liability company A copy of the audit shall be delivered to Manager within thirty (30) days following the completion of such audit.

9.6 Time Devoted to Company; Conflicts. It is understood and agreed that Manager is free to devote less than full time to the business of the Company and may engage in any other business or activity whatsoever. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of Manager or in the income or proceeds derived therefrom.

9.7 Indemnification.

(a) The Company shall indemnify any Person who is made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that such Person is or was a Manager, against costs and expenses, including, without limitation, attorneys' fees, judgments, fines and amounts paid in settlement, actually and reasonably incurred by Manager in connection with the action, suit or proceeding if such Person acted in good faith and in a manner such Person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that such Person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that such Manager (i) did not act in good faith and in a manner which such Person reasonably believed to be in or not opposed to the best interests of the Company, and (ii) with respect to any criminal action or proceeding, had reasonable cause to believe that such Person's conduct was unlawful.

(b) The Company (but not any Member) shall indemnify, defend and hold harmless the Members and their respective managers, members, employees and Affiliates (collectively, the "***Indemnified Party***") in the event any such Indemnified Party 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 by reason of any acts or omissions, or

alleged acts or omissions, arising out of the activities of the Indemnified Party on behalf of the Company, or in furtherance of the interests of the Company, against any and all claims, demands, losses, liabilities, expenses, actions, lawsuits, and other proceedings, judgments, awards, and costs and expenses (including, but not limited, to reasonable attorneys' fees, judgments, fines and accounts paid in settlement) for which such Indemnified Party has not otherwise been reimbursed actually and reasonably incurred by the Indemnified Party in connection with such action, suit or proceeding so long as the Indemnified Party reasonably believed that its actions were within the scope of this Operating Agreement and the Indemnified Party did not act fraudulently or in bad faith or in a manner constituting gross negligence or willful misconduct. The indemnification rights of the Indemnified Party set forth in this Section 9.7(b) shall be cumulative of and in addition to, any and all rights, remedies, and recourse to which it shall be entitled whether pursuant to the provisions of this Operating Agreement, at law, or in equity.

(c) Each Member (the "***Indemnifying Member***") shall, to the fullest extent permitted by applicable law, indemnify, protect, defend and hold the Company, each other Member, the Company assets and the Residential Project harmless from and against any and all liability, loss, cost, expense, damage (other than consequential, punitive, speculative or similar type damages) or injury (including but not limited to any judgment, award, settlement, reasonable attorneys' fees, costs and expenses, and other costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim) suffered or sustained by it by reason of any acts or omissions constituting willful misconduct, fraud, gross negligence or misappropriation of funds by the Indemnifying Member or an Affiliate thereof.

9.8 Resignation. A Person serving as a Manager may resign at any time by giving written notice to the Members of the Company at least sixty (60) days in advance of the effective date of such resignation. The resignation of a Manager shall take effect upon the date specified in the notice thereof or at such earlier time as shall be designated by the remaining Members of the Company which are not Affiliates of the resigned Manager. The notice period is in place solely for the benefit of the Company and the Members other than those Members which are Affiliates of the resigning Manager and, accordingly the right to designate an earlier effective date for such resignation shall be in the sole and absolute discretion of such remaining Members which are not Affiliates of the resigned Manager. Manager shall be obligated to cooperate fully with the remaining Members which are not Affiliates of the resigned Manager and any newly appointed Manager to effectuate a full and smooth transition of the responsibilities of Manager and shall turn over all records, data, information, assets and other materials of the Company in a timely and cooperative fashion.

9.9 Compensation. Except as may be otherwise provided in this Section 9.9 or in Section 9.13, EVAI3 while serving as Manager shall perform its duties and obligations hereunder without any compensation or remuneration, agreeing hereby to perform the same in consideration of the rights of EVAI3 as a Member specified in this Operating Agreement to the Profits of the Company. Nevertheless, the Company may, upon a unanimous vote of the Members to that effect, pay a reasonable additional compensation to Manager for such Person's services in that capacity hereunder. It being agreed that the Manager or its Affiliate will charge Fifteen Thousand Dollars ($15,000), annually, for maintaining the books and records of the Company and the preparation and filing all required tax returns.

9.10 Dealing with Affiliates — No Violation of Conflict of Interest Rules. The Company may enter into business and contractual relationships of any kind with entities affiliated with Manager or Members, provided that the terms of such relationships are commercially reasonable and satisfy arm's length standards and are disclosed to all Members. Notwithstanding the foregoing, nothing in this Section shall permit the Company to conduct business with any agent, officer, employee, trustee or Affiliate of UTA or with any Person with whom a conflict of interest would exist with UTA, provided that the Company may rely on a representation of such Person that no conflict exists without the requirement of the Company making an independent investigation. In this regard, Manager agrees to undertake extra precautions and due diligence in dealings of the Company with any third parties to assure that there is no such conflict of interest prohibition violation.

9.11 Removal of Manager.

(a) Any Member which is not an Affiliate of an existing Manager (the "Electing Member") may issue to the other Member and the Manager or Managers (if more than one Manager) a notice of removal "for cause" (a "Cause Removal Notice"), seeking removal of the Manager ("Removal"), if:

(i) such Manager or a principal of a Manager which is an entity commits any act of embezzlement, conversion of assets of the Company, or is convicted of a crime of moral turpitude or any felony, whether or not such conviction is being appealed or otherwise held in abeyance, and in the case of a principal of a Member such principal is not removed from any position it then holds in the Member within ten (10) days after the Cause Removal Notice (such principal may be reinstated if the "cause" as to such person is finally determined not to have occurred);

(ii) such Manager or a principal of a Manager which is an entity engages in separate individual material acts or material omissions in the performance of such Manager's duties as Manager for the Company that constitutes gross incompetence or reckless, grossly negligent or intentional misconduct or a material breach of such Manager's Duty of Care; or

(iii) such Manager or a principal of a Manager which is an entity engages in wrongful conduct which affects, interrupts, or interferes in a harmful manner with the performance of official duties of the Manager or a principal of a Manager which is an entity, or which is done wholly wrongfully and unlawfully, or without authority and such principal is not removed from any position it then holds in the Member within ten (10) days after the Removal Cause Notice of the commission of such unlawful act (such principal may be reinstated if the "cause" as to such person is finally determined not to have occurred).

(b) In the event that an Electing Member provides a Cause Removal Notice to Manager, and Manager elects to dispute the basis for the Removal, Manager shall give written notice to the Electing Member within ten (10) days after receipt of the Cause Removal Notice (a "Cause Dispute Notice"). If Manager timely provides the Cause Dispute Notice to the Electing Member, the issue of whether a Manager should be removed "for cause" shall be submitted to arbitration pursuant to Section 9.12.

(c) In the event that the Electing Member provides a Cause Removal Notice to Manager, and Manager does not provide a timely Cause Dispute Notice to the Electing Member, the Electing Member shall cause the Cause Removal Notice to be provided to Manager a second time ("Second Cause Removal Notice"). If Manager does not provide a Cause Dispute Notice to the Electing Member within ten (10) days of the Second Cause Removal Notice, Manager shall be deemed to have absolutely and unconditionally agreed that there is "cause" for its removal and Manager shall immediately resign. If, after the foregoing failure by Manager to provide a timely Cause Dispute Notice, Manager refuses to resign, the Electing Member shall be entitled to an injunction or other appropriate equitable remedy compelling the termination of Manager and restraining Manager from breaching or violating the provisions of this Operating Agreement, it being agreed that the loss and damages suffered by virtue of any such breach are incapable of being made certain. Manager further consents and agrees that in such event it will not request and waives any requirement for a bond or other similar undertaking by the Electing Member in the pursuit of its equitable remedies provided herein. Nothing herein shall be construed as prohibiting the Electing Member or any other Member not an Affiliate of the removed Manager from pursuing any other remedies for any such breach or threatened breach by Manager.

(d) In the event of the removal, dissolution or inability to act of a Manager, or in the event Manager notifies the Electing Member of its election to resign as Manager, and as a result no Manager remains, another Person shall be elected as successor Manager pursuant to the provisions of Section 9.2 and the Members shall execute such instruments, documents and agreements and perform such other acts as may be required to permit such duly designated Person to act as Manager in accordance with the provisions of this Operating Agreement. Provided, however, that any successor Manager shall not be controlled by or an Affiliate of Manager who has been removed or resigned without the consent of all the Members, other than any Member which is an Affiliate of the removed Manager.

9.12 Arbitration. In the event a Cause Removal Notice is sent to a Manager and the matter is to be submitted to arbitration pursuant to the provisions of Section 9.11, then the matter shall be submitted to binding arbitration in an expedited proceeding by this Section 9.12 and the Utah Uniform Arbitration Act, Utah Code Annotated 78B-11-101 et seq. The Electing Member providing the Cause Removal Notice to Manager and Manager shall each name a single arbitrator. The arbitrator chosen by the Electing Member and the arbitrator chosen by Manager shall then select a third arbitrator. The decision of the majority of the three arbitrators so selected shall be controlling. The decision shall be limited to the matter of the removal of the Manager and shall not address damages or other claims a Party may have. To the extent possible, all discovery shall be informal in accordance with a procedure and timetable prescribed by the arbitrators. The arbitrator shall employ all reasonable efforts to expedite the resolution of the matter. The cost of the arbitration shall be paid by the Company.

9.13 Intentionally Omitted.

9.14 Major Decisions.

(a) Notwithstanding anything to the contrary contained in this Operating Agreement, Manager shall not, without the prior written consent all of the Members, which consent shall not be unreasonably withheld, conditioned or delayed, make any Major Decision (hereinafter

defined) with respect to the Company or its business. Further, any matter constituting a Major Decision that would give rise to any recourse or personal liability to a Member shall require the prior express written consent of such Member. Each time the consent of the Members is required hereunder, a notice shall be sent to the Members. The Members shall respond within five (5) business days after the date the Members are notified of the need for such consent or action, provided however, that if any Member does not respond within said five (5) business day period, then such matter or action requested shall be deemed approved by such Member.

(b) A "Major Decision" as used in this Operating Agreement means any decision (or action) to:

(i) Acquire additional non-liquid Company assets;

(ii) Sell, lease, assign, mortgage, pledge, convey, exchange, encumber or otherwise dispose of all or any portion of the assets of the Company;

(iii) Cause the Company to loan Company funds to any Person;

(iv) Commingle funds of the Company with the funds of any other Person;

(v) Possess any property of the Company or assign the rights of the Company in specific Company property for other than a Company purpose;

(vi) Make any change to the Company's accounting practices or policies that would be material to either the Company or any Members;

(vii) Amend, waive or otherwise modify this Operating Agreement or the governing documents of the Company;

(viii) Amend or modify the Joint Venture Agreement in any respect which would expose the Company to any additional liability;

(ix) Exercise any of the rights of the Company contained in Article XI and Article XII of the Joint Venture Agreement;

(x) Admit, including by assignment of economic rights or permitting encumbrances of interests, any new member;

(xi) Merge or consolidate the Company with or into another entity, invest in or acquire an interest in any other entity, reorganize the Company, or make a binding commitment to do any of the foregoing;

(xii) File any voluntary petition for the Company under Title 11 of the United States Code, the Bankruptcy Act, seek the protection of any other federal or state bankruptcy or insolvency law, fail to contest a bankruptcy proceeding; or seek or permit a receivership or make an assignment for the benefit of its creditors;

(xiii) Voluntarily dissolve or liquidate the Company or any subsidiary;

(xiv) Determine or alter the form and substance of any tax election to be made to any taxing authority, on behalf of the Company, or take any other action that would cause any of the foregoing;

(xv) Cause or permit the Company to make distributions to the Members other than in accordance with Section 8 hereof; and

(xvi) Engage in litigation as a plaintiff on behalf of the Company.

ARTICLE 10
RIGHTS AND OBLIGATIONS OF MEMBERS

10.1 Limitation of Liability. No Member shall be personally liable for any debts, obligations, liabilities or losses of the Company, regardless of the particular nature or source thereof, beyond such Member's capital interest in the Company. Notwithstanding the foregoing, unless otherwise excused by the URULLCA, in the event a Member has in fact received the return, in whole or in part, of such Member's capital contribution, other than as specifically provided in Section 8.1, it shall be liable for and agrees to repay to the Company up to the amount of such returned contribution, to the extent required by URULLCA §48-3a-406.

10.2 Company Books. Manager shall maintain and preserve at the Company's principal office, during the term of the Company and for six (6) years thereafter, all accounts, books, and other documents and records required to be maintained by URULLCA §48-3a-410. Upon reasonable request, each Member or its designee shall have the right, during ordinary business hours, to inspect and copy all such records and audit such records. Manager shall fully comply with all requirements of URULLCA §48-3a-410.

10.3 Priority and Return of Capital. Except as specifically provided in this Operating Agreement, no Member shall have priority over any other Member, either as to the return of Capital Contributions or as to distributions.

10.4 Withdrawal by a Member. Except as expressly provided in this Operating Agreement, no Member shall have the right under this Operating Agreement to unilaterally withdraw from the Company or to require that its interest in the Company be redeemed, in whole or in part.

ARTICLE 11
MEETINGS OF MEMBERS

11.1 Special Meetings. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribe by statute, may be called by Manager or by a Member or Members holding at least 20% of the Percentage Interests in the Company.

11.2 Place of Meetings; Telephonic Attendance or Meetings. The Members may designate any place, either within or outside the State of Utah, as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting be otherwise called,

the place of meeting shall be the principal executive office of the Company in the State of Utah. A Member shall be entitled to attend any meeting and vote by telephonic participation instead of being physically present at any meeting. A valid meeting may also be held with all Members participating and/or voting by telephone.

11.3 Notice of Meetings. Written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of Manager or person calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered three (3) calendar days after being deposited in the United States mail, addressed to the Member at its address as it appears on the books of the Company, with postage thereon prepaid.

11.4 Meeting of all Members. If all of the Members shall meet at any time and place, either within or outside of the State of Utah, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting any lawful action may be taken.

11.5 Record Date. For the purpose of determining the Members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

11.6 Quorum. No less than two Members holding at least 51% of all Percentage Interests in the Company, represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any such meeting, a majority of the Percentage Interests so represented may without further notice adjourn the meeting from time to time for a period not to exceed sixty (60) days. However, if at the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of that number of Percentage Interests whose absence would cause less than a quorum to be present.

11.7 Manner of Acting. If a quorum is present, the affirmative vote of at least two Members who, in the aggregate hold a majority of those Percentage Interests in attendance at the Meeting shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the URULLCA, by the Certificate of Organization, or by this Operating Agreement. Unless otherwise expressly provided herein or required under applicable law, Members who have an interest (economic or otherwise) in the outcome of any particular matter upon which the Members vote or consent may vote or consent upon any such matter and their Percentage Interest, vote or consent, as the case may be, shall be counted in the determination of whether the requisite matter was approved by the Members.

11.8 Proxies. At all meetings of Members a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with Manager before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

11.9 Actions by Members Without a Meeting. Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by written consents of at least two Members describing the action taken, signed by the necessary Members entitled to vote and required to approve such action and delivered to Manager for inclusion in the minutes or for filing with the Company records. Action taken under this Section is effective when the Members required to approve such action have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

11.10 Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

ARTICLE 12
ADMISSION OF NEW MEMBERS

No Person shall be admitted to the Company as an additional or Substituted Member without the express, written consent of Manager and a vote in favor of the same by all of the Members. The terms and conditions upon which an additional or Substituted Member is to be admitted shall also be subject to the prior written approval of UTA, provided that such approval shall not be unreasonably withheld, conditioned or delayed. An additional or Substituted Member shall execute and deliver all documents necessary to reflect such Member's admission to the Company and such Member's agreement to be bound by the terms and conditions of this Operating Agreement. An additional or substituted Member shall thereupon be entitled to all of the rights and be subject to all of the duties and liabilities of membership in the Company. This Operating Agreement shall be amended as necessary to conform to the changed conditions of the Company, and Manager shall file an appropriate amendment to the Certificate of Organization of the Company if required by URULLCA §48-3a-2025 to do so.

ARTICLE 13
TRANSFER OF MEMBERSHIP INTEREST

13.1 Transferability of Membership Interest. Subject to Section 14.1 below and without the prior written consent of all of the Members, no Member shall Transfer all or any portion of its Membership Interest in the Company at any time to any Person on any terms and conditions. In addition:

(a) Certain Transfers are subject to the right of first refusal and consent of all the Members as set forth in Section 13.2 below.

(b) No Transfer otherwise permitted hereunder may be made if such Transfer would constitute a breach or violation under the Joint Venture Agreement or any of the Financing Documents.

(c) Notwithstanding anything to the contrary in this Section 13.1, but subject to Section 13.1(c), the following Transfers shall be permitted without the consent of the other Member (collectively, the "Permitted Transfers"):

(i) Any transfer of any direct or indirect interest in EVAI3, provided that following such transfer one or more of Mark Hamilton, Kirk Hamilton, Ronald Lunt, Bruce Bingham, and George Arnold, together with their families and trusts or other entities primarily for the benefit of any of the foregoing, control EVAI3 and own at least fifty percent (50%) of the ownership interests in EVAI3.

(ii) Any Transfer pursuant to the provisions of Article 14 (Buy-Out of Membership Interest) below.

13.2 Right of First Refusal. In the event a Member receives a bona fide written offer to purchase all or any portion of such Member's interest in the Company from a third party (not including a member of a Member) which such Member desires to accept, such Member shall first offer to sell such Member's interest, or portion thereof, to the Company and the other Member in the manner set forth below on the same terms and conditions as offered by the third party by delivering a copy of said third party offer to Manager and the other Member (with a cash equivalent value being substituted for any non-cash consideration contained in said third party offer).

Manager and Members shall have sixty (60) days from the date of the Selling Member's offer in which to accept or decline said offer. If Manager and Members decline to accept said offer the non-Selling Member shall have the right to allow the sale to the third party, subject to the terms and conditions of the Financing Documents and the Joint Venture Agreement.

If the Manager and the non-Selling Member do not accept the offer of the Selling Member, but elect to allow the sale to the third party, the third party purchaser shall not be admitted as a Substitute Member unless all Members consent that such purchaser may be admitted as a Substitute Member, provided that any such consent by a Member shall not be unreasonably withheld, and provided such Transfer is permitted or otherwise approved in accordance with the Financing Documents and the Joint Venture Agreement. If the foregoing conditions are satisfied, the admission of such third party purchaser as a Substituted Member shall be subject to the further condition that such third party purchaser enter into a counterpart of this Operating Agreement, as amended, agreeing and acknowledging that such third party's interest as a Substituted Member of the Company is subject to all terms and conditions governing a Member and its interest in the Company set forth in the Operating Agreement.

Notwithstanding the foregoing, the following Transfers shall not be subject to the above right of first refusal:

(a) A lifetime or testamentary Transfer, whether by sale or by gift, by any Member who is a natural person of all or any portion of such Member's interest in the Company to or for the benefit of such Member's Family, or trust or other Entity for the benefit of such Family (an "Intra-family Transfer"), provided that the transferring Member remains in control of the transferee after the Transfer.

(b) A distribution, termination, merger, consolidation or transfer of substantially all the assets of said Member, or other reorganization of said Member constituting a mere change in the form of doing business or of holding property, provided said Member or the persons formerly in control of said Member own the transferred interest in the Company directly or have beneficial percentage interests in the new or surviving Entity.

(c) Any Permitted Transfers.

13.3 Effect of Transfer; Status of Transferee. The Transfer of any interest in the Company, voluntary or involuntary, permissible or impermissible, if effective at all, shall be effective only to Transfer the transferring Member's economic rights in such interest and not to Transfer such Member's voting, management and other rights of ownership with respect to such interest. Accordingly, any transferee of such interest shall have the status of an assignee and shall not be entitled to become, nor to exercise any of the rights of, a Member in the Company unless and until such transferee is admitted as a Substituted Member in accordance with Article XII above. In any event, the transferee shall be subject to all the obligations of a Member hereunder and the transferring Member shall cease to have any rights at all with respect to the transferred interest.

13.4 Transferring Member's Capital Account Balance. Subject to Section 7.2 above and any tax elections made to adjust basis under IRC §754 or any other provision of the IRC, that portion of the Capital Account balance of a Member who Transfers all or any portion of such Member's interest in the Company, as permitted hereunder, which is attributable to such transferred interest, shall carry over to the transferee as set forth in Regulations §1.704-1(b)(2)(iv)(1).

13.5 Internal Revenue Service Reporting Requirements. In the event of a sale or exchange of an interest in the Company, the Members shall comply with the reporting requirements of IRC §6050K.

ARTICLE 14
BUY-OUT OF MEMBERSHIP INTEREST

14.1 Buy-Out Upon Certain Events. Upon receiving notice of the occurrence of a Buy-Out Event (defined below), the Company shall have one hundred twenty (120) days in which it may exercise an option to purchase the entire Membership Interest in the Company of the Member on whose behalf or with respect to which the Buy-Out Event has occurred (the "Liquidating Member"). If the Company determines not to exercise its option to purchase, the Company shall assign the option to the Member that is not the Liquidating Member (the "Non-Liquidating Member"), but such assignment shall not extend the one hundred twenty (120) day exercise period. Subject to any other restrictions explicitly set forth in this Operating Agreement, Manager (or, if Manager is the Liquidating Member, the other Member) shall determine whether or not to exercise such option, provided that the decision not to exercise shall give rise to the right of the Non-Liquidating Member to exercise the same.

A "Buy-Out Event" shall consist of any of the following events or circumstances:

(a) any revocation of the right or authority of UTA to continue to participate as a member in the Company, whether by subsequent legislation, by reason of a failure of an existing condition or requirement precedent to such participation or by judicial decision or other occurrence making such continued participation unlawful;

(b) the conclusion by UTA, supported by advice of independent legal counsel to UTA, that continued participation in the Company will result in the loss, forfeiture or other abrogation of material rights, benefits or authority or will materially and negatively affect the business or operations of UTA (to include any strategic growth, expansion or development plans);

(c) the breach by a Member (including Manager) of any material term or provision of this Operating Agreement, which breach remains uncured for a period of thirty (30) days after notice of such breach, unless such Member is diligently pursuing a cure, in which event the cure period shall be extended for an additional ninety (90) days;

(d) a Transfer Event occurs as to all or any portion of a Member's interest if such Transfer is not specifically permitted by this Operating Agreement;

(e) as to UTA, UTA's failure to pay or perform any of UTA's obligations under the Parking Structure COREA or that certain Construction Agreement RFP 18-2800TP (Sandy Civic Center Station Parking Structure) dated as of September 6, 2018, as amended, by and among the Joint Venture and UTA, collectively as owner, and Wadsworth Brothers Construction, Inc., as the general contractor with respect to the Parking Structure (as defined in the Joint Venture Agreement); or

(f) as to a Member who is a natural person, an adjudication of Incompetency or imprisonment for a term greater than 1 year.

Exercise of said option by the Company shall be made by giving written notice thereof to the Liquidating Member or the personal representative, trustee or other successor-in-interest of the Liquidating Member, effective as of the date of notice of such election. Valuation of the Membership Interest of the Liquidating Member shall then take place pursuant to Section 14.2 below and payment for such Membership Interest shall take place pursuant to Section 14.3 below. Notwithstanding the foregoing, if with respect to subsection (a) or (b) above ("UTA Exit Events"), UTA elects in writing (during the 120 day period specified in this Section 14.1) to treat the described matters as cause for dissolution, then the provisions of this Article XIV shall not apply and the provisions of Article XV shall be effective with respect to such UTA Exit Events.

14.2 Valuation of Liquidating Membership Interest. The Membership Interest of a Liquidating Member shall be the amount the Liquidating Member will receive under Section Article XV of this Operating Agreement, if the Residential Project were sold under the Joint Venture Agreement for its Fair Market Value and the Joint Venture was dissolved and liquidated under the terms and provisions of the Joint Venture Agreement.

14.3 Negotiation to Determine Fair Market Value. Manager (or, if Manager is the Liquidating Member, the other Member) and the Liquidating Member or the personal representative, trustee or other successor-in-interest of the Liquidating Member shall promptly commence negotiations to establish the Fair Market Value. Fair Market Value shall be determined

as of the date of the election to buy out the Membership Interest of the Liquidating Member. Negotiations shall continue as long as required, provided that if an agreement is not reached within thirty (30) days after the date of the election to buy out the Membership Interest of the Liquidating Member or if negotiations break down prior to such time, either party may terminate the negotiations and require the valuation to be determined as provided in **Exhibit E**.

14.4 Payment Schedule. Payment for the Membership Interest in the Company of a Liquidating Member, as valued under Section 14.2 above, may be made by the Company or, as applicable, the acquiring Member, over a period of up to five (5) years in equal monthly, quarterly or annual installments of principal, together with accrued interest from the effective date of the buy-out or redemption. The period of payment and frequency of installments, subject to the limitations set forth in the preceding sentence, shall be determined by the Company to the extent it is acquiring the Membership Interest or, as applicable, the acquiring Member. The unpaid balance of the purchase price shall bear interest from time to time at the prime rate of interest as published by the Wall Street Journal or a successor publication. The unpaid balance of the purchase price need not be secured. The Company, or, as applicable, acquiring Member, shall have the right to prepay all or any portion of such obligation at any time without notice or penalty. In the event the Company terminates under Article XV below, prior to the payment in full by the Company of the foregoing obligation, the entire remaining balance of principal and accrued interest shall be immediately due and payable by the Company or, as applicable, the acquiring Member, as set forth in Section 15.3 below. The execution of a note, contract or agreement by the Company or the acquiring Member evidencing the installment payment obligation shall be sufficient to result in the immediate transfer and relinquishment of the Membership Interest in the Company of such Liquidating Member to the Company or acquiring Member.

14.5 Buy/Sell Upon Impasse.

(a) In the event after "Stabilization" (as such term is defined in the Joint Venture Agreement) of Residential Project any dispute or disagreement arising among the Members as to a Major Decision which has the effect of preventing or materially and adversely affecting the operation of the Company, the Members shall consult and negotiate with each other and use good faith efforts to settle the dispute and reach an equitable solution to the mutual satisfaction of the Members, recognizing their mutual interests, through good faith negotiation within thirty (30) days after the date that any Member informs the others in writing (the "Impasse Notice") that such dispute or disagreement exists (the "Impasse"). Such Impasse Notice shall designate and describe in reasonable detail the nature, circumstances, and impact of the Impasse. If, following such consultation and good faith negotiation during such 30-day period, the Members are unable to resolve the Impasse, the Members shall have the rights set forth below.

(b) At any time after thirty (30) days but no later than ninety (90) days following the delivery of an Impasse Notice, either Member desiring to resign from the Company (the "Requesting Party") shall establish an all cash selling price ("Offering Price") for such Member's Membership Interest and shall communicate the Offering Price to the other Member (each, a "Responding Party") by a written notice (the "Buy-Sell Notice") offering to sell such Membership Interest to the other Member. The Buy-Sell Notice shall (a) state that the Requesting Party offers to sell its Membership Interest to the Responding Party, and (b) set forth the Offering Price for sale of the Requesting Party's Membership Interest. The Offering Price included in the

Buy-Sell Notice shall be the aggregate dollar amount which the Requesting Party is willing to pay for the Residential Project (the "Specified Valuation Amount") as of the date of the Buy/Sell Notice, and (3) disclose all material liabilities and potential material liabilities of the Joint Venture and the Company actually known to the Requesting Party. The Responding Party shall be obligated to elect, in writing (the "Election Notice") within sixty (60) days after the date of the Buy-Sell Notice ("60 Day Period"), either (x) to purchase the Membership Interest of the Requesting Party at the Offering Price, or (y) to sell its Membership Interest to the Requesting Party at the Offering Price. The failure of the Responding Party to respond during the foregoing 60-day period shall be deemed to be an election by the Responding Party to purchase the Membership Interest of the Requesting Party at the Offering Price. The Member who will be selling its Membership Interest as determined in accordance with this Section is hereinafter referred to as the "Selling Member" and the Member who will be buying such Seller Member's Membership Interest is hereinafter referred to as the "Purchasing Member".

(c) The Members shall within ten (10) Business Days after the expiration of the 60 Day Period determine in good faith the amount that each Member would be entitled to receive based on the Specified Valuation Amount. Both Members shall deliver to each other reports specifying such calculations and assumptions. If the Members are unable to mutually agree on the amount that the Member which is selling its Interest would be entitled to receive based on the Specified Valuation Amount (there shall be no right to challenge the Specified Valuation Amount itself), either Member shall promptly provide notice of such dispute to the other Member and the Company Accountant, which dispute the Company Accountant shall resolve within thirty (30) days after receipt by such dispute notice (which resolution shall include a written report delivered to the Members specifying the calculations and assumptions underlying such resolution, and shall be binding). Any such dispute shall stay the time periods set forth in this Section 14.5(c) from the date on which notice such dispute is given to the other Member through and including the date on which the Company Accountant provides a written report of the resolution of such dispute.

(d) The Purchasing Member obligated to purchase under Section 14.5(b) shall fix a closing date not later than ninety (90) days following the earlier of the date of the delivery of the Election Notice and the expiration of such 60 Day Period and shall deposit two percent (2%) of the purchase price for the Membership Interest (the "Deposit") in the escrow established for the closing of the sale. At such closing, the Selling Member shall transfer to the Purchasing Member (or the Purchasing Member's nominee(s)) its entire Membership Interest free and clear of all liens and competing claims and shall deliver to the Purchasing Member (or the Purchasing Member's nominee(s)) such instruments of transfer and such evidence of due authorization, execution, and delivery, and of the absence of any such liens or competing claims, as the Purchasing Member (or the Purchasing Member's nominee(s)) shall reasonably request. In connection with any such withdrawal of the Selling Member, the Purchasing Member may cause any nominee designated in the sole and absolute discretion of the Purchasing Member to be admitted as a substitute Member of the Company to acquire all or part of the Membership Interest. Each Member shall pay its own legal, accounting and other consultant fees and expenses in connection with consummating a transaction under this Section 14.5, and all other closing costs shall be allocated 50% to the Selling Member and 50% to the purchasing Member.

(e) The Selling Member hereby irrevocably constitutes and appoints the purchasing Member as its attorney-in-fact to execute, acknowledge and deliver such instruments

as may be necessary or appropriate to carry out and enforce the provisions of Section 14.5(d) following the failure of the Selling Member to execute, acknowledge and deliver such instruments as and when required herein, after written request to do so. If the purchasing Member defaults in the performance of its obligations under this Section 14.5(d), the Selling Member may, as its exclusive remedy (except for the purchasing Member's loss of rights described below), either (i) retain the Deposit as liquidated damages or (ii) acquire the purchasing Member's Membership Interest at a ten percent (10%) discount to the price that would otherwise have been applicable to an acquisition of such Member's Membership Interest and with an extra 60 days (from the time of default) to make such decision, and an extra 60 days (from the time of such election) to close, but otherwise on the terms described in this Section 14.5 . If the Selling Member defaults, the purchasing Member may enforce its rights by specific performance (and damages incidental to a specific performance action which are allowed as part of such action as well as a dollar amount equal to the Deposit as agreed upon liquidated damages), as its exclusive remedy.

(f) No Member can exercise its rights under this Section 14.5 as a Requesting Party if such Member is in default hereunder, which default is then continuing. If any Member defaults in the performance of its obligations under Section 14.5(d), such Member shall have no further right to initiate the buy/sell procedure or to exercise the rights of a Requesting Party under this Section . In addition,

(g) In the event that EVAI3 is a Selling Member pursuant to this Section 14.45 the other remaining Member hereby agrees to obtain the release of Developer (as defined in the Joint Venture Agreement) and any of its Affiliates from any guarantees executed for the benefit of the Company or the Joint Venture as of the date of transfer. If such releases cannot be obtained by the Company, a party reasonably acceptable to the Developer shall indemnify Developer and any of its Affiliates for amounts that become due and payable under such guarantees, from and after Developer resigns from the Company.

ARTICLE 15
DISSOLUTION AND TERMINATION

15.1 Dissolution and Continuation. The Company shall be dissolved upon the occurrence of any of the following events:

(a) the occurrence of a UTA Exit Event with respect to which UTA has, by written election pursuant to Section 14.1, determined to not proceed under Article XIV with respect to such UTA Exit Event; or

(b) upon a vote in favor thereof by all Members; or

(c) a sale of all or substantially all of the assets of the Company.

The death, Financial Insolvency, Incompetency, withdrawal, retirement, Resignation, expulsion or dissolution of any Member shall not of itself cause the dissolution of the Company.

15.2 Winding Up the Company. Upon dissolution of the Company, Manager shall immediately commence to wind up the affairs of the Company and shall engage in an orderly disposition of its assets where such can be done at a fair value (except to the extent Manager may

determine to distribute any assets to the Members in kind). The items comprising the Profits or Losses of the Company, as the case may be, as well as any specially allocated items for the Fiscal Year in which the Company is terminated, shall continue to be allocated to the Members or their representatives and be credited or charged to their respective Capital Accounts in accordance with Articles VI and VII, above. Further, the Capital Accounts of the Members or their representatives shall be adjusted as required by Paragraph B.2(c) of the Capital Accounting and Tax Addendum attached hereto.

15.3 Distribution of Liquidation Proceeds. Pursuant to the winding up of the Company's affairs, the Company assets and the proceeds from the disposition of Company assets shall be applied in order of priority as follows:

(a) First, to creditors of the Company other than Members (and other than any former Members receiving payments in buy-out of their interest in the Company under Section 14.3 above);

(b) Second, to Members for any debts of the Company to such Members including loans from Members to the Company; and

(c) Third, to Members in the same manner as distributions are made under Section 8.1.

Each Member shall look solely to the assets of the Company for the return of such Member's investment in the Company, and if such assets or the proceeds from the liquidation of such assets are insufficient to return said investment, such Member shall have no recourse against any other Member. Liquidating distributions to Members shall be made by the later of (i) the end of the Company taxable year in which Liquidation occurs, or (ii) ninety (90) days after Liquidation.

15.4 Return of Capital Contributions. A Member shall not be entitled to the return of specific property contributed to the Company nor to any payments in Liquidation of such Member's interest in the Company other than in cash.

15.5 Negative Capital Account Balance. A negative balance in any Member's Capital Account which exists at any time, including upon termination of the Company (after the allocation of all Profits and Losses through termination) shall not constitute a debt or liability of such Member to the Company, to any creditor of the Company, to any other Member, or to any other Person for any purpose whatsoever, and such Member shall have no obligation to make any additional capital contribution to the Company by reason of such negative balance.

15.6 Articles of Dissolution. When all debts, liabilities and obligations of the Company have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets of the Company have been distributed to the Members, Articles of Dissolution shall be executed and filed pursuant to URULLCA §48-3a-703. Upon issuance by the State of Utah of a certificate of dissolution, the Company shall be terminated.

ARTICLE 16
MISCELLANEOUS PROVISIONS

16.1 Amendments. This Operating Agreement may be amended, or amended and restated, at any time upon the affirmative unanimous vote of all the Members. Manager shall file an appropriate amendment to the Certificate of Organization of the Company if and as required by the URULLCA.

16.2 Notices. Except as otherwise provided herein, any notice, election or communication required or permitted to be given by any provision of this Operating Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the party to whom the same is directed or upon receipt or rejection or, if no evidence of receipt or rejection is provided by the addressee, three (3) days after being sent by United States mail, certified or registered mail, postage prepaid, addressed to such party's address set forth in the records of the Company. Any such address may be changed by notice given in the above manner.

16.3 Governing Law. This Operating Agreement is entered into under and shall be governed by the laws of the State of Utah.

16.4 Construction. Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa.

16.5 Headings. The headings in this Operating Agreement are inserted for convenience only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

16.6 Binding Effect. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

16.7 Counterparts. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

16.8 Enforcement. In the event of a breach or dispute arising under this Operating Agreement, the non-breaching party or the party prevailing in such dispute shall be entitled to recover its costs, including without limitation reasonable attorneys' fees and court costs, from the breaching or non-prevailing party.

16.9 Entire Agreement. This Operating Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior agreements, discussions and understandings, whether written or oral, between and among the parties with respect hereto.

[The remainder of this page is left blank intentionally.]

669 West 200 South
Salt Lake City, UT 84111

By: _____
Carolyn Gonot
Executive Director

By: _____
Mary DeLoretto
Chief Service Development Officer

[Signatures are on the following page.]

IN WITNESS WHEREOF, this Operating Agreement has been executed as of the dale hereinabove first written by the following Members, whose respective mailing addresses arc set forth opposite their signatures. By their signatures below said Members do hereby affirm that they have read the foregoing Operating Agreement and are familiar with its contents and they do hereby verify the accuracy thereof.

MEMBERS:

Mailing Address:

222 South Main St., Suite 1760
Salt Lake City, UT 84101

EAST VILLAGE APARTMENT INVESTMENTS 3 LLC,
a Utah limited liability company

By: HP East Village 3 LLC
its: Managing Member

By: _____
Name: _____

669 West 200 South
Salt Lake City, UT 84111

UTAH TRANSIT AUTHORITY, a large public transit district organized under the Utah Public Transit District Act

By: _____
Carolyn Gonot
Executive Director

By: _____
Mary DeLoretto
Chief Service Development Officer

:

Approved as to Form:

_____
Timothy G. Merrill
Assistant Attorney General

SCHEDULE ONE

Agreed Dollar Value of Capital Contribution

Member	Description of Initial Capital Contribution	Amount
Utah Transit Authority	Residential Parcel (as defined in the text of the Operating Agreement) and grant of use and other rights with respect to portions of the Infrastructure	$1,580,316
East Village Apartment Investments 3 LLC		[T/B/D based on cash required for HPUTA's interest in EV3 LLC to equal 12% of equity]
TOTAL		$

CAPITAL ACCOUNTING AND TAX ADDENDUM

A. DEFINITIONS

Capitalized terms used in this Addendum and not otherwise defined herein shall have the meanings assigned to them in Section 1.1 of the Operating Agreement. The following additional definitions are supplied for purposes of this Addendum:

"Adjusted Capital Account" means a Member's Capital Account as of the end of any Fiscal Year, increased by the amount of any deficit balance in such Member's Capital Account which such Member is unconditionally obligated to restore to such Member's Capital Account, or is deemed obligated to restore pursuant to the penultimate sentence of Regulations §§ 1.704-2(g)(1) and 1.704-2(i)(5), and decreased by the items described in Regulations §1.704-1(b)(2)(ii)(d)(4), (5) and (6). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Regulations §1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Adjusted Tax Basis" means the adjusted tax basis of property for Federal income tax accounting purposes.

"Book Depreciation" means for each Company Fiscal Year or other period, an amount equal to the Tax Depreciation for such year or other period, except that if the Book Value of an asset differs from its adjusted tax basis at the beginning of such year or other period, Book Depreciation shall be an amount which bears the same relationship to such beginning Book Value as the Tax Depreciation for such year or other period bears to such beginning Adjusted Tax Basis; provided, however, that if the Tax Depreciation for such year is zero, Book Depreciation shall be determined with reference to such beginning Book Value using any reasonable method selected by Manager. The foregoing definition of Book Depreciation is intended to comply with the provisions of Regulations §1.704-1(b)(2)(iv)(g)(3) and shall be interpreted consistently herewith.

"Book Value" means the value of property as reflected on the books of the Company in accordance with Paragraph B.2 of this Addendum.

"Fair Market Value" means the fair market value of property, unreduced by any liabilities secured by such property. For the purpose of applying the capital accounting rules set forth in Paragraphs B.1(b) and B.1(g) of this Addendum and for purposes of Paragraph B.2(a) of this Addendum, such fair market value shall be determined without regard to the amount of any nonrecourse indebtedness secured by such property, in accordance with IRC §752(c). For all other purposes and provisions of this Operating Agreement, such fair market value shall be deemed to be no less than the amount of any nonrecourse indebtedness secured by such property, in accordance with IRC §7701(g).

"Partner Nonrecourse Liability" means any liability to the extent such liability is nonrecourse to the Company and a Member (or related Person) bears the economic risk of loss as set forth in Regulations §1.704-2(b)(4).

"Partner Nonrecourse Debt Minimum Gain" means the aggregate amount by which Partner Nonrecourse Liabilities, if any, exceed the adjusted tax bases of the Company properties which they encumber, as set forth in Regulations §§1.704-2(b)(2) and 1.704-2(i)(2).

"Partner Nonrecourse Deductions" means items of loss, deduction or IRC §705(a)(2)(B) expenditures that are attributable to a Partner Nonrecourse Liability, as set forth in Regulations §1.704-2(i)(1). The amount of Partner Nonrecourse Deductions for a Company Fiscal Year equals the net increase, if any, in the amount of Partner Nonrecourse Debt Minimum Gain during such Fiscal Year, reduced (but not below zero) by the distribution of proceeds of any Partner Nonrecourse Liability made during such Fiscal Year to the Member (or Members) bearing the economic risk of loss for such liability which are both attributable to such liability and allocable to an increase in Partner Nonrecourse Debt Minimum Gain, as set forth in Regulations §1.704-2(i)(2).

"Partnership Minimum Gain" means the aggregate amount by which Partnership Nonrecourse Liabilities, if any, exceed the adjusted tax bases of the Company properties which they encumber, as set forth in Regulations §§1.704-2(b)(2) and 1.704-2(d).

"Partnership Nonrecourse Deductions" means items of loss, deduction or IRC §705(a)(2)(B) expenditures that are attributable to Partnership Nonrecourse Liabilities, as set forth in Regulations §1.704-2(b)(1). The amount of Partnership Nonrecourse Deductions for a Company Fiscal Year equals the net increase, if any, in the amount of Partnership Minimum Gain during such Fiscal Year, reduced (but not below zero) by the aggregate distributions made during such Fiscal Year of proceeds of any Partnership Nonrecourse Liability which are allocable to an increase in Partnership Minimum Gain, as set forth in Regulations §1.704-2(c).

"Partnership Nonrecourse Liability" means any liability that is nonrecourse to the Company as to which no Member (or related Person) bears any economic risk of loss as set forth in Regulations §1.704-2(b)(3).

"Section 704(c) Property" has the meaning set forth in Paragraph C.1 of this Addendum.

"Tax Depreciation" means for each Company Fiscal Year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period for federal income tax purposes.

B. CAPITAL ACCOUNT MAINTENANCE RULES

1. Basic Capital Accounting Rules. The Members' Capital Accounts shall be kept in accordance with the following rules. A Member's Capital Account shall be increased by:

(a) the amount of money contributed by such Member to the Company (including the amount of Company liabilities assumed by such Member other than liabilities described in subparagraph (g));

(b) the Fair Market Value of property other than money contributed (or deemed contributed) by such Member to the Company, net of liabilities that the Company is considered to assume or take subject to under IRC §752;

(c) the amount of Company liabilities which are assumed by such Member (other than liabilities described in subsection (g) below which are assumed by a distributee Member);

(d) such Member's allocable share of the Profits of the Company under Section 7.1 above and of any items of income or gain which are specially allocated pursuant to Paragraph C.2 of this Addendum; and

(e) such Member's allocable share under Paragraph C.1(c) of this Addendum of any gain attributable to Section 704(c) Property, as computed for book purposes; and shall be decreased by:

(f) the amount of money distributed by the Company to such Member (including the amount of such Member's individual liabilities assumed by the Company other than liabilities described in subparagraph (b));

(g) the Fair Market Value of property other than money distributed (or deemed distributed) by the Company to such Member, net of liabilities that such Member is considered to assume or take subject to under IRC §752;

(h) the amount of such Member's individual liabilities which are assumed by the Company (other than liabilities described in subsection (b) above which are assumed by the Company);

(i) such Member's allocable share of the Losses of the Company under Section 7.1 above and of any items of loss or deduction which are specially allocated pursuant to Paragraph C.2 of this Addendum; and

(j) such Member's allocable share under Paragraph C.1(c) of this Addendum of any Book Depreciation or loss attributable to Section 704(c) Property, as computed for book purposes.

The Members' Capital Accounts shall also be debited or credited as provided in Paragraphs B.2(c) and B.2(d) of this Addendum. Also, in determining the amount of any liability for purposes of this provision, there shall be taken into account IRC §752(c) and any other applicable provisions of the IRC and Regulations.

2. Valuation of Company Property; Capital Account Adjustments. The Book Value of Company property shall be its Adjusted Tax Basis except in the following instances:

(a) Contributed Property. The Book Value of property contributed (or deemed contributed) to the Company by any Member shall be equal to its Fair Market Value on the date of contribution (or deemed contribution).

(b) Distributed Property. The Book Value of property distributed (or deemed distributed) by the Company to any Member, whether in connection with the Liquidation of the Company or otherwise, shall be increased or decreased, as the case may be, to equal its Fair Market Value on the date of distribution (or deemed distribution), and the Capital

Accounts of the Members shall be debited or credited, as the case may be, to reflect the manner in which gain or loss, as computed for book purposes, would be allocated among the Members if there were a taxable disposition of such property for such Fair Market Value.

(c) Other Property at Time of Contribution or Distribution. In connection with either

(i) a contribution (or deemed contribution) of money or other property, including services, to the Company by a new or existing Member in exchange for a new or increased interest in the Company, or

(ii) a distribution (or deemed distribution) of money or other property by the Company to a withdrawing or continuing Member in exchange for all or a portion of such Member's interest in the Company, or

(iii) the Liquidation of the Company.

The Book Values of all Company assets, including goodwill if applicable, shall be increased or decreased, as the case may be, to equal their respective Fair Market Values on the date an event described in subparagraphs (i) through (iii) of this Section B.2(c), and the Capital Accounts of the Members shall be debited or credited, as the case may be, to reflect the manner in which gain or loss, as computed for book purposes, would be allocated among the Members if there were a taxable disposition of all such assets for such Fair Market Values; provided, however, in the case of subparagraphs (i) and (ii) hereof, such adjustment shall not be made if such contribution or distribution is of a *de minimis* amount or if Manager reasonably determines that such adjustment is not necessary or appropriate in view of the cost to the Company of making such adjustment as compared with the distortion in the relative economic interests of the Members which would result from not making such adjustment. Paragraphs (a), (b) and (c) hereof are intended to comply with Regulations §1.704-1(b)(2)(iv)(d), (e) and (f) and shall be interpreted consistently therewith.

(d) IRC §754 Adjustments. The Book Value of an item of Company property shall be increased or decreased, as the case may be, to equal its Adjusted Tax Basis whenever an adjustment to the Adjusted Tax Basis of such item of Company property arises under IRC §§732(d), 734 or 743 and such adjustment exceeds the difference between the Book Value of such item of Company property and its Adjusted Tax Basis prior to making such adjustment, but only to the extent such adjustments are required to be taken into account in determining Capital Accounts under Regulations §1.704-1(b)(2)(iv)(m). Any increase or decrease in Book Value which occurs pursuant to an adjustment described in the preceding sentence shall then be allocated to the Capital Accounts of the Members in accordance with Regulations §1.704-1(b)(2)(iv)(m). This Paragraph B.2(d) shall be applied only after the application of Paragraphs B.2(a), (b) and (c) above.

C. SPECIAL TAX ALLOCATION RULES

1. Special Allocation Rules Where Book Value and Adjusted Tax Basis Are Unequal. Notwithstanding the general allocation rules set forth in Sections 7.1 and 7.2 above, as to property

the Book Value of which is different from its Adjusted Tax Basis ("Section 704(c) Property"), the following rules and definitions shall apply:

(a) If the Book Value of property exceeds its Adjusted Tax Basis, such excess shall be referred to as "Built-in Gain." Conversely, if the Adjusted Tax Basis of property exceeds its Book Value, such excess shall be referred to as "Built-in Loss."

(b) Built-in Gain or Built-in Loss may arise as the result of the contribution or deemed contribution of property to the Company by one or more Members (the "Contributing Members") or as the result of the revaluation of existing Company property under Paragraph B.2 of this Addendum. If existing Company property is revalued, the existing Members shall be considered the Contributing Members as to such property. The term Contributing Members shall include successors-in-interest thereto.

(c) Book Depreciation, and gain or loss with respect to Section 704(c) Property as computed for book purposes, shall be allocated to the Members in accordance with the general manner in which profits and losses are shared pursuant to Section 7.1, and the Members' Capital Accounts shall be adjusted accordingly, as set forth in Paragraph B.1 of this Addendum.

(d) Tax Depreciation, and gain or loss with respect to Section 704(c) Property as computed for tax purposes, shall be allocated to the Members in a manner that takes into account the Built-in Gain or Built-in Loss with respect to such property, in accordance with IRC §704(c) and equivalent principles, as follows, and such allocations shall not be independently reflected by further adjustments to the Members' Capital Accounts:

(i) With respect to Built-in Gain property, one hundred percent (100%) of any tax gain shall be allocated to the Contributing Members in the same proportion as such Built-in Gain has been credited to their respective Capital Accounts; Tax Depreciation shall be allocated to the Members other than the Contributing Members (the "Noncontributing Members") in the same proportion as, but in an amount not to exceed, the Book Depreciation with respect to such property which has been allocated to them under Paragraph C.1(c) of this Addendum; and any excess of such Tax Depreciation over the amount allocated to the Noncontributing Members shall be allocated to the Contributing Members in the same proportion that the Book Depreciation with respect to such property has been allocated to the Contributing Members under Paragraph C.1(c) of this Addendum. These allocations shall continue until the Built-in Gain has been eliminated. Thereafter, any Tax Depreciation and gain or loss with respect to such property shall be allocated to the Members pursuant to the general profit and loss allocation provisions of Section 7.2 above. However, notwithstanding the above, the Company shall use the traditional allocation method specified in Treas. Reg. §1.704-3(d).

(ii) With respect to Built-in Loss property, one hundred percent (100%) of any tax loss shall be allocated to the Contributing Members in the same proportion as such Built-in Loss has been charged to their respective Capital

Accounts; Tax Depreciation shall be allocated to the Noncontributing Members in the same proportion as, but in an amount not to exceed, the Book Depreciation with respect to such property which has been allocated to them under Paragraph C.1(c) of this Addendum; and any excess of such Tax Depreciation over the amount allocated to the Noncontributing Members shall be allocated to the Contributing Members in the same proportion that the Book Depreciation with respect to such property has been allocated to the Contributing Members under Paragraph C.1(c) of this Addendum. These allocations shall continue until the Built-in Loss has been eliminated. Thereafter, any Tax Depreciation and gain or loss with respect to such property shall be allocated to the Members pursuant to the general profit and loss allocation provisions of Section 7.2 above.

The foregoing provision is intended to comply with Regulations §§1.704-1(b)(2)(iv)(g) and 1.704-3(e) and shall be interpreted consistently therewith.

2. Special and Regulatory Allocations.

(a) Partnership Nonrecourse Deductions. Partnership Nonrecourse Deductions for any Company Fiscal Year shall be allocated among the Members in accordance with the Members' percentage interests in the Company's nonrecourse debt as computed under IRC §752. This Paragraph C.2(a) is intended to comply with Regulations §1.704-2(e)(2) and shall be interpreted consistently therewith.

(b) Partner Nonrecourse Deductions. Partner Nonrecourse Deductions for any Company Fiscal Year shall be allocated to the Member who bears the economic risk of loss for the Partner Nonrecourse Liability to which such deductions are attributable, or among all the Members who bear the economic risk of loss for such liability according to the ratio in which they bear such economic risk of loss. This Paragraph C.2(b) is intended to comply with Regulations §1.704-2(i)(1) and shall be interpreted consistently therewith.

(c) Partnership Minimum Gain Chargeback. If there is a net decrease in Partnership Minimum Gain during any Company Fiscal Year, then in that event, prior to the making of any other allocation under either Article VII above or this Addendum, there shall be specially allocated to all Members items of income and gain for such year (and, if necessary, subsequent years) equal to their share of such net decrease in Partnership Minimum Gain within the meaning of Regulations §§1.704-2(f)(1) and 1.704-2(g)(2).

(d) Partner Nonrecourse Debt Minimum Gain Chargeback. If there is a net decrease in Partner Nonrecourse Debt Minimum Gain during any Company Fiscal Year, then in that event, prior to the making of any other allocation under either Article VII above or this Addendum, there shall be specially allocated to all Members with a share of that Partner Nonrecourse Debt Minimum Gain items of income and gain for such year (and, if necessary, subsequent years) equal to their share of such net decrease in Partner Nonrecourse Debt Minimum Gain within the meaning of Regulations §§1.704-2(i)(4) and 1.704-2(i)(5).

(e) Qualified Income Offset. In the event a Member unexpectedly receives an adjustment, allocation or distribution described in Regulations §1.704-1(b)(2)(ii)(d)(4), (5) or (6) which creates or increases a deficit in such Member's Adjusted Capital Account, items of income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate such deficit as quickly as possible. This Paragraph C.2(e) is intended to comply with the qualified income offset requirement set forth in Regulations §1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

3. Curative Allocations. The special allocations set forth in Paragraphs C.2(a) through C.2(e) of this Addendum (the "Regulatory Allocations") are intended to comply with certain requirements of Regulations §§1.704-1(b) and 1.704-2(b). The Regulatory Allocations shall be taken into account in determining the allocation of Profits and Losses pursuant to Sections 7.1 and 7.2 above so that, to the extent possible without nullifying the Regulatory Allocations, the amount of the allocations of Profits and Losses under Sections 7.1 and 7.2, as adjusted pursuant to this Paragraph C.2(f), and of the Regulatory Allocations, when taken together, shall be equal to the amount of such allocations of Profits and Losses that would have been allocated to the Members under Sections 7.1 and 7.2 if the Regulatory Allocations had not occurred.

EXHIBIT A

Description of the Development Parcel

SURVEYOR'S CERTIFICATE

I, Gregory A. Cates, do hereby certify that I am a Professional Land Surveyor, and that I hold certificate No. 161226 as prescribed under the laws of the State of Utah. I further certify that, by authority of the Owners, I have made a survey of the tract of land shown on this plat and described below and have subdivided said tract of land into lots and streets, hereafter to be known as

SANDY EAST VILLAGE LOT 2, SECOND AMENDED

and that same has been surveyed and staked on the ground as shown on this plat.

BOUNDARY DESCRIPTION

A parcel of land being a portion of Sandy East Village Lot 2 Amended Plat, recorded in Book 2016P at Page 271 in the Salt Lake County Recorder's Office, said parcel also being located in the Southwest Quarter of Section 7, Township 3 South, Range 1 East, Salt Lake Base and Meridian, said parcel being more particularly described as follows:

Beginning at a point on the Northerly Boundary Line of Dry Creek Ridge Subdivision, as recorded in Book 2013P at Page 194 in the Salt Lake County Recorder's Office, said point being also on the South Line of Lot 5, Block 2, of the Sandy Five Acre Plat as recorded in Book C, at Page 153, in the Salt Lake County Recorder's Office, said point being also on the Easterly Right-of-Way Line of Creek Run Way as shown on said Dry Creek Ridge Subdivision, said point being also S00°08'34"E 1570.96 feet, along the Monument Line, and East 1019.35 feet from the Centerline Monument at 9800 South and State Street, said Street Monument being N89°40'00"E 92.57 feet (per ARP) from the West Quarter Corner of said Section 7, and running thence, along said Easterly Right-of-Way Line of Creek Run Way, Northwesterly 17.46 feet along the arc of a 233.00 foot radius curve to the left, chord bears N02°52'22"W 17.46 feet to the Southerly Right-of-Way Line of Midvillage Boulevard; thence, along siad Southerly Right-of-Way Line, the following three (3) courses: (1) Northeasterly 173.27 feet along the arc of a 228.80 foot radius curve to the left, chord bears N57°20'16"E 169.16 feet, (2) N35°37'44"E 604.86 feet, (3) Easterly 24.78 feet along the arc of a 15.00 foot radius curve to the right, chord bears N82°57'41"E 22.06 feet, to the Westerly Right-of-Way Line of Beetdigger Boulevard; thence, along siad Westerly Right-of-Way Line the following seven (7) courses: (1) Southeasterly 199.76 feet along the arc of a 293.00 foot radius curve to the right, chord bears S30°10'28"E 195.92 feet, (2) S10°38'34"E 82.89 feet, (3) Southeasterly 108.41 feet along the arc of a 309.50 foot radius curve to the right, chord bears S00°36'29"E 107.86 feet, (4) Southeasterly 285.07 feet along the arc of a 389.50 foot radius curve to the left, chord bears S11°32'25"E 278.75 feet, (5) S32°30'18"E 60.63 feet, (6) Southeasterly 93.70 feet along the arc of a 332.33 foot radius curve to the right, chord bears S23°49'54"E 93.39 feet, (7) S15°45'15"E 96.05 feet to the Northerly Boundary Line of said Dry Creek Ridge Subdivision; thence, along said Northerly Boundary Line, the following three (3) courses: (1) S89°51'38"W 701.56 feet, (2) N00°08'22"W 258.18, (3) S89°51'38"W 151.22 feet to said Easterly Right-of-Way Line of Creek Run Way and the Point of Beginning.

Contains: 358.333 SF or 8.23 AC and 5 Lots.

Note:

UTA will contribute the entire 8.23 Acre Development Parcel to East Village 3 LLC at Closing. It will subsequently be subdivided into a Residential Parcel and a Garage Parcel after the footings of the Parking Structure are installed and surveyed. The Garage Parcel will then be conveyed back to UTA in connection with an easement to East Village 3 LLC for residential use. East Village 3 LLC will continue to own the Residential Parcel after it is subdivided as described in Exhibit C.

EXHIBIT B

INTENTIONALLY DELETED

EXHIBIT C

Description of the Residential Parcel

UTA will contribute the entire Development Parcel to East Village 3 LLC at Closing as described in Exhibit A. The site will subsequently be subdivided to create a Residential Parcel which will continue to be owned by East Village 3 LLC.

The area shown below as the "Parking Structure" represents the Garage Parcel and the balance of the site will be the Residential Parcel.

Depiction of the Completed Development

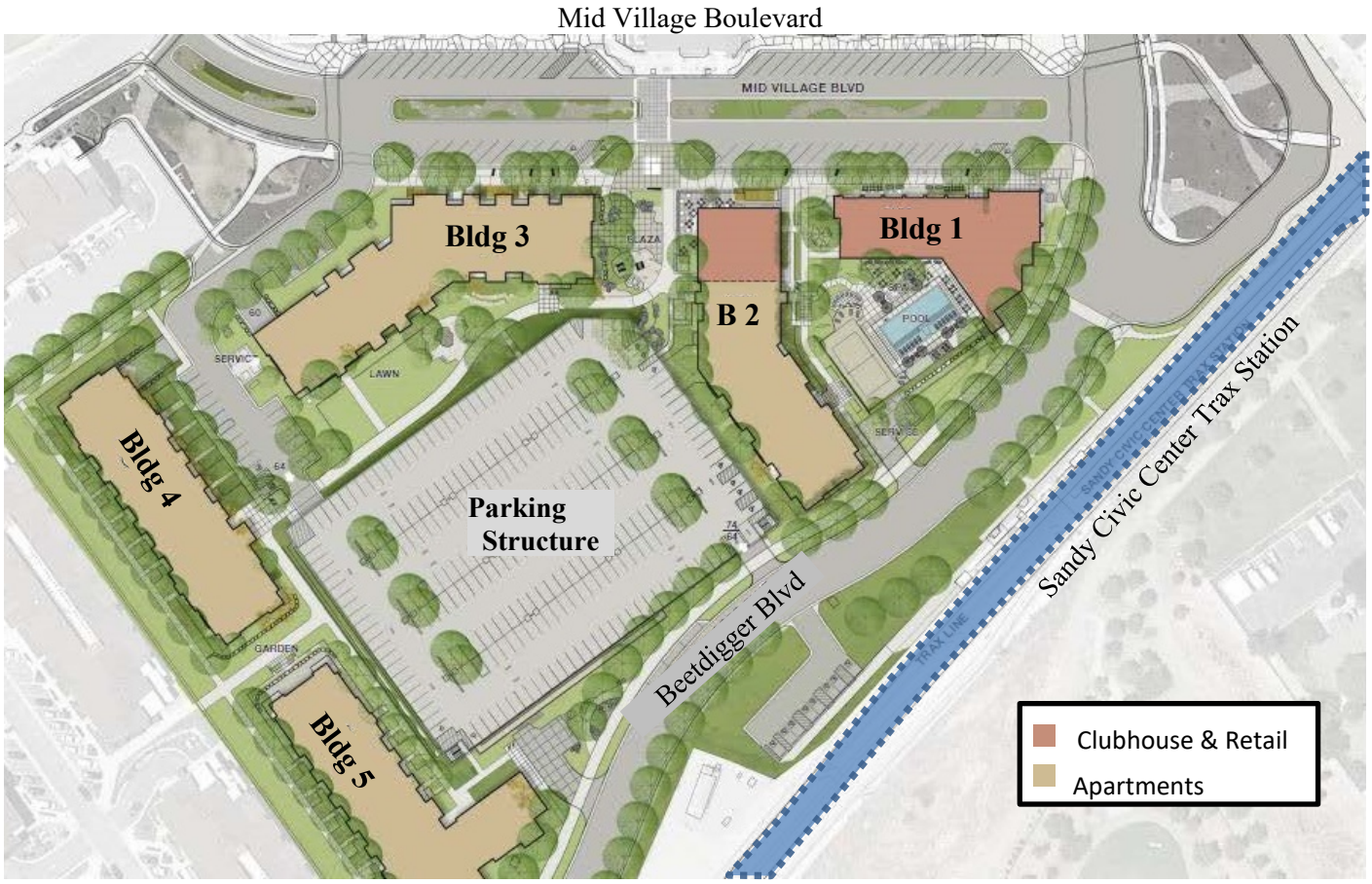


EXHIBIT D

LIST OF PREDEVELOPMENT EXPENSES

Est. Pre Dev costs at Closing	
Hard Costs	
Jacobsen Site Prep	980,722
HUNT ELECTRIC, INC.	95,000
Rocky Mountain Power	45,880
	1,121,602
Soft Costs	
Architectural Fees	1,455,046
Engineering Fees	165,947
Permit and Impact Fees	1,350
FF&E	-
Lender Legal and DD	-
Third Party CM Fees	84,500
Inspections and Testing	-
Legal	83,778
Closing Costs	6,310
Marketing	-
Insurance	-
Property Tax	-
Operating Reserve	-
Development Fee: 3%	-
Contingency	-
sub-total	1,796,931
TOTAL COSTS	2,918,533

EXHIBIT E

VALUATION PROCEDURES

Determination of Fair Market Value. If Fair Market Value ("**Fair Market Value**") of the Residential Project is to be determined under Section 14.5, unless otherwise agreed by the parties in writing, the Fair Market Value shall be determined by the Brokers. UTA shall, by written notice to the EVAI3, given no earlier than ten (10) days (i) after the 12.1 Election Notice designate a Broker as its Broker, and within five (5) business days after receipt of such designation, the EVAI3 shall, by written notice, designate a Broker as its Broker. If the EVAI3 fails to designate a Broker, then the Broker designated by the UTA shall proceed to issue his Broker Opinion of Value as to the Fair Market Value of the Residential Project. The Fair Market Value of the Residential Project shall be the midpoint (or the so-called "strike price") of such Broker's Opinion of Value as to the Fair Market Value of the Residential Project. If within fifteen (15) days after the last of Brokers are designated, the Brokers are unable to agree upon the Fair Market Value of the Residential Project and there are two (2) Brokers and the higher valuation does not exceed the lower valuation by more than five percent (5%), then the Fair Market Value of the Residential Project shall be deemed to be the average of the two (2) valuations and if such Brokers are unable to reduce the range of their difference so that the higher valuation does not exceed the lower valuation by more than five percent (5%), then the Brokers shall jointly designate a third Broker and, if they are unable to agree upon a third Broker within ten (10) days after the expiration of such thirty (30) day period or the Members do not approve any conflicts of interest disclosed by the third Broker as provided below, within ten (10) days after such disclosure, either Member may request that the Utah Transit Authority, a large public transit district organized pursuant to Utah law, designate the third Broker. If there are three (3) Brokers and they are unable to agree upon the Fair Market Value, then (x) if the third Broker's valuation is between valuations of the first two (2) Brokers, the fair market value of the Residential Project shall be deemed to be the valuation of the third Broker, and (y) if the valuation of the third Broker is not between the valuation of the first two (2) Brokers, the Fair Market Value of the Residential Project shall be the middle valuation (as opposed to the higher or lower valuation) of the Residential Project. The Broker or Brokers shall promptly notify the Members of their determination. In the case of the third Broker chosen by the first two Brokers, such Broker shall be disinterested and in furtherance thereof, he must, prior to accepting the assignment, complete a questionnaire which discloses the facts which evidence that he meets the applicable qualifications, including disclosing all existing and prior relationships with any Member or their respective Affiliates. The following rules shall apply if there is only one Broker or in the case of third Broker: (i) all questions from the Broker shall be in writing addressed to both Members and any responses must be approved by both Members; (ii) there shall be no hearing, unless otherwise approved by both Members; (iii) there shall be no ex-parte communications with the Members or any representative of such Members; and (iv) all other rules and procedures must be approved in advance by the Members.

Payment of Fees. Each Member shall pay the fees and expenses of the Broker designated by it, and in the case of a third Broker, each Member shall pay one-half of the fees and expenses of such third Broker.

Definition of Fair Market Value. The term "***Fair Market Value***" with respect to the Residential Project shall mean the price a willing buyer and a willing seller would agree upon as a fair sales

price that could reasonably be expected to be received upon the sale of the Residential Project as of the date specified in this Operating Agreement for the Valuation, if sold as a single asset, and not as a sale of its component parts, for its current use.. Any existing debt in place shall only be accounted for in determining "Fair Market Value" if the loan is not pre-payable and any pre-payment penalty shall be treated as a debt of the Company, unless, as a result of the transaction between Members, it is not triggered.

Definition of Broker. The term "***Broker***" means a senior professional at Jones Lang LaSalle, CBRE, Cushman and Wakefield, Colliers International and Newmark Grubb and such other real estate brokerage companies approved in writing by the Members, provided at the time of selection the broker selected is not an Affiliate of either Member, licensed in Utah to represent buyers and sellers of investment multi-family properties in the market in which the Project is located and has been actively and principally engaged in multi-family transactions for the immediately preceding ten (10) years and who at such time maintains an office in the market in which the Project is located.

Definition of Broker Opinion of Value. The term "***Broker Opinion of Value***" means a written educated estimate of value of a commercial property's market value, based upon a careful assessment of market value and property condition, issued by a Broker with the approval of the investment property group with which the Broker is associated. The Broker Opinion of Value shall contain a market overview and value matrix which shows (i) comparable transactions for comparable properties, (ii) if applicable, a ten year cash flow projection for the subject property and (iii) contains a range of values, based on property condition, location, vacancy and projected lease-up time, with a mid-point (or so –called "strike price") of value

EXHIBIT F

EXAMPLE OF AVAILABLE CASH DISTRIBUTIONS UNDER SECTION 6.1

Source of Funds	Amounts	
Cash from Ops in Mo 21-47 *	777,271	
Cash from Sale in Mo 48		
Amount to HP-UTA	5,833,101	
HP Developer Promote	9,844,960	63%
subtotal	15,678,061	
Total Source of Funds	16,455,332	

Use of Funds	
Infrastructure Reimb. & Interest	2,117,073
Additional Cap. Contributions	n/a
Return of Equity + 10% IRR	4,949,388
Credit for Z&E, no int.	904,110
Land Appreciation	1,801,252
subtotal	9,771,823
HP Developer Promote	9,844,960
Shortage of funds	(3,161,451)
Net Shared Promote	6,683,509
Total Use of Funds	16,455,332

* Cash from Ops. Is distributed 100% to HP until infrastructure is reimb.

	Distribution of Cash Flows				
		UTA	HP	Total	Cumulative
a	5% int. on Inf. - 4 yrs	-	375,352	375,352	375,352
b	Infrastructure Reimb.	-	1,741,721	1,741,721	2,117,073
g	Return original capital	1,580,316	1,800,182	3,380,498	3,685,962
h	10% IRR on Capital	733,425	835,465	1,568,889	7,066,460
i	Land Appreciation	856,868	944,384	1,801,252	9,771,823
j	Zoning & Entitlements	-	904,110	904,110	7,970,570
k	Final Distribution	1,162,452	5,521,057	6,683,509	16,455,332
	TOTAL Distributions	4,333,061	12,122,271	16,455,332	

Initial Capital Contributions		
UTA	1,580,316	47%
HP	1,800,182	53%
Total	3,380,498	

EXHIBIT F

EXAMPLE OF AVAILABLE CASH DISTRIBUTIONS UNDER SECTION 6.1

Zoning & Entitlements	
Land Value	$ 22.88
6 Ac Parcel, sf	263,386
Total Value	6,027,399
Percent for ZE	15.0%
Value of ZE	904,110

Land Appraisal	
Ap. Value	$8,200,000
entire site sf	358,325
$/sf	$22.88

Shared Land Apreciation	
Land Value	
Land Value	6,027,399
less Z&E value	(904,110)
Net Land Value	5,123,289

Land Basis		
Land at $6/sf	1,580,316	47.6%
HP - MPI	1,741,721	52.4%
Total Basis	3,322,037	
Appreciation	1,801,252	

Allocated Appreciation		
UTA Share	856,868	47.6%
HP Share	944,384	52.4%
Total Allocated	1,801,252	

Final Distribution in Waterfall, step 7		
Cash avail. after step 6		6,683,509
Distrbutions		
HP Promote	63%	4,196,876
HP share of bal.	20%	1,324,181
UTA Share	17%	1,162,452
TOTAL	100%	6,683,509

EXHIBIT F

EXAMPLE OF AVAILABLE CASH DISTRIBUTIONS UNDER SECTION 6.1

UTA Cash Flow	
IRR	10.00%
Mo IRR	0.7974%
Periods	48
Closing	(1,580,316)
1	-
2	-
3	-
4	-
5	-
6	-
7	-
8	-
9	-
10	-
11	-
12	-
13	-
14	-
15	-
16	-
17	-
18	-
19	-
20	-
21	-
22	-
23	-
24	-
25	-
26	-
27	-
28	-
29	-
30	-
31	-
32	-
33	-
34	-
35	-
36	-
37	-
38	-
39	-
40	-
41	-
42	-
43	-
44	-
45	-
46	-
47	-
48	2,313,741
IRR =	*10.00%*

Summary	
Return Capital	1,580,316
Dist., 1st tier	733,425
Total Distrib.	2,313,741

Exhibit G

Reimbursed Pre-development Expense

Est. Pre Dev costs at Closing	
Hard Costs	
Jacobsen Site Prep	980,722
HUNT ELECTRIC, INC.	95,000
Rocky Mountain Power	45,880
	1,121,602
Soft Costs	
Architectural Fees	1,455,046
Engineering Fees	165,947
Permit and Impact Fees	1,350
FF&E	-
Lender Legal and DD	-
Third Party CM Fees	84,500
Inspections and Testing	-
Legal	83,778
Closing Costs	6,310
Marketing	-
Insurance	-
Property Tax	-
Operating Reserve	-
Development Fee: 3%	-
Contingency	-
sub-total	1,796,931
TOTAL COSTS	2,918,533

Exhibit B
(Limited Liability Company Agreement of East Village 3 LLC)

20-P00013

LIMITED LIABILITY COMPANY AGREEMENT

OF

EAST VILLAGE 3 LLC

Dated as of June __, 2020

LIMITED LIABILITY COMPANY AGREEMENT

OF

EAST VILLAGE 3 LLC

TABLE OF CONTENTS

Page

EXHIBITS

LIMITED LIABILITY COMPANY AGREEMENT

OF

EAST VILLAGE 3 LLC

THIS LIMITED LIABILITY COMPANY AGREEMENT OF **EAST VILLAGE 3 LLC** (the "**Company**") is entered into as of June __, 2020 ("**Effective Date**"), by and between **HPUTA East Village 3 LLC**, a Utah limited liability company, as the initial Operating Member ("**Developer**"), and **BMF IV UT Alta Vue LLC**, a Delaware limited liability company, as a non-operating Member of the Company ("**Investor Member**").

PRELIMINARY STATEMENTS:

WHEREAS, Utah Transit Authority, a large public transit district of the State of Utah ("**UTA**"), and East Village Apartment Investments 3 LLC, a Utah limited liability company, have formed the Developer and entered into an operating agreement to act as the Operating Member of the Company for the development of the Project (defined below) on the Project Land (defined below), subject to the terms of this Agreement;

WHEREAS, the Company has by assignment become the "Developer" under that certain Development Agreement ("**Master Development Agreement**") as of the September 30, 2014 by and between UTA and EAST VILLAGE. INVESTMENTS LLC, a Utah limited liability company ("**Master Developer**"), for the development of the Project on the Project Land, in return for which the Company has agreed to reimburse Developer for certain pre-development costs incurred relative to the Project and the Parking Structure (defined below) in the amount of $_____ (the "**Master Developer Pre-Development Costs**");

WHEREAS, pursuant to the Master Development Agreement, the Company seeks to develop the Project as part of a transit-oriented development, which development will include, among other things, the Project, the UTA Property (which consists of the a station, platforms and other improvements as part of the construction of the TRAX Line, which is the light rail line, currently operated between the Salt Lake City Central Station in Salt Lake City and the Draper TRAX Station in Draper, Utah) and a Parking Structure for the benefit of the public in the use of the TRAX Line and the Project's residential occupants and their invitees;

WHEREAS, the Certificate of Formation of the Company (the "**Certificate**") was filed with the Secretary of State of the State of Delaware on September 19, 2019, but the Company has not conducted business from its formation until the Effective Date;

WHEREAS, from and after the Effective Date, this Agreement shall constitute the "limited liability company agreement" of the Company under the Act;

WHEREAS, Developer and Investor Member have agreed to enter into this Agreement for the purposes set forth in Section 2.1 of this Agreement; and

WHEREAS, on the Effective Date, the Company is issuing Interests to each Member in exchange for such Member's Required Capital Contributions made and to be made as provided herein;

WHEREAS, currently the Project Land which is to be contributed as a Capital Contribution by the Developer is part of a larger tract of land (the "**Development Land**"), the remaining portion of which is the land upon which the Parking Structure is to be constructed by UTA (**"Parking Structure Land**");

WHEREAS, in order to allow the Company or a subsidiary thereof to construct, operate and own the Project and UTA to construct, operate and own the Parking Structure, separately, the Development Land is to be subdivided into two separate land parcels: (i) the Project Land to be owned in fee by the Company or a subsidiary thereof, and (ii) the Parking Structure Land to be owned in fee by UTA, subject to the COREA (defined below);

WHEREAS, there is a delay in finalizing the proposed plat of subdivision, a draft of which is attached hereto as **Exhibit A-1** (the "**New Plat**"), with Lot __ as depicted thereon, being the Project Land and Lot __ as depicted thereon, being the Parking Structure Land;

WHEREAS, the Company seeks to start construction of the Project and UTA seeks to start construction of the Parking Structure prior to the recording of the New Plat;

WHEREAS, the Company agrees that in order to facilitate construction of the Project without delay, it will accept the contribution of the entire Development Land, and in order to facilitate UTA's construction of the Parking Structure it agrees to ground lease the Parking Structure Land to UTA pursuant to the terms of the Ground Lease attached hereto as **Exhibit K** (the "**Ground Lease**"), which Ground Lease provides that upon the recording of New Plat, the Company (or a subsidiary thereof, if applicable) shall convey the Parking Structure Land to UTA, a condition of such conveyance being that concurrently with the recording of the deed for the Parking Structure Land, the COREA, is recorded;

WHEREAS, in furtherance of the development of the Parking Structure, UTA has executed that certain Construction Agreement RFP 18-2800TP (the "**Wadsworth Contract**") with Wadsworth Brothers Construction, Inc. ("**Wadsworth**"), to construct the Parking Structure in accordance with the Parking Structure Budget;

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements herein contained, Developer and Investor Member hereby agree as follows:

ARTICLE I
DEFINITIONS

12.1 Closing. "**12.1 Closing**" shall have the meaning set forth in Section 12.2(b).

12.1 Closing Date. "**12.1 Closing Date**" shall have the meaning set forth in Section 12.2(b).

12.1 Election Period. "**12.1 Election Period**" shall have the meaning set forth in Section 12.1.

12.1 Marketing Period. "**12.1 Marketing Period**" shall have the meaning set forth in Section 12.1.

12.1 Third-Party Offer Price. "**12.1 Third-Party Offer Price**" shall have the meaning set forth in Section 12.1.

Act. "**Act**" shall mean the Delaware Limited Liability Company Act, as from time to time amended.

Additional Capital Contributions. "**Additional Capital Contributions**" means Capital Contributions made pursuant to Section 3.1(c) plus any Capital Contributions made after Stabilization, if approved by all the Members.

Adjusted Capital Account Deficit. "**Adjusted Capital Account Deficit**" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant fiscal year or other relevant period, after giving effect to the following adjustments: (i) crediting to such Capital Account any amounts that such Member is obligated to restore or is deemed to be obligated to restore pursuant to Regulations sections 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1), and 1.704-2(i)(5), and (ii) debiting to such Capital Account the items described in Regulations section 1.704-1(b)(2)(ii)(d)(4), (5), and (6). The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Regulations section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

Affiliate. "**Affiliate**" means, with respect to any Person, any Person who, directly or indirectly (including through one or more intermediaries), controls, is controlled by, or is under common control with, such Person.

Affiliate Agreement. "**Affiliate Agreement**" means any agreement concurrently or hereafter made or entered into under, pursuant to, or in connection with this Agreement or the Project between (i) a Member or any of its Affiliates or Affiliated Persons, on the one hand, and (ii) one or more of the Company or any Company Subsidiary, and their respective Affiliates, on the other hand.

Affiliated Person. "**Affiliated Person**" means, with respect to any Person, any officer, director, employee, trustee, shareholder, manager, member, partner or relative within the second degree of kindred of the Person in question.

Agreed Land Value. "**Agreed Land Value**" shall have the meaning set forth in Section 3.1(a)

Agreement. "**Agreement**" means this Limited Liability Company Agreement, as it may be amended from time to time in accordance with Section 13.7.

Annual Update. "**Annual Update**" means the annual plan and budget for the Company proposed to the Members for approval pursuant to Section 8.4(b).

Applicable Sale Interests. "**Applicable Sale Interests**" shall have the meaning set forth in Section 11.1(b).

Approved Annual Update. "**Approved Annual Update**" means the Annual Update of the Company approved (or deemed to have been approved) by the Members pursuant to Section 8.4(b), as the same may be amended from time to time as herein provided.

Bad Conduct. "**Bad Conduct**" means acts or omissions constituting gross negligence, willful or wanton misconduct, fraud, intentional misrepresentation, embezzlement or misappropriation of funds or property, bad faith or conviction of a crime of moral turpitude or any felony, whether or not such conviction is being appealed or otherwise held in abeyance (including but not limited to conduct with respect to which the Person makes a plea of no contest).

Bankruptcy. "**Bankruptcy**" of a Person shall be deemed to have occurred upon the happening of any of the following: (i) the filing by such Person of an application for, or a consent to, the appointment of a trustee for such Person's assets; (ii) the filing by such Person of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing its inability to pay its debts as they come

due; (iii) the making by the Person of a general assignment for the benefit of creditors; (iv) the filing by the Person of an answer admitting the material allegations of, or its consenting to or defaulting in answering, a bankruptcy petition filed against it in any bankruptcy proceeding; (v) the entry of an order, judgment, or decree by any court of competent jurisdiction adjudicating the Person a bankrupt or appointing a trustee of its assets, and such order, judgment, or decree continues unstayed and in effect for a period of 90 days; or (vi) if any petition for same shall be filed against a Person and such petition is not dismissed within one hundred twenty (120) days.

Book Depreciation. "**Book Depreciation**" means, with respect to any Company asset for each fiscal year, the Company's depreciation, amortization, or other cost recovery deductions determined for federal income tax purposes, except that if the Book Value of an asset differs from its adjusted tax basis at the beginning of such fiscal year, Book Depreciation shall be an amount which bears the same ratio to such beginning Book Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such fiscal year bears to such beginning adjusted tax basis; *provided*, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such fiscal year is zero and the Book Value of the asset is positive, Book Depreciation shall be determined with reference to such beginning Book Value using any permitted method selected by the Members in accordance with Regulations section 1.704-1(b)(2)(iv)(g)(3).

Book Value. "**Book Value**" means, with respect to any Company asset, the adjusted basis of such asset for federal income tax purposes, except as follows:

(a) the initial Book Value of any Company asset contributed by a Member to the Company shall be the gross fair market value of such Company asset as of the date of such contribution as agreed by the Members;

(b) immediately prior to the distribution by the Company of any Company asset to a Member, the Book Value of such asset shall be adjusted to its gross fair market value (taking into account Code Section 7701(g)) as of the date of such Distribution as reasonably determined by the Members;

(c) the Book Value of all Company Assets shall be adjusted to equal their respective gross fair market values, as reasonably determined by the Members, as of the following times:

(i) the acquisition of an additional membership interest in the Company by a new or existing Member in consideration of a Capital Contribution of more than a *de minimis* amount;

(ii) the distribution by the Company to a Member of more than a *de minimis* amount of property (other than cash) as consideration for all or a part of such Member's membership interest in the Company;

(iii) the liquidation of the Company within the meaning of Regulations section 1.704-1(b)(2)(ii)(g); and

(iv) any other event permitted by Regulations section 1.704-1(b)(2)(iv)(f);

provided, that an adjustment pursuant to clauses (i) or (ii) above need not be made if the Members reasonably determine that such adjustment is not necessary or appropriate to reflect the relative economic interests of the Members and that the

absence of such adjustment does not adversely and disproportionately affect any Member;

(d) the Book Value of each Company asset shall be increased or decreased, as the case may be, to reflect any adjustments to the adjusted tax basis of such Company asset pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Account balances pursuant to Regulations section 1.704-1(b)(2)(iv)(m); *provided*, that Book Values shall not be adjusted pursuant to this subsection (d) to the extent that an adjustment pursuant to subsection (c) above is made in conjunction with a transaction that would otherwise result in an adjustment pursuant to this subsection (d); and

(e) if the Book Value of a Company asset has been determined pursuant to subsection (a) or adjusted pursuant to subsections (c) or (d) above, such Book Value shall thereafter be adjusted to reflect the Book Depreciation taken into account with respect to such Company asset for purposes of computing Net Income and Net Losses.

Business Day. "**Business Day**" shall have the meaning set forth in Section 13.23.

Broker. "**Broker**" means a senior professional at Jones Lang LaSalle, CBRE, Cushman and Wakefield, Colliers International and Newmark Grubb and such other real estate brokerage companies approved in writing by the Members, provided at the time of selection the broker selected is not an Affiliate of either Member, licensed in Utah to represent buyers and sellers of investment multi-family properties in the market in which the Project is located and has been actively and principally engaged in multi-family transactions for the immediately preceding ten (10) years and who at such time maintains an office in the market in which the Project is located.

Broker Opinion of Value. "**Broker Opinion of Value**" means a written educated estimate of value of a commercial property's market value, based upon a careful assessment of market value and property condition, issued by a Broker with the approval of the investment property group with which the Broker is associated. The Broker Opinion of Value shall contain a market overview and value matrix which shows (i) comparable transactions for comparable properties, (ii) if applicable, a ten year cash flow projection for the subject property, and (iii) contains a range of values, based on property condition, location, vacancy and projected lease-up time, with a mid-point (or so –called "strike price") of value.

Capital Account. "**Capital Account**" means a financial account to be established and maintained by the Company for each Member as computed from time to time in accordance with Section 6.1 hereof. A transferee of a Member's Interest shall succeed to the transferor's Capital Account with respect to the transferred Interest.

Capital Call. "**Capital Call**" means a request by the Operating Member or Investor Member for Capital Contributions, (including Cost Overruns) pursuant to Section 3.1, Section 3.2(c), Section 3.4(b), Section 4.5, Section 4.6 and Section 4.11(b) or any other applicable provision of this Agreement.

Capital Contribution. "**Capital Contribution**" means, with respect to any Member, any cash or property contribution made or treated as having been made by the Member pursuant to this Agreement.

Capital Transaction. "**Capital Transaction**" shall mean (a) any sale, exchange, taking by eminent domain, damage, destruction or other disposition of all or any part of the assets of the Company or a Company Subsidiary, other than tangible personal property disposed of in the ordinary course of business; or (b) any financing or refinancing of any Company's or Company Subsidiary's indebtedness.

Cause Event. "**Cause Event**" shall mean (i) Bad Conduct of a Person who is an officer, director, agent and/or employee of such Member or its Affiliate, unless within ten (10) days following Member's knowledge of the same the Person who commits or engages in any such acts, is terminated as an officer, director, agent and/or employee of such Member and the Member takes all actions necessary (without any credit to its Capital Account) to make the Company and the other Member whole for any direct loss suffered by them (except in the case of an agent such indemnity shall not apply), and indemnifies, defends and holds them harmless, from any direct loss, cost, expense or damage arising out of such actions; provided, however, that the foregoing cure right shall not apply with respect to Bad Conduct that is committed by a Key Person, (ii) a material breach of or default under this Agreement with respect to the payment of money due hereunder as to Required Capital Contributions and/or a failure by a Member to timely fund any Developer Responsible Cost Overruns or Investor Member Responsible Cost Overruns, as the case may be) which such material breach or default continues beyond any applicable notice and cure periods, or if no such notice and cure period shall be contained herein, which such material breach or default continues uncured for a period of ten (10) days after delivery of written notice (a "**Cause Event Notice**") from the non-defaulting party, (iii) other than breaches or defaults covered by the other clauses in this definition and subject to tolling of any deadline during the continuance of a Force Majeure that affects a Member's ability to comply with such deadline, a material breach of or default under this Agreement or any Affiliate Agreement in the performance or observance of any material covenants or obligations under such agreement, which such material breach or default continues beyond any applicable notice and cure periods, or if no such notice and cure period shall be contained herein or therein, which such material breach or default continues uncured for a period of thirty (30) days after delivery of a Cause Event Notice from the non-defaulting party; provided that, if such breach or default is of a nature that it is susceptible of cure but cannot reasonably be cured within such thirty (30) day period, the defaulting Member shall have ninety (90) days after delivery of the Cause Event Notice to cure the same, so long as the defaulting Member has promptly commenced to cure such breach or default and thereafter diligently and continuously prosecutes such cure, (iv) a Key Person Event, (v) an unpermitted Transfer or Pledge of all or any part of a Member's Interests, or (vi) failure by Operating Member to apply casualty or condemnation proceeds or to pay insurance or taxes (to the extent Company funds are available) in each case in accordance with the Financing Documents.

Cause Event Notice. "**Cause Event Notice**" shall have the meaning set forth in the definition of the term "Cause Event."

Certificate. "**Certificate**" shall have the meaning set forth in the Preliminary Statements.

Change in Control. "**Change in Control**" means, (i) with respect to (A) the Developer, Development Manager no longer controls Developer and (B) the Development Manager, which is the non-UTA member of Developer, any time when one or more of Bruce Bingham, George Arnold, Ronald C. Lunt, Mark Hamilton and Kirk Hamilton ceases to own, directly or indirectly, more than fifty percent (50)% of the equity interests of Development Manager or otherwise ceases to control Development Manager, and (ii) with respect to Investor Member, any time (A) when Investor Member is not controlled by, or (B) when more than fifty percent (50%) of the equity interests of Investor Member are not owned, directly or indirectly, by, any Person that is directly or indirectly (including through one or more intermediaries) controlled by, or under common control with Bridge Investment Group LLC, a Utah limited liability company.

Code. "**Code**" means the Internal Revenue Code of 1986, as amended from time to time.

Company. "**Company**" shall have the meaning set forth in the Preamble.

Company Assets. "**Company Assets**" means all interests, properties and rights of any kind owned by the Company or a Company Subsidiary.

Company Available Cash Flow. "**Company Available Cash Flow**" means, with respect to the Company, the excess of (i) all revenues and receipts of the Company from all sources for the period in question, including funds of the Company arising from a Capital Transaction (except in the case of proceeds from the Construction Loan, if restricted by the Loan document under any Financings under any Financing), determined in accordance with the cash receipts and disbursements method of accounting, including any amounts expended from any of the Company's reserve accounts which were deemed an expenditure when deposited pursuant to clause (ii) (whether utilized to pay costs and expenditures of the Company or distributed to the Members), over (ii) all expenditures for the period in question, including actual costs incurred in connection with a Capital Transaction, determined in accordance with the cash receipts and disbursements method of accounting, including all cash operating expenses, capital expenditures, debt service payments and reasonable deposits to the Company's reserve accounts (including reserves for taxes and insurance), all as determined in accordance with this Agreement, the Development Plan, Residential Development Budget and/or Operating Budget, as applicable, or as otherwise approved by Investor Member.

Company Bank Accounts. "**Company Bank Accounts**" shall have the meaning set forth in Section 8.5.

Company Minimum Gain. "**Company Minimum Gain**" means "partnership minimum gain" as defined in Regulations section 1.704-2(b)(2) and determined in Regulations section 1.704-2(d)(1), substituting the term "Company" for the term "partnership" as the context requires.

Company Subsidiary. "**Company Subsidiary**" shall have the meaning set forth in Section 2.1.

Construction Contract. "**Construction Contract**" means the guaranteed maximum price construction contract for the construction of the Improvements entered into between the Company (or a Company Subsidiary) and the General Contractor, which has been approved by Investor Member.

Construction Funding Conditions. "**Construction Funding Conditions**" means the following conditions precedent to Investor Member's obligations to fund Capital Contributions in connection with the Development Plan or any Approved Annual Update: (i) construction Financing with a lender approved by Investor Member shall have been closed on terms and conditions approved by Investor Member, (iii) written evidence reasonably satisfactory to Investor Member that any Permits that are required to commence construction of the Improvements have been or will be obtained (or all conditions to the issuance of such Permits will be satisfied), (iv) the final Development Plan (including, without limitation, the Development Budget, a project schedule and the Plans) shall have been approved by Investor Member and Developer, (v) Developer is not in default under any provision of this Agreement, and (vi) each of the representations and warranties contained in this Agreement and in each Affiliate Agreement which has then been executed by both Members or their Affiliates as of the Effective Date shall be true and correct in all material respects.

Construction Lender. "**Construction Lender**" means The Canadian Imperial Bank of Commerce.

Construction Loan. "**Construction Loan**" means that certain construction loan with the Construction Lender.

Contributing Member. "**Contributing Member**" shall have the meaning set forth in Section 3.5(a).

Contingency. "**Contingency**" means the line item in the Residential Development Budget labeled "Contingency" which has been calculated at three percent (3%) of the sum of Hard Costs and Soft Costs (exclusive of Financing costs, including interest) set forth in the Residential Development Budget as of the closing of the Construction Loan, but which may, in the sole discretion of the Operating Member, be increased by the approved amount of the Two Percent Contingency as provided in Section 4.5(a)(x), and when contributed, such amountshall be a Capital Contribution under Section 3.1(b). Notwithstanding the foregoing, the use of the term "Contingency" shall not include any portion of the Two Percent Contingency unless and until the use thereof has been approved.

Control. "**control**," when used with respect to any specified Person, will mean the power, direct or indirect, to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise; and the terms "controlling" and "controlled" will have correlative meanings.

Conversion Period. "**Conversion Period**" shall have the meaning set forth in Section 3.5(b).

COREA. "**COREA**" means that certain Parking Structure Construction, Operation and Easement Agreement by and between UTA and the Company, which shall be substantially in the form attached hereto as **Exhibit J** and which is to be recorded upon the conveyance by the Company of the Parking Structure Land to UTA.

Cost Overruns. "**Cost Overruns**" means (i) for each line item of the Residential Development Budget, all costs and expenses of the Company (or any Company Subsidiary) paid or incurred which exceed the amount shown for such line items in the Residential Development Budget at the execution of the Construction Loan, as modified by the provisions of Section 4.5(a)(x) (taking into account, without limitation, any application of Cost Savings in other line items or the Contingency (including, if applicable, the Two Percent Contingency) as provided therein or in the Development Agreement), and (ii) any amounts required to be paid under the Financing Documents as loan balancing deposits or other payments to address budget overruns or the budget being out of balance, which funds are not thereafter released to the Borrower.

Cost Savings. "**Cost Savings**" means, except in the case of those line items pertaining to Non-Managed Soft Costs, the aggregate sum of all permanent savings, as to each line item, upon completion of all work and payment of all expenses allocable to such line item or in the aggregate the sum of all permanent savings in the Residential Development Budget, as the case may be, such Cost Savings being determined prior to Substantial Completion by Development Manager pursuant to the Development Agreement, or following Substantial Completion (at which time there shall be a final determination by Development Manager of Cost Savings as of Substantial Completion), by Developer in accordance with Section 3.4(e).

Crystallization. "**Crystallization**" shall have the meaning set forth in Section 12.1.

Crystallization Notice. "**Crystallization Notice**" shall have the meaning set forth in Section 12.1.

Default Contribution. "**Default Contribution**" shall have the meaning set forth in Section 3.5(a).

Default Contribution Loan. "**Default Contribution Loan**" shall have the meaning set forth in Section 3.5(b).

Defaulting Member. "**Defaulting Member**" shall have the meaning set forth in Section 3.5(a).

Defaulting Party. "**Defaulting Party**" shall have the meaning set forth in Section 6.8.

Developer. "**Developer**" shall have the meaning set forth in the Preamble.

Developer 12.1 Election Notice. "**Developer 12.1 Election Notice**" shall have the meaning set forth in Section 12.1.

Developer Responsible Cost Overruns. "**Developer Responsible Cost Overruns**" means all Cost Overruns pertaining to Hard Costs and Managed Soft Costs (and any increases to the Non-Managed Soft Costs arising from a Cause Event by Developer or its Affiliates), net of any Cost Savings (other than Cost Savings arising from Non-Managed Soft Costs) or Contingency that may be applied to reduce Developer Responsible Cost Overruns pursuant to Section 3.4(e) and Section 4.5(a)(x), other than (i) Cost Overruns expressly approved by Investor Member in writing as Shared Cost Overruns; (ii) Cost Overruns arising out of or resulting from acts of Force Majeure; (iii) any Loan Guaranty Indemnification Obligation arising under Section 3.2(c); and (iv) Investor Member Responsible Cost Overruns.

Developer's Promote. "**Developer's Promote**" means the amounts distributable to Developer pursuant to clause (A) of each of Sections 6.6(b)(iii), 6.6(b)(iv) and 6.6(b)(v).

Development Fee. "**Development Fee**" shall have the meaning set forth in Section 10.2.

Development Agreement. "**Development Agreement**" means that certain Development Agreement dated as of the Effective Date by and between the Company, as owner, and the Development Manager.

Development Manager. "**Development Manager**" means **EAST VILLAGE APARTMENT INVESTMENTS 3 LLC**, a Utah limited liability company, which is an Affiliate of Developer.

Development Plan. "**Development Plan**" means the development plan for the Project, as such plan is amended from time to time, in accordance with this Agreement. The Development Plan contains and consists of (i) a general description of the scope of the Project, (ii) a general schedule of significant events, (iii) targeted revenue projections, (iv) detailed description of the zoning and other entitlements applicable to the Project, (v) a conceptual site plan for the Project, (vi) the Residential Development Budget, (vii) the terms of any Financing commitments, if any, and (viii) a description of the Additional Capital Contributions to be required of the Members in connection with the Development Plan.

Dilution Percentage. "**Dilution Percentage** shall have the meaning set forth in Section 3.5(c)(i)

Disqualification Condition. "**Disqualification Condition**" shall have the meaning set forth in Section 7.1(a).

Effective Date. "**Effective Date**" shall have the meaning set forth in the Preamble.

Emergency Circumstance. "**Emergency Circumstance**" shall have the meaning set forth in Section 3.1(c).

Entitlements. "**Entitlements**" means all environmental, zoning, land use, subdivision, design review and site plan approvals and other permits (as applicable), required, by the applicable governmental authority, to commence construction and development of the Project, including, without limitation, environmental impact reports and conditional use permits, for the Project required under all applicable laws, statutes, ordinances, rules, regulations, orders and permits of all governmental agencies having jurisdiction over the Project Land and the Project.

ERISA. "**ERISA**" shall mean The Employee Retirement Income Security Act of 1974, as amended.

Excess Distributions. "**Excess Distributions**" shall have the meaning set forth in Section 3.1(d).

Fair Market Value. "**Fair Market Value**" shall have the meaning set forth in **Exhibit G**.

Financing. "**Financing**" means any loan, including the Construction Loan, or other borrowings by the Company or a Company Subsidiary, in accordance with the Development Plan or otherwise in accordance with this Agreement, for the development, construction, and operation of the Project, which is secured, in whole or in part, by Company Assets and/or the Project.

Financing Documents. "**Financing Documents**" means the documents evidencing, securing or otherwise governing a Financing.

First Offer Price. "**First Offer Price**" shall have the meaning set forth in Section 11.2(a).

Force Majeure. "**Force Majeure**" means (i) damage or destruction by fire or other casualty; (ii) lightning, tornadoes, hurricanes, earthquakes, floods, or other acts of God (including extended periods of precipitation or severe weather beyond those normally experienced in Salt Lake City, Utah) and delays arising out of a "pandemic" or similar type event (including, without limitation, subsequent occurrences of the COVID-19 pandemic for which a national or local emergency has been declared), (iii) a strike, lockout, work stoppage, or failure of utility services that is not specific to the Project; (iv) war, strikes, riots, or other civil insurrection or similar civil disturbance; (v) governmental actions that a prudent developer could not reasonably anticipate; (vi) unanticipated subsurface site conditions; and (vii) shortages or unavailability of materials or labor and not foreseeable by Developer at the later of the time of the Development Plan or the most recent Annual Update, including those caused by the indirect effects of the events set forth in clauses (i) - (vii); provided that, in each case, Operating Member notifies Investor Member within ten (10) days after learning of such Force Majeure Event.

Fundamental Major Decisions. "**Fundamental Major Decisions**" means (i) any of the actions set forth in Section 4.6(b), (ii) an amendment to this Agreement in a manner that has a material and disproportionate adverse effect on Developer, and (iii) any Major Decision proposed by Investor Member that is not consistent in all material respects with the Residential Development Budget, Development Plan, any Operating Budget or any Approved Annual Update.

General Contractor. "**General Contractor**" is the general contractor named in Section 10.2(b) and any replacement thereof retained by the Company pursuant to this Agreement.

Governmental Authority. "**Governmental Authority**" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

Guarantor. "**Guarantor**" shall have the meaning set forth in Section 3.2(c).

Hard Costs. "**Hard Costs**" means costs incurred to complete the improvements comprising the Project, including costs for site work, off site work, shell and core building, landscaping, and other line items listed as "Hard Costs" in the Residential Development Budget; specifically excluding, however, (i) Agreed Land Value, (ii) cost increases resulting from scope changes approved by the Members, or from Investor Member's scope changes, other than those required by changes in the law or building codes prior

to the date of the Residential Development Budget approved under the Construction Loan document under any Financings; (iii) Cost Overruns that constitute permitted increases to the Hard Cost line items set forth in the Residential Development Budget for the Project pursuant to Section 4.5(a)(x); (iv) cost increases resulting from subsurface conditions, including debris or other soil conditions requiring excavation/remediation which were not identified in the geotechnical report or otherwise known by Developer or its Affiliates to exist as of the Effective Date; (v) environmental conditions not identified in the environmental assessment obtained for the Project but only to the extent such costs are not covered by the environmental insurance policy which names the Company as an insured; (vi) the Development Fee; (vii) Soft Costs; and (viii) the Company's share of the costs incurred in the construction of the Parking Structure pursuant to the Parking Structure Budget.

Improvements. "**Improvements**" means the improvements to be constructed on the Project Land as part of the Project pursuant to the Development Plan.

Interest. "**Interest**" means, as to any Member, all of the Member's interest in the Company, including any and all benefits to which the holder of an interest in the Company may be entitled as provided in this Agreement and under the Act, together with all obligations of the Member to comply with the terms and provisions of this Agreement (including, without limitation, rights to the profits and losses of the Company pursuant to the terms of this Agreement).

Internal Rate of Return. "**Internal Rate of Return**" or "**IRR**" means, with respect to a Member, the discount rate at which the net present value of the Member's applicable Capital Contributions to the Company and the distributions from the Company to such Member equals zero, calculated for each such Capital Contribution or distribution from the date such Capital Contribution or distribution was made, with all contribution and distributions being treated as occurring on the last day of the month in which they are made. The Internal Rate of Return shall be calculated using the XIRR function in Microsoft Excel.

Investor Member. "**Investor Member**" shall have the meaning set forth in the Preamble.

Investor Member 12.1 Election Notice. "**Investor Member 12.1 Election Notice**" shall have the meaning set forth in Section 12.1.

Investor Member Responsible Cost Overruns. "**Investor Member Responsible Cost Overruns**" means any Cost Overruns arising out of or resulting from the Bad Conduct of Investor Member.

Key Persons. "**Key Persons**" means each of Bruce Bingham and George Arnold, unless and until such time as a replacement Key Person or Key Persons is appointed pursuant to the definition of Key Person Event.

Key Person Event. "**Key Person Event**" means (i) a Change in Control of Developer; (ii) the Bankruptcy of Developer or all of the Key Persons; or (iii) any other event or circumstance which results in all the Key Persons no longer being actively involved in the management and affairs of the Company, each Company Subsidiary and Developer for a continuous period of sixty (60) days; provided, however, that in each case of subsections (ii) and (iii) above, Developer may propose to replace a Key Person with one or more experienced and reputable Persons which such Persons shall only be deemed to replace the Key Person responsible for the occurrence of such Key Person Event in their roles as Key Person upon the approval of Investor Member, in its reasonable discretion. In the event that Investor Member does not approve the initially proposed replacement Key Person pursuant to the preceding sentence, Developer shall have one additional period of thirty (30) days following such disapproval to propose an alternative replacement to the applicable Key Person; such alternative replacement shall be subject to Investor Member's reasonable approval.

Law. "**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

Liquidity Option Notice. "**Liquidity Option Notice**" shall have the meaning set forth in Section 12.1.

Liquidity Purchase Price. "**Liquidity Purchase Price**" shall have the meaning set forth in Section 12.2(a).

Loan-to-Value Ratio. "**Loan-to-Value Ratio**" means, as of the date of the closing of a Financing, the ratio of (i) the aggregate amount committed for such Financing to (ii) the value of the Project, such value to be determined pursuant to a Project appraisal prepared by a third-party appraiser reasonably selected by the applicable lender.

Loan Guaranty Indemnification Obligation. "**Loan Guaranty Indemnification Obligation**" shall have the meaning set forth in Section 3.2(c).

Loan Guaranty Losses. "**Loan Guaranty Losses**" shall have the meaning set forth in Section 3.2(c).

Lock-Out Period. "**Lock-Out Period**" means the period beginning on the Effective Date and ending on the later to occur of when the Project achieves Stabilization or three years after the Effective Date.

Major Decision. "**Major Decision**" shall have the meaning set forth in Section 4.5.

Managed Soft Costs. "**Managed Soft Costs**" means those Soft Costs pertaining to the architectural, design and engineering related to the Project, and specifically excluding the costs of interest, taxes, insurance, financing and similar fees and other financing costs.

Member Loan. "**Member Loan**" means a loan made by a Member to the Company pursuant to the provisions of Section 3.3.

Member Nonrecourse Debt. "**Member Nonrecourse Debt**" shall have the meaning ascribed to the term "partner nonrecourse debt" in Regulations section 1.704-2(b)(4).

Member Nonrecourse Debt Minimum Gain. "**Member Nonrecourse Debt Minimum Gain**" shall have the meaning ascribed to the term "partner nonrecourse debt minimum gain" in Regulations section 1.704-2(i)(2), substituting the term "Member" for the term "partner" as the context requires.

Member Nonrecourse Deductions. "**Member Nonrecourse Deductions**" means any item of Company loss, deduction, or expenditure under Section 705(a)(2)(B) of the Code that is attributable to a Member Nonrecourse Debt, as determined pursuant to Regulations section 1.704-2(i)(2).

Members. "**Members**" means each of Developer, Investor Member, and their permitted successors and assigns, any one of which may be referred to individually as a "**Member**."

Members Schedule. "**Members Schedule**" means the schedule of all Members maintained by the Operating Member, which sets forth the respective legal names, mailing addresses, Capital Contributions, and the Ownership Percentages of each Member, as adjusted from time to time, the initial copy of which is attached hereto as **Exhibit B**.

Net Income and Net Loss. "**Net Income**" and "**Net Loss**" means, for each fiscal year or other relevant period, an amount equal to the Company's taxable income or loss for such fiscal year or relevant period, determined in accordance with Code Section 703(a) (for this purpose, all items of income gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Income or Net Loss shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B), or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Income or Net Loss shall be subtracted from such taxable income or loss;

(c) If the Book Value of any Company asset is adjusted pursuant to Regulations section 1.704-1(b)(2)(iv)(f), the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Income or Net Loss;

(d) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall (in accordance with Regulations section 1.704-1(b)(2)(iv)(g)) be computed by reference to the Book Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Book Value;

(e) In lieu of the deduction for depreciation, cost recovery, or amortization taken into account in computing such taxable income or loss, there shall be taken into account Book Depreciation determined in accordance with Regulations section 1.704-1(b)(2)(iv)(g)(3);

(f) To the extent that an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations section 1.704-1(b)(2)(iv)(m)(2) or Regulations section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of its Interest, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Members in accordance with their Ownership Percentage in the Company in the event that Regulations section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event that Regulations section 1.704-1(b)(2)(iv)(m)(4) applies; and

(g) Any items that are specially allocated pursuant to Sections 6.3(a)-6.3(f) shall not be taken into account in computing Net Income or Net Loss. The amount of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Section 6.3 shall be determined pursuant to rules analogous to those set forth in this definition.

Non-Managed Soft Costs. "**Non-Managed Soft Costs**" means those Soft Costs which are not Managed Soft Costs.

Nonrecourse Deductions. "**Nonrecourse Deductions**" shall have the meaning ascribed to such term in Regulations section 1.704-2(b)(1).

Operating Budget. "**Operating Budget**" means a general pro-forma budget on a calendar year (or, if applicable, a partial calendar year) basis for the operation and maintenance of the buildings and improvements constructed on the Project Land. The first Operating Budget shall apply to the period that commences upon substantial completion of any of the buildings and improvements contemplated by the Development Plan, and thereafter shall be updated pursuant to Annual Updates as set forth in Section 8.4(b).

Operating Member. "**Operating Member**" means Developer (unless Developer is removed as Operating Member pursuant to Section 4.2(c)) and any Persons hereafter elected or designated as the Operating Member of the Company as provided in this Agreement.

Ownership Percentage. "**Ownership Percentage**" means, with respect to any Member, (A) prior to a Crystallization, the fractional portion (expressed as a percentage) of the Interests held by such Member, determined by dividing (i) the Capital Contributions of such Member, by (ii) the Capital Contributions of all Members, subject to adjustment pursuant to Section 3.5(c), and (B) after a Crystallization, such Member's Post-Crystallization Ownership Percentage. On the Effective Date, the initial Ownership Percentages of the Members shall be eighty-eight percent (88%) with respect to Investor Member, and twelve percent (12%) with respect to Developer.

Parking Structure. "**Parking Structure**" means a two level parking facility with 517 parking spaces, which is intended to provide the necessary off-street parking for the Project and for patrons and personnel arriving at or departing from the adjoining TRAX Line Station, all as part of a transit-oriented development.

Parking Structure Budget. "**Parking Structure Budget** means the budget attached hereto as **Exhibit L.**

Partnership Audit Procedures. "**Partnership Audit Procedures**" means the provisions of Subchapter C of Chapter 63 of Subtitle F of the Code, as amended by P.L. 114-74, the Bipartisan Budget Act of 2015 (together with any subsequent amendments thereto, Regulations promulgated thereunder, and published administrative interpretations thereof).

Partnership Representative. "**Partnership Representative**" shall have the meaning set forth in Section 4.3(a).

Permitted Exceptions. "Permitted Exceptions" shall mean those title and survey exceptions pertaining to the Project Land listed on **Exhibit HI**

Person. "**Person**" means an individual, a trust, an estate, a governmental entity or subdivision, a partnership, a corporation, a joint venture, a company, a firm or any other entity whatsoever.

Plans. "**Plans**" means the plans, specifications, drawings and other materials which describe, in appropriate detail at the time, the improvements planned for the Project consistent with the Development Plan and any changes thereto as prepared by the Project Architect.

Pledge. "**Pledge**" means any voluntary pledge, mortgage, deed of trust, security interest or other consensual lien or hypothecation of, in or on any Member's Interest or right to receive distributions from the Company.

Post-Completion Capital Call. "**Post-Completion Capital Call**" shall have the meaning set forth in Section 3.1(c).

Post-Crystallization Ownership Percentage. "**Post-Crystallization Ownership Percentage**" shall have the meaning set forth in Section 12.3(c)(i).

Pre-Development Costs. "**Pre-Development Costs**" mean those third-party costs incurred by the Developer prior to the Effective Date relative to the development of the Project, including costs pertaining to the Parking Structure, all as listed on Schedule 3.1, which costs, along with the Master Developer Pre-Development Costs, are included in the Residential Development Budget.

Pre-Stabilization Major Decisions. "**Pre-Stabilization Major Decisions**" shall have the meaning set forth in Section 4.5(a).

Prime Rate. "**Prime Rate**" means the prime lending rate in effect from time to time at J. P. Morgan Chase in New York City, New York, or its successor. In the event no prime lending rate shall be in effect at J.P. Morgan Chase in New York City, New York, "**Prime Rate**" shall mean the highest domestic prime lending rate published from time to time in the Wall Street Journal.

Project. "**Project**" means the Project Land and the Improvements to be constructed thereon, in accordance with the Development Plan approved as provided herein, including all buildings, structures and improvements now or hereafter erected on, in, under or above the Project Land. As more particularly described in the Development Plan, the Project will include the development of the Project Land to approximately 305 multifamily units with construction of related improvements and amenities.

Project Architect. "**Project Architect**" means IBI Group and any replacement thereof retained by the Company pursuant to this Agreement.

Project Costs. "**Project Costs**" means the costs and expenses of the development and construction of the Project.

Project Land. "**Project Land**" means that approximately 6.05 acre parcel of land located in Sandy, Utah, as more particularly depicted on **Exhibit A** hereto and which will be Lot _ on the New Plat.

Project Sale Offer. "**Project Sale Offer**" shall have the meaning set forth in Section 11.1(b).

Property Management Agreement. "**Property Management Agreement**" shall have the meaning set forth in Section 10.1.

Property Manager. "**Property Manager**" shall have the meaning set forth in Section 10.1.

Property Sale Election. "**Property Sale Election**" shall have the meaning set forth in Section 11.2(a).

Property Sale Offer. "**Property Sale Offer**" shall have the meaning set forth in Section 11.1(b).

Proposed 12.1 Offering Price. "**Proposed 12.1 Offering Price**" shall have the meaning set forth in Section 12.1.

Recourse Obligation. "**Recourse Obligation**" means an obligation under the Loan document under any Financings which would trigger a payment requirement under a guaranty to a lender under any Financing.

Regulations. "**Regulations**" means the Treasury Regulations promulgated pursuant to the Code.

Regulatory Allocations. "**Regulatory Allocations**" means the allocations set forth in Section 6.3(a)-(f) of this Agreement, which allocations are intended to comply with certain requirements of Regulations sections 1.704-1(b) and 1.704-2.

Required Capital Contributions. "**Required Capital Contributions**" means (i) the Capital Contributions required to be made of the Members under Section 3.1(a) and Section 3.1(b), including any then un-contributed Contingency, but not including any Capital Contribution to be made to pay for Shared Cost Overruns, except to the extent the Operating Member elects to apply any portion of the Contingency to cover such Shared Cost Overrun pursuant to Section 3.4(e).

Required Loan Guarantees. "**Required Loan Guarantees**" shall have the meaning set forth in Section 3.2(c).

Residential Development Budget. "**Residential Development Budget**" means the development budget with respect to the Project included as part of the Development Plan, as such budget may, from time to time, be amended in accordance with this Agreement, the current draft of which, as of the Effective Date, is attached hereto as **Exhibit D**, and which shall be updated to attach the final version approved by the Construction Lender at closing of the Construction Loan.

Response Notice. "**Response Notice**" shall have the meaning set forth in Section 11.2(a).

Response Period. "**Response Period**" shall have the meaning set forth in Section 11.2(a).

Reverse Contributions. "**Reverse Contributions**" shall have the meaning set forth in Section 3.1(d).

ROFO Closing Date. "**ROFO Closing Date**" shall have the meaning set forth in Section 11.2(b).

ROFO Interests. "**ROFO Interests**" shall have the meaning set forth in Section 11.2(a).

Shared Cost Overruns. "**Shared Cost Overruns**" means all Cost Overruns that are not Investor Member Responsible Cost Overruns or Developer Responsible Cost Overruns.

Soft Costs. "**Soft Costs**" means Managed Soft Costs plus legal and accounting fees and expenses, building permit fees and testing fees, financing costs and interest reserves, the Development Fee or other management and development fees, leasing commissions and other items listed as "Soft Costs" in the Residential Development Budget, including consulting services, operating expenses, real estate taxes and insurance until Stabilization, administrative fees, zoning fees, impact fees, and insurance. In addition, Soft Costs include those additional line items shown in the Residential Development Budget which are not Hard Costs or Managed Soft Costs such as furniture, fixtures and equipment for the clubhouse and other public amenities.

Sole Recourse Obligation. "**Sole Recourse Obligation**" means a Recourse Obligation, arising out of Bad Conduct that results in a breach of any Loan document under any Financing provisions which results in liability under a Loan Guaranty.

Special Party. "**Special Party**" shall have the meaning set forth in Section 13.19.

Stabilization. "**Stabilization**" means such point in time when possession has been delivered to tenants under fully executed leases with respect to at least ninety-two percent (92%) of all the apartment units in the Project, and such tenants have commenced paying rent (or would be paying rent but for rent

abatements, rent credits, rent holidays and other such inducements and concessions granted in accordance with leasing guidelines approved by Investor Member).

Substantial Completion. "**Substantial Completion**" means the issuance of a Final Certificate of Occupancy for all the multi-family buildings comprising the Project and final Project Architect signoff with the remaining punchlist items not exceeding than $100,000.

Tax Advance. "**Tax Advance**" shall have the meaning set forth in Section 6.9(a).

Transfer. "**Transfer**" means any sale, assignment, transfer, gift, conveyance or other disposition, whether voluntary or involuntary (by operation of Law or otherwise), of any Interest of a Member in the Company.

Two Percent Contingency. "T**wo Percent Contingency**" means two percent (2%) of the sum of Hard Costs and Soft Costs (exclusive of Financing costs, including interest) set forth in the Residential Development Budget as of the closing of the Construction Loan, for which the Developer may issue a Capital Call, in its sole discretion, as provided in Section 3.1(b).

Unrecovered Contribution Amount. "**Unrecovered Contribution Amount**" means, with respect to a Member, the amount of Capital Contributions made by such Member, decreased by the amount of money and the agreed upon fair market value of any property distributed by the Company to such Member pursuant to Section 6.6(b) (but excluding amounts distributed thereunder to a Member which constitute the principal amount of any Member Loan or Default Contribution Loan, or any interest accrued thereon, in accordance with Section 3.3 or Section 3.5(b)).

Valuation Procedures. "**Valuation Procedures**" shall mean the procedures for determining Fair Market Value as set forth in **Exhibit G**.

ARTICLE II
THE COMPANY

2.1 Purpose of the Company. The purposes of the Company include owning, managing, developing, constructing, operating, leasing, financing, selling and otherwise dealing with the Project in accordance with the Development Plan and as otherwise permitted pursuant to the terms hereof, and in all respects act as owner thereof, and engaging in any lawful transactions and activities permitted to be conducted by a limited liability company under the Act, the Code or any other applicable Law as may be necessary, incidental, or convenient to carry out such business of the Company, upon and subject to the terms and conditions of this Agreement. The business of the Company may be conducted directly by the Company or, if approved by the Members, through direct or indirect wholly-owned subsidiaries of the Company (each, a "**Company Subsidiary**" and collectively, the "**Company Subsidiaries**"). Unless otherwise consented to by Investor Member, each Company Subsidiary must be a "disregarded entity" for federal income tax purposes.

2.2 Company Name and Office. The name of the Company shall be East Village 3 LLC and the business of the Company shall be conducted under that name. The principal place of business of the Company shall be located at c/o Hamilton Partners, 222 Main Street, Suite 1760, Salt Lake City, Utah 84101. The Company may maintain other offices as may be designated from time to time by Operating Member for the purpose of carrying out the business of the Company. Operating Member shall give Investor Member written notice of any change in the principal place of business of the Company.

2.3 Qualification. Operating Member is authorized to do any and all acts necessary to authorize or qualify the Company to do business in each jurisdiction in which the Company conducts business, to the extent legally required to so qualify.

2.4 Registered Office and Agent. The Company shall maintain a registered office and agent in Delaware, as may be designated from time to time by the Operating Member. The initial registered office of the Company will be the office of the initial registered agent named in the Certificate. The initial registered agent for service of process on the Company in the State of Delaware will be the initial registered agent named in the Certificate. Operating Member shall provide prompt written notice to Investor Member of any change in the registered office or registered agent.

2.5 Term of the Company. The term of the Company shall commence on the date of the filing of the Certificate with the Secretary of State of the State of Delaware and shall continue until terminated as provided in Article IX; provided, however, that this Agreement shall not be effective until it is executed and delivered. The Company shall exist as a separate legal entity shall continue until the cancellation of the Certificate filed with the Secretary of State of the State of Delaware pursuant to Section 18-201 of the Act.

2.6 Title to Property. Legal title to all Company Assets shall be taken and at all times held in the name of the Company. To the extent the Members have approved conducting the business of the Company through one or more Company Subsidiaries, legal title to all property of a Company Subsidiary (including, without limitation, the Project) shall be taken and at all times held in the name of such Company Subsidiary.

ARTICLE III
CAPITALIZATION AND FINANCING

3.1 Capital Contributions.

(a) On the Effective Date, Developer shall cause (i) the Project Land to be conveyed to the Company or a Company Subsidiary, subject only to the Permitted Exceptions, (ii) the issuance of a commitment for an ALTA Owner's Policy as of the Effective Date showing the Company or a Company Subsidiary as the fee owner of the Project Land along with the remainder of the Development Land in the insured amount of not less than $1,580,316.00 (such insured amount being the "**Agreed Land Value**") and (iii) all right title, and interest with respect to any and all contract rights and other property related to the Project to be assigned to the Company or a Company Subsidiary. Developer shall receive a credit to its Capital Account in the amount of the Agreed Land Value and in the amount shown on Schedule 3.1 (the "**Pre-Development Costs**"). Each Member represents and warrants to the other Members that no brokers or investment bankers are involved in this joint venture and neither such Member nor any of its Affiliates or Affiliated Persons has entered into any contract, agreement, arrangement or other understanding with any Person that may result in the obligation of the Company or any Company Subsidiary to pay any finder's fees, brokerage or agent's commissions or other like payments in connection with the contribution of the Project Land or the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby. Each Member agrees to reimburse and indemnify the Company and the other Members for any loss, cost or expense suffered by such other Member arising out of a failure of any of its foregoing representations and warranties to be true and correct.

(b) From and after the Effective Date, the Investor Member, upon Capital Calls from the Operating Member, shall make Capital Contributions to the Company, until the Capital Contributions of the Operating Member and the Investor Member are in the proportion of twelve percent (12%) and eighty-eight percent (88%), with a portion of the Capital Contributions being made by Investor Member to be used to pay the Master Developer Pre-Development Costs. Thereafter, each of the Members, pari passu,

in accordance with their respective Ownership Percentages and pursuant to a Capital Call by Operating Member in coordination with the Construction Lender (or by Investor Member in the event that prior to Substantial Completion, Operating Member fails to make a Capital Call when required in order to satisfy the Company's obligations under the Construction Loan), shall contribute as Capital Contributions when due, which shall be set forth in the Capital Call and shall be not less than twenty (20) days thereafter or such earlier date as required under the Construction Loan, such additional funds as are necessary to pay such remaining Project Costs as shown in the Residential Development Budget, including if the Operating Member elects, with the reasonable approval of Investor Member, the Two Percent Contingency, plus each Member's Ownership Percentage of the Shared Cost Overruns, less the funds being provided under Construction Loan.

(c) Without creating any rights in favor of any third party, from and after Substantial Completion, either the Operating Member or the Investor Member may issue a request for additional Capital Contributions from the Members, (each, a "**Post-Completion Capital Call**"), if the Company has insufficient funds to pay for the following, after taking into account available reserves: (1) emergency repairs of conditions involving manifest danger to life or property, or which are immediately necessary for the preservation of the safety of the Project or the safety of any tenant, guest or invitee of the Project (each, an "**Emergency Circumstance**"); (2) ad valorem real estate taxes and/or personal property taxes that are a lien against the Project and are due and payable; (3) premiums for then expiring insurance policies, which policies are contemplated to be maintained as a part of the most recently approved Operating Budget and Approved Annual Update (even if an Operating Budget or Annual Update has not yet been approved for the time periods to which such policies are designed to cover); (4) amounts necessary to pay any shortfall in debt service on any then existing Financing, including partial prepayments of principal in order to effect an extension of the maturing term on any Financing at the maturity thereof or otherwise refinance the Financing as approved as a Major Decision (provided that the proceeds from any refinancing is not less than amount necessary to discharge the then existing Financing); (5) amounts which are due and payable pursuant to any Recourse Obligation (including, without limitation, any amount required to be paid under any Financing Documents to the lender or any other third party that if not paid will trigger a Recourse Obligation); provided, however, that if a Member or its Affiliates (or any of their respective employees or agents) engage in an act or omission that gives rise to a Recourse Obligation that is a Sole Recourse Obligation, neither such Member nor, if applicable, its Affiliate shall have the right to make a Post-Completion Capital Call for such Recourse Obligations; (6) amounts necessary to pay any expenses not otherwise covered by clauses (1)-(5) to the extent the incurrence of such expenses are set forth in the most recently approved Operating Budget or Approved Annual Update. Each such Post-Completion Capital Call shall specify: (i) the aggregate amount of Additional Capital Contributions to be made by the Members; (ii) the date on which such funds are due (which date shall not be less than thirty (30) days after the date the Post-Completion Capital Call is issued, except in the case of an Emergency Circumstance); (iii) the amount of the Additional Capital Contribution to be made by each Member; and (iv) to the extent practicable, the purposes for which additional capital will be utilized. Subject to Section 3.5, each Member hereby agrees to make such Additional Capital Contributions to the Company in immediately available funds in accordance with their respective Ownership Percentages on or before the date due pursuant to clause (ii) above.

(d) Notwithstanding anything to the contrary in this Agreement, if any Additional Capital Contribution is to be made after any Developer's Promote has been distributed (collectively, "**Excess Distributions**"), then such Additional Capital Contribution shall be made in accordance with the Members' respective proportionate shares of the Excess Distributions made under Section 6.6(b)(iii)-6.6(b)(v) (in reverse order, collectively, "**Reverse Contributions**") unless (and until) on the date of such Additional Capital Contribution, (i) the aggregate amount of Reverse Contributions then or theretofore made in accordance with such proportionate shares by reason of this Section 3.1(d) equals (ii) the aggregate

amount of Excess Distributions then or theretofore made under such subsections as provided above. The provisions of this Section 3.1(d) shall no longer apply from and after a Crystallization Notice.

3.2 Financing.

(a) The Members approve the Construction Loan pursuant to the commitment issued by the Construction Lender to pay Project Costs in the maximum principal amount of $55,300,000. Following the completion of the development and construction of the Project, a Financing which has a Loan-to-Value Ratio that does not exceed seventy percent (70%) is approved by the Members, subject to approval of the other terms and conditions thereof, approval of which being a Major Decision.

(b) In connection with such Financing, each Member shall provide the applicable lender and/or investor with such customary financial and other information regarding the business of each Member and its Affiliates and the Company as such lender and/or investor may reasonably request in a form reasonably approved by the delivering Member. If the Company obtains such Financing, then Operating Member and Investor Member shall execute and deliver to the lender in connection therewith such documentation as the applicable lender may reasonably request in a form reasonably approved by the delivering Member(s) including, but not limited to, a legal opinion as to such matters as the lender may reasonably request, and a consent to, or acknowledgment of, the granting of a security interest in the Company Assets.

(c) Except as set forth in this Section 3.2(c), no Member, or any Affiliate thereof, will be obligated to guarantee or otherwise be personally liable for any obligation pertaining to any such Financing. Notwithstanding the foregoing, Developer shall provide, or shall cause a creditworthy Person, which may include one or more Key Persons, to provide, to any third-party lender (i) solely with respect to the Construction Loan, such completion guarantees, and (ii) with respect to any Financing, such non-recourse carve out guarantees and an environmental indemnity (collectively, "**Required Loan Guarantees**") as may be reasonably required by such third-party lender, provided that Guarantor shall not be required under this Agreement to execute a guaranty for any Financing which is materially broader in form and substance to Required Loan Guarantees it has approved and delivered in connection with the Construction Loan, other than the completion guarantees referenced in clause (i) above or any limited payment guaranty. Without limitation of the foregoing, the Guarantor providing the completion guarantees referenced in clause (i) above shall provide completion guarantees in substantially similar form and substance, *mutatis mutandis*, to Investor Member at closing of the Construction Loan. Except for distributions to which Developer is entitled under this Agreement, neither Developer nor any Guarantor shall be entitled to any compensation, reimbursement, indemnification or other consideration from the Company or the Members for executing, delivering or performing under such Required Loan Guarantees, it being agreed that Developer's agreement to execute, deliver and perform under such Required Loan Guarantees is a material inducement for Investor Member to enter into this Agreement. Except as provided above, no guarantees shall be issued by any Member or its Affiliates in connection with a Financing without the approval of both Members. Any Person who provides a Required Loan Guarantee is referred to as a "**Guarantor**." The Company shall indemnify and hold harmless the Guarantor from and against all losses, costs and expenses, including, without limitation, reasonable attorneys' fees, arising from the enforcement by any lender of amounts due or claimed due or amounts paid by Guarantor to avoid a default under any Financing or pursuant to any Required Loan Guarantees (collectively, "**Loan Guaranty Losses**"); provided that in no event shall the Company have any obligation to indemnify or hold harmless a Guarantor on account of any Loan Guaranty Losses to the extent such Loan Guaranty Losses arise out of or result from Developer Responsible Cost Overruns or a Sole Recourse Obligation. Any indemnification obligation of the Company arising under this Section 3.2(c) shall be referred to herein as a "**Loan Guaranty Indemnification Obligation**." The amount of any Loan Guaranty Indemnification Obligation shall be treated as a Shared Cost Overrun which shall be deemed to have been requested by Operating Member and

approved by Investor Member pursuant to Section 3.4(a) and thereafter shall be funded to the Company by the Members in accordance with Section 3.1(b) and to the extent a Guarantor is entitled to indemnification as provided herein, the Developer may issue a Capital Call to satisfy such Loan Guaranty Indemnification Obligation.

3.3 Member Loans. Either Member, with the consent of all the Members, may elect under this Section 3.3 to loan funds to the Company or to cause such a loan to be made by an Affiliate of either Member. Any such loan by a Member or an Affiliate is herein called a "Member Loan." Each Member Loan shall accrue interest on unpaid principal at a rate per annum equal to the lesser of: (a) the greater of (i) nine percent (9.0%) per annum, compounded monthly, and (ii) five percent (5.0%) above the Prime Rate, and (b) the maximum non-usurious rate allowed by applicable Law, or as may otherwise be agreed by the Members. No distributions shall be paid pursuant to Section 6.6 until all Member Loans are paid in full.

3.4 Cost Overruns.

(a) If at any time, or from time to time, a Cost Overrun exists, Operating Member shall provide written notice to Investor Member of the existence (or expected existence) of such Cost Overrun, not later than ten (10) Business Days after Operating Member obtains actual knowledge of such Cost Overrun, or expected Cost Overruns, which notice shall include factual information and reports evidencing the basis for the Cost Overrun and Operating Member's recommendation as to meeting such Cost Overrun, which recommendation may include seeking nonrecourse third-party financing for any Shared Cost Overrun. Any such financing requested by Operating Member on behalf of the Company and approved by Investor Member pursuant to this Section 3.4(a) may be secured by a mortgage encumbering all or a portion of the Project, provided that in no event shall the Company be permitted to obtain any financing on a basis that requires any Member or its Affiliates to guarantee or otherwise be personally liable for the repayment of any financing obtained by the Company without the consent of such Member and such Affiliate, if applicable. In the event a Guarantor delivers any guarantees with respect to such financing, the terms of Section 3.2(c) shall apply (including, without limitation, the Loan Guaranty Indemnification Obligations).

(b) In the event that (i) the Company has experienced a Shared Cost Overrun (or is expected to experience a Shared Cost Overrun), and (ii) all or a portion of such Cost Overrun is not defrayed pursuant to any of the methods described in Section 3.4(a), Operating Member may request the Members to make additional Capital Contributions in the amount of the Shared Cost Overrun pursuant to Section 3.1(b).

(c) All Developer Responsible Cost Overruns shall be paid by Developer no later than the date which is the earlier of (i) twenty (20) days after the date requested by Investor Member, and (ii) the date on which the Company or a Company Subsidiary requires such payment to pay for such Developer Responsible Cost Overruns. Any such payments made by Developer under this Section 3.4(c) shall not be treated as Capital Contributions for any purposes of this Agreement. Developer shall not be entitled to any increase in Developer's Ownership Percentage or Capital Account in connection with the funding of any Developer Responsible Cost Overruns and shall not have any right of reimbursement for such amounts from the other Members or the Company, except as set forth in Section 3.4(e); provided, however, that any such Developer Responsible Cost Overruns subsequently recovered by the Company from a third party shall be paid to Developer as a reimbursement for any such amounts previously paid by Developer in accordance with this Section 3.4(c).

(d) All Investor Member Responsible Cost Overruns shall be paid by Investor Member no later than the date which is the earlier of (i) twenty (20) days after the date requested by Operating Member, and (ii) the date on which the Company or a Company Subsidiary requires such payment to pay for such Investor Member Responsible Cost Overruns. Any such payments made by Investor Member under

this Section 3.4(d) shall not be treated as Capital Contributions for any purposes of this Agreement. Investor Member shall not be entitled to any increase in Investor Member's Ownership Percentage or Capital Account in connection with the funding of any Investor Member Responsible Cost Overruns and shall not have any right of reimbursement for such amounts from the other Members or the Company; provided, however, that any such Investor Member Responsible Cost Overruns subsequently recovered by the Company from a third party shall be paid to Investor Member as a reimbursement for any such amounts previously paid by Investor Member in accordance with this Section 3.4(d).

(e) Notwithstanding the foregoing provisions of this Section 3.4, following Substantial Completion, (i) any Cost Savings or available Contingency (each as finally determined by Development Manager as of Substantial Completion pursuant to the Development Agreement) not applied by the Development Manager to other line items in the Residential Development Budget in accordance with the Development Agreement (provided that, in the case of the Two Percent Contingency, Investor Member's consent shall be required as provided in Section 4.5(a)(x)), together with (ii) any subsequent demonstrated actual Cost Savings (as determined by the Operating Member) in the Residential Development Budget (including any such amounts subsequently recovered by the Company from a third party) that are not payable to the General Contractor under the Construction Contract, shall be used first to repay Developer and Investor Member an amount up to any Shared Cost Overruns previously funded by them, and then to repay Developer any Developer Responsible Cost Overruns previously funded by Developer (except for any Developer Responsible Cost Overruns arising out of or resulting from the Bad Conduct of Developer). In addition, prior to applying any Cost Savings as provided in this Section 3.4(e), Operating Member shall provide Investor Member with such evidence as Investor Member may request to substantiate such savings.

3.5 Failure of a Member to Satisfy Monetary Obligations.

(a) If any Member fails to make all or any portion of a Capital Contribution, or if a Member fails to fund any Developer Responsible Cost Overruns or Investor Member Responsible Cost Overruns for which it is responsible, in each case when the same becomes due and payable (the "**Defaulting Member**"), then the other Member (the "**Contributing Member**"), provided such Contributing Member has timely contributed all of the Capital Contributions, if any, required to be contributed by such Member with respect to that particular Capital Call, may (but without obligation to do so), within fifteen (15) days after the Contribution Member obtains actual knowledge that the Defaulting Member has failed to fund its Capital Contributions or Cost Overruns for which it is responsible, contribute to the Company an additional amount equal to the Defaulting Member's entire unpaid Capital Contribution or Cost Overrun (a "**Default Contribution**") and elect by written notice to the Defaulting Member, delivered within two (2) Business Days after funding the Default Contribution, to exercise any of the remedies provided in this Section 3.5. Unless the Contributing Member affirmatively elects the remedy set forth in Section 3.5(c) with respect to a Default Contribution, then the Contributing Member shall be deemed to have elected to treat such Default Contribution as a Default Contribution Loan as provided in Section 3.5(b). In addition to, or in lieu of, the remedies set forth in this Section 3.5, a Contributing Member shall have the right to withdraw, and obtain a reimbursement from the Company of, the amount contributed by such Member with respect to that particular Capital Call and obtain a reimbursement from the Company of such amount. The remedies contained in this Section 3.5 shall be exclusive, except in the case of the failure to make a Required Capital Contribution, in which case the rights and remedies contained in this Agreement shall be cumulative.

(b) The Contributing Member may treat a Default Contribution as a full recourse loan to the Defaulting Member with a maturity date equal to the date of the liquidation of the Company, but pre-payable at any time or from time to time without penalty and subject to mandatory prepayment as set forth in this Agreement (each, a "**Default Contribution Loan**") from the next available distributions otherwise distributable to the Defaulting Member. Any Default Contribution Loan shall be treated as a Capital

Contribution by the Defaulting Member to fund the Additional Capital Contribution otherwise required to be made by the Defaulting Member (unless such Default Contribution Loan is on account of a Developer Responsible Cost Overrun or an Investor Member Responsible Cost Overrun, in which case (i) such Default Contribution Loan shall not be deemed to be a Capital Contribution of the Defaulting Member, and (ii) at the option of the Contributing Member, such amount may be funded directly to the third party that is owed such amount for the account of, and as a Default Contribution Loan to, the Defaulting Member). Notwithstanding anything contained in this Agreement to the contrary, if the Contributing Member advances a Default Contribution Loan which is not repaid within ninety (90) days of the advance of the Default Contribution Loan, the Contributing Member may elect, at any time following the expiration of such ninety (90) day repayment period (the "**Conversion Period**") in its sole and absolute discretion, to convert the applicable Default Contribution Loan (together with any accrued but unpaid interest thereon) to a Capital Contribution in accordance with the terms of Section 3.5(c) hereof. The Default Contribution Loan shall be secured by the Defaulting Member's Interest in the Company and its share of distributions, including liquidating distributions and distributions of Company Available Cash Flow under Section 6.6 hereof, including any Developer's Promote, if applicable. Until each Default Contribution Loan to the Defaulting Member shall have been either converted to a Capital Contribution as provided above or repaid, together with interest at the rate equal to the lesser of: (1) the sum of ten percent (10%) plus the then current yield on ten (10) year U.S. Treasury Bonds, compounded monthly, and (2) the maximum non-usurious rate allowed by applicable Law, calculated upon the outstanding principal balance of such Default Contribution Loan(s) as of the first day of each month, all distributions, including distributions of Developer's Promote, if applicable, otherwise to be made to the Defaulting Member hereunder shall be distributed for the Defaulting Member's account, by payment of the same to the Contributing Member, and shall be applied against the balance owed by the Defaulting Member to the Contributing Member until the balance owed by the Defaulting Member to the Contributing Member is reduced to zero. The Members shall from time to time execute such other documents and instruments and take such actions as may be reasonably required by Contributing Member with respect to usury exemption filings or other methods to obtain an exemption from usury with respect to any such Default Contribution Loan under this Section 3.5(b). Defaulting Member hereby grants a security interest in its Interest to the Contributing Member until any and all such outstanding Default Contribution Loans made to it are paid in full or converted to a Capital Contribution pursuant to this Section 3.5(b) and Section 3.5(c). All payments and distributions made to a Contributing Member on account of one or more Default Contribution Loans shall be applied first to payment of any interest due under all such Default Contribution Loans and then to principal of all such Default Contribution Loans until all amounts due thereunder are paid in full. While any Default Contribution Loan is outstanding, the Company shall be obligated to pay directly to the Contributing Member, until all Default Contribution Loans have been paid in full, the amount of any distributions, including distributions of Developer's Promote, if applicable, otherwise payable to the Defaulting Member.

(c) If, pursuant to Section 3.5(a), or pursuant to Section 3.5(b) during the Conversion Period, the Contributing Member elects, in such Contributing Member's sole and absolute discretion, to convert a Default Contribution or a Default Contribution Loan to a Capital Contribution made by such Contributing Member, then the Ownership Percentages of the Contributing Member and the Defaulting Member shall be adjusted as of (x) the date of such Default Contribution, if the election is made under Section 3.5(a), or (y) the date on which such Contributing Member elects to convert a Default Contribution Loan to a Capital Contribution, if the election is made under Section 3.5(b), and in either case, such conversion shall occur as follows:

(i) The Ownership Percentage of the Defaulting Member shall be decreased to the percentage obtained (rounded to the nearest 1/100 of a percentage point) based on the following formula:

Ratio of: One hundred fifty percent (150%) of the Default Contribution;

To: The aggregate of all Capital Contributions, including such Default Contribution, made or deemed made by all Members (excluding, for avoidance of doubt, any Default Contribution Loans that have not been converted to Default Contributions);

Equals: Amount, expressed as a percentage, by which the Ownership Percentage of the Defaulting Member is decreased (the "Dilution Percentage"); and

(ii) The Ownership Percentage of the Contributing Member shall be increased by the Dilution Percentage,

By way of example, assuming that (1) the Ownership Percentages are eighty-eight percent (88%) to Investor Member and twelve percent (12%) to Developer based on aggregate Capital Contributions of $1,000,000 (of which Investor Member contributed $880,000 and Developer contributed $120,000), (2) a Capital Call is made in the aggregate amount of $200,000, (3) Developer fails to contribute its pro rata share in the amount of $24,000, and (4) Investor Member contributes its own pro rata share in the amount of $176,000 as a Capital Contribution, plus the $24,000 which Developer failed to contribute as a Default Contribution, then Developer's Ownership Percentage would be decreased to nine percent (9.00%), based on the following calculations under the formula above:

150% x $24,000(Default Contribution) = $36,000

$36,000 / $1,200,000 (Aggregate Capital Contributions) = 0.03 = 3.00% (Dilution Percentage)

12% (Ownership Percentage before dilution) - 3.00% = 9.00% (Ownership Percentage after dilution)

(d) THE PROVISIONS OF SECTION 3.5(c), WHICH MAY CAUSE A REDUCTION IN DEFAULTING MEMBER'S OWNERSHIP PERCENTAGE, ARE NOT INTENDED AS A FORFEITURE OR PENALTY BUT AS COMPENSATION TO THE CONTRIBUTING MEMBER FOR THE ADDED RISK ASSUMED IN PROVIDING A DISPROPORTIONATELY LARGE SHARE OF THE CAPITAL REQUIRED HEREUNDER. EACH MEMBER ACKNOWLEDGES THAT THE REMEDIES PROVIDED IN SECTION 3.5(c) ARE FAIR AND REASONABLE COMPENSATION TO A CONTRIBUTING MEMBER THAT FUNDS A DISPROPORTIONATELY LARGE SHARE OF CAPITAL CONTRIBUTIONS OR COST OVERRUN PAYMENTS AND THE NEED TO PROVIDE FOR A SIGNIFICANT RETURN ON INVESTMENT UNDER THOSE CIRCUMSTANCES. THE MEMBERS AGREE THAT SUCH REMEDIES IN SECTION 3.5(c) PROVIDE A REASONABLE ESTIMATE OF THE DAMAGES THE CONTRIBUTING MEMBER MAY SUFFER AS A RESULT OF DEFAULTING MEMBER'S FAILURE TO MAKE A REQUIRED CAPITAL CONTRIBUTION OR COST OVERRUN PAYMENT. THE INDIVIDUAL EXECUTING THIS AGREEMENT ON BEHALF OF EACH MEMBER HAS SPECIFICALLY ACKNOWLEDGED THE PROVISIONS OF SECTION 3.5(c) BY THE PARTY FOR WHOM HE IS ACTING.

ARTICLE IV
OPERATING MEMBER; MANAGEMENT OF THE COMPANY

4.1 Management.

(a) Subject to the provisions and delegations set forth in this Agreement, including, without limitation, Section 4.5, the management and control of the Company shall be exclusively vested in Operating Member.

(b) Operating Member shall manage and control the affairs of the Company in accordance with the Development Plan, Residential Development Budget, Operating Budget, and/or any Approved Annual Update, as applicable, or as otherwise approved by Investor Member, in good faith and in a commercially reasonable manner and conduct the operations contemplated herein in a manner it reasonably believes to be in the interest of the Company, with the interest of the Company coming before the best interest of the Operating Member, its constituent members on an individual basis and any Affiliates of the Operating Manager and in accordance with practices of developers undertaking similar projects in Salt Lake City, Utah. Operating Member, in its capacity as such, shall devote as much time to the performance of its duties under this Agreement, and shall make its personnel and the relevant personnel of its Affiliates engaged by the Company, as applicable, available to the Company and the Company Subsidiaries, as is reasonably necessary to carry on the affairs of the Company in accordance with good industry practices and the terms hereof. After Stabilization, if and to the extent the Operating Member fails or refuses to take any act reasonably necessary to implement the applicable Approved Annual Updates and/or Operating Budgets, Investor Member shall have the right to do so if such failure or refusal continues for a period longer than ten (10) days after receipt by Operating Member of a deemed notice from Investor Member to cure such failure or refusal.

(c) Notwithstanding the foregoing, Operating Member shall not be liable to the Company or any Member if and to the extent the Company does not have sufficient funds to make any payment of costs, expenses, or other items required to be paid or to perform an obligation, unless the insufficiency is caused by Operating Member's breach of this Agreement or any breach of an agreement with one of its Affiliates or a failure of the Operating Member to issue a Capital Call to the extent permitted herein.

4.2 Operating Member.

(a) The Members have designated and do hereby designate Developer as Operating Member of the Company, subject to the rights of the Members as provided in this Agreement. Except as otherwise provided in Section 4.5 with respect to Major Decisions, dispute resolution and other provisions of this Agreement, the management of the Company shall be the obligation and responsibility of and rest with Operating Member, who shall have all the rights and powers as are necessary or advisable to the management of the business and affairs of the Company.

(b) Subject to the limitations set forth in this Agreement and the Act, Operating Member shall have the following responsibilities and the power and authority to carry out the objectives and purposes of the Company set forth in Section 2.1 and otherwise manage the business and affairs of the Company, and perform all acts and enter into such contracts and other undertakings authorized hereunder, including, without limitation, the power and responsibility, all to the extent the Company has sufficient revenues and working capital:

(i) To effectuate the applicable Development Plan, Approved Annual Updates and Operating Budgets;

(ii) To manage the Company Assets, to cause the Company to arrange for the development, construction, repair, management, maintenance, and operation of the Project or any portion thereof in accordance with the Development Plan and any Approved Annual Update, to cause the Company to establish reserves in accordance with the Development Plan, Residential Development Budget and/or Operating Budget, as applicable, or as otherwise approved by the Members to pay anticipated costs and expenses, and to use commercially reasonable efforts to cause the Company to comply with all applicable laws, rules and regulations of governmental agencies having jurisdiction over the Project;

(iii) To cause all indebtedness owing by the Company or owing with respect to and secured by the Company Assets, or any part thereof, to be paid prior to delinquency and to make such other payments and perform such other acts as may be necessary to preserve the interest of the Company therein;

(iv) To pay and discharge all taxes and assessments levied and assessed against the Company Assets or any part thereof for the account of the Company;

(v) To obtain all property entitlements, approvals, zoning changes, subdivision or conditional use permits and other governmental consents and approvals as shall be necessary for the implementation of the Development Plan;

(vi) To prepare and submit to the Members for approval, each Operating Budget and each Annual Update pursuant to the terms of this Agreement;

(vii) To keep or cause to be kept proper and complete records and books of account of the Company and each Company Subsidiary in which shall be entered fully and accurately all transactions and other matters relating to the business of the Company and each of the Company Subsidiaries as are customarily entered into such records and books of account kept for businesses of a like character;

(viii) To keep the Members fully informed regarding all material matters relating to the Company, each Company Subsidiary and their respective operations and assets (and such other specific matters as a Member may reasonably request from time to time) by delivering reports and information on a timely basis as required by this Agreement, by consulting with Members on a monthly basis (and at all other reasonable times as requested by a Member) regarding the status of the Project and by responding to a Member's inquiries with regard to the Project in a prompt manner;

(ix) To appoint and cause the Company or a Company Subsidiary to contract with leasing agents, engineers, architects, consultants, professionals, contractors, suppliers, property managers, etc., as necessary for the development, improvement, build-out, operation and disposition of the Project pursuant to the Development Plan, provided that Operating Member shall facilitate the reasonable access of a Member to such parties upon a Member's reasonable request;

(x) To fulfill any other responsibilities or obligations of the Operating Member set forth in this Agreement; and

(xi) To have, exercise and perform, to the full extent granted to and permitted to be exercised by members under the Act, such other rights and powers and such other business functions as may be necessary for the operation of the Company's business, affairs and assets in the ordinary course.

(c) In connection with Operating Member's obligations with respect to selecting independent contractors to perform services and work for the Company and any Company Subsidiaries, Operating Member acknowledges Investor Member's and the Company's desire that it engage only contractors that are reputable, responsible in their employment practices, and comply with Law. Operating Member shall cooperate and comply with (and require any property managers engaged by the Company or any Company Subsidiary to cooperate and comply with, and use commercially reasonable efforts to require the Construction Contract to include, to extent of any bids first sought by the General Contractor after the Effective Date) Investor Member's bidding procedures and requirements set forth in **Exhibit E**.

(d) Upon the occurrence of a Cause Event by Developer and the expiration of all applicable cure periods, in Investor Member's sole and absolute discretion, Investor Member may deliver a Cause Event Notice to Developer, immediately removing Developer from its role as Operating Member. Upon delivery of a Cause Event Notice, Developer shall cease to be the Operating Member (subject to reinstatement as provided below), and Investor Member or its designee shall have all power and authority previously possessed by Developer as Operating Member. Upon such removal, Investor Member shall provide all directions to service providers such as architects, engineers, lawyers and accountants, will either assume the role of Operating Member or appoint another Person (who may be an Affiliate of Investor Member) to manage the operations of the Company, subject to the terms and conditions contained herein. Any removal of the Operating Member as Operating Member will not affect its rights as a Member of the Company, except as otherwise provided herein, and will not constitute a withdrawal of a Member. If Developer is removed following a Cause Event, (i) Developer shall no longer have the right to propose a Major Decision or vote with respect to any matters or exercise any other voting, consent, approval or decision-making rights set forth herein, except for Fundamental Major Decisions which shall require approval of all of the Members, (ii) any sums distributable or payable to Developer or its Affiliates or Affiliated Persons shall be offset against any damages sustained by the Company, any Company Subsidiary or Investor Member directly resulting from the Cause Event and shall be paid instead to the Company, a Company Subsidiary or Investor Member in such order as Investor Member shall determine (but shall be deemed to have been distributed or paid to Developer or its Affiliates or Affiliated Persons and then paid over to the Company, a Company Subsidiary or Investor Member, as the case may be), until such damages have been fully offset, (iii) at the election of Investor Member, any agreements with Developer or any of its Affiliates or Affiliated Persons may be terminated immediately (and upon such termination, no fees accruing from and after such removal shall be payable to Developer or any of its Affiliates, as applicable, pursuant to such Agreement) and Investor Member may select and retain, in its sole discretion, a new party which is not an Affiliate of Investor Member (subject to Section 10.1) to serve as the replacement provider of such services on commercially reasonable terms satisfactory to Investor Member (including, without limitation, any Property Management Agreement), (iv) Developer shall have no further right to deliver a Response Notice under Section 11.2, or a Liquidity Option Notice or a Crystallization Notice under Section 12.1, and (v) if such Cause Event occurs prior to Stabilization, then instead of the distribution waterfall set forth in Section 6.6, all distributions of Company Available Cash Flow shall, subject to Sections 3.3, 3.5(b) and 6.7, be made to the Members in accordance with their respective Ownership Percentages. If Operating Member disputes whether a Cause Event has occurred, and it is finally determined by a court of competent jurisdiction (after the exhaustion of all appeals) that a Cause Event did not occur, then Developer shall be reinstated and Developer and its Affiliates shall be reimbursed by the Company for any losses suffered prior to the reinstatement, without prejudice to Investor Member's right to deliver a subsequent Cause Event Notice or any other rights of Investment Member under this Section 4.2(d).

(e) If Investor Member exercises its removal rights under Section 4.2(d), from and after such date, as a condition of such removal Investor Member and a party which has at least the same credit worthiness as the then current Guarantors (or is otherwise acceptable to the then current Guarantors) shall (x) indemnify and hold harmless Developer or its applicable Affiliates from any liability arising under any Required Loan Guarantees (including, without limitation, "bad act" and/or non-recourse carve-out guarantees) to the extent first accruing after the date of such removal, except to the extent previously caused by the Bad Conduct of Developer or its Affiliates, and (y) shall use commercially reasonable efforts to cause Developer or its applicable Affiliates, with their cooperation, to be removed and fully released from any liability first accruing after the removal date under such Required Loan Guarantees, except to the extent previously caused by the Bad Conduct of Developer or its Affiliates, provided such efforts do not require Investor Member or the Company to make any payment to the applicable creditor to obtain such a release. Operating Member and Investor Member agree to and acknowledge their mutual intention that following a removal of Developer as Operating Member under this Section 4.2(c), any amendment to or amendment and restatement of this Agreement shall subject any replacement Operating Member or "manager"

thereunder or hereunder to substantially the same regime of "Cause Events" and remedies as are set forth in this Agreement on the Effective Date, with such modifications as shall be necessary to reflect the identity and organizational structure of such replacement Operating Member or manager. Furthermore, if the Developer is removed, Developer will not be obligated to fund Cost Overruns arising from any actions first taken by its successors but only to the extent not incurred or knowingly expected by the Developer to be incurred (including by written communication from the Investor Member) prior to such removal or which arise as a result of the Cause Event resulting in such removal or the Bad Conduct of Developer or its Affiliates following such removal.

(f) Following the delivery of a Cause Event Notice, Developer shall (or shall cause its Affiliates to) (i) promptly deliver to Investor Member or its designee (A) all rents and income, including tenant security deposits, of the Project and other monies of the Company or any Company Subsidiary held by, or under the control of Developer, (B) as received, any monies due the Company or any Company Subsidiary received after such removal, (C) all materials and supplies, keys, leases, contracts and documents, all other accounting papers and records of the Company or any Company Subsidiary, and all books and records in hard copy and electronic format, receipts for deposits, bills and other materials in the control or possession of Developer or its Affiliates that relate to the Company, the Company Subsidiaries or their respective assets (including hard and electronic copies of all data files used in any software programs by Operating Member), and (D) a notice to third parties directly involved with the Project in form reasonably satisfactory to Investor Member to the effect that Developer is no longer Operating Member and/or the general contractor; (ii) cooperate with the Company and each Company Subsidiary to allow the Company and each Company Subsidiary to effectively and productively continue the development, leasing, operation, marketing and other activities of the Project and the Company (without limitation on the foregoing, Developer shall deliver to the Company such information and documentation in the control or possession of Developer or its Affiliates at the time of removal as Investor Member may reasonably request concerning the Project, including any potential tenants or purchasers for the Project known by Developer or its Affiliates at the time of removal).

4.3 Tax Audit Matters.

(a) Investor Member shall have sole discretion to designate the "partnership representative" within the meaning of Section 6223 of the Code and any analogous provision of state or local income tax law, which may, for the avoidance of doubt, be Investor Member or an Affiliate of Investor Member, or any other Person designated by Investor Member as the partnership representative (the "**Partnership Representative**"). The Partnership Representative shall be entitled to take such actions on behalf of the Company in any and all proceedings with the Internal Revenue Service and any other taxing authority as it reasonably determines to be appropriate and that are consistent with this Section 4.3(a), shall be reimbursed by the Company for all out-of-pocket costs and expenses reasonably incurred in connection with any such proceeding, and shall be indemnified by the Company (solely out of Company assets) with respect to any action brought against such Partnership Representative in connection with the settlement of any such proceeding. The Partnership Representative may, within forty-five (45) days of a notice of final partnership adjustment, (i) cause the Company to elect the "alternative procedure" under Section 6226 of the Code, and furnish the Internal Revenue Service and each Member of the Company during the year or years to which the notice of final partnership adjustment relates a statement of the partner's share of any adjustment set forth in the notice of final partnership adjustment, or (ii) cause the Company to modify the amount of an "imputed underpayment" under Section 6225(c)(2) of the Code.

(b) For the avoidance of doubt, any taxes, penalties and interest payable under the Revised Partnership Audit Procedures by the Company or any fiscally transparent entity in which the Company owns an interest shall be treated as specifically attributable to the Members of the Company, and Investor Member shall use commercially reasonable efforts to allocate the burden of (or any diminution in

distributable proceeds resulting from) any such taxes, penalties or interest to those Members to whom such amounts are specifically attributable, as determined by Investor Member in its reasonable discretion

(c) Each Member shall use commercially reasonable efforts to give prompt notice to each other Member of any and all notices it receives from the Internal Revenue Service (or any other taxing authority) concerning the Company or any Subsidiary, including any notice of audit, any notice of action with respect to a revenue agent's report, any notice of a thirty (30) day appeal letter and any notice of a deficiency in tax concerning the Company's or any Subsidiary's federal, state or local income tax returns. At the Company's expense, the Partnership Representative shall furnish each Member with status reports regarding any negotiation or other proceeding between the Internal Revenue Service (or other taxing authority) and the Company promptly after any material development.

4.4 Member Voting Rights. Whenever this Agreement requires any action or decision to be approved by the Members, such decision shall be evidenced by the approval of Investor Member and Developer (subject to Section 4.2(c) and Section 4.6), and no other Member shall have any right to vote or approve or disapprove such matter.

(a) Meetings of the Members shall be held upon the request of any Member. Meetings of the Members may be attended either in person at Investor Member's offices at 111 East Sego Lily Drive, Suite 400, Sandy, Utah 84070 or by telephone or video conference or other communication device that permits all Members participating in the meeting to hear each other. Written notice of a meeting of the Members stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called shall be given to each Member by electronic mail or facsimile no less than fifteen (15) days before the date of the meeting; *provided* that, the Member requesting the meeting may reduce the advance notice period to not less than three (3) Business Days if such Member determines, acting reasonably and in good faith, that it is necessary and in the best interests of the Company for the Members to take action within a time period of less than fifteen (15) days. Each Member may authorize another individual (who may or may not be a Member) to act for such Member by proxy at any meeting of the Members, or to express consent or dissent to a Company action in writing without a meeting. Any such proxy may be granted in writing, by electronic transmission or as otherwise permitted by Law.

(b) The presence of Operating Member and Investor Member shall constitute a quorum for the conduct of business at any meeting of the Members. Except as expressly provided in this Agreement: (i) any agreement, approval, consent, judgment or other determination to be made by a Member under this Agreement shall not be effective unless it is in writing (which the Members agree may be delivered by electronic mail or facsimile) and shall be in the sole and absolute discretion of such Member for any reason or no reason; and (ii) such Member shall be entitled to consider only such interests and factors as it desires, including the interests of that Member, and shall, to the fullest extent permitted by applicable Law, have no duty or obligation to give any consideration to any interest of or factors affecting the Company, any Company Subsidiary or any other Member.

(c) Notwithstanding anything herein to the contrary, any action of the Members may be taken without a meeting if a consent in writing, which writing may in the form of electronic mail or a facsimile, setting forth the action to be taken, is signed, or approved by electronic mail or facsimile, by Operating Member and Investor Member. Such consent shall have the same force and effect as a vote at a meeting where a quorum was present and may be stated as such in any document or instrument filed with the applicable Secretary of State.

4.5 Specific Limitations on Operating Member. Notwithstanding anything to the contrary contained in this Agreement or the Act, but provided that Developer's and Investor Member's approval rights under this Section 4.5 are subject to the limitations in Section 4.5(a) and Section 4.6 and cease to

apply (except with respect to Fundamental Major Decisions) after a Cause Event Notice is given to Developer or Investor Member, as the case may be, without the prior written approval of the Investor Member (which may be given or withheld in Investor Member's sole and absolute discretion), Operating Member shall have no right, power, or authority to do any of the following acts (each of which is herein called a "**Major Decision**"), directly or indirectly, whether on behalf of the Company or any Company Subsidiary, but it is agreed that nothing herein shall prevent Investor Member or Operating Member proposing a Major Decision for consideration by the Members, approval of such Major Decision remaining in each such Member's sole and absolute discretion:

(a) Notwithstanding the grant to Investor Member of sole discretion as to Major Decisions in the introductory paragraph of this Section 4.5, Investor Member's discretionary approval rights are not absolute in the case of Fundamental Major Decisions, all of which require the approval of all the Members, each in their sole discretion, and, also, in the case of certain Major Decisions as specified below in this Section 4.5(a) ("**Pre-Stabilization Major Decisions**"), which prior to Stabilization or earlier removal of Developer as Operating Member pursuant to Section 4.2(d) may only be made with the written consent of both the Developer and Investor Member, unless such Pre-Stabilization Major Decision is specifically delegated herein to the Operating Member (in which case Investor Member consent shall not be required, but after Stabilization or earlier removal of Developer as Operating Member pursuant to Section 4.2(d), all Pre-Stabilization Decisions may be made solely by Investor Member after compliance with the provisions of Section 4.6(a) (such Pre-Stabilization Major Decisions from and after Stabilization or earlier removal of Developer as Operating Member pursuant to Section 4.2(d) becoming Major Decisions and being governed by the introductory provisions contained in Section 4.5)).

(i) cause or permit the Company to make any distribution of Company Available Cash Flow or Company Assets except as provided in this Agreement, including Section 6.6(a);

(ii) acquire, by purchase or lease, any direct or indirect interest in real property or any other assets in addition to the Project Land (other than utility and access easements on customary terms serving the Project over property owned by third parties) and rights affecting the Parking Structure or which are otherwise not set forth in the Residential Development Budget, an Operating Budget or an Approved Annual Update;

(iii) execute or deliver any Financing Documents, other than those related to the Construction Loan which are approved by Investor Member as of the Effective Date or pertain to any Guaranty signed by Developer or its Affiliates (which in the case of the Guaranty are in sole discretion of the Developer) which authority has been delegated to the Operating Member, borrow any money (other than trade payables) or enter into any financing, refinancing or loan transaction (other than ordinary course equipment leases contemplated in the Residential Development Budget, an Operating Budget, or an Approved Annual Update), grant any security interest in all or any portion of the Project (other than those granted under the Construction Loan), prepay any Financing, or amend the terms and conditions of any existing Financing in any material respect;

(iv) sell or convey the Project or any portion thereof or any interest therein, or enter into any Capital Transaction, or grant options with respect to any of the foregoing, except for Transfers of Interests permitted in accordance with Article VII or sales of the Project or ROFO Interests in accordance with Article XI, or the conveyance of the Parking Structure Land to UTA pursuant to and in accordance with the terms and conditions set forth in the Ground Lease;

(v) except as otherwise permitted in accordance with the Development Plan or as approved by Investor Member, such approval not to be unreasonably withheld, approve or

authorize any design (or change of design) of the Project, including entering into or amending on behalf of the Company or any Company Subsidiary the Construction Contract (except for modifications to the Residential Development Budget as permitted under Section 4.5(a)(x)), any construction management agreements, and contracts with engineers and other major consultants, and the engaging of any third party or personnel to effect any design of the Project to the extent not engaged as of the Effective Date;

(vi) amend (A) the Residential Development Budget except as otherwise permitted herein, and the Development Plan and (B) except in accordance with Section 8.4, any Operating Budget or any Approved Annual Update;

(vii) approve or authorize any leasing plan, marketing plan, re-positioning or re-tenanting, not previously approved by Investor Member;

(viii) remove or replace the Property Manager, except as set forth in the Property Management Agreement or in Section 10.1(a);

(ix) enter into any agreement or arrangement involving a capital investment in excess of $100,000, except in accordance with the Development Plan, Operating Budget, or any Approved Annual Update or as required by the COREA;

(x) prior to Substantial Completion, and subject to Sections 3.4(c) and 3.4(d), (a)(i) change one or more line items in the Residential Development Budget (as increased by the Investor Member approved amount of the Two Percent Contingency, as provided below) that increases such line item by more than five percent (5%) of the then existing amount thereof, net of the application of any available Cost Savings or Contingency, other than the application of any approved Two Percent Contingency), with any increases below such 5% limit remaining in Operating Member's sole discretion so long as such change will not, in the aggregate, cause the total Project Costs to exceed the Residential Development Budget,, as increased by the use of any portion of the Two Percent Contingency approved by the Investor Member as provided below, each as determined and applied by the Development Manager in accordance with the Development Agreement, or (ii) make any expenditures not contemplated by the Residential Development Budget, provided in all cases such limitations shall not apply to expenditures resulting from Force Majeure or to taxes and insurance and any other costs for which the Company is liable pursuant to written agreements previously approved by Investor Member; or (b) the application of the additional Two Percent Contingency, when and if contributed pursuant to a Capital Call, provided that application of the Two Percent Contingency shall only be with the approval of Investor Member, not to be unreasonably withheld, conditioned or delayed;

(xi) from and after Substantial Completion, (i) change one or more line items in any Operating Budget, as amended by an Approved Annual Update, that either (A) increases such line item by more than five percent (5%) of the of the then existing amount thereof, or (B) in the aggregate increases the Operating Budget, as amended by an Approved Annual Update, by more than two percent (2%) of the total amount thereof, except in the case of changes resulting from Force Majeure, or (ii) make any expenditures not contemplated by, or which exceed the amounts shown for such expenditures in the Operating Budget, as amended by an Approved Annual Update, that, when taken together, exceed the aggregate amount of the Operating Budget, as amended by an Approved Annual Update, by more than two percent (2%), provided such limit shall not apply to changes in the Operating Budget, as amended by an Approved Annual Update, resulting from Force Majeure or to taxes and insurance and any other costs for which the

Company is liable pursuant to written agreements previously approved by Investor Member, any increases below such stated limits remaining in Operating Member's sole discretion;

(xii) authorize the withdrawal of a Member or the Transfer of any Interests of a Member, except as expressly permitted by the terms of this Agreement;

(xiii) to the extent not in the Development Plan, the Operating Budget or the Approved Annual Update, adopt the Company's form of tenant lease and leasing guidelines, or enter into any tenant leases which materially deviate from such form of lease and leasing guidelines, including any rent abatements, rent credits, rent holidays and other such inducements and concessions that are not granted in accordance with such approved leasing guidelines;

(xiv) the selection of accountants or lawyers for the Company or any Company Subsidiary; provided that KPMG LLP, Kirkland & Ellis LLP and Seyfarth Shaw LLP have been approved by the Members and may be retained by the Operating Member, in its sole discretion, for Company purposes provided, however, that any lawyer that represents the Company or any Company Subsidiary with respect to any Financing or Financing Documents shall be subject to the prior written approval of Investor Member, which approval will not be unreasonably withheld;

(xv) zoning changes, entitlements, subdivisions or easements except as expressly set forth in the Development Plan;

(xvi) settle a casualty or condemnation claim in excess of $100,000;

(xvii) except as pertains to the requirements of the COREA, adopt Plans or designs for any repairs or renovations to any property of the Company or any Company Subsidiary which are reasonably anticipated to cost in excess of the lesser of (i) $25,000, or (ii) ten percent (10%) of any applicable line item in the Residential Development Budget, Operating Budget, or any Approved Annual Update;

(xviii) subject to Section 4.9, enter into, amend, terminate or make any material election with respect to or any management contracts; enter into any agreement with any Governmental Authority that is not expressly permitted or contemplated by the Development Plan or the COREA;

(xix) invest Company or Company Subsidiary funds (except in bank accounts permitted under this Agreement and short-term governmental obligations);

(xx) amend the COREA or any of the contracts entered into thereunder or pursuant thereto, provided that any consents or authorizations required of the Company under the COREA, including any amendment of any of the contracts entered into thereunder or pursuant thereto, shall be delegated to the Operating Member, in its reasonable discretion, except in the case of changes to any of the foregoing which increase the construction budget adopted under the COREA in any material respect, Investor Member's approval shall be required, such approval not to be unreasonably withheld;

(xxi) enter into any agreement, commitment or letter of intent with respect to any of the foregoing;

(xxii) the right on the part of the Developer to require the Investor Member to pay an Investor Responsible Cost Overrun under Section 3.4(d), which right shall be a Major Decision and which in the case of a Deadlock, the decision of the Developer shall control; and

(xxiii) amend or consent to the amendment of the Ground Lease, the New Plat, the Parking Structure Budget or the Wadsworth Contract, without Investor Member's consent, such consent not to be unreasonably withheld.

(b) The following Major Decisions, which after Stabilization or the removal of Developer as Operating Member pursuant to Section 4.2(d) shall also include the Pre-Stabilization Major Decisions set forth in Section 4.5(a), may be made after a Deadlock has occurred as provided in Section 4.6 by Investor Member, provided that if such Major Decision triggers any liability under any Financing to any affiliated Guarantor, including any Recourse Obligation, the status quo with respect thereto shall remain in effect until the Developer's consent is received, which may be withheld in Developer's sole discretion:

(i) the right on the part of the Investor Member to require the Developer to pay a Developer Responsible Cost Overrun under Section 3.4(c);

(ii) remove or replace the Property Manager;

(iii) the selection of a broker to sell all or a portion of the Project;

(iv) form any subsidiary of the Company;

(v) except as otherwise contemplated in the Development Plan, any Approved Annual Update or any leasing plan otherwise approved by Investor Member, enter into any retail leases;

(vi) commence or settle any lawsuits except that involve less than $100,000.00 or are in the ordinary course of business (e.g., actions with respect to apartment leases);

(vii) file tax returns or make tax elections;

(viii) any decision related to the type of insurance coverage or the underwriter selected by the Company or any Subsidiary, subject to the requirements of any Financing; and

(ix) register any Company securities.

4.6 Deadlocks. Notwithstanding any language to the contrary in this Agreement:

(a) if the Members do not agree in writing on any Major Decision (other than a Fundamental Major Decisions or prior to Stabilization or the removal of Developer as Operating Member pursuant to Section 4.2(d), a Pre-Stabilization Major Decision) for a period of five (5) Business Days (but if a decision must be made in order to meet a deadline or the Operating Member or Investor Member otherwise determines in its good faith judgment that a matter is urgent, then such period shall be reduced to three (3) Business Days) after written notice from the requesting Member, then (i) the decision of Investor Member regarding such Major Decision shall be final and binding on the Company and any applicable Company Subsidiary; and (ii) Investor Member shall have the right, acting alone, to implement such Major Decision on behalf of the Company and any applicable Company Subsidiary and Developer shall take such action as Investor Member reasonably requests in connection with the same; and

(b) if a disagreement over a Fundamental Major Decision or, prior to Stabilization or the removal of Developer as Operating Member pursuant to Section 4.2(d), a Pre-Stabilization Major Decision arises, the parties agree to negotiate to resolve the disagreement. If the negotiations do not resolve the disagreement over the Fundamental Major Decision or a Pre-Stabilization Major Decision to the reasonable satisfaction of the parties within fifteen (15) days from a written request for a negotiation, then each Member shall give notice to the other party identifying an officer who has authority to resolve the disagreement to meet in person or by video conference with the other party's designated officer who is similarly authorized. The officers identified by the parties shall meet in person or by video conference for one day within the ten (10) day period following the expiration of the fifteen (15) day negotiation period and the officers shall attempt in good faith to resolve the disagreement over the Fundamental Major Decision or Pre-Stabilization Major Decision. The meeting shall be held at a location mutually agreed to by the Members, and may be attended only by the parties' designated officers and by one assistant for each officer. If the officers are unable to resolve the disagreement, then the Fundamental Major Decision or until Stabilization or the removal of Developer as Operating Member pursuant to Section 4.2(d) has occurred, the Pre-Stabilization Major Decision shall be deemed disapproved. During the period that any Major Decision is presented to the Members or until the resolution of such Major Decision dispute or the exercise of any remedy pursuant to this Section 4.6(b), the Company shall conduct its business and affairs in accordance with (i) the most recent approved Major Decisions, (ii) if prior to Substantial Completion, the Final Project Budget and the Development Agreement and (iii) after Substantial Completion, the most recent approved Operating Budget and Approved Annual Update. Fundamental Major Decisions are as follows:

(i) any act contrary to the purpose set forth in Section 2.3 of this Agreement;

(ii) cause or permit the Company or any Company Subsidiary to extend credit to or make any loans to or become a surety, guarantor, endorser or accommodation endorser for any Person;

(iii) (A) file any voluntary petition in bankruptcy on behalf of the Company or any or Company Subsidiary, (B) consent to the filing of any involuntary petition in bankruptcy against the Company or any or Company Subsidiary, (C) file on behalf of the Company or any or Company Subsidiary any petition seeking, or consenting to, reorganization or relief under any applicable federal or state Law relating to bankruptcy or insolvency, (D) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or any or Company Subsidiary, or a substantial part of its property, (E) make any assignment for the benefit of creditors by the Company or any or Company Subsidiary, (F) admit in writing to the Company's or any or a Company Subsidiary's inability to pay its debts generally as they become due, (G) join in the filing of any voluntary or involuntary petition in bankruptcy against an Affiliate of the Company or any Key Person, or (H) take any action by the Company or any Company Subsidiary in furtherance of any such action;

(iv) enter into or modify any agreement with a Member or any Affiliate of any Member, or make any intercompany payments to a Member or any Affiliate of any Member, except in accordance with the Operating Budget and Approved Annual Update, as applicable;

(v) issue additional Interests or other equity securities or admit a new Member to the Company except as expressly permitted by Section 7.3, or issue additional equity interests in or admit any new member to any Company Subsidiary;

(vi) amend the Certificate, the certificate of formation of any Company Subsidiary, this Agreement, the limited liability company agreement of any Company Subsidiary

or any agreement of the Company that is referenced in this Agreement or was required to be approved by the Members in the first instance, other than non-material ministerial amendments or those required to correct any non-material inconsistencies in such agreements or mutual mistakes;;the merger, conversion or reorganization of the Company or any Company Subsidiary;

(vii) accept any in-kind Capital Contribution (other than the Project Land) or make any in-kind distribution to one or more Members (except to effectuate a sale transaction in accordance with Section 11.2);

(viii) except in the case of Capital Calls (A) for Required Capital Contributions, (B) for Shared Cost Overruns, (C) for Additional Capital under Section 3.1(c), (D) to satisfy a Loan Indemnification Obligation under Section 3.4(b), (E) to satisfy the indemnification obligations under Section 4.11(b), or (F) for such other provision in this Agreement which expressly grants a Member a Capital Call right, the right to make a Capital Call;

(ix) enter into any joint venture or partnership;

(x) hire anyone to be an employee of the Company or any Company Subsidiary;

(xi) take any action in contravention of this Agreement;

(xii) possess Company Assets for other than a Company purpose;

(xiii) commingle funds of the Company (or a Company Subsidiary) with the funds of any other Person;

(xiv) any decision not to comply with requirements of any loan document under any Financings which would trigger a Recourse Obligation;

(xv) any liquidation, dissolution or termination of the Company or any Subsidiary or other decisions made pursuant to Article IX;

(xvi) confess a judgment against the Company or any Company Subsidiary;

(xvii) approval of the final Plans and the final Project Budget, if not final as of the Effective Date;

(xviii) other than in connection with the incurrence of a Financing or a sale of the Project after Stabilization, the granting or incurrence of any options, rights of first refusal, ground leases, security liens or encumbrances on, or the pledging of any assets of the Company or any Subsidiary, or granting of any guarantees, indemnities or letters of comfort; and

(xix) any election that would cause the Company to cease being treated as a partnership for U.S. federal and applicable state income tax purposes.

Further, no action shall be taken with respect to any Major Decision which triggers any liability under the loan documents under any Financings, including any Recourse Obligation, without the approval of Developer, in its sole discretion.

4.7 Actions by a Company Subsidiary. Notwithstanding any language to the contrary in this Agreement, any provision of this Agreement giving the Members, the Operating Member, Investor Member or any manager or agent of the Company the right or authority to take any action or refrain from taking any action, or cause the Company to take any action or refrain from taking any action, shall be interpreted to require the managing member, manager, general partner or any officer of any Company Subsidiary to effectuate the identical right or authority of such Person(s) with respect to any Company Subsidiary. Without limitation of the foregoing, the operative agreement for each Company Subsidiary shall prohibit any such managing member, manager, general partner or officer of such Company Subsidiary from taking (or omitting) any action on behalf of the Company Subsidiary which constitutes a Major Decision, without first obtaining the required approvals under this Agreement. Any provision of this Agreement imposing any duty or responsibility on the Members, the Operating Member, Investor Member or any manager or agent of the Company, or limiting their respective rights or authority, with respect to the Project owned or activities undertaken directly by the Company shall be interpreted to impose the identical duty, responsibility or limitation on them with respect to the Project owned or activities undertaken through a Company Subsidiary. The operative agreement for each Company Subsidiary shall be in a form approved by the Members.

4.8 Insurance Requirements. The Company and the Company Subsidiaries, at a minimum, shall obtain and maintain the following insurance and any other insurance required by any lender providing Financing or determined to be appropriate by the Members (in form and with named insureds, endorsements, waivers and deductibles and with insurance companies and agents/brokers, designated by the Members) for the benefit of the Company and the Company Subsidiaries, provided that the insurance coverage maintained by the Company and the Company Subsidiaries shall be no less than the coverage Investor Member has committed to its investors to carry for similar type investments:

(a) During construction of the Project, a policy of insurance covering loss or damage to the Project with an insurable value equal to the value of the Project.

(b) Following completion of construction of the Project, an "all-risk" property insurance policy which shall include protection against loss or damage from earthquakes, in the full amount of its replacement value, which Operating Member or any lender providing Financing deems reasonably necessary.

(c) At all times, an umbrella liability policy of insurance with a minimum limit of coverage of not less than Ten Million Dollars ($10,000,000) per occurrence and not less than Ten Million Dollars ($10,000,000) in the aggregate. Such insurance shall further insure the Company against liability for property damage of at least Ten Million Dollars ($10,000,000.00).

(d) Without limiting the generality of Investor Member's ability to obtain insurance it determines to be appropriate, Investor Member has the right, but not the obligation, to maintain loss of income and extra expense insurance in amounts that will reimburse the Members and their Affiliates for direct or indirect loss of earning attributable to all perils commonly insured or attributable to prevention of access to the Project Land or the Project as a result of such perils.

The Members agree that after Substantial Completion the insurance maintained pursuant to this Section 4.8 may be carried under Investor Member's or its Affiliate's bulk insurance policy so long as the portion of the premiums due under such bulk insurance policy related to the Project are equal to or less than market rates for such insurance if purchased on a stand-alone project basis, except that the builder's risk policy carried by the Company shall be procured by Developer. All insurance policies must be pre-approved by Investor Member's insurance consultant.

4.9 Contracts with Members and Affiliates of Members. The Company may enter into Affiliate Agreements, and the validity of any such transaction, agreement, or payment shall not be affected by reason of any relationship between the Company and such Affiliates or Affiliated Persons, provided that such agreements shall be in accordance with the Development Plan, Residential Development Budget and/or Operating Budget, as applicable, or as otherwise approved by the Members, and shall not result in expenditures or concessions by the Company in excess of the amount or terms that would be paid or agreed to by the Company in arm's length agreements with unrelated parties with comparable experience, capability and expertise in the same geographic area as the Company. Investor Member shall have sole authority to cause the Company and/or any Company Subsidiary to enter into, amend, modify or waive any provision of, or enforce or administer any Affiliate Agreement between the Company or any Company Subsidiary, on the one hand, and the Developer or any Affiliate thereof, on the other hand, and to make all determinations on behalf of the Company or such Company Subsidiary with respect thereto, including, without limitation, the right to exercise any termination rights in accordance with the terms thereof and to enter into on behalf of the Company or such Company Subsidiary any agreement that replaces an Affiliate Agreement upon any expiration or earlier termination thereof. The Developer shall have sole authority to cause the Company and/or any Company Subsidiary to enter into, amend, modify or waive any provision of, or enforce or administer any Affiliate Agreement between the Company or any Company Subsidiary, on the one hand, and the Investor Member or any Affiliate thereof, on the other hand, and to make all determinations on behalf of the Company or such Company Subsidiary with respect thereto, including, without limitation, the right to exercise any termination rights in accordance with the terms thereof and to enter into on behalf of the Company or such Company Subsidiary any agreement that replaces any such Affiliate Agreement upon any expiration or earlier termination thereof. Notwithstanding anything to the contrary in this Agreement, the Members agree and acknowledge that nothing in this Section 4.9 shall apply to any distributions permitted under this Agreement.

4.10 Permissible Activities of the Members. The Members and their Affiliates or Affiliated Persons may individually and/or with others (i.e., other than in their capacity as Members) engage in other activities for profit, whether in the real estate business or otherwise, including, without limitation, the ownership, operation, development, leasing, sale, and management of other properties similar to the Project, and may in the future participate in memberships or other ventures for such purposes. Neither the Company nor the Members shall have any right by virtue of this Agreement in or to such independent ventures or to the income or profits derived therefrom.

4.11 Exculpation of the Members.

(a) No Member nor its partners or members shall be liable or accountable, in damages or otherwise, to the Company or to the Members for any act performed or failure to act by it (or them) that arises out of, or in connection with, this Agreement or the Company's business and affairs, unless such act or failure to act is attributable to its Bad Conduct or material breach of this Agreement.

(b) The Company shall indemnify, defend and hold harmless the Members and their respective members, partners, agents and employees for any loss, damage, liability, cost, or expense (including reasonable attorneys' fees) claimed by a third party and incurred by virtue of either of the Member's activities as a Member hereunder and arising out of any act performed or failure to act that is within the scope of a Member's authority hereunder, and arises out of, or in connection with, this Agreement or the Company's business and affairs, except to the extent the act or omission constitutes Bad Conduct or material breach of this Agreement. For the avoidance of doubt, this Section 4.11 shall apply in all respects to any Person acting in the capacity of the Partnership Representative. The Member seeking indemnification may issue a Capital Call to satisfy the Company's indemnification obligations contained in this Section 4.11.

(c) Each Member shall, to the fullest extent permitted by applicable law, indemnify, defend and hold the other Member(s) (and, if the other Member so elects, the Company and each Company Subsidiary, and the assets of the Company and each Company Subsidiary), harmless from and against any and all claims suffered or sustained by any of them (including the other Member's share of any obligation, liability, loss, damage, cost or expense directly or indirectly incurred by the Company) by reason of any act or omission constituting (i) breach or default by the indemnifying Member or its Affiliate under this Agreement or any Affiliate Agreement (including a breach of any representation or warranty by the indemnifying Member under this Agreement or any Affiliate Agreement and any failure to honor an indemnity obligation under this Agreement or any Affiliate Agreement) or (b) acts or omissions constituting Bad Conduct by the indemnifying Member or its Affiliate.

(d) In no event shall the foregoing be deemed to confer any personal liability upon any limited partner, agent or employee of Developer or of Investor Member. The Company's obligations under this Section 4.11 shall be satisfied only out of the assets of the Company and the rents, issues and profits therefrom, and in no event shall any Member be required to make any Capital Contribution to discharge the Company's obligations under this Section 4.11(b).

4.12 Approval of Emergency Actions. Operating Member shall submit to Investor Member in writing for its approval each act, item or decision with respect to which Operating Member is required to obtain the approval of the Members or Investor Member pursuant to the terms of this Agreement and which is not already set forth in the Development Plan. Notwithstanding the requirement to obtain Investor Member's advance written approval for such act, items or decisions, in the event of any Emergency Circumstance, Operating Member shall be required to provide only such notice as is practical under the circumstances before taking such action as Operating Member reasonably believes to be necessary in order to remove such imminent threat.

ARTICLE V
RIGHTS AND OBLIGATIONS OF THE MEMBERS

5.1 Member Liability. The Members shall not be personally liable for any of the debts, obligations, or liabilities of the Company or any of the losses thereof.

5.2 Examination of the Company Records. The Members and/or their representatives shall have unrestricted access to and may, during regular business hours, examine the books and records (at the Project or at such other location approved by the Members where such records are maintained) or property of the Company, consult with and advise those persons carrying out the business of the Company (including any service providers such as architects, engineers, lawyers and accountants) and otherwise inquire as to Company affairs. Operating Member shall cooperate with Investor Member in arranging such examinations and consultations.

5.3 Reliance on Authority of Person Signing Agreement; Designated Representatives.

(a) In the event that a Member is any entity other than a natural person, the Members and the Company (i) shall not be required to determine the authority of the person signing this Agreement to make any commitment or undertaking on behalf of such entity or to determine any fact or circumstance bearing upon the existence of the authority of such person; (ii) shall not be required to see to the application or distribution of proceeds paid or credited to persons signing this Agreement or any document executed in connection herewith on behalf of such entity; and (iii) shall be entitled to rely on the authority of the person signing this Agreement or any document in connection herewith with respect to the voting of the interest of such entity and with respect to the giving of consent on behalf of such entity in connection with any

matter for which consent is permitted or required under this Agreement or any document in connection herewith.

(b) In dealing with Operating Member, no Person shall be required to inquire as to its authority to bind the Company. Operating Member shall have the full right and authority to execute and deliver any and all agreements, contracts, documents and instruments relating to the business and affairs of the Company authorized pursuant to this Agreement, without the joinder of Investor Member (but subject to any requirement under this Agreement to obtain Investor Member's approval thereof) or any other Person, and any Person dealing with the Company may rely upon Operating Member's execution and delivery of any agreement, contract, document or instrument authorized pursuant to this Agreement as the act and deed of the Company, without the necessity for further inquiry.

ARTICLE VI
CAPITAL ACCOUNTS;
ALLOCATIONS AND DISTRIBUTIONS

6.1 Capital Accounts.

(a) A Capital Account shall be maintained for each Member, which account shall be increased (credited) by (i) the amount of money and the fair market value of property contributed and deemed contributed by such Member to the Company (net of liabilities that the Company is considered to assume or take subject to under Section 752 of the Code), and (ii) the amount of Net Income and items of income and gain of the Company allocated to such Member; and decreased (debited) by (iii) the amount of money and the fair market value of property distributed to such Member (net of liabilities that such Member is considered to assume or take subject to under Section 752 of the Code), and (iv) the amount of Net Loss and items of loss and deduction of the Company allocated to such Member pursuant to Sections 6.2 and 6.3, and otherwise adjusted in accordance with the additional rules set forth in Regulations section 1.704-1(b)(2)(iv). In addition, a Member's Capital Account may be adjusted as provided in Section 9.2 hereof. The Capital Accounts of all Members shall be adjusted as required under Regulations sections 1.704-1(b)(2)(iv)(f) or 1.704-1(b)(2)(iv)(m), as applicable, to reflect any aggregate net adjustment to the values of Company Assets as permitted by the Code or the relevant Regulations.

(b) A single Capital Account shall be maintained for each Member, which Capital Account shall reflect all allocations, distributions, or other adjustments required by this ARTICLE VI with respect to Company interests owned by such Member, regardless of whether such Member owns more than one class of Company interest.

(c) Upon any Transfer of all or part of an Interest, as permitted by this Agreement, the Capital Account (or portion thereof) of the transferor that is attributable to the transferred Interest (or portion thereof) shall carry over to the transferee, as prescribed by Regulations section 1.704-1(b)(2)(iv)(l).

6.2 Allocation of Net Income and Net Loss.

(a) Subject to Section 6.2(b), for each fiscal year or other relevant period, after first giving effect to the special allocations required or permitted by Sections 6.3, Net Income and Net Loss (and, to the extent necessary, individual items of income, gain, loss or deduction) of the Company shall be allocated among the Members in a manner such that the Capital Account balance of each Member, immediately after making such allocations, is, as nearly as possible, equal to (i) the distributions that would be made to such Member pursuant to Section 6.6 if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Book Value, all Company liabilities were satisfied (limited, with respect to any nonrecourse liabilities, to the Book Value of the property securing such nonrecourse liability),

and the net assets of the Company were distributed, in accordance with Section 6.6, to the Members immediately after making such allocations, minus (ii) such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets. Notwithstanding the foregoing, the Members shall make such allocations as they deem reasonably necessary to give economic effect to the provisions of this Agreement and to carry out the intent of this Agreement, regarding the order of priority of distributions set forth in Section 6.6, taking into account such facts and circumstances they deem reasonably necessary for this purpose.

(b) Notwithstanding Section 6.2(a), if the Ownership Percentages and the Members' rights to receive distributions have been modified pursuant to Section 12.3, then for each fiscal year or other relevant period thereafter, after first giving effect to the special allocations required or permitted by Sections 6.3, Net Income and Net Loss (and, to the extent necessary, individual items of income, gain, loss or deduction) of the Company shall be allocated among the Members as follows:

(i) Net Income, other than Net Income resulting from Capital Transactions, shall be allocated as follows:

(A) first, to the Members in proportion to, in the inverse order in which, and to the extent of, the Net Loss previously allocated to them pursuant to Sections 6.2(b)(iii)(A) and 6.2(b)(iii)(B), until the cumulative amounts allocated to each Member pursuant to this Section 6.2(b)(i)(A) and Section 6.2(b)(ii)(A) for such fiscal year or other period and all prior fiscal years and other periods are equal to the cumulative Net Loss so allocated to such Member; and

(B) next, to the Members in proportion to their respective Ownership Percentages;

(ii) Net Income resulting from Capital Transactions shall be allocated as follows:

(A) first, to the Members in proportion to, in the inverse order in which, and to the extent of, the Net Loss previously allocated to them pursuant to Sections 6.2(b)(iii)(A) and 6.2(b)(iii)(B), until the cumulative amounts allocated to each Member pursuant to Section 6.2(b)(i)(A) and this Section 6.2(b)(ii)(A) for such fiscal year or other period and all prior fiscal years and other periods are equal to the cumulative Net Loss so allocated to such Member;

(B) second, one hundred percent (100%) to the Developer until the cumulative amounts allocated to the Developer pursuant to this Section 6.2(b)(ii)(B) for such fiscal year or other period and all prior fiscal years or other periods are equal to the cumulative amounts distributed (and as provided below in this Section 6.2(b)(ii), deemed distributed) to the Developer pursuant to Section 6.6(b)(ii) (as in effect after Section 6.6(b) has been amended pursuant to Section 12.3); and

(C) next, to the Members in the proportions in which distributions were made (and as provided below in this Section 6.2(b)(ii), deemed made) to them pursuant to Section 6.6(b)(iii) (as in effect after Section 6.6(b) has been amended pursuant to Section 12.3);

provided however, that in making any allocations pursuant to Section 6.2(b)(ii)(B) or Section 6.2(b)(ii)(C) for any fiscal year or other period in which the Net Income to be so allocated exceeds the cash distributed pursuant to Section 6.6(b)(ii) and 6.6(b)(iii) (as in effect after Section 6.6(b) has been amended pursuant to Section 12.3), then such allocations shall be made as if cash in an amount equal to such Net Income was actually distributed pursuant to Sections 6.6(b)(ii) or 6.6(b)(iii) (as in effect after Section 6.6(b) has been amended pursuant to Section 12.3) as applicable, taking into account all previous distributions and previous deemed distributions under such Sections, with the excess being deemed distributed for purposes of this Section 6.2(b)(ii), and any amounts so allocated shall be taken into account in determining the amount of any subsequent allocations of Net Income pursuant to Sections 6.2(b)(ii)(B) and 6.2(b)(ii)(C);

(iii) Net Loss shall be allocated as follows:

(A) first, to the Members in proportion to, in the inverse order in which, and to the extent of, the Net Income previously allocated to them pursuant to Sections 6.2(b)(i)(B), 6.2(b)(ii)(B) and 6.2(b)(ii)(C); and

(B) next, to the Members in proportion to their respective Ownership Percentages.

6.3 Limitations and Qualifications Regarding Special Allocations. Notwithstanding the provisions of Section 6.2, Net Income and Net Loss of the Company (or items of income, gain, loss, deduction or credit, as the case may be) shall be allocated in accordance with the following provisions of this Section 6.3 to the extent such provisions shall be applicable.

(a) Subject to the exceptions set forth in Regulations section 1.704-2(f)(2), (3), (4) or (5), if there is a net decrease in Company Minimum Gain during any fiscal year or other relevant period, each Member shall be specially allocated items of Company income and gain for such year or period (and, if necessary, subsequent years and periods) in proportion to, and to the extent of, an amount equal to that Member's share of the net decrease in Company Minimum Gain, within the meaning of Regulations section 1.704-2(g)(2). The chargeback of Company Minimum Gain shall consist first of income and gain from the disposition of Company Assets subject to nonrecourse liabilities of the Company, with the remainder of the chargeback, if any, made up of a pro rata portion of the Company's other items of income and gain for such year, and shall be determined in accordance with Regulations sections 1.704-2(f)(6), 1.704-2(g)(2) and 1.704-2(j)(2)(i), or any successor provisions. The provisions of this Section 6.3(a) are intended to comply with the minimum gain chargeback requirement of Regulations section 1.704-2(f) and shall be interpreted in accordance therewith for all purposes under this Agreement.

(b) Notwithstanding any other provision of this Section 6.3 other than Section 6.3(a), but subject to the exceptions referenced in Regulations section 1.704-2(i)(4), if there is a net decrease in Member Nonrecourse Debt Minimum Gain during any fiscal year or other relevant period, each Member that has a share of such Member Nonrecourse Debt Minimum Gain, determined in accordance with Regulations section 1.704-2(i)(5), as of the beginning of such year or period shall be specially allocated items of Company income and gain for such year or period (and, if necessary, for succeeding years or periods) equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain. The items to be so allocated shall be determined in accordance with Regulations section 1.704-2(i)(4) or any successor provision. The provisions of this Section 6.3(b) are intended to comply with the Member

Nonrecourse Debt Minimum Gain chargeback requirement of Regulations section 1.704-2(i)(4) and shall be interpreted in accordance therewith for all purposes under this Agreement.

(c) If any Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year) shall be specially allocated to such Member in an amount and manner sufficient to eliminate as quickly as possible the Adjusted Capital Account Deficit of such Member, if any, to the extent required by the Regulations. The provisions of this Section 6.3(c) are intended to comply with the "qualified income offset" requirement of Regulations section 1.704-1(b)(2)(ii)(d)(3) and shall be interpreted in accordance therewith for all purposes under this Agreement.

(d) Nonrecourse Deductions of the Company for any fiscal year or other relevant period shall be specially allocated to the Members in accordance with their respective Ownership Percentages. Member Nonrecourse Deductions of the Company for any fiscal year or other relevant period shall be specially allocated to the Member who bears the economic risk of loss for the liability in question. The provisions of this Section 6.3(d) are intended to satisfy the requirements of Regulations sections 1.704-2(e)(2) and 1.704-2(i)(1) and shall be interpreted in accordance therewith for all purposes under this Agreement.

(e) No Net Loss shall be allocated to a Member pursuant to Section 6.2 hereof to the extent that such allocation would cause such Member to have an Adjusted Capital Account Deficit at the end of any fiscal year or other relevant period. Instead, any such loss shall be allocated to each other Member to the extent that such allocation would not cause such other Member to have an Adjusted Capital Account Deficit and thereafter the remainder shall be allocated to the Members in accordance with their respective Ownership Percentages.

(f) Net Income and Net Loss of the Company shall not be allocated in accordance with Section 6.2 hereof or any paragraph of this Section 6.3 other than this paragraph (f) if and to the extent that any such allocation would cause the Company's allocations not to have substantial economic effect for purposes of Section 704(b)(2) of the Code under the economic effect equivalence test set forth in Regulations section 1.704-1(b)(2)(ii)(i), and any such Net Income and Net Loss shall instead be allocated to and among the Members in the amounts and in the manner necessary to cause the Company's allocations to comply with such economic effect equivalence test. For purposes of this Section 6.3(f), it shall be acknowledged and assumed that no Member is obligated to contribute to the Company any cash or property to eliminate the deficit balance existing in its Capital Account upon the liquidation of the Company except to the extent that such Member is personally liable under Law or by contract to satisfy a Company liability.

(g) The allocations set forth in Sections 6.3(a)-(f) (the "**Regulatory Allocations**") are intended to comply with certain requirements of Regulations sections 1.704-1(b) and 1.704-2. Notwithstanding any other provision of this Article VI (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in making allocations among the Members of Net Income and Net Loss (and items thereof) of the Company other than the Regulatory Allocations such that, to the extent possible, the net amount of such allocations of Net Income and Net Loss (and items thereof) other than the Regulatory Allocations, together with the Regulatory Allocations, shall equal the net amount that would have been allocated to and among the Members had the Regulatory Allocations not occurred.

6.4 Tax Allocations; Contributed Property. Except as provided below in this paragraph, for each fiscal year or other relevant period, items of income, gain, loss and deduction of the Company, determined solely for federal (and, where applicable, state and local) income tax purposes, shall be allocated to the Members in the same manner as each correlative item of Net Income and Net Loss (and item of

income, gain, loss, and deduction) are allocated to the Members pursuant to Sections 6.2 and 6.3. In accordance with Section 704(c) of the Code and applicable Regulations, income, gain, loss and deduction with respect to any property contributed to the Company (or any predecessor thereto) shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company (or any predecessor thereto) for federal income tax purposes and the fair market value of such property for federal income tax purposes at the time of contribution using any method selected by the Investor Member and permitted under Regulations section 1.704-3. In addition, in the event that the Book Value of any asset of the Company is adjusted pursuant to the provisions of Section 704(b) of the Code and the Regulations thereunder, subsequent allocations of income, gain, loss and deduction for tax purposes with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its adjusted Book Value using any method selected by the Investor Member and permitted under Regulations section 1.704-3, in the same manner as under Section 704(c) of the Code and the applicable Regulations.

6.5 Allocation of Items with Respect to Interests Transferred. If any Interest is Transferred during any fiscal year, the Net Income and Net Loss attributable to such Interest for such fiscal year will be divided and allocated between the transferor and the transferee by taking account of their varying interests in the Company during such fiscal year on a daily, monthly, or other basis, as determined by the Investor Member, using any method selected by the Investor Member and permitted by Section 706 of the Code and the Regulations promulgated thereunder.

6.6 Distribution of Company Available Cash Flow.

(a) Company Available Cash Flow shall be distributed quarterly (provided that Company Available Cash Flow resulting from Capital Transactions shall be distributed as soon as practicable after receipt), subject to amounts to be applied under the Development Plan and reasonable reserves pursuant to an established reasonable reserves policy approved by Investor Member, in its reasonable discretion. Company Available Cash Flow shall be computed on an aggregate basis for all Company Assets.

(b) Subject to Sections 3.3, 3.5(b), 4.2(d), 6.7 and 6.8, the amount of Company Available Cash Flow shall be apportioned and distributed to the Members as follows:

(i) First, one hundred percent (100%) to the Members in proportion to their respective Unrecovered Contribution Amounts, until each Member has received an amount equal to its Unrecovered Contribution Amount.

(ii) Second, one hundred percent (100%) to the Members in proportion to their respective Ownership Percentages until Investor Member has received an IRR of nine percent (9%).

(iii) Third, (A) twenty percent (20%) to Developer, and (B) eighty percent (80%) to the Members in proportion to their respective Ownership Percentages, until Investor Member has received an IRR of twelve percent (12%).

(iv) Fourth, (A) thirty-five percent (35%) to Developer, and (B) sixty-five percent (65%) to the Members in proportion to their respective Ownership Percentages, until Investor Member has received an IRR of sixteen percent (16%).

(v) Fifth, the remainder, (A) forty-five percent (45%) to Developer, and (B) fifty-five percent (55%) to the Members in proportion to their respective Ownership Percentages.

An example of the IRR calculation of the distribution of Available Cash Flow under this Section 6.6(b) is set forth in Exhibit H.

6.7 Return of Distributions. From time to time but no later than ninety (90) days after the close of any fiscal year, if requested by either Member, the distributions of Company Available Cash Flow between the Members shall be recomputed on the basis of the actual amount of Company Available Cash Flow for such fiscal year c or portion thereof. If distributions to one or both Members were greater than the distributions thus recomputed by the accountants for the Company, then such Member(s) shall, within thirty (30) days after notice, re-contribute to the Company, in reverse order of the priorities set forth in Section 6.6(b), the amounts received by such Member(s) for such fiscal year until all distributions of Company Available Cash Flow for such fiscal year (or portion thereof) shall be in conformance with such re-computation.

6.8 Offsets. In the event of an uncured event of default or breach by a Member (the "**Defaulting Party**") under this Agreement, any sums distributable or payable to the Defaulting Party shall be offset against any losses, costs and damages sustained by the Company, any Company Subsidiary or the non-defaulting Member resulting from the default and shall be paid instead to the Company, a Company Subsidiary or the non-defaulting Member in such order as the non-defaulting Member shall determine (but shall be deemed to have been distributed or paid to the Defaulting Party or its Affiliates and then paid over to the Company, a Company Subsidiary or the non-defaulting Member, as the case may be), until such damages have been fully offset.

6.9 Withholding.

(a) The Company is authorized to withhold from any cash distribution to any Member amounts necessary to pay any tax (including interest, penalties or other additions to tax) with respect to a Member's allocable share of Company items of income or gain, whether or not distributed, including without limitation, any estimated, composite or withholding tax, and including any taxes imposed under the Partnership Audit Procedures ("**Tax Advances**"), and to remit such withheld amounts to the Internal Revenue Service or any other proper governmental authority. Any amount withheld pursuant to this Section 6.9 shall, for purposes of this Agreement, be treated as having been distributed to the Member from whom it was withheld, and, to the extent that such withholding exceeds the amount otherwise distributable to such Member, such Member shall pay the amount of such excess to the Company within ten (10) Business Days of receipt of written notice thereof (it being understood that, for the avoidance of doubt, any payments pursuant to this proviso shall not be treated as Capital Contributions made to the Company by the paying Member).

(b) In the event that any Member fails to timely make any such payment, such Member shall be in default and shall indemnify and hold the Company and the other Member harmless for any costs, penalties, payments or damages incurred by the Company or the other Member as a result of such failure (including any taxes owed by the Company or such other Member as a result of the receipt of such amounts), and such Member shall pay the Company interest in respect of any disbursements made by the Company as a result of such Member failing to timely make the payments required by Section 6.9(a) at the rate of nine percent (9%) per annum (or, if lower, the highest rate of interest allowed by applicable law).

ARTICLE VII
ASSIGNABILITY

7.1 Transfers and Pledges. Except as contemplated in Section 3.5(b), this Section 7.1, or in ARTICLE XI or ARTICLE XII, no Member shall Transfer or Pledge all or any part of its Interest, directly

or indirectly, without the prior written consent of the other Member, which approval may be given or withheld in the sole and absolute discretion of the other Member.

(a) Developer's Permitted Transfers. Subject to Section 7.2, (1) Developer at any time may directly Transfer its entire Interest to any Affiliate, and (2) any direct or indirect equity owner in Developer may Transfer its direct or indirect interests in Developer, in each case without the prior written consent of Investor Member, provided that (X) (i) such Transfer shall not violate any of the terms of any Financing Documents or other obligations of the Company or any Company Subsidiary, (ii) such transferee shall not, and shall not have any member or partner (directly or indirectly) which has violated or allegedly violated the USA PATRIOT Act or is on the OFAC list of prohibited owners, (iii) such Transfer shall not result in the Company (A) having to register under the Investment Company Act of 1940, (B) holding plan assets for purposes of ERISA, or (C) being a publicly traded partnership, (iv) the transferee would not hold, directly or indirectly, all or any portion of its Interest or its interests in such Member, as applicable, for the benefit of any Person described in subsection (iii) hereinabove (any of such events, a "**Disqualification Condition**") and (iv) such transfer is in compliance with applicable law, and (Y) such Transfer does not result in a Key Person Event or a Change in Control of Developer.

(b) Investor Member's Permitted Transfers. Subject to Section 7.2, (1) Investor Member at any time may directly Transfer its entire Interest to any Affiliate, and (2) any direct or indirect equity owner in Investor Member may Transfer its direct or indirect interests in Investor Member, in each case without the prior written consent of Developer, provided that such Transfer does not result in a Disqualification Condition or a Change in Control of Investor Member. Operating Member hereby covenants and agrees to use commercially reasonable efforts to cause any Financing Documents to permit each Transfer contemplated in this Section 7.1(b); provided, however, that the foregoing covenant shall not limit Investor Member's right to approve the execution and delivery of any such Financing Documents as a Major Decision as provided in Section 4.5(a)(ii), but as limited by Section 4.6(b).

7.2 Additional Covenants Concerning Transfers. In the event of any Transfer of an Interest in accordance with the provisions of this Article VII, the Members agree to cooperate fully in order to facilitate such Transfer, such cooperation to include without limitation the execution of all appropriate instruments or documents evidencing such Transfer or such Member's consent thereto, provided that any reasonable expenses incurred by the non-transferring Member shall be reimbursed by the other Member and the non-transferring Member shall not be required to incur any additional risk, liability or obligation in connection therewith.

7.3 Admission as Substituted Member. The transferee of an Interest permitted under this Article VII shall be admitted as a Member in substitution for the Member which has Transferred its Interest, provided that the transferee must assume all of the obligations of the applicable Member thereafter accruing hereunder with respect to the Interest being Transferred, and under all agreements given to third parties by the Member which has Transferred its Interest, or by such Member's Affiliates or Affiliated Persons. Any Interest transferred pursuant to any provision of this Article VII shall thereafter remain subject to all the provisions of this Article VII and this Agreement.

ARTICLE VIII
ACCOUNTING PROCEDURE

8.1 Fiscal Year. The fiscal year of the Company shall begin on January 1 and shall end on December 31 of each year.

8.2 Books of Account. There shall be kept books of account at the offices of the Company in which shall be entered fully and accurately each and every transaction of the Company. The books shall be

kept using the accrual method of accounting. Each Member shall have unrestricted access to and have the right to inspect the books and records of the Company and the right to consult with and advise those persons carrying out the business of the Company (including any service providers such as architects, engineers, lawyers and accountants) upon reasonable notice during business hours. Further, each Member shall have the right at all reasonable times during usual business hours to audit, examine and make copies of or extracts from the books and records of the Company. Such right may be exercised through any agent or employee of such Member designated by it or by a certified public accountant designated by such Member. A Member shall bear all expenses incurred in any examination made for such Member's account.

8.3 Notices, Reports and Meetings. The Operating Member shall promptly deliver to Investor Member such additional information regarding the Company as Investor Member may reasonably request from time to time, including without limitation the reports, contractual documents, payment application information and financial reports listed on **Exhibit F** at the times and intervals set forth therein. Without limitation of the foregoing:

(a) At the end of each calendar month, unless such calendar month is the last calendar month of any fiscal year of the Company, Operating Member shall prepare, or cause to be prepared, at the expense of the Company, unaudited financial statements of the Company on a GAAP basis consistently applied as of the end of such calendar month, including a balance sheet, a statement of income or loss, a statement of cash flows, and such other schedules, reports and backup information as are reasonably requested by Investor Member. A copy of such unaudited financial statements, schedules and backup information for each calendar month shall be furnished by Operating Member to Investor Member not later than fifteen (15) calendar days after the end of each calendar month.

(b) At the end of each calendar month, Operating Member shall prepare, or cause to be prepared, at the expense of the Company, a report listing all changes to line items contained in the Residential Development Budget or any Approved Annual Update as of the end of such calendar month. A copy of such report shall be furnished by Operating Member to Investor Member not later than fifteen (15) calendar days after the end of each calendar month.

(c) At the end of each fiscal year, Operating Member shall prepare, or cause to be prepared, at the expense of the Company, unaudited financial statements of the Company on a GAAP basis consistently applied as of the close of such fiscal year, including a balance sheet, a statement of income or loss, a statement of cash flows, a statement of changes in Members' capital, and such other schedules, reports and backup information as are reasonably requested by Investor Member, all of which shall be signed by Operating Member, and to its actual knowledge, after reasonable inquiry, shall be true, correct, and complete. A copy of such unaudited financial statements, schedules and backup information for each fiscal year shall be furnished by Operating Member to Investor Member not later than January 31 after the end of the fiscal year of the Company.

(d) Not later than March 1 of each year, Operating Member shall furnish to the Members a draft copy of the Company's U.S. Income Tax Return (presently Form 1065), including each Member's estimated Schedule K-1, for the prior year, which draft (and estimated Schedule K-1s) shall (regardless of the date it is in fact furnished) be provided to the Members before filing the same. Each tax return must be approved by Investor Member before it is filed with tax authorities. If Investor Member has not approved any tax return prior to the date required for the filing thereof (including any extensions granted), Operating Member will timely obtain an extension of such date if an extension is available.

(e) The Company shall furnish to the Members monthly reports reflecting progress on construction, sales, the amount of funds drawn down under any loans, all disbursements, and other

information reasonably requested by Investor Member, and shall show, in comparative form, the operating results actually realized and the results projected by the Approved Annual Update then in effect.

(f) Operating Member will furnish to each Member, at the expense of the Company, copies of all reports required to be furnished to any lender.

(g) Regular meetings of the Members to review the Company's business and affairs and such other matters as any Member may propose to be attended either in person at Investor Member's offices at 111 East Sego Lily Drive, Suite 400, Sandy, Utah 84070 or through audio or video conference at least annually, and more frequently as requested by either Operating Member or Investor Member.

(h) Each Member shall give the other Member prompt notice of the following (including copies of each relevant document):

(i) all correspondence (other than routine non-material items) regarding the Project, the Company Subsidiaries, the Company or any Member with respect to Company business to or from banks, insurers, tax authorities, Governmental Authorities (with sufficient advance notice for representatives of the other Member to attend any meetings with any of them);

(ii) personal injury at the Project;

(iii) threatened claims against the Project, the Company Subsidiaries, the Company or any Member or its Affiliate with respect to Company business;

(iv) upon obtaining knowledge thereof, the occurrence of any event that makes it reasonably likely that there will be (A) any substantial deviation from the Development Plan, or (B) an inability to meet any of the timing milestones or budget contained therein;

(v) offers to purchase the Project received by such Member; and

(vi) notices of violations of Law regarding the Project, the Company Subsidiaries, the Company or such Member with respect to Company business.

8.4 The Development Plan, the Operating Budget and the Annual Update.

(a) The Development Plan and the Residential Development Budget have been prepared by Operating Member and approved by Investor Member, and are attached hereto as **Exhibit C** and **Exhibit D**, respectively. The Members are obligated to make the Additional Capital Contributions provided for in the Development Plan and the Residential Development Budget in accordance with Section 3.1. The Development Plan, including the Residential Development Budget, may be amended from time to time (i) as a Major Decision pursuant to Section 4.5(a)(v), (ii) to be consistent with any subsequently Approved Annual Update, or (iii) as otherwise provided in this Agreement. The Parking Structure Budget is attached hereto as **Exhibit L** and may be amended from time to time as a Major Decision pursuant to Section 4.5(a)(xxiii).

(b) By November 30th of each calendar year, Operating Member shall prepare and submit to Investor Member for its approval an update and proposed changes to the Development Plan, including the Residential Development Budget, together with annual Operating Budgets, commencing ninety (90) days prior to substantial completion of any of the buildings and improvements contemplated by the Development Plan and no later than November 30th of each calendar year starting with the year in which Substantial Completion has occurred (the "**Annual Update**" or, as approved, the "**Approved**

Annual Update") for the Company for the next calendar year. Investor Member shall have fifteen (15) calendar days from the date upon which it receives the Annual Update to approve or disapprove such Annual Update. During such 15-day period, Operating Member and Investor Member shall meet to discuss the Annual Update. If Investor Member has not notified Operating Member of its approval or disapproval of the Annual Update by the end of such 15-day period, Investor Member shall be deemed to have disapproved the Annual Update. If Investor Member is deemed to have disapproved the Annual Notice, Operating Member may resend the Annual Update to Investor Member and Investor Member shall have five (5) days from the date upon which it receives the second copy of the Annual Update to approve or disapprove such Annual Update. Provided that such second notice includes a statement in bold and all caps at the top of the first page of such second notice informing Investor Member of the effect of its failure to approve or disapprove the Annual Update, if Investor Member fails to notify Operating Member of its approval or disapproval within such five-day period, Investor Member shall be deemed to have approved the Annual Update. Prior to the approval of an Annual Update, Operating Member shall operate the Company in accordance with the Operating Budget, as modified by the most recent Approved Annual Update. Notwithstanding the foregoing, the Approved Annual Update for the calendar year immediately preceding the calendar year for which the Annual Update has not yet been approved shall automatically be adjusted for increases, if any, in debt service, insurance, utilities, taxes and other uncontrollable increases, and shall not take into account any extraordinary or non-recurring items.

(c) In conjunction with the formulation of, and as part of, the Annual Update for each year beginning in the year in which the Project will be substantially completed, Operating Member will also develop rental advertising and other operating guidelines for the Project for the upcoming fiscal year, which rental advertising and other operating guidelines shall include (i) a budget for the costs to be incurred for the balance of the projected period, and (ii) a summary of the general content and method of presentation of the advertising program to be implemented with respect to the Project.

8.5 Bank Accounts. Operating Member shall not employ Company funds or Company Assets in any manner except for the exclusive benefit of the Company. Operating Member shall open and maintain interest bearing accounts (the "**Company Bank Accounts**") in the name of the Company in such banks or trust companies as the Operating Member may select, subject to the reasonable approval of Investor Member (which shall be deemed given to the extent specified in the Approved Annual Update and provided that the lender providing any Financing, to the extent required under such Financing, shall be deemed approved), for the deposit and disbursement of all funds relating to the Company. The funds of the Company and each Company Subsidiary shall not be commingled with the funds of any other Person. Operating Member shall use commercially reasonable efforts to cause such banks or trust companies to provide Investor Member with e-mail notifications within one Business Day of all transactions over $100,000.

ARTICLE IX
DURATION AND DISSOLUTION

9.1 Dissolution.

(a) The Company shall continue in existence until the earliest to occur of (i) a written election by Operating Member and Investor Member to dissolve the Company; (ii) the sale, forfeiture, or abandonment of substantially all of the Company Assets and the receipt of all payments with respect thereto, including a sale of the Applicable Sale Interests pursuant to Section 11.2; or (iii) any other event causing the dissolution of the Company by operation of Law.

(b) Except as expressly provided herein to the contrary, each Member agrees not to withdraw from the Company without the prior written consent of the other Member.

9.2 Liquidation.

(a) Except as otherwise provided herein, upon the dissolution of the Company no further business shall be conducted except for the taking of such action as shall be necessary for the winding up of the affairs of the Company and the distribution of its assets to the Members pursuant to the provisions of this section. In such event, a liquidating trustee shall be appointed as follows: Each Member shall select an advisor and the advisors shall select a third person to serve as liquidating trustee; provided, however, that Investor Member shall appoint the liquidating trustee in its sole discretion (and may appoint itself or an Affiliate as liquidator) if Operating Member has committed a Cause Event. The liquidating trustee shall have full authority to wind up the affairs of the Company and to make final distribution as provided herein.

(b) Upon the dissolution of the Company, the liquidating trustee shall use commercially reasonable efforts to sell the Company Assets at the best price available, or, with the consent of all Members, the liquidating trustee may distribute those assets in kind; provided, however, that the liquidating trustee shall ascertain the fair market value by appraisal or other reasonable means of the Company Assets to be distributed in kind, and each Member's Capital Account shall be charged or credited, as the case may be, as if such asset had been sold for cash at such fair market value and the net gain or net loss recognized thereby had been allocated to and among the Members in accordance with Article VI above. All of the Company Assets shall be so applied and distributed by the liquidating trustee on or before the later to occur of (x) the end of the taxable year in which the dissolution of the Company occurs, (y) the date that is ninety (90) days following the date upon which substantially all of the Company Assets are sold or otherwise disposed of by the Company, or (z) the date that is ninety (90) days following the date any other event of dissolution occurs, and in the following order:

(i) First, to the creditors of the Company;

(ii) Second, to setting up the reserves that the Members reasonably deem necessary for contingent or unforeseen liabilities or obligations of the Company; and

(iii) Finally, in the manner provided in Section 6.6.

Notwithstanding the provisions of Article VI, the Net Income and Net Loss (and items of gross income, gain, loss and deduction) of the Company for the fiscal year in which the liquidation of the Company occurs shall be allocated in a manner such that, to the extent possible, the Capital Account of each Member, immediately prior to the final liquidating distribution, is equal to the amount which such Member is entitled to receive under Section 6.6.

(c) The liquidating trustee shall comply with any requirements of the Act or other applicable Law, except as modified by this Agreement in the manner permitted by the Act, pertaining to the winding up of a limited liability company, at which time the Company shall stand liquidated.

(d) The Members intend that the allocation provisions of Article VI produce final Capital Account balances of the Members that will result in liquidating distributions provided for in this Section 9.2 to be in accordance with their respective Capital Account balances. If and to the extent that the allocation provisions of Article VI in the year of the Company's liquidation would fail to produce such final Capital Account balances, following the allocation of income and gain from the year in which liquidation occurs (i) such provisions shall be amended by the Members if and to the extent necessary to produce such result, and (ii) items of income, gain, loss and deduction for all prior open years that can be amended (i.e., those years for which the Company and its Members can still file an amended federal income tax return) shall be reallocated among the Members as reasonably determined by the Members to produce such result.

9.3 Deficit Capital Account. No Member shall be required to pay to the Company or any Member any deficit or negative balance which may exist in such Member's Capital Account from time to time or upon liquidation of the Company, except to the extent such Member is personally liable under Law or by contract to satisfy a Company liability.

ARTICLE X
COMPENSATION AND FEES

10.1 Property Management. (a) Investor Member and Operating Member shall approve as a Pre-Stabilization Major Decision, or after Stabilization, a Major Decision, the property manager for any Improvements constructed upon the Project (such manager or any replacement appointed pursuant to this Section 10.1, the "**Property Manager**"), subject to the provisions of Section 4.9, and the Company will enter (or cause the Company Subsidiary to enter) into a property management agreement with such Property Manager on market rates and in a form agreed to by the Members (a "**Property Management Agreement**") whereby the Company will delegate day-to-day management of the Project to the Property Manager subject to the terms of this Agreement.

(a) Notwithstanding the foregoing, Investor Member shall have the right of first offer, in its sole and absolute discretion, to appoint Bridge Property Management, L.C. (or with the reasonable approval of Developer, another Affiliate of Investor Member) as the initial Property Manager or, if applicable, to cause the Company to remove any Property Manager previously appointed as Property Manager, subject to the terms and conditions contained herein. In the event Investor Member exercises such right to cause the Company to appoint Bridge Property Management L.C. (or such other Affiliate of Investor Member) as Property Manager pursuant to this Section 10.1(a), the Company shall enter (or cause the Company Subsidiary to enter) into a Property Management Agreement with such Property Manager, subject to the provisions of Section 4.9.

(b) The terms and conditions, including any fees, of any Property Management Agreement entered into by the Company pursuant to this Section 10.1 shall be made on competitive market terms and at market rates.

(c) The Operating Member shall be required to manage the Company Assets after the Effective Date and during development without additional compensation in excess of the fees contemplated by this Agreement unrelated to property management.

10.2 Development and Construction Fee.

(a) The Company shall pay to Developer or an Affiliate of Developer a development fee (the "**Development Fee**") equal to three percent (3.0%) of Hard Costs and items listed as "Managed Soft Costs" in the Residential Development Budget (excluding Developer Responsible Cost Overruns), computed and paid in the manner set forth in the Residential Development Budget. Twenty-five percent (25%) of the Development Fee shall be paid upon issuance of final building permits, and the balance shall be paid quarterly in arrears during the twenty-four (24) month period following thereafter, in compliance with the Financing Documents governing the Construction Loan.

(b) The general contractor for the Project (in such capacity, the "**General Contractor**") shall be Jacobsen Construction. The form and substance of the Construction Contract has been approved by Investor Member.

10.3 Finance Fee. The Company shall pay a debt sourcing fee of one-quarter of one percent (0.25%) to Bridge Structured Finance LLC if Bridge Structured Finance LLC, at the request of the

Developer, is retained to be responsible for and obtains any Financing to replace any then-existing Financing, including the Construction Loan. In the event the Company pays any fees to Bridge Structured Finance LLC pursuant to this Section 10.3, neither the Company nor any other Person shall have any obligation to pay a brokerage fee arising from or relating to any such Financing. Any brokerage fees charged by any third party responsible for obtaining such Financing on behalf of Bridge Structured Finance LLC, Investor Member or any of their Affiliates shall be the sole obligation of Bridge Structured Finance LLC, Investor Member or such Affiliate, as applicable, if Bridge Structured Finance LLC, Investor Member or such Affiliate receives any fee with respect thereto.

10.4 Reimbursement of Expenses. The Company shall pay to each Member, as and when requested, the amounts necessary to reimburse such Member for the direct third-party out-of-pocket expenses directly, reasonably and actually incurred by it in administering the Company. Included in the foregoing are all costs and expenses directly and reasonably incurred by such Member in connection with the development, construction, repair, ownership, operation and maintenance of the Project, but only to the extent provided in the Residential Development Budget, an Operating Budget, or any Approved Annual Update.

ARTICLE XI
SALE RIGHTS

11.1 Lock-Out Period; Sale Right.

(a) The Members agree that the Project (and any portion thereof) shall not be sold or transferred, in whole or in part, during the Lock-Out Period without the approval of each Member in its sole and absolute discretion.

(b) At any time after the Lock-Out Period, Investor Member will have the right to unilaterally elect to sell the Project in its entirety, (but not one or more of the individual apartment buildings comprising the Project) and in doing so shall cause the Company to solicit offers from prospective third-party purchasers, the terms of such sale being determined by Investor Member, in its sole discretion (except the terms must include only an all cash offer, other than the assumption of the existing Loan). Investor Member shall retain a nationally recognized broker to sell the Project, and the Members, working together, on an open book/communication basis and sharing all information with respect to the Project, its condition and financial information, shall cause the Project to be widely exposed to the market. The Members, working together, shall, with the assistance of the retained broker, prepare an information package on the Project, which shall include the information which is customarily included in an offering memorandum for the sale of similar type properties. The offering memorandum as completed shall constitute the "**Project Sale Offer**."

11.2 Developer Right of First Offer.

(a) Prior to the Project Sale Offer being submitted to any third party, Investor Member shall deliver written notice including the Project Sale Offer ("**Property Sale Election**") to the Developer for purchase of the Project in its entirety, which Property Sale Election shall name the price Investor Member is willing to accept on behalf of the Company ("**First Offer Price**") for the Project. Upon receipt of a Property Sale Election and for a period of thirty (30) days thereafter ("**Response Period**"), the Developer may deliver to Investor Member a written notice (the "**Response Notice**") stating whether Developer or one of its Affiliates intends to purchase the Project on such terms and price as included in the Project Sale Offer, either by purchasing the fee interest of the Project or purchasing the Interests held by the Investor Member (collectively, the "**ROFO Interests**"), in either case for all cash (other than, if so elected, assumption of the existing indebtedness.

(b) Upon receipt of a Response Notice electing to purchase the ROFO Interests, the parties agree to negotiate a purchase and sale agreement on a form customary for transactions between members of a limited liability company (subject to the customary requirements of any third-party equity source, but without representations and warranties by Investor Member pertaining to the Project (as opposed to the Interests being sold)), including matters related to title and survey and the issuance of a new title policy, which agreement shall be executed within ten (10) days after the expiration of the Response Period. The Developer's closing conditions shall include standard closing conditions for transactions similar to those arms-length commercial transactions in Salt Lake City, Utah of the same size between third parties including matters related to title and survey, and material changes in the representations and warranties common for similar transactions. If the transaction is structured as a sale of Interests between members of limited liability companies, the contract will include representations and warranties relating the Interests being sold. The Members agree to structure the transaction in a manner which is tax efficient to the Investor Member provided such structuring does not create any adverse tax consequence to Developer. The sale and close of such purchase shall be on the date that is one hundred twenty (120) days after receipt of the Response Notice or such earlier mutually agreed date (the "**ROFO Closing Date**"). The purchase price for the ROFO Interests shall be an amount equal to the distributions, if any, of Company Available Cash Flow that the Investor Member would receive under Section 6.6 (taking Section 6.7 into account) on account of its Interest if (x) the Project were sold for the First Offer Price, as adjusted to reflect accrued, liquidated liabilities (including accrued property taxes and other items typically prorated in the sale of similar commercial real property in the Salt Lake City area) and after deducting an amount equal to an estimate of transaction costs, including customary brokerage commissions, that would be incurred in a third-party sale at the First Offer Price, which the parties will in good faith estimate, and absent agreement, one percent (1%) of the First Offer Price, (y) the Company and the Subsidiaries were dissolved as of the ROFO Closing Date, and (z) the proceeds of such hypothetical sale, together with all other cash and cash equivalents then held by the Company and the Subsidiaries, were used to repay all loans, including any prepayment penalties, and make distributions to the Members after taking into account the payment and discharge of all of the Company's debts and liabilities to third parties, but without establishment of any reserves.

(c) If either (i) the Developer does not deliver a Response Notice to the Investor Member during the Response Period, or (ii) the Response Notice evidences an election by the Developer not to purchase the ROFO Interests, then Investor Member may, during the six (6) month period following the expiration of the Response Period, cause the Company to sell all but not less than all ROFO Interests, including the Interest held by Developer, as set forth in the Property Sale Election and for a cash price equal to (or that would result from a sale of the Project for) at least ninety-five percent (95%) of the First Offer Price. If the Company or applicable party has not consummated the sale of the ROFO Interests within such six (6) month period following the expiration of the Response Period (which period may be extended by Investor Member for an additional thirty (30) days if the ROFO Interests are under a binding sale contract, for at least ninety-five percent (95%) of the First Offer Price, the Company (and the Investor Member) will not enter into any contract with any third parties to sell the ROFO Interests until the Investor Member has delivered a new Property Sale Election to Developer and, thus, triggered the first offer right provisions set forth in Sections 11.1(a) and the procedures therefor in Section 11.1(b).

(d) In connection with any sale transaction of the Project (or the Interests of all the Members) to a third party, each Member shall: (i) make such representations, warranties and covenants and agree to provide such purchase price adjustments and holdbacks (on a pro rata basis based upon the amount of consideration received by such Member in the transaction with respect to its Interest being sold) as Investor Member agrees with such third party to make or provide in connection with such sale, (ii) pay its pro rata share of the general costs and expenses incurred in connection with such sale (based upon the amount of consideration received by such Member in the transaction with respect to its Interest); provided that the Company shall pay all transaction costs associated with any such transaction to the extent such costs are incurred for the benefit of all Members, including the legal costs of each Member; provided

further, that each Member shall be responsible for the entirety of any transaction costs associated with such transaction, including legal costs, to the extent such costs are incurred solely for the benefit of such Member, and (iii) take all necessary or desirable actions in connection with the transaction and the distribution of the aggregate consideration from such transaction as are reasonably requested by Investor Member, all to the extent not the obligation of the Company, which Obligations in (i), (ii) and (iii) are customarily assumed by the Company and not the Members, except in the case of a sale of membership interests. In connection with such a transaction, each Member will also agree to provide on behalf of the Company or the owner of the Interests, as the case may be, such indemnification that Investor Member agrees to make or provide (which indemnification is not customarily given by the Company in the case of the sale of a fee interest in the Project) in connection with such sale (other than with respect to any such obligations that relate specifically to a particular Member such as indemnification with respect to representations and warranties given by a Member in the case of a sale of Interests and not the fee interests in the Project, regarding its title to and ownership of Interests, which indemnification shall be provided only by such Member); provided, that such indemnification by any Member and not the Company (x) shall be on a several basis (and not a joint and several basis), (y) shall be pro rata (based upon the amount of consideration received by such Member in the transaction with respect to its Interest being sold), and (z) shall in no event exceed such Member's net proceeds from such transaction.

(e) Developer hereby irrevocably constitutes and appoints Investor Member as its agent and attorney in fact, coupled with an interest, for the purpose of executing and delivering any documents required to be executed and delivered by Developer pursuant to Section 11.2(d) in the event Developer Member fails or refuses to execute and deliver the same upon request of Investor Member and all third parties may rely thereon. Nothing herein shall prevent Developer from making a claim against the Investor Member as to its obligations or other rights under this Agreement, but such claim shall not affect the validity of the power of attorney.

(f) If Developer is not purchasing the Interests of Investor Member under Section 11.2(b), whether structured as a sale of the Project or a sale of Interests, on the ROFO Closing Date, at the closing of the third-party purchase of the Project or the Interests of all the Members, Developer (and/or its Affiliates), shall be released from all Recourse Obligations and any then existing Guaranty to which Developer or any Affiliate thereof is a party and accruing after the transfer.

(g) If Developer purchases the Investor Member's Interest under Section 11.2(b), this Agreement shall terminate as to Investor Member, other than with respect to the provisions of this Agreement that expressly survive the termination of this Agreement, but shall remain in effect as to Developer and any designee purchasing Investor Member's Interest.

ARTICLE XII
LIQUIDITY OPTION

12.1 Exercise of Right. At any time after the one (1) year anniversary of the expiration of the Lockout Period, provided that the proceedings under Section 11.1 or Section 11.2, are not ongoing, the Operating Member, if the Developer (the rights given to the Developer in this Section 12.1 shall only be available if the Developer is the Operating Member), by giving written notice to Investor Member, may elect to either (A) require Investor Member to either (i) purchase the Developer's Interest, or (ii) agree to list the Project for sale (the "**Liquidity Option Notice**"), or (B) adjust the Ownership Percentages ("**Crystallization**") in the Company pursuant to Section 12.3 below (the "**Crystallization Notice**"). If the Developer delivers the Liquidity Option Notice, then the Developer shall specify in such Liquidity Option Notice the price at which the Developer desires the Company to sell the Project if Investor Member agrees to list the Project for sale (the "**Proposed 12.1 Offering Price**"). Investor Member shall have forty-five (45) days from receipt of the Liquidity Option Notice (the "**12.1 Election Period**") to elect by written notice

(the "**Investor Member 12.1 Election Notice**") to the Developer to either (x) purchase the Developer's entire Interest pursuant to the provisions of Section 12.2, or (y) agree to list the Project for sale at not less than the Proposed 12.1 Offering Price (or if Investor Member objects to the Proposed 12.1 Offering Price, such other price as the Members may agree or, failing agreement, a sales price equal to the Fair Market Value to be determined in accordance with the Valuation Procedures set forth in **Exhibit G**) (as applicable, the "**12.1 Marketing Price**"). If the Investor Member elects to list the Project for sale pursuant to clause (y), then Investor Member may, during the six (6) month period following the expiration of the later of the expiration of the 12.1 Election Period or the determination of the 12.1 Marketing Price as provided above (which period may be extended by Investor Member for an additional thirty (30) days if the Project is under a binding sale contract) (as may be so extended, the "**12.1 Marketing Period**"), cause the Company to sell the Project for a cash price equal to at least ninety-five percent (95%) of the 12.1 Marketing Price, but in any event Investor Member shall be obligated to cause the Company to sell the Project to any bona fide, third-party purchaser for a cash price equal to at least one hundred percent (100%) of the 12.1 Marketing Price and otherwise including customary terms (including, without limitation, representations, warranties, covenants, and indemnifications (and caps thereon)) that are reasonably acceptable to Investor Member. In the event that the Company receives an offer from a bona fide, third-party purchaser for a cash price including customary terms (including, without limitation, representations, warranties, covenants, and indemnifications (and caps thereon) of the Company) that are reasonably acceptable to Investor Member but for a cash price which is less than one hundred percent (100%) of the 12.1 Marketing Price, and which Investor Member does not elect to accept on account of such price (the "**12.1 Third-Party Offer Price**"), then Investor Member shall notify Developer of the 12.1 Third-Party Offer Price and the other terms of such offer in writing. If Developer desires to accept the 12.1 Third-Party Offer Price, then Developer shall notify Investor Member in writing within three (3) Business Days after receiving the terms of such offer (such notice, the "**Developer 12.1 Election Notice**"), in which event Investor Member shall elect, by written notice to Developer within three (3) Business Days after receiving the Developer 12.1 Election Notice, to either (1) accept the third-party offer and cause the Company to sell the Project for the 12.1 Third-Party Offer Price, or (2) reject the third-party offer and proceed to purchase the Developer's entire Interest pursuant to the provisions of Section 12.2, provided that the "Fair Market Value" as referenced therein shall be the 12.1 Third-Party Offer Price. Any sale of the Project to a third party pursuant to this Section 12.1 shall be consummated pursuant to the provisions of Sections 11.2(d) - 11.2(f). If the Company has not consummated the sale of the Project, and no Developer 12.1 Election Notice has been delivered, during the 12.1 Marketing Period, then Developer may re-exercise its rights under this Section 12.1 by delivering another Liquidity Option Notice not less than ninety (90) days after expiration of the 12.1 Marketing Period, in which event the procedures set forth in this Section 12.1 shall be repeated until either Developer's entire Interest has been acquired by Investor Member or the Project has been sold to a third party.

12.2 Purchase of the Developer's Interest. If Investor Member elects to purchase the Developer's Interest following receipt of a Liquidity Option Notice, Investor Member shall purchase, and the Developer shall sell, its Interest on the following terms:

(a) The purchase price (the "**Liquidity Purchase Price**") payable by Investor Member to the Developer for the Developer's Interest shall be an amount determined in the same manner as determined under Section 11.2(b) if the Project were sold for its Fair Market Value (and not the "First Offer Price") as of the 12.1 Closing Date. The Fair Market Value of the Project shall be determined as soon as reasonably possible following the delivery of the Investor Member 12.1 Election Notice, but in any event on or before the 12.1 Closing Date, all as provided in 12.2(c).

(b) The closing ("**12.1 Closing**") of the purchase of the Developer's Interest shall take place on the date that is fifteen (15) days after the Fair Market Value is determined either by agreement or pursuant to the Valuation Procedures (the "**12.1 Closing Date**"), at which time Investor Member shall pay

the Liquidity Purchase Price by wire transfer of funds in the amount thereof to an account designated by the Developer and the Developer thereafter shall cease to be a Member.

(c) The Fair Market Value of the Project shall be determined by agreement of Investor Member and Developer no later than the date the Investor Member 12.1 Election Notice is sent by the Investor Member and if agreement is not reached by such date, the Fair Market Value shall be determined as provided in the Valuation Procedures. If Investor Member is dissatisfied with the Fair Market Value determined pursuant to this Section 12.2(c), Investor Member, by notice to the Developer given within five (5) days after determination of the Fair Market Value, may revoke its election to purchase the Developer's Interest and instead agree to list the Project for sale and sell the Project at not less than the price as the Members may agree or, failing agreement, a sale price equal to the Fair Market Value as determined under **Exhibit G**.

(d) The Developer's Interest shall be free of encumbrances and adverse claims at the time of its transfer, except for (i) matters created by this Agreement, and (ii) liens securing debts, liabilities or obligations of the Company. The Developer will be in breach of its obligation under this Section 12.2 if its Interest is subject to any unpermitted encumbrance or adverse claim at the time of transfer.

(e) The right of Investor Member to purchase the Developer's Interest may be assigned, in whole or part, to one or more of its Affiliates, but any such assignment by Investor Member will not relieve Investor Member from liability for performance of obligations for which it otherwise would be responsible under this Section 12.2.

(f) On the 12.1 Closing Date Developer (and/or its Affiliates), shall be released from all Recourse Obligations and any then existing Guaranty to which Developer or any Affiliate thereof is a party as to all obligations first accruing after the transfer, provided if, after commercially reasonable efforts on the part of Investor Member the lender under the then existing Financing will not execute such release, the Company and Investor Member shall indemnify, defend and hold harmless the applicable Developer parties from and against such matters first accruing after the transfer, and Investor Member will use commercially reasonable efforts to cause the Company to refinance the Project within one hundred eighty (180) days after the 12.1 Closing Date, which obligation shall survive the payment of the purchase price to Developer or any termination of this Agreement as to the Developer.

(g) Upon Developer's receipt of the purchase price for its Interest this Agreement shall terminate as to Developer, other than with respect to the provisions of this Agreement that expressly survive the termination of this Agreement, but shall remain in effect as to Investor Member and any designee purchasing Investor Member's Interest.

12.3 Crystallization of Developer's Promote.

(a) If the Operating Member delivers a Crystallization Notice pursuant to Section 12.1, then the Members shall make a good faith effort to agree upon a market value for the Project and, if mutually agreed such value shall be the "Fair Market Value" for purposes of this Section 12.3. If within thirty (30) days after delivery of the Crystallization Notice the Members cannot mutually agree, then the Fair Market Value shall be determined in accordance with the Valuation Procedures.

(b) If the Crystallization occurs, none of the Members shall be entitled to any distributions from and after the date the Crystallization Notice is received by the Investor Member until the date as of which the Ownership Percentages have been restated pursuant to this Section 12.3.

(c) Following the determination of Fair Market Value, then:

(i) within thirty (30) days after such Fair Market Value is determined, the then current accountants for the Company shall deliver a written report showing the amount each Member would receive under Section 6.6 (taking Sections 3.3, 3.5(b), 4.2(d) and 6.7 into account) on account of its Interest upon a liquidation of the Company and a distribution of all the assets of the Company, if (x) the Project were sold for the Fair Market Value, as adjusted to reflect accrued, liquidated liabilities (including accrued property taxes and other items typically prorated in the sale of real property in the Salt Lake City area) and after deducting an amount equal to an estimate of transaction costs, including customary brokerage commissions, that would be incurred in a third-party sale at the Fair Market Value, which the parties will in good faith estimate and absent agreement, will use one percent (1.0%) the Fair Market Value, (y) the Subsidiaries and the Company were dissolved, and (z) the proceeds of such hypothetical sale, together with all other cash and cash equivalents, including accounts receivables, then held by the Company and the Subsidiary, were used to repay all loans and make distributions to the Members after taking into account the payment and discharge of all of the Company's debts and liabilities to third parties, but without establishment of any reserves as of the date the Crystallization Notice is received, as well as the calculation of the new Ownership Percentages (based upon such distribution as of the date of the Crystallization Notice is received), which going forward would be in the ratio of the amounts such report shows each Member would so receive (the "**Post-Crystallization Ownership Percentages**"). For the avoidance of doubt, the calculation of such new Ownership Percentages shall be based on an assumed distribution in accordance with Sections 6.6(b)(i) through 6.6(b)(v) that is completed effective as of the Crystallization Notice. By way of example, assuming that (1) prior to a Crystallization, the Ownership Percentages are eighty-eight percent (88%) to Investor Member and twelve percent (12%) to Developer, (2) Developer delivers a Crystallization Notice at Stabilization of the Project, (3) the Fair Market Value of the Project is determined to be $100,000,000 based on the Valuation Procedures, (4) the amount required to satisfy the outstanding Financing (including any prepayment fee) and other liabilities of the Company at closing of a hypothetical sale would be $50,000,000, and (5) after deducting $1,000,000 (1% of the Market Value), a hypothetical sale to a third party for a net sale price of $99,000,000 would result in a Company Available Cash Flow equal to $49,000,000, of which $9,000,000 would be allocable to Developer pursuant to Section 6.6(b) (i.e., assuming for purposes of this example [which may not resemble actual calculations to be performed when the Crystallization Notice is delivered] that Capital Contributions were made by the Members in such amounts and on such dates that would result in the aggregate amount of $9,000,000 being distributable to Developer Member pursuant to Section 6.6(b), inclusive of the hypothetical Developer's Promote), then the respective Ownership Percentages of the Members would be adjusted following the Crystallization to reflect Post-Crystallization Ownership Percentages of (x) 18.37% to Developer ($9,000,000 / $49,000,000), and (y) 81.63% to Investor Member ($40,000,000 / $49,000,000).

(ii) within ten (10) business days of receipt of such report any of the Members may contest such calculation by written notice to the other Members. If no Member contests the findings in such report, the Post-Crystallization Ownership Percentages hereunder for all distributions occurring after the date Crystallization Notice is received shall be restated as set forth in such report (or such Post-Crystallization Ownership Percentages shall be as determined in accordance with the immediately succeeding sentence if there is such a contest), and (i) all Available Cash Flow shall be distributed in accordance with such Post-Crystallization Ownership Percentages (as modified in the case of Company Available Cash Flow from Capital Transactions and as they may be further modified thereafter pursuant to Section 3.5(b)). If one of the Members contests in writing the proposed Post-Crystallization Ownership Percentages, the Members shall in good faith seek to resolve any discrepancies, and if they are not resolved within thirty (30) days, the final decision of one of the so-called "Big Four" public accounting firms, selected by the Investor Member and reasonably approved by Developer (after disclosure of any then-existing

auditing or consulting services being performed for the Investor Member and its Affiliates but not including such services being rendered to any "Operating Company" as such term is defined under ERISA in which any Affiliate of the Investor Member has an interest) shall be the final arbiter with the cost thereof being paid by the Company provided such final determination is in accordance with this Section 12.3. No Member shall be deemed to have made a Capital Contribution as a result of a Crystallization; and

(iii) the Members will enter into an amendment to the Agreement as follows:

(A) memorializing the Post-Crystallization Ownership Percentages of the parties as the result of Developer's delivery of the Crystallization Notice, which shall then become the Ownership Percentages for all purposes going forward;

(B) deleting and causing to be null and void Section 6.6(b) and replacing with the following new Section 6.6(b): "The amount of Company Available Cash Flow, other than from Capital Transactions, shall be apportioned and distributed to the Members in proportion to each Member's Post-Crystallization Ownership Percentage. The amount of Company Available Cash Flow from Capital Transactions shall be apportioned and distributed to the Members as follows: (i) first, one hundred percent (100%) to the Members in proportion to their respective Unrecovered Contribution Amounts as of the delivery of the Crystallization Notice, until each Member has recovered an amount equal to its Unrecovered Contribution Amount as of the delivery of the Crystallization Notice; (ii) second, one hundred percent (100%) to the Developer until each Member has received, in the aggregate, distributions pursuant to the foregoing clause (i) and this clause (ii) equal to (A) the total amount of Company Available Cash Flow from Capital Transactions distributed to the Members pursuant to such clause (i) and distributed to the Developer pursuant to this clause (ii), multiplied by (B) the Member's respective Post-Crystallization Ownership Percentage; and (iii) the remainder, pro rata in proportion to each Member's Post-Crystallization Ownership Percentage; and

(C) deleting and causing to be null and void this Section 12.3 and references in this Agreement to the Crystallization Notice.

By way of example, and assuming the facts in the example set forth in clause (i) above (i.e., the Post-Crystallization Ownership Percentages have been determined to be 18.37% to Developer and 81.63% to Investor Member), and that (1) the Unrecovered Contribution Amounts as of the delivery of the Crystallization Notice are $6,000,000 of Developer and $44,000,000 of Bridge, and (2) a Capital Transaction results in Company Available Cash Flow of $60,000,000, then such Company Available Cash Flow would be distributed as follows: (i) first, $44,000,000 to Bridge and $6,000,000 to Developer (i.e., their respective Unrecovered Contribution Amounts as of the delivery of the Crystallization Notice), (ii) second, $3,901,752 to Developer (i.e., resulting in Developer receiving aggregate distributions equal to 18.37% of the total amount distributed under this clause (ii) and clause (i) (being $53,901,752), with the amount distributed to Investor Member pursuant to clause (i) constituting 81.63% of such total amount ($44,000,000 / $53,901,752)), and (iii) thereafter, $1,120,248 to Developer and $4,978,000 to Investor

Member (i.e., their respective Post-Crystallization Ownership Percentages of the $6,098,248 of remaining Company Available Cash Flow).

ARTICLE XIII
MISCELLANEOUS PROVISIONS

13.1 Entire Contract. This Agreement and its exhibits shall constitute the entire contract between the parties and shall supersede all prior agreements and understandings, and there are no other or further agreements outstanding not specifically mentioned herein; provided, however, that the parties may by agreement amend and supplement this Agreement in writing from time to time pursuant to Section 13.7 hereof.

13.2 Notices. Any notice or demand provided for in or permitted under this Agreement shall be made in writing and may be given or served by (i) email or (ii) by depositing same with a reputable overnight courier service. The time to respond to any notice given in any such manner shall commence to run only if and when received by the party to be notified (or service is refused), but if notice is not received by 5:00 p.m. local time on a Business Day, the time to respond to such notice will commence to run the next Business Day. For the purpose of notice, the address of the Members shall be, until changed as hereinafter provided, as follows:

If to Developer:

c/o Hamilton Partners
222 Main Street, Suite 1760
Salt Lake City, UT 84101
Attn: Bruce Bingham and George Arnold
bbingham@hpre.com and garnold@hpre.com

with a copy to:
c/o Hamilton Partners
300 Park Blvd. Suite 201
Itasca, IL 60143
Attn: Ronald C. Lunt
rlunt@hpre.com

with copy to:
Seyfarth Shaw LLP
233 S. Wacker Drive Suite 8000
Chicago, Illinois 60606
Attn: Joel D. Rubin
jrubin@seyfarth.com

If to Investor Member:

c/o Bridge Investment Group
111 E. Sego Lily Drive, Suite 400
Sandy, UT 84070
Attn: Colin Apple
Colin.Apple@bridgeig.com

with a copy to:

c/o Bridge Investment Group
111 E. Sego Lily Drive, Suite 400
Sandy, UT 84070
Attn: Adam O'Farrell
Adam.OFarrell@bridgeig.com

and to:

Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654
Attn: Joshua P. Hanna, P.C.
joshua.hanna@kirkland.com

or to such other address as each Member may specify in a written notice to the other Member in accordance with this Section 13.2.

Each Member shall have the right from time to time and at any time to change its respective address and each shall have the right to specify as its address any other address by at least fifteen (15) days' written notice to the other Member. Each Member shall have the right from time to time to specify an additional party to whom notice hereunder must be given by delivering to the other party fifteen (15) days' written notice thereof setting forth the address of such additional party; provided, however, that no Member shall have the right to designate more than one (1) such additional party. Notice required to be delivered hereunder to either Member shall not be deemed to be effective until the additional parties, if any, designated by such Member have been given notice in a manner deemed effective pursuant to the terms of this Section 13.2.

13.3 Nature of Interest. The Interest of the Members in the Company is personal property.

13.4 Execution in Counterparts. This Agreement may be executed in multiple counterparts, each to constitute an original, but all in the aggregate to constitute one agreement as executed. The delivery of an executed counterpart of this Agreement by facsimile or as a PDF or similar attachment to an email shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

13.5 Good Faith and Fair Dealing. Each Member will conduct the business and affairs of the Company (a) in accordance with this Agreement and the implied contractual obligation of good faith and fair dealing, and (b) in a manner that does not constitute Bad Conduct. The provisions of this Agreement replace, eliminate, and otherwise supplant those duties (including fiduciary duties) and liabilities that the Members might otherwise have with respect to each other.

13.6 Severability. In case any one or more of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

13.7 Amendment. This Agreement may be modified, terminated or waived only by a writing signed by all of the Members.

13.8 Waivers. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

13.9 Headings. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope, extent, or intent of this Agreement or any provision hereof.

13.10 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and, except as otherwise provided herein, the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. Except as otherwise provided herein, said rights and remedies are given in addition to any other rights the parties may have by Law.

13.11 Waiver of Right of Partition. Each of the parties hereto irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to Company property.

13.12 Heirs, Successors, and Assigns. Each and all of the covenants, terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors, and assigns. Each of the Persons exculpated or indemnified pursuant to Section 4.11 hereof shall be intended third-party beneficiaries of the provisions of Section 4.11.

13.13 Governing Law.

(a) THIS AGREEMENT AND THE RIGHTS OF THE PARTIES HERETO SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE.

(b) THE MEMBERS WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF MATTERS RELATED TO THIS AGREEMENT OR BROUGHT TO ENFORCE OR DEFEND ANY RIGHTS OR REMEDIES UNDER THIS AGREEMENT OR ANY DOCUMENTS RELATED HERETO. THIS WAIVER IS INFORMED AND VOLUNTARY.

13.14 Estoppel Certificates. Within fifteen (15) days following the request of any Member, each of the other Members shall execute estoppel certificates addressed to such parties as the requesting Member may specify, certifying to such Member's actual knowledge without inquiry as to such facts, if true, with respect to this Agreement and the Company as the requesting Member may reasonably request. Notwithstanding the foregoing, in no event shall any Member request estoppels from the other Members more than twice annually.

13.15 Further Assurances. Each Member agrees to execute, acknowledge, deliver, file, record and publish such further instruments and documents, and do all such other acts and things as may be required by Law or as may be required to carry out the intent and purposes of this Agreement.

13.16 Attorneys' Fees. Each Member shall bear its own attorneys' fees and other expenses and costs incurred in connection with the preparation and negotiation of this Agreement, the Development Agreement and the due diligence investigations of the transactions contemplated hereby, including in the case of Investor Member, review of existing agreements being assigned to the Company as provided in Section 3.1(a) (except that the closing costs related to the consummation of the transaction will be funded by the Members in proportion to their respective Ownership Percentages and treated as Capital Contributions). In clarification, all costs incurred in the negotiation of the COREA and the agreements contemplated thereby shall be a Company cost and expense. If the Company or any Member commences any judicial proceeding, or other legal action or proceeding against any Member by reason of the breach

of this Agreement or the failure to comply with the terms hereof, the prevailing party as determined pursuant to a final, un-appealable adjudication or other resolution (including a settlement) of such proceeding shall be entitled to recover its reasonable attorneys' fees, expenses and costs incurred in connection with the legal action or proceeding as fixed by the court (which shall be paid by the non-prevailing party and shall not be subject to reimbursement by or indemnification payment from the Company).

13.17 Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, and neuter, singular and plural, as the identity of the party or parties may require.

13.18 Confidentiality; Publicity. The Members agree that no Member shall issue any press release concerning formation of the Company or otherwise publicize the terms of this Agreement or the proposed terms of the acquisition by the Company of any assets, without the approval of the Members except as such publicity may be made in the course of normal reporting practices by a Member to its partners, shareholders or Members or as otherwise required by Law. Furthermore, the Members acknowledge their mutual desire to limit disclosure of the terms of this Agreement, any other agreements entered into in connection with the transactions contemplated hereby, and the parties shall use their good faith efforts to prevent disclosure thereof absent a reasonable business purpose for doing so (such as, by way of example and not by limitation, to demonstrate the financial strength of the Members to potential tenants); provided, however, that any Member may make disclosures if required to do so by applicable Law or court order and to such parties attorneys, accountants and other professionals and to potential purchasers and lenders, who have a reasonable need to know such information. Neither Member shall at any time, either during or after the term of this Agreement, use for its own benefit and account (except as provided herein) or for the benefit and account of any other person or entity any tenant lists or financial information relating to the Project. Notwithstanding anything to the contrary contained in this Agreement, either Member may (a) disclose the performance of the Company (i) in connection with the offering of interests in investment vehicles sponsored or to be sponsored by it or any of its Affiliates or (ii) to its underlying investors or investors of an Affiliate, (b) disclose the fact that it is a member of the Company and the identity of the Members, and (c) disclose all restrictions under this Agreement on its ability to act.

13.19 General Exculpation. Notwithstanding any provision hereof to the contrary, in no circumstances shall a partner, shareholder, limited partner, member, director, officer, employee or agent ("**Special Party**") of a Member or of a Special Party of a Member hereto be personally liable for any of the obligations of a Member under this Agreement except to the extent, if any, provided otherwise in this Agreement or in any separate agreement now or hereafter executed and delivered by such Special Party, nor shall any Special Party of a Member be liable to any other Member (the other Members herein agreeing to indemnify such Special Party from and against any such liability) for any act or omission, negligent, tortious or otherwise, of such Special Party unless, in each case, the same results from Bad Conduct by such Special Party. In addition, a Member's liability under this Agreement shall, notwithstanding any provision of this Agreement to the contrary, be limited to its Interest in the Company and in no event shall any Member have any personal liability hereunder.

13.20 No Third-Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the Members and their respective successors and permitted assigns and, except as provided in Section 13.12, are not for the benefit of any other person or entity (including, without limitation, any tenants or purchasers of interests in the Project).

13.21 No Consequential Damages. Notwithstanding anything herein to the contrary, in no event shall any Member be liable to any other Member for any special, consequential or punitive damages, other than those damages payable or paid to third parties.

13.22 Exhibits. All Exhibits attached hereto are made a part hereof by this reference.

13.23 Days. Unless otherwise stated, a day shall be deemed to mean a calendar day and a "**Business Day**" means a day which is not a Saturday, Sunday or a holiday on which national banks in Salt Lake City, Utah are closed for business. In the event the date for performance of any obligation hereunder falls on a day which is not a Business Day, then the date for performance hereunder shall be extended until the next Business Day.

13.24 No Drafting Presumption. In interpreting the provisions of this Agreement, no presumption shall apply against any Member that otherwise would operate against such Member by reason of such document having been drafted by such Member or at the direction of such Member or an Affiliate of such Member. Each Member has carefully considered and has, to the extent it believes such discussion necessary or appropriate, discussed with legal, tax, accounting and financial advisers the suitability of an investment in the Company in light of its particular tax and financial situation, and has determined that the acquisition of Interests is a suitable investment for such Member. Each Member acknowledges that it is able to fend for itself, can bear the economic risk of its investment in the Interests, and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of its investment in the Company.

13.25 Attorney Representation. Each Member hereby acknowledges and agrees that: (i) in the negotiation and preparation of this Agreement and with respect to the matters contemplated hereby Investor Member has been independently represented by the law firm of Kirkland & Ellis LLP ("**Kirkland**") and Developer has been independently represented by Seyfarth Shaw LLP ("**Seyfarth**"); and (ii) each Member hereby waives any potential conflict of interest resulting from (x) Kirkland's representation of Investor Member and Investor Member's Affiliates with respect to this Agreement with respect to other related and unrelated matters, and (y) Seyfarth's representation of Developer, Developer's Affiliates with respect to this Agreement and the Company with respect to other related and unrelated matters; (iii) Developer agrees and acknowledges that in the event of a default on the part of Developer under this Agreement, Kirkland shall be free to represent the Company, Investor Member and Investor Member's Affiliates in the enforcement of this Agreement; (iv) Investor Member agrees and acknowledges that in the event of a default on the part of Investor Member under this Agreement, Seyfarth shall be free to represent the Company, Developer and Developer's Affiliates in the enforcement of this Agreement; (vi) Investor Member agrees and acknowledges that in the event of a default on the part of Developer or an Affiliate of Developer under this Agreement or any agreement between the Company and Developer or its Affiliates, Seyfarth shall be free to represent Developer and Developer's Affiliates in connection with the enforcement of (A) any agreement between the Company and Developer or its Affiliates and (B) this Agreement by the Company or any Subsidiary against Developer and Developer's Affiliates; and (vi) Developer agrees and acknowledges that in the event of a default on the part of Investor Member or an Affiliate of Investor Member under this Agreement, Kirkland shall be free to represent Investor Member and Investor Member's Affiliates in connection with the enforcement of this Agreement by the Company or the Developer against Investor Member and Investor Member's Affiliates.

13.27 Developer Representations and Warranties**.** As a condition of Investor Member purchasing becoming a Member of the Company and making its Capital Contributions under Section 3.1(a), Developer represents and warrants to Investor Member the following:

(a) As to the Company:

(i) The Company has been formed as a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to carry on its business as now conducted and as proposed to be conducted, to own the assets and properties which it owns and

intends to acquire and to perform all its obligations under the agreements to which it is a party;

(ii) The Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned by it or the operation of its business makes such licensing or qualification necessary;

(iii) To the knowledge of Developer, the Company is not in violation of any of the provisions of its organizational documents;

(iv) Except for the acquisition of the Project Land and the rights of the "Company" (as defined in the COREA) under the COREA, the contemplated development thereof, the Company has not conducted any business;

(v) The Company does not have any indebtedness, liability or obligation, whether matured or unmatured, fixed, determined or determinable, absolute or contingent, accrued or unaccrued, known or unknown, reserved or unreserved, and whether due or to become due other than trade payables and its contractual commitments reference in this Agreement;

(vi) The Company is not a party to any material contract, agreement, indenture, note, bond, mortgage, loan, instrument, lease, license, commitment or other arrangement, understanding, undertaking or obligation, whether written or oral other than as referenced in this Agreement or entered into in the ordinary course relative to carrying out the purposes of the Company as set forth herein;

(vii) The Company does not have, nor has it previously had, any employees. The Company has not entered into, nor has it agreed to enter into, any contract for the employment or relating to or regarding the terms and conditions of employment of any person. The Company is not bound by or subject to any agreement with any labor union; and

(viii) To the knowledge of Developer, the Company is in compliance in all material respects with all applicable Laws, injunctions, decisions or awards of any governmental authority applicable to it or any of its properties. The Company has not received any notice of or been charged with the violation of any applicable Laws. As of the date hereof, the Company is not under investigation with respect to the violation of any Laws.

(b) As to Developer:

(i) Developer has delivered or caused to be delivered to Investor Member complete and correct copies of the organizational documents of the Company as such documents exist as of the Effective Date;

(ii) Developer has the full power and authority to execute and deliver this Agreement and to perform its obligations hereunder;

(iii) The execution and delivery by Developer of this Agreement has been duly and validly authorized by all necessary limited liability company action on the part of Developer;

(iv) The execution and delivery of this Agreement by Developer does not conflict with, violate, constitute a breach of or default (with or without notice or lapse of time, or both) under, permit the acceleration or modification of any obligation under or give rise to a right of consent, termination or cancellation under: (i) any term or provision of the organizational documents of the Company or of Developer, (ii) any contract, license, permit, instrument or lease by which the Company or Developer are bound, (iii) any order, injunction, judgment, requirement, decree, ruling, writ, assessment or arbitration award of a governmental authority to which either the Company or Developer is a party or by which either is bound, or (iv) to the knowledge of Developer, any law applicable to the Company or Developer or any of their respective assets;

(v) To the knowledge of Developer, no consent, approval, Order or authorization of, registration, declaration or filing with or notice to, any governmental authority or any other Person with respect to either Developer or the Company is required in connection with (i) the execution, delivery or performance of this Agreement or (ii) the consummation of the transfer and issuance of the Membership Interests; and

(vi) There are no judicial, administrative or arbitral actions, suits, arbitrations, mediations, claims (including counterclaims), investigations, inquiries or proceedings pending for which the Company or Developer has received legal process, and to the knowledge of Developer no such actions are threatened against the Company. The Company is not subject to any order of any governmental authority.

(c) Capitalization of Developer. Developer own all of its the issued and outstanding Interests, free and clear of any liens, options, charges, agreements, claims, restrictions, pledges, encumbrances or restrictions of any kind

(d) Tax Matters. Neither Developer nor the Company is required to make any disclosure to the U.S. Internal Revenue Service with respect to a "listed transaction" pursuant to Treasury Regulations § 1.6011-4(b)(2). Developer is not a "foreign person" as defined in Section 1445 of the Code.

(e) No party may claim a right of first offer or first refusal with respect to Interests being acquired by Investor Member.

(f) Real Property. As of the Effective Date, the Company has no right, title or interest in or to any real property of any kind other than its title and interest in and to the Development Land. There are no agreements of any kind to which the Company or any Subsidiary is a party relating to the leasing, licensing, rental, use or occupancy of any real property other than what is set forth in the Ground Lease. There are no pending condemnation, expropriation, eminent domain or similar proceedings in connection with the Project Land or any portion thereof for which the Company, any Subsidiary or Developer has received legal process, and to the knowledge of Developer are any such condemnation, expropriation, eminent domain or similar proceedings threatened or contemplated by any governmental authority in connection with the Project Land or any portion thereof.

(g) With respect to the Project Land:

(i) The Company has obtained all Entitlements and such Entitlements will allow the Project Land to be used as a multi-family apartment project in a manner consistent

with the final Plans delivered to Investor Member, subject to the final approval of the New Plat by all applicable governmental parties;

(ii) Developer has no knowledge that the permits to construct and complete the first of the five multi-family buildings will not be issued in due course;

(iii) Developer has delivered to Investor Member copies of all reports prepared at the direction of Developer or any Affiliate related to hazardous waste, hazardous materials, hazardous substances, oil, radon, urea formaldehyde, lead paint or asbestos, and, except as set forth in such reports delivered to Investor Member, Developer has no knowledge of any material information as to those substances which was not disclosed in such reports.

(h) Brokers. Neither Developer nor the Company has dealt with any broker, finder or consultant with respect to this Agreement or the transactions contemplated hereby.

(i) ERISA. Neither Developer nor the Company, and no portion of Project Land constitutes the assets of an "employee benefits plan" of ERISA.

(j) OFAC Sanctions and Anti-Money Laundering Laws; No Bad Actor; Patriot Act.

(i) Neither the Company nor Developer nor any of their respective Affiliates is (i) a Person designated by the U.S. Government as a Specially Designated National and Blocked Person, designated on the Sectoral Sanctions Identification List or Foreign Sanctions Evader List, maintained by OFAC; (ii) a Person who is otherwise the target of any U.S. economic sanctions program such that a U.S. Person cannot deal with or otherwise engage in business transactions involving such person or entity; (iii) directly or indirectly owned or controlled by (including without limitation by virtue of such Person being a director or owning voting shares or interests), or acting for or on behalf of, any Person identified in (i) and/or (ii) above; or (iv) located, domiciled or residing in a country or territory that is the target of any comprehensive U.S. economic sanctions program such that the entry into this Agreement would be prohibited under Applicable Law;

(ii) Neither Developer nor the Company or any Person controlling or controlled by Developer will use the monies obtained in connection with this Agreement for any activities that contravene any applicable anti-money laundering or anti-bribery laws and regulations (including any unlawful activity defined under Title 18 of the United States Code, Section 1956(c)(7)); and

(iii) Developer and the Company are in material compliance with any and all applicable provisions of the Patriot Act.

13.28 Investor Member Representations and Warranties. As a condition of Developer agreeing enter into this Agreement, Investor Member represents and warrants to Developer and the Company the following:

(k) Investor Member is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware;

(l) Investor Member has the full power and authority to execute and deliver this Agreement and to perform its obligations hereunder;

(m) The execution and delivery by Investor Member of this Agreement has been duly and validly authorized by all necessary limited liability company action on the part of Investor Member;

(n) The execution and delivery of this Agreement by Investor Member does not conflict with, violate, constitute a breach of or default (with or without notice or lapse of time, or both) under, permit the acceleration or modification of any obligation under or give rise to a right of consent, termination or cancellation under: (i) any term or provision of the organizational documents of Investor Member, (ii) any contract, license, permit, instrument or lease by which Investor Member is bound, (iii) any order, injunction, judgment, requirement, decree, ruling, writ, assessment or arbitration award of a governmental authority ("**Order**") to which Investor Member is a party or by which itis bound, or (iv) to the knowledge of Investor Member, any law applicable to Investor Member or any of its respective assets.

(o) Tax Matters. Neither Investor Member nor its members are required to make any disclosure to the U.S. Internal Revenue Service with respect to a "listed transaction" pursuant to Treasury Regulations § 1.6011-4(b)(2).

(p) ERISA. No portion of the Capital Contributions made and to be made by Investor Member constitutes the assets of an "employee benefits plan" (within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended).

(q) OFAC Sanctions and Anti-Money Laundering Laws; No Bad Actor; Patriot Act.

(i) Neither Investor Member nor its members nor any of their respective Affiliates is (i) a Person designated by the U.S. Government as a Specially Designated National and Blocked Person, designated on the Sectoral Sanctions Identification List or Foreign Sanctions Evader List, maintained by OFAC; (ii) a Person who is otherwise the target of any U.S. economic sanctions program such that a U.S. Person cannot deal with or otherwise engage in business transactions involving such person or entity; (iii) directly or indirectly owned or controlled by (including without limitation by virtue of such Person being a director or owning voting shares or interests), or acting for or on behalf of, any Person identified in (i) and/or (ii) above; or (iv) located, domiciled or residing in a country or territory that is the target of any comprehensive U.S. economic sanctions program such that the entry into this Agreement would be prohibited under Applicable Law;

(ii) Neither Investor Member, its members or any Person controlling or controlled by the same will use the monies obtained in connection with this Agreement for any activities that contravene any applicable anti-money laundering or anti-bribery laws and regulations (including any unlawful activity defined under Title 18 of the United States Code, Section 1956(c)(7)); and

(iii) Investor Member and its members are in material compliance with any and all applicable provisions of the Patriot Act.

13.29 Indemnification by Developer. Developer hereby covenants and agrees to indemnify, defend and hold harmless Investor Member and its Affiliates (not including the Company) and their respective members, directors, officers, agents, representatives and employees from and against all Losses incurred as a material breach of the representations and warranties of (i) Developer set forth in Section 13.27, except to the extent Investor Member had actual knowledge of such breach on the Effective Date. Anything contained herein to the contrary notwithstanding, any claim of Investor Member for breach must be made in writing to Developer no later than the twelve (12) month anniversary of the Effective Date.

13.30 Indemnification by Investor Member. Investor Member hereby covenants and agrees to indemnify, defend and hold harmless Developer and its Affiliates (not including the Company) and their respective members, directors, officers, agents, representatives and employees from and against all Losses incurred as a material breach of the representations and warranties of Investor Member set forth in Section 13.28, except to the extent Developer had actual knowledge of such breach on the Effective Date. Anything contained herein to the contrary notwithstanding, any claim of Developer for breach must be made in writing to Investor Member no later than the twelve (12) month anniversary of the Effective Date.

SIGNATURE PAGE TO FOLLOW.

IN WITNESS WHEREOF, the undersigned have executed this Limited Liability Company Agreement as of the day and year first above written.

DEVELOPER:

HPUTA EAST VILLAGE 3 LLC, a Utah limited liability company

By:_____
Name:_____
Title:_____

INVESTOR MEMBER:

BMF IV UT ALTA VUE LLC, a Delaware limited liability company

By:_____
Name:_____
Title:_____

EXHIBIT A

Project Land Description

SURVEYOR'S CERTIFICATE

I, Gregory A. Cates, do hereby certify that I am a Professional Land Surveyor, and that I hold certificate No. 161226 as prescribed under the laws of the State of Utah. I further certify that, by authority of the Owners, I have made a survey of the tract of land shown on this plat and described below and have subdivided said tract of land into lots and streets, hereafter to be known as

SANDY EAST VILLAGE LOT 2, SECOND AMENDED

and that same has been surveyed and staked on the ground as shown on this plat.

BOUNDARY DESCRIPTION

A parcel of land being a portion of Sandy East Village Lot 2 Amended Plat, recorded in Book 2016P at Page 271 in the Salt Lake County Recorder's Office, said parcel also being located in the Southwest Quarter of Section 7, Township 3 South, Range 1 East, Salt Lake Base and Meridian, said parcel being more particularly described as follows:

Beginning at a point on the Northerly Boundary Line of Dry Creek Ridge Subdivision, as recorded in Book 2013P at Page 194 in the Salt Lake County Recorder's Office, said point being also on the South Line of Lot 5, Block 2, of the Sandy Five Acre Plat as recorded in Book C, at Page 153, in the Salt Lake County Recorder's Office, said point being also on the Easterly Right-of-Way Line of Creek Run Way as shown on said Dry Creek Ridge Subdivision, said point being also S00°08'34"E 1570.96 feet, along the Monument Line, and East 1019.35 feet from the Centerline Monument at 9800 South and State Street, said Street Monument being N89°40'00"E 92.57 feet (per ARP) from the West Quarter Corner of said Section 7, and running thence, along said Easterly Right-of-Way Line of Creek Run Way, Northwesterly 17.46 feet along the arc of a 233.00 foot radius curve to the left, chord bears N02°52'22"W 17.46 feet to the Southerly Right-of-Way Line of Midvillage Boulevard; thence, along siad Southerly Right-of-Way Line, the following three (3) courses: (1) Northeasterly 173.27 feet along the arc of a 228.80 foot radius curve to the left, chord bears N57°20'16"E 169.16 feet, (2) N35°37'44"E 604.86 feet, (3) Easterly 24.78 feet along the arc of a 15.00 foot radius curve to the right, chord bears N82°57'41"E 22.06 feet, to the Westerly Right-of-Way Line of Beetdigger Boulevard; thence, along siad Westerly Right-of-Way Line the following seven (7) courses: (1) Southeasterly 199.76 feet along the arc of a 293.00 foot radius curve to the right, chord bears S30°10'28"E 195.92 feet, (2) S10°38'34"E 82.89 feet, (3) Southeasterly 108.41 feet along the arc of a 309.50 foot radius curve to the right, chord bears S00°36'29"E 107.86 feet, (4) Southeasterly 285.07 feet along the arc of a 389.50 foot radius curve to the left, chord bears S11°32'25"E 278.75 feet, (5) S32°30'18"E 60.63 feet, (6) Southeasterly 93.70 feet along the arc of a 332.33 foot radius curve to the right, chord bears S23°49'54"E 93.39 feet, (7) S15°45'15"E 96.05 feet to the Northerly Boundary Line of said Dry Creek Ridge Subdivision; thence, along said Northerly Boundary Line, the following three (3) courses: (1) S89°51'38"W 701.56 feet, (2) N00°08'22"W 258.18, (3) S89°51'38"W 151.22 feet to said Easterly Right-of-Way Line of Creek Run Way and the Point of Beginning.

Contains: 358.333 SF or 8.23 AC and 5 Lots.

Note:

The above description is for the entire 8.23 acre development site that will be contributed to East Village 3 LLC at Closing. It will subsequently be subdivided into a Residential Parcel and a Garage Parcel after the footings of the Parking Structure are installed and surveyed. The Garage Parcel will then be conveyed back to UTA in connection with an easement to East Village 3 LLC for residential use. East Village 3 LLC will continue to own the Residential Parcel after it is subdivided.

EXHIBIT B

MEMBERS SCHEDULE

Member Address	Capital Contributions as of Effective Date	Ownership Percentage
BMF IV UT ALTA VUE LLC c/o Bridge Investment Group 111 E. Sego Lily Drive, Suite 400 Sandy, UT 84070 Attn: Colin Apple Colin.Apple@bridgeig.com	$24,933,340	88%
HPUTA EAST VILLAGE 3 LLC c/o Hamilton Partners 222 Main Street, Suite 1760 Salt Lake City, Utah 84101	$3,400,001	12%
Total	$28,333,341	100%

Exhibit C

Development Plan

Proposal	This development consists of: (a) a clubhouse and four apartment buildings and (b) a parking garage with 517 stalls shared between residents and UTA commuters. The garage will be owned by UTA subject to an easement for residential use. Its construction costs and ownership interests will be based on an allocation of stalls resulting in 52% for UTA and 48% for residents.
Location	The Project is located in a portion of the The East Village TOD in Sandy Utah adjacent to the UTA TRAX Station at the intersection of Mid Village Boulevard and Beetdigger Road, commonly known as 166 East Midvillage Boulevard.
Entitlements	The property has been zoned and entitled for apartments.
Site Status	The site has been prepared for development, including the modification of Beetdigger Road, mass excavation for foundations and other infrastructure improvements completed by Hamilton Partners. The area of the site includes 2.18 acres for the Garage and 6.05 acres for the Apartment Project. The entire 8.23 acre site will be conveyed to East Village 3 LLC at Closing and the garage parcel will be re-conveyed to UTA when it is subdivided after its foundations are installed.
Apartments	There will be 305 total apartment units for this project.
Rentable SQFT	The project has 262,620 rental sqft of apartments and approximately 10,000 sqft for potential retail space (6,000 sf in the clubhouse and 4,000 sf in Building 2).
Apartment Mix	Avg. Sized Unit is 861 sqft

BUILDING 2-5 UNIT MIX			
UNIT	# of	%	Sq. Ft.
Studio	40	13.00%	450-570
1 Bed	151	50.00%	580-930
2 Bed	99	32.00%	947-1265
3 Bed	15	5.00%	1115-1550
Total	305		

Exhibit C

Development Plan

Project Budget — The Project Budget totals $85,183,341 (see Exhibit D).

Construction Loan — The construction loan will be with CIBC for $56,850,000.

Equity — Equity will be allocated as follows:

Capitalization		
Total Costs	85,183,341	
Const. Loan	(56,850,000)	67%
Equity	28,333,341	33%

Membership Equity		
UT Land	1,580,316	5.6%
HP Cash	1,819,685	6.4%
HP-UTA	3,400,001	12.0%
Bridge	24,933,340	88.0%
TOTAL	28,333,341	100.0%

Project Schedule:

Project Schedule

Building	Start	Finish	Term, Days	Sq Ft	% Bldg Area
Building 1	07/01/20	06/30/21	364	20,356	4.9%
Building 2	07/01/20	09/29/21	455	104,118	25.2%
Building 3	08/01/20	04/02/22	609	127,080	30.8%
Building 4	10/01/20	07/31/22	668	83,150	20.1%
Building 5	04/01/21	11/29/22	607	78,427	19.0%
Project	07/01/20	11/29/22	881	413,131	100.0%
		Total Project	29.4	months	

Proposed Units

Avg. Mkt Rent at Closing — $1.89/sf

First Unit Delivered — Building 2 in Oct. 2021

Stabilized Occupancy (95%) — Mar. 2023

Exhibit D

Project Budget

06/08/20	Apartment Project	42% of Garage	Total Budget
Land (263,386 sf x $6.0/sf)	1,580,316	-	1,580,316
Hard Costs			
Site Work	5,606,113	290,426	5,896,539
Building / Structure	59,514,339	2,512,817	62,027,156
SUB-TOTAL	65,120,452	2,803,243	67,923,695
Soft Costs			
Architectural Fees	2,274,562	102,825	2,377,387
Permit and Impact Fees	2,299,879	19,773	2,319,652
FF&E	617,100	-	617,100
Third Party CM Fees	411,000	-	411,000
Inspections and Testing	183,941	20,059	204,000
Legal & Professional	291,238	58,762	350,000
Marketing	48,000	-	48,000
Builders Risk Insurance *	730,293	2,686	732,979
Property Tax	431,626	-	431,626
Operating Reserve	324,075	-	324,075
Contingency	2,248,398	92,787	2,341,185
3% Development Fee **	2,214,470	93,013	2,307,483
SUB-TOTAL	12,074,582	389,906	12,464,488
Costs Prior to Financing	78,775,350	3,193,149	81,968,499
Financing Costs			
Loan Fee and Costs	466,148	18,880	485,028
Title Company Costs	236,409	9,575	245,984
	702,558	28,454	731,012
Interest Reserve	2,387,070	96,760	2,483,830
SUB-TOTAL	3,089,628	125,214	3,214,842
TOTAL COSTS	81,864,978	3,318,363	85,183,341

* Contractor shall provide Builders Risk Ins. for the Garage

** Excludes: land, tax, ins., dev. fee, finance costs, interest.

EXHIBIT E

BIDDING REQUIREMENTS

(These are not meant to be Instructions to Bidders (as in AIA-A701), but rather bidding standards to be followed by Developer)

1. Developer will procure bids from three (3) qualified general contractors
2. All biding general contractors shall have prior experience (10-15+ years) in construction and delivery of equivalent or larger projects
3. All bidding general contractors will submit a portfolio of equivalent or larger projects completed or under construction in the last 10 years
4. All bidding general contractors will submit a list of 10 references for equivalent or larger projects recently deliver or under construction
5. All bidding general contractors will submit a list names and individual resumes for the project team that will be assigned and actively work on the project
    a. Resumes should detail years of experience, number of years with the company, roles, specific involvement on the project, and list of projects each individual has been involved in
6. Developer will require general contractor to provide three (3) bids for all trades/subcontractors bidding on work in excess of $400,000
7. All bids will be required to be and presented Construction Specifications Institute Master Format ®
8. All general contractor bids will clearly outline any allowances and contingencies
9. All bids must clearly state all exclusions (either by the general contractor or subcontractors)
10. All bids must include a Contractor's Qualification Statement (AIA305)
11. Developer will share all general contractor bids and subcontractor bids with Investor Member, as part of a bid package
12. Each general contractor bidding the project will provide an affidavit certifying that the principals and supervisory roles involved in the project have never been indicted, convicted, suspended, debarred or terminated by any governmental agency; never failed to pay taxes; and never been the subject of a criminal investigation
13. All bids will include a Critical Path Management (CPM) schedule of milestones with detailed construction sequences
14. All bids must clearly state how the general contractor expects to account for weather delays

EXHIBIT F

REPORTING REQUIREMENTS

1. **Bridge Investment Management Committee (IMC) Report:**
    - Proforma
    - Budgets
        - Development
        - Construction
2. **Contract Document Requirements:**
    - Prime Contract (between Developer & General Contractor).
    - Critical Path Management Schedule to track high level milestone dates; i.e., project commencement, concrete, framing, drywall, carpentry, mechanical, electrical, first unwit's turnover, etc.
    - Contractor licenses and insurance certificates of general contractor and subcontractors.
    - Project budget itemized by CSI divisions, in form provided to Developer prior to the Effective Date.
    - Subcontractor list.
    - Cost loaded schedule
    - Schedule of Values
    - Cash Flow projection for the duration of the project
3. **Monthly Payment Application and Job Cost Requirements:**
    - Payment Application Request (AIA G702 and G703).
    - Detail Job Costs (segregated using cost categories provided by Bridge Investment Group), in form provided to Developer prior to the Effective Date.
    - Supporting invoices for all detail job costs.
    - Updated subcontractor list.
    - Updated contractor licenses and insurance certificates list.
    - Notarized lien releases; conditional and unconditional.
    - Schedule update
    - Permit tracker
    - Buyout log
    - Allowance log
    - Contingency use log
    - Change order log
    - RFI log
    - Submittal logs
    - Progress Photos
    - Critical issues log which explains how costs are impacted:
        - Weather days vs. contracted weather days
        - Design issues
        - Non-conformance issues
4. **Monthly Project Financial Reports:**
    - Balance Sheet
    - Profit and Loss Statement
    - Aged receivables and payables
    - Bank statements

EXHIBIT G

VALUATION PROCEDURES

Determination of Fair Market Value. If Fair Market Value ("**Fair Market Value**") of the Project is to be determined under Article XII, unless otherwise agreed by the parties in writing, the Fair Market Value shall be determined by the Brokers. Investor Member shall, by written notice to the Developer, given no earlier than ten (10) days (i) after the Investor Member 12.1 Election Notice designate a Broker as its Broker, and within five (5) business days after receipt of such designation, the Developer shall, by written notice, designate a Broker as its Broker. If the Developer fails to designate a Broker, then the Broker designated by the Investor Member shall proceed to issue his Broker Opinion of Value as to the Fair Market Value of the Project. The Fair Market Value of the Project shall be the midpoint (or the so-called "strike price") of such Broker's Opinion of Value as to the Fair Market Value of the Project. If within fifteen (15) days after the last of Brokers are designated, the Brokers are unable to agree upon the Fair Market Value of the Project and there are two (2) Brokers and the higher valuation does not exceed the lower valuation by more than five percent (5%), then the Fair Market Value of the Project shall be deemed to be the average of the two (2) valuations and if such Brokers are unable to reduce the range of their difference so that the higher valuation does not exceed the lower valuation by more than five percent (5%), then the Brokers shall jointly designate a third Broker and, if they are unable to agree upon a third Broker within ten (10) days after the expiration of such thirty (30) day period or the Members do not approve any conflicts of interest disclosed by the third Broker as provided below, within ten (10) days after such disclosure, either Member may request that the Utah Transit Authority, a large public transit district organized pursuant to Utah law, designate the third Broker. If there are three (3) Brokers and they are unable to agree upon the Fair Market Value, then (x) if the third Broker's valuation is between valuations of the first two (2) Brokers, the fair market value of the Project shall be deemed to be the valuation of the third Broker, and (y) if the valuation of the third Broker is not between the valuation of the first two (2) Brokers, the Fair Market Value of the Project shall be the middle valuation (as opposed to the higher or lower valuation) of the Project. The Broker or Brokers shall promptly notify the Members of their determination. In the case of the third Broker chosen by the first two Brokers, such Broker shall be disinterested and in furtherance thereof, he must, prior to accepting the assignment, complete a questionnaire which discloses the facts which evidence that he meets the applicable qualifications, including disclosing all existing and prior relationships with any Member or their respective Affiliates. The following rules shall apply if there is only one Broker or in the case of third Broker: (i) all questions from the Broker shall be in writing addressed to both Members and any responses must be approved by both Members; (ii) there shall be no hearing, unless otherwise approved by both Members; (iii) there shall be no ex-parte communications with the Members or any representative of such Members; and (iv) all other rules and procedures must be approved in advance by the Members.

Payment of Fees. Each Member shall pay the fees and expenses of the Broker designated by it, and in the case of a third broker, each Member shall pay one-half of the fees and expenses of such jointly designated Broker.

Definition of Fair Market Value. The term "***Fair Market Value***" with respect to the Project shall mean the price a willing buyer and a willing seller would agree upon as a fair sales price that could reasonably be expected to be received upon the sale of the Project as of the date specified in

this Agreement for the Valuation, if sold as a single asset, and not as a sale of its component parts, for its current use.. Any existing debt in place shall only be accounted for in determining "Fair Market Value" if the loan is not pre-payable and any pre-payment penalty shall be treated as a debt of the Company, unless, as a result of the transaction between Members, it is not triggered.

Exhibit H

Example for Distribution of Cash Available from Operations & Capital Events

Capital Contributions & Permformance Thresholds

Equity & Disribution Priority		Allocation of Distributions		
Description	IRR	Promote	Bridge	Hamilton
Initial Equity Invested	0.0%	0.0%	88.5%	11.5%
Return of Capital	0.0%	0.0%	88.5%	11.5%
IRR Hurdle I	9.0%	0.0%	88.5%	11.5%
IRR Hurdle II	12.0%	20.0%	70.8%	9.2%
IRR Hurdle III	18.0%	35.0%	57.5%	7.5%
Thereafter	> 18%	45.0%	48.7%	6.3%

Annual	Closing	FY1	FY2	FY3	FY4	Net Profit
Cash Flows	(22,500,000)	5,000,000	5,000,000	5,000,000	40,000,000	32,500,000

Summary of Allocated Cash Flows

Description	Investors	Developer	Promote	Total
Initial Capital Invested	(19,912,500)	(2,587,500)	-	(22,500,000)
Cash from Ops, FY1-3	13,275,000	1,725,000	-	15,000,000
Final Distributions in FY4	26,548,278	3,449,776	10,001,946	40,000,000
Net Profit	19,910,778	2,587,276	10,001,946	32,500,000

Distrbutions in FY4	Investors	Developer	Promote	Total
1. Return Invested Capital	6,637,500	862,500	-	7,500,000
2. 9% Return on Capital	5,659,523	735,418	-	6,394,941
3. 12% Return on Capital	2,312,155	300,450	653,151	3,265,755
4. 18% Return on Capital	5,343,448	694,346	3,251,120	9,288,914
5. Dist. > 18% IRR	6,595,652	857,062	6,097,675	13,550,389
Total Distributions	26,548,278	3,449,776	10,001,946	40,000,000

Notes

The above example is based on annual cash flows for simplicity in this exhibit.
Acutal distribution calculations shall be based on a monthly cash flows.
Details for determining these calculations are on the following page.

Exhibit H

Example for Distribution of Cash Available from Operations & Capital Events

Bridge Account - Return of Capital						
Beginning of Period		-	(19,912,500)	(15,487,500)	(11,062,500)	(6,637,500)
Bridge Equity Investment - 88.5%		(19,912,500)	-	-	-	-
Return of Capital Contributions		-	4,425,000	4,425,000	4,425,000	6,637,500
End of Period		(19,912,500)	(15,487,500)	(11,062,500)	(6,637,500)	-
Bridge Return of Capital	19,912,500	-	4,425,000	4,425,000	4,425,000	6,637,500
Hamilton Return of Capital	2,587,500	-	575,000	575,000	575,000	862,500
Total	22,500,000	-	5,000,000	5,000,000	5,000,000	7,500,000
Cash For Remaining Hurdles		-	-	-	-	32,500,000
Bridge Cash Flow		(19,912,500)	4,425,000	4,425,000	4,425,000	6,637,500
Hamilton Cash Flow		(2,587,500)	575,000	575,000	575,000	862,500
Bridge Account - Hurdle I						
Beginning of Peiord		-	(19,912,500)	(17,279,625)	(14,409,791)	(11,281,672)
Bridge Equity Investment - 88.5%		(19,912,500)	-	-	-	-
Distributions - Return of Capital		-	4,425,000	4,425,000	4,425,000	6,637,500
Accrual (Bridge) 9.0% Return		-	(1,792,125)	(1,555,166)	(1,296,881)	(1,015,351)
Distributions - Hurdle I		-	-	-	-	5,659,523
EOP		(19,912,500)	(17,279,625)	(14,409,791)	(11,281,672)	-
Bridge Hurdle I Distribution - 88.5%		-	-	-	-	5,659,523
Hamilton Hurdle I Distribution - 11.5%		-	-	-	-	735,418
Promote Hurdle I Distribution - 0.0%		-	-	-	-	-
Total		-	-	-	-	6,394,941
Cash Available After Hurdle I		-	-	-	-	26,105,059
Bridge Cummlative CF - Hurdle I		(19,912,500)	4,425,000	4,425,000	4,425,000	12,297,023
Hamilton Cummulative CF - Hurdle I		(2,587,500)	575,000	575,000	575,000	1,597,918

Exhibit H

Example for Distribution of Cash Available from Operations & Capital Events

Bridge Account - Hurdle II					
Beginning of Peiord	-	(19,912,500)	(17,877,000)	(15,597,240)	(13,043,909)
Bridge Equity Investment - 88.5%	(19,912,500)	-	-	-	-
Distributions - Return of Capital	-	4,425,000	4,425,000	4,425,000	6,637,500
Distributions - Hurdle I	-	-	-	-	5,659,523
Accrual (Bridge) 12.0% Return	-	(2,389,500)	(2,145,240)	(1,871,669)	(1,565,269)
Distributions - Hurdle II	-	-	-	-	2,312,155
EOP	(19,912,500)	(17,877,000)	(15,597,240)	(13,043,909)	-
Bridge Hurdle II Distribution - 70.8%	-	-	-	-	2,312,155
Hamilton Hurdle II Distribution - 9.2%	-	-	-	-	300,450
Promote Hurdle II Distribution - 20.0%	-	-	-	-	653,151
Total	-	-	-	-	3,265,755
Cash Available After Hurdle II	-	-	-	-	22,839,303
Bridge Cash Flow Through Hurdle II	(19,912,500)	4,425,000	4,425,000	4,425,000	14,609,178
Hamilton Cash Flow Through Hurdle II	(2,587,500)	575,000	575,000	575,000	1,898,368

Bridge Account - Hurdle III					
Beginning of Peiord	-	(19,912,500)	(19,071,750)	(18,079,665)	(16,909,005)
Bridge Equity Investment - 88.5%	(19,912,500)	-	-	-	-
Distributions - Return of Capital	-	4,425,000	4,425,000	4,425,000	6,637,500
Distributions - Hurdle I	-	-	-	-	5,659,523
Distributions - Hurdle II	-	-	-	-	2,312,155
Accrual (Bridge) 18.0% Return	-	(3,584,250)	(3,432,915)	(3,254,340)	(3,043,621)
Distributions - Hurdle III	-	-	-	-	5,343,448
EOP	(19,912,500)	(19,071,750)	(18,079,665)	(16,909,005)	-
Bridge Hurdle III Distribution - 57.5%	-	-	-	-	5,343,448
Hamilton Hurdle III Distribution - 7.5%	-	-	-	-	694,346
Promote Hurdle III Distribution - 35.0%	-	-	-	-	3,251,120
Total	-	-	-	-	9,288,914

Exhibit H

Example for Distribution of Cash Available from Operations & Capital Events

Cash Available After Hurdle III	-	-	-	-	13,550,389
Bridge Cash Flow Through Hurdle III	(19,912,500)	4,425,000	4,425,000	4,425,000	19,952,626
Hamilton Cash Flow Through Hurdle III	(2,587,500)	575,000	575,000	575,000	2,592,714

Distributions - Thereafter					
Bridge Final Hurdle Distribution - 48.7%	-	-	-	-	6,595,652
Hamilton Final Hurdle Distribution - 6.3%	-	-	-	-	857,062
Promote Final Hurdle Distribution - 45.0%	-	-	-	-	6,097,675
Total	-	-	-	-	13,550,389

Summary of Cash Flows	Closing	1	2	3	4	Net Profit
Bridge Inv. Group	(19,912,500)	4,425,000	4,425,000	4,425,000	26,548,278	19,910,778
Hamilton & UTA	(2,587,500)	575,000	575,000	575,000	3,449,776	2,587,276
Developer Promote	-	-	-	-	10,001,946	10,001,946
Total Cash Flows	(22,500,000)	5,000,000	5,000,000	5,000,000	40,000,000	32,500,000

Exhibit I

Permitted Exceptions

First American **Schedule BI & BII (Cont.)**	ALTA Commitment for Title Insurance ISSUED BY **First American Title Insurance Company** File No: NCS-923401-SLC1

Commitment No.: NCS-923401-SLC1

SCHEDULE B, PART II

Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

2. Any facts, rights, interest or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.

3. Easements, liens or encumbrances or claims thereof, not shown by the Public Record.

4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the Land, and not shown in the Public Records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Record.

6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown in the Public Records.

7. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I-Requirements are met.

Exhibit I

Permitted Exceptions

8. General property taxes for the year 2020 are accruing as a lien, but are not yet due. Tax Parcel No. 28-07-331-001-0000.

   General property taxes for the year 2019 were exempt. Tax Parcel No. 28-07-331-001-0000.

   Note: General property taxes were not assessed against the subject property because of ownership by a tax exempt entity. The land may be subject to a possible Appendix Roll Tax from the time of transfer into a non-exempt entity for the remainder of the taxing year.

   (The following affects the subject land)

9. The land is included within the boundaries of Sandy City; the South Valley Sewer District; the Metropolitan Water District of Salt Lake and Sandy; the Crescent Cemetery Maintenance District; and the Central Utah Water Conservancy District, and is subject to charges and assessments made thereby.

   (The following affects the subject land, together with other land)

10. Reservations as set forth in that certain Special Warranty Deed recorded March 20, 1941 as Entry No. 900303 in Book 264 at Page 324 of Official Records.

    (The following affects a portion of the subject land)

11. Reservations as set forth in that certain Quit Claim Deed recorded July 9, 1980 as Entry No. 3451677 in Book 5121 at Page 202 of Official Records.

    (The following affects undetermined portions of the subject land, together with other land)

12. Rights and/or easements, in favor of the State of Utah, acting through the Board of Water Resources and/or Draper Irrigation Company, a corporation, for a water distribution system of canals, ditches pipelines, and appurtenances thereto, and incidental purposes therewith, as set forth in that certain Agreement recorded May 29, 1996 as Entry No. 6368924 in Book 7409 at Page 2566 of Official Records.

13. This item has been intentionally deleted.

    (The following affects portions of the subject land, together with other land)

14. Easements, notes and restrictions, as set forth on the Official Plat of Dry Creek Ridge recorded September 27, 2013 as Entry No. 11732792 in Book 2013P of Plats at Page 194 of Official Records.

15. This item has been intentionally deleted.

16. This item has been intentionally deleted.

17. This item has been intentionally deleted.

18. This item has been intentionally deleted.

Exhibit I

Permitted Exceptions

19. Notice of Adoption of the Sandy TOD Community Development Project Area recorded March 14, 2014 as Entry No. 11818434 in Book 10217 at Page 1904 of Official Records, and subject to assessments and levies thereunder.

20. This item has been intentionally deleted.

(The following affects portions of the subject land, together with other land)

21. Easements and incidental purposes, in favor of South Valley Sewer District, a body politic of the State of Utah, as set forth in that certain Easements recorded August 20, 2014 as Entry No. 11900026 in Book 10254 at Page 997 of Official Records.

(The following affects the subject land, together with other land)

22. Easements, notes and restrictions, as set forth on the Official Plat of Sandy East Village, Amending a Portion of the Sandy 5 Acre Plat recorded May 6, 2015 as Entry No. 12045386 in Book 2015P of Plats at Page 103 of Official Records.

Surveyor's Affidavit correcting dimension errors recorded June 25, 2018 as Entry No. 12797628 in Book 10687 at Page 1766 of Official Records.

(The following affects a portion of the subject land, together with other land)

23. Terms, conditions, provisions, restrictions, assessments, easements and incidental purposes, as set forth in that certain Agreement for Water Line Easement recorded September 1, 2015 as Entry No. 12124588 in Book 10358 at Page 1984 of Official Records.

(The following affects the subject land, together with other land)

24. Terms, conditions, provisions, restrictions, assessments, easements and incidental purposes, as set forth in that certain Declaration of Covenants, Conditions, Restrictions and Easements recorded November 19, 2015 as Entry No. 12173741 in Book 10380 at Page 6242 of Official Records.

(The following affects the subject land)

25. Access Easement Agreement dated June 4, 2015 by and between Utah Transit Authority, a public transit district organized and existing pursuant to Utah law (Grantor) and Dry Creek Property Development, Inc., a Utah corporation (Grantee) recorded April 22, 2016 as Entry No. 12264478 in Book 10423 at Page 4831 of Official Records.

Assignment of Access Easement Agreement dated February 13, 2018 between Dry Creek Property Development, Inc., a Utah corporation (Assignor) and Security National Life Insurance Company, a Utah corporation (Assignee) recorded February 21, 2018 as Entry No. 12719973 in Book 10648 at Page 7788 of Official Records.

26. This item has been intentionally deleted.

Exhibit I

Permitted Exceptions

27. Easements, notes and restrictions, as set forth on the Official Plat of Sandy East Village Lot 2 Amended recorded October 19, 2016 as Entry No. 12392591 in Book 2016P of Plats at Page 271 of Official Records.

(The following affects the subject land)

28. Any rights and/or claims which may be associated with the East Jordan Canal, including but not limited to, maintenance, use of water and any other interest(s) and/or incidental purposes affecting portions of the subject land.

(The following affects the subject land)

29. The State Construction Registry discloses the following Preliminary Notice(s): (Within the last 12 months):

Entry # 7399533, filed October 18, 2019 by Sinc Constructors Co.

Entry # 7426039, filed October 30, 2019 by Asphalt Materials, Inc.

Entry # 7457405, filed November 11, 2019 by Staker & Parson Co

Entry # 7473199, filed November 18, 2019 by M. C. Green & Sons, Inc

Entry # 7524925, filed December 13, 2019 by Geneva Rock Products

Entry # 7527361, filed December 16, 2019 by J&J Produce Inc. dba J&J Nursery and Garden Center

Entry # 7553049, filed January 02, 2020 by Mountainland Supply

30. Post-Construction Storm Water Maintenance Agreement recorded May 26, 2020 as Entry No. 13280366 in Book 10949 at Page 7014 of Official Records.

***

The name(s) **Hamilton Partners** , has/have been checked for judgments, State and Federal tax liens, and bankruptcies and if any were found, are disclosed herein.

The name(s) **Utah Transit Authority, a governmental agency exempt from execution pursuant to Utah Code Annotated 63-30d-101 et.seq.** , has NOT been checked for judgments, State and Federal tax liens or bankruptcies.

***

Title inquiries should be directed to Greg Holbrook @ 801-578-8869 or Aaron Hansen @ 801-578-8845.

***

EXHIBIT J

COREA

Please see COREA as presented in Resolution R2020-06-05 Exhibit F

EXHIBIT K

GROUND LEASE

Please see Ground Lease as presented in Resolution R2020-06-05 Exhibit E

Exhibit L

Parking Structure Budget

Alta Vue Apartments
6/8/2020

Garage Budget

Description	UTA	EV3	Total
Allocation	58.0%	42.0%	100%
Hard Costs			
Site Costs	401,511	290,426	691,937
Structure	3,473,940	2,512,817	5,986,757
	3,875,451	2,803,243	6,678,694
Soft Costs			
Arch & Structural	142,155	102,825	244,980
Permit, Tap, Util.	27,337	19,773	47,110
Inspections & Tests	-	20,059	20,059
Legal & Professional	81,238	58,762	140,000
Contingency	128,277	92,787	221,065
Builder Risk Insurance	3,714	2,686	6,400
3% Developer Fee	128,590	93,013	221,603
Loan Fee & Costs	-	18,880	18,880
Title Co. costs	-	9,575	9,575
Interest Reserve	-	96,760	96,760
	511,310	515,120	1,026,430
Total Costs	4,386,761	3,318,363	7,705,124

Wadsworth Brothers, Garage Cost

Initial Price in 2019	5,914,889
Rock Wall Credit	(59,951)
Price Escalation	116,819
City changes, permit	15,000
Revised 2020 Price	5,986,757

Notes

The Parking Garage will be owned by UTA with no charge for the underlying land. An easement will be provided for residential use.

The above membership interests are based on a proration of 517 stalls. UTA will have 300 stalls (58%) and the JV will have 217 covered stalls (42%).

Owner to provide Builders Risk Insurance

Exhibit C
(Pro Forma)

East Village 3 Pro Forma
Inputs

INPUT FOR MODEL

Name	Alta Vue Apartments
Address	168 E Midvillage Blvd
City	Sandy
State, ZIP	UT 84070

Land Size (Acres)	6.05
Land Size (SF)	263,386
Purchase Phases	1
Month 0 Price ($/SF)	$6.00
Annual Inflation (%)	0.00%
Daily Inflation (%)	0.00%
Market Escalation ($/SF)	$0.00
Assemblage Cost ($/RSF	$0.00
Total Building Size (GSF)	413,131
Total Building Size (RSF)	262,280
Total Unit Count	305

Phase 1 **BUILDINGS**

Land

Size (Acres)	6.05	*100%*
Size (SF)	263,386	
Closing Date	5/1/2020	
Price ($/SF)	$6.00	
Site Work Allocation	100%	
Utilities Allocation	100%	
CL Land Price	$15.33	

Buildings

Name	Buildings
Name	N/A
Total Building Area	0

Project Schedule

Bldg	Start	Finish	Days	Months
CH	05/01/20	04/30/21	364	12
2	05/01/20	07/30/21	455	15
3	06/01/20	01/31/22	609	20
4	08/01/20	05/31/22	668	22
5	02/01/21	10/01/22	607	20
T	05/01/20	10/01/22	883	29

Leasing starts: B2 in 08/30/21

CIRC	1
Toggle 1 to run model. 0 to iterate.	

Set: File/Options/enable interive calc

Soft Costs

Architectural Fees	1,913,747	*2.8% of hard costs*
Engineering Fees	679,357	*1.0% of hard costs*
Permit and Impact Fees	2,592,638	*3.8% of hard costs*
FF&E	617,099	
Lender Legal and DD	72,078	
Third Party CM Fees	411,000	
Title Company Costs	245,984	
Inspections and Testing	204,000	*204,000*
Legal	100,000	*(160,000)*
Marketing	48,000	*44,000*
Insurance	696,000	*22.00*
Property Tax	431,400	

Operating Contingency	20.0%
Development Fee	3.00%
Contingency (% Hard Cost)	3.00%

Construction Loan

Construction Loan Fee	0.70%
Loan-to-cost	66.7%
1M LIBOR Spread (I/O)	2.40%
Term (Months)	48
Interest Resv. Contingency	25.0%

CIBC reviewed NOI 3/31 (new loan & int resv)

New Loan Amount	56,580,000
Interest	2,453,718

Assumes 30 mo. to complete construction
Interest rate = Fwd Libor + 2.4% +.05%

Perm Loan

Closing Costs	0.50%
LTV	0.0%
Going-in Cap	5.75%
Rate	5.0%
Term (Years)	25

Building Detail & Hard Cost		Clubhouse	APT	APT	APT	APT	Parking
Description	TOTAL	Bldg 1	Bldg 2	Bldg 3	Bldg 4	Bldg 5	Garage
Building Details							
Size (GSF)	413,131	20,356	104,118	127,080	83,150	78,427	0
Apt. Bldg Area (RSF)	262,280	0	69,125	83,150	51,935	58,070	0
Unit Count			76	98	64	67	
Delivery Date		05/31/21	07/31/21	11/30/21	02/28/22	07/31/22	
Parking Count	404						
Hard Costs							
Site Work	5,881,539	1,118,223	1,118,223	1,118,223	1,118,223	1,118,223	290,426
Hard Cost	62,054,585	5,110,782	14,237,617	16,649,505	11,821,734	11,728,428	2,506,521
TOTAL	67,936,125	6,229,004	15,355,839	17,767,727	12,939,957	12,846,650	2,796,947
Cost Allocation		9.2%	22.6%	26.2%	19.0%	18.9%	4.1%
Escalation	0.00%						

Existing Property Taxes

Assessed Value	$6,600,000
Tax Rate	1.2650%

Leasing Assumptions

Avg. Rent to Market	100%
Absorption Rate (/Mth)	18.00
Vacancy and CL	5.0%
Pre-Occupancy Growth	5.0%
Pre-Stab Rent Growth	3.0%
Stabilized Rent Growth	3.0%
Current Rent Date	12/1/2019
Lease Up Concession	1.0 Month(s)
as a % of rent p.a.	*8.3%*

Investment Inputs

Terminal Cap Rate	5.00%
Sales Cost	1.00%
Hold Period (Months)	48
Capital Reserves ($/Unit)	200
HP Accounting ($/Year)	$30,000

Alta Vue Apartments
168 E Midvillage Blvd, Sandy UT 84070

Proforma	
Hold period (mths)	48
Last Revised	06/05/20
Closing Date	05/01/20
Land (Acres)	6.05
Rentable SF	262,280
Units	305

Capitalization		
Total Costs	85,034,728	
Const. Loan	(56,580,000)	67%
Equity	28,454,728	33%

Membership Equity		
UT Land	1,580,316	5.6%
HP Cash	1,834,251	6.4%
HP-UTA	3,414,567	12.0%
Bridge Investor	25,040,161	88.0%
TOTAL	28,454,728	100.0%

Development Budget	
Land	1,580,316
Hard Costs	67,967,671
Soft Costs	12,285,470
Sub-Total	81,833,457
Loan Costs	729,122
Interest Resv.	2,472,149
Total Cost	**85,034,728**
Cost/RSF	324
Cost/Unit	*$324*

Construction Loan	
Dev. Budget	85,034,728
UTA 58% Garage	4,330,953
Master Plan Imp.	2,453,734
Loan Budget	91,819,415
Loan to Cost	62%
Loan Amount	56,580,000
Spread > Libor	2.90%
Term	36 Months

Residual Sale	
Sale Date	4/30/24
Fwd NOI	5,795,321
Cap Rate	5%
Resid Value	115,906,419
Sale Costs	(1,159,064)
Net Proceeds	114,747,354
Price/RSF	*$442*
Sale/Unit	*$376,221*

** Includes masterplan improvement costs to the land, UTA's share of garage costs and the Land under the garage to be owned by UTA.*

update S&U

	1	2	3	4	
CASH FLOW	May-21	May-22	May-23	May-24	Total
Net Op. Income	-	66,362	4,175,150	5,677,637	9,919,149
Development Cost	(48,347,693)	(29,740,915)	(3,744,849)	-	(81,833,457)
Residual Sale	-	-	-	114,747,354	114,747,354
Unleveraged CF	(48,347,693)	(29,674,553)	430,301	120,424,991	42,833,046
Finance Costs	(729,122)	-	-	-	(729,122)
CL Draw	20,759,910	31,083,369	4,736,721	-	56,580,000
Interest Reserve	(137,823)	(1,342,454)	(991,872)	-	(2,472,149)
Int. paid. after Resv.			(1,059,033)	(2,201,664)	(3,260,697)
Const. Loan Payoff	-	-	-	(56,580,000)	(56,580,000)
Leveraged CF	(28,454,728)	66,362	3,116,117	61,643,327	36,371,078

IRR	
Unleveraged IRR	15.1%
Leveraged IRR	25.9%
Multiple	3.54x
Net Profit	36,371,078

Return on Cost	
Stablized NOI	5,677,637
Dev. Budget	85,034,728
Return on cost	6.7%

East Village 3 Pro Forma
Alta Vue Apartments Cash Flow

Alta Vue Apartments

Proforma	
Hold period (mths)	48
Last Revised	06/05/20
Closing Date	05/01/20
Land (Acres)	6.05
Rentable SF	262,280
Units	305

Capitalization		
Total Costs	85,034,728	
Const. Loan	(56,580,000)	67%
Equity	28,454,728	33%

Membership Equity		
UT Land	1,580,316	5.6%
HP Cash	1,834,251	6.4%
HP-UTA	3,414,567	12.0%
Bridge	25,040,161	88.0%
TOTAL	28,454,728	100.0%

Development Budget	
Land	1,580,316
Hard Costs	67,967,671
Soft Costs	12,285,470
Sub-Total	81,833,457
Loan Costs	729,122
Interest Resv.	2,472,149
Total Cost	**85,034,728**
Cost/RSF	*$324*
Cost/Unit	*$278,802*

Construction Loan	
Dev. Budget	85,034,728
LTC	67%
Loan Amount	56,580,000
Term	48
Rate	290 bp > Libor

** CIBC determined the amount per NOI review using the int. rate below*
Fwd Libor + 2.40% + .50% cushion based on our draw sched on 3/31/20

Residual Sale	
Sale Date	04/30/24
Fwd NOI	5,795,321
Cap Rate	5.00%
Resid Value	115,906,419
Sale Costs	(1,159,064)
Net Proceeds	114,747,354
Price/RSF	$442
Sale/Unit	*$376,221*

	FY	1	1	1	1	1	1	1	1	1	1	1	1	2	2	2	2	2	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4	4	4	4	4	4	
CASH FLOW	*Mo.*	5/31/20	6/30/20	7/31/20	8/31/20	9/30/20	10/31/20	11/30/20	12/31/20	1/31/21	2/28/21	3/31/21	4/30/21	5/31/21	6/30/21	7/31/21	8/31/21	9/30/21	10/31/21	11/30/21	12/31/21	1/31/22	2/28/22	3/31/22	4/30/22	5/31/22	6/30/22	7/31/22	8/31/22	9/30/22	10/31/22	11/30/22	12/31/22	1/31/23	2/28/23	3/31/23	4/30/23	5/31/23	6/30/23	7/31/23	8/31/23	9/30/23	10/31/23	11/30/23	12/31/23	1/31/24	2/29/24	3/31/24	4/30/24	**TOTAL**
Unleveraged Dev. Costs		(8,069,153)	(2,789,634)	(1,842,695)	(2,393,723)	(3,336,388)	(3,868,507)	(4,297,261)	(4,576,706)	(4,629,463)	(4,097,344)	(4,351,713)	(4,095,108)	(3,934,791)	(3,524,905)	(3,301,831)	(2,910,154)	(2,417,637)	(2,307,404)	(2,249,665)	(2,671,065)	(1,955,282)	(1,955,282)	(1,317,565)	(1,195,332)	(1,074,065)	(973,036)	(485,071)	(485,071)	(363,803)	(363,803)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(81,833,457)
Net Operating Income		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(37,760)	(60,347)	(57,164)	(15,268)	(5,047)	17,799	61,667	72,305	90,177	124,076	142,340	255,563	279,012	323,807	367,208	402,597	428,404	467,433	477,135	448,556	459,019	462,695	453,980	462,393	477,788	477,788	477,788	477,788	477,788	477,788	477,788	477,788	476,265	9,919,149
Residual Sale Proceeds		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	114,747,354	114,747,354
Unleveraged Cashflow		(8,069,153)	(2,789,634)	(1,842,695)	(2,393,723)	(3,336,388)	(3,868,507)	(4,297,261)	(4,576,706)	(4,629,463)	(4,097,344)	(4,351,713)	(4,095,108)	(3,934,791)	(3,524,905)	(3,301,831)	(2,947,914)	(2,477,984)	(2,364,568)	(2,264,933)	(2,676,112)	(1,937,483)	(1,893,616)	(1,245,260)	(1,105,155)	(949,988)	(830,696)	(229,508)	(206,059)	(39,996)	3,404	402,597	428,404	467,433	477,135	448,556	459,019	462,695	453,980	462,393	477,788	477,788	477,788	477,788	477,788	477,788	477,788	477,788	115,223,619	42,833,046
Loan Activity & Interest																																															
Loan Fees and Costs		(729,122)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(729,122)
Interest from loan to Mo. 30		-	-	-	-	-	-	-	(4,623)	(15,524)	(27,442)	(39,161)	(51,075)	(62,630)	(73,615)	(83,941)	(93,636)	(102,130)	(109,950)	(117,653)	(125,873)	(133,775)	(140,711)	(146,748)	(151,792)	(156,550)	(160,899)	(164,476)	(167,313)	(170,062)	(172,572)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(2,472,149)
Interest from NOI > mo 30		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(174,265)	(175,206)	(176,134)	(176,995)	(177,810)	(178,624)	(179,415)	(180,255)	(181,023)	(181,769)	(182,564)	(183,329)	(183,973)	(184,688)	(185,294)	(185,892)	(186,479)	(186,984)	(3,260,697)
Construction Loan Draws		-	-	-	-	-	-	-	3,453,083	4,644,986	4,124,785	4,390,873	4,146,182	3,997,422	3,598,520	3,385,772	3,003,791	2,519,767	2,417,354	2,367,318	2,796,938	2,089,057	2,095,993	1,464,313	1,347,124	1,230,614	########	649,547	652,384	533,865	536,375	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	56,580,000
Construction Loan Payoff																																														(56,580,000)	(56,580,000)
Leveraged CF		(8,798,275)	(2,789,634)	(1,842,695)	(2,393,723)	(3,336,388)	(3,868,507)	(4,297,261)	(1,128,246)	-	-	-	-	-	-	-	(37,760)	(60,347)	(57,164)	(15,268)	(5,047)	17,799	61,667	72,305	90,177	124,076	142,340	255,563	279,012	323,807	367,208	228,333	253,198	291,298	300,140	270,747	280,396	283,280	273,725	281,371	296,019	295,224	294,459	293,815	293,100	292,494	291,896	291,309	58,456,636	36,371,078

IRR

Unleveraged IRR	15.1%
Leveraged IRR	25.9%
Multiple	3.54x
Net Profit	36,371,078
Investor IRR	20.3%

Equity Waterfall Assumptions		Multiple	JV Entity	JV Entity LLC Split: Bridge	JV Entity LLC Split: HPUTA	Dev. Promote
Level 1 - Preferred Returns to JV Entity						
Annual IRR Threshold	**9.00%**	**1.00x**	**100.00%**	**88.00%**	**12.00%**	**0.00%**
Monthly IRR Threshold	0.72%					
Daily IRR Threshold	0.02%					
Level 2 - Return of Capital to JV Entity						
Return of Capital to JV Entity			**100.00%**	**88.00%**	**12.00%**	**0.00%**
Level 3 - Promote Tier I						
Annual IRR Threshold	**12.00%**	**1.00x**	**80.00%**	**88.00%**	**12.00%**	**20.00%**
Monthly IRR Threshold	0.95%					
Daily IRR Threshold	0.03%					
Level 4 - Promote Tier II						
Annual IRR Threshold	**16.00%**	**1.00x**	**65.00%**	**88.00%**	**12.00%**	**35.00%**
Monthly IRR Threshold	1.24%					
Daily IRR Threshold	0.04%					
Level 5 - Remaining Cashflow Split			**55.00%**	**88.00%**	**12.00%**	**45.00%**

- *First*, 100% to the equity investors pro rata until the equity investors have received from all sources a return of their invested capital;
- *Second*, 100% to equity investors until the equity investors have received from all sources an 9% IRR (including their invested capital);
- *Third*, 20% to Developer and 80% to the equity investors based upon their percentage interest until the equity investors have received from all sources a 12% IRR (including their invested capital); and
- *Fourth*, 35% to Developer and 65% to the equity investors based upon their percentage interest until the equity investors have received from all sources a 16% IRR (including their invested capital); and
- *Fifth*, 45% to Developer and 55% to the equity investon based upon their percentage interest.

East Village 3 Pro Forma
HPUTA East Village 3 LLC
Waterfall

HP-UTA East Village 3 LLC
Projected Waterfall
Updated 5/20/20

Source of Funds	Amounts	
Cash from Ops in Mo 21-47 *	777,271	
Cash from Sale in Mo 48		
Amount to HP-UTA	5,855,994	
HP Developer Promote	9,654,186	62%
subtotal	15,510,180	
Total Source of Funds	16,287,451	

Use of Funds	
Infrastructure Reimb. & Interest	2,117,073
Additional Cap. Contributions	n/a
Return of Equity + 10% IRR	4,999,268
Credit for Z&E, no int.	904,110
Land Appreciation	1,801,252
subtotal	9,821,703
HP Developer Promote	9,654,186
Shortage of funds	(3,188,438)
Net Shared Promote	6,465,748
Total Use of Funds	16,287,451

* Cash from Ops. Is distributed 100% to HP until infrastructure is reimb.

Distribution of Cash Flows

		UTA	HP	Total	Cumulative
a	5% int. on Inf. - 4 yrs	-	375,352	375,352	375,352
b	Infrastructure Reimb.	-	1,741,721	1,741,721	2,117,073
g	Return original capital	1,580,316	1,834,251	3,414,567	3,701,773
h	10% IRR on Capital	733,425	851,276	1,584,701	7,116,341
i	Land Appreciation	856,868	944,384	1,801,252	9,821,703
j	Zoning & Entitlements	-	904,110	904,110	8,020,451
k	Final Distribution	1,129,824	5,335,924	6,465,748	16,287,451
	TOTAL Distributions	4,300,433	11,987,018	16,287,451	

Initial Capital Contributions		
UTA	1,580,316	46%
HP	1,834,251	54%
Total	3,414,567	

Zoning & Entitlements		Appraisal	
Land Value	$ 22.88	$ 8,200,000	
6 Ac Parcel, sf	263,386	358,325	8.226 Ac
Total Value	6,027,399	$22.88	
Percent for ZE	15.0%	$/sf	
Value of ZE	904,110		

Shared Land Apreciation	
Land Value	
Land Value	6,027,399
less Z&E value	(904,110)
Net Land Value	5,123,289

Land Basis		
Land at $6/sf	1,580,316	47.6%
HP - MPI	1,741,721	52.4%
Total Basis	3,322,037	
Appreciation	1,801,252	

Allocated Appreciation		
UTA Share	856,868	47.6%
HP Share	944,384	52.4%
Total Allocated	1,801,252	

Final Distribution in Waterfall, step 7		
Cash avail. after step 6		6,465,748
Distrbutions		
HP Promote	62%	4,024,552
HP share of bal.	20%	1,311,371
UTA Share	17%	1,129,824
TOTAL	100%	6,465,748

UTA Cash Flow

IRR		10.00%
Mo IRR		0.7974%
Periods		48
Closing		(1,580,316)
	1	-
	2	-
	3	-
	4	-
	5	-
	6	-
	7	-
	8	-
	9	-
	10	-
	11	-
	12	-
	13	-
	14	-
	15	-
	16	-
	17	-
	18	-
	19	-
	20	-
	21	-
	22	-
	23	-
	24	-
	25	-
	26	-
	27	-
	28	-
	29	-
	30	-
	31	-
	32	-
	33	-
	34	-
	35	-
	36	-
	37	-
	38	-
	39	-
	40	-
	41	-
	42	-
	43	-
	44	-
	45	-
	46	-
	47	-
	48	2,313,741
	IRR =	*10.00%*

Summary	
Return Capital	1,580,316
Dist., 1st tier	733,425
Total Distrib.	2,313,741

Distribution Priority for the Waterfall

(a) First, to EVAI3 until it has received a return on the unpaid Infrastructure Costs of five percent (5%) per annum, not compounded, from the Effective Date;

(b) Second, to EVAI3 in the amount of Infrastructure Costs until they are paid in full;

(c) Third, to EVAI3 until it has received a return on the UTA Additional Capital Contributions equal to the sum of ten percent (10%) plus the then current yield on ten (10) year U.S. Treasury Bonds per annum, compounded monthly;

(d) Fourth, to EVAI3 until it has received the return of the UTA Additional Capital Contributions in full;

(e) Fifth, to EVAI3 until it has received a return on the EVAI3 Additional Capital Contributions equal to ten percent (10%) per annum, compounded monthly;

(f) Sixth, to EVAI3 until it has received the return of the EVAI3 Additional Capital Contributions in full;

(g) Seventh, to the Members of their Unreturned Capital Contributions in proportion to their combined Unreturned Capital Contributions until such Unreturned Capital Contributions have been reduced to zero;

(h) Eighth, to the Members in proportion to their respective Initial Capital Contributions until each Member receives a ten percent (10%) IRR on its Initial Capital Contributions;

(i) Ninth, until such Member has received the following amount (which is based on the agreed past Residential Parcel appreciation): (i) to EVAI3 _____ Dollars ($___); and (ii) to UTA, _____ Dollars ($___), in each case payable pro-rata based on the relative unpaid amounts;

(j) Tenth, to EVAI3 in the amount of Eight Hundred Thirty-Seven Thousand Nine Hundred and Sixty-Three Dollars ($837,963) which is the agreed value-add for zoning and entitlement; and

(k) The balance, if any, (i) as to any additional amounts received or deemed received from the Joint Venture which are paid in accordance with Ownership Percentages under the Joint Venture Agreement, to the Members in accordance with Percentage Interests and (ii) all other distributions or deemed distributions from the Joint Venture which pursuant to the Joint Venture Agreement are paid solely to the Developer, to EVAI3.

East Village 3 Pro Forma
HPUTA East Village 3 LLC
Cash Flow

Cash Flow *	*mo. 1*	*mo. 2*	*mo. 3*	*mo. 4*	*mo. 5*	*mo. 6*	*mo. 8*	*mo. 9*	*mo. 10*	*mo. 11*	*mo. 12*	*mo. 13*	*mo. 14*	*mo. 15*	*mo. 16*	*mo. 17*	*mo. 18*	*mo. 19*	*mo. 20*	*mo. 21*	*mo. 22*	*mo. 23*	*mo. 24*	*mo. 25*	*mo. 26*	*mo. 27*	*mo. 28*	*mo. 29*	*mo. 30*	*mo. 31*	*mo. 32*	*mo. 33*	*mo. 34*	*mo. 35*	*mo. 36*	*mo. 37*	*mo. 38*	*mo. 39*	*mo. 40*	*mo. 41*	*mo. 42*	*mo. 43*	*mo. 44*	*mo. 45*	*mo. 46*	*mo. 47*	*mo. 48*	Total
HP-UTA Member	(1,056,093)	(335,056)	(221,423)	(287,547)	(400,667)	(464,521)	(135,689)	(300)	(300)	(300)	(300)	(300)	(300)	(300)	(4,831)	(7,542)	(7,160)	(2,132)	(906)	1,836	7,100	8,377	10,521	14,589	16,781	30,368	33,181	38,557	43,765	27,100	30,084	34,656	35,717	32,190	33,347	33,694	32,547	33,464	35,222	35,127	35,035	34,958	34,872	34,799	34,728	34,657	5,855,994	3,707,598
Developer Promote	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	9,654,186	9,654,186
Total Cash Flows	(1,056,093)	(335,056)	(221,423)	(287,547)	(400,667)	(464,521)	(135,689)	(300)	(300)	(300)	(300)	(300)	(300)	(300)	(4,831)	(7,542)	(7,160)	(2,132)	(906)	1,836	7,100	8,377	10,521	14,589	16,781	30,368	33,181	38,557	43,765	27,100	30,084	34,656	35,717	32,190	33,347	33,694	32,547	33,464	35,222	35,127	35,035	34,958	34,872	34,799	34,728	34,657	15,510,180	13,361,784

* This assumes captial contributions are prorata 12%/88% between in mo. 1-7.
However, HP and UTA are contributing 100% of their capital at Closing.

Total for Mo 21-48 16,284,413

Cash from Ops, Mo 1-47	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	Total
HP-UTA Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,836	7,100	8,377	10,521	14,589	16,781	30,368	33,181	38,557	43,765	27,100	30,084	34,656	35,717	32,190	33,347	33,694	32,547	33,464	35,222	35,127	35,035	34,958	34,872	34,799	34,728	34,657	777,271
NOI escrow: Mo 21-36 *	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(1,836)	(7,100)	(8,377)	(10,521)	(14,589)	(16,781)	(30,368)	(33,181)	(38,557)	(43,765)	(27,100)	(30,084)	(34,656)	(35,717)	(32,190)	364,820	-	-	-	-	-	-	-	-	-	-	-	-
Net Cash to HP **	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	398,168	33,694	32,547	33,464	35,222	35,127	35,035	34,958	34,872	34,799	34,728	34,657	777,271

* Cash from NOI is escrowed until Mo 36, when the property is stabilized per Loan Covenants
*** Cash is first applied to HP interest on its unreimbursed infrastructure*

Exhibit D
(Contribution Agreement)

CONTRIBUTION AGREEMENT

BETWEEN

UTAH TRANSIT AUTHORITY ("UTA")

AND

HPUTA EAST VILLAGE 3 LLC, a Utah limited liability company

LIST OF EXHIBITS AND SCHEDULES

EAST VILLAGE 3
SANDY, UTAH

CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT (this "**Agreement**") is made and entered into as of this ___ day of _____, 2020 (the "**Effective Date**"), by and between UTAH TRANSIT AUTHORITY, a large public transit district of the State of Utah ("**UTA**"), and HPUTA EAST VILLAGE 3 LLC, a Utah limited liability company (the "**Company**", together with UTA, each a "**Party**" and, collectively, the "**Parties**").

RECITALS

A. WHEREAS, UTA and EAST VILLAGE. INVESTMENTS LLC, a Utah limited liability company ("**Master Developer**") executed that certain Development Agreement as of the September 30, 2014 (the "**Development Agreement**") to develop approximately thirty (30) acres in the City of Sandy, County of Salt Lake, State of Utah, (the "**Original Property**") as a transit oriented development in conjunction with the development of the adjacent Transit Property. As used herein, "**Transit Property**" shall have its meaning as defined in the Development Agreement and is to contain a light rail station, bus loop, kiss and ride and the Parking Structure (defined below);

B. WHEREAS, UTA owns that certain unimproved parcel of land located in the City of Sandy, County of Salt Lake, State of Utah, and more particularly described on **Exhibit A-1** (the "**Development Parcel**"), a portion of which is part of the Original Property, and a portion of which is part of the Transit Property;

C. WHEREAS, UTA and East Village Apartment Investments 3 LLC, a Utah limited liability company ("**EVAI3**"), formed the Company and is executing that certain Operating Agreement of the Company of even date herewith (the "**Company Operating Agreement**") for, among other purposes, the formation of a joint venture, East Village 3 LLC, a Delaware limited liability company (the "**Joint Venture**"), the members of which being BMF IV UT Alta Vue LLC, a Delaware limited liability company, and the Company, with the Company being the "Operating Member";

D. WHEREAS, as of even date herewith, the Master Developer has, as contemplated by the Development Agreement, assigned the rights to develop the Residential Parcel (defined below) to the Company which is, in turn, assigning such rights to the Joint Venture or a subsidiary thereof, which will act as the Development Company under the Development Agreement, for the development of approximately 305 multifamily units along with related improvements and amenities (the "**Residential Project**"). As used herein, the "**Residential Parcel**" shall mean the parcel upon which the Residential Project is to be built, which parcel is depicted on **Exhibit A-2**, attached hereto and made a part hereof;

E. WHEREAS, as contemplated by the Development Agreement, UTA will construct and develop the Parking Structure on the Parking Structure Parcel (defined below). As used herein, the "**Parking Structure**" shall mean a two level parking facility with 517 parking spaces, which is intended to provide the necessary off-street parking for the Residential Project and for patrons

and personnel arriving at or departing from the adjoining TRAX Line Station, all as part of a transit-oriented development. As used herein, the "**Parking Structure Parcel**" shall mean the Development Parcel less and except the Residential Parcel (which Parking Structure Parcel has been and shall continue to be included in the Transit Property).

F. WHEREAS, in furtherance of the development of the Parking Structure, UTA has executed that certain Construction Agreement RFP 18-2800TP (the "**Wadsworth Contract**") with Wadsworth Brothers Construction, Inc. ("**Wadsworth**"), to construct the Parking Structure in accordance with the budget attached hereto as **Exhibit E** and made a part hereof (the "**Parking Structure Budget**");

G. WHEREAS, UTA is, pursuant to this Agreement, contributing the Residential Parcel to the Company in return for which UTA is to receive a credit to its Capital Account of One Million Five Hundred Eighty Thousand Three Hundred Sixteen Dollars ($1,580,316) (calculated at 263,386 square feet multiplied by $6.00 per square foot) (the "**Agreed Amount**"), the Residential Parcel being in turn contributed by the Company to the Joint Venture in return for which the Company is receiving a credit to its capital account in the Joint Venture in the Agreed Amount;

H. WHEREAS, in order to allow the Joint Venture or a subsidiary thereof to construct, operate and own the Residential Project and UTA to construct, operate and own the Parking Structure, separately, the Development Parcel is to be subdivided into two separate parcels: (i) the Residential Parcel to be owned in fee by the Joint Venture or a subsidiary thereof, and (ii) the Parking Structure Parcel to be owned in fee by UTA, subject to the Parking Structure COREA (defined below);

I. WHEREAS, there is a delay in finalizing the proposed plat of subdivision, a draft of which is attached hereto as **Exhibit A-3** (the "**New Plat**"), with Lot __ as depicted thereon, being the Residential Parcel and Lot __ as depicted thereon, being the Parking Structure Parcel;

J. WHEREAS, the Parties seek to start construction of the Residential Project and the Parking Structure prior to the recording of the New Plat;

K. WHEREAS, upon the recordation of the New Plat, UTA and the Joint Venture intend, and the Company shall cause the Joint Venture, to enter into that certain Parking Structure Construction, Operation and Easement Agreement (the "**Parking Structure COREA**"), which shall be substantially in the form attached hereto as **Exhibit C.** Further to this, the Parties acknowledge and agree that but for the need to record the New Plat, the Parking Structure COREA would have been executed simultaneously herewith, and as a result, the Parties desire to incorporate certain provisions of the Parking Structure COREA as if set forth herein below, hereby agreeing to be bound by those certain provisions notwithstanding that the Parking Structure COREA has yet to be executed;

L. WHEREAS, the Parties have agreed that in order to facilitate construction of the Residential Project and the Parking Structure without to delay, UTA will, concurrently herewith, contribute the entire Development Parcel to the Company, which will, in turn, contribute it to the Joint Venture (the "**Development Parcel Contribution**"), provided that concurrently with the

conveyance of the Development Parcel to the Joint Venture or a subsidiary thereof, the Joint Venture or a subsidiary thereof executes a ground lease of the Parking Structure Parcel to UTA pursuant to the terms of the Ground Lease attached hereto as **Exhibit B** (the "**Ground Lease**"), which Ground Lease provides that UTA shall be obligated to commence and complete construction of the Parking Structure pursuant to Section 6 of the Parking Structure COREA and the Construction Documents irrespective of when the New Plat is recorded, and that upon the recording of New Plat, the Company shall cause the Joint Venture or a subsidiary thereof to re-convey the Parking Structure Parcel to UTA and as part of such conveyance record the Parking Structure COREA;

M. WHEREAS, the Parties desire to enter into this Contribution Agreement to memorialize and implement the described transaction on the terms and conditions set forth in this Agreement. All capitalized terms used herein and not otherwise defined shall have their respective meanings as is set forth in the Company Operating Agreement

NOW, THEREFORE as an inducement to the Parties entering into the transactions described herein, the Parties agree as follows:

1. **Recitals**. The Recitals set forth above are incorporated herein.

2. **Conveyance of the Property by UTA to the Company**. The Company agrees to acquire from UTA, and UTA agrees to contribute to the Company, subject to the terms of this Contribution Agreement, the Ground Lease, and the Company Operating Agreement, all of UTA's right, title, and interest in and to the Development Parcel. In consideration for UTA's contribution of the Development Parcel to the Company, UTA shall receive such credit to its Capital Account in the Agreed Amount. UTA acknowledges and agrees that the Company has directed UTA to convey the Development Parcel directly to the Joint Venture or subsidiary thereof, which conveyance shall be first deemed a contribution from UTA to the Company and subsequently a contribution from the Company to the Joint Venture.

3. **Representations and Warranties of the Company**. The Company hereby represents and warrants to UTA as of the date of this Agreement as follows:

(a) The Company is duly organized and validly existing and in good standing under the laws of the State of its formation. This Agreement and all documents executed by the Company which are to be delivered to UTA are and will be, duly authorized, executed and delivered by the Company.

(b) The Company is not the subject of any filing of a petition under the Federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors.

(c) The Company has not received written notice that there is any litigation or other proceeding pending or, to the Company's knowledge, threatened against the Company that may detrimentally affect the ability of the Company to perform its obligations under this Agreement.

(d) The Company has not dealt with any broker or finder which would be entitled to a commission or fee arising out of the transactions contemplated by this Agreement.

(e) The Company is in compliance with all laws, statutes, rules and regulations of any federal, state or local governmental authority in the United States of America applicable to the Company arising out of Executive Order No. 133224, 66 Fed Reg. 49079 (September 25, 2001).

For purposes of this Agreement and any document delivered at the Closing, whenever the phrase "**to the Company's knowledge**" or the "**knowledge**" of the Company or words of similar import are used, they shall be deemed to mean and are limited to the current actual knowledge only of Bruce Bingham and George Arnold, at the times indicated only, and not any implied, imputed or constructive knowledge of such individuals, and without any independent investigation or inquiry having been made or any implied duty to investigate, make any inquiries or review the Due Diligence Materials. Furthermore, it is understood and agreed that such individuals shall have no personal liability in any manner whatsoever hereunder or otherwise related to the transactions contemplated hereby.

4. **Representations and Warranties of UTA**. Subject to all matters disclosed on Schedule 1 attached hereto and made a part hereof (the "**Disclosure Items**"), UTA represents and warrants to the Company, the Joint Venture, EVAI3, and their respective affiliates, as of the date of this Agreement as follows:

(a) UTA is transit district organized under the Utah Public Transit District Act, Utah Code Ann. §§ 17B-2a-801 et. seq. (the "**Utah Public Transit District Act**"); this Agreement and all documents executed by UTA which are to be delivered to the Company or the Joint Venture on the date hereof are and will be, duly authorized, executed and delivered by UTA, as applicable.

(b) UTA is not the subject of any filing of a petition under the Federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors.

(c) UTA has not received written notice that there is any litigation or other proceeding pending or, to the best of UTA's knowledge, threatened arising out of or relating to the Development Parcel or UTA that might detrimentally affect the Development Parcel, the Company, or the Joint Venture and/or the ability of UTA to perform its obligations under this Agreement.

(d) There are no pending condemnation, expropriation, eminent domain or similar proceedings in connection with the Development Parcel or any portion thereof for which UTA has received legal process, and nor, to the knowledge of UTA, are any such condemnation, expropriation, eminent domain or similar proceedings threatened or contemplated by any governmental authority in connection with the Project Land or any portion thereof;

(e) UTA has not granted any contract, option or right of first refusal or first opportunity to any party to acquire any fee or ground leasehold interest in any portion of the Development Parcel, and, no contract, option or right of first refusal or first opportunity to any party to acquire any fee or ground leasehold interest has been granted in any portion of the Development Parcel.

(f) UTA is in compliance with all laws, statutes, rules and regulations of any federal, state or local governmental authority in the United States of America applicable to UTA arising out of Executive Order No. 133224, 66 Fed Reg. 49079 (September 25, 2001).

(g) The execution and delivery of this Agreement, the Ground Lease and the Parking Structure COREA, the consummation of the transactions described herein, and compliance with the terms of this Agreement will not conflict with, or constitute a default under, any agreement to which UTA is a party or by which UTA or the Development Parcel is bound.

(h) UTA has no knowledge of any issues with respect to the generation, transportation, storage, treatment or disposal at or from the Development Parcel of any Hazardous Materials (as defined in Section 10(a)(ii)) in violation of any applicable Environmental Laws (as defined in Section 10(a)(ii), except and to the extent such issues may be set forth in the Disclosure Items. UTA has not received any written notice of any generation, transportation, storage, treatment or disposal at or from the Development Parcel of any Hazardous Materials in violation of any applicable Environmental Laws that has not heretofore been corrected in compliance with such Environmental Laws.

(i) UTA has delivered to EVAI3 true, correct and complete copies of all documents, service contracts and other contracts, agreements, reports, and other items and materials delivered to, prepared by or on behalf of, or made available to UTA with respect to the Development Parcel (collectively, the "**Due Diligence Materials**").

(j) UTA has not, within the last six (6) months let any contracts for the furnishing of labor, service or materials to improve the Development Parcel, except any work performed or to be performed pursuant to the Wadsworth Contract.

(k) UTA has not dealt with any broker or finder which would be entitled to a commission or fee arising out of the transactions contemplated by this Agreement.

For purposes of this Agreement and any document delivered at the Closing, whenever the phrase "**to UTA's knowledge**" or the "**knowledge**" of UTA or words of similar import are used, they shall be deemed to mean and are limited to the current actual knowledge only of Paul Drake, at the times indicated only, and not any implied, imputed or constructive knowledge of such individual or of UTA, and without any independent investigation or inquiry having been made or any implied duty to investigate. Furthermore, it is understood and agreed that such individual(s) shall have no personal liability in any manner whatsoever hereunder or otherwise related to the transactions contemplated hereby.

5. **Survival of UTA's Representations and Warranties of Sale**. The representations and warranties of UTA contained herein or in any Closing Documents shall survive the Closing without limitation.

6. **The Company's Independent Investigation**.

(a) Upon Closing, and subject to the provisions of this Agreement, the Company will be deemed to have acknowledged and agreed that it has been given a full opportunity to inspect and investigate each and every aspect of the Development Parcel and either independently or through agents of the Company's choosing, including, without limitation:

(i) All matters relating to title and survey with respect to the Development Parcel, together with all governmental and other legal requirements such as taxes, assessments, zoning, use permit requirements and building codes.

(ii) The physical condition and aspects of the Development Parcel including, without limitation, all physical and functional aspects of the Development Parcel. Such examination of the physical condition of the Development Parcel shall include an examination for the presence or absence of Hazardous Materials, as defined below, which shall be performed or arranged by the Company at the Company's sole expense. For purposes of this Agreement, "Hazardous Materials" shall mean inflammable explosives, radioactive materials, asbestos, asbestos–containing materials, polychlorinated biphenyls, lead, lead-based paint, radon, under and/or above ground tanks, hazardous materials, hazardous wastes, hazardous substances, oil, or related materials, which are listed or regulated in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 6901, et seq.), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 1401, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), and the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.), and any other applicable federal, state or local laws (collectively, "**Environmental Laws**").

(iii) Any easements and/or access rights affecting the Development Parcel.

(iv) The service contracts and any other documents or agreements of significance affecting the Development Parcel.

(b) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE COMPANY OPERATING AGREEMENT, AND IN ANY OF THE CLOSING DOCUMENTS, THE COMPANY SPECIFICALLY ACKNOWLEDGES AND AGREES THAT UTA IS CONTRIBUTING AND THE COMPANY AND THE JOINT VENTURE ARE ACCEPTING THE DEVELOPMENT PARCEL ON AN "**AS IS WITH ALL FAULTS**" BASIS AND THAT THE COMPANY AND THE JOINT VENTURE ARE

NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM UTA.

(c) The provisions of this Section shall survive the Closing.

7. **Closing of the Transfer of the Development Parcel**

(a) Upon mutual execution of this Agreement, the Parties shall deposit an executed counterpart of this Agreement with First American Title Insurance Company (the "**Title Company**"), as escrow holder, and this Agreement shall serve as instructions to Title Company (as the escrow holder) for consummation of the transaction contemplated hereby. UTA and the Company shall, and the Company shall cause the Joint Venture to, execute such additional escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Agreement and any supplementary agreements between the Parties. The Parties agree that to the extent permitted by the Title Company, and specifically excepting such documents which are to be recorded, the Closing Documents may be circulated by electronic mail and the Parties shall rely on such electronic signatures as if they were original wet-ink signatures.

(b) The Parties shall close the transfer of the Development Parcel contemplated hereby (the "**Closing**") pursuant to this Section on the date hereof; the date of the Closing is referred to herein as the "**Closing Date**".

(c) Closing Deliveries.

(i) On or before the Closing Date, the Company shall deliver or cause to be delivered to the Title Company the following:

(1) Any customary and/or reasonable closing documents reasonably requested by the Title Company of the Company or the Joint Venture to record the Deed and for the Title Company to be prepared to issue a title policy showing fee simple title to the Development Parcel in the name of the Joint Venture or a subsidiary thereof subject only to matters approved by the Joint Venture.

(2) four (4) counterparts of the Ground Lease executed by the Joint Venture or a subsidiary thereof, to be recorded by the Title Company on the Closing Date;

(ii) On or before the Closing Date, UTA shall deliver or cause to be delivered to the Title Company the following:

(1) two (2) originals of a "**FIRPTA Affidavit**" pursuant to Section 1445 (b)(2) of the Internal Revenue Code duly executed by UTA, originals of which are to be delivered to each of the Company and the Joint Venture;

(2) a duly executed and acknowledged special warranty deed in the form attached hereto as **Exhibit D** (the "**Deed**") with respect to the Development Parcel, to be recorded by the Title Company on the Closing Date;

(3) four (4) counterparts of the Ground Lease to be recorded by the Title Company on the Closing Date;

(4) two (2) duly executed of each of the following: ALTA Statement, GAP Indemnity, and Non-Imputation Affidavit in such form as is required by the Title Company to issue the Title Policy.

(5) any other customary and/or reasonable closing documents reasonably requested by the Company, the Joint Venture, EVAI3, or the Title Company or otherwise required to close the escrow and consummate the contribution of the Development Parcel in accordance with the terms hereof, the Company Operating Agreement, and the Joint Venture Operating Agreement, duly executed by UTA; provided, however, that in no event shall any such documents increase the liability of UTA.

The documents required to be delivered on or before the Closing by the Parties under this Section 6(c) are herein collectively called the "**Closing Documents**."

(d) UTA and the Company hereby designate Title Company as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Internal Revenue Code and the regulations promulgated thereunder and agree to execute such documentation as is reasonably necessary to effectuate such designation.

(e) With respect to the Property, the following are to be apportioned as follows between UTA and the Company as of Closing Date, with Company being deemed to be the owner of the Development Parcel through the entire day that comprises the Closing Date and being entitled to receive all income of the Development Parcel, and being obligated to pay all expenses of the Property, with respect to such day. The Parties acknowledge and agree that the Company may assign its rights and obligations with respect to the closing costs set forth in this Section 6(e) to the Joint Venture:

(i) Miscellaneous Apportionments; Closing Costs. The Company shall pay the premium for the Title Policy and for all endorsements thereto and all escrow fees.

(ii) Utility Charges. UTA shall be responsible for the cost of all utilities, if any, used on the Development Parcel prior to the Closing Date, and the Company shall be responsible for costs of all utilities used on the Development Parcel from and after the Closing Date.

(iii) Real Estate Taxes and Special Assessments. The parties acknowledge and agree UTA does not currently pay real estate tax on the Development Parcel, and as such there shall be no proration of real estate taxes.

(iv) Survival. The provisions of this Section 6(f) with respect to the Property shall survive the Closing of the transactions contemplated hereby.

8. **Parking Structure Development**.

(a) The terms Sections 6 and 11 of the Parking Structure COREA as set forth in the form attached as **Exhibit C**, are hereby incorporated by reference as if set forth in their entirety herein, and UTA acknowledges, and the Company and the Joint Venture are simultaneously relying, that the obligations contained in such Sections shall be enforceable by the Joint Venture until the Parking Structure COREA is executed by UTA and the Joint Venture and recorded. UTA shall cause the construction and equipping of the Parking Structure to be completed in a good and workmen-like manner and in accordance with the Wadsworth Contract, that certain Architect's Contract by and between [IBI Group, Inc.] and _____ dated as of _____, the plans and specifications for the Parking Structure prepared by IBI Group Inc. and set forth on Exhibit E to the Parking Structure COREA, the construction budget set forth on Exhibit F to the Parking Structure COREA, and the Construction Management Agreement (as hereinafter defined) (collectively, the "**Construction Documents**") on or before the Construction Deadline (as such term is defined in the Parking Structure COREA), all in accordance with the Ground Lease and Section 6 of the Parking Structure COREA.

(b) Simultaneously with the recordation of the New Plat, UTA shall execute and deliver to the Joint Venture, and the Company shall cause the Joint Venture to execute and deliver to UTA two (2) original counterparts, each, of the Parking Structure COREA, simultaneously in the form attached hereto as **Exhibit C**, and the Company shall cause the Joint Venture to record the Parking Structure COREA with the Recorder of Salt Lake County, Utah as modified to reflect the New Plat and such other changes to which the parties thereto reasonably agree, including the changes as may be required by Section 8(c) below.

(c) The current architectural plans for the Parking Structure for the parking structure are in accordance with the International Building Code, and upon which a building permit was approved by the City of Sandy. The plan show a total of 517 parking spaces, 251 of which are on the lower level and 266 on the top floor. On the lower level, 215 parking spaces are to be reserved for residential use, including 2 ADA parking spaces. The remaining 36 parking spaces are shared spaces with UTA. On the top floor, two ADA parking spaces are to be reserved for residential use, 240 parking spaces are solely for UTA use, and 24 spaces are for shared use. These 24 shared use parking spaces on the top level are comprised of 7 ADA parking spaces and 17 regular parking spaces. UTA has previously installed 8 ADA parking spaces across Beetdigger Blvd next to the UTA station, and as such UTA is of the view that its 8 ADA parking spaces comply with the 2006 DOT ADA Standards for Transportation Facilities as well as the 2010 DOJ ADA Standards for UTA's required number of ADA parking spaces. UTA has communicated its view in the application of the ADA requirements of the International Building Code to the City of Sandy to allow UTA to count the 8 ADA spaces at the UTA station as part of the parking structure for the purpose of ADA compliance. If the City of Sandy approves such variance in accordance with the following prior to the recording of the New Plat, the parties agree

to revise the Parking Structure COREA to so reflect such change: The top floor of the parking structure will contain an additional 2 parking spaces (by restriping), making the total parking spaces in the structure to be 519 parking spaces, instead of 517 parking spaces. The top floor will, thus, have 268 parking spaces instead of 266 parking spaces, which will include 241 UTA parking spaces, 25 shared parking spaces and 2 ADA parking spaces for residential use only, The lower level would continue to have 251 parking spaces, but number of residential parking spaces would be increased from 215 spaces to 216, only one of which would be an ADA parking space, and 35 shared parking spaces.

9. Miscellaneous

(a) Notices. Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given (i) upon receipt if hand delivered, (ii) upon delivery by a reputable next business day delivery service providing receipt of delivery (such as FedEx), (iii) when sent by facsimile transmission with electronic written confirmation of receipt evidencing delivery on or before 5:00 p.m. on the date transmitted and with delivery of an original thereafter by such other method designated in (i), (ii) or (v) of this Section (provided, where delivery receipt evidences a time after 5:00 p.m. on the date transmitted, then such delivery shall be deemed to be the following business day), (iv) when sent by e-mail transmission with delivery of an original thereafter by such other method designated in (i), (ii), or (v) of this Section (provided, where delivery receipt evidences a time after 5:00 p.m. on the date transmitted, then such delivery shall be deemed to be the following business day) or (v) upon delivery, or refusal to accept if delivered to the valid address of the recipient Party under this Agreement, by the United States mail, registered or certified mail, postage prepaid, return receipt required, in any such case addressed to as follows:

If to UTA: 669 West 200 Street
Salt Lake City, Utah 84111
Attention: _____
Fax: _____
E-mail:_____

With a copy to: _____
_____
_____
Attention: _____
Fax: _____
E-mail:_____

If to the Company: c/o Hamilton Partners
222 South Main Street, Suite 1760
Salt Lake City, Utah 84101
Attention: Bruce Bingham
Fax: _____
E-mail: bbingham@hpre.com

With a copy to: Seyfarth Shaw LLP
233 South Wacker Drive, Suite 8000
Chicago, IL 60606
Attention: Tobi L. Pinsky
Fax: (312) 460-7906
E-mail: tpinsky@seyfarth.com

or such other address as either Party may from time to time specify in writing to the other in the manner provided in this Section.

(b) No Recording. Neither this Agreement nor any memorandum or short form thereof may be recorded by either Party.

(c) Successors and Assigns. Neither Party shall have any right to assign its respective rights and obligations under this Agreement to any other party. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns.

(d) Amendments. Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by UTA and the Company.

(e) Third Party Beneficiary. The Parties acknowledge that the Joint Venture is a third beneficiary of the provisions of Sections 4, 5, 7, 8, and 9(l) hereof, but not any other provision, and such provisions may be enforceable directly by the Joint Venture, even if the Company is no longer the Operating Member of the Joint Venture. The Parties shall not modify of amend Sections 4, 5, 7, 8, or 9(l) hereof without the advance written consent of the Joint Venture.

(f) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. UTA and the Company hereby consent to the personal jurisdiction of the courts of Utah.

(g) Merger of Prior Agreements. This Agreement and the exhibits and schedules hereto constitute the entire agreement between the Parties and supersede all prior agreements and understandings between the Parties relating to the subject matter hereof.

(h) Enforcement. If any Party fails to perform any of its obligations under this Agreement or if a dispute arises between the Parties concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other Party or Parties on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

(i) Time of the Essence. Time is of the essence of this Agreement.

(j) Severability. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to

be invalid, unenforceable or void, the remainder of this Agreement and such provision as applied to other persons, places and circumstances shall remain in full force and effect.

(k) Business Days. The term "**business day**" means any day on which business is generally transacted by banks in both of Chicago, Illinois, and Salt Lake City County, Utah. If the final date of any period which is set out in this Agreement falls upon a day which is not a business day, then, and in such event, the time of such period will be extended to the next business day.

(l) Confidentiality and Return of Documents. UTA and the Company shall each maintain as confidential any and all material information obtained about the other or, the Development Parcel, this Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by any applicable statute, law, regulation or governmental authority, or in connection with any litigation that may arise between the Parties in connection with the transactions contemplated by this Agreement, neither Party will divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of the Parties. Notwithstanding the foregoing, (x) the Company shall have the right to disclose information with respect to the Property and UTA to its officers, directors, employees, attorneys, accountants, contractors, environmental auditors, engineers, potential lenders, potential investors, affiliated entities and permitted assignees under this Agreement and other consultants to the extent necessary for the Company to perform its obligations under this Agreement, the Company Operating Agreement, the Joint Venture Operating Agreement, and such other documents related to the development of the Residential Project, provided that all such persons are told that such information is confidential and agree to keep such information confidential, and (y) UTA shall have the right to disclose information regarding the Company to its officers, directors, employees, attorneys and accountants under this Agreement to the extent necessary for UTA to evaluate the transactions contemplated by this Agreement and perform its obligations under this Agreement, provided that all such persons are told that such information is confidential and agree to keep such information confidential.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Restatement Effective Date.

UTA:

UTAH TRANSIT AUTHORITY, a public transit district organized under the Utah Public Transit District Act

By: _____
Carolyn Gonot
Executive Director

By: _____
Mary DeLoretto
Chief Service Development Officer

THE COMPANY:

HPUTA EAST VILLAGE 3 LLC
a Utah limited liability company

By: East Village Apartment Investments 3 LLC,
a Utah limited liability company

By: HP East Village 3 LLC,
its Managing Member

By: _____
Name: _____
Title: _____

COUNTERPART SIGNATURE PAGE TO
CONTRIBUTION AGREEMENT DATED AS OF APRIL ____, 2013

(TITLE COMPANY)

Title Company agrees to act as escrow holder and title company in accordance with the terms of this Agreement and to act as the Reporting Person in accordance with Section 6045(e) (of the Internal Revenue Code and the regulations promulgated thereunder.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____

Its: _____

Date: _____, 2020

EXHIBIT A-1

Description of Development Parcel

EXHIBIT A-2

Description of Parking Structure Parcel

EXHIBIT A-3

Proposed Plat of Subdivision

EXHIBIT B

Ground Lease of the Parking Structure Parcel

Please see Ground Lease as presented in Resolution R2020-06-05 Exhibit E

EXHIBIT C

Proposed Parking Structure COREA

Please see COREA as presented in Resolution R2020-06-05 Exhibit F

EXHIBIT D

FORM OF DEED

WHEN RECORDED, MAIL TO:

_____

_____

_____

_____

MAIL TAX NOTICES TO:

_____

_____

_____

_____

Tax I.D. No. _____

SPECIAL WARRANTY DEED

EAST VILLAGE 3 LLC, a Delaware limited liability company (the "**Grantor**"), of c/o Hamilton Partners, 222 Main Street, Suite 1760, Salt Lake City, Utah 84101, hereby CONVEYS and WARRANTS only as against all claiming by, through or under it to **UTAH TRANSIT AUTHORITY**, a large public transit district of the State of Utah (the "**Grantee**"), of 669 West 200 South, Salt Lake City, Utah 84101, for the sum of TEN DOLLARS and other good and valuable consideration, the following-described tracts of land situated in the City of Sandy, Salt Lake County, State of Utah:

See attached Exhibit A

SUBJECT TO real property taxes for the year of closing and subsequent years, and to those exceptions set forth on attached Exhibit B.

[signature page follows next]

Exhibit E

Parking Structure Budget

Alta Vue Apartments
6/8/2020

Garage Budget

Description	UTA	EV3	Total
Allocation	58.0%	42.0%	100%
Hard Costs			
Site Costs	401,511	290,426	691,937
Structure	3,473,940	2,512,817	5,986,757
	3,875,451	2,803,243	6,678,694
Soft Costs			
Arch & Structural	142,155	102,825	244,980
Permit, Tap, Util.	27,337	19,773	47,110
Inspections & Tests	-	20,059	20,059
Legal & Professional	81,238	58,762	140,000
Contingency	128,277	92,787	221,065
Builder Risk Insurance	3,714	2,686	6,400
3% Developer Fee	128,590	93,013	221,603
Loan Fee & Costs	-	18,880	18,880
Title Co. costs	-	9,575	9,575
Interest Reserve	-	96,760	96,760
	511,310	515,120	1,026,430
Total Costs	4,386,761	3,318,363	7,705,124

Wadsworth Brothers, Garage Cost

Initial Price in 2019	5,914,889
Rock Wall Credit	(59,951)
Price Escalation	116,819
City changes, permit	15,000
Revised 2020 Price	5,986,757

Notes

The Parking Garage will be owned by UTA with no charge for the underlying land. An easement will be provided for residential use.

The above membership interests are based on a proration of 517 stalls. UTA will have 300 stalls (58%) and the JV will have 217 covered stalls (42%).

Owner to provide Builders Risk Insurance

SCHEDULE 1

Disclosure Items

Exhibit E
(Ground Lease)

Execution Version

20-P00010

GROUND LEASE

Between

EAST VILLAGE 3 LLC

Landlord

and

UTAH TRANSIT AUTHORITY

Tenant

GROUND LEASE

DATED: _____, 2020

Lease Summary

LANDLORD:	East Village 3 LLC c/o Hamilton Partners 222 Main Street, Suite 1760 Salt Lake City, Utah 84101
TENANT:	Utah Transit Authority 669 West 200 Street Salt Lake City, Utah 84111
LEASED PREMISES:	Approximately two and two tenths (2.2) acres of undeveloped land located in the City of Sandy, County of Salt Lake, Utah, and more particularly described in the legal description attached hereto as **Exhibit A** and made a part hereof.

TERM: The term (the "**Term**") shall be ninety-nine (99) Lease Years, commencing on the "Commencement Date" (as hereinafter defined) and ending on the last day of the ninety-ninth (99th) Lease Year.

The term "**Lease Year**" means a period of twelve (12) consecutive calendar months, except that the first Lease Year shall begin on the Commencement Date and end on the last day of the calendar year following the year of the Commencement Date. The second (2nd) Lease Year shall commence on the day next following the last day of the first (1st) Lease Year, and each succeeding Lease Year shall commence upon the anniversary date of the first day of the second Lease Year. Even if there are more than twelve (12) months in the first (1st) Lease Year, the Annual Rent shall be payable for the first (1st) Lease Year at the rate of the Annual Rent set forth herein. The phrase "**Term**" or "**Term of this or the Lease**" as used herein shall include all full Lease Years and any partial month at the commencement of the Term and any partial year at the end of the Term

ANNUAL RENT: One Dollar ($1.00), due and payable to Landlord on the Commencement Date and each anniversary thereof

NOTICES:

To Landlord:

East Village 3 LLC
c/o Hamilton Partners
222 Main Street, Suite 1760
Salt Lake City, Utah 84101
Attn: Bruce Bingham
E-mail: bbingham@hamiltonpartners.com

with copies to:

Hamilton Partners
300 Park Boulevard, Suite 201
Itasca, Illinois 60143
Attn: Ronald C. Lunt
E-mail: rlunt@hpre.com

And:

Seyfarth Shaw LLP
233 South Wacker Drive, Suite 8000
Chicago, Illinois 60606
Attention: Tobi L. Pinsky
Email: tpinsky@seyfarth.com

To Tenant:

Utah Transit Authority
669 West 200 Street
Salt Lake City, Utah 84111
Attn: _____
E-mail: _____

with copies to:

_____
_____
_____
Attn: _____
Email: _____

This Lease Summary is intended to supplement and/or summarize the provisions set forth in the balance of this Lease. This Lease Summary is a part of the Lease, but if there is any conflict between any provision contained in this Lease Summary and the balance of this Lease, the balance of this Lease shall control.

TABLE OF CONTENTS

Page

EXHIBITS:

A – Legal Description of the Leased Premises
B – Legal Description of the Residential Parcel
C – Permitted Exceptions
D – Form of Estoppel Certificate
E – Form of Ground Lease Termination
F – Intentionally Deleted
G – Form of COREA
H – Form of Deed
I – Memorandum of Lease

1. **LEASED PREMISES; TERM.**

(a) Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Leased Premises for the Term and at the Annual Rent set forth on the Lease Summary above, and upon all of the other terms, conditions and provisions herein contained, including, without limitation, all of the terms, conditions and provisions set forth on the Lease Summary above and on the various Exhibits attached hereto, all of which are incorporated herein by reference.

(b) The Term of this Lease and all of Tenant's obligations hereunder (except as otherwise specified herein) shall commence (the **"Commencement Date"**) on the day and year first written above, which is the date on which Landlord and Tenant executed this Lease.

2. **RENT AND OTHER PAYMENTS.** Tenant shall pay the foregoing Annual Rent in the manner above prescribed, and all other payments required hereunder, in the manner herein prescribed, such rent to be made at the address hereinabove specified for notices to Landlord, or at such other address as may, from time to time, be designated by Landlord in writing. Annual Rent is herein sometimes referred to as "**Rent"** or "**rent"**. Payment of Rent is an independent covenant under this Lease and shall be paid without set off or abatement, unless specifically permitted by the terms of this Lease.

3. **USE OF LEASED PREMISES.** Subject to the terms of Section 8 herein below and Section 8 of that certain Contribution Agreement of even date herewith between Tenant and HPUTA-East Village LLC, a Utah limited liability company (the "**Contribution Agreement**"), Tenant shall use the Leased Premises for the construction, operation and maintenance of a two level parking facility (the "**Parking Structure**") with 517 parking spaces, which is intended to provide the necessary off-street parking for the to-be developed apartment project consisting of approximately 305 multifamily units along with related improvements and amenities (the "**Residential Project**") and for patrons and personnel arriving at or departing from the adjoining TRAX Line Station, all a part of a transit-oriented development. The Leased Premises shall not be used for any other purpose.

4. **REPRESENTATIONS AND WARRANTIES OF LANDLORD**. Landlord hereby represents and warrants to Tenant as of the date of this Ground Lease as follows:

(a) Landlord is not the subject of any filing of a petition under the Federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors.

(b) Landlord has not received written notice that there is any litigation or other proceeding pending or, to Landlord's knowledge, threatened against Landlord that may detrimentally affect the ability of Landlord to perform its obligations under this Ground Lease.

(c) Landlord is in compliance with all laws, statutes, rules and regulations of any federal, state or local governmental authority in the United States of America applicable to Landlord arising out of Executive Order No. 133224, 66 Fed Reg. 49079 (September 25, 2001).

For purposes of this Ground Lease, whenever the phrase "**to the Landlord's knowledge**" or the "**knowledge**" of Landlord or words of similar import are used, they shall be deemed to mean and

are limited to the current actual knowledge only of _____ and _____, at the times indicated only, and not any implied, imputed or constructive knowledge of such individuals, and without any independent investigation or inquiry having been made or any implied duty to investigate. Furthermore, it is understood and agreed that such individuals shall have no personal liability in any manner whatsoever hereunder or otherwise related to the transactions contemplated hereby.

5. **NET LEASE.** It is the intention of the parties hereto that this Lease is a "net lease" and that Landlord shall receive the Rent herein provided as net income from the Leased Premises and except for any costs or expenses specifically designated as Landlord's costs or expenses under this Lease, not diminished by (a) any taxes or assessments payable by Tenant under Section 6 below, (b) the cost of any repairs, replacements, restorations, improvements, maintenance, utilities, insurance expenses or charges in any way connected with or related to the Leased Premises, (c) any other costs or expense involved in the care, management, use, construction and operation of the Leased Premises, (d) any rent tax or (e) any other expenses for which Tenant is responsible under this Lease.

6. **REAL ESTATE TAXES.**

(a) Landlord and Tenant acknowledge and agree that Tenant, as the prior owner of the Leased Premises did not pay real estate tax on the Leased Premises, as Tenant is a tax-exempt entity. Simultaneously with the execution hereof, Tenant, as seller, is conveying the Leased Premises and the Residential Parcel to Landlord, and Landlord and Tenant acknowledge and agree that such transfer may cause the Leased Premises to become subject to real estate taxes and special assessments. Tenant shall use commercially reasonable efforts to cause the Leased Premises to become exempt from tax during the Term of this Ground Lease.

(b) Upon recording of the Plat of Subdivision (hereinafter defined), Landlord and Tenant shall cause the Leased Premises to constitute one tax parcel (the "**Tenant Tax Parcel**"). From and after recordation of the Plat of Subdivision, Tenant shall cause the Tenant Tax Parcel to become tax-exempt or shall pay, directly to the taxing authority, before any fine, penalty, interest or cost is incurred, all real estate taxes and special assessments and other impositions of every kind accruing on or after the Commencement Date with respect to the Leased Premises. Prior to the recordation of the Plat of Subdivision, Landlord shall pay all real estate taxes applicable to the Leased Premises, and provide Tenant with receipt of such payment, not less than fifteen (15) days prior to the date the same are due. In the event that Landlord does not provide Tenant with receipt of payment of the applicable real estate taxes at least fifteen (15) days prior to the date the same are due, Tenant may, but shall not be obligated to, pay all or any portion of the real estate taxes impacting the Leased Premises together with any additional land included in the applicable PIN, and shall be entitled to reimbursement from Landlord, upon demand therefor. Real estate taxes under this Section 6 shall be paid on a cash basis. If at any time during the Lease Term the method of taxation prevailing at the Commencement Date shall be altered so that any new or additional tax assessment, levy, imposition, or charge, or any part thereof, shall be imposed in place or partly in place of any real estate taxes or contemplated increase therein, including, without limitation, any tax, assessment, levy, imposition or charge on Rent, then all such taxes, assessments, levies, impositions or charges shall be deemed to be real estate taxes for

the purpose hereof. If the Term commences other than on the 1st day of January, general real estate taxes for the first and, if a partial year, the last years shall be prorated accordingly.

(c) Nothing herein contained shall be construed to require Tenant to pay any transfer, estate, inheritance, succession or gift tax or taxes imposed in respect of any devise or gift of any interest of Landlord or its successors or assigns in the Leased Premises, nor any income tax imposed in respect to Landlord's income from the Leased Premises; provided, however, Tenant shall be fully obligated to pay any replacement tax or additional tax intended as an ad valorem tax, including, without limitation, any lease tax.

(d) Tenant shall have the right to contest the legality or validity of any of the taxes herein provided to be paid by it. Landlord agrees to join in and be a party to any such contest, at Tenant's expense, if so requested by Tenant. Tenant shall receive the sole benefit of any refund awarded with respect to the Leased Premises or reduction in taxes therefor.

(e) Upon the recording of the Plat of Subdivision, Landlord shall cause all tax bills relating to the Leased Premises to be put in Tenant's name and shall also promptly deliver to Tenant any and all tax notices or assessments which it may receive relating to the Leased Premises.

7. SUBDIVISION/DECLARATION.

The legal description of the Leased Premises set forth on **Exhibit A** hereto is a current metes and bounds legal description. Landlord and Tenant acknowledge that Landlord shall submit for approval and recording a Plat of Subdivision (the "**Plat of Subdivision**") of the Leased Premises and other property wherein the Leased Premises would be one lot, and there would be one other lot, the current metes and bounds legal description of which is set forth on **Exhibit B** hereto (the "**Residential Parcel**"); and Landlord shall be obligated to obtain such approval and cause the recording of the Plat of Subdivision within twelve (12) months from the date hereof. Such other additional lots are herein sometimes collectively referred to as the "**Adjacent Lots**." At either Landlord's or Tenant's request after the Plat of Subdivision has been approved and duly recorded with the Recorder's Office for Salt Lake County, the parties shall amend **Exhibit A** hereto to have the legal description modified to be the legal description of the Leased Premises under the Plat of Subdivision. Prior to the execution and recordation of the Plat of Subdivision, Tenant shall have the right to review and approve the Plat of Subdivision, which approval may not be unreasonably withheld, conditioned, or delayed. Tenant's discretion shall not be deemed unreasonable if the Leased Premises are burdened by any easement, restrictions, covenants or other material interest in the Leased Premises created by Landlord or the underlying fee interest which is not a Permitted Exception (as defined in Section 13(b)) (except for any encumbrances or other matters created by Tenant or previously approved by Tenant, in Tenant's sole discretion). Subject to the foregoing, Tenant shall execute, to the extent required for submission and recording, the Plat of Subdivision.

8. ALTERATIONS; IMPROVEMENTS; FIXTURES.

(a) Tenant shall have the right and the obligation, at its sole cost and expense, but subject to Section 8 of the Contribution Agreement to construct the Parking Structure. The Parking Structure shall be constructed pursuant to that certain Construction Agreement RFP 18-

2800TP (as amended and assigned from time to time, the "**Wadsworth Contract**") with Wadsworth Brothers Construction, Inc. ("**Wadsworth**"). The Parking Structure, together with all other improvements located at any time upon the Lease Premises shall be referred to herein as the "**Improvements**". Any and all Improvements constructed by Tenant on the Leased Premises shall be constructed in accordance with all applicable laws.

(b) At any time and from time to time during the Term, but subject to Section 8 of the Contribution Agreement, Tenant may perform such alterations, renovations, demolitions, removals, repairs, refurbishments and other work with regard to any Improvements as Tenant may elect.

(c) During the Term all Improvements constructed by Tenant shall be solely the property of Tenant, and Landlord shall transfer all of its right, title and interest in the Improvements to Tenant at the time of the Conveyance (as hereinafter defined).

9. **INDEMNITY.**

(a) Landlord agrees to indemnify and save Tenant harmless from and against any and all claims, damages, costs, and expenses, including reasonable attorneys' fees, in any manner arising out of the breach or default on the part of Landlord in the performance of any covenant or agreement contained in this Lease, or any gross negligence of Landlord, its agents, employees, concessionaires, licensees, customers or invitees. In case any action or proceeding is brought against Tenant, by reason of any such claim, Landlord, upon notice from Tenant, shall defend such action or proceeding. Tenant agrees to indemnify and save Landlord harmless from and against any and all claims, damages, costs, and expenses, including reasonable attorneys' fees, in any manner arising out of the breach or default on the part of Tenant in the performance of any covenant or agreement contained in this Lease, or any gross negligence of Tenant, its agents, employees, concessionaires, licensees, customers or invitees. In case any action or proceeding is brought against Landlord, by reason of any such claim, Tenant, upon notice from Landlord, shall defend such action or proceeding.

(b) Tenant is a governmental entity under the Governmental Immunity Act, Section 63G-7-101 et seq. 1953 of the Utah Code (as amended) (the "**Governmental Immunity Act**"). Notwithstanding any provision to the contrary in this Agreement, (i) the obligations of Tenant to indemnify, defend and/or hold harmless in this Ground Lease are limited to the dollar amounts set forth in the Governmental Immunity Act and are further limited only to the claims that arise from the negligent acts or omissions of Tenant, and (ii) nothing in this Ground Lease shall be construed to be a waiver by Tenant of any defenses or limits of liability available under the Government Immunity Act.

10. **UTILITIES.** Tenant shall pay when due, directly to the applicable utility provider, all bills for all utilities used in or on the Leased Premises commencing on the Commencement Date and continuing until expiration of the Term, and shall pay when due all bills for all utilities used by Tenant in or on the Leased Premises. Commencing on the Commencement Date, Tenant shall pay all bills for sewer rents or sewer charges which are separately metered to the Leased Premises, and, if the Leased Premises is not separately metered for sewer rents and sewer charges, shall cause the Leased Premises to become separately metered.

11. **EMINENT DOMAIN.**

(a) If the whole or any portion of the Leased Premises is taken (which term, as used in this Section 11, shall include any conveyance in avoidance or settlement of eminent domain, condemnation or other similar proceedings) by any governmental authority, corporation or other entity under the right of eminent domain, condemnation or similar right, for temporary use or occupancy or on a permanent basis, the Term shall not be reduced or affected, and Tenant shall continue to pay the Rent in full. In the event of any taking, then any award for all or any part of the Leased Premises or any payment made under the threat of the exercise of the power of eminent domain shall be distributed and disbursed first, to the cost of rebuilding or restoring the Leased Premises, and any remaining proceeds shall be paid to the Parties in accordance with their relative percentage interests set forth in Section 7.2 of the COREA (as hereinafter defined).

(b) Landlord and Tenant shall immediately notify the other of the commencement of any eminent domain, condemnation or other similar proceedings with regard to the Leased Premises. Landlord and Tenant covenant and agree to fully cooperate in any condemnation, eminent domain, or similar proceeding in order to maximize the total award receivable in respect thereof, provided that Tenant shall be responsible for the reasonable costs of such proceeding.

12. **DAMAGE OR DESTRUCTION.**

(a) Tenant shall immediately notify Landlord of any destruction or damage to the Leased Premises. If destruction or damage to the Leased Premises occurs Tenant shall be obligated to and shall repair, replace, restore or reconstruct, as the case may be, the Improvements to substantially its condition prior to such destruction. Tenant's obligation set forth in this Section 12(a) shall survive the termination of this Ground Lease, including, without limitation, in connection with the Conveyance, until such time as the COREA is recorded, at which point Section 10.2 of the COREA shall control..

(b) Tenant shall commence such rebuilding, repair or restoration within thirty (30) days following the date all permits and approvals required in connection therewith have been obtained from all applicable governmental authorities, or if no such permits and approvals are required, thirty (30) days following the date of the casualty; provided, however, Tenant shall use commercially reasonable efforts to obtain all such permits and approvals, as are necessary, and commence rebuilding, repair or restoration as promptly and expeditiously as possible. The proceeds payable under all property insurance policies maintained by Tenant or caused to be maintained by Tenant shall first be used for the restoration of the Leased Premises, and any remaining proceeds shall be paid to the Parties in accordance with their relative percentage interests set forth in Section 7.2 of the COREA. Any material changes to the design and structure of the Parking Structure not required by changes in any statute, law, ordinance, order, rule, regulation or judgment of any governmental authority and any requirement, term or condition contained in any restriction or restrictive covenant affecting the Leased Parcel or the construction or operation of the Parking Structure, shall be subject to approval of Landlord, such approval not to be unreasonably withheld.

13. **COVENANT OF TITLE, AUTHORITY AND QUIET POSSESSION.**

(a) Covenant of Title, Authority and Quiet Possession. Landlord represents and warrants to Tenant that Landlord is the holder of fee title to the Leased Premises and Landlord has full right and lawful authority to enter into and perform Landlord's obligations under this Lease for the full Term. Landlord covenants that Tenant shall have and enjoy, during the Term hereof, the quiet and undisturbed possession of the Leased Premises subject to the Permitted Exceptions. Tenant represents and warrants to Landlord that Tenant has full right and lawful authority to enter into and perform Tenant's obligations under this Lease for the full Term.

(b) Title Evidence; Survey. Landlord has furnished to Tenant, at Tenant's sole cost, a leasehold policy of title insurance evidencing that Landlord is the holder of fee simple title to Leased Premises, insuring Tenant's leasehold interest in the Leased Premises including showing the recorded Memorandum of Lease provided for in Section 27 below, and subject only to the Permitted Exceptions (as hereinafter defined). Landlord has previously furnished to Tenant a current ALTA/ACSM Land Title Survey of the Leased Premises (which includes the Residential Parcel), bearing the certification to Tenant required by the American Land Title Association, meeting the current Accuracy Standards for Land Title Surveys, as adopted by the American Congress on Surveying and Mapping, the National Society of Professional Surveyors and the American Land Title Association, and by a land surveyor registered in the state where the Leased Premises is located (the "**Survey**"). Tenant acknowledges and accepts that title to the Leased Premises shall be subject to the matters listed on **Exhibit C** attached hereto and made a part hereof (herein referred to as the "**Permitted Exceptions**").

14. **ENVIRONMENTAL COVENANTS; ENVIRONMENTAL INDEMNITIES**.

(a) Environmental Covenants.

(i) Definitions. For purposes of this Section 14:

(A) The term "**Environmental Laws**" shall mean and include all federal, state and local law (including common law), statutes, ordinances, codes, regulations, rules and orders of any applicable federal, state or local governmental authority, whether presently in force or hereafter enacted, relating to human health, worker health and safety, environmental quality, pollution, contamination or protection of the environment (including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act ("**CERCLA**"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"); the Resource Conservation and Recovery Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Occupational Safety and Health Act, and any similar statutes and/or ordinances and all rules and regulations presently or hereafter promulgated thereunder, as amended).

(B) The term "**Hazardous Substances**" shall mean any substance, chemical, pollutant, contaminant, effluent, waste, product or toxic or hazardous substance, material or waste regulated under

Environmental Laws, including, but not limited to, any "hazardous substance" as now defined pursuant to (1) CERCLA, as amended by SARA, (2) any applicable state Environmental Law, and (3) any judicial interpretation of the foregoing; any petroleum or any petroleum product, including crude oil or any fraction thereof; natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; asbestos and presumed asbestos containing materials; radon; lead based paint; polychlorinated biphenyls; any "hazardous chemical" as defined pursuant to 29 C.F.R. Part 1910; and any other substance or material subject to regulation as a pollutant or hazardous or toxic substance under Environmental Laws.

(ii) Landlord's Covenants. Landlord covenants to promptly notify Tenant and provide copies promptly upon receipt by Landlord, of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to environmental matters or Hazardous Substances on the Leased Premises or compliance with Environmental Laws. If any Hazardous Substances are introduced to the Leased Premises at any time after the Commencement Date by Landlord or Landlord's employees, agents, contractors and invitees, Landlord shall: (W) notify Tenant of such Hazardous Substances if Landlord is required under any Environmental Law(s) to provide notice to any applicable governmental agency of the presence of such Hazardous Substances; (X) promptly (and in no event later than three hundred sixty five (365) days following demand by Tenant) determine Landlord's obligations with respect to such Hazardous Substances under applicable Environmental Laws and notify Tenant of such determination; (Y) if required by any Environmental Law(s), promptly thereafter undertake (or cause the appropriate responsible party) to contain and/or remove such Hazardous Substances, investigate the extent of any contamination, and remediate any contamination caused thereby, in accordance with such Environmental Law(s) (Landlord's determination, containment, removal, investigation and/or remediation as hereinabove set forth is referred to hereinafter as "**Landlord's Remediation**"); and (Z) prosecute such containment, removal, investigation and/or remediation to conclusion, and complete all repairs to the Leased Premises made necessary thereby, within three hundred sixty five (365) days after the date on which Landlord determines its obligations with respect to such Hazardous Substances; provided, however, said 365-day period shall be extended if the circumstances so warrant and Landlord is using all due diligence to complete Landlord's Remediation. In the event that Landlord fails to initiate and/or complete Landlord's Remediation as hereinabove required, and Tenant gives notice to Landlord of its intent to exercise its rights under this subparagraph (ii), and Landlord does not within ninety (90) days thereof initiate or complete, as applicable, Landlord's Remediation, then Tenant may, at its option and without limiting Tenant's other rights and remedies hereunder, initiate and/or complete Landlord's Remediation, in which event Landlord shall reimburse Tenant for all of Tenant's reasonable costs and expenses incurred in completing Landlord's Remediation, which reimbursement shall be made within thirty (30) days after receipt of Tenant's demand together with evidence of the costs and expenses so incurred by Tenant. In no event shall Landlord have any liability for environmental matters or obligation to remediate

any Hazardous Substances existing on the Leased Premises prior to the Commencement Date

(iii) Tenant's Covenants. Tenant covenants to promptly notify Landlord, and provide copies promptly upon receipt by Tenant, of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to environmental matters or Hazardous Substances on the Leased Premises or compliance with Environmental Laws. Tenant covenants, from and after the Commencement Date, that Tenant shall not manufacture, refine, locate, store, dispose of, release or discharge any Hazardous Substances on, from or to the Leased Premises (X) in violation of any Environmental Laws or (Y) in any manner other than for resale at retail on the Leased Premises in consumer-sized containers and delivered to the Leased Premises in such containers or not for resale but used exclusively in the operation, maintenance or repair of the Improvements, or (Z) that is stored in or beneath the ground of the Leased Premises. Tenant covenants, from and after the Commencement Date (i) with respect to Hazardous Substances existing on the Leased Premises used by Tenant after the Commencement Date, to comply, and to cause the Leased Premises to comply, with Environmental Law, and (ii) to obtain and comply with all permit, judgment and licenses relating to the use or operation of the Leased Premises required by applicable Environmental Laws. Except with respect to any Hazardous Substances introduced to the Leased Premises after the Commencement Date by Landlord or Landlord's employees, agents, contractors and invitees, but specifically including Hazardous Substances existing on the Leased Premises prior to the Commencement Date, if any, Tenant shall: (A) notify Landlord of the presence of Hazardous Substances at, in, on, under or about the Leased Premises if Tenant is required under any Environmental Law(s) to provide notice to any applicable governmental agency of the presence of such Hazardous Substances; (B) promptly (and in no event later than sixty (60) days following demand by Landlord) determine Tenant's obligations with respect to such Hazardous Substances under applicable Environmental Law(s) and notify Landlord of such determination; (C) if required by any Environmental Law(s), promptly thereafter undertake to contain and/or remove such Hazardous Substances, investigate the extent of any contamination, and remediate any contamination caused thereby, in accordance with such Environmental Law(s) (Tenant's determination, containment, removal, investigation and/or remediation as hereinabove set forth is referred to hereinafter as "**Tenant's Remediation**"); and (D) prosecute such containment, removal, investigation and/or remediation to conclusion, and complete all repairs to the Leased Premises made necessary thereby, within three hundred sixty five (365) days after the date on which Tenant determines its obligations with respect to such Hazardous Substances; provided, however, said 365-day period shall be extended if the circumstances so warrant and Tenant is using all due diligence to complete Tenant's Remediation. In the event that Tenant fails to initiate and/or complete Tenant's Remediation as hereinabove required, Landlord may, at its option and without limiting Landlord's other rights and remedies hereunder, initiate and/or complete Tenant's Remediation, in which event Tenant shall reimburse Landlord, as Rent, for all of Landlord's reasonable costs and expenses incurred in completing Tenant's Remediation, which

reimbursement shall be made within thirty (30) days after receipt of Landlord's demand together with evidence of the costs and expenses so incurred by Landlord.

(iv) Survival. The foregoing covenants, representations and warranties shall survive the expiration or earlier termination of the Term of this Lease.

(b) Environmental Indemnities.

(i) Landlord shall indemnify and save Tenant and each of its directors, officers, employees and agents, and their respective personal representatives, heirs, successors and assigns (collectively, the "**Tenant Indemnified Parties**"), harmless from and against any and all claims, damages, fines, penalties, injunctive relief, remedial action, response costs, or other costs and expenses, including reasonable attorneys' fees, in any manner arising out of, based upon or in connection with: (A) any Hazardous Substances introduced to the Leased Premises at any time after the Commencement Date by Landlord or Landlord's employees, agents, contractors and invitees, (B) the violation by Landlord or Landlord's employees, agents, contractors and invitees, at any time after the Commencement Date, of any Environmental Laws, permit, judgment or license relating to the presence, use, storage, deposit, generation, treatment, handling, recycling, release or disposal of any Hazardous Substances on, under, in or about the Leased Premises, and (C) any breach of Landlord's covenants set forth in this Section 14. This indemnification of the Tenant Indemnified Parties by Landlord includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by a state or local government agency, a political subdivision or a private party with respect to any Hazardous Substances introduced to the Leased Premises at any time after the Commencement Date by Landlord or Landlord's employees, agents, contractors and invitees. All covenants of Landlord under this Section 14, as well as the foregoing indemnification, shall survive the termination or expiration of this Lease. The foregoing indemnification is in addition to, and not in lieu of any other indemnification given by Landlord in this Lease, including the indemnification contained in Section 9 hereof.

(ii) From and after the Commencement Date, Tenant shall indemnify and save Landlord and Landlord's mortgagee, and each of their directors, officers, employees and agents, and their respective personal representatives, heirs, successors and assigns (collectively, the "**Landlord Indemnified Parties**"), harmless from and against any and all claims, damages, fines, penalties, injunctive relief, remedial action, response costs, or other costs and expenses, including reasonable attorneys' fees, in any manner arising out of, based upon or in connection with: (A) any Hazardous Substances introduced to the Leased Premises at any time unless introduced by Landlord or Landlord's employees, agents, contractors and invitees after the Commencement Date, (B) the violation by Tenant or Tenant's employee's agents, contractors and invitees, at any time, of any Environmental Laws, permit judgment or license relating to the presences, use, storage, deposit, generation, treatment, handling, recycling, release or disposal of

any Hazardous Substances on, under, in or about the Leased Premises, and (C) any breach of Tenant's covenants set forth in this Section 14. This indemnification of the Landlord Indemnified Parties by Tenant shall survive the termination or expiration of this Lease. The foregoing indemnification is in addition to, and not in lieu of any other indemnification given by Tenant in this Lease, including the indemnification contained in Section 9 hereof.

15. **SIGNS.** Subject to all applicable laws and the Permitted Exceptions, Tenant shall have the right to place or have placed on the Leased Premises such signs as Tenant determines to be necessary and appropriate.

16. **ORDINANCES.**

(a) Without limiting in any manner its covenants and obligations under Section 14 hereof, Landlord shall, at Landlord's expense, with respect to Landlord's obligations hereunder, at Landlord's expense, comply with all federal, state, county and municipal laws and ordinances (including, without limitation, all Environmental Laws) and all rules, regulations and orders of any duly constituted authority, present or future, affecting the Leased Premises.

(b) Without limiting in any manner its covenants and obligations under Section 14 hereof, Tenant shall, at Tenant's expense, comply with all federal, state, county and municipal laws and ordinances (including, without limitation, all Environmental Laws) and all rules, regulations and orders of any duly constituted authority, present or future, which are directly related to the carrying on of Tenant's construction, operations, obligations hereunder and business in the Leased Premises from and after the Commencement Date.

17. **DEFAULT AND REMEDIES.**

(a) Should Tenant fail to perform any of its covenants and obligations under this Lease, and thereafter fail to cure such failure within thirty (30) days after receipt of written notice of such failure from Landlord, Tenant shall be deemed to be in default hereunder and Landlord may bring an action against Tenant at law to recover its actual damages. Notwithstanding the forgoing, to the extent such cure cannot reasonably be performed within thirty (30) days following written notice from Landlord, and provided Tenant is diligently attempting to cure such failure, the cure period under this Section 17(a) shall be extended for an additional ninety (90) days. Landlord hereby waives any and all rights it may have by law or in equity to termination of this Lease and recapture of possession of the Leased Premises. Landlord and Tenant acknowledge and agree that should Tenant fail to satisfy its obligations set forth in Section 22 herein below, Landlord may avail itself of specific performance.

(b) Should Landlord fail to perform any of its covenants and obligations under this Lease, and thereafter fail to cure such failure within thirty (30) days after receipt of written notice of such failure from Tenant, Landlord shall be deemed to be in default hereunder and Tenant, at its option, may (i) elect to cure such default, or (ii) bring an action against Landlord at law or in equity for performance or damages. Tenant hereby waives any and all rights it may have by law or in equity to termination of this Lease. If Tenant elects to cure such default, Tenant shall provide Landlord with written notice of Tenant's intention to cure along with a third party estimate

of the charges for Tenant's cure and if Tenant cures Landlord's default Landlord shall pay such amount to Tenant within thirty (30) days after receipt of Tenant's notice. If Landlord's failure to perform hereunder is not reasonably able to be cured within the foregoing thirty (30) day period, Landlord will not be deemed in default hereunder if it commences to cure such failure within said thirty (30) day period and thereafter diligently pursues the same to completion up to a maximum of sixty (60) additional days. In the event Tenant has cured a Landlord default pursuant to the provisions of this Section 17(b), Landlord shall reimburse Tenant for Tenant's costs and expenses incurred in such cure within thirty (30) days after Tenant's notice to Landlord, which notice shall include documentation evidencing Tenant's costs and expenses.

(c) To assure that the Parking Structure is completed in accordance with the Construction Documents (as such term is defined in the Contribution Agreement) or in the event of non-performance by Tenant or Wadsworth under the Wadsworth Contract, Landlord may, and may allow its lender to enter upon the Leased Premises for the purpose of (i) completing construction of the Parking Structure, (ii) inspecting from time to time during normal business hours, but no less frequently than every thirty (30) days, and (iii) upon final completion of the construction of the Parking Structure, assuring that the Parking Structure is completed in accordance with the Construction Documents.

18. **ASSIGNMENT OR SUBLETTING.** Tenant shall not, at any time during the Term of this Lease, without the advance written consent of Landlord, assign this Lease or sublet any portion or all of the Leased Premises.

19. **FINANCING; ESTOPPEL CERTIFICATE.**

(a) Financing. Tenant acknowledges that simultaneously herewith Landlord has entered into that certain Loan Agreement with [CIBC entity] ("**Landlord's Lender**") to finance the Residential Project (the "**Financing**"), and that because the Plat of Subdivision has not yet been filed, Landlord's Lender has required the Leased Premises to be a part of the property mortgaged by Landlord. Such Financing shall be and at all times remain subject and subordinate to this Lease. Landlord shall cause the terms of such Financing to require Landlord's Lender to execute and record with the Recorder's Office for Salt Lake County a release of all documents of record with respect to the Financing at such time as the Conveyance is consummated.

(b) Tenant shall not have the right, without express written consent from Landlord and Landlord's Lender, to mortgage, pledge or otherwise encumber Tenant's leasehold estate under this Lease and its interest in the Leased Premises.

(c) Landlord and Tenant shall each, from time to time but not more frequently than twice during each Lease Year, within ten (10) days after receipt by Landlord or Tenant, as the case may be, of written request from Landlord or Tenant, as the case may be, or from any mortgagee under any mortgage on Landlord's interest in the Leased Premises or any prospective mortgagee, deliver a duly executed Estoppel Certificate substantially in the form attached hereto as **Exhibit D**.

20. **PRO RATA CHARGES.** Whenever payments are required to be made by Tenant under the provisions of this Lease for periods commencing prior to or extending beyond the Term

of this Lease, the same shall be averaged on a per diem basis, and Tenant shall be responsible only for the number of days within such period during which this Lease was in effect.

21. **INTEREST.** All sums owing hereunder by Landlord to Tenant, or with respect to real estate taxes only due hereunder from Tenant to Landlord, shall bear interest from and after the due date thereof at the rate ("**Interest Rate**") equal to the "prime rate" of interest in effect when the payment was due, as published in the *Wall Street Journal*, plus 1% (which Interest Rate shall not exceed sixteen percent (16%) per annum), or if such rate shall be in excess of the highest legal rate of interest which may be charged, then at such highest legal rate.

22. **TENANT'S ACQUISITION FOLLOWING SUBDIVISION.**

(a) Within ten (10) business days from the date the Plat of Subdivision is recorded, which recording shall occur not later than twelve (12) months following the Commencement Date, Landlord shall deliver written notice (the "**Conveyance Notice**") to Tenant advising Tenant of the recordation of the Plat of Subdivision, and setting the date (the "**Closing Date**")for Landlord to convey the Leased Premises to Tenant (such transaction as described in this Section 22, the "**Conveyance**"), which Closing Date shall be thirty (30) days from the date of the Conveyance Notice. The purchase price for the Leased Premises shall be One Dollar ($1.00).

(b) On or before the Closing Date, Tenant shall deliver or cause to be delivered to First American Title Insurance Company (the "**Title Company**") the following:

(i) Two (2) originals of the Termination of Ground Lease in the form attached hereto as **Exhibit E** (the "**Ground Lease Termination**");

(ii) Intentionally Deleted;

(iii) Two (2) originals of the Parking Structure COREA, which shall be substantially in the form attached hereto as **Exhibit G** (the "**COREA**") executed by Tenant; and

(iv) Any customary and/or reasonable closing documents reasonably requested by the Title Company or Landlord to record the Deed (as hereinafter defined) , close escrow, and for the Title Company to be prepared to issue the Title Policy (as hereinafter defined).

(c) On or before the Closing Date, Landlord shall deliver or cause to be delivered to the Title Company the following:

(i) Two (2) originals of a "FIRPTA Affidavit" pursuant to Section 1445 (b)(2) of the Internal Revenue Code duly executed by Landlord;

(ii) A duly executed and acknowledged special warranty deed in the form attached hereto as **Exhibit H** (the "**Deed**") with respect to the Leased Premises, subject only to the Permitted Exceptions, such additional exceptions as are in accordance with Section 30 hereof, and the COREA, to be recorded by the Title Company on the Closing Date;

(iii) Two (2) originals of the Ground Lease Termination, executed by Landlord;

(iv) Intentionally Deleted;

(v) Two (2) originals of the COREA, executed by Landlord;

(vi) Two (2) duly executed of each of the following: ALTA Statement, GAP Indemnity, and Non-Imputation Affidavit in such form as is required by the Title Company to issue the Title Policy; and

(vii) Any customary and/or reasonable closing documents reasonably requested by the Title Company or Tenant to record the Deed, close escrow, and for the Title Company to be prepared to issue the Title Policy; provided, however, that in no event shall any such documents increase the liability of Landlord.

The documents required to be delivered on or before the Closing by the Parties under this Section 22(b) and (c) are herein collectively called the "**Closing Documents**."

(d) Landlord and Tenant hereby designate Title Company as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Internal Revenue Code and the regulations promulgated thereunder and agree to execute such documentation as is reasonably necessary to effectuate such designation.

(e) Landlord shall, at Tenant's sole cost, cause the Title Company to issue a title policy showing fee simple title to the Leased Premises in the name of Tenant, subject only to the Permitted Exceptions, ongoing construction, and any other exceptions which are not caused by Landlord (the "**Title Policy**") to Tenant at Closing. The Tenant shall pay the premium for the Title Policy and for all endorsements thereto. The Landlord shall pay all escrow fees. There shall be no prorations or other cost-sharing allocations made at Closing.

23. **NOTICES.** Any notices, demands, consents, requests, approvals, undertakings or other instruments required or permitted to be given in connection with this Lease (and all copies of such notices or other instruments as set forth on the Lease Summary above) shall be in writing, shall be (a) personally delivered, (b) sent by prepaid overnight or courier service, or (c) deposited in the United States Mail, with proper postage prepaid, and shall be deemed to have been validly served, given or delivered when delivered by hand or by overnight courier service or when sent by registered or certified mail, return receipt requested, postage prepaid, directed to the party to receive the same at the address set forth in the Lease Summary above or at such other address as may be substituted by notice given as herein provided.

24. **BROKERAGE.** Landlord and Tenant represent and warrant to each other that they have dealt with no brokers in connection with the negotiation, execution and delivery of this Lease. If any person shall assert a claim to a finder's fee, brokerage commission or other compensation on account of alleged employment as finder or broker or performance of services as a finder or broker in connection with this transaction, the party whom the finder or broker is claiming to represent shall indemnify, defend and hold the other party harmless from and against any such claim and all costs, expenses and liabilities incurred in connection with such claim or any action

or proceeding brought thereon, including but not limited to attorneys' fees and court costs in defending such claim.

25. **ATTORNEYS' FEES.** In the event that at any time during the Term of this Lease either Landlord or Tenant shall institute any action or proceeding against the other relating to the provisions of this Lease, or any default hereunder, then, and in that event, the unsuccessful party in such action or proceeding shall reimburse the successful party for their reasonable expenses of attorneys' fees and disbursements incurred therein by the successful party.

26. **GENERAL.** Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between Landlord and Tenant, it being expressly understood and agreed that neither the method of computation of rent nor any other provisions contained in this Lease nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of lessor and lessee. No waiver of any default of Tenant hereunder shall be implied from any omission by Landlord to take any action on account of such default if such default persists or is repeated and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers of any covenant, term or condition of this Lease by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant. The invalidity or unenforceability of any provision hereof shall not affect or impair any other provisions. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one landlord or tenant and to either corporations, associations, partnerships or individuals, males or females, shall in all instances be assumed as though in each case fully expressed. The laws of the State in which the Leased Premises are located shall govern the validity, performance and enforcement of this Lease. The headings of the several sections contained herein are for convenience only and do not define, limit or construe the contents of such sections.

27. **MEMORANDUM OF LEASE.** Landlord and Tenant shall enter into a memorandum of lease in the form attached as **Exhibit I**, which shall be recorded by Landlord, at Landlord's sole cost and expense.

28. **SUCCESSORS AND ASSIGNS.** The terms, covenants and conditions hereof shall be binding upon and inure to the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

29. **ENTIRE AGREEMENT.** This Lease contains the entire agreement between Landlord and Tenant with respect to the transactions hereinabove set forth, and there are no other agreements, terms, conditions, promises, undertakings, statements or representations, expressed or implied, concerning the subject matter hereof, and this Lease may not be changed, amended, modified, released or discharged, in whole or in part, except by an instrument in writing signed by all parties to this Lease.

30. **CONSENT TO EASEMENTS.** Except for the COREA, neither Landlord nor Tenant shall enter into, grant, record, or create any easements, encumbrances or servitude upon or impacting any portion of the Leased Premises without the express, written consent of the Landlord or Tenant, as the case may be. Notwithstanding the foregoing, Landlord and Tenant acknowledge and agree that simultaneously with the construction of the Parking Structure, Landlord intends to construct the Residential Project. Landlord has engaged Jacobson Construction Company, Inc. ("Jacobson") for the construction of the Residential Project. As a result of the simultaneous construction of the Parking Structure by Tenant and the Residential Project by Landlord, Landlord and Tenant agree that Wadsworth and Jacobson may designate certain areas on the Leased Premises or the Residential Parcel, as are mutually acceptable to Wadsworth and Jacobson, for (i) vehicular and pedestrian ingress and egress, including as is necessary for construction vehicles, (ii) storing and staging of construction materials, and (iii) parking for Jacobson and Wadsworth, and their respective employees, agents, subcontractors, and invitees during periods of construction.

31. **WAIVER OF TRIAL BY JURY.** Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on or in respect of any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant hereunder, Tenant's use or occupancy of the Leased Premises and/or any claim of injury or damage.

32. **ENFORCEABILITY.** If any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

33. **PATRIOT ACT.**

(a) Tenant is not, and shall not during the Term become, a person or entity with whom Landlord is restricted from doing business under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the "**USA Patriot Act**") and Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001 and regulations promulgated pursuant thereto (collectively, "**Anti-Terrorism Laws**"), including without limitation persons and entities named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List (collectively, "**Prohibited Persons**"). To the best of its knowledge, Tenant is not currently engaged in any transactions or dealings, or otherwise associated with, any Prohibited Persons in connection with the use or occupancy of the Leased Premises. Tenant will not in the future during the Term engage in any transactions or dealings, or be otherwise associated with, any Prohibited Persons in connection with the use or occupancy of the Leased Premises. Breach of these representations constitutes a material breach of this Lease and shall entitle Landlord to any and all remedies available thereunder, or at law or in equity.

(b) Landlord is not, and shall not during the Term become, a person or entity with whom Tenant is restricted from doing business under the USA Patriot Act, Anti-Terrorism Laws, including without limitation any Prohibited Persons. To the best of its knowledge, Landlord is not currently engaged in any transactions or dealings, or otherwise associated with, any

Prohibited Persons in connection with the use or occupancy of the Leased Premises. Landlord will not in the future during the Term engage in any transactions or dealings, or be otherwise associated with, any Prohibited Persons in connection with the use or occupancy of the Leased Premises. Breach of these representations constitutes a material breach of this Lease and shall entitle Tenant to any and all remedies available thereunder, or at law or in equity.

34. **NON-MERGER OF FEE AND LEASEHOLD ESTATES.** If under any circumstances both Landlord's and Tenant's estates in the Leased Premises, or any portions thereof, become vested in the same owner, including without limitation due to Conveyance, this Lease nevertheless shall not be extinguished by application of the doctrine of merger except at the express election of the owner.

35. **RULE AGAINST PERPETUITIES.** If any right granted in this Lease or any provision contained in this Lease is subject to the rule against perpetuities and the same shall not occur or shall not have vested on the date that is twenty-one (21) years after the death of the last to die of all now living descendants of Barak Obama, George W. Bush, William J. Clinton, George H. W. Bush, James E. Carter, Jr., and Gerald R. Ford, all of whom are current or former Presidents of the United States of America, then such right or provision shall terminate as of such date.

36. **INTENTIONALLY DELETED.**

37. **WAIVER OF PUNITIVE DAMAGES, ETC.** Notwithstanding anything to the contrary contained herein, neither Landlord nor Tenant will be responsible or liable for any punitive, indirect, incidental, exemplary, or consequential damages that may be alleged as a result of the relationship created by this Lease, pursuant to any indemnification provision contained in this Lease, or resulting from any default by a party under this Lease.

38. **INSURANCE AND MUTUAL WAIVER OF SUBROGATION.**

(a) From the Commencement Date until Final Completion (as such term is defined in the Wadsworth Contract) of the Parking Structure, Tenant shall cause Wadsworth to maintain insurance covering the Leased Premises consistent with the requirements of the Wadsworth Contract, that certain Owner-Construction Manager as Advisor Agreement between Landlord and Tenant, dated of even date herewith (the "OCM Agreement"), and Sections 6.6 and 11.5(h) of the Parking Structure COREA. To the extent of any conflict in the insurance provisions set forth in the Wadsworth Contract, the OCM Agreement, and the COREA, the parties agree that the insurance provisions set forth in Exhibit B of the Wadsworth Contract shall control.

(b) Tenant shall cause Wadsworth to name Landlord, its subsidiaries, affiliates, directors, officers, shareholders, employees, agents, Landlord's lender and mortgagee where applicable, and such other entities Landlord shall reasonably request (hereby "Additional Insureds"), including, without limitation, BMF IV UT Alta Vue LLC, a Delaware limited liability company, and each of its members and subsidiaries, as an additional insureds under all insurance policies carried by Wadsworth in the same coverage limits as the named insureds. Additional insured status shall not include any privity of contract requirement. All primary and excess liability insurance to be carried by Wadsworth shall be primary and non-contributory with respect to any liability insurance carried by Landlord.

(c) At all times from and after the Effective Date, Tenant, at its sole cost and expense, shall procure and maintain commercial general liability insurance, including, but not limited to, contractual liability coverage against claims for bodily injury, personal injury and damage to property naming Landlord as an additional insured, with minimum limits of $3,000,000 and with a deductible not to exceed $50,000, provided that Tenant may elect to self-insure against any losses which would be covered by such insurance. If Tenant elects to self-insure, Tenant shall be responsible for any losses or liabilities which would have been covered by the insurance companies which would have issued the insurance required of Tenant under this Section 38(c). As to any claims made which would be covered by such commercial liability insurance and for which the Company would be liable, in whole or in part and for which it would be entitled to contribution from Tenant, Tenant agrees to make an equivalent contribution up to the statutory damages limits enacted in Utah Code § 63G-7-604, as amended. Nothing in this Agreement is intended to waive, modify, limit or otherwise affect any defense or other provisions that the any of the Parties may assert against third parties, except that the Governmental Immunity Act shall not be a defense to UTA's obligation to comply with applicable law or its contractual obligations to Company hereunder. Notwithstanding any provision to the contrary in this Agreement, (i) the obligations of UTA to indemnify, defend and/or hold harmless in this Agreement are limited to the dollar amounts set forth in the Governmental Immunity Act and are further limited only to the claims that arise from the negligent acts or omissions of UTA, and (ii) nothing in this Agreement shall be construed to be a waiver by UTA of any defenses or limits of liability available under the Government Immunity Act.

(d) All insurance required hereunder shall be carried by a reputable insurance company or companies qualified to do business in the State of Utah with a financial rating equivalent of VIII or better and a policyholder's rating equivalent of A- or better in the latest edition of Best's Rating Guide on Property and Casualty Insurance Companies (or a comparable rating in any comparable and generally recognized national or international ratings guide) and such insurance shall provide that each insured and any additional insureds shall be given a minimum of thirty (30) days' written notice prior to the cancellation, termination or alteration of the terms or limits of such coverage, unless such cancellation is due to nonpayment, in which case a minimum of ten (10) days' written notice shall be required. Such insurance may also be carried under a "blanket" policy or policies covering other properties of the party and its subsidiaries, controlling or affiliated corporations so long as the amount and coverage required hereunder is not diminished. Each Party shall, upon written request from another party, furnish to the party making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Article VII, and evidencing the designation of the appropriate parties as additional insureds. Each Party may provide the names of other additional insureds from time to time by written notice to the other Party. Coverage provided shall contain no restrictions or exclusions pertaining to the type of asset nor the type of construction contemplated by this Ground Lease. No Labor Law, Action Over, or exclusions or restrictions for injuries to employees shall apply. Landlord and Tenant acknowledge and agree that the provisions of this Section 38(d) shall not apply if Tenant self-insures.

(e) Prior to the commencement of this Lease, Tenant shall deliver, or cause to be delivered, to Landlord a certificate of insurance evidencing all insurance coverage required herein is in full force and effect with the required limits and evidencing that all parties required by this Ground Lease are listed as Additional Insureds, including copies of endorsements showing

additional insured status and waiver of subrogation. Additionally, Tenant shall deliver copies of all insurance policies required under this Ground Lease at the request of Landlord. Landlord and Tenant acknowledge and agree that the provisions of this Section 38(e) shall not apply if Tenant self-insures.

(f) Tenant, Landlord and Additional Insureds each hereby waives, releases and discharges the other, its property managers, agents, subtenants, licensees and employees, from all claims whatsoever arising out of loss, claim, expense or damage to or destruction covered by insurance carried by the waiving party or required under this Lease to be carried by the waiving party notwithstanding that such loss, claim, expense or damage may have been caused by the other, its property managers, agents, subtenants, licensees or employees, and Tenant and Landlord each agrees to look to the insurance coverage only in the event of such loss.

(g) Any and all of the deductibles associated with the policies providing the insurance coverage required herein shall be assumed by, for the account of, and at the sole risk of Tenant and its contractors.

(h) The provisions of this Section 38 shall survive the termination of this Ground Lease.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

[Signature page to Ground Lease]

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

LANDLORD:

EAST VILLAGE 3, LLC, a Delaware limited liability company

By: HPUTA East Village 3 LLC, a Delaware limited liability company

By: East Village Apartment Investments 3 LLC, a Utah limited liability company

By: HP East Village 3 LLC, its Managing Member

By: _____
Name: _____
Title: _____

TENANT:

UTAH TRANSIT AUTHORITY, a public transit district organized under the Utah Public Transit District Act

By: _____
Name: Carolyn Gonot
Title: Executive Director

By: _____
Name: Mary DeLoretto
Title: Chief Service Development Officer

EXHIBIT A

Description of Leased Premises

SURVEYOR'S CERTIFICATE

I, Gregory A. Cates, do hereby certify that I am a Professional Land Surveyor, and that I hold certificate No. 161226 as prescribed under the laws of the State of Utah. I further certify that, by authority of the Owners, I have made a survey of the tract of land shown on this plat and described below and have subdivided said tract of land into lots and streets, hereafter to be known as

SANDY EAST VILLAGE LOT 2, SECOND AMENDED

and that same has been surveyed and staked on the ground as shown on this plat.

BOUNDARY DESCRIPTION

A parcel of land being a portion of Sandy East Village Lot 2 Amended Plat, recorded in Book 2016P at Page 271 in the Salt Lake County Recorder's Office, said parcel also being located in the Southwest Quarter of Section 7, Township 3 South, Range 1 East, Salt Lake Base and Meridian, said parcel being more particularly described as follows:

Beginning at a point on the Northerly Boundary Line of Dry Creek Ridge Subdivision, as recorded in Book 2013P at Page 194 in the Salt Lake County Recorder's Office, said point being also on the South Line of Lot 5, Block 2, of the Sandy Five Acre Plat as recorded in Book C, at Page 153, in the Salt Lake County Recorder's Office, said point being also on the Easterly Right-of-Way Line of Creek Run Way as shown on said Dry Creek Ridge Subdivision, said point being also S00°08'34"E 1570.96 feet, along the Monument Line, and East 1019.35 feet from the Centerline Monument at 9800 South and State Street, said Street Monument being N89°40'00"E 92.57 feet (per ARP) from the West Quarter Corner of said Section 7, and running thence, along said Easterly Right-of-Way Line of Creek Run Way, Northwesterly 17.46 feet along the arc of a 233.00 foot radius curve to the left, chord bears N02°52'22"W 17.46 feet to the Southerly Right-of-Way Line of Midvillage Boulevard; thence, along siad Southerly Right-of-Way Line, the following three (3) courses: (1) Northeasterly 173.27 feet along the arc of a 228.80 foot radius curve to the left, chord bears N57°20'16"E 169.16 feet, (2) N35°37'44"E 604.86 feet, (3) Easterly 24.78 feet along the arc of a 15.00 foot radius curve to the right, chord bears N82°57'41"E 22.06 feet, to the Westerly Right-of-Way Line of Beetdigger Boulevard; thence, along siad Westerly Right-of-Way Line the following seven (7) courses: (1) Southeasterly 199.76 feet along the arc of a 293.00 foot radius curve to the right, chord bears S30°10'28"E 195.92 feet, (2) S10°38'34"E 82.89 feet, (3) Southeasterly 108.41 feet along the arc of a 309.50 foot radius curve to the right, chord bears S00°36'29"E 107.86 feet, (4) Southeasterly 285.07 feet along the arc of a 389.50 foot radius curve to the left, chord bears S11°32'25"E 278.75 feet, (5) S32°30'18"E 60.63 feet, (6) Southeasterly 93.70 feet along the arc of a 332.33 foot radius curve to the right, chord bears S23°49'54"E 93.39 feet, (7) S15°45'15"E 96.05 feet to the Northerly Boundary Line of said Dry Creek Ridge Subdivision; thence, along said Northerly Boundary Line, the following three (3) courses: (1) S89°51'38"W 701.56 feet, (2) N00°08'22"W 258.18, (3) S89°51'38"W 151.22 feet to said Easterly Right-of-Way Line of Creek Run Way and the Point of Beginning.

Contains: 358.333 SF or 8.23 AC and 5 Lots.

Note:

The above description is for the entire 8.23 Acre development site that will be contributed to East Village 3 LLC at Closing. It will subsequently be subdivided into a Residential Parcel and a Garage Parcel after the footings of the Parking Structure are installed and surveyed. The Garage Parcel will then be conveyed back to UTA in connection with an easement to East Village 3 LLC for residential use.

EXHIBIT B

Description of the Residential Parcel

UTA will contribute the entire development site to East Village 3 LLC at Closing as described in Exhibit A. This land will subsequently be subdivided to create a Residential Parcel which will continue to be owned by East Village 3 LLC.

The area shown below as the "Parking Structure" represents the Garage Parcel and the balance of the site will be the Residential Parcel.

Depiction of the Completed Development

Mid Village Boulevard

Exhibit C

Permitted Exceptions

First American **Schedule BI & BII (Cont.)**	ALTA Commitment for Title Insurance ISSUED BY **First American Title Insurance Company** File No: NCS-923401-SLC1

Commitment No.: NCS-923401-SLC1

SCHEDULE B, PART II

Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

2. Any facts, rights, interest or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.

3. Easements, liens or encumbrances or claims thereof, not shown by the Public Record.

4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the Land, and not shown in the Public Records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Record.

6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown in the Public Records.

7. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I-Requirements are met.

Exhibit C

Permitted Exceptions

8. General property taxes for the year 2020 are accruing as a lien, but are not yet due. Tax Parcel No. 28-07-331-001-0000.

   General property taxes for the year 2019 were exempt. Tax Parcel No. 28-07-331-001-0000.

   Note: General property taxes were not assessed against the subject property because of ownership by a tax exempt entity. The land may be subject to a possible Appendix Roll Tax from the time of transfer into a non-exempt entity for the remainder of the taxing year.

   (The following affects the subject land)

9. The land is included within the boundaries of Sandy City; the South Valley Sewer District; the Metropolitan Water District of Salt Lake and Sandy; the Crescent Cemetery Maintenance District; and the Central Utah Water Conservancy District, and is subject to charges and assessments made thereby.

   (The following affects the subject land, together with other land)

10. Reservations as set forth in that certain Special Warranty Deed recorded March 20, 1941 as Entry No. 900303 in Book 264 at Page 324 of Official Records.

    (The following affects a portion of the subject land)

11. Reservations as set forth in that certain Quit Claim Deed recorded July 9, 1980 as Entry No. 3451677 in Book 5121 at Page 202 of Official Records.

    (The following affects undetermined portions of the subject land, together with other land)

12. Rights and/or easements, in favor of the State of Utah, acting through the Board of Water Resources and/or Draper Irrigation Company, a corporation, for a water distribution system of canals, ditches pipelines, and appurtenances thereto, and incidental purposes therewith, as set forth in that certain Agreement recorded May 29, 1996 as Entry No. 6368924 in Book 7409 at Page 2566 of Official Records.

13. This item has been intentionally deleted.

    (The following affects portions of the subject land, together with other land)

14. Easements, notes and restrictions, as set forth on the Official Plat of Dry Creek Ridge recorded September 27, 2013 as Entry No. 11732792 in Book 2013P of Plats at Page 194 of Official Records.

15. This item has been intentionally deleted.

16. This item has been intentionally deleted.

17. This item has been intentionally deleted.

18. This item has been intentionally deleted.

Exhibit C

Permitted Exceptions

19. Notice of Adoption of the Sandy TOD Community Development Project Area recorded March 14, 2014 as Entry No. 11818434 in Book 10217 at Page 1904 of Official Records, and subject to assessments and levies thereunder.

20. This item has been intentionally deleted.

(The following affects portions of the subject land, together with other land)

21. Easements and incidental purposes, in favor of South Valley Sewer District, a body politic of the State of Utah, as set forth in that certain Easements recorded August 20, 2014 as Entry No. 11900026 in Book 10254 at Page 997 of Official Records.

(The following affects the subject land, together with other land)

22. Easements, notes and restrictions, as set forth on the Official Plat of Sandy East Village, Amending a Portion of the Sandy 5 Acre Plat recorded May 6, 2015 as Entry No. 12045386 in Book 2015P of Plats at Page 103 of Official Records.

Surveyor's Affidavit correcting dimension errors recorded June 25, 2018 as Entry No. 12797628 in Book 10687 at Page 1766 of Official Records.

(The following affects a portion of the subject land, together with other land)

23. Terms, conditions, provisions, restrictions, assessments, easements and incidental purposes, as set forth in that certain Agreement for Water Line Easement recorded September 1, 2015 as Entry No. 12124588 in Book 10358 at Page 1984 of Official Records.

(The following affects the subject land, together with other land)

24. Terms, conditions, provisions, restrictions, assessments, easements and incidental purposes, as set forth in that certain Declaration of Covenants, Conditions, Restrictions and Easements recorded November 19, 2015 as Entry No. 12173741 in Book 10380 at Page 6242 of Official Records.

(The following affects the subject land)

25. Access Easement Agreement dated June 4, 2015 by and between Utah Transit Authority, a public transit district organized and existing pursuant to Utah law (Grantor) and Dry Creek Property Development, Inc., a Utah corporation (Grantee) recorded April 22, 2016 as Entry No. 12264478 in Book 10423 at Page 4831 of Official Records.

Assignment of Access Easement Agreement dated February 13, 2018 between Dry Creek Property Development, Inc., a Utah corporation (Assignor) and Security National Life Insurance Company, a Utah corporation (Assignee) recorded February 21, 2018 as Entry No. 12719973 in Book 10648 at Page 7788 of Official Records.

26. This item has been intentionally deleted.

Exhibit C

Permitted Exceptions

27. Easements, notes and restrictions, as set forth on the Official Plat of Sandy East Village Lot 2 Amended recorded October 19, 2016 as Entry No. 12392591 in Book 2016P of Plats at Page 271 of Official Records.

(The following affects the subject land)

28. Any rights and/or claims which may be associated with the East Jordan Canal, including but not limited to, maintenance, use of water and any other interest(s) and/or incidental purposes affecting portions of the subject land.

(The following affects the subject land)

29. The State Construction Registry discloses the following Preliminary Notice(s): (Within the last 12 months):

Entry # 7399533, filed October 18, 2019 by Sinc Constructors Co.

Entry # 7426039, filed October 30, 2019 by Asphalt Materials, Inc.

Entry # 7457405, filed November 11, 2019 by Staker & Parson Co

Entry # 7473199, filed November 18, 2019 by M. C. Green & Sons, Inc

Entry # 7524925, filed December 13, 2019 by Geneva Rock Products

Entry # 7527361, filed December 16, 2019 by J&J Produce Inc. dba J&J Nursery and Garden Center

Entry # 7553049, filed January 02, 2020 by Mountainland Supply

30. Post-Construction Storm Water Maintenance Agreement recorded May 26, 2020 as Entry No. 13280366 in Book 10949 at Page 7014 of Official Records.

***

The name(s) **Hamilton Partners** , has/have been checked for judgments, State and Federal tax liens, and bankruptcies and if any were found, are disclosed herein.

The name(s) **Utah Transit Authority, a governmental agency exempt from execution pursuant to Utah Code Annotated 63-30d-101 et.seq.** , has NOT been checked for judgments, State and Federal tax liens or bankruptcies.

***

Title inquiries should be directed to Greg Holbrook @ 801-578-8869 or Aaron Hansen @ 801-578-8845.

***

EXHIBIT D

ESTOPPEL CERTIFICATE

STATE OF)
) ss
COUNTY OF)

The undersigned officer of _____ ("Landlord"/"Tenant"), being first duly sworn, does on oath state on behalf of Landlord/Tenant that, to the best of the undersigned's knowledge, the following are true and correct as of the date of execution hereof:

1. Landlord/Tenant entered into that certain Ground Lease with _____("Tenant"/"Landlord") on the ____ day of _____, 2020, the "Lease"), pursuant to which Tenant currently leases the real property located at _____, Sandy, Utah, as more particularly described in **Exhibit A** attached hereto (the "Leased Premises").

2. Landlord/Tenant is bound under the Lease, in accordance with its express terms and conditions.

3. Annual Rent has been paid for the current month. There is no prepaid Rent other than Annual Rent for the current month. No security deposit is required by, or is being held in connection with, the Lease.

4. Tenant has accepted possession of the Leased Premises and has commenced to pay rent. Annual Rent is currently payable under the Lease in the amount of $1.00 annually.

5. Except as may be otherwise stated in any amendments referenced in Paragraph 1 above, the Lease has not been modified, amended or assigned and currently is in full force and effect.

6. The Lease terminates on _____. Except as set forth in the Lease, there are no agreements to extend or renew the term of the Lease.

7. Tenant has not prepaid its rental obligations under the Lease in excess of one installment, except as may be required by the Lease.

8. Landlord/Tenant is not in default in the performance of any of its obligations under the Lease.

9. The undersigned has not assigned the Lease or otherwise transferred the Leased Premises.

10. The Lease contains a covenant of Tenant to purchase the Leased Premises.

11. The statements contained herein may be relied upon by the Landlord, Tenant, any of Landlord's lenders, and each of their respective successors and assigns.

12. Except as set forth in the Lease, Tenant is not entitled to any credits, offsets, defenses or deductions against payment of the rental obligations under the Lease

13. The undersigned is duly authorized to sign this Estoppel Certificate.

Dated this ____ day of _____, _____.

LANDLORD/TENANT:

_____
_____,
a _____
_____

By:_____
_____
Name:_____
_____
Title:_____
_____

EXHIBIT E

FORM OF GROUND LEASE TERMINATION

**THIS INSTRUMENT PREPARED
BY AND AFTER RECORDING
RETURN TO:**

Tobi L. Pinsky, Esq.
Seyfarth Shaw LLP
233 South Wacker Drive, Suite 8000
Chicago, Illinois 60606

GROUND LEASE TERMINATION AGREEMENT

THIS GROUND LEASE TERMINATION AGREEMENT, dated as of _____, 20___ (this "Agreement"), is entered into by and between EAST VILLAGE 3 LLC, a Delaware limited liability company ("Landlord"), and UTAH TRANSIT AUTHORITY, a large public transit district of the State of Utah ("Tenant").

RECITALS

A. Landlord and Tenant are parties to that certain Ground Lease dated _____, 2020 (the "Lease"), as memorialized by that certain Memorandum of Ground Lease recorded _____ in Book _____, Page _____ of the Salt Lake County Recorder of Deeds (the "Memo of Lease"). Pursuant to the Lease, Landlord demised and let Tenant, and Tenant leased and took from Landlord, certain premises containing approximating 2.2 acres located in Sandy, Salt Lake County, Utah, as more particularly described on Exhibit A attached hereto (the "Leased Premises"), which Leased Premises include the appurtenant rights and easements thereto.

B. Pursuant to Section 22 of the Lease, Tenant has acquired the Leased Premises from Landlord and Landlord has executed that certain Special Warranty Deed for the Leased Premises to be delivered and recorded concurrently herewith.

C. In connection with the conveyance of the Leased Premises, Landlord and Tenant desire to terminate the Lease, and are executing this Agreement for the purpose of terminating the Lease and releasing the Memo of Lease.

AGREEMENTS

In consideration of the premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. Recitals. The foregoing Recitals are hereby incorporated into and made a part of this Agreement.

Section 2. Termination of Lease. The Lease is hereby terminated as of the date hereof. The Memo of Lease is hereby terminated and released from the Premises as of the date hereof. Following the termination of the Lease and the Memo of Lease, neither Landlord nor Tenant shall have any further rights or obligations under the Lease, except those which expressly survive the termination thereof, including, without limitation, Tenants obligations under Section 38 of the Lease.

Section 3. Successors. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors, assigns and legal representatives.

Section 4. Governing Law. This Agreement is prepared and entered into with the intention that the law of the State of Utah shall govern its construction and enforcement.

[SIGNATURE PAGES FOLLOWS THIS PAGE]

LANDLORD:

EAST VILLAGE 3, LLC, a Delaware limited liability company

By: HPUTA East Village 3 LLC, a Delaware limited liability company

By: East Village Apartment Investments 3 LLC, a Utah limited liability company

By: HP East Village 3 LLC, its Managing Member

By: _____
Name: _____
Title: _____

STATE OF _____)

COUNTY OF _____)

Personally appeared before me, the undersigned, a Notary Public having authority within the State and County aforesaid, _____, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the _____ of HP East Village 3 LLC, the Managing Member of East Village Apartment Investments 3 LLC, the _____ of HPUTA East Village 3, LLC, the _____ of East Village 3, LLC, and is authorized by the limited liability company to execute this instrument on behalf of the limited liability company.

WITNESS my hand, at office, this _____ day of _____, 20___.

_____
Notary Public

TENANT:

UTAH TRANSIT AUTHORITY, a public transit district organized under the Utah Public Transit District Act

By: _____
Name: Carolyn Gonot
Title: Executive Director

By: _____
Name: Mary DeLoretto
Title: Chief Service Development Officer

STATE OF _____)

COUNTY OF _____)

Personally appeared before me, the undersigned, a Notary Public having authority within the State and County aforesaid, _____, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the _____ of HP East Village 3 LLC, the Managing Member of East Village Apartment Investments 3 LLC, the _____ of HPUTA East Village 3, LLC, the _____ of East Village 3, LLC, and is authorized by the limited liability company to execute this instrument on behalf of the limited liability company.

WITNESS my hand, at office, this _____ day of _____, 20___.

_____
Notary Public

EXHIBIT A

Legal Description of the Premises

EXHIBIT F

INTENTIONALLY DELETED

EXHIBIT G

FORM OF COREA

Please see COREA as presented in Resolution R2020-06-05 Exhibit F

EXHIBIT H

FORM OF DEED

WHEN RECORDED, MAIL TO:

_____

_____

_____

_____

MAIL TAX NOTICES TO:

_____

_____

_____

_____

Tax I.D. No. _____

SPECIAL WARRANTY DEED

EAST VILLAGE 3 LLC, a Delaware limited liability company (the "**Grantor**"), of c/o Hamilton Partners, 222 Main Street, Suite 1760, Salt Lake City, Utah 84101, hereby CONVEYS and WARRANTS only as against all claiming by, through or under it to **UTAH TRANSIT AUTHORITY**, a large public transit district of the State of Utah (the "**Grantee**"), of 669 West 200 South, Salt Lake City, Utah 84101, for the sum of TEN DOLLARS and other good and valuable consideration, the following-described tracts of land situated in the City of Sandy, Salt Lake County, State of Utah:

See attached Exhibit A

SUBJECT TO real property taxes for the year of closing and subsequent years, and to those exceptions set forth on attached Exhibit B.

[signature page follows next]

Witness, the hand of said Grantor, this _____ day of _____, 20___.

GRANTOR:

EAST VILLAGE 3, LLC, a Delaware limited liability company

By: HPUTA East Village 3 LLC, a Delaware limited liability company

By: East Village Apartment Investments 3 LLC, a Utah limited liability company

By: HP East Village 3 LLC, its Managing Member

By: _____
Name: _____
Title: _____

STATE OF _____)

COUNTY OF _____)

Personally appeared before me, the undersigned, a Notary Public having authority within the State and County aforesaid, _____, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the _____ of HP East Village 3 LLC, the Managing Member of East Village Apartment Investments 3 LLC, the _____ of HPUTA East Village 3, LLC, the _____ of East Village 3, LLC, and is authorized by the limited liability company to execute this instrument on behalf of the limited liability company.

WITNESS my hand, at office, this _____ day of _____, 20___.

_____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B
PERMITTED EXCEPTIONS

EXHIBIT I

FORM OF MEMORANDUM OF LEASE

[SUBJECT TO REVIEW OF LOCAL COUNSEL]

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE, dated as of the ____ day of _____, 2020 (the "Memorandum"), is made and entered into by and between EAST VILLAGE 3, LLC, a Delaware limited liability company ("Landlord"), having an address of c/o Hamilton Partners, 222 Main Street, Suite 1760, Salt Lake City, Utah 8410, and UTAH TRANSIT AUTHORITY, a public transit district organized under the Utah Public Transit District Act ("Tenant"), having an address of 669 West 200 Street, Salt Lake City, Utah 84111.

W I T N E S S E T H:

WHEREAS, Landlord and Tenant entered into that certain Ground Lease of even date with this Memorandum (the "Lease"; capitalized terms used but not defined in this Memorandum, if any, shall have the meanings assigned to such terms in the Lease), whereby Tenant leased from Landlord the real property located in Salt Lake County, Utah more particularly described on Exhibit A attached hereto (the "Leased Property"); and

WHEREAS, Landlord and Tenant desire to enter into this Memorandum which is to be recorded in the Recorder's Office for Salt Lake County, Utah in order that third parties may have notice of (i) the estate of Tenant in the Leased Property, (ii) the Lease, and (iii) the other matters referred to herein.

NOW, THEREFORE, Landlord, in consideration of the rents and covenants provided for in the Lease to be paid and performed by Tenant, does hereby demise and let unto Tenant all of the Leased Property on the terms and subject to the conditions set forth in the Lease, as follows:

1. The initial term of the Lease shall be for a period of ninety-nine (99) years (commencing as provided in the Lease), unless sooner terminated as provided in the Lease.

2. Pursuant to the Lease, Landlord grants to Tenant five (5) consecutive renewal options, each for an additional period of ninety-nine (99) years.

3. Pursuant to the Lease, Tenant has a covenant to purchase the Leased Property on the terms and conditions specified in Section 22 of the Lease.

4. Pursuant to the Lease, Landlord is permitted to mortgage its fee interest in the Leased Property.

5. Pursuant to the Lease, Tenant is prohibited, without consent from Landlord, from mortgaging, pledging or otherwise encumbering Tenant's leasehold estate.

6. Pursuant to the Lease, Tenant may not enter into, record, grant or create any easements, encumbrances or servitudes upon or impacting the Leased Premises without Landlord's consent.

7. Pursuant to the Lease, Landlord may not enter into, record, grant or create any easements, encumbrances or servitudes upon or impacting the Leased Premises without Tenant's consent.

8. This Memorandum is not a complete summary of the Lease. All the terms, conditions, provisions, and covenants of the Lease are incorporated in this Memorandum by reference as though written out at length herein. In the event of any inconsistency between the terms and provisions of this Memorandum and the terms and provisions of the Lease, the terms and provisions of the Lease shall control. Copies of the Lease are held by both Landlord and Tenant at their respective addresses first set forth above.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum, or have caused this Memorandum to be executed by their duly authorized representative, as of the day and year first above written.

LANDLORD:

EAST VILLAGE 3, LLC,
a Delaware limited liability company

By: HPUTA East Village 3 LLC, a Delaware limited liability company

By: East Village Apartment Investors 3 LLC, a Utah limited liability company

By: HP East Village 3 LLC, its Managing Member

By: _____
Name: _____
Title: _____

STATE OF _____)

COUNTY OF _____)

Personally appeared before me, the undersigned, a Notary Public having authority within the State and County aforesaid, _____, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the _____ of HP East Village 3 LLC, a _____ limited liability company, the Managing Member of East Village Apartment Investors 3, a Utah limited liability company, the _____ of HPUTA East Village 3 LLC, a Utah limited liability company, the _____ of East Village 3, LLC, a Delaware limited liability company, and is authorized by the limited liability company to execute this instrument on behalf of the limited liability company.

WITNESS my hand, at office, this _____ day of _____, 2020.

_____
Notary Public

My Commission Expires:

_____

TENANT:

UTAH TRANSIT AUTHORITY, a public transit district organized under the Utah Public Transit District Act

By: _____
Name: Carolyn Gonot
Title: Executive Director

By: _____
Name: Mary DeLoretto
Title: Chief Service Development Officer

STATE OF _____)

COUNTY OF _____)

Personally appeared before me, the undersigned, a Notary Public having authority within the State and County aforesaid, Carolyn Gonot, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that she is the Executive Director of Utah Transit Authority, a public transit district organized under the Utah Public Transit District Act and is authorized to execute this instrument on behalf of the Utah Transit Authority.

WITNESS my hand, at office, this _____ day of _____, 2020.

_____
Notary Public

My Commission Expires:

_____

STATE OF _____)

COUNTY OF _____)

Personally appeared before me, the undersigned, a Notary Public having authority within the State and County aforesaid, Mary DeLoretto, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that she is the Chief Service Development Officer of Utah Transit Authority, a public transit district organized under the Utah Public Transit District Act and is authorized to execute this instrument on behalf of the Utah Transit Authority.

WITNESS my hand, at office, this _____ day of _____, 2020.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT A

Exhibit F
(Parking Structure Construction, Operation, and Easement Agreement)

PREPARED BY AND WHEN RECORDED,
RETURN TO:
Seyfarth Shaw LLP
233 South Wacker Drive, Suite 8000
Chicago, Illinois 60606
Attention: Melissa Vandewater, Esq.

PARKING STRUCTURE CONSTRUCTION, OPERATION AND EASEMENT AGREEMENT

This Parking Structure Construction, Operation and Easement Agreement (this "**Agreement**") is hereby entered this ____ day of _____, 2020 (the "**Effective Date**"), by and between Utah Transit Authority, a large public transit district organized pursuant to Utah law ("**UTA**"), and East Village 3 LLC, a Delaware limited liability company (the "**Company**"). UTA and Company are hereafter collectively referred to as the "**Parties**" and either of them may be referred to individually as "**Party**," as the context may require.

RECITALS

A. Immediately preceding the recording of this Agreement, UTA by deed has become the fee owner of that certain parcel of land located in the City of Sandy, County of Salt Lake, State of Utah, and more particularly described on **Exhibit A-1** attached hereto and made a part hereof (the "**Parking Parcel**"), UTA having previously commenced construction of the Parking Structure (defined below) thereon pursuant to a ground lease of which it was the ground lessee, memorandum of which has been recorded as Document Number _____ (the "**Ground Lease**").

B. The Company is the owner of that certain partially improved parcel of land located in the City of Sandy, County of Salt Lake, State of Utah, and more particularly described on **Exhibit A-2** attached hereto and made a part hereof (the "**Residential Parcel**"; together with the Parking Parcel, each a "**Property**" and collectively "**Properties**"). The Residential Parcel is located adjacent to the Parking Parcel.

C. UTA has constructed a station, platforms and other improvements as part of the construction of the TRAX Line on certain other property owned by UTA (collectively with the Parking Parcel, the "**UTA Property**").

D. UTA is developing or causing to be developed a two level parking garage (which, together with all entries, exits, driveways, ramps, stairwells and elevators thereto, are hereinafter referred to as the "**Parking Structure**"), which is being built by the Contractor pursuant to the Construction Contract. The Parking Structure is intended to provide the necessary off-street parking for the Residential Project (defined below) and for the UTA Authorized Users. The Parking Structure will include 517 parking spaces. A site plan (the "**Site Plan**") depicting the Parking Parcel, the Residential Parcel, and the Parking Structure is attached hereto as **Exhibit B**.

E. The Company is developing an apartment community on the Residential Parcel (the "**Residential Project**") as part of a transit-oriented development (the "**Development**"), which Development includes, among other things, the Residential Project, the UTA Property, and the Parking Structure, as authorized and encouraged under federal and state law, to promote the compatibility between the Residential Project and public transit.

F. The parking spaces on the top floor of the Parking Structure (collectively, the "**Top Floor Spaces**") shall be no less than two hundred sixty-six (266) parking spaces, including no less than nine (9) parking spaces which are ADA Spaces (defined below). Of the nine (9) ADA Spaces on Top Floor, one (1) shall be a Van Accessible ADA Space. The parking spaces on the first floor of the Parking Structure (collectively, the "**First Floor Spaces**") shall be no less than two hundred fifty-one (251) spaces, of which two (2) shall be ADA Spaces. Of these two (2) ADA Spaces, one shall be a Van Accessible ADA Space. Of the Top Floor Spaces, two hundred forty (240) parking spaces will be dedicated for exclusive use by UTA Authorized Users (as defined below) to park personal vehicles at the Station (defined below), and two (2) ADA Spaces, one of which shall be a Van Accessible ADA Space, shall be dedicated for the exclusive use of the Residential Authorized Users. The remaining parking spaces on the Top Floor (being no less than twenty-four (24) spaces), shall be Shared Use Spaces, seven (7) of which spaces shall be ADA Spaces. Of the First Floor Spaces, two hundred fifteen (215) parking spaces, including two (2) ADA Spaces, shall be dedicated to the exclusive of the Residential Authorized Users. The remaining First Floor Spaces, being no less than thirty-six (36) parking spaces, shall be Shared Use Spaces. The parking spaces in the Parking Structure dedicated for the exclusive use and benefit of the Residential Parcel, totaling in the aggregate two hundred and seventeen (217) parking spaces, including four (4) ADA Spaces, shall allow Residential Authorized Users to utilize a portion of the Parking Structure on an exclusive basis as hereinafter provided with access easement rights by the Residential Authorized Users from the Residential Parcel to each floor of Parking Structure and the public ways adjoining the Parking Parcel and from the Parking Structure and public ways adjoining the Parking Parcel to the Residential Parcel.

G. Now that after the recording of that certain Plat of Subdivision dated _____, 2020, the Parking Parcel and the Residential Parcel (each a "**Parcel**") are two separate legal lots, UTA and the Company desire to enter into this Agreement to memorialize the agreements relative to completion of the construction of the Parking Structure on the Parking Parcel and Residential Project on the Residential Parcel and upon completion the maintenance and operation of the Parking Structure, and various easements, right, covenants, restrictions, provisions and agreements related thereto, all as more particularly described herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals which are hereby incorporated herein by reference as a material part of this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. Defined Terms

Capitalized terms used in this Agreement shall have the meanings ascribed to such terms elsewhere in this Agreement. For purposes of this Agreement, the following definitions shall apply:

1.1 "ADA Spaces" means those spaces in the Parking Structure which are designed and constructed to comply with Section 502 of the 2010 Standards for Accessible Design (the "**2010 Standards**"). "**Van Accessible ADA Space**" means a space designed and constructed to comply with Section 502 of the 2010 Standards for Accessible Design that is at least 132" wide.

1.2 "Authorized User(s)" shall mean one or more Residential Authorized Users and/or UTA Authorized Users.

1.3 "Common Area" shall mean those areas within the Parking Structure or the Parking Parcel which (A) provide for the ingress and egress of persons and vehicles by Residential Authorized Users and UTA Authorized Users, through and including, but not limited to, drive aisles, sidewalks, stairwells and elevators to, from, and between (i) any publicly dedicated right-of-way and each floor of the Parking Structure and

through each floor of the Parking Structure to the Residential Parcel, (ii) each floor of the Parking Structure, (iii) each floor of the Parking Structure and Residential Parcel and (iv) the TRAX Line station located on or adjoining the UTA Parcel and both each floor of the Parking Structure and the Residential Parcel and (B) and all other non-exclusive Easement Areas as depicted on **Exhibit C**, as such Exhibit is amended by the Parties from time to time, but in all cases specifically excluding from the Common Areas, the Residential Parking Spaces, the UTA Parking Spaces, including the Shared Use Spaces, and all structural elements of the Parking Structure.

1.4 "Company" shall mean East Village 3 LLC, a Delaware limited liability company, and its successors and assigns.

1.5 "Company's Lender" shall mean, as applicable, the lender providing financing for the Company's share of costs and expenses for the construction of the Parking Structure and the Residential Project or any future lender providing financing secured by the Residential Project.

1.6 "Completion Date" shall mean the date on which substantial completion of the Parking Structure shall occur in accordance with the terms of the Construction Contract, and if required by the applicable Governmental Authority, the receipt of a certificate of occupancy or similar type certificate permitting the use and occupancy of the Parking Structure as a parking facility. Within thirty (30) days after the Completion Date, UTA shall cause the delivery to the Company of all permits, certificates and licenses to allow full operation to the Parking Structure, all warranties issued by all the contractors associated with the construction of the Parking Structure and all operating manuals.

1.7 "Construction Contract" shall mean that certain Construction Agreement dated September 6, 2018 between UTA as owner, and the Contractor, as amended by Amendment to Construction Contract dated June __, 2020, which amendment was joined in by the Company, and by doing so, the Company is included in the Construction Contract as "Owner". (The Company was identified in the original Construction Agreement as "Developer," but never signed it.)

1.8 "Construction Budget" means the budget for the cost for the development, construction and completion of the Parking Structure, which has been approved by the Parties.

1.9 "Construction Deadline" means _____.

1.10 "Construction Documents" shall have the definition set forth in Section 6.1 of this Agreement.

1.11 "Construction Manager" means and HP East Village 3, LLC, a Utah limited liability company.

1.12 "Contractor" shall mean Wadsworth Brothers Construction, Inc., a Utah corporation.

1.13 "Development" shall have the meaning set forth in Recital E above.

1.14 "Easements" shall have the definition set forth in Section 2.2 of this Agreement plus where applicable the Temporary Cross Access Easements referenced in Section 27.

1.15 "Easement Areas" shall mean, collectively, all portions of the Parking Parcel and the Parking Structure subject to the Easements, including, without limitation, the Residential Parking Spaces and during the agreed time periods the non-exclusive Easements for the Shared Use Spaces.

1.16 "First Floor Spaces" means those parking spaces referenced in Recital F and as shown on **Exhibit C**, as amended from time to time by the Parties.

1.17 "Governmental Authority" shall mean the United States of America, the State of Utah, the County of Salt Lake and the City of Sandy, and any political or other subdivision of any of the foregoing, and any agency, department, commission, board, bureau, court or instrumentality of any of them which now or hereafter has jurisdiction over any part of the Project or the operation or management of the Parking Parcel and the Parking Structure.

1.18 "Governmental Permits" shall mean all certificates, licenses and permits from any Governmental Authority required to evidence full compliance and conformance of the Parking Structure with all Legal Requirements.

1.19 "Insurance Premiums" has the meaning set forth in Section 7.5.

1.20 "Legal Requirements" shall mean any statute, law, ordinance, order, rule, regulation or judgment of any governmental authority and any requirement, term or condition contained in any restriction or restrictive covenant affecting the Parking Parcel or the construction or operation of the Parking Structure.

1.21 "License Agreement" shall have the meaning set forth in Section 1.32.

1.22 "Opening Date" shall mean the date on which either Party opens the Parking Structure for use by the Authorized Users after the Completion Date.

1.23 "Operating Expenses" shall mean the actual out-of-pocket costs incurred from and after the Completion Date in operating, maintaining, repairing and making replacements to the Parking Structure, including, without limitation, the obligations set forth in Section 7.1 (including as provided in Section 3.10), the payment of any deductibles in connection with any claim under the insurance required to be maintained under Section 11.4 of this Agreement, and the cost of the Insurance Premiums.

1.24 "Operating Standards" shall mean the operation of the Parking Structure in a manner consistent with the then current prudent business and management practices applicable to the operation, repair, maintenance and management of parking garages comparable in size, character and location to the Parking Structure, including those concerning compliance with applicable Legal Requirements.

1.25 "Operating Year" shall mean each twelve (12) month period commencing on January 1 and ending on December 31, except that the first Operating Year shall be that period commencing on the Completion Date and ending on the immediately succeeding December 31. In the event that this Agreement shall terminate on a date other than December 31 in accordance with the terms hereof, the last Operating Year hereunder shall end on the date of termination (it being the intent of the Parties, however, that this Agreement will run with and bind title to the Parking Parcel and the Residential Parcel as set forth in Section 4.

1.26 "Owner-Construction Manager Agreement" means that certain construction management agreement dated _____, 2020 by and between UTA as owner and Construction Manager pursuant to which Construction Manager will act as the construction manager of the development and construction of the Parking Structure but not for any other improvements on the UTA Property.

1.27 "Parking Management Agreement" means a management agreement entered into from time to time by UTA and the Company, as owner, and the Parking Manager, as manager, to manage and operate the Parking Structure in accordance with Section 7.1.

1.28 "Parking Manager" shall mean a parking manager hired to manage and operate the Parking Structure in accordance with Section 7.1.

1.29 "Plans and Specifications" means the plans and specifications for the Parking Structure prepared by IBI Group Inc. and listed on **Exhibit D**.

1.30 "Residential Authorized User" shall mean any employee, officer, director, agent, contractor and business invitee of the Company, Company's Lender, the tenants and other lawful occupants of the Residential Parcel for the duration of such occupancy, and any of their respective contractors, representatives, agents, guests or other invitees, provided that the rights of the Residential, Authorized Users to utilize the Parking Structure and the Easements associated therewith as granted herein shall be subject to the rules and regulations of the Company adopted from time to time.

1.31 "Residential Parking Spaces" shall mean, collectively, the two hundred fifteen (215) parking spaces located on the first floor of the Parking Structure, including two (2) ADA Spaces and two (2) ADA Spaces on the top floor, in each case identified on the drawings attached hereto as **Exhibit C**, as amended from time to time by the Parties, such drawings being incorporated into this Agreement by reference.

1.32 "Shared Use Spaces" shall mean a total of sixty (60) spaces, twenty-four (24) being located on the top floor and thirty-six (36) on the first floor dedicated to UTA patrons and personnel which are to be non-exclusive to the UTA Authorized Users and licensed to the Company for non-exclusive use by Residential Authorized Users pursuant to a license agreement executed by the Parties, as amended by the Parties from time to time (the "**License Agreement**"), during the period from 7:00 pm (local time) to 7:00 am (local time) or such other time period as may be required for such Shared Use Spaces to be included by the owner of the Residential Parcel for satisfying the zoning parking requirements of the Residential Project, unless and until such time periods are revised in the License Agreement

1.33 "Station" shall mean the light railway station adjacent to the Development designated for use by UTA patrons who are using the TRAX Line.

1.34 "Taxes" shall have the meaning set forth in Section 7.4.

1.35 "Term" shall mean the term of the Agreement as defined in Section 3 of this Agreement.

1.36 "Top Floor Spaces" means those parking spaces reference in Recital F and as shown on **Exhibit C**, as amended from time to time by the Parties.

1.37 "TRAX Line" shall mean the UTA TRAX light rail line, currently operated between the Salt Lake City Central Station in Salt Lake City, Utah and the Draper TRAX Station in Draper, Utah, colloquially referred to as the "blue line."

1.38 "UTA Authorized Users" shall mean UTA patrons and personnel arriving at or departing from the TRAX Line located at the Station within the Development and any employee, officer, director, agent, contractor of UTA, the presence of whom is necessary to the conduction of business of UTA on the Parking Parcel or the UTA Property.

1.39 "UTA Parking Spaces" shall mean, collectively, three hundred (300) parking spaces, including sixty (60) Shared Parking Spaces as identified on the drawings attached hereto as **Exhibit C**, such drawings being incorporated into this Agreement by reference.

2. Easements; Use Restriction; Additional Covenants

2.1 To ensure that the Parking Structure is completed in accordance with the Construction Documents or in the event of non-performance by UTA or Contractor under the Construction Contract, UTA hereby

grants and conveys to the Company for the benefit of the Company and the Company Lender and as an appurtenance to the Residential Parcel a non-exclusive, non-revocable right and easement (the "**Temporary Construction Easement**") to enter upon the Parking Parcel for the purpose of completing construction of the Parking Structure, including the right to inspect from time to time during normal business hours, but no less frequently than every thirty (30) days, and upon final completion of the construction of the Parking Structure, to assure that the Parking Structure is completed in accordance with the Construction Documents. The Temporary Easement shall terminate upon the Completion Date.

2.2 UTA hereby grants and conveys to the Company and the other Residential Authorized Users, for the benefit of and as an appurtenance to the Residential Parcel, the following easements (collectively, the "**Easements**"), which Easements shall be effective as of the Effective Date but, with respect to the Easements described in paragraphs (a) through (c) below, only exercisable from and after the Completion Date:

(a) an exclusive, perpetual right and easement for use of the Residential Parking Spaces (the "**Exclusive Easement**") as permitted herein as depicted on **Exhibit C**, which shall be amended to reflect the actual parking spaces as of the Completion Date and which shall be amended from time to time by the Parties as may be required in the event of Eminent Domain or Casualty as provide in Section 10;

(b) a non-exclusive, perpetual right and easement for use of the Shared Use Spaces, if any, during the agreed time periods as detailed in the License Agreement;

(c) a non-exclusive, perpetual right and easement in and to the Common Areas;

2.3 UTA expressly reserves the UTA Parking Spaces for the sole and exclusive use of UTA Authorized Users, except in the case of the Shared Use Spaces, as designated from time to time by UTA and the Company, which Shared Use Spaces shall be for non-exclusive use but in accordance with the rules and regulations associated therewith as set forth in the License Agreement, which may include licensee paying fees to the licensor for use of the Shared Use Spaces, which fees shall not be included as Operating Expenses. UTA expressly reserves for itself, its successors and its assigns, the right to use the non-exclusive Easement Areas or to grant other easements or licenses at the same location so long as such uses do not interfere with the Company's and Residential Authorized Users' rights and uses herein granted; provided, however, in no event shall UTA or its successors or assigns have any right to use, or to grant other easements or licenses with respect to the Residential Parking Spaces, such Residential Parking Spaces being for the sole and exclusive use and benefit of the Residential Parcel and the Residential Authorized Users and the Shared Use Spaces or to grant rights to the Shared Use Spaces in violation of the License Agreement. UTA hereby retains and reserves all rights to the Parking Structure not explicitly granted to the Company or the Residential Authorized Users hereunder, which includes the Shared Use Spaces, so long as such rights do not have an adverse impact on the Easements as contemplated by this Agreement.

2.4 Notwithstanding anything to the contrary contained herein, in no event shall UTA Authorized Users have the right to park in the Residential Parking Spaces, and in no event shall the Residential Authorized Users have the right to park in the UTA Parking Spaces, except in the case of those UTA Parking Spaces which as agreed by the Parties are Shared Use Spaces.

2.5 The Parties hereby agree that, from and after the Completion Date, no portion of the Parking Structure may be used, leased, licensed, or occupied for anything other than a parking facility.

2.6 Each Party hereby covenants and agrees, for itself and its respective Authorized Users, to comply with the following provisions from and after the Opening Date:

(a) Neither Party shall operate or permit to be operated any musical or sound producing instrument or device inside or outside the Parking Structure which may be heard outside the Parking Structure or otherwise make noises, cause disturbances, or vibrations or use or operate any electrical or electronic devices or other devices that emit sound or other waves or disturbances that would interfere with the operation of any device or equipment or radio or television broadcasting or reception.

(b) Each Party assumes full responsibility for any personal property belonging to such Party brought into the Parking Structure and hereby agrees that the risk of loss with respect thereto shall be borne solely by such Party or its Authorized Users and the other Party shall not be liable for damage thereto or theft or misappropriation thereof. Nothing herein shall be construed to impose any liability on either Party for personal property of any other person or entity.

(c) Neither Party shall conduct any promotion or other non-parking activities in or on the Parking Structure.

2.7 Notwithstanding any rights in the Easement or this Agreement, UTA police shall have the right to enter, access and monitor, by physical means, electronic means or otherwise, all areas of the Parking Structure, including the Residential Parking Spaces.

2.8 Except as expressly set forth herein, each Party acknowledges that the other Party does not represent or warrant the condition of the Parking Structure. Except for those matters covered by any representation or warranty of the other Party under this Agreement, and without waiving any right or remedy of either Party with respect to the performance of the obligation of the Contractor under the Construction Contract, each Party shall upon Completion accept the condition of the Parking Structure in its as-built condition, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Parking Structure, and any existing covenant and restrictions of record, and the Company accepts the Easements subject to the terms thereof as contained herein and to all matters disclosed thereby, including, without limitation, all the covenants, conditions, restrictions and third-party easements existing as of the Effective Date. Each Party further agrees to comply with all applicable zoning, municipal, county and state laws and ordinances regulating the use of the Parking Structure and to obtain any necessary permits to operate its respective parking spaces for its purposes that UTA has not previously retained or is specifically required by this Agreement to obtain.

2.9 To the extent not part of the management obligation contained in Section 7.1, each Party will take all commercially reasonable steps and implement all commercially reasonable procedures to not permit third parties (other than such Party's Authorized Users) to use or occupy the Parking Structure in such a manner that would impair UTA's title to the Parking Structure or any portion thereof or the Company's rights with respect to the Easements granted hereunder.

2.10 The Easement Areas shall be accessible by UTA, the Company, their respective employees, officers, directors, agents, and contractors as reasonably necessary for management and inspection of the Parking Structure so long as such access does not materially impair the use of the Parking Structure or interfere with the use and enjoyment of the Easements by the Company or any other Authorized User of the Residential Parking Spaces.

3. Alterations

3.1 After the Completion Date and except for those improvements contemplated under the Construction Documents, neither Party shall make any addition to or improvements to the Parking Structure, without the review and authorization of the other Party, not to be unreasonably withheld, conditioned or delayed (but which consent with respect to any change resulting in a reduction in the number

of parking spaces allocated to such Party or otherwise adversely affecting such Party's rights under this Agreement may be withheld by such Party in its sole and absolute discretion), except that the prior approval of UTA shall not be required as a condition to the Company's performance of any of its obligations hereunder. Notwithstanding anything to the contrary set forth herein, any and all costs and expenses incurred by the Company to maintain, repair or replace, including replacement of capital items, all or any portion of the Parking Parcel or Parking Structure or to perform alterations required by any federal, state or local law shall be included as Operating Expenses and shared pro rata in accordance with each Party's share calculated in accordance with Section 7.2, unless arising out of construction defects discovered within the period ending on the fifth anniversary of the Opening Date, in which event UTA and the Company shall jointly pursue the applicable contractor, or covered by any third party warranty.

3.2 Subsequent to completion, all alterations performed by either Party (the "**Improving Party**") and its respective contractors, subcontractors, agents and other representatives in, on, or about the Parking Structure shall be done in a good and workmanlike manner, in accordance with materials and designs approved by the other Party, in advance, such approval not to be unreasonably withheld, conditioned or delayed and in accordance with all applicable laws. Unless otherwise agreed in writing, the Improving Party shall be responsible for timely payment of the Improving Party's contractors, subcontractors, agents or other representatives for work on or about the Property and Parking Structure, including all costs, liabilities, liens, fees, costs and related damages arising out of or in any way connected with any such construction or alterations, unless such work is performed pursuant to Section 7.1, in which event the costs and expenses of such work shall constitute Operating Expenses.

3.3 Notwithstanding anything to the contrary set forth herein, Company may from time to time, at the Company's sole option and at its sole cost and expense, install and operate, at its sole expense, a commercially reasonable validation program for its agents, licensees, and invitees including all Residential Authorized Users, to access its parking spaces, including the right to install any barricades, gates, chains, or key card access programs as the Company may determine is necessary to protect the exclusive use of the Residential Parking Spaces by the Residential Authorized Users, and the protection and enforcement of the Easements associated therewith, including access to and from the Residential Parcel, so long as such alteration or program does not materially and adversely impair UTA's Authorized Users' ability to access and use the Common Areas of the Parking Structure or the UTA Parking Spaces. It is understood and agreed that UTA shall assume no operation or maintenance obligations associated with such program or any equipment installed to operate such program.

3.4 Notwithstanding anything to the contrary set forth herein, UTA may from time to time, at the UTA's sole option and at its sole cost and expense, install and operate, at its sole expense, a commercially reasonable validation program for its agents, licensees, and invitees including all UTA Authorized Users, to access the UTA Parking Spaces, including the right to install any barricades, gates, chains, or key card access programs the UTA may determine is necessary to protect the exclusive use of the UTA Parking Spaces by the UTA Authorized Users, so long as such alteration or program does not materially and adversely impair Residential Authorized Users' ability to access and use the Common Areas of the Parking Structure or the Residential Parking Spaces or the Shares Use Spaces during such periods as provided herein or as revised in the License Agreement. It is understood and agreed that Company shall assume no operation or maintenance obligations associated with such program or any equipment installed to operate such program.

3.5 Any alterations installed by the Parties must preserve access to and not create a barrier to accessing the Station, the TRAX Line, UTA Parking Spaces, or the Residential Parking Spaces, except as permitted under Section 3.1 or Section 3.3.

3.6 No Party shall make any alteration that materially or adversely affects the Parking Structure or reduces the number of parking spaces available in the Parking Structure without the prior written approval of the other Party.

3.7 For so long as UTA shall own any interest in the Parking Parcel, the Company shall cause the Parking Manager to comply with the Utah Procurement Code (63G-6a-101, *et al*) and UTA procurement policies in any and all selecting and retaining all third parties for alterations to the Parking Structure.

3.8 Each Party may police, secure, protect, or monitor the Parking Structure and its users and may enforce any state or federal law, ordinance, regulation or order lawfully enforceable by such Party, the cost of which may, if agreed by the Parties, be included as an Operating Expense. However, neither Party shall have any obligation to police, secure, protect, or monitor the Parking Structure or its users except to the extent required by any applicable Legal Requirements.

3.9 Unless approved by the other Party in writing, no Party shall not conduct any activity on the Parking Parcel which would either impair the structural integrity of the Parking Structure or which would structurally change the Parking Structure.

3.10 Neither UTA or Company shall leave debris or unsightly materials in or on the Parking Structure.

3.11 Not less than once in each five year period commencing the fifth anniversary of the Opening Date the Parking Structure shall be inspected by appropriate third parties to insure the structural integrity of the Parking Structure and its compliance with all applicable laws, ordinances, codes and regulations, the cost of which, including any repairs or replacements arising from such inspection, shall be an Operating Expense.

4. Easements and Covenants Run with the Land

It is intended that each of the easements, covenants, restrictions and obligations and all other benefit and burdens of this Agreement are intended to be covenants running with the Parking Parcel and the Residential Parcel, shall bind every entity or person having any fee, leasehold or other interest therein, and shall inure to the benefit of and be binding on the respective Parties and their respective successors, assigns, heirs and personal representatives. This Agreement shall be duly recorded in the real property records of the county in which the Development is located, and shall be recorded against the Parking Parcel and the Residential Parcel. Company and all successors in interest shall have the right, in its sole and absolute discretion, to determine the appropriate division of parking, and relevant rights and duties relating thereto, of the Residential Parking Spaces between the Company and successors in interest prior to conveying all or any portion of the Residential Property to any other person or entity. The rights of successors in interest shall not exceed the rights provided in this Agreement unless amended by the Parties in accordance herewith.

5. Term of Agreement

The term of this Agreement shall commence on the Effective Date and shall continue in perpetuity, except as provided in Section 10.3 or until otherwise terminated and released by the Parties by written termination agreement recorded in the real property records of the county in which the Development is located, whichever shall occur earlier (the "**Term**").

6. Parking Structure Design, Development, Construction

6.1 As of the Effective Date, the Parties have approved the Architect's Contract, the Plans and Specifications, the Construction Contract and the Owner-Construction Manager Agreement (collectively, the "**Construction Documents**"), all of which have been approved by the Parties.

6.2 UTA has appointed the Construction Manager to manage the construction of the Parking Structure pursuant to the Owner-Construction Manager Agreement. If either Party desires to make any material changes to the Construction Documents, any such change shall be subject to the prior written approval of the other Party, which such approval shall not be unreasonably withheld or delayed, provided in no event shall any such changes result in a reduction in the number of Residential Parking Spaces or the UTA Parking Spaces. The Parties acknowledge that pursuant to the Owner-Construction Manager Agreement approval of non-material changes has been delegated to the Construction Manager. In addition the Company has assumed the obligation of assuring that the insurance required to be maintained by the "Owner" under the Owner-Construction Manager Agreement will be maintained and all Parties and their appropriate affiliates will listed as "Insureds".

6.3 UTA shall, at its sole cost and expense, be responsible for securing all Governmental Permits in connection with the planning, development and construction of the Parking Structure, which obligation may be delegated to the Construction Manager, the cost and expense of which will be included in the Construction Budget, the cost of which shall be shared as provided in Section 6.5.

6.4 UTA shall cause the construction and equipping of the Parking Structure to be completed in a good and workmen-like manner and substantially in accordance with the Construction Documents on or before the Construction Deadline. In the event UTA fails to cause the Parking Structure to be so completed and open for business, subject to any Force Majeure Event then, Company shall provide written notice of default as described in Section 19.1. In the event that the default is not cured as provided in 19.1, then, subject to the written consent and approval of any mortgagee of the Parking Structure, the Company shall thereafter have the right, but not the obligation, by giving not less than ten (10) days' written notice to UTA, to take over and complete the construction of the Parking Structure, and UTA hereby covenants and agrees in such an event to cooperate with the Company in executing such documents and assignments of the plans and contracts (subject to the rights of the third parties thereto) for the Parking Structure as are reasonably necessary to enable the Company to do so. To the extent that the Company shall perform or pay for the completion of the Parking Structure as aforesaid, the Company shall be entitled to reimbursement for all costs and expenses incurred in connection therewith (including, without limitation, reasonable attorneys' fees and costs and costs of collection incurred in enforcing its rights hereunder), together with interest on such amounts at the lesser of the Default Rate or the highest rate permitted by applicable law from the date incurred by the Company until reimbursed.

6.5 The cost and expense in developing, constructing and completing the Parking Structure as set forth in the Construction Budget has been approved by the Parties and may only be amended by consent of both Parties, such consent not to be unreasonably withheld by either. Such cost and expense shall be paid in accordance with the Parties' relative percentage interests as provided in Section 7.2 as requested from time to time by the Construction Manager in accordance with the Owner Construction Manager Agreement.

6.6 UTA has pursuant to the Ground Lease caused and will as a continuing obligation under the Ground Lease and this Agreement cause the Contactor to maintain until Completion a builder's risk policy on the terms specified in both the Ground Lease and the Construction Contract and to include UTA, the Company, the Company's members and their appropriate affiliates, the Company's Lender and the Construction Manager as additional insureds, certificates of insurance having been delivered to all such parties. In

addition, the obligations of UTA under Section 11.5(h), which obligations are also in the Ground Lease, are in full force and effect and shall continue throughout the Term.

7. Operations, Maintenance, Management and Cost Sharing

7.1 Following the Completion Date, the Parking Manager shall pursuant to the Parking Management Agreement entered into among UTA and the Company, as owner, the Parking Manager, as parking Manager, operate, clean (including trash and snow removal), manage, repair (including routine mill and fill, painting and periodic resurfacing) and maintain in good order, condition and repair the Parking Structure in compliance with all applicable laws, codes and regulations, including, without limitation, (a) maintaining, repairing and making replacements to (i) all interior non-structural portions of the Parking Structure, (ii) the structural and exterior portions of the Parking Structure, including, without limitation, exterior building walls, foundations, floors, structural supports, roof, roof structures, drainage facility (including gutters and downspouts), and exterior painted portions thereof; (iii) all window, doors, stairwells and elevators; (iv) identification signage within the parking deck and traffic signage as required in the Parking Structure and that complies with UTA's wayfinding standards; (v) all utilities serving the Parking Structure, including, without limitation, all wiring, plumbing, drains, pipes, conduits and other utility lines, equipment, systems, and related structures, fixtures, connections or appurtenances; (vi) all heating, ventilating and air conditioning units or systems, security (but only to the extent each Party is not providing its own security systems for the portions of the Parking Structure dedicated to such Party), fire protection, data, communication, lighting (including replacement of bulbs) and all other systems exclusively serving the Parking Structure, wherever located, including, without limitation, all wiring, plumbing, pipes, conduits and other lines, equipment, systems, and related structures, fixtures, connections or appurtenances; and (vii) the sidewalk and landscaping on the Parking Parcel, and providing all services reasonably necessary for the operation of the Parking Structure, including, without limitation, shared security systems and lighting (in each case to the extent not separately provided by the respective Parties or separately metered), (b) painting, striping, resurfacing and cleaning the parking spaces in the Parking Structure, and (c) performing such other tasks reasonably necessary to operate the Parking Structure as a first-class facility (the costs of all of the foregoing being considered Operating Expenses) including, without limitation, maintaining all permits and licenses necessary for the proper operation of the Parking Structure. The Company may from time to time replace the Parking Manager, subject to UTA's review and approval, such approval not to be unreasonably withheld, conditioned or delayed and in the event the Parking Manager is in default under the Parking Management Agreement and has not been replaced by the Company, or the Company is in default under this Agreement and all applicable cure periods have expired, UTA, after written notice to the Company, may replace the Parking Manager. In all cases the Company or UTA, as the case may be, shall cause such Parking Manager to keep and maintain the insurance coverages pursuant to Section 11 hereof on behalf of the Company and UTA to the extent such coverages are available to the Company and Parking Manager.

7.2 The Operating Expenses shall be allocated between the Company and UTA, such that the Company's share of Operating Expenses (the "**Company's Share**") shall be the percentage that the number of parking spaces exclusively allocated as Residential Parking Spaces bears to the total number of parking spaces in the Parking Structure, and UTA's share of Operating Expenses ("**UTA's Share**") shall be the percentage that the number of parking spaces allocated as UTA Parking Space bears to the total number of parking spaces in the Parking Structure. Based on the allocation of parking spaces as of the Effective Date, UTA shall be responsible for 58% of the Operating Expenses and the Company shall be responsible for 42% of the Operating Expenses, but shall be subject to change in the case of a loss by either Party resulting from a reduction in spaces arising Eminent Domain or a Casualty. No later than ninety (90) days prior to the Completion Date, the Company shall cause to be prepared and delivered to UTA for review and approval a budget for the Operating Expenses and Taxes for remaining portion of the then calendar year and no later than October 1 of such year and October 1 of each subsequent Operating Year thereafter, the Company shall cause to be prepare and deliver to UTA for review and approval a budget for Operating Expenses and

Taxes for the next Operating Year. UTA shall pay UTA's Share of Operating Expenses in advance in monthly installments in such amounts as are reasonably estimated and billed by the Company consistent with the approved budget at the beginning the Operating Year, each installment being due on the first business day of each calendar month. If at any time during an Operating Year, the Company reasonably determines that it has underestimated or overestimated the Operating Expenses for such Operating Year, the Company may re-estimate the Operating Expenses and may bill the Parties for any deficiency or may credit the Parties for any overstatement which may have accrued during such Operating Year and thereafter subsequent monthly installments shall also be adjusted as necessary. The Parties shall pay such deficiency within thirty (30) days after receipt of such bill. Within one hundred twenty (120) days after the end of each such Operating Year, the Company shall deliver to the Parties a statement of the Operating Expenses actually incurred for such Operating Year, and the Parties shall pay the Parking Manager within thirty (30) days of receipt of such statement, or the Parking Manager shall credit such Party's account the amount of any excess or deficiency in the Operating Expenses paid by the Parties to the Parking Manager during such Operating Year. Failure of the Parking Manger to provide the statement called for hereunder shall not relieve the Parties from their respective obligations hereunder. The Operating Expenses shall include an administrative fee payable to the Parking Manager in the amount which is the greater of: (i) three percent (3%) of the Operating Expenses; provided however, all Taxes included within Operating Expenses pursuant to Section 7.4 below shall not be subject to such administrative fee or (ii) ___ Dollars ($___.00) per month.

7.3 The Company shall cause the Parking Manager to maintain separate and complete books and records regarding Operating Expenses in accordance with sound accounting and management practices, consistently applied. The Parties may inspect or audit the Company's records relating to Operating Expenses in accordance with the following provisions. If a Party does not complete its inspection and/or audit of the Company's records relating to the Operating Expenses within six (6) months after receipt of an annual statement from the Parking Manger, such Party shall have no further right to review the Parking Manager's records with respect to such annual statement. A Party must give at least five (5) business days prior notice before conducting an audit. A party's audit or inspection shall be conducted where the Parking Manager maintains its books and records in the Salt Lake City metropolitan area, shall not unreasonably interfere with the conduct of the Parking Manager's business, and shall be conducted only during business hours reasonably designated by the Parking Manager. Alternatively, at UTA's request, the Company shall e-mail the books and records to UTA so that UTA may pursuant to the Parking Management Agreement perform the audit off site. UTA shall pay the cost of such audit or inspection unless the total Operating Expenses for the period in question are determined to be in error by more than 5%, in which case the Company shall pay the audit cost. If such inspection or audit reveals that an error was made in the Operating Expenses previously charged to a Party for that year and/or for prior years, then the Parking Manager or the Company, as the case may be, shall refund to the Parties or other Party, as the case may be, any overpayment of such costs, or the Party owing the refund shall pay to the Parking Manager for appropriate any underpayment of such costs, as the case may be, within thirty (30) days after notification thereof.

7.4 For purposes of this Agreement, the term "**Taxes**" shall mean all real estate taxes, general or special assessments, sewer and water rents, rates and charges, transit and transit district taxes, and any other federal, state or local governmental charge, whether general, special, ordinary or extraordinary which may now or hereafter be levied, assessed or imposed against the Parking Parcel and the Parking Structure, but shall not include any taxes of any type or origin imposed on the Parties. UTA shall be solely responsible for payment of all Taxes accruing against the Parking Parcel, if any, after the date hereof and prior to the Completion Date. Taxes accruing against the Parking Parcel from and after the Completion Date and continuing during the Term shall be an Operating Expense; provided, however, so long as UTA owns fee title to the Parking Parcel and Parking Structure and is treated as a governmental tax exempt entity and is not charging any UTA Authorized Users for use of the UTA Parking Spaces, all Taxes, if any, shall be paid by the Company provided UTA delivers to the Company the applicable tax bill no later than thirty (30) days prior to any penalty attaching based on thereto. UTA being tax-exempt, it is not expected that any Taxes will be

imposed on the Parking Structure or increased as a result of UTA Authorized Users use of the Parking Structure, whether or not fees are charged for such use, provided that if such tax exemption is denied, Taxes shall be shared by the Company and UTA in the same manner as Operating Expenses are shared. Notwithstanding the foregoing, each Party may contest the Taxes (i) in good faith and with reasonable diligence, (ii) in accordance with all applicable laws, and (iii) in any event so as to prevent the forfeiture or loss of use of any portion of the Parking Structure. The Company, and UTA shall reasonably cooperate with one another in connection with contesting any Taxes or impositions.

7.5 For purposes of this Agreement, the term "**Insurance Premiums**" shall mean and refer to all premiums for the insurance required to be maintained by the Company or the Property Manager under Section 11.4 hereof. The Company shall cause all Insurance Premiums to be paid in a timely manner so as to prevent any lapse in coverage.

8. Marking of Premises/Signage

8.1 The Parties may install within the Parking Structure, information signage regarding routes to nearby streets, the location of the Parking Structure at the Development, specified improvements or occupants, tenant directory information and signage identifying the Development, provided that such signage is compatible with the look and feel of the Development, Residential Project, and Parking Structure as well as UTA's wayfinding standards. In addition, the Parties shall have the right to install signage on the exterior of or adjacent to the Parking Structure indicating the availability of parking, in accordance with applicable laws, and at its sole cost and expense. Each Party shall, at its sole cost and expense, provide signage and notice to such Party's Authorized Users that shall provide that use of the Parking Structure by any such Authorized User shall be at his/her own risk and that neither the Company nor UTA shall be responsible for any loss or damage to any person or vehicle. Any signage or other markings to be installed upon or adjacent to the Parking Structure shall be subject to the approval of UTA and the Company, such approval not to be unreasonably withheld, conditioned or delayed. In no event shall any installed signage include advertising or marketing for third-parties unless approved and signed by UTA and the Company in writing. The cost to install (if not included in the Construction Contract) and maintain and if necessary replace any general signage shall be an Operating Expense.

8.2 The Company shall have the right to designate the Residential Parking Spaces as reserved. Nothing herein shall prevent the owner of the Residential Parcel from charging Residential Authorized Users for use of the Residential Parking Spaces. Each Party shall provide signage in the Parking Structure reasonably necessary to direct its respective Authorized Users where they are permitted to park.

8.3 UTA shall have the right to designate any one or more UTA Parking Spaces as reserved and may determine the amount of any charges for parking within the UTA Parking Spaces in UTA's sole and absolute discretion. Each Party shall provide signage in the Parking Structure reasonably necessary to direct its respective Authorized Users where they are permitted to park such signage to comply with UTA's wayfinding standards.

8.4 The Company and UTA shall reasonable cooperate and coordinate with each other in connection with any such signage permitted to be installed within the Parking Structure as provided herein.

9. Prohibited Practices

The Company shall establish and enforce general policies, rules and regulations for the operation and use of the Residential Parking Spaces, and UTA shall establish and enforce general policies, rules and regulations for the operation and use of the balance of the Parking Structure (collectively, the "**Rules and Regulations**") which shall be consistent with the provisions of this Agreement and which shall be approved

in advance by the other Party (which such approval shall not be unreasonably withheld or delayed by such Party). The Rules and Regulations shall: (a) not permit the parking of any vehicle other than passenger vehicles, motorcycles and bikes; (b) not permit the repair of motor vehicles within the Parking Structure (other than in connection with any tire or battery repair necessary to resume use of the vehicle); (c) not use the Residential Parking Spaces for any use other than for parking vehicles of the Company and its other Authorized Users; (d) not use the UTA Parking Spaces for any use other than for parking vehicles of UTA and its other UTA Authorized Users; (e) not permit any nuisance or noxious or offensive activity in, on or about the Parking Structure; (f) allow no obstruction of the Common Area; (g) keep the Common Area free and clear of debris; (h) not permit storage of any materials within the use of Common Area without the written authorization of UTA or the Company, as the case may be; (i) prohibit any flammable materials or materials on fire to be disposed in trash chutes; (j) not to keep or permit to be kept any substances designated as or containing a component designated as hazardous, toxic or harmful and/or substances subject to prohibition or regulation by federal, state or local law, regulation or ordinances, except for small quantities of gasoline and other petroleum products that are in the proper receptacles or equipment of the automobiles themselves and are handled, stored and disposed of in accordance with all applicable federal, state and local laws, regulations and/or ordinances. The Rules and Regulations shall be subject to change from time to time by the Company and UTA in consultation with each other. Each Party agrees to comply, and cause such Party's Authorized Users to comply with, the Rules and Regulations adopted by the other Party in accordance with this Agreement.

10. Eminent Domain; Casualty

10.1 In the event that all or any portion of the Parking Structure is taken under the power of eminent domain or sold under the threat of the exercise of eminent domain (each, a "**Taking**"), then any award for the Taking of all or any part of the Parking Structure under the power of eminent domain or any payment made under the threat of the exercise of the power of eminent domain shall be distributed and disbursed first, to the cost of rebuilding or restoring the Parking Structure and any remaining proceeds shall be paid to the Parties in accordance with the Parties' relative percentage interests as provided in Section 7.2, as revised to reflect the relative loss of any parking spaces by either Party, which is not proportional.

10.2 If the Parking Structure or any portion thereof is damaged or destroyed by fire or other casualty, then the Company shall diligently proceed to rebuild, repair or restore the Parking Structure so damaged or destroyed, at its expense, to substantially its condition prior to such destruction to the extent of all proceeds received, subject to Section 10.3. The Company shall commence such rebuilding, repair or restoration within thirty (30) days following the date all permits and approvals required in connection therewith have been obtained from all applicable governmental authorities and insurance proceeds become available to the Company for such work; provided, however, the Company shall use commercially reasonable efforts to obtain all such permits and approvals in a prompt and expeditious manner. UTA shall cooperate with the Company in connection with such rebuilding, repair and/or restoration and agrees that it shall not do, suffer or permit, or agree to enter into any transaction with respect to or affecting the Parking Parcel or Parking Structure that would in any way prevent, limit or adversely affect the Company's ability to perform any such rebuilding, repair or restoration, including, without limitation, anything that may subject the Company to any cost, liability or expense or that may otherwise interfere with, delay or increase the cost of such rebuilding, repair or restoration. Furthermore, each of the Parties shall cooperate with the other to permit equitable use of the remaining operable portions of the Parking Structure while the Parking Structure is being restored. The proceeds payable under all property insurance policies maintained by the Company shall belong to and be the property of the Company and used for the restoration of the Parking Structure, and UTA shall not have any interest in such proceeds. If the Company elects not to rebuild the Parking Structure as provided in Section 10.3, the proceeds shall be used to demolish the remaining Parking Structure and any remaining proceeds shall be paid to the Parties in accordance with the Parties' relative percentage interests as provided in Section 7.2, in which event the Easements shall terminate. Any material

changes to the design and structure of the Parking Structure not required by changes in the Legal Requirements shall be subject to approval of UTA, such approval not to be unreasonably withheld.

10.3 Notwithstanding anything to the contrary contained in Sections 10.1 and 10.2, the Company shall have the right, in its sole and absolute discretion, to elect not to restore the Parking Structure by delivering written notice thereof to UTA within ninety (90) days after any casualty or Taking if (a) the Company's Lender does not make insurance proceeds available for restoration of the Parking Structure and/or the Residential Project, (b) a casualty or a Taking affects the Residential Project or the Residential Parcel and the Company does not restore the Residential Project or the Residential Parcel, or (c) the Company elects not to restore the portion of the Parking Structure. If for whatever reason the Company elects not to restore the Parking Structure as provided in this Section 10.3, UTA may elect, by delivering written notice to the Company within ten (10) days after receipt of the Company's election, to cause the Company to raze the Parking Structure, the cost of which shall be paid from the insurance proceeds. If the Company elects to restore the Parking Structure and the cost and expense of doing (other than costs which specifically related to the use of one Party's Authorized Users and not the other Party's Authorized Users, e.g. key cards) so exceeds the insurance proceeds, such excess shall be allocated between the Parties in the same manner as Operating Expenses are allocated and paid, accordingly.

11. Liability and Indemnification; Insurance

11.1 During the Term, the Company shall indemnify, defend and hold harmless UTA, its departments, employees, officers or trustees from and against any and all liabilities, losses, liens, fees, damages, costs, expenses (including, without limitation, reasonable attorney's fees and expenses), causes of action, suits, claims, demands or judgments of any nature whatsoever (collectively, "**Losses**"): (i) resulting from a breach of this Agreement by the Company or the Parking Manager, if it is an Affiliate of the Company; (ii) resulting from any grossly negligent act or omission of the Company or the Parking Manager, if it is an Affiliate of the Company; or (iii) resulting from the failure of the Company to comply with any applicable federal, state or local laws applicable to the Company, including any failure by the Parking Manager, if it is an Affiliate of the Company. The Company shall, at its sole cost and expense, defend any and all actions which may be brought against UTA with respect to the forgoing, unless UTA elects to defend said action with legal counsel of its own choosing in which case the Company shall promptly reimburse UTA upon demand for all reasonable out-of-pocket costs and expenses associated with its defense of such action. The Company shall pay, satisfy and discharge any and all judgment, orders and decrees which may be recovered or obtained against UTA constituting a Loss.

11.2 During the Term, UTA shall, subject to the provisions of Section 11.4, indemnify, defend and hold harmless the Company and the Company's officers, directors, members, managers, employees, agents, tenants, occupants, contractors, licensees and invitees (individually and collectively, the "**Company Indemnified Party**") from and against any and all Losses (i) resulting from a breach of this Agreement by UTA; (ii) resulting from any grossly negligent act or omission of UTA; or (iii) resulting from the failure of UTA to comply with any applicable federal, state or local laws applicable to UTA or the Parking Structure, including compliance with ADA as to the number of ADA Spaces required for UTA Authorized Users, unless the Company or such Company Indemnified Party elects to defend said action with legal counsel of its own choosing in which case UTA shall promptly reimburse the Company or such Company Indemnified Party upon demand for all reasonable out-of-pocket costs and expenses associated with its defense of such action. UTA shall pay, satisfy and discharge any and all judgment, orders and decrees which may be recovered or obtained against the Company constituting a Loss.

11.3 Nothing in this Agreement is intended to waive, modify, limit or otherwise affect any defense or other provisions that the any of the Parties may assert against third parties, except that the Governmental

Immunity Act shall not be a defense to UTA's obligation to comply with applicable law or its contractual obligations to Company hereunder.

11.4 UTA is a governmental entity under the Governmental Immunity Act, Section 63G-7-101 et seq. 1953 of the Utah Code (as amended) (the "Governmental Immunity Act"). Notwithstanding any provision to the contrary in this Agreement, (i) the obligations of UTA to indemnify, defend and/or hold harmless in this Agreement are limited to the dollar amounts set forth in the Governmental Immunity Act and are further limited only to the claims that arise from the negligent acts or omissions of UTA, and (ii) nothing in this Agreement shall be construed to be a waiver by UTA of any defenses or limits of liability available under the Government Immunity Act.

11.5 At all times from and after the Completion Date (except in the case of UTA as provided in Section 11.5(h) below, beginning with the Effective Date), the Company shall procure and maintain the insurance coverage described below. Insurance under Section (a) below and any umbrella/excess liability policies, shall name UTA as an additional insured. Insurance under Sections (b) and (c) below shall name UTA as loss payee. Insurance under Sections (a), (b) and (c) below shall be primary and non-contributory to any insurance additional insureds may carry. Insurance coverage shall be as follows:

(a) commercial general liability insurance, including, but not limited to claims for bodily injury, personal injury to property, and contractual liability, with minimum limits of $5,000,000 per occurrence on a per location aggregate basis, and with a deductible not to exceed $50,000. This limit may be satisfied with an Umbrella/Excess Liability policy. If applicable, the policy shall also contain an endorsement for garagekeepers legal liability.

(b) "all-risk" or "special form" policy, including riot and civil commotion, vandalism, terrorist acts, malicious mischief, burglary and theft property insurance which shall include protection against loss or damage from earthquakes, covering the Parking Structure for the full replacement cost thereof, providing protection against perils included in the standard form of "all-risk" insurance policy, together with insurance against sprinkler leakage, vandalism, and malicious mischief, flood, and business income, and with a deductible not to exceed $50,000.00, except in the case of the perils of earthquake, wind and flood, the deductible shall be such amount as the Company determines to be commercially reasonable;

(c) boiler and machinery/mechanical breakdown insurance against loss or damage from external explosion or breakdown of boilers and other mechanical equipment and miscellaneous electrical apparatus, if any, in the Parking Structure in the amount of at least $1,000,000;

(d) workers' compensation for employees of the Company with respect to the Parking Structure or similar insurance if and to the extent required by law;

(e) employer's liability insurance at minimum limits of $1,000,000 per occurrence for bodily injury by accident, $1,000,000 per occurrence for bodily injury by disease, and $1,000,000 aggregate for bodily injury by disease. This limit may be satisfied with an umbrella/excess liability policy;

(f) personal property insurance covering all the contents in the Parking Structure, including, without limitation, all trade fixtures, machinery, equipment, furniture and furnishings for the full replacement cost under standard fire and extended coverage insurance, including, without limitation, vandalism and malicious mischief, sprinkler leakage, and flood endorsements; and

(g) business interruption and extra expenses insurance in amounts typically carried by prudent managers engaged in similar operations, provided that nothing herein shall prevent the owner of the Residential Project and UTA from each maintaining its own business interruption and extra expenses

insurance typically maintained by similar parties under agreements similar to this Agreement or self-insuring such risk.

(h) At all times from and after the Effective Date, UTA, at its sole cost and expense, shall procure and maintain commercial general liability insurance, including, but not limited to contractual liability coverage, against claims for bodily injury, personal injury and damage to property naming the Company, the Company's members and their appropriate affiliates, and the Company's Lender as additional insureds, with minimum limits of $3,000,000 and with a deductible not to exceed $50,000, provided that UTA may elect to self-insure against any losses which would be covered by such insurance with no privity of contract requirement. If UTA elects to self-insure, UTA shall be responsible for any losses or liabilities which would have been covered by the insurance companies which would have issued the insurance required of UTA under this Section 11.5(h). As to any claims made against the Company which would be covered by such commercial liability insurance and for which the Company is found liable, in whole or in part and for which it would be entitled to contribution from UTA, UTA agrees to make an equivalent payment up to the statutory damages limits enacted in Utah Code §63G-7-604, as amended, plus its share of the cost of defense, whether or not found liable.

11.6 All insurance required hereunder, except in the case where UTA elects to self-insure as provided in Section 11.5(h), shall be carried by a reputable insurance company or companies qualified to do business in the State of Utah with a financial rating equivalent of VIII or better and a policyholder's rating equivalent of A- or better in the latest edition of Best's Rating Guide on Property and Casualty Insurance Companies (or a comparable rating in any comparable and generally recognized national or international ratings guide) and such insurance shall provide that each insured and any additional insureds shall be given a minimum of thirty (30) days' written notice prior to the cancellation, termination or alteration of the terms or limits of such coverage, unless such cancellation is due to nonpayment, in which case a minimum of ten (10) days' written notice shall be required. Such insurance may also be carried under a "blanket" policy or policies covering other properties of the party and its subsidiaries, controlling or affiliated corporations so long as the amount and coverage required hereunder is not diminished. Each Party (other than in the case where UTA has elected to self-insure) shall, upon written request from another party, furnish to the party making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Article XI, and evidencing the designation of the appropriate parties as additional insureds. Each Party may provide the names of other additional insureds, including any successor or assign of such Party and any appropriate affiliates of any of the foregoing, from time to time by written notice to the other Party. Additional insured status shall not include any privity of contract requirement.

11.7 Each Party shall cause the insurance policies it is required to maintain hereunder to be written to provide that the insurer waives all rights of recovery by way of subrogation against the other Party in connection with any loss or damage covered by the policy. Each Party hereto hereby waives any rights of recovery against any other party, its officers, directors, member, employees, agents and tenants for any damage or consequential loss covered by said policies, against which such Party is protected by insurance, to the extent of the proceeds payable under such policies, whether or not such damage or loss shall have been caused by any acts or omissions of any other party or its officers, directors, members, employees, agents or tenants.

12. Liens

Each Party agrees to pay, when due, all sums of money that may become due for, or purporting to be due for, any labor, services, materials, supplies or equipment alleged to have been furnished or to be furnished to or for such Party, as the case may be, in, upon, or about the Parking Structure, as the case may be, and will cause any lien to be fully discharged and released at the time the performance of any obligation secured by such lien matures and/or becomes due, provided that if any Party desires to contest any such lien, it may

do so upon providing a bond or other lawful security as a guarantee or title insurance insuring over such claim.

13. Satisfactory Continuing Control

Each of UTA and the Company agrees to comply with the following:

13.1 49 CFR 26.7 binding the Company and UTA not to discriminate based on race, color, national origin or sex;

13.2 49 CFR 27.7, 27.9(b) and 37 binding the Company and UTA not to discriminate based on disability and binding the Company and UTA to comply with the Americans with Disabilities Act with regard to any improvements constructed, which such costs of compliance shall be included as Operating Expenses.

13.3 The Federal Transit Administration Master Agreement, as revised from time to time, relating to conflicts of interests, debarment and suspension, provided that in the case of the Company, UTA advises the Company upon the Company's request the necessary information to assure the Company's compliance.

13.4 Any and all Declaration of Covenants, Conditions, Restrictions and Easements signed by UTA, as declarant, and recorded against the Property as of the Effective Date; provided, however, in no event may UTA record any new covenants, conditions, restrictions or easements against the Property without the Company's prior written approval, which shall not be unreasonably withheld or delayed.

14. Enforcement

In the event that any legal action is commenced to enforce any part of this Agreement, the prevailing party in such action shall be entitled to recover its costs and reasonably incurred attorneys' fees and costs in such action from the other party.

15. Governing Law

This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Utah and any dispute involving this Agreement that requires legal action shall be resolved in an appropriate court situated in Salt Lake County, Utah.

16. Third Party Beneficiary

The provisions of this Agreement are for the exclusive benefit of the Parties hereto and their respective mortgagees and not for the benefit of any other person nor shall this Agreement be deemed or construed to have conferred any rights, express or implied, upon any other person. No modification or amendment of this Agreement, in whole or in part, shall require any consent or approval on the part of any person other than the Parties. Persons who are not Parties are not intended third-party beneficiaries of this Agreement, it being understood and agreed that references to use of easements by Residential Users or UTA Users are for the benefit of the respective Parties and may not be directly enforced by any person that is not a Party.

17. Modification

This Agreement may not be modified, waived, amended or changed unless the same is in writing and signed by the party against whom the enforcement of such modification, waiver, amendment or change is sought.

18. Assignment of Agreement

This Agreement and all the provisions hereof shall run with the land so as to be binding upon and inure to the benefit of the Parties, respectively, and each of their respective successors in interest in and to each of the Parking Parcel and the Residential Parcel, including any future subdivision(s) of the Residential Parcels. In the event of any conveyance or divestiture of title to either such Parcel or any portion thereof, the grantor or the person or persons who are divested of title shall be entirely freed and relieved of all covenants and obligations thereafter accruing hereunder with respect to such Party's Parcel or applicable portion thereof, as the case may be. In the event of any conveyance or divestiture of title to either Parcel or any portion thereof, the grantee or the person or persons which otherwise succeed to title shall be deemed to have assumed all of the covenants and obligations of such Party as to such Parcel (or portion thereof) thereafter (but not before) accruing hereunder until such grantee or successor is freed and relieved therefrom pursuant to the first sentence of this Section 18.

19. Default and Remedies

The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement:

19.1 The failure of a Party to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by such party (a "**Defaulting Party**") where such failure shall continue for a period of thirty (30) days after delivery of written notice from the Party affected by such default (a "**Non-Defaulting Party**") specifying the particulars of the alleged default and the action required to cure such alleged default, which notice shall also be provided by such Non-Defaulting Party to any mortgagee of the Defaulting Party to the extent the notice address for such mortgagee has previously been furnished to the Non-Defaulting Party; provided however, should the time necessary to cure such default exceed thirty (30) days, a the Defaulting Party shall not be in default if the Defaulting Party or its mortgagee commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

19.2 The making by any party of (i) any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by a party of a petition to have the party adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy; (iii) the filing of an involuntary petition to have the party adjudicated bankrupt under any law relating to bankruptcy, which is not dismissed within sixty (60) days thereafter; (iv) the appointment of a trustee or receiver to take possession of substantially all of the party's assets, where possession is not restored within thirty (30) days; or (v) the attachment, execution or other judicial seizure of substantially all of the party's assets, where such seizure is not discharged within thirty (30) days.

19.3 In the event of any such material default or breach by a Defaulting Party as set forth in Sections 19.1 or 19.2 above, the Non-Defaulting Party may at any time after expiration of all applicable notice and cure periods, pursue any other remedy now or hereafter available under the laws or judicial decisions of the State of Utah or in equity, which may include, without limitation, the right damages suffered as a result of non-performance and the right, in its sole discretion, to perform such obligation on behalf of the Defaulting Party without waiving any other remedy available to the Non-Defaulting Party. In such event, the Defaulting Party shall reimburse the Non-Defaulting Party an amount equal to the sum of all costs and expenses incurred by the Non-Defaulting Party in the performance of the Defaulting Party's obligation, together with interest thereon from the date of each outlay of such costs and expenses so incurred at a rate (the "**Default Rate**") equal to the lesser of: (i) three percent (3%) in excess of the "Prime Rate" published in the Wall Street Journal, or if such publication or rate is not available on a permanent basis, then three percent (3%) in excess of the prime lending rate charged by Zion First National Bank, Salt Lake City Utah

(or its successor) for commercial loans to its most preferred commercial customers; or (ii) the highest rate permitted by applicable law. The foregoing reimbursement shall be paid within thirty (30) days following the date the Non-Defaulting Party delivers to the Defaulting Party a statement reflecting the amount then due hereunder, together with reasonable supporting documentation therefor. In addition, the Non-Defaulting Party shall also have the right to specific performance against the Defaulting Party.

19.4 No delay or omission of any Non-Defaulting Party in the exercise of any right accruing upon any default by a Defaulting Party shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any Non-Defaulting Party of a breach of, or a default in, any of the terms and conditions of this Agreement shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Agreement. Except as otherwise specifically provided in this Agreement: (i) no remedy provided in this Agreement shall be exclusive but each shall be cumulative with all other remedies provided in this Agreement; and (ii) all remedies at law or in equity shall be available.

19.5 No breach of the provisions of this Agreement shall entitle any Party to cancel, rescind or otherwise terminate this Agreement or any easement (including any of the Easements) created hereby, but such limitation shall not affect, in any manner, any other rights or remedies which any Non-Defaulting Party may have hereunder by reason of any breach of the provisions of this Agreement. No breach of the provisions of this Agreement shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value covering any part of the Parking Parcel or the Residential Parcel or any improvements thereon.

19.6 If any Party to this Agreement or any party subject to the terms hereof shall be delayed or hindered in or prevented from the performance of any act required to be performed by such party by reason of a Force Majeure Event (defined below), then the time for performance of such act shall be extended for a period equivalent to the period of such delay. "**Force Majeure Event**" means (i) damage or destruction by fire or other casualty; (ii) lightning, tornadoes, hurricanes, earthquakes, floods, or other acts of God (including extended periods of precipitation or severe weather beyond those normally experienced in Salt Lake City, Utah) and delays arising out of a "pandemic" or similar type event (including, without limitation, subsequent occurrences of the COVID-19 pandemic) for which a national or local emergency has been declared, (iii) a strike, lockout, work stoppage, or failure of utility services that is not specific to the Project; (iv) war, strikes, riots, or other civil insurrection or similar civil disturbance; (v) governmental actions that a prudent developer could not reasonably anticipate; (vi) unanticipated subsurface site conditions; and (vii) shortages or unavailability of materials or labor and not foreseeable by either Party at the applicable time, including those caused by the indirect effects of the events set forth in clauses (i) - (vii), provided that, in each case, the Party claiming a Force Majeure Event notifies the other Party within ten (10) days after learning of such Force Majeure Event. Lack of adequate funds or financial inability to perform shall not be deemed to be a cause beyond the control of such party.

19.7 In the event of a default by a Party in the performance of any of the provisions contained herein and the subsequent failure to cure the same in accordance with the provision of this Agreement, any mortgagee of the affected Parcel of which notice has been provided pursuant to the terms of Section 20 below shall have the right to cure the Party's default upon the same terms and conditions as were provided the Party. Therefore, wherever a Party is herein provided specific rights in respect of the manner of effecting a cure, any mortgagee of such Parcel shall have identical rights in respect of the manner of effecting a cure. Additionally, wherever a Party is herein provided a specific time within which to cure, any mortgagee of the affected Parcel shall have an identical period of time (but in no event less than thirty (30) days) within which to cure following the expiration of the Party's right to cure such default. Likewise, where a Party is not herein provided a specific time within which to cure, but rather is given a right to cure

within a reasonable period of time, any mortgagee of such Parcel shall have a reasonable period of time in which to cure following the expiration of a reasonable time given to mortgagor Party.

20. Notices

Any and all formal notices, demands, requests and other communications required hereunder shall be in writing and shall be personally delivered or sent by overnight courier service, and addressed as shown below or at such other address as the respective Parties may from time to time designate by like notice. Delivery shall be deemed effective (a) if hand delivered, when delivered, or (b) if sent by overnight courier service, on the date of delivery as shown on the delivery ticket of the applicable courier evidencing receipt thereof or refusal to accept receipt thereof. The initial addresses of the Parties shall be:

To the Company:

c/o Hamilton Partners, Inc.
222 South Main
Suite 1760
Salt Lake City, UT 84101
Attention: Bruce Bingham and George Arnold

With a copy to:

Seyfarth Shaw LLP
233 S. Wacker Drive
Suite 8000
Chicago, IL 60606
Attention: Melissa Vandewater

To UTA:

Transit Oriented Development Manager
Utah Transit Authority
669 West 200 South
Salt Lake City, UT 84101

With a copy to:

Office of Legal Counsel
Utah Transit Authority
669 West 200 South
Salt Lake City, UT 84101

Each Party may, from time to time, request by sending a notice to the other Party, to send a copy of any notice (including default notices) under the Agreement to the mortgagee(s) of records for such Party's Parcel. After receipt of such notice, the receiving Party shall use commercially reasonable efforts to deliver copies of all notices sent by such Party to the mortgagee(s) at the addresses designated in such notice; provided, however, that the failure of any Party to deliver copies of any notice to a mortgagee shall not in any way alter, excuse or impact the Party receiving such notice from its obligations under this Agreement nor shall such failure extend any cure periods granted to such mortgagee hereunder.

21. Counterparts

This Agreement may be executed in any number of counterparts and by either of the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of this Agreement may be detached from any counterpart and reattached to any other counterpart hereof. The facsimile transmission of a signed original of this Agreement or any counterpart hereof and the retransmission of any signed facsimile transmission hereof shall be the same as delivery of an original.

22. Non-Waiver

No covenant or condition of this Agreement may be waived by any party, unless done so in writing by such party. Forbearance or indulgence by any party in any regard whatsoever shall not constitute a waiver of the covenants or conditions to be performed by any other party.

23. Estoppel Certificates

Each Party (the "**Responding Party**") shall within ten (10) days after written notice from the other party (the "**Requesting Party**") execute and deliver to the Requesting Party a statement in writing certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Agreement as so modified is in full force and effect), and the date to any charges are paid in advance, if any, acknowledging that there are not, to the Responding Party's knowledge, any uncured defaults on the part of UTA or the Company, or specifying such defaults if any are claimed, and certifying as to such additional information, confirmations and/or statements as may be reasonably requested by the Requesting Party. Any such statement may be conclusively relied upon by any prospective purchaser or mortgagee of the Requesting Party's Property or of the business of the Requesting Party. Failure to deliver such statement within such time may be declared by the Requesting Party to be a default of this Agreement or, at the option of the Requesting Party, be deemed to conclusively establish that this Agreement is in full force and effect, unmodified except as provided in Requesting Party's initial notice and that Requesting Party is in full compliance with all of the terms of this Agreement.

24. Further Acts and Assurances

Each Party agrees that it will execute such documents as may be reasonably necessary to effectuate the provisions of this Agreement.

25. Subordination.

Any mortgage, deed of trust or easement affecting any portion of the Parking Parcel or the Residential Parcel shall at all times be subject and subordinate to the terms of this Agreement, and any party foreclosing any such mortgage or deed of trust, acquiring title by deed in lieu of foreclosure or trustee's sale, or obtaining an easement interest shall acquire title or hold such interest subject to all of the terms and provisions of this Agreement.

26. Binding Effect.

Every agreement, covenant, promise, undertaking, condition, easement, right, privilege, option and restriction made, granted or assumed, as the case may be, by either party to this Agreement is made for the benefit of the other party hereto and shall constitute an equitable servitude on each party's Property for the benefit of the other party's Property. Any transferee of any interest in a Property shall automatically be deemed, by acceptance of the title thereto or the interest therein, to have assumed all obligations of this

Agreement relating thereto to the extent of its interest in its Property and to have agreed to execute any and all instruments and to do any and all things reasonably required to carry out the intention of this Agreement, and the transferor shall, upon the completion of such transfer and delivery of notice to the other Party, be relieved of all further liability under this Agreement except liability with respect to matters that may have arisen during its period of ownership of such Property that remain unsatisfied. Notwithstanding anything to the contrary contained herein, the Company may assign its interest in this Agreement to the Company's Lender in connection with financing obtained by the Company.

27. Non-Dedication.

Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Parking Parcel or any other property subject to this Agreement to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto and their successors and assigns and that nothing in this Agreement, expressed or implied, shall confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

28. Temporary Cross Access Easements

(a) Grant of UTA Cross Access Easement. UTA hereby grants to the Company and its successors and assigns a non-exclusive easement over, upon and across those portions of the Parking Parcel designated from time to time by UTA for access, including without limitation, vehicular and workmen ingress and egress, to and from the Residential Parcel to all public and private roads adjacent to the Parking Parcel to assist in the completion of the construction of the Residential Project. The easement rights granted hereunder shall be shared by the Company and UTA and their respective successors and assigns and the employees, agents, licensees, contractors, engineers and consultants of each. This UTA Cross Access Easement shall terminate on the Completion Date.

(b) Grant of Company Cross Access Easement. Company hereby grants to UTA and its successors and assigns a non-exclusive easement over, upon and across those portions of the Residential Parcel designated from time to time by the Company for access, including without limitation, vehicular and workmen ingress and egress, to and from the Parking Parcel to all public and private roads adjacent to the Residential Parcel to assist in the completion of the construction of the Parking Structure. The easement rights granted hereunder shall be shared by the Company and UTA and their respective successors and assigns and the employees, agents, licensees, contractors, engineers and consultants of each. This Company Cross Access Easement shall terminate on the Completion Date.

29. Miscellaneous.

(a) If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(b) The Section headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof.

(c) Nothing in this Agreement shall be construed to make the Parties partners or joint venturers or render either of the Parties liable for the debts or obligations of the other.

[TEXT OF THIS AGREEMENT ENDS HERE; SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, each of the parties has executed this Agreement.

EAST VILLAGE 3, LLC,
a Delaware limited liability company

By: HPUTA East Village 3 LLC, a Delaware limited liability company

By: East Village Apartment Investors 3 LLC, a Utah limited liability company

By: HP East Village 3 LLC, a Utah limited liability company, its Managing Member

By: _____
Name: _____
Title: _____

UTAH TRANSIT AUTHORITY, a large public transit district organized under the Utah Public Transit District Act

By: _____
Carolyn Gonot, Executive Director

Date: _____

By: _____
Mary DeLoretto, Chief Service Development Officer

Date: _____

APPROVED AS TO FORM:

By: _____
Legal Counsel

STATE OF UTAH)

COUNTY OF SALT LAKE)

Personally appeared before me, the undersigned, a Notary Public having authority within the State and County aforesaid, _____, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is a manager member of HP East Village 3 LLC, a Utah limited liability company, which is the managing member of East Village Apartment Investors 3 LLC, a Utah limited liability company, which is the manager of HPUTA East Village 3 LLC, a Utah limited liability company, which is the operating member of East Village 3, LLC, a Delaware limited liability company, and is authorized by the limited liability company of HP East Village 3 LLC, to execute this instrument on its behalf.

WITNESS my hand, at office, this _____ day of _____, 2020.

_____
Notary Public

My Commission Expires:

_____

STATE OF UTAH

COUNTY OF SALT LAKE

Personally appeared before me, the undersigned, a Notary Public having authority within the State and County aforesaid, Carolyn Gonot, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that she is the Executive Director of Utah Transit Authority, a public transit district organized under the Utah Public Transit District Act and is authorized to execute this instrument on behalf of the Utah Transit Authority.

WITNESS my hand, at office, this _____ day of _____, 2020.

_____
Notary Public

My Commission Expires:

_____

STATE OF UTAH

COUNTY OF SALT LAKE

Personally appeared before me, the undersigned, a Notary Public having authority within the State and County aforesaid, Mary DeLoretto with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the Chief Service Development Officer of Utah Transit Authority, a public transit district organized under the Utah Public Transit District Act and is authorized to execute this instrument on behalf of the Utah Transit Authority.

WITNESS my hand, at office, this _____ day of _____, 2020.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT A

Description of the Parking and Residential Parcel

SURVEYOR'S CERTIFICATE

I, Gregory A. Cates, do hereby certify that I am a Professional Land Surveyor, and that I hold certificate No. 161226 as prescribed under the laws of the State of Utah. I further certify that, by authority of the Owners, I have made a survey of the tract of land shown on this plat and described below and have subdivided said tract of land into lots and streets, hereafter to be known as

SANDY EAST VILLAGE LOT 2, SECOND AMENDED

and that same has been surveyed and staked on the ground as shown on this plat.

BOUNDARY DESCRIPTION

A parcel of land being a portion of Sandy East Village Lot 2 Amended Plat, recorded in Book 2016P at Page 271 in the Salt Lake County Recorder's Office, said parcel also being located in the Southwest Quarter of Section 7, Township 3 South, Range 1 East, Salt Lake Base and Meridian, said parcel being more particularly described as follows:

Beginning at a point on the Northerly Boundary Line of Dry Creek Ridge Subdivision, as recorded in Book 2013P at Page 194 in the Salt Lake County Recorder's Office, said point being also on the South Line of Lot 5, Block 2, of the Sandy Five Acre Plat as recorded in Book C, at Page 153, in the Salt Lake County Recorder's Office, said point being also on the Easterly Right-of-Way Line of Creek Run Way as shown on said Dry Creek Ridge Subdivision, said point being also S00°08'34"E 1570.96 feet, along the Monument Line, and East 1019.35 feet from the Centerline Monument at 9800 South and State Street, said Street Monument being N89°40'00"E 92.57 feet (per ARP) from the West Quarter Corner of said Section 7, and running thence, along said Easterly Right-of-Way Line of Creek Run Way, Northwesterly 17.46 feet along the arc of a 233.00 foot radius curve to the left, chord bears N02°52'22"W 17.46 feet to the Southerly Right-of-Way Line of Midvillage Boulevard; thence, along siad Southerly Right-of-Way Line, the following three (3) courses: (1) Northeasterly 173.27 feet along the arc of a 228.80 foot radius curve to the left, chord bears N57°20'16"E 169.16 feet, (2) N35°37'44"E 604.86 feet, (3) Easterly 24.78 feet along the arc of a 15.00 foot radius curve to the right, chord bears N82°57'41"E 22.06 feet, to the Westerly Right-of-Way Line of Beetdigger Boulevard; thence, along siad Westerly Right-of-Way Line the following seven (7) courses: (1) Southeasterly 199.76 feet along the arc of a 293.00 foot radius curve to the right, chord bears S30°10'28"E 195.92 feet, (2) S10°38'34"E 82.89 feet, (3) Southeasterly 108.41 feet along the arc of a 309.50 foot radius curve to the right, chord bears S00°36'29"E 107.86 feet, (4) Southeasterly 285.07 feet along the arc of a 389.50 foot radius curve to the left, chord bears S11°32'25"E 278.75 feet, (5) S32°30'18"E 60.63 feet, (6) Southeasterly 93.70 feet along the arc of a 332.33 foot radius curve to the right, chord bears S23°49'54"E 93.39 feet, (7) S15°45'15"E 96.05 feet to the Northerly Boundary Line of said Dry Creek Ridge Subdivision; thence, along said Northerly Boundary Line, the following three (3) courses: (1) S89°51'38"W 701.56 feet, (2) N00°08'22"W 258.18, (3) S89°51'38"W 151.22 feet to said Easterly Right-of-Way Line of Creek Run Way and the Point of Beginning.

Contains: 358.333 SF or 8.23 AC and 5 Lots.

Note:

UTA will contribute the entire 8.23 Acre Development Parcel to East Village 3 LLC at Closing. It will subsequently be subdivided into a Residential Parcel and a Garage Parcel after the footings of the Parking Structure are installed and surveyed. The Garage Parcel will then be conveyed back to UTA in connection with an easement to East Village 3 LLC for residential use. East Village 3 LLC will continue to own the Residential Parcel after it is subdivided.

EXHIBIT A-2
LEGAL DESCRIPTION OF RESIDENTIAL PARCEL

Exhibit B

Site Plan

Mid Village Boulevard

EXHIBIT C
PARKING DRAWINGS

Designated Parking Stalls

Type	UTA	Res.	ADA Res	Shared	Total
2nd floor	240	-	2	24	266
1st floor	-	213	2	36	251
Total	240	213	4	60	517

UTA stalls	
1L (AU)	-
2L (AU)	240
total AU	240
1L shared	36
2L Shared	24
Total	300

Residential stalls	
1L (AU)	215
2L (AU)	2
total AU	217
1L Shared	-
2L Shared	-
Total	217

ADA parking	
L1 Res	2
L2 Res	2
Res total	4
Shared*	7
Total	11

*part of 24 on L2

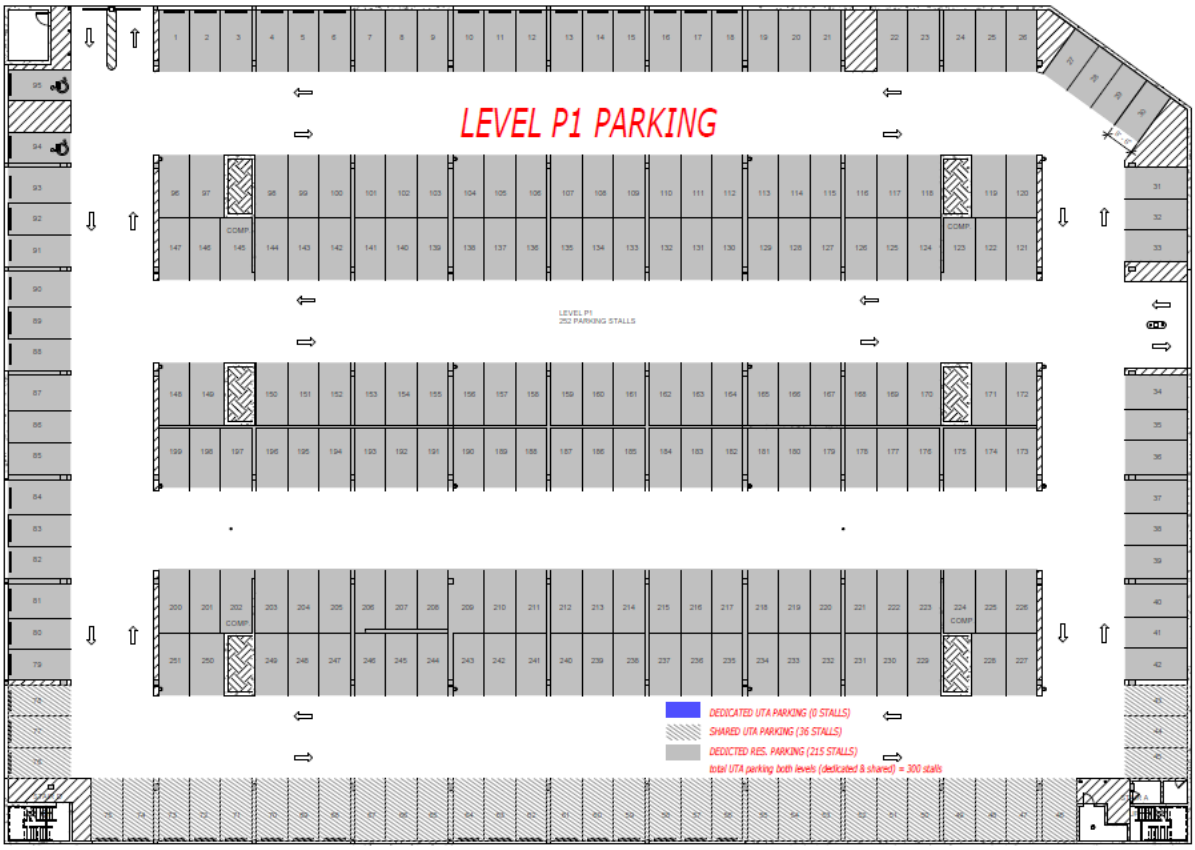
Notes:

1. "AU" stands for Authorized Users of UTA and the Residential Project.
2. Shared Stalls are for variable demand from commuters & residents.
3. Each level has its own entrance/egress with no connecting ramps.
4. UTA has 8 ADA spaces on a surface lot near the Station.
5. Retail parking can be accomodated on surface parking lots.

EXHIBIT C
PARKING DRAWINGS

FIRST FLOOR

North

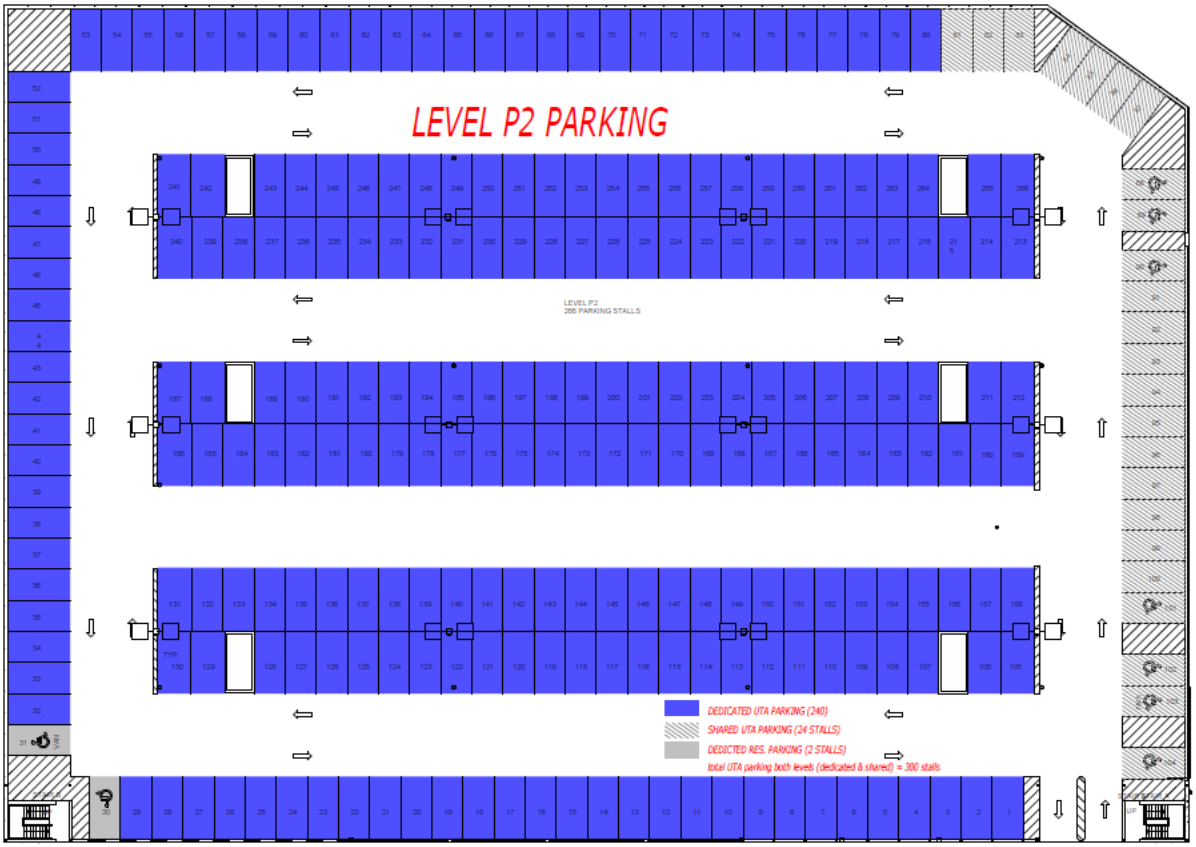


1st Floor Parking Spaces	
Residential Authorized Users	213
Residential AU (ADA in SW corner)	2
Shared Parking Stalls (East perimeter)	36
Total Parking Spaces	251

EXHIBIT C
PARKING DRAWINGS

SECOND FLOOR

North



2nd Floor Parking Spaces	
UTA Authorized Users	240
Residential Authorized Users *	2
Shared Parking Stalls **	24
Total Parking Spaces	266

** Dark grey ADA spaces in SE corner for Building 5.*

*** Light grey spaces along the north & west walls, including 7 ADA.*

Exhibit D

Plans and Specifications

The following plans were prepared by IBI Architects in order to obtain a Permit for construction of the Project:

Residential:

1. Sandy East Village Phase 3: Site Plan Conform Set
2. Sandy East Village Phase 3: Building 1 Conform Set
3. Sandy East Village Phase 3: Building 2 Conform Set
4. Sandy East Village Phase 3: Building 3 Conform Set
5. Sandy East Village Phase 3: Building 4 Conform Set
6. Sandy East Village Phase 3: Building 5 Conform Set
7. Project Manual for Sandy East Village Phase 3: Volume 1 Conformed Set
8. Project Manual for Sandy East Village Phase 3: Volume 2 Conformed Set

Parking Garage:

1. Sandy East Village Phase 3 – Parking Structure: Conformance Set
2. Project Manual for Sandy East Village Phase III Parking Structure: Issued for Permit

Exhibit G
(Parking Structure Management Agreement)

PARKING STRUCTURE MANAGEMENT AGREEMENT

This Parking Structure Management Agreement ("Agreement") is hereby entered this ____ day of _____, 202__ by and between Utah Transit Authority, a large public transit district organized pursuant to title 17B, Chapter 2a, Part 8, Utah Code Annotated 1953, as amended ("UTA"), East Village 3, LLC, a Utah limited liability company ("Company") and HP Utah Management LLC, a Delaware limited liability company (the "Manager'). UTA, Manager and Company are hereafter collectively referred to as the "Parties" and each of them may be referred to individually as "Party," as the context may require.

RECITALS

WHEREAS, Company has chosen Manager to perform certain obligations relating to the operation and maintenance of a parking structure to be built in Sandy, Utah ("Parking Structure");

WHEREAS, once the land upon which the Parking Structure will be constructed is reconveyed to UTA, Company and UTA will enter into that certain Parking Structure Construction, Operation and Easement Agreement, dated as of _____, 2020 (the "COREA"), whereby the Company has certain easement rights in the Parking Structure;

WHEREAS, Manager and the Company have determined to enter into this Agreement upon the terms and subject to the conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals which are hereby incorporated herein by reference as a material part of this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. Defined Terms

Capitalized terms used in this Agreement shall have the meanings ascribed to such terms (a) elsewhere in this Agreement, or (b) if not otherwise defined herein, in the COREA. For purposes of this Agreement, the following definitions shall apply:

1.1 "Administrative Fee" shall mean a fee payable to Manager equal to fifteen percent (15%) of the Management Expenses (excluding taxes).

1.2 "Authorized User" shall mean any employee, officer, director, agent, contractor, invitee, tenant, lessee, guest, or other occupant of Company.

1.3 "Construction Management Fee" shall mean a fee payable to Manager equal to five percent (5%) of the costs expended by Company for any construction on the Parking Structure supervised by Manager.

1.4 "Management Expenses" shall mean the reasonable and customary costs paid by Company for Company's operation, management, repair and maintenance of the Parking Structure, in accordance with the obligations of the parties and restrictions contained in the COREA and the Budget.

1.5 "Opening Date" shall mean the date that one or both of UTA and the Company begin using the Parking Structure pursuant to the COREA.

1.6 "Property Owner" shall mean UTA.

1.7 "Term" shall mean the term of the Agreement as defined in Section 3 of this Agreement.

1.8 "Warranty" shall mean the warranty provided pursuant to UTA's construction management/general contractor agreement for the Parking Structure.

2. Term of Agreement

The term of this Agreement shall commence on the Opening Date and, unless sooner terminated as provided herein, shall thereafter continue for an initial term of twelve (12) months ("Initial Term"). Unless either party elects not to renew this Agreement by written notice to the other party no later than thirty (30) days prior to the end of the Initial Term or any Renewal Term, this Agreement shall be automatically renewed for successive terms, each with a duration of one (1) year (each, a "Renewal Term") unless otherwise terminated, as set forth below. Together, the Initial Term and the Renewal Term shall be known as the "Term". Notwithstanding the foregoing, at any time during the Term, Manager shall have the absolute right and power to terminate this Agreement, at any time without cause, for any reason whatsoever upon not less than ninety (90) days' prior written notice to the Company.

3. Operations and Maintenance

3.1 During the Term, Manager shall perform all of the obligations of the Parking Manager set forth in Section 7.1 of the COREA, subject to timely reimbursement of the Management Costs by the Company. As compensation for Manager's operation and maintenance work under this Agreement, the Company shall pay Manager the Administrative Fee on a monthly basis, in arrears. In addition, Manager shall, at the request of Company, supervise and coordinate any construction on the Parking Structure. As compensation for such construction supervision, the Company shall pay Manager the Construction Management Fee, payable on a monthly basis, based on the construction costs incurred to such date.

4. Budget

4.1 By October 1 of each calendar year, Manager shall promptly prepare and submit to the Company a budget ("Budget") setting forth the estimated Management Expenses for the following calendar year. Thereafter, the Company and Manager shall work together to finalize a Budget which is acceptable to the Company and UTA. The Company will provide Manager with the final Budget in an expeditious manner. A draft of the initial Budget that is prorated for the remainder of the year is attached hereto, as "**Exhibit A**." Manager shall use its best efforts to comply with each approved Budget and to make no expenditures in excess of that allocated for each line item of the Budget. However, in the event of an act of God or an emergency or to preserve the structural integrity of the Parking Structure, Manager may incur reasonable expenses necessary to preserve or protect life or property and such expense shall be deemed to be within the Budget and a permissible Management Expense for the current management year, provided that Manager shall promptly notify the Company of any such deviation from the Budget. If a final Budget is not approved prior to the commencement of any calendar year, Manager shall operate pursuant to the previous year's Budget with the greater of: (1) a two percent (2%); or (2) a CPI percentage increase, in each line item that was disapproved, compounded annually.

4.2 Manager shall maintain for a period of at least three (3) years following the end of the period to which they pertain complete and accurate books and records of all Management Expenses paid or incurred by Manager, to the extent that such records are maintained by Manager as part of its customary accounting practices. Such books and records shall be kept at Manager's office. both UTA and the Company shall have the right, at its sole cost and expense except as expressly set forth in the COREA, to appoint an auditor and with seven (7) business days' written notice, to inspect, copy and audit such books and records at any time during normal business hours, and the right to receive from Manager reasonable back-up

documentation of such costs. A copy of the audit shall be delivered to Manager. The audit shall be conducted in such a manner so as not to disrupt the Parties' business operations and shall be performed by an independent, qualified accountant experienced in auditing costs. To the extent that, pursuant to the COREA, the auditing party is entitled to compensation for the audit and the cause of such obligation is due to Manager's actions or inactions, then Manager shall pay such compensation.

5. Insurance / Damage and Destruction

5.1 The Company and UTA shall maintain in full force during the Term of this Agreement insurance and property damage insurance in accordance with the requirements of the COREA. Manager shall maintain, or cause its agents and assignees to maintain, in full force during the Term, its own commercial general liability insurance and property damage insurance, a Worker's Compensation Policy in the statutory amount, including a waiver of subrogation against the Company and UTA.

5.2 The following general requirements shall apply to all insurance policies and coverage required in this Section:

5.2.1 Manager's policies shall be with reputable insurance companies, licensed to do business in the state of Utah, reasonably acceptable to the Parties and licensed to do business in the State of Utah and shall name both Company and UTA as additional insureds;

5.2.2 Manager shall provide the other parties with policies or certificates of insurance evidencing such coverage as soon as practicable, but no later than the Opening Date;

5.2.3 Within thirty (30) days prior to expiration of coverage, or as soon as practicable, the insuring Party shall provide renewal policies or certificates of insurance evidencing renewal and payment of premium to the other Party; and

5.2.4 The property damage insurance shall have a full waiver of subrogation for Manager.

5.3 If at any time before or during the Term of this Agreement, the Parking Structure is damaged or destroyed, Manager shall evaluate whether any part of the Parking Structure is under Warranty. Should any part of the damage or destruction of the Parking Structure be repairable pursuant to Warranty, Manager shall so inform the Company and UTA and administer the Warranty to repair such damage and restore the Parking Structure to as near its former condition as practicable and without materially and adversely affecting the nature, use, occupancy, or capacity of the Parking Structure as such existed prior to the casualty, and shall be paid a reasonable and customary Warranty administration expense.

5.4 In the event any material portion of the Parking Structure is damaged and the Company directs that the damage be repaired,

> Manager shall cause the Parking Structure so damaged or the portion thereof to be repaired and restored as nearly as practicable to the condition existing immediately prior to such damage as provided above, such to the applicable laws and to the availability, sufficiency and receipt of any applicable insurance proceeds, and adjustments pursuant to this Agreement, and Manager shall be paid a reasonable and customary construction administration fee

5.5 In the event that any material portion of the Parking Structure is damaged or destroyed and said damage is not covered by the insurance policies required in this Section or the insurance proceeds paid to cover said damage is insufficient to cover the costs to repair and restore said damage, the remaining costs for the repair and restoration of the Parking Structure necessary for the use thereof shall be included in the

Management Expenses.

6. Liability and Indemnification

6.1 From and after the Opening Date until the end of the Term and except to the extent covered by the Company's insurance, Manager agrees to indemnify, defend, and hold UTA and the Company, and their respective directors, officers, employees and agents harmless from and against any and all liability, claim, demand, loss, settlement, judgment, cost, damage, expense or cause of action (including without limitation, reasonable attorneys' fees and out of pocket reasonable expenses and costs of litigation) (collectively, "Liabilities") brought by a third-party arising out of, related to, or in connection with: (i) any action taken, omitted, or suffered by Manager its officers, partners, employees, agents or subcontractors that was not in good faith or was not authorized by or within the discretion or right or powers conferred upon it by this Agreement, or which does not comply with applicable federal, state or local laws, or that constitute negligence, fraud or willful misconduct or (ii) the breach of any covenant, agreement or obligation of Manager contained in this Agreement, the COREA, or any other instrument contemplated by this Agreement.

6.2 To the fullest extent permitted by law, the Company shall indemnify, defend, and hold Manager, its parent, subsidiaries, affiliates, directors, officers, managers, members, employees, agents, representatives, successors, and assigns ("Manager Indemnitees") harmless from and against any and all Liabilities incurred or suffered by any Manager Indemnitees arising out of, resulting from, or in connection with: (a) the condition of, or the Company's activities relating to, the Parking Structure, (b) Manager's performance of the services hereunder except to the extent not in good faith or was not authorized by or within the discretion or right or powers conferred upon it by this Agreement, or (c) arising out of, based upon, or related to, information, data and documents received from the Company, the Company's representative, or generated prior to the commencement of this Agreement, and reasonably relied upon by the Manager.

6.3 Nothing in this Agreement is intended to waive, modify, limit or otherwise affect any defense or other provisions that the parties may assert against third parties, including defenses provided under the Utah Governmental Immunity Act or other applicable law.

7. Liens

Manager shall fully pay for all materials joined or affixed to the Parking Structure and labor performed with respect to the repair and restoration of the Parking Structure, as the case may be, following the Opening Date, to the extent the Company actually reimburses Manager for such costs and is required to reimburse such costs pursuant to the terms of this Agreement, prior to the affixing of any mechanic's or materialman's lien of any kind or nature to be enforced against the Parking Structure for any work done or materials furnished thereon at the instance or request or on behalf of Manager. Manager shall be solely liable for all expenses, fees, attorneys' fees, costs, or other damages incurred in the removal or remedying of any and all liens filed on the Parking Structure in violation of the foregoing requirement and said costs will not be included as a Management Expense.

8. Enforcement

In the event that any legal action is commenced to enforce any part of this Agreement, the prevailing party in such action shall be entitled to recover its costs and reasonably incurred attorneys' fees and costs in such action from the other party.

9. Governing Law

This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Utah and any dispute involving this Agreement that requires legal action shall be resolved in an appropriate court situated in Salt Lake County, Utah.

10. Third Party Beneficiary

This Agreement is not intended to create, and shall not create, any right, benefit or entitlement in, to, or on behalf of any person or entity that is not a party to this Agreement.

11. Modification

This Agreement may not be modified, waived, amended or changed unless the same is in writing and signed by the party against whom the enforcement of such modification, waiver, amendment or change is sought.

12. Assignment of Agreement

12.1 Unless mutually agreed in writing, no assignment of this Agreement by Manager shall be permitted, provided that the Manager shall have the right, without UTA's or the Company's approval, to (i) assign to any "Affiliate" of the Manager, or (ii) assign this Agreement for financing purposes. For purposes hereof, as to any entity, an "Affiliate" of such entity shall mean another entity controlling, controlled by or under common control with such entity or the surviving entity after a merger or a sale of all or substantially all of the assets of the Manager. Any such assignment shall be subject to the terms and conditions of this Agreement. If the Manager assigns its rights and interests under this Agreement, the assignee under such assignment shall be deemed to have expressly assumed all obligations of the Manager arising thereafter without the necessity of any further documentation and the Manager shall be released with respect to obligations accruing after any such assignment. No assignment by Manager shall impose any obligations on UTA or the Company or otherwise affect any of the rights of UTA or the Company under this Agreement, nor shall it affect or reduce or release any obligations of the Manager hereunder.

12.2 The Company may only assign this Agreement in the event that the Company transfers its interest in the Development, in which case the successor to the Company shall be deemed to have expressly assumed all obligations of the Company arising thereafter without the necessity of any further documentation and the Company shall be released with respect to obligations accruing after any such assignment. No assignment by the Company shall impose any obligations on UTA or Manager or otherwise affect any of the rights of UTA or Manager under this Agreement, nor shall it affect or reduce or release any obligations of the Company hereunder.

13. Default and Remedies

13.1 The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement:

13.1.1 The failure of a Party to pay any sum of money due hereunder within five (5) business days after delivery of a written notice thereof.

13.1.2 The failure of a Party to observe or perform any of the covenants, conditions or provisions of this Agreement (other than the payment of money) to be observed or performed by a Party where such failure shall continue for a period of thirty (30) days after delivery of written notice thereof specifying the particulars of the alleged default and the action required to cure such alleged default; provided however, should the time necessary to cure such default exceed thirty (30) days, a party shall not be in default if it

commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

13.1.2 The making by any Party of (i) any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by a Party of a petition to have the party adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy; (iii) the filing of an involuntary petition to have the Party adjudicated bankrupt under any law relating to bankruptcy, which is not dismissed within sixty (60) days thereafter; (iv) the appointment of a trustee or receiver to take possession of substantially all of the Party's assets, where possession is not restored within thirty (30) days; or (v) the attachment, execution or other judicial seizure of substantially all of the Party's assets, where such seizure is not discharged within thirty (30) days.

13.2 In the event of any such material default or breach by a Party as set forth in Section 13.1 above, the other Party may at any time thereafter, pursue any other remedy now or hereafter available under the laws or judicial decisions of the State of Utah, which may include, without limitation, an action for damages. In the event that Manager materially defaults under the terms of the Agreement, and fails to cure as contemplated by Section 13.1, the Company may immediately terminate this Agreement.

14. Notices

Any and all formal notices, demands, requests and other communications required hereunder shall be in writing and shall be personally delivered, mailed by certified or registered mail, postage prepaid, or sent by overnight courier service, and addressed as follows:

To the Company:

[ ]
[ ]
[ ]

To the Manager:

[ ]
[ ]
[ ]

To UTA:

Real Estate Department
Utah Transit Authority
669 West 200 South
Salt Lake City, UT 84101

With a copy to:

Office of General Counsel
Utah Transit Authority
669 West 200 South
Salt Lake City, UT 84101

15. Counterparts

This Agreement may be executed in any number of counterparts and by either of the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of this Agreement may be detached from any counterpart and reattached to any other counterpart hereof. The facsimile transmission of a signed original of this Agreement or any counterpart hereof and the retransmission of any signed facsimile transmission hereof shall be the same as delivery of an original.

16. Non-Waiver

No covenant or condition of this Agreement may be waived by any party, unless done so in writing by such party. Forbearance or indulgence by any party in any regard whatsoever shall not constitute a waiver of the covenants or conditions to be performed by any other party.

17. Estoppel Certificates

Each party (the "Responding Party") shall within ten (10) days after written notice from the other party (the "Requesting Party") execute and deliver to the Requesting Party a statement in writing certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Agreement as so modified is in full force and effect), and the date to any charges are paid in advance, if any, acknowledging that there are not, to the Responding Party's knowledge, any uncured defaults on the part of UTA or the Company, or specifying such defaults if any are claimed, and certifying as to such additional information, confirmations and/or statements as may be reasonably requested by the Requesting Party.

IN WITNESS WHEREOF, each of the parties has executed this Agreement.

MANAGER

HP Utah Management LLC, a Delaware limited liability company

By: _____
Title: Managing Member

Date: _____

COMPANY

East Village 3, LLC, a Utah limited liability company

By: _____
Title: Managing Member

UTAH TRANSIT AUTHORITY

By: _____
Carolyn Gonot
Executive Director

By: _____
Mary DeLoretto
Chief Service Development Officer

Date: _____

APPROVED AS TO FORM:

By: _____
Legal Counsel

EXHIBIT A
(Initial Budget)

Alta Vue Parking Garage Operating Budget 2021

Insurance @ $0.20/sf	$	16,450
Repairs and maintenance	$	1,200
Sweeping/power washing	$	1,600
Snow removal	$	3,400
Electricity	$	4,400
Water	$	1,500
Fire and life safety	$	1,800
Fire sprinkler	$	900
Lighting	$	150
Trash	$	600
Cleaning	$	480
Signage	$	120
Security	$	2,400
A/P and Accounting @ $500/mo.	$	6,000
Sub Total	$	41,000
Management Fee @ 15%	$	5,740
Total	$	46,740

Note: Manager will receive a 5% Construction Management Fee for work after the final garage punchlist is done.