

Regular Meeting of the  
**Board of Trustees of the Utah Transit Authority**



Wednesday, June 24, 2020, 9:00 a.m.

Remote Electronic Meeting – No Anchor Location – Live-Stream at

[https://www.youtube.com/results?search\\_query=utaride](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 23<sup>rd</sup> 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](mailto: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](https://www.youtube.com/results?search_query=utaride)

- |   |                                       |
|---|---------------------------------------|
| <b>1. Call to Order &amp; Opening Remarks</b>   | <b>Chair Carlton Christensen</b>      |
| <b>2. Safety First Minute</b>   | <b>Sheldon Shaw</b>                   |
| <b>3. Consent</b>   | <b>Chair Carlton Christensen</b>      |
| a. 2019 Financial Audit Report (Comprehensive Annual Financial Report)  |                                       |
| <b>4. Agency Report</b>   | <b>Carolyn Gonot</b>                  |
| <b>5. Temporary Service Modification Extension Approval</b>   | <b>Carolyn Gonot,<br/>Eddy Cumins</b> |
| <b>6. Pension Committee Report</b>  | <b>Kent Millington</b>                |
| <b>7. Resolutions</b>   |                                       |
| a. R2020-06-05 – Resolution Approving the Financial Analysis and Authorizing Execution of the Associated Agreements for Sandy East Village 3 Transit Oriented Development | Paul Drake                            |

Website: <https://www.rideuta.com/Board-of-Trustees>

Live Streaming: [https://www.youtube.com/results?search\\_query=utaride](https://www.youtube.com/results?search_query=utaride)

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## 8. Contracts, Disbursements, and Grants

- |   |                               |
|---|-------------------------------|
| a. Contract: Occupational Medical Services (Intermountain Health Care WorkMed )   | Kim Ulibarri,<br>Jacob Gomez  |
| b. Contract: Drug and Alcohol Testing Services (Workforce QA )  | Kim Ulibarri,<br>Jacob Gomez  |
| c. Contract: SD160 Auxiliary Power Supply (APS) Replacement (Woojin IS America, Inc.)   | Eddy Cumins                   |
| d. Change Order: Construction Management Fees 2020 – On-Call Maintenance Contract, Task Order #110 (Stacy and Witbeck Inc.)                           | Eddy Cumins,<br>David Hancock |
| e. Change Order: State of Good Repair Mid Jordan Grade Crossing Replacement – On-Call Maintenance Contract, Task Order #111 (Stacy and Witbeck, Inc.) | Eddy Cumins,<br>David Hancock |
| f. Revenue Contract: Supplement No. 3 to TIGER Stakeholder Agreement for Salt Lake City Folsom Trail TIGER Project (Salt Lake City Corporation)       | Mary DeLoretto                |

## 9. Service and Fare Approvals

- |                                       |               |
|---------------------------------------|---------------|
| a. ECO Pass Agreement (State of Utah) | Monica Morton |
|---------------------------------------|---------------|

## 10. Other Business

- |  |                                  |
|--|----------------------------------|
| a. Next meeting: July 1, 2020 at 9:00 a.m. | <b>Chair Carlton Christensen</b> |
|--|----------------------------------|

## 11. Closed Session

- |  |                                  |
|--|----------------------------------|
| a. Strategy session to discuss the purchase, exchange, lease, or sale of real property, if public discussion of the transaction would prevent the public body from completing the transaction on the best possible terms | <b>Chair Carlton Christensen</b> |
| b. Strategy session to discuss pending or reasonably imminent litigation   |                                  |

## 12. Adjourn

**Chair Carlton Christensen**

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

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# Returning to work safely





## 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 and Steven Rowley, Keddington & Christensen LLC, Partner

**BOARD MEETING DATE:** June 24, 2020

<b>SUBJECT:</b>	<b>2019 UTA Financial Audit Report</b>
<b>AGENDA ITEM TYPE:</b>	<b>Consent</b>
<b>RECOMMENDATION:</b>	Accept the 2019 UTA Financial Audit Report
<b>BACKGROUND:</b>	<p>Provisions within the Public Transit District Act, 17B-2a-808.1(2)(p), UTA's By-Laws, Article VII, Section 6, and the Board of Trustee Policy 2.1, Financial Management, all require the use of a qualified independent auditing firm to conduct an annual financial audit and to present the results of their annual audit to the UTA's Audit Committee and the Board of Trustees.</p> <p>Keddington &amp; Christensen LLC was selected to conduct the 2019 financial audit. They have completed their financial audit and presented their results to UTA's Audit Committee on June 22, 2020.</p>
<b>DISCUSSION:</b>	<p>Representatives from Keddington &amp; Christensen LLC will present their audit report to the Audit Committee on June 22<sup>nd</sup> and discuss the purpose and scope of the financial audit, required communications to the Board of Trustees, and results of their audit and compliance work. This Board Memo is being prepared prior to that meeting, but it is anticipated that the Audit Committee will recommend the Board of Trustees accept the report.</p> <p>Upon acceptance by the Board of Trustees, UTA staff will submit the 2019 Comprehensive Annual Financial Report ("CAFR") to the Government Finance Officers Association's Certificate of Excellence in Financial Reporting program.</p>
<b>ALTERNATIVES:</b>	The Board of Trustees may seek additional information and delay acceptance of the 2019 UTA Financial Audit Report.
<b>FISCAL IMPACT:</b>	None
<b>ATTACHMENTS:</b>	1) 2019 Letter to the Board of Trustees 2019 CAFR which includes the Annual Financial Statements, the Single Audit Report, and the Utah State Compliance Report



KEDDINGTON & CHRISTENSEN, CPAS

CERTIFIED PUBLIC ACCOUNTANTS

Gary K. Keddington, CPA  
Phyl R. Warnock, CPA  
Marcus K. Arbuckle, CPA  
Steven M. Rowley, CPA

June 2, 2020

Board of Trustees  
Utah Transit Authority  
669 West 200 South  
Salt Lake City, Utah 84101

We have audited the financial statements of the business-type activities, and the discretely presented component unit, of Utah Transit Authority (the Authority), a component unit of the State of Utah, for the year ended December 31, 2019. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards, *Government Auditing Standards* and the Uniform Guidance, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated March 16, 2020. Professional standards also require that we communicate to you the following information related to our audit.

### Significant Audit Findings

#### *Qualitative Aspects of Accounting Practices*

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the Authority are described in Note 2 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during 2019. We noted no transactions entered into by the Authority during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the Authority's financial statements were:

Management's estimate of depreciation expense is based on the useful lives of the fixed assets. We evaluated the key factors and assumptions used to develop the Authority's reported depreciation expense in determining that it is reasonable in relation to the financial statements taken as a whole.

The financial statement disclosures are neutral, consistent, and clear.

### *Difficulties Encountered in Performing the Audit*

We encountered no significant difficulties in dealing with management in performing and completing our audit.

### *Corrected and Uncorrected Misstatements*

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. In addition, none of the misstatements detected as a result of audit procedures and corrected by management were material, either individually or in the aggregate, to the financial statements taken as a whole.

### *Disagreements with Management*

For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

### *Management Representations*

We have requested certain representations from management that are included in the management representation letter dated June 2, 2020.

### *Management Consultations with Other Independent Accountants*

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the Authority's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

### *Other Audit Findings or Issues*

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the Authority's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

### Other Matters

We applied certain limited procedures to Management's Discussion and Analysis, the Schedule of Changes in Net Pension Liability and Related Ratios, and Statement of Required Employer Contributions which are required supplementary information (RSI) that supplements the basic financial statements. Our procedures consisted of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We did not audit the RSI and do not express an opinion or provide any assurance on the RSI.

We were engaged to report on the supplemental budget to actual schedule, and schedule of expenditures of federal awards, which accompany the financial statements but are not RSI. With respect to this supplementary information, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with accounting principles generally accepted in the United States of America for the schedule of expenditures of federal awards, and non-GAAP budgetary basis for the budget to actual schedule, the method of preparing those schedules has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves.

### Restriction on Use

This information is intended solely for the information and use of the Board of Trustees and management of Utah Transit Authority and is not intended to be, and should not be, used by anyone other than these specified parties.

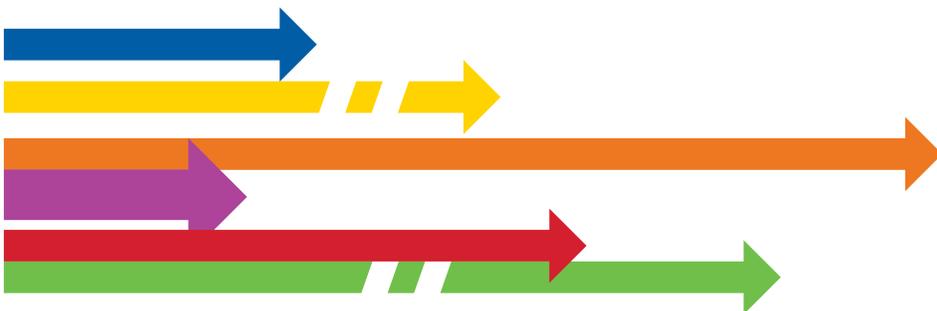
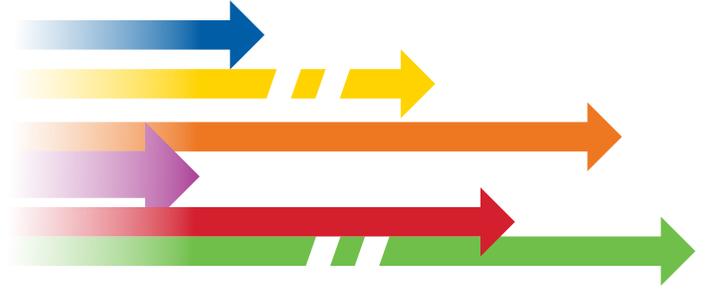
Very truly yours,

*Keddington & Christensen, LLC*

Salt Lake City, Utah  
June 2, 2020

# Comprehensive Annual Financial Report

For Fiscal Years Ended  
December 31, 2019 and 2018





## **Our Mission**

Provide integrated mobility solutions to service life's connections,  
improve public health  
and enhance quality of life.

# **Comprehensive Annual Financial Report**

**For Fiscal Years Ended  
December 31, 2019 and 2018**

Finance Department

**Robert K. Biles**  
Chief Financial Officer

**Troy Bingham**  
Comptroller



UTAH TRANSIT AUTHORITY

UTAH TRANSIT AUTHORITY  
 COMPREHENSIVE ANNUAL FINANCIAL REPORT  
 Years Ended December 31, 2019 and 2018

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# Introductory

For Fiscal Years Ended  
December 31, 2019 and 2018





669 West 200 South  
Salt Lake City, Utah 84101  
1-888-RIDE-UTA  
[www.rideuta.com](http://www.rideuta.com)

June 2, 2020

To the Board of Trustees  
Utah Transit Authority and  
Citizens within the UTA Service Area

We are pleased to submit to you the Comprehensive Annual Financial Report (CAFR) of the Utah Transit Authority (the Authority) for the fiscal years ended December 31, 2019 and 2018. This document has been prepared by the Authority's Finance Department using the guidelines recommended by the Government Finance Officers Association of the United States and Canada and conforms to accounting principles generally accepted in the United States of America and promulgated by the Governmental Accounting Standards Board.

This report contains financial statements and statistical data which provide full disclosure of all the material financial operations of the Authority. The financial statement and statistical information are the representation of the Authority's management which bears the responsibility for their accuracy, completeness and fairness.

The financial statements have been prepared on the accrual basis of accounting in conformance with generally accepted accounting principles. The Authority is accounted for as a single enterprise fund. This CAFR is indicative of the Authority's commitment to provide accurate, concise and high-quality financial information to the residents of its service area and to all other interested parties.

## The Authority

The Utah Transit Authority was incorporated on March 3, 1970 under authority of the Utah Public Transit District Act of 1969 for the purpose of providing a public mass transportation system for Utah communities.

The Authority is governed by a three-member full-time board of trustees. The Governor appoints nominees from the three appointing districts within the UTA service territory to serve as trustees. The names of the nominees are then forwarded to the Senate for confirmation. Once confirmed, an appointee is sworn in as a trustee.

Utah Transit Authority also has a nine-member local advisory council. The local advisory council representation includes: three members appointed by the Salt Lake County council of governments; one member appointed by the Mayor of Salt Lake City; two members appointed by the Utah County council of governments; one member appointed by the Davis County council of governments; one member appointed by the Weber County council of governments; and one member appointed by the councils of governments of Tooele and Box Elder counties. Terms for local advisory council members are indefinite.

The responsibility for the operation of the Authority is held by the board of trustees that hires, sets the salaries, and develops performance targets and evaluations for the Executive Director, Internal Auditor, and any chief level officer. The Executive Director is charged with certain responsibilities, some of which require coordination with, or providing advice to, the board of trustees. Legal counsel is provided by the Utah Attorney General's Office. An organizational chart which illustrates the reporting relationships follows in the introductory section.

The executive staff meets weekly to coordinate management of the affairs of the organization. The executive staff and various other department officials meet as needed in a policy forum to review management policies and strategic direction and objectives for the organization.

The Authority serves the largest segment of population in the State of Utah known as the Wasatch Front.



Provo-Orem Bus Rapid Transit Bus

Its service area includes Salt Lake, Davis, Utah, and Weber Counties, the cities of Tooele and Grantsville in Tooele County and that part of Tooele County comprising the unincorporated areas of Erda, Lakepoint, Stansbury Park and Lincoln, and the cities of Brigham City, Perry and Willard in Box Elder County.

According to the U.S. Census Bureau population estimates of July 1, 2018, the population of the Authority's service area is approximately 2,507,775 and represents 78.2% of the state's total population.



## Current Year Review

UTA has a strong legacy of providing service, continuous achievement, and transit leadership. The information below provides a glimpse of the year's accomplishments.

Transit Service. 2019 was an extraordinary year for service improvements at UTA, with over half of bus routes experiencing some kind of change.



Central Station Bus Depot

The largest single driver of change in 2019 was the Funding our Future initiative, sponsored by Salt Lake City, which provided the resources to improve service levels on routes 2, 9, and 21, three corridors that provide east-west connections across the city, including downtown, the University of Utah and the Glendale/Poplar Grove and Sugar House neighborhoods. A number of bus stop improvements were also made in conjunction with the improvements to route 9. UTA also partnered with the University of Utah to expand an already existing terminal facility within the campus to accommodate the expanded service and reduce congestion at the University Hospital.

UTA expanded service in Weber County with a new trolley in downtown Ogden and a new flex route serving west Ogden and West Haven. The West Haven flex expands coverage to an area previously not served by transit.



Ogden Trolley

UTA provided a new all-day local connection between Utah County and Salt Lake County via routes 850 and 871. Previously this connection was only possible midday by using FrontRunner, which is a premium service at a higher fare. Improvements to these routes also greatly increased the level of service in Utah County on Sundays.

In Tooele County, UTA provided additional trips to and from Grantsville on route 454, and midday service between Tooele County and Salt Lake County on route F453. Previously only peak-hour service was available between Tooele and Salt Lake Counties.



## Current Year Review (continued)

Other route changes associated with those described above were leveraged to provide additional service to the following neighborhoods and destinations:

- Avenues
- East Bench
- State Capitol
- Fort Union Blvd
- Thanksgiving Point
- International Center

UTA's on-time reliability results by mode are shown below. They are among the highest reliability results within the transit industry.

Mode	2019	2018	2017	2016	2015
Bus	89.94%	91.41%	92.51%	91.07%	92.19%
TRAX	92.18%	93.60%	91.91%	94.49%	93.98%
FrontRunner	88.43%	85.92%	90.92%	89.96%	86.63%
Paratransit	95.24%	94.74%	96.80%	97.85%	97.92%
Streetcar	98.20%	99.41%	99.49%	99.50%	98.68%

System Enhancements. Keeping the transit system in a state of good repair is a high priority. During 2019, UTA continued the light rail vehicles overhaul program, inspected all rail bridges, and finished its Positive Train Control testing and implementation and is awaiting FRA approval of its Safety Plan (anticipated in 2020). UTA participated with Dominion Energy in stray current monitoring and completed a comprehensive review of its original substation inventory and the entire light rail overhead catenary system's contact wire. UTA also completed curved rail replacements at one location and a two-block double track extension on its Sugarhouse Streetcar line.

In 2019, UTA replaced major trackwork elements at the Delta Interlocking, 150 South Interlocking, and the Half Grand special trackwork piece at 400 South and Main Street. UTA replaced 13 transit buses and 81 rideshare vans.

As part of the first/last mile connection initiative, in 2019, four bike lanes, one sidewalk project, two bike shares, three crosswalks, and one multi-use path project were constructed with funding from local partners and a federal grant. At the end of 2019 a total of 80 of the 161 projects included in the first/last mile connection initiative were complete. Another crosswalk project was started in 2019 and will be completed in the spring of 2020. Additional first/last mile projects to be constructed in 2020 under this program include bike lanes, bike parking, bike repair stands, bus stop improvements, a pedestrian bridge, a railroad crossing, and a sidewalk project.

Funded by a grant from Salt Lake County worth \$5.9 million, two blocks of the *S-Line* in South Salt Lake were double tracked in 2019. This now allows the S-Line to operate at 15-minute headways between the Sugar House area in Salt Lake City and the City of South Salt Lake.

Environmental work was completed in 2018 for a BRT line in Ogden. This 6-mile line will connect UTA's Ogden FrontRunner station to Weber State University and McKay Dee Hospital. The design phase of the Ogden BRT project began in 2019. UTA procured a design consultant and a construction contractor, and purchased two of the required properties for the project.

## Current Year Review (continued)

Ridership and Passenger Revenues. System ridership increased by 401,827 going from 44.176 million in 2018 to 44.578 million in 2019. Passenger revenues increased by \$597,162 to \$52.6 million, a 1.15% increase from 2018 passenger revenues.

Transit-Oriented Development. Construction was completed on a new Starbucks at the Jordan Valley TOD, and ground was broken on a second phase of apartments. The Sandy Civic Center TOD development team continued to pursue design and entitlements for two new phases of development, including another phase of mixed-use residential and a 180,000 square foot office. Construction continued at 3900 South Meadowbrook TRAX Station on a mixed-used residential, retail, and training facility, the majority of which is preleased. Work continued on the third and final phase of development at the South Jordan FrontRunner Station TOD, consisting of a preleased office building.

Financial Stewardship. In November 2019, UTA refunded \$98 million of its 2012 subordinate bonds and \$125.1 million of its 2015A subordinate bonds through a \$118 million senior bond and a \$59.1 million subordinate bond issue. Net present value savings from these transactions totaled \$11.7 million.

For the year, operating expenses, excluding the unallocated Salt Lake County service budget of \$4.37 million, were 2.63% below budget. Variances of budget to actual by expense category, in millions, are shown below.

Expense Category	Favorable (Unfavorable)
Fuel	\$2.98
Services	2.37
Insurance and Claims	2.27
Utilities	1.87
Contingency	1.05
All Other Operating	(0.56)
Wages & Benefits	(0.99)
Parts and Warranty Recovery	(1.13)
Total	7.86

For a more complete review of the Authority's current year financial activities, please refer to section two which contains the Auditor's Report, Management's Discussion and Analysis, the Financial Statements and accompanying notes.



## Future Plans

UTA will continue its partnerships with federal, state, and local governments and stakeholders to identify and provide innovative, cost-effective, and successful transit solutions for the Wasatch Front community.

Future plans include the following:

### UTA Service Choices.

UTA initiated an update to its Five-Year Mobility Plan with a robust community engagement process called UTA Service Choices in 2019. Over 3,500 people provided input through a survey, community leader workshops, public open houses and more. This feedback is being used to update UTA's bus network plan and vision and will guide future service changes and investments.

### Future of Light Rail Transit

UTA's TRAX line turned 20-years old in 2019, marking a milestone in our region's history. This system has served the region well, but is aging and showing signs of wear. Additionally, new growth along the Wasatch Front has created increased demands for transportation. To address these concerns and new challenges, UTA is initiating a Future of Light Rail Transit study to explore how to strengthen and build upon this system, maximize operational efficiency, and prepare to meet the needs of the next twenty years.



Trax Red Line Train

### Transit Oriented Development (TOD) projects.

As noted in the Current Year section, there are four active TODs with phases completed or under construction. Additional projects and development phases in Salt Lake City, Ogden, Clearfield, Sandy, and West Jordan are in various stages of planning and approvals. UTA will continue to work on current and pipeline TOD projects to ensure that UTA's and each community's goals and standards are met.

### State of Good Repair (SGR).

Recent transportation infrastructure failures in various parts of the United States increased the emphasis to ensure that future long-term infrastructure maintenance and replacement needs were identified, funded, and completed in a timely manner. In the next year, UTA will continue to refine its long-term SGR work plan with an emphasis on development and approval of a detailed five-year work plan.



## Future Plans (continued)

Major SGR infrastructure projects scheduled for 2020, include:

- \$1.5 million for the curve replacements at South Temple and Main Street on the Blue Line and just east/north of the Historic Gardner Village stop on the Red Line.
- It also includes \$2 million for grade crossing replacements on the Blue and Red lines.

Major vehicle projects include:

- \$27.5 million for bus replacements
- \$2.9 million for paratransit vehicle replacements
- \$1.3 million for van pool vehicle replacements
- \$9.7 million for light rail vehicle overhaul work
- \$2.7 million for FrontRunner Engine Rebuilds
- \$1.5 million for bus engine and transmission replacements

The total budget for SGR projects is approximately \$50 million for the 2020 fiscal year.

### Anticipated Capital Projects.

- In conjunction with six counties, two metropolitan planning agencies, and dozens of Utah cities, UTA was notified in late 2016 that it had been awarded a \$20 million TIGER grant which will be matched with local funding to improve *transit access* as well as trails and bikeways feeding into the transit system over the next five years. Projects in 2020 are estimated at almost \$15 million with all projects being completed by 2022.
- Salt Lake City International Airport is undergoing a \$3.6 billion renovation, including the relocation of its terminal building. The relocation of the terminal requires the realignment of UTA's light rail green line, the *Airport Line Project*, to a more central, transit-friendly location. The estimated cost of this relocation is \$20 million. The project design is now complete and construction scheduled to start in 2020 and be completed in June 2021.
- The *Depot District Service Facility* will replace the existing aging and undersized Central bus facility, allowing for growth of bus service, housing up to 150 alternative and standard fuel buses with the ability to expand to 250 buses in the future. The initial phase of the project constructed the compressed natural gas fueling and fare collection buildings on the site. Construction began in late 2019 with the facility opening in 2023. The 2020 budget is \$25 million. Estimated cost for the facility is \$95 million.

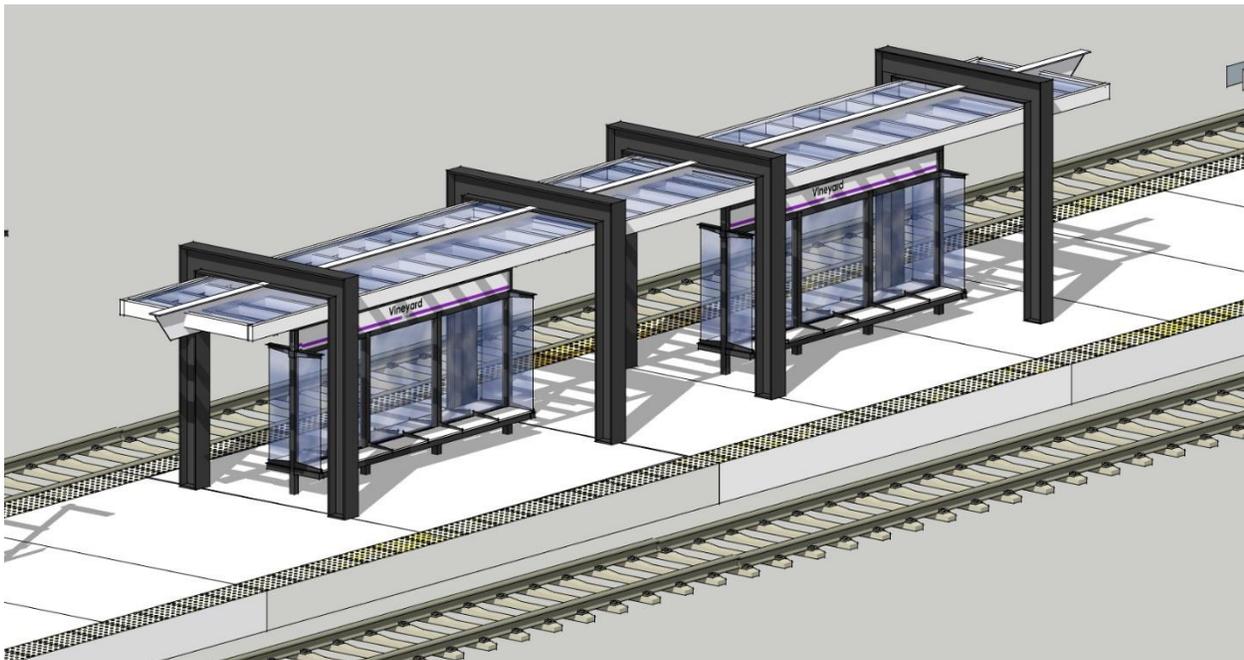


Depot District Clean Fuels Technology Center Drawings

## Future Plans (continued)

- With a population boom of 63% last year, Vineyard City is one of the fastest growing cities in the United States. The Utah State Legislature obligated \$4 million to build a new FrontRunner station and UTA is contributing \$10 million to double track a 2-mile section north of the new platform. This project is currently being designed and will begin construction in mid-2020.
- Rapid growth within the Sandy TOD is accelerating the need to construct a 300-stall parking structure. Funded by a \$2 million STP grant from FHWA and \$3.4 million of proceeds from the sale of adjacent property, the parking structure is anticipated to be completed in 2020.

Over the next few years, UTA will seek to build upon its reputation as a successful and innovative transit organization by increasing service reliability, strategically adding cost-effective service, and improving passenger amenities while maintaining strong financial management.



Vineyard Platform Drawing



## The Economic Condition and Outlook

The Utah Governor’s Office of Management and Budget in collaboration with the David Eccles School of Business at the University of Utah, prepared the 2020 Economic Report to the Governor. The Economic Report focuses on an estimated summary of the previous year and a forecast for the forthcoming year. The primary goal of the report is to improve the reader’s understanding of the Utah economy. The report is a collaborative effort of both public and private entities which devote a significant amount of time to this report ensuring that it contains the latest economic and demographic information. Below are several excerpts from the Economic Report. For more detailed information, the entire report is available on the Gardner Policy Institute’s website at <http://gardner.utah.edu>.

The 2020 Economic Report was prepared and presented in January 2020, well before the economic impact of the COVID-19 pandemic became apparent. The 2019 Overview information remains accurate, and is presented below. As conditions have changed significantly since this report was prepared, the 2020 Outlook, although available, is not being presented.

According to recent COVID-19 report from the Governor’s Office, Utah’s economy is expected to go through three stages: 1) Urgent – the initial economic slowdown due to pandemic countermeasures, 2) Stabilization – a period where businesses and citizens begin operating under less restrictive countermeasures, and 3) Recovery – the period in which the economy recovers and reaches a new normal of economic activity. The Urgent stage began in March of 2020 and started transitioning to the Stabilization phase in May 2020. Transition to the Recovery stage is expected to begin in October 2020. The Recovery stage is expected to last until early 2022. The beginning and ending dates of these stages remain fluid.

### 2019 Overview

#### *Employment, Wages, and Labor Force*

The decade’s concluding year caps a chronicle centered on Utah’s resilient rebound from the Post Great Recession’s economic low point—the decade’s starting position. By 2012, Utah’s characteristic employment growth returned and has since featured yearly at-or-above-average (3.0%) employment gains. This vibrant economic story continued into 2019, setting the stage for an encouraging transition into the next decade.

The 2019 data is still accumulating, but the year’s employment gains are estimated to again measure around 3.0%. The seventh year of strong employment growth coupled with an already tight labor market further pushed down the unemployment rate to 2.4% by the year’s latter months—a rate matching Utah’s historical low.

Long-running economic expansions tend to lift all ships. It is no surprise that possessing higher education increases ones employment outlook. Workers with the highest level of educational attainment encounter the lowest unemployment rates—even in the worst of times. It is the lower education levels that undergo the most unemployment volatility, often being slowly and sometimes stubbornly reabsorbed by the economy. Utah’s strong seven-year employment gains have shrunk the unemployment disparity between the highest and lowest education segments to the narrowest gap since these data points were made available in 2005. This melding shows itself through a 2.4% unemployment rate in the last months of 2019.

## The Economic Condition and Outlook (continued)

A textbook low-unemployment outcome featuring full employment across all education tiers, is strong wage growth. A lack of formidable wage gains throughout much of the Great Recession's rebound was the recovery's missing potency. But within the past two years, Utah's wage gains have been vigorous. The 2018 gains reached 4.2% (helped along by national tax stimulus), and 2019 should follow with another 3.7% increase. These gains can anchor their strength in all education tiers attaining full employment.

### *Personal Income*

Utah's total personal income in 2019 was an estimated \$155.2 billion, a 6.0% increase from \$146.4 billion in 2018. Utah's estimated 2019 per capita income was \$48,332, up 4.3% from \$46,320 in 2018. Both measures of estimated personal income growth in Utah were lower in 2019 than in 2018. In 2018, total personal income grew by 7.2% and per capita income grew by 5.3%. In 2018, Utah's total personal income growth was the second highest in the nation, while its per capita personal income growth was the 15<sup>th</sup> highest.

### *Taxable Sales*

In 2019, total taxable sales (sales and purchases subject to sales and use tax) in Utah increased by an estimated 4.4% to approximately \$67.8 billion. Growth in 2019 was slower than recent years and among the slowest years that the state has experienced since the Great Recession. Although growth in total taxable sales was buoyed by an increase in remote sales and by a labor market that is among the best in the nation, it was also tempered by an expansion of the manufacturing exemption and by a slowing in business and consumer spending. Growth rates for retail sales and taxable services were the lowest since 2010 when the recovery from the Great Recession began, increasing by 3.9% and 4.0% respectively in 2019. Business investment also underperformed recent years, declining by 3.5%. Conversely, all other sales not categorized in those three sectors increased by an estimated 29.0% in 2019.



FrontRunner at the Jordan Narrows



## Debt Administration

The Authority has sold Sales Tax Revenue Bonds to partially finance the purchase and construction of various capital assets, and to refund other outstanding bond issues. Payment of debt service on the outstanding bonds is secured by a pledge of sales tax revenues and other revenues of the Authority

In November 2019, the Authority issued its \$61,830,000 Sales Tax Revenue Bonds, Series 2019A to fund the construction or replacement of transit capital assets including traction power replacement, the Depot District maintenance facility, the Ogden/Weber State University bus rapid transit system, FrontRunner double tracking in Northern Utah County, and operator restrooms. True interest cost for the bonds was 2.733%.

In November 2019, the Authority issued its \$188,810,000 Federally Taxable Sales Tax Revenue Refunding Bonds, Series 2019. These bonds were issued to refund the then outstanding balance of its \$171,600,000 Series 2012 Subordinated Sales Tax Revenue and Refunding Bonds in the amount of \$98,000,000 and to retire the then outstanding balance of its \$192,005,000 Subordinated Sales Tax Revenue Refunding Bonds, Series 2015A in the amount of \$75,000,000. True interest cost for the bonds was 3.469%.

In November 2019, the Authority issued its \$59,070,000 Federally Taxable Subordinate Sales Tax Revenue Refunding Bonds, Series 2019B. These bonds were issued to refund the then outstanding balance of its \$192,005,000 Subordinated Sales Tax Revenue Refunding Bonds, Series 2015A in the amount of \$50,135,000. True interest cost for the bonds was 3.607%.



Big Boy Locomotive on its way through Utah  
Passing FrontRunner Train

As of December 31, 2019, the Authority had \$2,196,731,498 in outstanding bonds.

For a more complete review of the Authority's financing activities please refer to Section Two which contains the Auditors Report, Management's Discussion and Analysis, the Financial Statements and accompanying notes.



## Independent Audit

State law requires that the Authority cause an independent audit to be performed on an annual basis. The Authority's independent auditors, Keddington and Christensen, LLC, have rendered an unmodified audit report on the Authority's financial statements. The auditor's report on the financial statements with accompanying notes is included in the Financial Section of the Comprehensive Annual Financial Report.

The Authority also has a single audit of all federally funded programs administered by this agency as a requirement for continued funding eligibility. The Single Audit is mandatory for most local government including the Utah Transit Authority.

## Certificate of Achievement

The Government Finance Officers Association of the United States and Canada (GFOA) awarded a Certificate of Achievement for Excellence in Financial Reporting to Utah Transit Authority for its Comprehensive Annual Financial Report for the fiscal year ended December 31, 2018. In order to be awarded a Certificate of Achievement, a government must publish an easily readable and efficiently organized comprehensive annual financial report. This report must satisfy both general accepted accounting principles and applicable legal requirements.

A Certificate of Achievement is valid for a period of one year only. We believe that our current Comprehensive Annual Financial Report continues to meet the Certificate of Achievement Program's requirements and we are submitting it to the GFOA to determine its eligibility for another certificate.

## Acknowledgments

The preparation of the Comprehensive Annual Financial Report on a timely basis requires dedicated extra efforts of the staff of several departments. I wish to express my appreciation to all department staff and managers who contributed to this report with special recognition to Teri Black, Executive Assistant; Troy Bingham, Comptroller; the Accounting Department Employees of UTA; Blair Lewis, Graphic Artist; and Eric Vance, Photographer.

Sincerely,



Robert K. Biles  
Chief Financial Officer  
Utah Transit Authority





Government Finance Officers Association

**Certificate of  
Achievement  
for Excellence  
in Financial  
Reporting**

Presented to

**Utah Transit Authority**

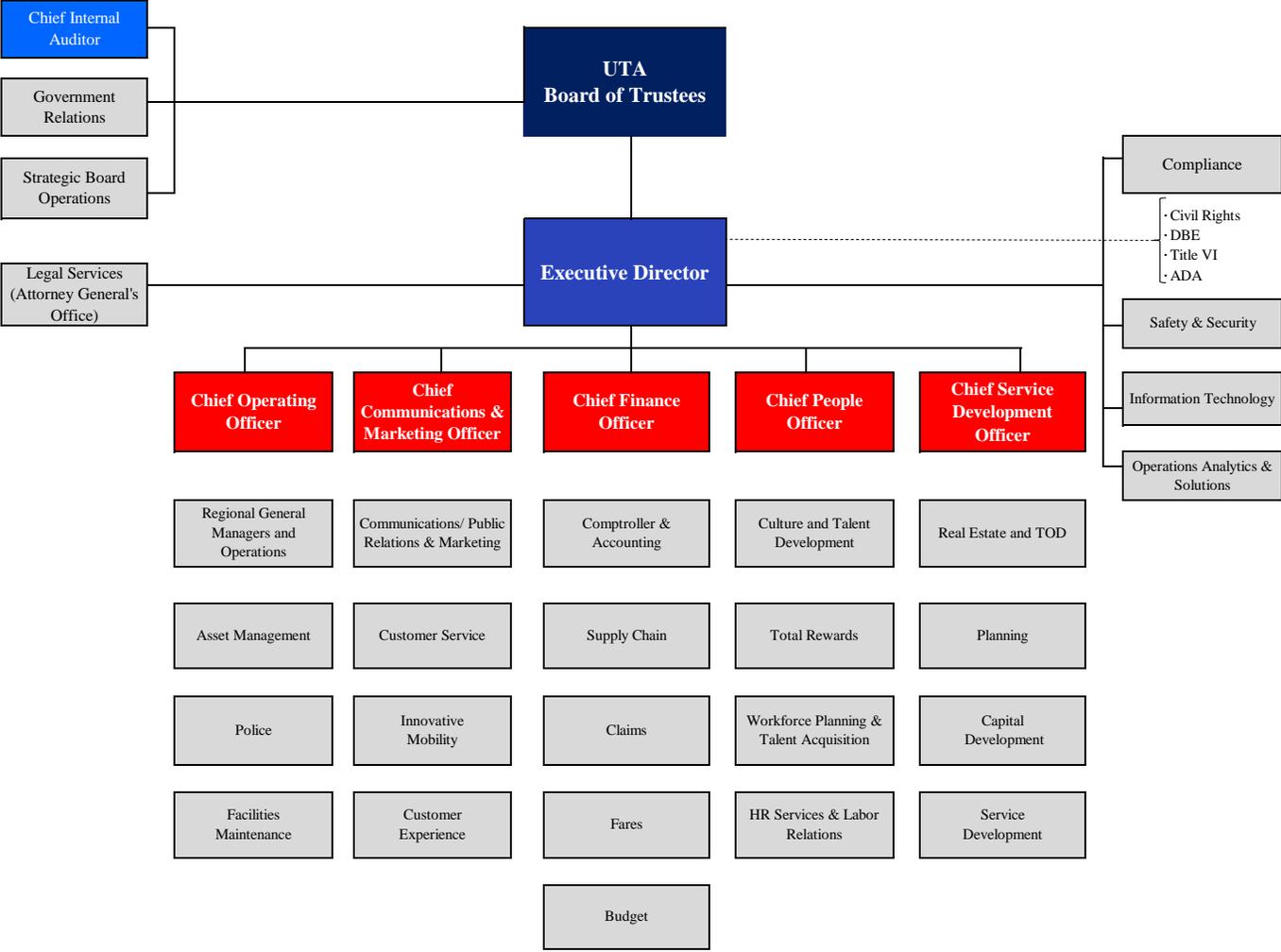
For its Comprehensive Annual  
Financial Report  
for the Fiscal Year Ended

**December 31, 2018**

*Christopher P. Morill*

Executive Director/CEO

# Organizational Chart



Revised 1/31/2019

## UTA Board of Trustees



Beth Holbrook



Carlton Christensen  
Board Chair



Kent Millington



## Administration

### Board of Trustees

BOARD CHAIR .....Carlton Christensen  
BOARD TRUSTEE .....Beth Holbrook  
BOARD TRUSTEE .....Kent Millington

### Officers of the Authority

BOARD CHAIR .....Carlton Christensen  
EXECUTIVE DIRECTOR .....Carolyn Gonot  
SECRETARY/TREASURER AND CHIEF FINANCIAL OFFICER .....Robert K. Biles  
COMPTROLLER.....Troy Bingham

### Administration of the Authority

EXECUTIVE DIRECTOR .....Carolyn Gonot  
CHIEF OF INTERNAL AUDIT .....Riana DeVilliers  
CHIEF COMMUNICATIONS AND MARKETING OFFICER .....Nichol Bourdeaux  
CHIEF FINANCIAL OFFICER .....Robert K. Biles  
CHIEF OPERATING OFFICER .....Eddy Cumins  
CHIEF PEOPLE OFFICER .....Kim Ulibarri  
CHIEF SERVICE DEVELOPMENT OFFICER .....Mary DeLoretto

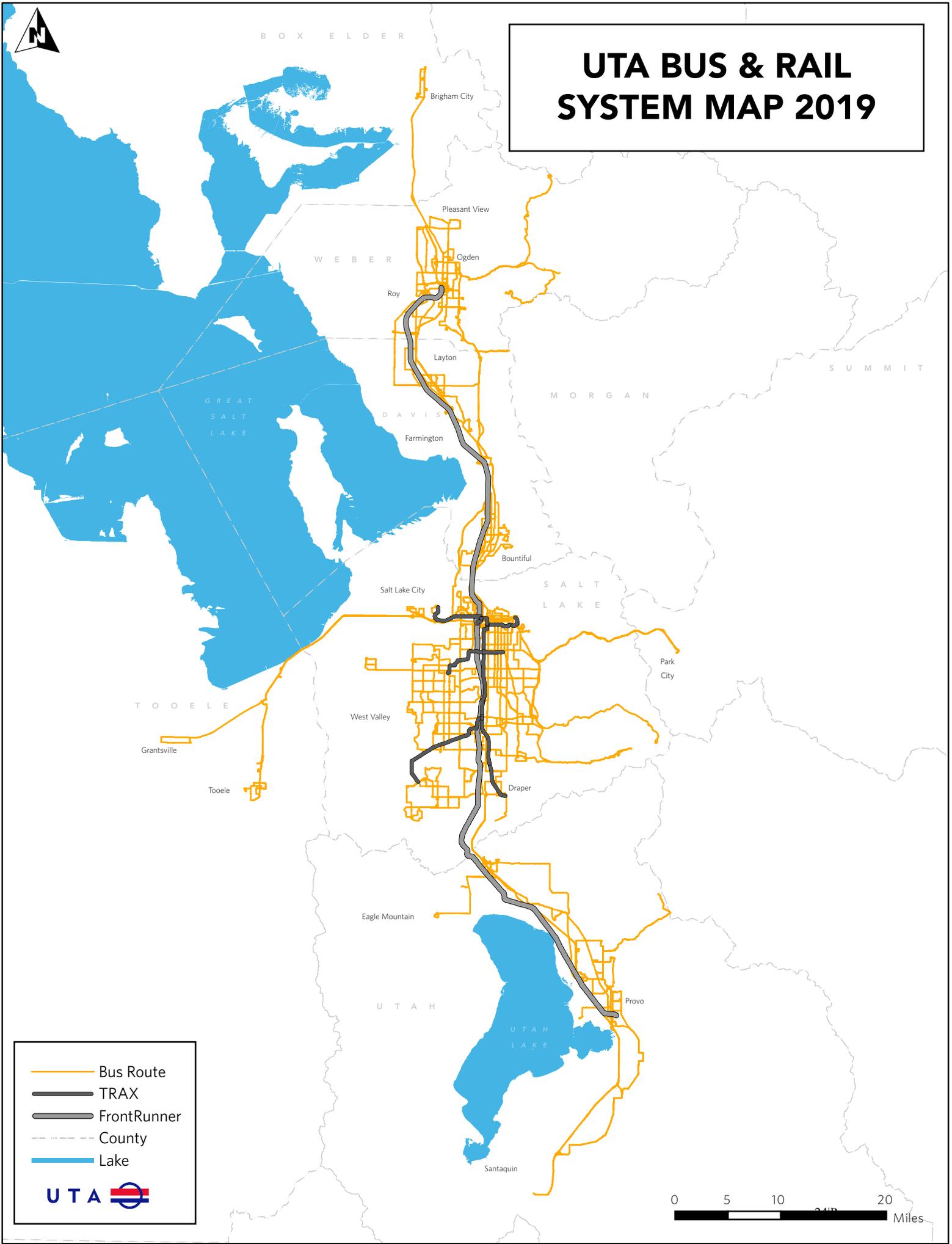


## Advisory Council Committee Members

Name.....	Appointing Authority
Jeff Acerson .....	Utah County COG
Erin Mendenhall.....	Salt Lake City
Leonard Call .....	Weber Area COG
Erik Craythorne .....	Davis Area COG
Karen Cronin .....	Box Elder COG/Tooele COG
Julie Fullmer .....	Utah County COG
Robert Hale.....	Salt Lake County COG
Clint Smith.....	Salt Lake County COG
Troy Walker .....	Salt Lake County COG



# UTA BUS & RAIL SYSTEM MAP 2019



- Bus Route
- TRAX
- FrontRunner
- - - County
- Lake



# Financial

For Fiscal Years Ended  
December 31, 2019 and 2018





**KEDDINGTON & CHRISTENSEN, CPAS**  
CERTIFIED PUBLIC ACCOUNTANTS

Gary K. Keddington, CPA  
Phyl R. Warnock, CPA  
Marcus K. Arbuckle, CPA  
Steven M. Rowley, CPA

## **INDEPENDENT AUDITOR'S REPORT**

To the Board of Trustees,  
Utah Transit Authority  
Salt Lake City, Utah

### **Report on the Financial Statements**

We have audited the accompanying financial statements of the business-type activities, discretely presented component unit, and the remaining fund information of Utah Transit Authority (the "Authority"), a component unit of the State of Utah, as of and for the years ended December 31, 2019 and 2018, and the related notes to the financial statements, which collectively comprise the Authority's basic financial statements as listed in the table of contents.

### ***Management's Responsibility for the Financial Statements***

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### ***Auditor's Responsibility***

Our responsibility is to express opinions on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

## ***Opinions***

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the business-type activities, discretely presented component unit, and the remaining fund information of Utah Transit Authority, as of December 31, 2019 and 2018, and the respective changes in net position and, where applicable, cash flows thereof for the years then ended in accordance with accounting principles generally accepted in the United States of America.

## ***Other Matters***

### ***Required Supplementary Information***

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis, schedule of changes in net pension liability, and schedule of contributions, and notes to the required supplementary information as listed in the table of contents be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

### ***Other Information***

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise Utah Transit Authority's basic financial statements. The introductory section and statistical sections as listed in the table of contents are presented for purposes of additional analysis and are not a required part of the basic financial statements. The schedule of expenditures of federal awards is presented for purposes of additional analysis as required by Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, and is also not a required part of the basic financial statements.

The supplemental budget to actual schedule, and schedule of expenditures of federal awards as listed in the table of contents are the responsibility of management and were derived from and relate directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion the supplemental budget to actual schedule, and schedule of expenditures of federal awards are fairly stated in all material respects in relation to the basic financial statements as a whole.

The introductory and statistical sections have not been subjected to the auditing procedures applied in the audit of the basic financial statements and, accordingly, we do not express an opinion or provide any assurance on them.

### **Other Reporting Required by *Government Auditing Standards***

In accordance with *Government Auditing Standards*, we have also issued our report dated June 2, 2020, on our consideration of the Authority's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Authority's internal control over financial reporting and compliance.

*Keddington & Christensen, LLC*

Keddington & Christensen, LLC  
Salt Lake City  
June 2, 2020

UTAH TRANSIT AUTHORITY  
MANAGEMENT'S DISCUSSION AND ANALYSIS  
Years Ended December 31, 2019 and 2018

This section of Utah Transit Authority's (UTA) annual financial report presents our discussion and analysis of UTA's financial performance during the fiscal years ended on December 31, 2019 and December 31, 2018.

Following this Management Discussion and Analysis are the basic financial statements of UTA, together with the notes thereto, which are essential to a full understanding of the information contained in the financial statements.

**FINANCIAL STATEMENTS**

UTA's financial statements are prepared on an accrual basis in accordance with accounting principles generally accepted in the United States of America (GAAP), promulgated by the Governmental Accounting Standards Board (GASB). UTA reports as a single enterprise fund. Revenues are recognized when earned and expenses are recognized in the period in which they are incurred. See the notes to the financial statements for a summary of UTA's significant accounting policies.

**CONDENSED STATEMENTS OF NET POSITION**

	<u>2019</u>	<u>2018</u>	<i>Difference</i>	<i>Percent difference</i>	<u>2017</u>
<b>Assets</b>					
Current and other assets	\$ 454,691,660	\$ 395,157,482	\$ 59,534,178	15%	\$ 350,629,354
Capital assets, net	2,949,391,911	3,089,897,011	<u>(140,505,100)</u>	-5%	3,068,709,875
Total assets	<u>3,404,083,571</u>	<u>3,485,054,493</u>	<u>(80,970,922)</u>	-2%	3,419,339,229
<b>Deferred outflows of resources</b>	<u>101,605,576</u>	<u>120,421,199</u>	<u>(18,815,623)</u>	-16%	109,761,191
<b>Liabilities</b>					
Current liabilities	83,812,739	91,107,642	(7,294,903)	-8%	101,099,455
Long-term liabilities	2,537,454,662	2,531,689,731	5,764,931	0%	2,422,375,239
Total liabilities	<u>2,621,267,401</u>	<u>2,622,797,373</u>	<u>(1,529,972)</u>	0%	2,523,474,694
<b>Deferred inflows of resources</b>	<u>11,653,452</u>	<u>3,383,699</u>	<u>8,269,753</u>	244%	11,948,307
<b>Net position</b>					
Net investment in capital assets	692,675,681	827,646,243	(134,970,562)	-16%	894,275,843
Restricted	66,948,773	66,559,450	389,323	1%	60,399,717
Unrestricted	113,143,840	85,088,927	28,054,913	33%	39,001,859
<b>Total net position</b>	<u>\$ 872,768,294</u>	<u>\$ 979,294,620</u>	<u>\$ (106,526,326)</u>	-11%	<u>\$ 993,677,419</u>

**2019 Results**

In November 2019, the Utah Transit Authority sold 2019 Series Senior Lien revenue bonds of \$250,640,000 and 2019 Series Subordinate Lien revenue bonds of \$59,070,000. The \$188,810,000 of proceeds from the Federally Taxable Sales Tax Revenue Refunding Bonds, Series 2019 were used to refund the refundable maturities of the Series 2007 capital appreciation, 2012 and 2015 subordinate lien revenue bonds. The \$61,830,000 of proceeds from the Sales Tax Revenue Bonds, Series 2019A were used for new capital project financing. \$59,070,000 of proceeds from the Federally Taxable Subordinate Sales Tax Revenue Refunding Bonds, Series 2019B were used to refund certain maturities of the Series 2015 subordinate lien revenue bonds. These bond transactions increased the amount held in escrow and the corresponding restricted net position of UTA. The remaining amount of escrow at the end of 2019 and restricted for future capital project expenses was \$105.6 million.

The pension is evaluated by an actuary that determines the future cost of the pension based on the plan assumptions described in Footnote 7 of these financial statements. Due to investment returns significantly exceeding the pension earnings assumption, Deferred Outflow of Resources decreased by 18.8 million.

UTAH TRANSIT AUTHORITY  
MANAGEMENT'S DISCUSSION AND ANALYSIS  
Years Ended December 31, 2019 and 2018

**CONDENSED STATEMENTS OF NET POSITION (continued)**

2019 Results (continued)

Capital projects had \$17.6 million less payables to vendors at the end of 2019, due to less work performed at UTA construction sites in the fall and winter months leading up to the end of the year.

A change in unrestricted net position over time may serve as a useful indicator of a government entity's financial position. As of December 31, 2019, UTA's unrestricted net position increased \$28.1 million from the December 31, 2018 net position.

2018 Results

In May 2018, the Utah Transit Authority sold \$83,765,000 of Senior Sales Tax Revenue bonds, Series 2018 (the "Series 2018 Bonds"). This bond transaction increased the amount held in escrow and the corresponding restricted net position of UTA. The remaining amount at the end of 2018 in escrow and restricted for future capital project expenses was \$51.7 million.

Every year the pension is evaluated by an actuary that determines the future cost in the pension based on the plan described in Footnote 7 of these financial statements. Due to an aging workforce that is growing closer to retirement and the increased year over year salaries increases of these employees, the assumption of the pension have increased \$19.0 million. Advance refunding gains from previous refunding continue to be amortize, so the net increase in the deferred outflow of resources only reflects a 10.7 million increase.

The pension's investment rate of return decreased significantly from an 18.0% rate of return for 2017 to -7.8% for 2018. This resulted in \$8.6 million decrease in deferred inflow of resources in 2018.

An increase in unrestricted net position over time may serve as a useful indicator of a government entity's financial position. As of December 31, 2018, UTA's net position increased \$46.1 million from the December 31, 2017 net position.

**CONDENSED STATEMENTS OF REVENUES, EXPENSES, AND CHANGES IN NET POSITION**

	<u>2019</u>	<u>2018</u>	<i>Difference</i>	<i>Percent difference</i>	<u>2017</u>
Operating revenues	\$ 55,111,554	\$ 54,464,392	\$ 647,162	1%	\$ 54,525,870
Operating expenses	457,897,920	401,161,541	56,736,379	14%	427,777,940
Excess of operating expenses over operating revenues	(402,786,366)	(346,697,149)	(56,089,217)	-16%	(373,252,070)
Non-operating revenues	348,993,103	359,435,799	(10,442,696)	-3%	334,913,449
Non-operating expenses	87,541,906	91,000,388	(3,458,482)	-4%	88,190,962
Income (loss) before contributions	(141,335,169)	(78,261,738)	(63,073,431)	-81%	(126,529,583)
Capital contributions	34,808,843	63,878,939	(29,070,096)	-46%	57,063,288
Change in net position	\$ (106,526,326)	\$ (14,382,799)	<u>\$ (92,143,527)</u>	-641%	\$ (69,466,295)
Total net position, January 1	<u>\$ 979,294,620</u>	<u>\$ 993,677,419</u>			<u>\$ 1,063,143,714</u>
Total net position, December 31	<u>\$ 872,768,294</u>	<u>\$ 979,294,620</u>			<u>\$ 993,677,419</u>

UTAH TRANSIT AUTHORITY  
MANAGEMENT'S DISCUSSION AND ANALYSIS  
Years Ended December 31, 2019 and 2018

**SUMMARY OF REVENUES FOR THE YEAR ENDED DECEMBER 31**

	<u>2019</u>	<u>2018</u>	<i>Difference</i>	<i>Percent difference</i>	<u>2017</u>
Operating					
Passenger revenue	\$ 52,649,054	\$ 52,051,892	\$ 597,162	1%	\$ 52,159,203
Advertising	2,462,500	2,412,500	50,000	2%	2,366,667
Total operating revenue	55,111,554	54,464,392	647,162	1%	54,525,870
Non-operating					
Contributions from other gov'ts (sales tax)	317,797,604	282,933,591	34,864,013	12%	265,770,775
Federal noncapital assistance	69,746,231	61,820,668	7,925,563	13%	62,313,994
Interest income	6,821,490	6,525,872	295,618	5%	2,873,787
Other	(45,372,222)	8,155,668	(53,527,890)	-656%	3,954,893
Total non-operating revenue	348,993,103	359,435,799	(10,442,696)	-3%	334,913,449
Capital contributions	34,808,843	63,878,939	(29,070,096)	-46%	57,063,288
Total revenues	<u>\$ 438,913,500</u>	<u>\$ 477,779,130</u>	<u>\$ (38,865,630)</u>	-8%	<u>\$ 446,502,607</u>

2019 Results

Passenger revenue held steady in 2019. In 2019 UTA started the process of reworking fare types and fares strategy under the guidance of UTA's Board of Trustees. Modifications and pilot programs were started in late 2019 to address low income riders but the overall results of these programs will not be known until 2020.

Since UTA does not have the ability to levy taxes, it relies on contributions dedicated by member governments in the form of sales tax. The 2018 legislative changes to Transit District Act allowed for counties in UTA's service area to add an additional ¼ cent sales tax in their county's dedicated contribution to fund transit needs. Salt Lake and Utah County both passed this ¼ cent sales tax with the transit portion becoming effective on July 1, 2019. In 2019, UTA recognized \$34.9 million (12%) increased contributions of sales tax.

In 2019, the Federal Government increased the amount contributed to UTA for operating assistance by \$7.9 million (13%). These allocations are based on an allocation formula that takes into account size, asset ages, and other factors of various transit agencies nationwide to determine the annual amounts.

Other revenues reflects the net effect of a \$51.4 million of undepreciated asset value write down resulting from the 2019 capital asset inventory. Please see Note 4 of the financial statements for additional information.

Capital contributions decreased by \$29.1 million due to the Provo-Orem Bus Rapid Transit line be completed and no further contributions from the State and local governments on the project.

2018 Results

Since UTA does not have the ability to tax, it relies on contributions dedicated by other governments for the purpose of mass transit in the form of sales tax as supplementary income to operations and development. As Utah's economy continues to improve and unemployment rates continue to decrease, this sales tax amount continues to increase. In 2018, UTA recognized \$17.2 million (6%) in increased contributions of sales tax.

Interest income has increased \$3.7 million due to a favorable rate of return environment and UTA having more funds to be able to invest at these terms. UTA continues to have positive returns on its current investments at transit oriented developments and those transactions in 2018 represent \$1.5 million of the increase from 2017.

UTAH TRANSIT AUTHORITY  
MANAGEMENT'S DISCUSSION AND ANALYSIS  
Years Ended December 31, 2019 and 2018

**SUMMARY OF REVENUES FOR THE YEAR ENDED DECEMBER 31 (continued)**

2018 Results (continued)

Other revenues reflects the final sales and divestitures from other transit-oriented development agreements which vary from year to year. This year's increase can be attributed to sale of the Sandy East Village apartments for \$4.7 million at our Sandy Civic Center TRAX station in Sandy.

Capital contributions increased by \$7.0 million due to the state and local participation in the construction of the Provo-Orem Bus Rapid Transit line by donating the land under the dedicated lanes to UTA worth \$20.1 million at the time of the exchange.

**SUMMARY OF EXPENSES FOR THE YEAR ENDED DECEMBER 31**

	<u>2019</u>	<u>2018</u>	<i>Difference</i>	<i>Percent difference</i>	<u>2017</u>
Operating expenses					
Bus service	\$ 104,570,413	\$ 96,719,747	\$ 7,850,666	8%	\$ 88,928,063
Rail service	77,972,467	75,157,087	2,815,380	4%	72,895,607
Paratransit service	23,121,527	21,857,632	1,263,895	6%	19,572,367
Other services	3,247,699	3,056,191	191,508	6%	2,982,176
Operations support	47,056,444	45,557,749	1,498,695	3%	41,932,571
Administration	36,738,745	39,593,947	(2,855,202)	-7%	31,423,844
Capital Maintenance Projects	19,078,502	38,654,111	(19,575,609)	-51%	20,602,425
Depreciation	146,112,123	80,565,077	65,547,046	81%	149,440,887
Total operating expenses	<u>\$ 457,897,920</u>	<u>\$ 401,161,541</u>	<u>\$ 56,736,379</u>	14%	<u>\$ 427,777,940</u>

2019 Results

Overall expenses for 2019 increased \$56.7 million (14%) from 2018. Most expense differences are within capital maintenance projects and depreciation expenses categories. Capital maintenance projects are expenses that are significant but infrequent non-capital expenses that are not directly attributed to each mode of transit. The decrease of \$19.6 million (51%) in capital maintenance projects is due to changes in spending that can occur from year to year. The increase in depreciation expense of \$65.4 million was caused by the effects of a change in accounting estimate that occurred in 2018 that affected only that year's depreciation expenses.

Like most service agencies, personnel is the largest expense. Personnel cost for UTA in 2019 was 71.0% of total operating expense less depreciation. Overall, personnel cost rose by \$12.3 million (5.9%) in 2019. Operating expense less personnel cost decreased by \$21.1 million (18.9%) mainly due to the \$19.6 million reduction in capital maintenance projects.

ANALYSIS	<u>2019</u>	<u>2018</u>	<i>Difference</i>	<i>Percent difference</i>	<u>2017</u>
Operating expense less depreciation	\$ 311,785,797	\$ 320,596,464	\$ (8,810,667)	-2.7%	\$ 278,337,053
Wages (50100-50199)	150,740,728	142,416,641	8,324,087	5.8%	131,228,632
Benefits (50200-50299)	70,530,094	66,566,327	3,963,767	6.0%	58,322,422
Operations less wages/benefits	90,514,975	111,613,496	(21,098,521)	-18.9%	88,785,999
Personnel cost	\$ 221,270,822	\$ 208,982,968	\$ 12,287,854	5.9%	\$ 189,551,054
% of operating expense	71.0%	65.2%	5.8%	8.9%	68.1%

UTAH TRANSIT AUTHORITY  
MANAGEMENT'S DISCUSSION AND ANALYSIS  
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**SUMMARY OF EXPENSES FOR THE YEAR ENDED DECEMBER 31 (continued)**

2018 Results

The operational cost for all direct service decreased in 2018 by \$26.8 million as a result of a change in accounting estimate for depreciation that created a decrease in the current year depreciation expense (see Note 4 of the financials for more information on the current year impact).

Personnel cost for UTA in 2018 was 65.2% of total operating expense (including capital maintenance projects) less depreciation. Overall, personnel cost rose by \$19.4 million (10.3%) in 2018. Operating expense less personnel cost increased by \$22.7 million (25.5%), all of which is the result of increased system maintenance costs. Within operating expense, administration expense increased by \$8.1 million (26%), due to increased personnel, maintenance of the information systems infrastructure, increased risk management expense, and general pension related expense increases. Capital maintenance projects increased by \$18.1 million (88%), due to unreimbursed UDOT charges related to Provo-Orem BRT (\$10.3 million), TIGER project for other communities (\$5.6 million) that are new in 2018, and Light Rail vehicle damage repairs (\$1.8 million).

CAPITAL ASSET ACTIVITY

	<b>2019</b>	<b>2018</b>	<b>Difference</b>	<b>Percent difference</b>	<b>2017</b>
Land	\$ 408,225,179	\$ 440,917,126	\$ (32,691,947)	-7%	\$ 425,736,158
Construction in process	139,699,345	109,972,902	29,726,443	27%	205,102,231
Infrastructure	2,499,683,484	2,515,426,407	(15,742,923)	-1%	2,528,679,092
Building and building improvements	245,182,707	302,473,214	(57,290,507)	-19%	132,444,199
Revenue vehicles	752,446,315	753,650,299	(1,203,984)	0%	757,025,778
Leased revenue vehicles	66,592,155	60,365,705	6,226,450	10%	-
Equipment	60,703,740	144,817,612	(84,113,872)	-58%	326,289,349
Land improvements	105,928,156	79,140,497	26,787,659	34%	12,300,402
Leased land improvements	84,485,965	75,804,461	8,681,504	11%	-
Intangibles	18,292,597	9,585,417	8,707,180	91%	22,537,996
Accumulated depreciation and amortization	(1,431,847,732)	(1,402,256,629)	(29,591,103)	2%	(1,341,405,330)
Total capital assets, net	<u>\$ 2,949,391,911</u>	<u>\$ 3,089,897,011</u>	<u>\$ (140,505,100)</u>	-5%	<u>\$ 3,068,709,875</u>

\*\*Readers wanting additional information should refer to Note 4 in the notes to the financial statements\*\*

2019 Results

In 2019, UTA continued to better define what constituted a capital asset, revisited asset categorization, and updated asset useful lives as part of the biennial asset inventory. This resulted in transfers of assets between categories and adjustments to balances for each category of capital assets (see Footnote 4 for more details).

UTA expended approximately \$57.1 million for capital assets in 2019. Approximately \$10.8 million was expended for revenue vehicle replacements. This program included thirteen (13) buses and eighty-one (81) Rideshare vans. In 2019, UTA expended \$46.3 million on major strategic projects. This included the development and start of construction of the Depot District (fueling and maintenance facility to support bus operations), various rail Infrastructure replacements, and several other projects designed to enhance the system and passenger experience.



UTAH TRANSIT AUTHORITY  
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**SUMMARY OF CAPITAL ASSET ACTIVITY (continued)**

2018 Results

In 2018, UTA more clearly defined what constituted an asset and relooked at the prior asset category assignments and asset useful lives. This resulted in large transfers of assets between categories and adjusted accumulated depreciation for each category of capital assets (see Footnote 4 for more details).

UTA expended approximately \$86.0 million for capital assets in 2018 that increased construction in progress. UTA finished the development and construction of the Provo-Orem Bus Rapid Transit (BRT) route and associated maintenance facilities, Positive Train Control, the relocation of the Airport TRAX Station design, the double tracking of streetcar, the replacement of at TRAX bridge at 7200 South, and several other projects designed to enhance the system and passenger experience which added \$181.8 million to various asset categories in 2018.

UTA retired or disposed of \$23.9 million in historical asset value through land sales and buses and equipment auctions. The depreciable assets disposed in 2018, removed \$19.7 million of accumulated depreciation from the capital asset records.

DEBT ADMINISTRATION

Bond rating agencies have rated UTA based on the types of bonds issued and an analysis of several financial conditions and influencing factors. The following chart summarizes those ratings by bond and agency:

Ratings Summary

Source: Zions Bank Financial Advisors

Effective date: November 2019	Standard & Poor's	Fitch	Moody's
Senior Lien Bonds			
Current rating	AA	AA-	Aa2
Outlook	Stable	Stable	Stable
Subordinate Lien Fixed Rate Bonds			
Current rating	A+	AA-	A1
Outlook	Stable	Stable	Stable

\*\*Readers wanting additional information should refer to Note 8 in the notes to financial statements\*\*

During 2019, UTA issued the following bonds:

2019 Series Senior Lien revenue bonds: \$250,640,000  
2019 Series Subordinate Lien revenue bonds: \$59,070,000

\$188,810,000 of proceeds from the Federally Taxable Sales Tax Revenue Refunding Bonds, Series 2019 were used to refund the refundable maturities of the Series 2007 capital appreciation, 2012 and 2015 subordinate lien revenue bonds. The \$61,830,000 of proceeds from the Sales Tax Revenue Bonds, Series 2019A were used for new capital project financing.

\$59,070,000 of proceeds from the Federally Taxable Subordinate Sales Tax Revenue Refunding Bonds, Series 2019B were used to refund certain maturities of the Series 2015 subordinate lien revenue bonds.

UTAH TRANSIT AUTHORITY  
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**SUMMARY OF DEBT ADMINISTRATION ACTIVITY (continued)**

2018 Debt Issuance

During 2018, UTA issued the following subordinated and senior lien bonds:

Senior Sales Tax Revenue, Series 2018: \$83,765,000  
Subordinated Sales Tax Revenue Refunding Bonds, Series 2018: \$115,540,000

Proceeds from the Series 2018 Senior Lien bond are being used for new capital projects financing. Proceeds from the Series 2018 Subordinated Lien bond issue were used to refund the Series 2017 revenue bonds (\$112.1 million) and Series 2007A revenue bonds (3.4 million).

**SIGNIFICANT ACTIVITIES**

2019 Results

*Transit-oriented Development (TOD) –*

- Construction was completed on a new Starbucks at the Jordan Valley TOD, and ground was broken on a second phase of apartments.
- The Sandy Civic Center TOD development team continued to pursue design and entitlements for two new phases of development, including another phase of mixed-use residential and a 180,000 square foot office.
- Construction continued at 3900 South Meadowbrook TRAX Station on a mixed-use residential, retail, and training facility, the majority of which is preleased.
- Work continued on the third and final phase of development at the South Jordan FrontRunner Station TOD, consisting of a preleased office building.

UTA provided special event support for the following events:

- Utah Jazz games
- University of Utah events
- Brigham Young University events
- Weber State events
- Utah Valley University events
- LDS Church General Conferences
- The Salt Lake City Marathon
- Other special events

2018 Results

The governance of UTA was changed in 2018 as part of the State of Utah legislative session, and the new board started in the fall of 2018. This legislative change has allowed for more sales tax allocation to transit from counties in UTA's service area. The county commissioners in both Utah and Salt Lake County approved 4th quarter sales tax increases for their jurisdictions and UTA is scheduled to start receiving its 40% share of those sales taxes funds in the fall 2019.

UTAH TRANSIT AUTHORITY  
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**SIGNIFICANT ACTIVITIES**

2018 Results (continued)

*Transit-oriented Development (TOD) –*

- Jordan Valley TOD construction has started on a new Starbucks
- Sandy East Village TOD sold the first phase of apartment buildings and the office building.
- 3900 South Meadowbrook TRAX Station TOD broke ground for the mixed-use office and residential facility that is already long-termed leased

UTA provided special event support for the following events:

- Warriors over the Wasatch Air Show
- Utah Jazz games
- University of Utah events
- Brigham Young University events
- Weber State events
- Utah Valley University events
- LDS Church General Conferences
- The Salt Lake City Marathon
- Other special events

**RIDERSHIP COMPARISON**

The following information provides an annual comparison of ridership by service for years 2019, 2018, and 2017.

	<b>2019</b>	<b>2018</b>	<b>Difference</b>	<b>Percent difference</b>	<b>2017</b>
Bus service	20,799,642	19,624,936	1,174,706	6.0%	19,748,489
Light rail service	17,128,008	17,899,715	(771,707)	-4.3%	18,823,578
Commuter rail service	5,193,879	5,082,168	111,711	2.2%	4,854,099
Paratransit service	388,265	394,816	(6,551)	-1.7%	385,969
Vanpools	1,068,364	1,174,696	(106,332)	-9.1%	1,264,410
Total ridership	<u>44,578,158</u>	<u>44,176,331</u>	<u>401,827</u>	<u>0.9%</u>	<u>45,076,545</u>

2019 Results

UTA realized a 0.9% increase in overall ridership from 2018. Bus and Commuter Rail services showed an increases in demand for this service. Light Rail, Paratransit and Vanpool services experienced a decrease in ridership in 2019.

2018 Results

In 2018, UTA realized a 2.0% decrease in overall ridership from 2017. Commuter Rail and Paratransit services showed slight increases in 2018 as demand for these services. Light Rail and Vanpool services experienced a decrease in ridership in 2018.

UTAH TRANSIT AUTHORITY  
INTRODUCTORY SECTION  
Year Ended December 31, 2019 and 2018

**COMPARATIVE STATEMENTS OF NET POSITION**

	<u>2019</u>	<u>2018</u>
<b>ASSETS</b>		
<b>Current Assets:</b>		
Cash and cash equivalents	\$ 121,247,679	\$ 103,037,555
Restricted cash and cash equivalents	892,005	-
Receivables		
Contributions from other governments (sales tax)	61,526,161	50,725,259
Federal grants	16,963,742	24,146,542
Other	6,016,947	4,443,339
State of Utah	7,270,213	9,930,141
Restricted receivables	1,843,015	-
Parts and supplies inventories	36,043,834	35,551,784
Prepaid expenses	2,299,133	2,842,013
<b>Total Current Assets</b>	<b><u>254,102,729</u></b>	<b><u>230,676,633</u></b>
<b>Noncurrent Assets:</b>		
Restricted assets (Cash equivalents and investments)		
Bonds funds	44,906,842	47,668,250
Interlocal agreements	6,778,351	7,040,441
Represented employee benefits	4,596,492	4,133,950
Escrow funds	105,638,304	66,174,772
Self-insurance deposits	7,932,069	7,716,809
Total restricted assets	<u>169,852,058</u>	<u>132,734,222</u>
Non-Depreciable Capital Assets:		
Land	408,225,179	440,917,126
Construction in progress	139,699,345	109,972,902
	<u>547,924,524</u>	<u>550,890,028</u>
Depreciable Capital Assets:		
Land improvements	105,928,156	79,140,497
Leased Land Improvements	84,485,965	75,804,461
Building and building improvements	245,182,707	302,473,214
Infrastructure	2,499,683,484	2,515,426,407
Revenue vehicles	752,446,315	753,650,299
Leased revenue vehicles	66,592,155	60,365,705
Equipment	60,703,740	144,817,612
Intangibles	18,292,597	9,585,417
Total Depreciable Capital Assets	<u>3,833,315,119</u>	<u>3,941,263,612</u>
Total Capital Assets	<u>4,381,239,643</u>	<u>4,492,153,640</u>
Less accumulated depreciation and amortization	(1,431,847,732)	(1,402,256,629)
Amount recoverable - interlocal agreement	21,236,873	22,047,787
Other assets	9,500,000	9,698,840
<b>Total Noncurrent Assets</b>	<b><u>3,149,980,842</u></b>	<b><u>3,254,377,860</u></b>
<b>TOTAL ASSETS</b>	<b><u>\$ 3,404,083,571</u></b>	<b><u>\$ 3,485,054,493</u></b>

\*\*Readers wanting additional information should refer to the notes to the financial statements\*\*

UTAH TRANSIT AUTHORITY  
INTRODUCTORY SECTION  
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**COMPARATIVE STATEMENTS OF NET POSITION (continued)**

	<u>2019</u>	<u>2018</u>
<b>DEFERRED OUTFLOWS OF RESOURCES</b>		
Advanced debt refunding	\$ 88,145,622	\$ 88,490,542
Assumptions changes related to pensions	13,459,954	31,930,657
<b>TOTAL DEFERRED OUTFLOWS OF RESOURCES</b>	<b><u>101,605,576</u></b>	<b><u>120,421,199</u></b>
<b>LIABILITIES</b>		
<b>Current Liabilities:</b>		
Accounts payable		
Other	19,533,745	37,169,641
State of Utah	29,679	138,224
Accrued liabilities, primarily payroll-related	11,811,462	10,718,710
Current portion of compensated absences	1,664,512	2,010,345
Current portion of accrued interest	4,614,297	4,165,847
Current portion of long-term debt	33,413,386	24,126,320
Accrued self-insurance liability	862,650	1,155,787
Unearned revenue	11,883,008	11,622,768
<b>Total Current Liabilities</b>	<b><u>83,812,739</u></b>	<b><u>91,107,642</u></b>
<b>Long-Term Liabilities:</b>		
Long-term compensated absences	10,768,696	9,513,471
Long-term accrued interest	7,332,852	5,614,014
Long-term debt	2,415,488,275	2,385,014,132
Long-term net pension liability	103,864,839	131,548,114
<b>Total Long-term Liabilities</b>	<b><u>2,537,454,662</u></b>	<b><u>2,531,689,731</u></b>
<b>TOTAL LIABILITIES</b>	<b><u>2,621,267,401</u></b>	<b><u>2,622,797,373</u></b>
<b>DEFERRED INFLOWS OF RESOURCES</b>		
Changes to earnings on pension plan investments	11,653,452	3,383,699
<b>TOTAL DEFERRED INFLOWS OF RESOURCES</b>	<b><u>11,653,452</u></b>	<b><u>3,383,699</u></b>
<b>NET POSITION</b>		
Net investment in capital assets	692,675,681	827,646,243
Restricted for		
Debt service	44,906,842	47,668,250
Interlocal agreements	9,513,370	7,040,441
Represented employee benefits	4,596,492	4,133,950
Self-insurance deposits	7,932,069	7,716,809
Unrestricted	113,143,840	85,088,927
<b>TOTAL NET POSITION</b>	<b><u>\$ 872,768,294</u></b>	<b><u>\$ 979,294,620</u></b>

\*\*Readers wanting additional information should refer to the notes to the financial statements\*\*

UTAH TRANSIT AUTHORITY  
INTRODUCTORY SECTION  
Year Ended December 31, 2019 and 2018

**COMPARATIVE STATEMENTS OF EXPENSES AND CHANGES IN NET POSITION**

	<u>2019</u>	<u>2018</u>
<b>OPERATING REVENUES</b>		
Passenger fares	\$ 52,649,054	\$ 52,051,892
Advertising	2,462,500	2,412,500
<b>Total operating revenues</b>	<b><u>55,111,554</u></b>	<b><u>54,464,392</u></b>
<b>OPERATING EXPENSES</b>		
Bus service	104,570,413	96,719,747
Rail service	77,972,467	75,157,087
Paratransit service	23,121,527	21,857,632
Other service	3,247,699	3,056,191
Operations support	47,056,444	45,557,749
Administration	36,738,745	39,593,947
Capital maintenance projects	19,078,502	38,654,111
Depreciation	146,112,123	80,565,077
<b>Total operating expenses</b>	<b><u>457,897,920</u></b>	<b><u>401,161,541</u></b>
<b>Excess of operating expenses over operating revenues</b>	<b><u>(402,786,366)</u></b>	<b><u>(346,697,149)</u></b>
<b>NON-OPERATING REVENUES (EXPENSES)</b>		
Contributions from other governments (sales tax)	317,797,604	282,933,591
Federal preventative maintenance grants	69,746,231	61,820,668
Investment income	6,821,490	6,525,872
Other	(45,372,222)	8,155,668
Interest expense	(87,541,906)	(91,000,388)
<b>Net non-operating revenues</b>	<b><u>261,451,197</u></b>	<b><u>268,435,411</u></b>
<b>LOSS BEFORE CONTRIBUTIONS</b>	<b><u>(141,335,169)</u></b>	<b><u>(78,261,738)</u></b>
<b>Capital contributions:</b>		
Federal grants	16,395,068	31,585,004
Local	17,383,709	12,151,003
Capital contribution	1,030,066	20,142,932
<b>Total capital contributions</b>	<b><u>34,808,843</u></b>	<b><u>63,878,939</u></b>
Change in Net Position	(106,526,326)	(14,382,799)
Total Net Position, January 1	<u>979,294,620</u>	<u>993,677,419</u>
<b>TOTAL NET POSITION, DECEMBER 31</b>	<b><u>\$ 872,768,294</u></b>	<b><u>\$ 979,294,620</u></b>

\*\*Readers wanting additional information should refer to the notes to the financial statements\*\*

**COMPARATIVE STATEMENTS OF CASH FLOW**

	<u>2019</u>	<u>2018</u>
<b>Cash flows from operating activities:</b>		
Passenger receipts	\$ 54,460,498	\$ 53,155,758
Advertising receipts	2,500,000	2,450,000
Payments to vendors	(111,394,592)	(137,245,416)
Payments to employees	(149,031,724)	(124,125,880)
Employee benefits paid	(68,287,980)	(81,158,163)
<b>Net cash used in operating activities</b>	<b><u>(271,753,798)</u></b>	<b><u>(286,923,701)</u></b>
<b>Cash flows from noncapital financing activities:</b>		
Contributions from other governments (sales tax)	307,813,615	283,545,887
Federal preventative maintenance grants	77,007,721	67,144,601
Other receipts	4,347,043	6,202,743
<b>Net cash provided by noncapital financing activities</b>	<b><u>389,168,379</u></b>	<b><u>356,893,231</u></b>
<b>Cash flows from capital and related financing activities:</b>		
Contributions for capital projects		
Federal	16,316,378	46,222,427
Local	15,795,005	16,414,407
Proceeds from the sale of revenue bonds	312,375,835	257,785,547
Deposit into escrow for refunding bonds	(254,152,865)	(125,172,395)
Payment of bond principal	(24,584,516)	(18,921,211)
Interest paid on revenue bonds	(87,695,985)	(105,194,215)
Proceeds from leases	9,880,000	14,377,000
Purchases of property, facilities, and equipment	(57,603,695)	(67,528,327)
Proceeds from the sale of property	1,653,736	5,948,541
<b>Net cash used in capital and related financing activities</b>	<b><u>(68,016,107)</u></b>	<b><u>23,931,774</u></b>
<b>Cash flows from investing activities:</b>		
Proceeds from the sales of investments	584,640	-
Interest on investments	6,236,850	5,062,618
<b>Net cash provided by investing activities</b>	<b><u>6,236,850</u></b>	<b><u>5,062,618</u></b>
Net increase in cash and cash equivalents	56,219,964	98,963,922
Cash and cash equivalents at beginning of year	<u>235,771,778</u>	<u>136,807,856</u>
Cash and cash equivalents at end of year	<u>\$ 291,991,742</u>	<u>\$ 235,771,778</u>

\*\*Readers wanting additional information should refer to the notes to the financial statements\*\*



**COMPARATIVE STATEMENTS OF CASH FLOWS (continued)**

	<u>2019</u>	<u>2018</u>
<b>Reconciliation of Cash to the Statement of Net Position</b>		
Cash and cash equivalents at year end from cash flows	\$ 291,991,742	\$ 235,771,778
Total cash and cash equivalents and investments	<u>291,991,742</u>	<u>235,771,778</u>
Cash and investments as reported on the Statement of Net Position		
Cash and cash equivalents	121,247,679	103,037,555
Current Restricted Cash and Cash Equivalents	892,005	-
Noncurrent restricted assets (cash equivalents and investments)		
Bonds funds	44,906,842	47,668,250
Interlocal agreements	6,778,351	7,040,441
Represented employee benefits	4,596,492	4,133,950
Escrow funds	105,638,304	66,174,773
Self-insurance deposits	<u>7,932,069</u>	<u>7,716,809</u>
Total cash and cash equivalents and investments	<u>291,991,742</u>	<u>235,771,778</u>
<b>Reconciliation of operating loss to net cash used in operating activities:</b>		
Operating loss	(402,786,366)	(346,697,149)
Adjustments to reconcile excess of operating expenses over operating revenues to net cash used in operating activities:		
Pension expense	(942,818)	(2,748,070)
Depreciation	146,112,123	80,565,076
Changes in assets and liabilities:		
Parts and supplies inventories	(492,051)	(3,862,516)
Prepaid expenses	542,880	(58,211)
Accounts payable - trade and restricted	(17,745,514)	(16,967,292)
Accrued liabilities	1,709,004	1,703,097
Unearned revenue	<u>1,848,944</u>	<u>1,141,364</u>
<b>Net cash used in operating activities</b>	<u>\$ (271,753,798)</u>	<u>\$ (286,923,701)</u>

\*\*Readers wanting additional information should refer to the notes to the financial statements\*\*



UTAH TRANSIT AUTHORITY  
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**COMPARATIVE STATEMENT OF FIDUCIARY NET POSITION**

	<u>2019</u>	<u>2018</u>
<b>ASSETS</b>		
Cash Advanced to Advance CFO	\$ 476,391	\$ 604,152
<b>Total Cash</b>	<b>476,391</b>	<b>604,152</b>
Investments at fair value as determined by quoted market prices	238,931,999	192,047,892
Prepaid Benefits	1,213,458	1,095,081
Dividends Receivable	7,311	7,859
Accounts Receivable - Benefits	3,674	10,978
Accounts Receivable - Contributions	1,132,757	880,663
<b>Total Receivables</b>	<b>1,143,742</b>	<b>899,500</b>
<b>Total Assets</b>	<b>\$ 241,765,590</b>	<b>\$ 194,646,625</b>
<b>LIABILITIES</b>		
Benefits Payable	\$ 8,240	\$ -
Withholding Taxes Payable	-	108,077
<b>Total Liabilities</b>	<b>8,240</b>	<b>108,077</b>
<b>NET POSITION</b>		
Net Position Held in Trust for Pension Benefits	<b>\$ 241,757,350</b>	<b>\$ 194,538,548</b>

\*\*Readers wanting additional information should refer to the notes to the financial statements\*\*



UTAH TRANSIT AUTHORITY  
 INTRODUCTORY SECTION  
 Year Ended December 31, 2019 and 2018

**COMPARATIVE STATEMENT OF CHANGES IN FIDUCIARY NET POSITION**

	<u>2019</u>	<u>2018</u>
<b>ADDITIONS</b>		
Employer Contributions	\$ 24,008,192	\$ 22,355,434
Participant Voluntary Contributions	298,803	223,572
<b>Total Contributions</b>	<b>24,306,995</b>	<b>22,579,006</b>
Investment Income		
Net Appreciation in Fair Value of Investments	39,627,534	(17,276,731)
Interest	61,626	94,458
Dividends	1,543,060	1,193,815
Other Income	-	300
<b>Total Investment Income</b>	<b>41,232,220</b>	<b>(15,988,158)</b>
Less: Investment Expense	583,287	641,763
<b>Net Investment Income</b>	<b>40,648,933</b>	<b>(16,629,921)</b>
<b>Total Additions</b>	<b>64,955,928</b>	<b>5,949,085</b>
<b>DEDUCTIONS</b>		
Monthly Benefits Paid	12,000,602	10,824,630
Lump Sum Distributions	5,302,097	4,650,189
Administrative Expense	434,427	440,279
<b>Total Deductions</b>	<b>17,737,126</b>	<b>15,915,098</b>
<b>NET INCREASE (DECREASE)</b>	<b>47,218,802</b>	<b>(9,966,013)</b>
<b>Net Position Held in Trust For Pension Benefits</b>		
Beginning of Year	194,538,548	204,504,561
<b>As of December 31</b>	<b>\$ 241,757,350</b>	<b>\$ 194,538,548</b>

\*\*Readers wanting additional information should refer to the notes to the financial statements\*\*



**NOTE 1 – DESCRIPTION OF THE AUTHORITY OPERATIONS AND DEFINITION OF THE ENTITY**

A. Organization

The Utah Transit Authority (Authority) was incorporated on March 3, 1970 under authority of the Utah Public Transit District Act of 1969 for the purpose of providing a public mass transportation system for Utah communities.

The Authority's service area lies in the region commonly referred to as the Wasatch Front. The service area extends from the Wasatch Mountains on the east to the Great Salt Lake on the west, is approximately 100 miles long and 30 miles wide, and consists of an area of approximately 1,400 square miles that covers all or portions of six (6) principal counties (Box Elder, Davis, Salt Lake, Tooele, Utah and Weber). The service area also includes a small portion of Juab County. The total population within the six principal counties is approximately 2,507,775 which represents approximately 79.3% of the state's total population.

The Authority's operations include commuter rail service from Ogden to Provo, light rail service in Salt Lake County, and bus service, paratransit service for the transit disabled, rideshare and van pool programs system wide.

The Authority is governed by a three-member full-time board of trustees. The Governor appoints nominees from the three appointing districts within the UTA service territory to serve as trustees. The names of the nominees are then forwarded to the Senate for confirmation. Once confirmed, an appointee is sworn in as a trustee.

Utah Transit Authority also has a nine-member local advisory board. The local advisory board representation includes: three members appointed by the Salt Lake County council of governments; one member appointed by the Mayor of Salt Lake City; two members appointed by the Utah County council of governments; one member appointed by the Davis County council of governments; one member appointed by the Weber County council of governments; and one member appointed by the councils of governments of Tooele and Box Elder counties. Terms for local advisory board members are indefinite.

B. Reporting Entity

The Authority has adopted the provisions of Governmental Accounting Standards Board (GASB) Statement No. 14, *The Financial Reporting Entity*, and GASB Statement No. 39, *Determining Whether Certain Organizations Are Component Units - An Amendment of GASB Statement No. 14*. Accordingly, the accompanying financial statements include only the accounts and transactions of the Authority. Under the criteria specified in Statements No. 14 and No. 39, the Authority has no component units. Due to the changes in governance in 2018, UTA is now considered a component unit of State of Utah.

These conclusions regarding the financial reporting entity are based on the concept of financial accountability. The Authority is not financially accountable for any other organizations. Additionally, the Authority has considered the provisions of GASB No. 39 which follows the concept of economic independence. The Authority does not raise or hold economic resources for the direct benefit of a governmental unit and other governmental units do not have the ability to access economic resources held by the Authority. This is evidenced by the fact that the Authority is a legally and fiscally separate and distinct organization under the provision of the Utah State Code.

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**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

A. Basis of Accounting

The Authority reports as a single enterprise fund and uses the accrual method of accounting and the economic resources measurement focus. Under this method, revenues are recognized when they are earned and expenses are recognized when they are incurred.

B. Standards for Reporting Purposes

The financial statements of the Authority have been prepared in conformity with accounting principles generally accepted in the United States of America as prescribed by GASB.

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets, deferred outflows of resources, liabilities, deferred inflows of resources, and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts or revenues and expenses during the reporting period. Actual results could differ from those estimates.

C. Federal Planning Assistance and Preventative Maintenance Grants

Federal planning assistance grants received from the Federal Transit Administration (FTA) and preventative maintenance grants are recognized as revenue and receivable during the period in which the related expenses are incurred and eligibility requirements are met. The FAST Act (Fixing America's Surface Transportation Act) is a fully funded five-year authorization of surface transportation programs. This Act allows for the replacement and repair of aging infrastructure.

D. Federal Grants for Capital Expenditures

The U.S. Department of Transportation, through contracts between the Authority and the FTA, provides federal funds of 35% to 100% of the cost of property, facilities and equipment acquired by the Authority through federal grants. Grant funds for capital expenditures are earned and recorded as capital contribution revenue when the capital expenditures are made and eligibility requirements are met.

E. Classification of Revenues and Expenses

- *Operating revenues:* Operating revenues include activities that have the characteristics of exchange transactions such as passenger revenues and advertising revenues.
- *Operating expenses:* Operating expenses include payments to suppliers, employees, and third parties on behalf of employees and all payments that do not result from transactions defined as capital and related financing, non-capital financing, or investing activities.
- *Non-operating revenues:* Non-operating revenues include activities that have the characteristics of non-exchange transactions and other revenue sources that are defined as non-operating revenues by GASB Statement No. 9, *Reporting Cash Flows of Proprietary and Nonexpendable Trust Funds and Governmental Entities That Use Proprietary Fund Accounting*, and GASB Statement No. 34. Examples of non-operating revenues would be the contributions from other governments (sales tax), federal grants and investment income.
- *Non-operating expenses:* Non-operating expenses include payments from transactions defined as capital and related financing, non-capital financing or investing activities.

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**

F. Contributions from Other Governments

The counties and municipalities who receive transit services from the Authority have agreed to contribute a portion of sales tax to the Authority in exchange for service. These contributions are received by the Authority approximately 60 days after the collection of the sales tax, and as such are recorded as an accrual to revenue and receivable during that period.

The following percentage of sales have been authorized as Local Option Sales Tax and dedicated to support transit:

Salt Lake County	0.7875%
Davis County	0.6500%
Weber County	0.6500%
Box Elder County	0.5500%
Utah County	0.6260%
Tooele County	0.4000%

G. Cash and Cash Equivalents

Cash and cash equivalents include cash on hand, demand deposits, and amounts invested in a repurchase agreement, a certificate of deposit and the Utah Public Treasurers' Investments Fund, including restricted cash equivalents. The Authority considers short-term investments with an original maturity of three (3) months or less to be cash equivalents (Note 3).

H. Investments

Cash in excess of operating requirements is invested by the Authority. The Authority's investments comply with the Utah Money Management Act, and are stated at fair value, which is primarily determined based upon quoted market prices at year end (Note 3).

*Investment policy:* The Authority's investment policy is established by the Board of Trustees. The Treasurer is charged with investing in accordance with the investment policy and the Utah Money Management Act.

I. Receivables

Receivables consist primarily of amounts due to the Authority from sales tax collections, federal grants, local government partners, pass sales and investment income. Management does not believe any credit risk exists related to these receivables. As such there is no current provision for bad debts.

J. Parts and Supplies Inventories

Parts and supplies inventories are stated at the lower of cost (using the moving average cost method) or market. Inventories generally consist of fuel, lube oil, antifreeze and repair parts held for consumption. Inventories are expensed as used.

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**

K. Capital Assets

Capital assets include land and land improvements, right of way, buildings and building improvements, infrastructure, vehicles, equipment, intangibles, as well as any leased capital assets in these categories. Capital assets, other than infrastructure and intangible software, are defined by UTA policy as an asset with an initial, individual cost of \$5,000 or more. Infrastructure capital assets are defined as assets with an initial, individual cost of \$50,000 or more. Intangible software capital assets are defined as assets with an initial, individual software license cost of \$10,000 or more, or \$100,000 or more implementation cost per software. The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend the asset’s life, are not capitalized, but are charged to operating expense as incurred. Upon disposal of capital assets, the accounts are relieved of the related costs and accumulated depreciation, and the resulting gains or losses are reflected in the statement of revenues, expenses and changes in net position.

Depreciation of capital assets is recorded using the straight-line method over the estimated useful lives of the assets.

Capital assets are assigned the following estimated useful lives:

Capital Assets	Years
Land Improvements	10 to 25
Buildings and Building Improvements	20 to 50
Infrastructure	5 to 75
Revenue Service Vehicles	4 to 30
Equipment	4 to 20
Intangibles	4 to 20
Leased Land Improvements	50 to 52
Leased Revenue Service Vehicles	4 to 12



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**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**

L. Amount Recoverable – Interlocal Agreement

In 2008, the Authority entered into an agreement with the Utah Department of Transportation (UDOT) which required the Authority to pay UDOT \$15 million in 2008 and \$15 million in 2009 for the rights to Salt Lake County's 2% of the 0.25% part 17 sales tax through the years 2045.

The Authority records such payments made to other entities for rights to future revenues as Amount Recoverable – Interlocal Agreement. This amount is amortized over the life of the agreement.

M. Compensated Absences

Vacation pay is accrued and charged to compensation expense as earned. Sick pay benefits are accrued as vested by Authority employees.

N. Risk Management

The Authority is exposed to various risks of loss related to torts; theft, damage and destruction of assets; environmental matters; worker's compensation self-insurance; damage to property; and injuries to passengers and other individuals resulting from accidents, errors and omissions.

Under the Governmental Immunity Act, the maximum statutory liability in any one accident is \$3 million for incidents occurring after May 1, 2019. The Authority is self-insured for amounts up to this limit. The Authority has Railroad Liability Coverage of \$100 million per annum with \$5 million of risk retention. The Authority is self-insured for worker's compensation up to the amount of \$1 million per incident and has excess insurance for claims over this amount. The Authority has insurance for errors and omissions and damage to property in excess of \$100,000 per annum.

O. Pensions

For purposes of measuring the net pension liability, deferred outflows of resources and deferred inflows of resources related to pensions, and pension expense, information about the fiduciary net position of the Utah Transit Authority Employee Retirement Plan and Trust ("the Plan") and additions to/deductions from the Plan's fiduciary net position have been determined on the same basis as they are reported by the Plan. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.

P. Net Position

The Authority's net position is classified as follows:

- *Net investment in capital assets:* This component of net position consists of the Authority's total investment in capital assets, net of accumulated depreciation, reduced by the outstanding debt obligations related to those assets. To the extent debt has been incurred, but not yet expended for capital assets, such amounts are not included as a component of net investment in capital assets.
- *Restricted for debt service:* This component of net position consists of the amount restricted by bond covenants for debt service.
- *Restricted for interlocal agreement:* This component of net position consists of the amounts restricted by interlocal agreements with the municipalities of Willard, Perry and Brigham City in Box Elder County.

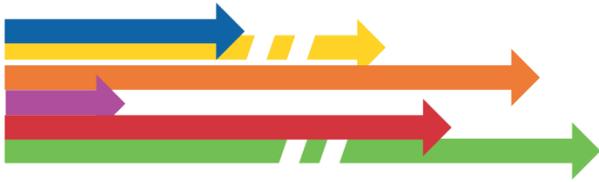
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**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**

- *Restricted for represented employee benefits:* This component of net position consists of the amount restricted by the Utah Transit Authority Bargaining Unit Employees’ Insurance Trust Account Agreement for the purpose of providing represented employee benefits.
- *Self-insurance deposits:* This component of net position consists of the fund amount set aside for risk.
- *Unrestricted:* This component of net position consists of that portion of net position that does not meet the definition of restricted or net investment in capital assets. When both restricted and unrestricted resources are available for use, it is the Authority’s policy to use restricted resources first, then unrestricted resources as they are needed.

	2019	2018
NET POSITION		
Net investment in capital assets	\$ 692,675,681	\$ 827,646,243
Restricted for:		
Debt Service	44,906,842	47,668,250
Interlocal agreements	9,513,370	7,040,441
Represented employee benefits	4,596,492	4,133,950
Self-insurance deposits	7,932,069	7,716,809
Unrestricted	113,143,840	85,088,927
TOTAL NET POSITION	<u>\$ 872,768,294</u>	<u>\$ 979,294,620</u>

It was determined during the preparation of the 2019 financial statements that there was an error in the calculation of Restricted Net Position. The error had no impact on the overall Net Position balances reported, however the prior year categories have been corrected.



**NOTE 2 –**

**SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**

**Q. Budgetary and Accounting Controls**

The Authority's annual budgets are approved by the Board of Trustees, as provided for by law. Operating and non-operating revenues and expenditures are budgeted on the accrual basis, except for depreciation. Capital expenditures and grant reimbursements are budgeted on a project basis. Multi-year projects are approved in whole, but are budgeted based on estimated annual expenses.

The Authority adopts its annual budget in December of the preceding year based on recommendations of staff and the local advisory board.

The first step in developing the Authority's budget is a review of the Transit Development Program and Long Range Financial Plan. This plan then acts as a focus for the development of programs and objectives. Concurrent with the development of programs and objectives, revenues for the coming year are estimated. The estimates of the coming year's revenues are then used as a guide for the Authority to determine the amount of change in service to be provided in the following year. Once the level of service for the coming year is determined, each manager develops a departmental budget.

The Executive staff reviews departmental budgets and balances the total budget with project revenues, service requirements, and the Board of Trustee's priorities. The tentative budget is presented to the Board and the Local Advisory Council for their review.

Within 30 days after the tentative budget is approved by the Board, and at least 30 days before the Board adopts its final budget, the Board sends a copy of the tentative budget, a signature sheet and notice of the time and place for a budget hearing to the chief administrative officers and legislative bodies of each municipality and unincorporated county area within the district of the Authority.

Within 30 days after it is approved by the Board and at least 30 days before the Board adopts its final budget, the Board sends a copy of the tentative budget to the Governor and the Legislature for examination and comment.

Before the first day of each fiscal year, the Board adopts the final budget by an affirmative vote of a majority of all the trustees. Copies of the final budget are filed in the office of the Authority. If for any reason the Board has not adopted the final budget on or before the first day of any fiscal year, the tentative budget for such year, if approved by formal action of the Board, is deemed to be in effect for such fiscal year until the final budget for such fiscal year is adopted.

The Board must approve, after consultation with the Local Advisory Council, all increases or decreases to net operating expense by mode or major classification, capital projects, or major revenue classification for the Authority's operating and capital budgets.

The Board must approve all increases or decreases to the net operating expense line, total capital budget line and total operating revenue line of the Authority's operating and capital budgets.

The Authority's budgetary process follows Title 17B, Chapter 1, Section 702 of the Utah Code Annotated, as amended. The annual budget is submitted to the State Auditors' Office within 30 days of adoption.

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**

Q. Recent Accounting Pronouncements

GASB Statement 83  
*Certain Asset Retirement Obligations*  
Takes Effect: December 31, 2020

GASB Statement 84  
*Fiduciary Activities*  
Takes Effect: December 31, 2020

GASB Statement 87  
*Leases*  
Takes Effect: December 31, 2021

GASB Statement 88  
*Certain Disclosures Related to Debt, including Direct Borrowing and Direct Placements*  
Takes Effect: December 31, 2020

GASB Statement 89  
*Accounting for Interest Cost Incurred before the End of a Construction Period*  
Takes Effect: December 31, 2021

GASB Statement 90  
*Majority Equity Interests-an amendment of GASB Statements No. 14 and No. 61*  
Takes Effect: December 31, 2020



**NOTE 3 – CASH, CASH EQUIVALENTS AND INVESTMENTS**

A. Restricted Cash and Cash Equivalents

Restricted cash and cash equivalents are defined as funds restricted by legal requirement(s) outside of the Authority. The Authority is required to maintain certain accounts in connection with the issuance of bonds which are restricted per the bond covenants. In addition, the Authority is acting as the trustee of funds for a represented employee benefits trust.

B. Designated Cash and Cash Equivalents

Designated cash and cash equivalents are considered designated through action by the Authority’s Board of Trustees and have no outside legal restrictions. Designations include funds to stabilize operations and debt service in the case of changing economic environments. The following amounts were considered designated by the Board of Trustees as of December 31 of the respective years:

	<u>2019</u>	<u>2018</u>
Debt Reduction Reserve	\$ 71,341,000	\$ 47,384,438
General Reserve	36,660,000	
Capital Replacement Reserve	10,700,000	
Fuel Reserve	-	1,915,000
Operating Reserve	-	28,507,000
Parts Reserve	-	3,000,000
Service Sustainability Reserve	9,166,000	15,272,000
Total designated cash and cash equivalents	<u>\$ 127,867,000</u>	<u>\$ 96,078,438</u>

- *Designated for Debt Reduction Reserves*— “This component of cash consists of debt service savings from refunded bond issues. In July 2019, in accordance with the Board’s Policy No. 2.1 – Financial Management, the Board affirmed continuing the Debt Reduction Reserve and the primary purpose to be primarily early retirement of outstanding debt.
- *Designated for general reserves* – This component of cash including the risk reserve, funded at a level equal to at least twelve percent (12%) of the Authority’s budgeted operating expense, excluding non-operating expense, to be used as a working capital account throughout the year. The Treasurer will manage the use of the funds in the general operating reserve. (*Utah Transit Authority Board Policy No. 2.1 Financial Management*)
- *Designated for capital replacement reserves* – This component of cash is expected to reach 1% of the value of property, facilities, and equipment cost as reported in the comprehensive annual financial report to be used for capital repair or replacement costs due to extraordinary circumstances. The Board of Trustees, recognizing that the increase reserve requirement would take time to meet, approved at their April 29, 2020 meeting to officially meet the 1% requirement by December 31, 2020. The Board of Trustees must give its prior approval before funds in the capital replacement reserve are used. (*Utah Transit Authority Board Policy No. 2.1 Financial Management*)
- *Designated for fuel reserves (No longer used after June 12, 2019)* – This component of cash consists of the amount designated by the Board of Trustees to mitigate the financial impact of unexpected and rapidly rising fuel prices. (*Executive Limitations Policy No. 2.3.3 Budgeting*)
- *Designated for operating reserves (No longer used after June 12, 2019)* – This component of cash consists of 9.33% (one month expense, plus 1%) of the annual budgeted operating expense, and is required by the Board of Trustees. (*Executive Limitations Policy No. 2.3.3 Budgeting*)

**NOTE 3 – CASH, CASH EQUIVALENTS AND INVESTMENTS (continued)**

- *Designated for parts reserves (No longer used after June 12, 2019)* – This component of cash consists of the amount designated by the Board of Trustees to be accumulate funds in anticipation of a State of Good Repairs requirement. (*Executive Limitations Policy No. 2.3.3 Budgeting*)
- *Designated for service sustainability reserves* - This component of cash consists of 3% of the Authority’s annual operating budget expenses for the purpose of preserving service levels when the Authority is facing a revenue shortfall or cost overrun due to extraordinary circumstances, such as an economic downturn or rapid rise in fuel prices or any combination of such events. The Board of Trustees must give its prior approval before funds in the bond reserve are used. (*Utah Transit Authority Board Policy No. 2.1 Financial Management*)

C. Deposits and Investments

Deposits and investments for the Authority are governed by the Utah Money Management Act (*Utah Code Annotated*, Title 51, Chapter 7, “the Act”) and by rules of the Utah Money Management Council (the Council). Following are discussions of the Authority’s exposure to various risks related to its cash management activities.

- *Custodial Credit Risk* - Custodial credit risk for deposits is the risk that in the event of a bank failure, the Authority’s deposits may not be recovered. The Authority’s policy for managing custodial credit risk is to adhere to the Act. The Act requires all deposits of the Authority to be in a *qualified depository*, defined as any financial institution whose deposits are insured by an agency of the federal government and which has been certified by the Commissioner of Financial Institutions as meeting the requirements of the Act and adhering to the rules of the Council.

At December 31, 2019 and 2018, the balances in the Authority’s bank demand deposit accounts and certificate of deposit accounts according to the bank statements totaled \$42,611,072 and \$17,599,147, respectively, of which \$261,276 and \$257,989 were covered by Federal depository insurance.

- *Credit Risk* - Credit risk is the risk that the counterparty to an investment will not fulfill its obligations. The Authority’s policy for limiting the credit risk of investments is to comply with the Act. The Act requires investment transactions to be conducted only through qualified depositories, certified dealers, or directly with issuers of investment securities. Permitted investments include deposits of qualified depositories; repurchase agreements; commercial paper that is classified as “first-tier” by two nationally recognized statistical rating organizations, one of which must be Moody’s investor Service or Standard & Poor’s; bankers acceptances; obligations of the U.S. treasury and U.S. government sponsored enterprise; bonds and notes of political subdivision of the state of Utah; fixed rate corporate obligations and variable rated securities rated “A” or higher by two nationally recognized statistical rating services as defined in the Act.

The Authority is authorized to invest in the Utah Public Treasurers’ Investment Fund (PTIF), an external pooled investment fund managed by the Utah State Treasurer and subject to the Act and Council requirements. The PTIF is not registered with the SEC as an investment company and deposits in the PTIF are not insured or otherwise guaranteed by the State of Utah. The PTIF operates and reports to the participants on an amortized cost basis. The income, gains and losses, net of administration fees of the PTIF are allocated based upon the participants’ average daily balances.



**NOTE 3 – CASH, CASH EQUIVALENTS AND INVESTMENTS (continued)**

The following are the Authority’s investment as of December 31, 2019:

Investment	Grade	Investment Maturity (in years)		
		Less than 1	1 to 3	TOTAL
U.S. Agencies	AAA	\$ 1,500,120	\$ 1,516,261	\$ 3,016,381
Corporate Bonds	AA+ to AA-, A+ to A-, BBB+ to BBB-	7,374,188	1,346,191	8,720,379
MM - Cash		49,966,838	-	49,966,838
PTIF		66,565,679	-	66,565,679
Total Investments		\$ 125,406,826	\$ 2,862,453	\$ 128,269,277

- *Interest Rate Risk* - Interest rate risk is the risk that changes in the interest rates will adversely affect the fair value of an investment. The Authority manages its exposure by strictly complying with its Investment Policy which complies with the Act. The Authority’s policy relating to specific investment-related risk is to adhere to the Act. The Act requires that the remaining term to maturity of investments may not exceed the period of availability of the fund to be invested. The maximum adjusted weighted average maturity of the portfolio does not exceed 90 days.
- *Fair Value of Investments* – The framework for measuring fair value provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3).

The three levels of the fair value hierarchy under GASB Statement 72 are described as follows:

Level 1: Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the Plan has ability to access.

Level 2: Inputs to the valuation methodology include:

- Quoted prices for similar assets of liabilities in active markets;
- Quoted prices for identical or similar assets or liabilities in inactive markets;
- Inputs other than quoted prices that are observable for the asset or liability;
- Inputs that are derived principally from or corroborated by observable market data by correlation or other means.

If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.

Level 3: Inputs to the valuation methodology are unobservable and significant to the fair value measurement. The asset’s fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used need to maximize the use of observable inputs and minimize the use of unobservable inputs.



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**NOTE 3 – CASH, CASH EQUIVALENTS AND INVESTMENTS (continued)**

The Authority invests with Zions Capital Advisors and the Utah Public Treasurers Investment Fund. Both of these organizations meet the requirements of the Utah Money Management Act. The following are the Authority’s investment as of December 31, 2019 by organization and by fair value measurement:

	12/31/2019	Fair Value Measurements		
		Level 1	Level 2	Level 3
<b>Zions Capital Advisors</b>				
Agency	\$ 3,016,381	\$ 3,016,381	\$ -	\$ -
Corporate	8,720,379	-	8,720,379	-
Currency	16,940,734	16,940,734	-	-
Total Zions Capital Advisor investments	28,677,494	19,957,115	8,720,379	-
<b>Zions Trustee Investments</b>				
Money market	33,026,104	-	33,026,104	-
Total Zions Trustee investments	33,026,104	-	33,026,104	-
Public Treasurers Investment Fund	66,565,679	-	66,565,679	-
Total investments by fair value level	\$ 128,269,277	\$ 19,957,115	\$ 108,312,162	\$ -



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**NOTE 4 – CAPITAL ASSETS**

Construction in progress for 2019 consists of following large projects:

- \$35.8 million for Positive Train Control to be completed December 31, 2021.
- \$22.5 million for the Depot District expected to be completed January of 2023.
- \$17.2 million for Provo/Orem Bus Rapid Transit expected to be completed December 31, 2020.
- \$5.5 million for the I-15 Road Widening at 7200 S by UDOT expected to be completed June of 2020.

UTA formally adopted a Capital Asset manual, policy, and formal procedures that better defined asset categories and processes in early 2019. These changes are evident in the amount and magnitude of the transfers of capital assets in 2019.

A biennial inventory of capital assets was completed in 2019. During the 2019 inventory, there were 892 assets out of 9,986 total assets, that were no longer owned by UTA, did not meet the new definitions of a capital asset, or were previously disposed of without accounting documentation. The effect on the financial statement are as follows:

Quantitative Results of 2019 Inventory Write-Off	Original Cost 12/31/2019	Accumulated Depreciation 12/31/2019	Loss on Disposal 12/31/2019
<b>Capital assets not being depreciated</b>			
Land	\$ 13,783,836	\$ -	\$ 13,783,836
Total capital assets not being depreciated	13,783,836	-	13,783,836
<b>Capital assets being depreciated</b>			
Infrastructure	22,944,287	(6,693,267)	16,251,020
Buildings and Building Improvements	28,717,226	(9,134,066)	19,583,160
Revenue Vehicles	1,398,587	(1,377,902)	20,685
Equipment	85,718,230	(85,131,576)	586,654
Land improvements	7,010,225	(5,897,453)	1,112,772
Intangibles	2,623,892	(2,623,892)	-
Total capital assets being depreciated	148,412,447	(110,858,156)	37,554,291
Total capital assets	\$ 162,196,283	\$ (110,858,156)	\$ 51,338,127



UTAH TRANSIT AUTHORITY  
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**NOTE 4 – CAPITAL ASSETS (continued)**

	Balance 12/31/2018	Increases	Transfers	Decreases	Balance 12/31/2019
Capital assets not being depreciated					
Land	\$ 440,917,126	\$ 282,472	\$ (8,681,504)	\$ (24,292,916)	\$ 408,225,179
Construction in Progress	109,972,902	57,144,662	-	(27,418,218)	139,699,345
Total capital assets not being depreciated	<u>550,890,028</u>	<u>57,427,134</u>	<u>(8,681,504)</u>	<u>(51,711,134)</u>	<u>547,924,524</u>
Capital assets being depreciated					
Infrastructure	2,515,426,407	5,850,625	1,350,739	(22,944,287)	2,499,683,484
Buildings and Building Improvements	302,473,212	1,215,530	(29,548,307)	(28,957,729)	245,182,707
Revenue Vehicles	753,650,299	2,901,827	1,107,017	(5,212,828)	752,446,315
Leased Revenue Vehicles	60,365,705	7,986,592	(1,760,142)	-	66,592,155
Equipment	144,817,614	3,592,681	(1,656,730)	(86,049,824)	60,703,740
Land improvements	79,140,497	3,309,427	30,507,423	(7,029,191)	105,928,156
Leased Land Improvements	75,804,461	-	8,681,504	-	84,485,965
Intangibles	9,585,417	11,331,072	-	(2,623,892)	18,292,597
Total capital assets being depreciated	<u>3,941,263,612</u>	<u>36,187,754</u>	<u>8,681,504</u>	<u>(152,817,751)</u>	<u>3,833,315,119</u>
Less: Accumulated depreciation					
Infrastructure	(714,768,440)	(76,833,150)	(1,350,738)	6,693,267	(786,259,061)
Buildings and Building Improvements	(116,927,359)	(13,821,747)	16,667,243	10,492,537	(103,589,326)
Revenue Vehicles	(370,587,010)	(34,469,136)	(786,301)	5,192,143	(400,650,304)
Leased Revenue Vehicles	(10,781,376)	(7,594,114)	1,384,045	-	(16,991,445)
Equipment	(138,277,665)	(4,198,547)	1,629,360	85,604,580	(55,242,272)
Land Improvements	(41,223,412)	(4,816,713)	(17,576,453)	5,914,602	(57,701,976)
Leased Land Improvements	(128,764)	(3,044,077)	-	-	(3,172,841)
Intangibles	(9,562,603)	(1,334,639)	32,844	2,623,891	(8,240,507)
Total accumulated depreciation	<u>(1,402,256,629)</u>	<u>(146,112,123)</u>	<u>-</u>	<u>116,521,020</u>	<u>(1,431,847,732)</u>
Capital assets being depreciated, net	<u>2,539,006,983</u>	<u>(109,924,369)</u>	<u>8,681,504</u>	<u>(36,296,731)</u>	<u>2,401,467,387</u>
Total capital assets, net	<u>\$ 3,089,897,011</u>	<u>\$ (52,497,235)</u>	<u>\$ -</u>	<u>\$ (88,007,865)</u>	<u>\$ 2,949,391,911</u>



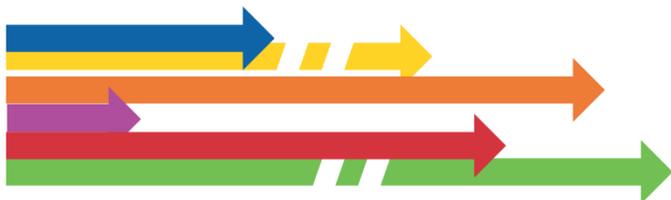
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**NOTE 4 – CAPITAL ASSETS (continued)**

	Balance 12/31/2017	Increases	Transfers	Decreases	Balance 12/31/2018
Capital assets not being depreciated					
Land	\$ 425,736,158	\$ 19,259,000	\$ -	\$ (4,078,032)	\$ 440,917,126
Construction in Progress	205,102,230	86,039,389	-	(181,168,717)	109,972,902
Total capital assets not being depreciated	<u>630,838,388</u>	<u>105,298,389</u>	<u>-</u>	<u>(185,246,749)</u>	<u>550,890,028</u>
Capital assets being depreciated					
Infrastructure	2,528,679,092	-	(13,252,685)	-	2,515,426,407
Buildings and Building Improvements	132,444,199	25,091,054	145,611,097	(673,138)	302,473,212
Revenue Vehicles	757,025,778	35,408,999	(23,891,477)	(14,893,001)	753,650,299
Leased Revenue Vehicles	-	42,343,725	18,047,840	(25,860)	60,365,705
Equipment	326,289,349	3,146,819	(180,348,041)	(4,270,513)	144,817,614
Land improvements	12,300,402	54,250	66,785,845	-	79,140,497
Leased Land Improvements	-	75,804,461	-	-	75,804,461
Intangibles	22,537,996	-	(12,952,579)	-	9,585,417
Total capital assets being depreciated	<u>3,779,276,816</u>	<u>181,849,308</u>	<u>-</u>	<u>(19,862,512)</u>	<u>3,941,263,612</u>
Less: Accumulated depreciation					
Infrastructure	(651,651,962)	(38,120,418)	(24,996,060)	-	(714,768,440)
Buildings and Building Improvements	(64,302,569)	8,055,469	(61,335,558)	655,299	(116,927,359)
Revenue Vehicles	(361,922,236)	(33,229,497)	9,795,521	14,769,202	(370,587,010)
Leased Revenue Vehicles	-	(5,871,145)	(4,928,992)	18,761	(10,781,376)
Equipment	(231,855,525)	(9,361,139)	98,668,483	4,270,516	(138,277,665)
Land Improvements	(9,123,916)	(1,909,583)	(30,189,913)	-	(41,223,412)
Leased Land Improvements	-	(128,764)	-	-	(128,764)
Intangibles	(22,549,122)	-	12,986,519	-	(9,562,603)
Total accumulated depreciation	<u>(1,341,405,330)</u>	<u>(80,565,077)</u>	<u>-</u>	<u>19,713,778</u>	<u>(1,402,256,629)</u>
Capital assets being depreciated, net	<u>2,437,871,486</u>	<u>101,284,231</u>	<u>-</u>	<u>(148,734)</u>	<u>2,539,006,983</u>
Total capital assets, net	<u>\$ 3,068,709,873</u>	<u>\$ 206,582,621</u>	<u>\$ -</u>	<u>\$ (185,395,483)</u>	<u>\$ 3,089,897,011</u>

Depreciation expense by mode that mirrors the Comparative Statement of Revenues, Expenses, and Changes in Net Position is as follows:

Depreciation Expense	2019	2018
Bus Service	\$ 25,412,263	\$ 17,144,994
Rail Service	114,000,131	56,825,449
Paratransit Service	4,171,785	4,290,318
Vanpool Service	2,527,944	2,304,317
Total Depreciation Expense	<u>\$ 146,112,123</u>	<u>\$ 80,565,077</u>



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**NOTE 5 – FEDERAL FINANCIAL ASSISTANCE**

The Authority receives a portion of its funding from the through the U.S. Department of Transportation’s Federal Transit Administration (FTA) in the form of federal preventative maintenance, federal operating assistance, and federal capital assistance grants. The majority of these grants require the Authority to participate in the funding of the service and/or capital project. The FTA retains ownership in assets purchased with federal funds.

	<u>2019</u>	<u>2018</u>
Operating assistance		
Federal preventive maintenance grants	\$ 65,398,164	\$ 59,382,717
Federal operating assistance grants	4,348,067	2,437,951
	<u>69,746,231</u>	<u>61,820,668</u>
Capital projects		
Federal capital projects	16,395,068	31,585,004
Prior Year Federal capital projects	9,409	4,041
	<u>16,404,477</u>	<u>31,589,045</u>
 Total federal assistance	 <u>\$ 86,150,708</u>	 <u>\$ 93,409,713</u>

	<u>Prior Year Federal Receivables</u>	<u>Recognized Prior Year Federal Capital</u>	<u>Received Operating Assistance</u>	<u>Received Federal Capital Projects</u>	<u>Year End Federal Receivables</u>	<u>Total</u>
2019	\$ (24,146,542)	\$ 9,409	\$ 77,007,721	\$ 16,316,378	\$ 16,963,742	\$ 86,150,708
2018	\$ (44,107,878)	\$ 4,041	\$ 67,144,601	\$ 46,222,427	\$ 24,146,542	\$ 93,409,713

**NOTE 6 – SELF-INSURANCE CLAIMS LIABILITY**

Changes in the accrued claims liability in 2019 and 2018 were as follows:

	<u>Beginning liability</u>	<u>Changes in estimates</u>	<u>Claim payments</u>	<u>Ending liability</u>
2019	\$ 1,155,787	\$ 3,319,863	\$ (3,613,000)	\$ 862,650
2018	\$ 1,495,597	\$ 3,117,762	\$ (3,457,572)	\$ 1,155,787



**NOTE 7 – PENSION PLANS**

**A) General Information**

Deferred Compensation Plan

The Authority offers its employees a deferred compensation plan created in accordance with Internal Revenue Code Section 457. The plan is available to all employees on a voluntary basis and permits them to defer a portion of their salaries until future years. The deferred compensation is not available to employees until termination, retirement, death or unforeseeable emergency.

All assets and income of the plan are held in trust for the exclusive benefit of the participants and their beneficiaries. As part of its fiduciary role, the Authority has an obligation of due care in selecting the third party administrators. In the opinion of management, the Authority has acted in a prudent manner and is not liable for losses that may arise from the administration of the plan. The deferred compensation assets are held by third party plan administrators and are generally invested in money market funds, stock or bond mutual funds or guarantee funds as selected by the employee.

Defined Benefit Plan

The Authority offers its employees a single employer non-contributory defined benefit pension plan which includes all employees of the Authority who are eligible and who have completed six months of service. The Plan is a qualified government plan and is not subject to all of the provisions of ERISA.

As a defined benefit pension plan, the Authority contributes such amounts as are necessary, on an actuarially-sound basis, to provide assets sufficient to meet the benefits to be paid. Required employee contributions were discontinued effective June 1, 1992. Participants may make voluntary contributions as described below. Interest on existing account balances is credited at 5% per year.

Although the Authority has not expressed any intention to do so, the Authority has the right under the Plan to discontinue its contributions at any time and to terminate the Plan. In the event the Plan terminates, the trustee will liquidate all assets of the Plan and will determine the value of the trust fund as of the next business day following the date of such termination. The trustee will allocate assets of the Plan among the participants and beneficiaries as required by law.

As of February 2016, U.S. Bank began serving as the administrator and custodian of the Plan, with Cambridge Associates, LLC (CA) serving as a third-party investment manager. Prior to February 2016, Fidelity Investments served as the administrator and custodian of the Plan, with Soltis Investment Advisors serving as a third-party investment manager.

**B) Reporting**

The Plan is administered by the Pension Committee that consists of five (5) members, three (3) appointed by the Authority and two (2) appointed by the Amalgamated Transit Union Local 382 in accordance with a collective bargaining agreement. The members of the Pension Committee may (but need not) be participants in the Plan. In the absence of a Pension Committee, the Plan Administrator assumes the powers, duties and responsibilities of the Pension Committee with respect to the administration of the Plan.



**NOTE 7 – PENSION PLANS (continued)**

**C) Membership**

The Plan’s membership consisted of:

	January 1, 2019	January 1, 2018
Active Participants		
Fully Vested	1406	1377
Partially Vested	-	-
Not Vested	850	788
Inactive Participants Not Receiving Benefits	368	343
Retirees and Beneficiaries Receiving Benefits	668	629
Total	<u>3149</u>	<u>3149</u>

**D) Benefit Terms**

*Retirement Benefits*

Employees with five or more years of service are entitled to annual pension benefits beginning at normal retirement age 65, or any age with 37.5 years of service in the Plan.

For participants who began participating in the Administrative Plan prior to January 1, 1994, the annual benefit is based on a retirement benefit formula equal to:

- 2.3% of average compensation multiplied by the participant’s years of service (not exceeding 20 years), plus
- 1.5% of the average compensation multiplied by the participant’s years of service in excess of 20 years (but such excess not to exceed 9 years of service), plus
- 0.5% for one year plus 2.0% for years in excess of 30 years not to exceed 75% of average compensation.

For all other active participants, the annual benefit is based on a retirement benefit formula equal to:

- 2.0% of average compensation multiplied by the participant’s years of service (not to exceed 37.5 years or 75% of average compensation)

Upon termination of employment, members may leave their retirement account intact for future benefits based on vesting qualification or withdraw the accumulated funds in their individual member account and forfeit service credits and rights to future benefits upon which the contributions were based.

If employees terminate employment before rendering three years of service, they forfeit the right to receive their non-vested accrued plan benefits.



**NOTE 7 – PENSION PLANS (continued)**

*Early Retirement Benefits*

The Plan allows for early retirement benefits if the participant has not reached the age of 65 but is at least age 55 with a vested benefit. Benefits under early retirement are equal to the value of the accrued pension, if the participant had retired at the age of 65, reduced 5% per year if the payments begin before age 65.

*Disability Benefits*

The Plan allows for disability benefits. A member who becomes permanently disabled after 5 years of service will immediately receive the greater of the actuarially-reduced monthly accrued benefit or \$90 per month, reduced by any Authority sponsored disability plans. Payment of the disability benefit ends at age 65.

*Death Benefits*

If a participant's death occurs before age 55, but after 5 years of service, the present value of the participant's accrued vested benefit is payable to the participant's beneficiary in the form of a single lump sum regardless of the amount.

If a participant's death occurs after age 55 and 5 years of service, the participant's beneficiary can elect to receive a benefit equal to the greater of:

- 1) A survivor's pension as if the participant had retired on the date before the death with a 100% joint and survivor annuity in effect, or
- 2) The present value of the survivor's pension, or
- 3) If a spouse of 2 or more years or a minor child, the participant's contribution with interest, plus 50% of the average compensation, payable in the form of a lump sum, or
- 4) A 10-year term certain.

A participant may elect a joint and survivor annuity with 100%, 75% or 50% to be continued to the beneficiary upon the death of the participant.

*Lump Sum Distributions*

Payment in a lump sum, regardless of amount, may be made with the participant's written consent. Effective September 1, 2012, a participant who has not previously received benefits may elect a partial lump sum payment with the remaining part to be paid in the same manner as the traditional annuity.

During 2019 and 2018, 33 and 37 participants in each respective year elected to receive their benefit in the form of lump sum distribution. Lump sum distributions collectively totaled \$5,302,097 and \$4,650,189 for 2019 and 2018, respectively. Individuals are removed from the Plan's membership if they choose to take all of their benefit as a lump sum distribution.

**E) Contributions**

*Employer Contribution Requirements*

Contributions are received from the Authority in amounts determined by the Pension Committee and approved by the Board of Trustees based on the current collective bargaining agreement and the minimum and maximum funding levels recommended by the Plan's actuary.

**NOTE 7 – PENSION PLANS (continued)**

*Participant Voluntary Contributions*

A participant who is vested in the Plan may make voluntary contributions into the Plan, and transfer funds from the Employee 457 Deferred Compensation Plan, for the purpose of purchasing “permissive service credit” (as defined in Internal Revenue Code Section 415(N)(3)(A)), in the Plan. No more than 5 years of “permissive service credit” may be purchased. Any purchase of “permissive service credit” must be made in the final year of employment with the Authority.

**F) Change in Plan Custodian**

As of February 2016, U.S. Bank began serving as the administrator and custodian of the Plan, with Cambridge Associates, LLC (CA) serving as a third-party investment manager.

**G) Method of Accounting**

The Plan prepares its financial statements on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America, under which benefits and expenses are recognized when due and payable and revenues are recorded in the accounting period in which they are earned and become measurable in accordance with the terms of the Plan. Accordingly, the valuation of investments is shown at fair value and both realized and unrealized gains (losses) are included in net appreciation and depreciation in fair value of investments.

GASB Statement No. 67, *Financial Reporting for Pension Plans*, which was adopted during the year ended December 31, 2014, addresses accounting and financial reporting requirements for pension plans. The requirements for GASB No. 67 require changes in presentation of the financial statements, notes to the financial statements, and required supplementary information. Significant changes include an actuarial calculation of total and net pension liability. It also includes comprehensive footnote disclosure regarding the pension liability, the sensitivity of the net pension liability to the discount rate, and increased investment disclosures. The implementation of GASB No. 67 did not significantly impact the accounting for accounts receivable and investment balances. The total pension liability, determined in accordance with GASB No. 67, is presented in Note 7 Section H and in the Required Supplementary Information.

**H) Pension Assets, Liabilities, Expense, and Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions**

*Net pension liability* - At December 31, 2019, the Authority reported a net pension liability of \$103,864,839. The net pension liability was measured as of December 31, 2019, and was determined by an actuarial valuation as of January 1, 2019 and rolled-forward using generally accepted actuarial procedures.



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**NOTE 7 – PENSION PLANS (continued)**

Date	Total Pension Liability	Plan Fiduciary Net Position	Employers Net Pension Liability/(Asset)	Plan Fiduciary Net Position as a Percentage of the Total Plan Liability	Covered Payroll	Net Pension Liability as a Percentage Of Covered Employee Payroll
12/31/2019	\$345,622,189	\$241,757,350	\$103,864,839	69.95%	\$141,812,999	73.24%
12/31/2018	326,086,663	194,538,549	131,548,114	59.66%	132,521,079	99.27%
12/31/2017	305,381,116	204,504,562	100,876,554	66.97%	126,690,540	79.62%
12/31/2016	278,960,378	166,035,257	112,925,121	59.50%	115,430,618	97.80%
12/31/2015	269,069,798	151,631,937	117,437,871	56.40%	110,727,134	106.10%
12/31/2014	247,692,651	146,854,399	100,838,252	59.30%	106,004,057	95.10%
1/1/2014	\$232,691,093	\$135,666,362	\$97,024,731	58.30%	\$102,099,985	95.00%

*Schedule is intended to show information for 10 years. Additional years will be displayed when available.*

*Deferred outflows of resources and deferred inflows of resources - At December 31, 2019, the Authority reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:*

	<u>Deferred Inflows of Resources</u>	<u>Deferred Outflows of Resources</u>
Differences between expected and actual experience	\$ (772,375)	\$ 9,027,318
Change of Assumptions	(1,558,306)	4,432,636
Net difference between projected and actual earnings	<u>(9,322,772)</u>	<u>-</u>
Total	<u>\$ (11,653,453)</u>	<u>\$ 13,459,954</u>

*Pension expense - For the year ended December 31, 2019, the Authority recognized pension expense of \$23,065,374. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized as pension expense as follows:*

<u>Year ending December 31,</u>	<u>Amount</u>
2020	\$ 819,702
2021	(548,371)
2022	3,129,788
2023	(2,955,207)
2024	1,010,852
Thereafter	<u>349,737</u>
Total	<u>\$ 1,806,501</u>

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**NOTE 7 – PENSION PLANS (continued)**

*Actuarial assumptions* - The total pension liability in the January 1, 2019 actuarial valuation was determined using the following actuarial assumptions, applied to all periods included in the measurement:

Inflation	2.30%
Salary Increases	5.40% per annum for the first five (5) years of employment; 3.40% per annum thereafter
Investment rate of return	7.0%, net of investment expenses
Mortality	RP-2014 Blue Collar Mortality Table, with MP-2014 Project Scale (Pre-retirement; Employee Table; Post-retirement Annuitant Table)
Bond Buyer General Obligation 20-Bond Municipal Bond Index	2.74%

The actuarial assumptions used in the January 1, 2019 valuation were based on the results of an actuarial experience study for the five year period ending December 31, 2008.

*Discount rate:* The discount rate used to measure the total pension liability was 7.00%. The projection of cash flows used to determine the discount rate assumed contribution rates as recommended by the Authority’s Pension Committee and approved by the Board of Trustees. Based on these assumptions, the pension plan’s fiduciary net position was projected to be available to make all projected future benefit payments of current active and inactive participants. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

The following sensitivity analysis assumes rate volatility of plus and minus one percent of the discount rate of 7.0%.

	1% Decrease 6.00%	Current Discount Rate 7.00%	1% Increase 8.00%
Total pension liability	\$ 394,219,179	\$ 345,622,189	\$ 305,558,521
Fiduciary net position	241,757,350	241,757,350	241,757,350
Net pension liability	\$ 152,461,829	\$ 103,864,839	\$ 63,801,171



UTAH TRANSIT AUTHORITY  
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**NOTE 7 – PENSION PLANS (continued)**

*Schedule of changes in total pension liability, plan fiduciary net position, and net pension liability:* The following table shows the change to the total pension liability, the plan fiduciary net position, and the net pension liability during the year.

	Increase (Decrease)		
	Total Pension Liability	Plan Fiduciary Net Position	Net Pension Liability
	[a]	[b]	[a]-[b]
Balances as of December 31, 2018	\$ 326,086,663	\$ 194,538,549	\$ 131,548,114
Charges for the year			
Service cost	10,244,115		10,244,155
Interest on total pension liability	22,947,802		22,947,802
Differences between expected and actual experience	3,347,505		
Changes of assumptions	-		
Employer contributions		24,008,192	(24,008,192)
Member voluntary contributions	298,803	298,803	-
Net investment income		40,648,932	(40,648,932)
Benefit payments	(17,302,699)	(17,302,699)	
Administrative expenses		(434,427)	434,427
Balance as of December 31, 2019	\$ <u>345,622,189</u>	\$ <u>241,757,350</u>	\$ <u>103,864,839</u>

**I) Investments**

All Plan investments are stated at fair value. Most types of marketable or actively traded investments are priced by nationally known vendors. In the event that an investment is not priced by the primary vendor, the Custodian (US Bank) engages a secondary vendor or other source. See Note 4- Investments, Fair Value Measurements.

Purchases and sales are recorded on a trade-date basis. Interest income is recorded on the accrual basis. Dividends are recorded on the ex-dividend date.

*Investment Policy*

The Pension Committee has adopted an Investment Policy Statement (IPS). The IPS is reviewed by the Pension Committee once a year, and was amended effective February 2016 to revise the asset classes. A normal weighting is now indicated for each asset class. The IPS was also amended to provide a list of prohibited investments.



**NOTE 7 – PENSION PLANS (CONTINUED) (continued)**

**J) Investments (continued)**

In setting the long-term asset policy for the Plan, the Committee has opted to provide a minimum and maximum allowable allocation to the major asset classes. The aggregate exposure to each of the asset classes is to remain within the following ranges:

	Policy Allocation	
	Target Allocation	Range
Global Equity	63%	51% - 75%
Liquid Diversifiers	10%	0% - 15%
Real Assets	4%	0% - 8%
Alternatives	22%	12% - 32%
Cash & Equivalents	1%	0% - 5%

*Rate of Return*

The long-term rate of return is selected by the Plan’s Pension Committee after a review of the expected inflation and long term real returns, reflecting expected volatility and correlation. The assumption currently selected is 7.00% per annum, net of investment expenses.

**K) Payment of Benefits**

Benefit payments to participants are recorded upon distribution.

**L) Administrative Expenses**

Expenses for the administration of the Plan are budgeted and approved by the Pension Committee. Administrative expenses are paid from investment earnings. Plan expenses are paid from Plan assets. For the years ended December 31, 2019 and 2018, the Plan paid \$434,427 and \$440,279 respectively, of administrative expenses.

**M) Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities and changes therein and the disclosure of contingent assets and liabilities as of the date of the financial statements. Accordingly, actual results could differ from those estimates.



**NOTE 7 – PENSION PLANS (CONTINUED)**

**N) Risks and Uncertainties**

The Plan utilizes various investments which, in general are exposed to various risks such as interest rate risk, credit risk and overall market volatility. Due to the level of risk associated with certain investment securities, it is reasonably possible that changes in the values of investment securities will occur in the near term and such changes could materially affect the amounts reported in the financial statements.

**O) Tax Status**

The Plan operates under an exemption from federal income taxes pursuant to Section 501(a) of the Internal Revenue Code as a defined benefit plan.

**P) Mutual Fund Asset Coverage**

The Securities and Exchange Commission requires mutual fund companies to obtain fidelity bond coverage for the assets under their control. The bond coverage varies in amounts depending on the mutual fund.

**Q) Reclassifications**

Certain amounts in the prior period presentation have been reclassified or added to conform to the current period financial statement presentation. These changes have no effect on previously reported amounts on the Comparative Statement of Changes in Fiduciary Net Position.

**R) Cash Deposits**

Custodial credit risk for cash deposits is the risk in the event of a bank failure, the Plan’s cash deposits may not be returned. The Federal Deposit Insurance Corporation (FDIC) insures up to \$250,000 per depositor per institution. Cash deposits and account balances in excess of \$250,000 are uninsured and uncollateralized. The Plan has no formal policy for cash deposit custodial credit risk. Cash deposits are presented in the financial statements at cost plus accrued interest, which is market or fair value.

Cash equivalents include amounts invested in the Utah Public Treasurer’s Investment Fund. The Plan considers short-term investments with an original maturity of 3 months or less to be cash equivalents.

	<u>2019</u>	<u>2018</u>
Cash held in banking institution(s)	\$ 476,391	\$ 604,152
Cash held in Utah Public Treasurer's Investment Fund	0	0
	<u>\$ 476,391</u>	<u>\$ 604,152</u>



**NOTE 7 – PENSION PLANS (CONTINUED)**

**S) Custodial Credit Risk**

Custodial credit risk for investments is in the risk that the counterparty to an investment will not fulfill its obligations. The Plan has no formal policy for custodial credit risk.

The Plan’s rated investments are show below.

Fixed Income:			
	2019	\$ 51,231,785	AA/Aa Rated
	2018	\$ 44,511,657	AA/Aa Rated

**T) Investment Interest Rate Risk**

Investment interest rate risk is the risk that changes in interest rates of debt investments will adversely affect the fair value of an investment. The Plan has no formal policy for investment interest rate risk. The table below shows the maturities of the Plan’s investments.

Equity funds:			
	2019	\$153,380,592	No maturity dates
	2018	\$121,933,057	No maturity dates
Fixed Inc funds:			
	2019	\$ 51,231,785	Average effective duration: 5.3 years Average effective maturity: 7.5 years
	2018	\$ 44,511,657	Average effective duration: 5.3 years Average effective maturity: 7.5 years
Other funds:			
	2019	\$ 34,319,622	Average effective duration/maturity: n/a
	2018	\$ 26,081,608	Average effective duration/maturity: n/a

**U) Concentration of Credit Risk**

Concentration of credit risk is the risk of loss attributed to the magnitude of a government’s investment in a single issuer. The Plan has no formal policy for concentration of credit risk. The following amounts represent 5% or more of the Plan’s net position as of December 31, 2019 and/or 2018 invested with any one organization. (Investments with Fidelity representing less than 5% of the Plan’s net position are not required to be disclosed, but are included in the detail of total Fidelity Investments in Note 4).

	<u>2019</u>	<u>2018</u>
Equity funds:		
Two Sigma Active US All Cap & Investments	\$ 21,086,294	\$ 16,287,880
Fixed funds:		
IR+M Core Bond Fund II	\$ 23,796,928	\$ 18,593,036



**NOTE 7 – PENSION PLANS (CONTINUED)**

**V) Fair Value Measurements**

The framework for measuring fair value provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3).

The three levels of the fair value hierarchy under GASB Statement 72 are described as follows:

Level 1: Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the Plan has ability to access.

Level 2: Inputs to the valuation methodology include:

- Quoted prices for similar assets of liabilities in active markets;
- Quoted prices for identical or similar assets or liabilities in inactive markets;
- Inputs other than quoted prices that are observable for the asset or liability;
- Inputs that are derived principally from or corroborated by observable market data by correlation or other means.

If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.

Level 3: Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The asset's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used need to maximize the use of observable inputs and minimize the use of unobservable inputs.



UTAH TRANSIT AUTHORITY  
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**NOTE 7 – PENSION PLANS (CONTINUED)**

	<u>2019</u>	<u>2018</u>
Investments:		
Global Equity Funds:		
1607 Capital International Equity Fund	\$ -	\$ 7,068,884
Arrowstreet International Equity	10,968,933	8,880,682
Artisan Global Value Institutional	8,073,562	6,504,923
Artisan Global Opportunities Trust	6,565,743	6,349,204
Artisan Global Discovery Trust	5,666,532	-
Causeway Emerging Markets Equity	7,643,201	6,547,729
City of London CA International Equity	9,133,524	-
Edgewood Growth Fund Institutional	7,759,905	7,054,931
Gqg Partners Intl Eqty	9,560,000	7,384,000
Independent Franchise Partners US Equity	9,726,691	7,196,531
Iridian Private Business Value Mid Cap	7,438,275	5,555,749
John Hancock Disciplined Value I	7,469,439	6,086,912
Kiltearn Global Equity Fund	6,746,613	5,744,563
Mahout Global Emerging Markets	-	2,134,715
Oakmark International I	8,362,496	6,720,896
Overlook Partners Fund	3,081,304	2,477,772
RWC Horizon Equity Offshore Ltd.	5,870,507	4,695,445
RWC Horizon Equity Fund 97MSCLV	698,308	558,532
RWC Horizon Equity Fund Limited	812,248	-
Two Sigma Active US All Cap & Investments	21,086,294	16,267,880
Vanguard FTSE Developed Markets EFT	1,212,002	1,871,213
Vanguard S&P 500 EFT	3,672,653	2,853,321
Vanguard Emerging Markets Stock Index Fund	2,114,282	-
Total Global Equity Funds	<u>143,662,332</u>	<u>111,953,882</u>



UTAH TRANSIT AUTHORITY  
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**NOTE 7 – PENSION PLANS (CONTINUED)**

Investments (continued)

	<u>2019</u>	<u>2018</u>
Polen Capital		
Adobe Systems Inc.	\$ 593,988	\$ 392,300
Automatic Data Process.	311,163	405,948
Align Technology Inc.	278,761	142,412
Accenture Plc	473,151	308,530
Booking Holdings	186,889	155,018
Abbott Laboratories	282,990	-
Dollar General	378,875	322,835
Facebook Inc.	681,020	414,244
First American Treasury Obligations	192,224	331,585
Alphabet Inc.	892,167	597,961
Gartner Inc.	301,266	245,964
Mastercard Inc.	519,845	187,895
Msci Inc	207,835	-
Microsoft Corp.	909,614	609,318
Nestle Sa	314,495	229,845
Nike Inc.	402,403	355,650
Nvidia Corp	-	147,918
Oracle	-	251,079
O Reilly	368,138	413,885
Paypal	308,068	-
Regeneron	235,801	230,076
Salesforce	195,819	-
Servicenow Inc	207,505	-
Starbucks Corp.	243,538	347,374
Visa Inc.	699,552	478,810
Zoetis Inc.	532,973	336,172
Total Polen Capital	<u>9,718,080</u>	<u>6,904,819</u>
Total Global Equity, and Polen Capital Investment Funds	<u>153,380,412</u>	<u>118,858,701</u>



UTAH TRANSIT AUTHORITY  
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**NOTE 7 – PENSION PLANS (CONTINUED)**

Investments (continued)

	2019	2018
Fixed Income Funds:		
1607 Capital Tax Fixed Income Fund	\$ 4,776,531	\$ 3,130,603
Double Line Core Plus 4L3	10,386,179	7,138,145
IR+M Core Bond Fund II	23,796,928	18,593,036
PIMCO Income Fund Institutional	3,485,017	6,327,452
State Street Global Adv. 3-10 US Treasury	8,787,130	9,322,421
Total Fixed Income Funds	<u>51,231,785</u>	<u>44,511,657</u>
Liquid Diversifier Funds:		
AQR Style Premia 97MSCMCV9	170,444	3,489,659
Fort Global Offshore Fund	6,205,549	4,890,738
ISAM SYSTEMATIC 97MSCNDS3	217,906	212,508
ISAM Systematic Trend	1,870,840	1,824,493
IVA International Fund	5,492,210	2,921,780
Renaissance Institutional Equity	9,026,663	6,008,085
Total Liquid Diversifier Funds	<u>22,893,612</u>	<u>19,347,261</u>
Real Asset Funds:		
AEW Global Properties	1,936,251	1,587,870
T. Rowe Price Global Natural Resources	4,151,087	3,546,308
Vanguard Short Term Inflation Protected Sec	2,667,048	2,543,785
Total Real Asset Funds	<u>8,754,386</u>	<u>7,677,963</u>
Cash & Equivalents:		
US Bank Cash (First American US Money Mkt	2,581,806	1,652,310
Total Cash & Equivalents	<u>2,581,806</u>	<u>1,652,310</u>
<b>Total investments</b>	<b>\$ <u>238,931,999</u></b>	<b>\$ <u>192,047,892</u></b>



**NOTE 7 – PENSION PLANS (CONTINUED)**

**W) 2019 and 2018 Valuation Methodology**

Level 1 – These investments are measured at fair value based on quoted prices in active markets.

Level 2 – These investments are measured at fair value based on inputs other than quoted prices included within Level 1. Observable inputs include quoted prices for similar assets in active or non-active markets. While the underlying asset values are quoted prices for the mutual funds, the net asset value (NAV) of the mutual funds is not publicly quoted in an active market.

Level 3 – These Investments are valued at fair value based on information obtained from the investment issuer.

The following tables set forth by level, within the fair value hierarchy, the Plan’s investments at fair value as of December 31, 2019 and December 31, 2018.

**Investment Assets at Fair Value  
 as of December 31, 2019**

	<b>Fair Value</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>
Global Equities (NAV Level 2)	\$ 153,380,5412	\$ 16,717,017	\$ 49,035,295	\$ 87,628,099
Fixed Income (NAV level 2)	51,231,785	-	3,485,017	47,746,768
Liquid diversifiers	22,983,612	-	5,492,210	17,491,402
Real assets (NAV level 2)	8,754,386	-	6,818,135	1,936,251
Money market	2,581,806	2,581,806	-	-
<b>Total investments at fair value</b>	<b>\$ 238,931,999</b>	<b>\$ 19,298,823</b>	<b>\$ 64,830,657</b>	<b>\$ 154,802,520</b>

**Investment Assets at Fair Value  
 as of December 31, 2018**

	<b>Fair Value</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>
Global Equities (NAV Level 2)	\$ 118,858,701	\$ 11,629,353	\$ 40,111,922	\$ 67,117,426
Fixed Income (NAV level 2)	44,511,657	-	6,327,452	38,184,205
Liquid diversifiers	19,347,261	-	2,921,780	16,425,481
Real assets (NAV level 2)	7,677,963	-	6,090,093	1,587,870
Money market	1,652,310	1,652,310	-	-
<b>Total investments at fair value</b>	<b>\$ 192,047,892</b>	<b>\$ 13,281,663</b>	<b>\$ 55,451,247</b>	<b>\$ 123,314,982</b>



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**NOTE 7 – PENSION PLANS (CONTINUED)**

**X) NET ASSET VALUE PER SHARE**

The mutual funds in the global equities, fixed income and real assets classes Level 2 are stated at net asset value or its equivalent, which is the practical expedient for estimating the fair value of those investments. The following tables provide additional disclosures concerning the investments measured at fair value based on NAV as of December 31, 2019 and 2018.

	<b>2019</b>			
	<b>Fair Value</b>	<b>Unfunded Commitment</b>	<b>Redemption Frequency</b>	<b>Redemption Notice Period</b>
Global Equities (NAV Level 2)	\$ 49,035,295	\$ -	Daily	Daily
Fixed Income (NAV level 2)	3,485,017	-	Daily	Daily
Liquid diversifier(NAV level 2)	5,492,210	-	Daily	Daily
Real assets (NAV level 2)	6,818,135	-	Daily	Daily
<b>Total</b>	<b>\$ 64,830,657</b>	<b>\$ -</b>		

	<b>2018</b>			
	<b>Fair Value</b>	<b>Unfunded Commitment</b>	<b>Redemption Frequency</b>	<b>Redemption Notice Period</b>
Global Equities (NAV Level 2)	\$ 40,111,922	\$ -	Daily	Daily
Fixed Income (NAV level 2)	6,327,452	-	Daily	Daily
Real assets (NAV level 2)	6,090,093	-	Daily	Daily
<b>Total</b>	<b>\$ 55,451,247</b>	<b>\$ -</b>		

Global Equity – intended to provide capital appreciation, current income, and growth of income mostly through the ownership of public equities representing an ownership interest in a company. The objective for investment managers in this category is to exceed the results represented by the annualized return of the MSCI All Country World Index, net over annualized rolling three to five-year time periods.

Fixed Income – intended to provide diversification and protection against downward moves in the equity market and serves as a deflation hedge and a predictable source of income. Weighted average duration of the allocation will be within 1 year of the Barclays Capital Aggregate Bond Index, as measured on a quarterly basis.

Real Assets – intended to provide real return through investments which has inflation sensitive characteristics. Investments could include REITs, natural resource equities, MLPs, inflation linked bonds and commodities.

**NOTE 7 – PENSION PLANS (CONTINUED)**

**Y) Net Pension Liability**

The net pension liability is the Plan's total pension liability determined in accordance with GASB No. 67, less the Plan's fiduciary net position. The Plan's net pension liability was \$103,864,839 and \$131,069,664 as of December 31, 2019 and December 31, 2018, respectively. A portion of this change is attributed to the Plan's change of methods and assumptions.

The Plan's net pension liability is mainly attributed to significant plan changes made during 1999 and 2011, which resulted in benefit increases. Fiduciary net position as a percent of total pension liability increased from 59.81% at December 31, 2018 to 69.95% at December 31, 2019.

**Z) Actuarial Methods and Assumptions**

Actuarial valuation of the Plan involves estimates of the reported amounts and assumptions about the probability of occurrence of events into the future. Examples include assumptions about future mortality and future salary increases. Amounts determined regarding the net pension liability are subject to continual revision as actual results are compared with past expectations and new estimates are made about the future. The last experience study was performed for the five consecutive calendar years ending December 31, 2008. The total pension liability as of December 31, 2019, is based on the results of an actuarial valuation date of January 1, 2018, and rolled-forward using generally accepted actuarial procedures. The significant actuarial assumptions and methods used in the January 1, 2018 valuation are as follows:

- Actuarial Cost Method – Entry Age Normal
- Inflation – 2.30%
- Employer Annual Payroll Growth Including Inflation – 3.40%
- Salary Increases – 5.4% for the first five years of employment; 3.4% per annum thereafter
- Mortality – RP 2014 Blue Collar Mortality Table, with MP-2014 projection scale
- Investment Rate of Return – 7.0%, net of investment expenses
- Retirement Age – Table of rates by age and eligibility

**AA) Actuarial Methods and Assumptions (continued)**

- Cost of Living Adjustments – None
- Percent of Future Retirements Electing Lump Sum – 20%



**NOTE 7 – PENSION PLANS (CONTINUED)**

**BB) Target Allocations**

The long-term rate of return is selected by the Plan’s Pension Committee after a review of expected inflation and long-term real returns, reflecting expected volatility and correlation. Best estimates of the compound nominal rates of return for each major asset class included in the Plan’s target asset allocations as of December 31, 2019, is summarized in the table below.

Asset Class	Target Asset Allocation	Long Term Expected Return
Global Equities	63%	6.8%
Fixed Income	22%	2.7%
Liquid Diversifiers	10%	3.4%
Real Assets	4%	5.1%
Cash & Equivalents	1%	1.6%
Total	100%	5.4%

The 7.00% assumed investment rate of return is comprised of an inflation rate of 2.30% and a real return of 4.70% net of investment expense.

**CC) Discount Rate and Rate Sensitivity Analysis**

The discount rate used to measure the total pension liability was 7.00%. The discount rate incorporates a municipal bond rate of 3.44% based on the Bond Buyer General, Obligation 20-Bond Municipal Bond Index. The projection of cash flows used to determine the discount rate assumed that contributions will be made based on the actuarially determined rates. Based on those assumptions, the Plan’s fiduciary net position was projected to be available to make all the projected future benefit payments of current Plan members. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

In accordance with GASB 67 regarding the disclosure of the sensitivity of the net pension liability to changes in the discount rate, the table below presents the net pension liability using the discount rate of 7.00%, as well as what the net pension liability would be if it were calculated using a discount rate 1.00% lower (6.00%) or 1.00% higher (8.00%) than the current rate.



**NOTE 7 – PENSION PLANS (CONTINUED)**

	1.00% Decrease 6.00%	Current Rate 7.00%	1.00% Increase 8.00%
Total pension liability	\$ 394,219,179	\$ 345,622,189	\$ 291,631,806
Fiduciary net position	241,757,350	241,757,350	241,757,350
Net pension liability	152,461,829	103,864,839	63,801,171

**DD) Employer Contribution Requirements**

The Authority’s contribution rate consists of (1) an amount for normal cost, the estimated amount necessary to finance benefits earned by participants during the current year, and (2) an amount for amortization of the unfunded or excess funded actuarial accrued liability over the service life of the vested participants in preparation for the Authority’s adoption of GASB 68, *Accounting and Financial Reporting for Pensions— an amendment of GASB Statement No. 27*. The rates are determined using the entry age actuarial cost method.

The Authority’s Board of Trustees and Pension Board adopted a contribution rate policy of 16.3% for 2018 and 2019.

Employer contributions in 2019 and 2018 totaled \$24,008,192 and \$22,355,434 respectively, which represented 110.7% and 110.4% of the annual actuarial recommended contributions, respectively.

**EE) Party-in-Interest Transactions**

Cambridge Associates is the Plan’s investment manager and they charge fees for the services they provide, the transactions qualify as party-in-interest transactions. Fees paid by the Plan for the investment management services for the years ended December 31, 2019 and 2018 were \$382,347 and \$364,729, respectively.



**NOTE 8 – LONG TERM DEBT**

The following provides detailed information about each of the Authority’s debt issuances along with a summary of the long-term debt activity for the year.

A. Series 2005A Revenue Bond

Purpose: Advanced refunding of the 1997 Series Revenue Bonds  
 Interest rate: 3.25-5.25%  
 Original amount: \$20,630,000

Debt service requirements to maturity, including interest:

Year ending December 31	Principal	Interest	Total
2020	\$ 1,720,000	\$ 240,975	\$ 1,960,975
2021	1,815,000	148,181	1,963,181
2022	1,915,000	50,269	1,965,269
	<u>\$ 5,450,000</u>	<u>\$ 439,425</u>	<u>\$ 5,889,425</u>

*Defeasance of Debt* - On August 10, 2005, the Authority defeased certain 1997 Series Revenue Bonds by placing the proceeds of new bonds in an irrevocable trust to provide for all future debt service payments on the old bonds. Accordingly, the trust account assets and the liability for the defeased bonds are not included in the Authority’s financial statements. The 1997 Series Revenue Bonds relating to this issuance were defeased on December 15, 2007.

B. Series 2006C Revenue Bond

Purpose: Advanced refunding of the 2002A Series Revenue Bonds  
 Interest rates: 5.00-5.25%  
 Original amount: \$134,650,000

Debt service requirements to maturity, including interest:

Year ending December 31	Principal	Interest	Total
2020	\$ 5,635,000	\$ 5,228,606	\$ 10,863,606
2021	5,950,000	4,924,500	10,874,500
2022	6,265,000	4,603,856	10,868,856
2023	6,605,000	4,266,019	10,871,019
2024	6,970,000	3,909,675	10,879,675
2025-2029	40,830,000	13,499,588	54,329,588
2030-2032	30,155,000	2,429,306	32,584,306
	<u>\$ 102,410,000</u>	<u>\$ 38,861,550</u>	<u>\$ 141,271,550</u>



**NOTE 8 – LONG TERM DEBT (continued)**

Series 2006C Revenue Bond (continued)

*Defeasance of Debt* - On October 24, 2006, the Authority defeased certain 2002A Series Revenue Bonds by placing the proceeds of new bonds in an irrevocable trust to provide for all future debt service payments on the old bonds. Accordingly, the trust account assets and the liability for the defeased bonds are not included in the Authority’s financial statements. The 2002A Series Revenue Bonds relating to this issuance were defeased on December 15, 2012.

C. Series 2007A Capital Appreciation/Capitalized Interest Bond(s)

Purpose: Partial advanced refunding of the 2005B Revenue Bonds; construction and acquisition of improvements to the transit system.

Interest rates

Capital Appreciation Bonds: 4.55-5.05%  
 Capital Interest Bonds: 5.00%

Original amount

Capital Appreciation Bonds: \$132,329,109  
 Capital Interest Bonds: \$128,795,000

Debt service requirements to maturity, including interest:

*Series 2007A Subordinate Lien Capital Appreciation Bond*

On March 15, 2018 the remaining debt service for this bond was defeased through the issuance of the Series 2018 Sales Tax Revenue Subordinate Refunding Bond.

*Series 2007A Subordinate Lien Capital Interest Bond*

Year ending December 31	Principal	Interest	Total
2020	\$ 2,850,000	\$ 5,866,000	\$ 8,716,000
2021	-	5,794,750	5,794,750
2022	-	5,794,750	5,794,750
2023	5,300,000	5,662,250	10,962,250
2024	5,560,000	5,390,750	10,950,750
2025-2029	26,425,000	23,699,875	50,124,875
2030-2034	56,455,000	14,564,375	71,019,375
2035	22,155,000	553,875	22,708,875
	\$ 118,745,000	\$ 67,326,625	\$ 186,071,625

*Defeasance of Debt* - On June 19, 2007, the Authority defeased certain 2005B Series Revenue Bonds by placing the proceeds of new bonds in an irrevocable trust to provide for all future debt service payments on the old bonds. Accordingly, the trust account assets and the liability for the defeased bonds are not included in the Authority’s financial statements. The 2005B Series Revenue Bonds relating to this issuance were defeased on December 15, 2015.



**NOTE 8 – LONG TERM DEBT (continued)**

D. Series 2008A Revenue Bond

Purpose: Cost of acquisition and construction of certain improvements to the Authority’s transit system.  
 Interest rates: 4.75-5.25%  
 Original amount: \$700,000,000

Debt service requirements to maturity, including interest:

Year ending December 31	Principal	Interest	Total
2020	\$ -	\$ 2,541,525	\$ 2,541,525
2021	-	2,541,525	2,541,525
2022	23,570,000	1,922,813	25,492,813
2023	24,840,000	652,050	25,492,050
	\$ 48,410,000	\$ 7,657,913	\$ 56,067,913

E. Series 2009B Federally Taxable-Issuer Subsidy “Build America Bonds”

The Authority has elected to treat the 2009B bonds as “Build America Bonds” for the purposes of the American Recovery and Investment Act of 2009 (the Recovery Act) and to receive a cash subsidy from the United States Treasury in connection therewith. Pursuant to the Recovery Act, the Authority anticipated cash subsidy payments from the United States Treasury equal to 35% (\$5,432,800) of the interest payable on the 2009B bonds.

Purpose: Cost of acquisition and construction of certain improvements to the Authority’s transit system.  
 Interest rates: 5.937%  
 Original amount: \$261,450,000

Debt service requirements to maturity, including interest:

Year ending December 31	Principal	Interest	Total	Scheduled Federal Subsidy Payment
2020	\$ -	\$ 15,522,286	\$ 15,522,286	\$ 5,432,800
2021	-	15,522,286	15,522,286	5,432,800
2022	-	15,522,286	15,522,286	5,432,800
2023	-	15,522,286	15,522,286	5,432,800
2024	-	15,522,286	15,522,286	5,432,800
2025-2029	-	77,611,433	77,611,433	27,164,001
2030-2034	80,735,000	68,115,943	148,850,943	23,840,580
2035-2039	180,715,000	31,620,314	212,335,314	11,067,110
	\$ 261,450,000	\$ 254,959,120	\$ 516,409,120	\$ 89,235,691



**NOTE 8 – LONG TERM DEBT (continued)**

F. Series 2010A Federally Taxable-Issuer Subsidy “Build America Bonds”

The Authority has elected to treat the 2010A bonds as “Build America Bonds” for the purposes of the American Recovery and Investment Act of 2009 (the Recovery Act) and to receive a cash subsidy from the United States Treasury in connection therewith. Pursuant to the Recovery Act, the Authority anticipated cash subsidy payments from the United States Treasury equal to 35% (\$3,993,500) of the interest payable on the 2010A bonds.

Purpose: Cost of acquisition and construction of certain improvements to the Authority’s transit system.  
 Interest rates: 5.705%  
 Original amount: \$200,000,000

Debt service requirements to maturity, including interest:

Year ending December 31	Principal	Interest	Total	Scheduled Federal Subsidy Payment
2020	\$ -	\$ 11,410,000	\$ 11,410,000	\$ 3,993,500
2021	-	11,410,000	11,410,000	3,993,500
2022	-	11,410,000	11,410,000	3,993,500
2023	-	11,410,000	11,410,000	3,993,500
2024	-	11,410,000	11,410,000	3,993,500
2025-2029	-	57,050,000	57,050,000	19,967,500
2030-2034	-	57,050,000	57,050,000	19,967,500
2035-2039	78,970,000	52,762,407	131,732,407	18,466,842
2040	121,030,000	3,452,381	124,482,381	1,208,333
	\$ 200,000,000	\$ 227,364,788	\$ 427,364,788	\$ 79,577,675



**NOTE 8 – LONG TERM DEBT (continued)**

G. Series 2012A Revenue Bond

Purpose: Refunding of \$32,020,000 of the 2006AB Variable Rate Bonds; refunding of \$100,000,000 of the 2011AB Variable Rate Bonds; and the cost of acquisition and construction of certain improvements to the Authority’s transit system.

Interest rates: 4.00-5.00%

Original amount: \$295,520,000

Debt service requirements to maturity, including interest:

Year ending December 31	Principal	Interest	Total
2020	\$ -	\$ 2,944,000	\$ 2,944,000
2021	-	2,944,000	2,944,000
2022	-	2,944,000	2,944,000
2023	-	2,944,000	2,944,000
2024	-	2,944,000	2,944,000
2025-2029	-	14,720,000	14,720,000
2030-2034	2,940,000	14,603,600	17,543,600
2035-2039	70,660,000	9,203,800	79,863,800
	\$ 73,600,000	\$ 53,247,400	\$ 126,847,400

*Defeasance of Debt* - On November 28, 2012, the Authority defeased all of the 2011AB Variable Rate Revenue Bonds, and certain 2006AB Series Variable Rate Revenue Bonds. The 2006AB and 2011AB Series Revenue Bonds relating to this issuance were defeased on November 28, 2012.

On December 28, 2017 a portion of the original debt service for this bond was defeased through the issuance of the \$120,575,000 Series 2017 Sales Tax Revenue Refunding Bond.

On November 26, 2019 a portion of the original debt service for this bond was defeased through the issuance of the \$188,810,000 Series 2019B Senior Sales Tax Revenue Refunding Bond. This resulted in a cash flow savings of \$14,762,454 and an economic gain of \$28,095,615. The Authority defeased certain 2012A Series Revenue Bonds by placing the proceeds of new bonds in an irrevocable trust to provide for all future debt service payments on the old bonds. Accordingly, the trust account assets and the liability for the defeased bonds are not included in the Authority’s financial statements.

H. Series 2015A Revenue Bonds

On February 25, 2015, the Authority issued \$668,655,000 in Senior Sales Tax Revenue Bonds and \$192,005,000 in Subordinate Sales Tax Revenue Bonds to provide resources to purchase qualifying open market securities that were placed in an irrevocable trust for the purpose of generating resources for the advanced refunding of certain 2008A Revenue Bonds, certain 2009A Revenue Bonds, certain 2007A capital appreciation Revenue Bonds, and certain 2012A Revenue Bonds. These resources are intended to provide all future debt payments of \$904,901,591 of Senior and Subordinate Sales Tax Revenue Bonds. As a result, the refunded bonds are considered to be defeased and the liability has been removed from the Authority’s financial statements. These advanced refundings were undertaken to reduce total debt service payments over the next 23 years by \$85,099,817, and resulted in an economic gain of \$77,660,118. As of December 31, 2017, \$4,245,000 of the 2012A Revenue Bond was defeased from the escrow fund.



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**NOTE 8 – LONG TERM DEBT (continued)**

Series 2015A Revenue Bonds (continued)

*Series 2015A Senior Lien Revenue Bond*

Purpose: Advanced refunding of \$645,705,000 of the 2008A Revenue Bonds and \$44,550,000 of the 2009A Revenue Bonds; debt service reserve  
 Interest rates: 4.00-5.00%  
 Original amount: \$668,655,000

Debt service requirements to maturity, including interest:

<u>Year ending December 31</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2020	\$ 12,425,000	\$ 30,769,238	\$ 43,194,238
2021	18,235,000	30,029,138	48,264,138
2022	-	29,592,463	29,592,463
2023	8,030,000	29,416,463	37,446,463
2024	34,540,000	28,394,631	62,934,631
2025-2029	200,970,000	113,797,250	314,767,250
2030-2034	200,440,000	65,348,650	265,788,650
2035-2038	194,015,000	18,974,600	212,989,600
	<u>\$ 668,655,000</u>	<u>\$ 346,322,433</u>	<u>\$ 1,014,977,433</u>

*Series 2015A Subordinate Lien Revenue Bond*

Purpose: Advanced refunding of \$129,997,040 of the 2007A capital appreciation Revenue Bonds and associated accreted interest of \$80,404,551, and \$4,245,000 of the 2012A Revenue Bonds; debt service reserve  
 Interest rates: 3.00-5.00%  
 Original amount: \$192,005,000

Debt service requirements to maturity, including interest:

<u>Year ending December 31</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2020	\$ 2,850,000	\$ 3,243,750	\$ 6,093,750
2021	5,840,000	3,055,000	8,895,000
2022	8,875,000	2,687,125	11,562,125
2023	6,750,000	2,296,500	9,046,500
2024	7,100,000	1,950,250	9,050,250
2025-2029	21,310,000	4,468,750	25,778,750
2030-2034	-	3,536,250	3,536,250
2035-2037	14,145,000	1,768,125	15,913,125
	<u>\$ 66,870,000</u>	<u>\$ 23,005,750</u>	<u>\$ 89,875,750</u>



UTAH TRANSIT AUTHORITY  
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**NOTE 8 – LONG TERM DEBT (continued)**

Series 2015A Revenue Bonds (continued)

*Defeasence of Debt* - On November 26, 2019 a portion of the original debt service for this bond was defeased through the issuance of the \$188,810,000 Series 2019B Senior Sales Tax Revenue Refunding Bond and the \$59,070,000 Series 2019B Subordinate Sale Tax Revenue Bond. The 2019B Senior Sales Tax Revenue Refunding Bond resulted in a negative cash flow of \$1,112,712 and an economic loss of \$32,721,510. The 2019B Subordinate Sales Tax Revenue Bond resulted in a negative cash flow of \$1,951,533 and an economic loss of \$20,662,073. The Authority defeased certain 2015A Series Subordinate Revenue Bonds by placing the proceeds of new bonds in an irrevocable trust to provide for all future debt service payments on the old bonds. Accordingly, the trust account assets and the liability for the defeased bonds are not included in the Authority's financial statements.

I. Series 2016 Revenue Bonds

On August 24, 2016, the Authority issued \$145,691,497 in Subordinate Sales Tax Revenue Bonds with a premium of \$12,932,675 to provide resources to purchase qualifying open market securities that were placed in an irrevocable trust for the purpose of generating resources for the advanced refunding of the 2013 Revenue Bonds and 2014AB Revenue Bonds. As a result, the refunded bonds are considered to be defeased and the liability has been removed from the Authority's financial statements. These advanced refundings were undertaken to remove the Authority's short-term debt which reduced total debt service payments by \$156,360,000 over the next three (3) years. This issuance resulted in an economic loss of \$8,045,006. As of June 15, 2018, \$62,000,000 of the 2014A Revenue Bond was defeased from the escrow fund.

*Series 2016 Subordinate Lien Revenue Bond*

Purpose: Refunding of \$13,990,000 of the 2013 short-term bonds, and refunding of \$142,370,000 of the 2014AB short-term bonds.  
 Interest rates: 3.00-4.00%  
 Original amount: \$145,691,498

Debt service requirements to maturity, including interest:

<u>Year ending December 31</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2020	\$ -	\$ 4,602,300	\$ 4,602,300
2021	-	4,602,300	4,602,300
2022	-	4,602,300	4,602,300
2023	-	4,602,300	4,602,300
2024	-	4,602,300	4,602,300
2025-2029	65,755,000	21,359,550	87,114,550
2030-2031	61,025,000	3,685,400	64,710,400
	\$ <u>126,780,000</u>	\$ <u>48,056,450</u>	\$ <u>174,836,450</u>

*Series 2016 Subordinate Lien Capital Appreciation Revenue Bond*

Purpose: Refunding of \$13,990,000 of the 2013 short-term bonds, and refunding of \$142,370,000 of the 2014AB short-term bonds.  
 Interest rates: 3.32004%  
 Original amount: \$18,911,498

**NOTE 8 – LONG TERM DEBT (continued)**

Series 2016 Revenue Bonds (continued)

Debt service requirements to maturity, including interest:

Year Ending December 31	Principal	Interest	Total
2032	\$ 18,911,498	\$ 13,443,503	\$ 32,355,001
	\$ 18,911,498	\$ 13,443,503	\$ 32,355,001

J. Series 2016 Utah County Subordinated Transportation Sales Tax Revenue Bond

On December 22, 2016, Utah County issued a \$65 million Subordinated Transportation Sales Tax Revenue Bond to be used for the construction of the Provo-Orem BRT. The Authority and Utah County have entered into an inter-local agreement that requires the Authority to reimburse Utah County for all bond costs (principal, interest, and cost of issuance) prior to December 31, 2028. The Authority paid the November 1, 2019 bond principal and interest payment. The principal amount was \$1,410,000 and the interest was \$983,796. The amount owed to the County was reduced by those amounts. In 2020, the Authority will remit \$2,735,019 to Utah County for repayment of prior debt payments of the County issued Subordinated Transportation Sales Tax Revenue Bond per the terms of Utah County 4<sup>th</sup> Quarter Cent Sales Tax Interlocal Agreement.

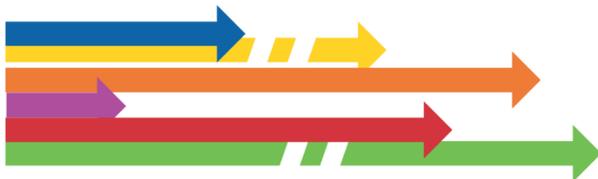
The amount owed to Utah County increased by \$2,500,000 in FY 2019 based on an agreement which states that Utah County will loan UTA an amount of \$2,500,000 per year for operations and maintenance costs until December 31, 2028 or until the Authority assumes responsibility for such funding.

Year ending December 31	Principal	Interest	Total
2028	\$ 67,050,616	\$ 5,161,925	\$ 72,212,541
	\$ 67,050,616	\$ 5,161,925	\$ 72,212,541

K. Series 2018 Revenue Bonds

On March 15, 2018, the Authority issued \$83,765,000 in Senior Sales Tax Revenue Bonds and \$115,540,000 in Subordinate Sales Tax Revenue Refunding Bonds to provide resources to purchase qualifying open market securities that were placed in an irrevocable trust for the purpose of generating resources for the advanced refunding of certain 2017 Revenue Bonds, certain 2007A Revenue Bonds, and to finance certain capital projects. These resources are intended to provide all future debt payments for the 2017 and 2007A Bonds in the amount of \$125,172,394 of Sales Tax Revenue Bonds. As a result, the refunded bonds are considered to be defeased and the liability has been removed from the Authority’s financial statements. The advanced refundings were undertaken to reduce total debt service payments over the next 14 years by \$122,907,069, and resulted in an economic gain of \$5,587,749.

The financing for certain construction projects consisted of \$88,500,000 and include funds for the Salt Lake City Airport Light Rail Station relocation of \$24,905,000.



UTAH TRANSIT AUTHORITY  
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**NOTE 8 – LONG TERM DEBT (continued)**

Series 2018 Revenue Bonds (continued)

*Series 2018 Senior Sales Tax Revenue Bond*

Purpose: Finance Capital Projects - \$58,860,000 for other projects and \$24,905,000 for the Salt Lake City Airport Light Rail Station relocation.  
 Interest rates: 3.25-5.00%  
 Original amount: \$83,765,000

Debt service requirements to maturity, including interest:

<u>Year ending December 31</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2020	\$ -	\$ 3,537,400	\$ 3,537,400
2021	-	3,537,400	3,537,400
2022	-	3,537,400	3,537,400
2023	-	3,537,400	3,537,400
2024	-	3,537,400	3,537,400
2025-2029	-	17,687,000	17,687,000
2030-2034	39,730,000	16,803,500	56,533,500
2035-2036	42,535,000	2,776,750	43,311,750
	<u>\$ 82,265,000</u>	<u>\$ 54,954,250</u>	<u>\$ 137,219,250</u>

*Series 2018 Subordinate Sales Tax Revenue Refunding Bond*

Purpose: Advanced refunding of \$112,125,000 of the 2017 Revenue Bonds and \$3,415,000 of the 2007A Revenue Bonds.  
 Interest rates: 3.125-5.00%  
 Original amount: \$115,540,000

Debt service requirements to maturity, including interest:

<u>Year ending December 31</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2020	\$ 440,000	\$ 5,112,894	\$ 5,552,894
2021	3,235,000	5,090,894	8,325,894
2022	3,395,000	4,929,144	8,324,144
2023	3,565,000	4,759,394	8,324,394
2024	3,745,000	4,581,144	8,326,144
2025-2029	17,755,000	19,943,969	37,698,969
2030-2034	12,925,000	16,287,313	29,212,313
2035-2039	2,225,000	14,474,031	16,699,031
2040-2041	66,190,000	4,587,875	70,777,875
	<u>\$ 113,475,000</u>	<u>\$ 79,766,658</u>	<u>\$ 193,241,658</u>



**NOTE 8 – LONG TERM DEBT (continued)**

L. Series 2019 Revenue Bonds

*Series 2019A Sales Tax Revenue Bond*

Purpose: Finance Capital Projects - \$70,900,000 which include the Depot District Technology Center, Traction Power Rehab and Replacement, Ogden/Weber State University Bus Rapid Transit, Northern Utah County Double Track, and System Operator Restrooms.

Interest rates: 3.00-5.00%

Original amount: \$61,830,000 and a \$9,320,342 premium

Debt service requirements to maturity, including interest:

Year ending December 31	Principal	Interest	Total
2020	\$ -	\$ 2,642,367	\$ 2,642,367
2021	-	2,509,900	2,509,900
2022	-	2,509,900	2,509,900
2023	-	2,509,900	2,509,900
2024	-	2,509,900	2,509,900
2025-2029	10,690,000	11,532,500	22,222,500
2030-2034	13,650,000	8,578,250	22,228,250
2035-2039	17,140,000	5,080,100	22,220,100
2040-2044	20,350,000	1,867,200	22,217,200
	<u>\$ 61,830,000</u>	<u>\$ 39,740,017</u>	<u>\$ 101,570,017</u>

*Series 2019B Federally Taxable Sales Tax Revenue Refunding Bonds*

Purpose: Advanced refunding of \$98,000,00 of the 2012A Revenue Bonds and \$75,000,000 of the 2015A Subordinate Revenue Bonds; debt service reserve

Interest rates: 3.443%

Original amount: \$188,810,000

Debt service requirements to maturity, including interest:

Year ending December 31	Principal	Interest	Total
2020	\$ -	\$ 6,843,822	\$ 6,843,822
2021	-	6,500,728	6,500,728
2022	-	6,500,728	6,500,728
2023	-	6,500,728	6,500,728
2024	-	6,500,728	6,500,728
2025-2029	-	32,503,642	32,503,642
2030-2034	-	32,503,642	32,503,642
2035-2039	5,475,000	32,234,399	37,709,399
2040-2042	183,335,000	16,513,144	199,848,144
	<u>\$ 188,810,000</u>	<u>\$ 146,601,561</u>	<u>\$ 335,411,561</u>



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**NOTE 8 – LONG TERM DEBT (continued)**

Series 2019 Revenue Bonds (continued)

*Series 2019B Federally Taxable Subordinate Sales Tax Revenue Refunding Bond*

Purpose: Advanced refunding of \$50,135,000 of the 2015A Revenue Bonds.  
 Interest rates: 3.393% - 3.643%  
 Original amount: \$59,070,000

Debt service requirements to maturity, including interest:

<u>Year ending December 31</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2020	\$ -	\$ 2,219,698	\$ 2,219,698
2021	-	2,108,420	2,108,420
2022	-	2,108,420	2,108,420
2023	-	2,108,420	2,108,420
2024	-	2,108,420	2,108,420
2025-2029	-	10,542,101	10,542,101
2030-2034	-	10,542,101	10,542,101
2035-2039	17,400,000	8,770,955	26,170,955
2040-2042	41,670,000	3,861,216	45,531,216
	\$ <u>59,070,000</u>	\$ <u>44,369,751</u>	\$ <u>103,439,751</u>

M. 2015 Issuance 12-Year Lease Financing

Purpose: Acquisition of 10 CNG buses and equipment  
 Interest rates: 2.0908%  
 Original amount: \$5,283,500

Debt service requirements to maturity, including interest:

<u>Year ending December 31</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2020	\$ 429,322	\$ 68,893	\$ 498,215
2021	438,385	59,830	498,215
2022	447,640	50,575	498,215
2023	457,089	41,126	498,215
2024	466,738	31,477	498,215
2025-2027	1,251,852	35,202	1,287,054
	\$ <u>3,491,026</u>	\$ <u>287,103</u>	\$ <u>3,778,129</u>



**NOTE 8 – LONG TERM DEBT (continued)**

N. 2015 Issuance 5-Year Lease Financing

Purpose: Acquisition of 20 flex/paratransit vehicles  
 Interest rates: 1.3186%  
 Original amount: \$3,583,370

Debt service requirements to maturity, including interest:

<u>Year ending December 31</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2020	\$ 415,540	\$ 1,828	\$ 417,368
	\$ 415,540	\$ 1,828	\$ 417,368

O. 2016 Issuance 12-Year Lease Financing

Purpose: Acquisition of 5 buses and equipment for use in the canyons for ski service  
 Interest rates: 1.6322%  
 Original amount: \$2,480,000

Debt service requirements to maturity, including interest:

<u>Year ending December 31</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2020	\$ 198,904	\$ 28,803	\$ 227,707
2021	202,175	25,532	227,707
2022	205,500	22,207	227,707
2023	208,879	18,828	227,707
2024	212,314	15,393	227,707
2025-2028	827,746	26,154	853,900
	\$ 1,855,518	\$ 136,917	\$ 1,992,435

P. 2016 Issuance 5-Year Lease Financing

Purpose: Acquisition of 33 flex/paratransit vehicles  
 Interest rates: 1.3008%  
 Original amount: \$4,546,000

Debt service requirements to maturity, including interest:

<u>Year ending December 31</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2020	\$ 923,940	\$ 15,640	\$ 939,580
2021	700,881	3,804	704,685
	\$ 1,624,821	\$ 19,444	\$ 1,644,265



**NOTE 8 – LONG TERM DEBT (continued)**

Q. 2016 Issuance 4-Year Lease Financing

Purpose: Acquisition of 56 RideShare vans  
 Interest rates: 1.2298%  
 Original amount: \$1,647,000

Debt service requirements to maturity, including interest:

<u>Year ending December 31</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2020	\$ 315,012	\$ 1,616	\$ 316,628
	\$ 315,012	\$ 1,616	\$ 316,628

R. 2017 Issuance 12-Year Lease Financing

Purpose: Acquisition of 47 buses and equipment  
 Interest rates: 2.2440%  
 Original amount: \$24,390,000

Debt service requirements to maturity, including interest:

<u>Year ending December 31</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2020	\$ 1,877,001	\$ 443,310	\$ 2,320,311
2021	1,919,557	400,754	2,320,311
2022	1,963,077	357,234	2,320,311
2023	2,007,585	312,726	2,320,311
2024	2,053,101	267,210	2,320,311
2025-2029	10,791,842	616,354	11,408,196
	\$ 20,612,163	\$ 2,397,588	\$ 23,009,751

S. 2017 Issuance 5-Year Lease Financing

Purpose: Acquisition of 13 flex/paratransit vehicles  
 Interest rates: 1.8200%  
 Original amount: \$1,444,000

Debt service requirements to maturity, including interest:

<u>Year ending December 31</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2020	\$ 289,143	\$ 13,216	\$ 302,359
2021	294,449	7,910	302,359
2022	274,656	2,506	277,162
	\$ 858,248	\$ 23,632	\$ 881,880



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**NOTE 8 – LONG TERM DEBT (continued)**

T. 2017 Issuance 4-Year Lease Financing

Purpose: Acquisition of 36 RideShare vans  
 Interest rates: 1.7700%  
 Original amount: \$1,307,000  
 (\*\*A vehicle was totaled and paid off in 2018, therefore principal was reduced by \$28,893\*\*)

Debt service requirements to maturity, including interest:

Year ending December 31	Principal	Interest	Total
2020	\$ 320,176	\$ 8,362	\$ 328,538
2021	298,511	2,648	301,159
	<u>\$ 618,687</u>	<u>\$ 11,010</u>	<u>\$ 629,697</u>

U. 2018 Issuance 12-Year Lease Financing

Purpose: Acquisition of 24 buses and 2 Trolley style buses  
 Interest rates: 3.295%  
 Original amount: \$12,496,000

Debt service requirements to maturity, including interest:

Year ending December 31	Principal	Interest	Total
2020	\$ 894,697	\$ 367,450	\$ 1,262,147
2021	924,626	337,521	1,262,147
2022	955,557	306,590	1,262,147
2023	987,522	274,625	1,262,147
2024	1,020,557	241,590	1,262,147
2025-2029	5,638,306	672,430	6,310,736
2030	1,138,132	18,836	1,156,968
	<u>\$ 11,559,397</u>	<u>\$ 2,219,042</u>	<u>\$ 13,778,439</u>

V. 2018 Issuance 5-Year Lease Financing

Purpose: Acquisition of 36 flex/paratransit vehicles  
 Interest rates: 3.057%  
 Original amount: \$381,000

Debt service requirements to maturity, including interest:

Year ending December 31	Principal	Interest	Total
2020	\$ 74,028	\$ 8,241	\$ 82,269
2021	76,323	5,946	82,269
2022	78,689	3,580	82,269
2023	74,157	1,140	75,297
	<u>\$ 303,197</u>	<u>\$ 18,907</u>	<u>\$ 322,104</u>



UTAH TRANSIT AUTHORITY  
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**NOTE 8 – LONG TERM DEBT (continued)**

W. 2018 Issuance 4-Year Lease Financing

Purpose: Acquisition of 60 RideShare vans  
 Interest rates: 3.022%  
 Original amount: \$1,500,000

Debt service requirements to maturity, including interest:

<u>Year ending December 31</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2020	\$ 370,103	\$ 28,490	\$ 398,593
2021	381,444	17,149	398,593
2022	359,915	5,462	365,377
	<u>\$ 1,111,462</u>	<u>\$ 51,101</u>	<u>\$ 1,162,563</u>

X. 2019 Issuance 12-Year Lease Financing

Purpose: Acquisition of 35 buses  
 Interest rates: 2.2200%  
 Original amount: \$5,190,000

Debt service requirements to maturity, including interest:

<u>Year ending December 31</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2020	\$ 384,544	\$ 108,517	\$ 493,061
2021	393,169	99,892	493,061
2022	401,986	91,075	493,061
2023	411,002	82,059	493,061
2024	420,219	72,842	493,061
2025-2029	2,246,762	218,545	2,465,307
2030-2031	806,020	15,749	821,769
	<u>\$ 5,063,702</u>	<u>\$ 688,679</u>	<u>\$ 5,752,381</u>

Y. 2019 Issuance 5-Year Lease Financing

Purpose: Acquisition of 30 flex/paratransit vehicles  
 Interest rates: 1.9100%  
 Original amount: \$2,730,000

Debt service requirements to maturity, including interest:

<u>Year ending December 31</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2020	\$ 528,714	\$ 44,206	\$ 572,920
2021	538,901	34,019	572,920
2022	549,284	23,636	572,920
2023	559,868	13,052	572,920
2024	379,226	2,721	381,947
	<u>\$ 2,555,993</u>	<u>\$ 117,634</u>	<u>\$ 2,673,627</u>



UTAH TRANSIT AUTHORITY  
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**NOTE 8 – LONG TERM DEBT (continued)**

Z. 2019 Issuance 4-Year Lease Financing

Purpose: Acquisition of 76 flex/paratransit vehicles  
 Interest rates: 1.9100%  
 Original amount: \$1,960,000

Debt service requirements to maturity, including interest:

<u>Year ending December 31</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2020	\$ 479,101	\$ 30,245	\$ 509,346
2021	488,333	21,013	509,346
2022	497,742	11,604	509,346
2023	337,145	2,419	339,564
	<u>\$ 1,802,321</u>	<u>\$ 65,281</u>	<u>\$ 1,867,602</u>

AA. Capital Leased Assets

The following represents the assets acquired through the 2015, 2016, 2017, 2018 and 2019 series capital leases and the corresponding accumulated depreciation.

	<u>2015 Series Leases</u>	<u>2016 Series Leases</u>	<u>2017 Series Leases</u>
Revenue vehicles			
12-year lease	\$ 4,859,620	\$ 2,480,000	\$ 23,680,879
5-year lease	3,626,139	3,719,002	1,443,746
4-year lease	-	1,647,000	1,267,806
Subtotal	<u>\$ 8,485,759</u>	<u>7,846,002</u>	<u>26,392,431</u>
Accumulated depreciation	<u>(4,936,563)</u>	<u>(4,948,672)</u>	<u>(6,329,602)</u>
Total capital assets (net)	<u>\$ 3,549,196</u>	<u>\$ 2,897,330</u>	<u>\$ 20,062,829</u>

	<u>2018 Series Leases</u>	<u>2019 Series Lease</u>
Revenue vehicles		
12-year lease	\$ 11,537,964	\$ 5,010,868
5-year lease	368,211	1,207,414
4-year lease	1,485,803	1,775,781
Subtotal	<u>13,391,978</u>	<u>7,994,063</u>
Accumulated depreciation	<u>(1,520,416)</u>	<u>(449,965)</u>
Total capital assets (net)	<u>\$ 11,871,562</u>	<u>\$ 7,544,098</u>



UTAH TRANSIT AUTHORITY  
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**NOTE 8 – LONG TERM DEBT (continued)**

Long Term Debt Summary Table FY 2019

	Balance			Balance		
	12/31/2018	Additions	Reductions	12/31/2019	Amount due within one year	
<b>Bonds</b>						
Series 2005A Revenue Bond	\$ 7,085,000	\$ -	\$ (1,635,000)	\$ 5,450,000	\$ 1,720,000	
Series 2006C Revenue Bond	107,760,000	-	(5,350,000)	102,410,000	5,635,000	
Series 2007A Current Interest Bond	121,455,000	-	(2,710,000)	118,745,000	2,850,000	
Series 2008A Revenue Bond	54,295,000	-	(5,885,000)	48,410,000	-	
Series 2009B Build America Bond	261,450,000	-	-	261,450,000	-	
Series 2010A Build America Bond	200,000,000	-	-	200,000,000	-	
Series 2012A Revenue Bond	171,600,000	-	(98,000,000)	73,600,000	-	
Series 2015A Revenue Bond (Sr)	668,655,000	-	-	668,655,000	12,425,000	
Series 2015A Revenue Bond (Sub)	192,005,000	-	(125,135,000)	66,870,000	2,850,000	
Series 2016 Revenue Bond	126,780,000	-	-	126,780,000	-	
Series 2016 Capital Appreciation	18,911,498	-	-	18,911,498	-	
Series 2016 UTCT	65,960,616	2,500,000	(1,410,000)	67,050,616	-	
Series 2018 Revenue Bond (Sr)	83,765,000	-	(1,500,000)	82,265,000	-	
Series 2018 Revenue Bond (Sub)	113,895,000	-	(420,000)	113,475,000	440,000	
Series 2019A Revenue Bond	-	61,830,000	-	61,830,000	-	
Series 2019B Revenue Bond (Sr)	-	188,810,000	-	188,810,000	-	
Series 2019B Revenue Bond (Sub)	-	59,070,000	-	59,070,000	-	
Subtotal - Bonds	<u>2,193,617,114</u>	<u>312,210,000</u>	<u>(242,045,000)</u>	<u>2,263,782,114</u>	<u>25,920,000</u>	
<b>Leases</b>						
2015 12-Year Lease	3,911,531	-	(420,505)	3,491,026	429,322	
2015 5-Year Lease	1,145,873	-	(730,333)	415,540	415,540	
2015 4-Year Lease	243,467	-	(243,467)	-	-	
2016 12-Year Lease	2,051,204	-	(195,686)	1,855,518	198,904	
2016 5-Year Lease	2,536,307	-	(911,486)	1,624,821	923,940	
2016 4-Year Lease	731,067	-	(416,055)	315,012	315,012	
2017 12-Year Lease	22,447,551	-	(1,835,389)	20,612,163	1,877,001	
2017 5-Year Lease	1,142,179	-	(283,931)	858,248	289,143	
2017 4-Year Lease	932,408	-	(313,721)	618,687	320,176	
2018 12-Year Lease	12,425,133	-	(865,736)	11,559,397	894,697	
2018 5-Year Lease	375,115	-	(71,918)	303,197	74,028	
2018 4-Year Lease	1,470,561	-	(359,099)	1,111,462	363,263	
2019 12-Year Lease	-	5,190,000	(126,298)	5,063,702	384,544	
2019 5-Year Lease	-	2,730,000	(174,007)	2,555,993	528,714	
2019 4-Year Lease	-	1,960,000	(157,679)	1,802,321	479,101	
Subtotal - Leases	<u>49,412,396</u>	<u>9,880,000</u>	<u>(7,105,310)</u>	<u>52,187,087</u>	<u>7,493,385</u>	
Total – Bonds & Leases	\$ <u>2,243,029,510</u>	\$ <u>322,090,000</u>	\$ <u>(249,150,310)</u>	\$ <u>2,315,969,201</u>	\$ <u>33,413,385</u>	
<b>Unamortized Premiums</b>						
Series 2005A Revenue Bond	112,378	-	(49,552)	62,826	-	
Series 2006C Revenue Bond	6,044,178	-	(768,000)	5,276,178	-	
Series 2007A Current Interest Bond	5,741,000	-	(464,801)	5,276,199	-	
Series 2008A Revenue Bond	1,118,021	-	(302,987)	815,034	-	
Series 2012A Revenue Bond	13,450,680	-	(12,464,330)	986,350	-	
Series 2015A Revenue Bond (Sr)	85,949,114	-	(9,085,303)	76,863,811	-	
Series 2015A Revenue Bond (Sub)	25,681,975	-	(17,656,251)	8,025,724	-	
Series 2016 Revenue Bond	10,768,774	-	(935,752)	9,833,022	-	
Series 2018 Revenue Bond (Sr)	7,242,847	-	(403,314)	6,839,533	-	
Series 2018 Revenue Bond (Sub)	10,001,973	-	(347,821)	9,654,152	-	
Series 2019A Revenue Bond (Sr)	-	9,320,343	(20,712)	9,299,631	-	
Subtotal – Unamortized Premiums	<u>166,110,940</u>	<u>9,320,343</u>	<u>(42,498,823)</u>	<u>132,932,460</u>	<u>-</u>	
Total Long Term Debt	\$ <u>2,409,140,450</u>	\$ <u>331,410,343</u>	\$ <u>(291,649,133)</u>	\$ <u>2,448,901,661</u>	\$ <u>33,413,385</u>	

UTAH TRANSIT AUTHORITY  
NOTES TO THE FINANCIAL STATEMENTS  
Years Ended December 31, 2019 and 2018

**NOTE 8 – LONG TERM DEBT (continued)**

Long Term Debt Summary Table FY 2018

	Balance			Balance		
	12/31/2017	Additions	Reductions	12/31/2018	Amount due within one year	
<b>Bonds</b>						
Series 2005A Revenue Bond	\$ 8,635,000	\$ -	\$ (1,550,000)	\$ 7,085,000	\$ 1,635,000	
Series 2006C Revenue Bond	112,845,000	-	(5,085,000)	107,760,000	5,350,000	
Series 2007A Capital Appreciation	2,332,069	-	(2,332,069)	-	-	
Series 2007A Current Interest Bond	124,020,000	-	(2,565,000)	121,455,000	2,710,000	
Series 2008A Revenue Bond	54,295,000	-	-	54,295,000	5,885,000	
Series 2009B Build America Bond	261,450,000	-	-	261,450,000	-	
Series 2010A Build America Bond	200,000,000	-	-	200,000,000	-	
Series 2012A Revenue Bond	171,600,000	-	-	171,600,000	-	
Series 2015A Revenue Bond (Sr)	668,655,000	-	-	668,655,000	-	
Series 2015A Revenue Bond (Sub)	192,005,000	-	-	192,005,000	-	
Series 2016 Revenue Bond	126,780,000	-	-	126,780,000	-	
Series 2016 Capital Appreciation	18,911,498	-	-	18,911,498	-	
Series 2016 UTCT	65,000,000	960,616	-	65,960,616	-	
Series 2017 Revenue Bond (Sub)	120,575,000	-	(120,575,000)	-	-	
Series 2018 Revenue Bond (Sr)	-	83,765,000	-	83,765,000	1,500,000	
Series 2018 Revenue Bond (Sub)	-	115,540,000	(1,645,000)	113,895,000	420,000	
Subtotal – Bonds	<u>2,127,103,567</u>	<u>200,265,616</u>	<u>(133,752,069)</u>	<u>2,193,617,114</u>	<u>17,500,000</u>	
<b>Leases</b>						
2015 12-Year Lease	4,323,227	-	(411,696)	3,911,531	420,447	
2015 5-Year Lease	1,857,256	-	(711,383)	1,145,873	720,885	
2015 4-Year Lease	636,293	-	(392,826)	243,467	231,295	
2016 12-Year Lease	2,243,724	-	(192,520)	2,051,204	195,686	
2016 5-Year Lease	3,437,053	-	(900,746)	2,536,307	912,006	
2016 4-Year Lease	1,140,985	-	(409,918)	731,067	415,524	
2017 12-Year Lease	24,390,000	-	(1,942,449)	22,447,551	1,835,389	
2017 5-Year Lease	1,444,000	-	(301,821)	1,142,179	283,931	
2017 4-Year Lease	1,307,000	-	(374,592)	932,408	314,520	
2018 12-Year Lease	-	12,496,000	(70,867)	12,425,133	865,736	
2018 5-Year Lease	-	381,000	(5,885)	375,115	71,802	
2018 4-Year Lease	-	1,500,000	(29,439)	1,470,561	359,099	
Subtotal - Leases	<u>40,779,538</u>	<u>14,377,000</u>	<u>(5,744,142)</u>	<u>49,412,396</u>	<u>6,626,320</u>	
Total – Bonds & Leases	<u>2,167,883,105</u>	<u>214,642,616</u>	<u>(139,496,211)</u>	<u>2,243,029,510</u>	<u>24,126,320</u>	
<b>Unamortized Premiums</b>						
Series 2005A Revenue Bond	176,244	-	(63,865)	112,379	-	
Series 2006C Revenue Bond	6,866,239	-	(822,061)	6,044,178	-	
Series 2007A Current Interest Bond	6,224,106	-	(483,106)	5,741,000	-	
Series 2008A Revenue Bond	1,450,701	-	(332,679)	1,118,022	-	
Series 2012A Revenue Bond	14,013,078	-	(562,398)	13,450,680	-	
Series 2015A Revenue Bond (Sr)	95,034,418	-	(9,085,303)	85,949,115	-	
Series 2015A Revenue Bond (Sub)	28,420,439	-	(2,738,465)	25,681,975	-	
Series 2016 Revenue Bond	11,704,515	-	(935,741)	10,768,774	-	
Series 2018 Revenue Bond (Sr)	-	7,562,137	(319,290)	7,242,847	-	
Series 2018 Revenue Bond (Sub)	-	10,277,332	(275,359)	10,001,973	-	
Subtotal – Unamortized Premiums	<u>163,889,740</u>	<u>17,839,469</u>	<u>(15,618,267)</u>	<u>166,110,943</u>	<u>-</u>	
Total Long Term Debt	\$ <u>2,331,772,845</u>	\$ <u>232,482,085</u>	\$ <u>(155,114,478)</u>	\$ <u>2,409,140,453</u>	\$ <u>24,126,320</u>	

UTAH TRANSIT AUTHORITY  
 NOTES TO THE FINANCIAL STATEMENTS  
 Years Ended December 31, 2019 and 2018

**NOTE 8 – LONG TERM DEBT (continued)**

In addition, the Authority has long term obligations related to compensate absences which represent obligations to employees for unused vacation leave balances or guaranteed health saving account contributions at retirement for unused sick leave balances. General revenues are used to liquidate compensated absence balances.

The following is a summary of compensated absences of the Authority for the year ended December 31, 2019

	<u>Balance</u> <u>12/31/2018</u>	<u>Additions</u>	<u>Reductions</u>	<u>Balance</u> <u>12/31/2019</u>	<u>Amount</u> <u>due within</u> <u>one year</u>
UTA's obligations:					
Compensated Absences	11,523,816	2,919,737	(2,010,345)	12,433,208	1,664,512

The following is a summary of compensated absences of the Authority for the year ended December 31, 2018

	<u>Balance</u> <u>12/31/2017</u>	<u>Additions</u>	<u>Reductions</u>	<u>Balance</u> <u>12/31/2018</u>	<u>Amount</u> <u>due within</u> <u>one year</u>
UTA's obligations:					
Compensated Absences	9,325,711	3,605,639	(1,407,534)	11,523,816	2,010,345

**NOTE 9 – COMMITMENTS AND CONTINGENCIES**

The Authority is a defendant in various matters of litigation and has other claims pending as a result of activities in the ordinary courses of business. Management and legal counsel believe that by reason of meritorious defense, by insurance coverage or statutory limitations, these contingencies will not result in a significant liability to the Authority in excess of the amounts provided as accrued self-insurance liability in the accompanying financial statements.

As of December 31, 2019, the Authority also has purchasing commitments for several capital projects. The largest of these commitments are as follows:

- \$15.4 million TRAX Airport Relocation Design
- \$12.6 million Bus Replacements
- \$11.3 million Depot District
- \$ 6.3 million Ogden-Weber State University Bus Rapid Transit
- \$ 5.9 million Sandy Civic Center Parking Structure
- \$ 4.2 million TIGER Grant Projects
- \$ 1.3 million Provo-Orem Bus Rapid Transit
- \$ 1.1 million South Davis County Bus Rapid Transit

**NOTE 10 –SUBSEQUENT EVENTS**

***COVID 19***

On March 18, 2020, in keeping with recommendations of Federal, State, and Local authorities to limit public gatherings to control the continuing spread of COVID-19, Utah Governor Gary Herbert issued several Executive Orders which has changed the economy of the Wasatch Front and ridership on mass transit. These changes will likely result in significant reductions of UTA’s sales tax and passenger revenues in 2020 and possibly in future years.

On March 27, 2020, President Donald J. Trump signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act which provides \$25 billion to transit agencies in the form of formula grant to help to prevent, prepare for and respond to the COVID-19 pandemic. The total available amount for UTA is as follows:

Urbanized Area	Amount
Salt Lake	\$ 112,091,799
Ogden	49,428,793
Provo	25,655,102
<b>Total</b>	<b>\$ 187,175,694</b>

Although the long-term economic impact of COVID-19 is unknown at this time, UTA anticipates that the CARES Act funding, along with service reductions effective April 5, 2020, will allow UTA to carefully evaluate long-term financial impacts and make necessary adjustments, if any, to align its expenditures to a new level of revenue streams.

***Bond Issuance***

On March 19, 2020, the Authority issued Senior Lien revenue bonds for \$216,650,000. Proceeds from bond issue were used to refund multiple maturities of the Series 2015A Senior Lien revenue bonds (\$176.01 million).



# Required Supplementary Information

For Fiscal Years Ended  
December 31, 2019 and 2018



UTAH TRANSIT AUTHORITY  
 REQUIRED SUPPLEMENTARY INFORMATION  
 Years Ended December 31, 2019 and 2018

**SCHEDULE OF CHANGES IN NET PENSION LIABILITY AND RELATED RATIOS – 10 YEARS**

	2019	2018	2017	2016	2015	2014
<b>Total Pension Liability</b>						
Service cost	\$10,244,115	\$9,550,863	\$8,368,262	\$7,711,706	\$7,545,807	\$7,284,379
Interest on total pension liability	22,947,802	21,512,781	20,368,031	19,604,345	18,717,411	17,623,248
Voluntary member contributions	298,803	223,572	697,576	437,923	916,567	275,663
Gains or losses	3,347,505	4,893,150	4,915,564	(927,077)	(1,973,177)	-
Assumption changes or inputs	-	-	5,079,447	(3,955,702)	7,725,363	-
Benefits paid	(17,302,699)	(15,474,819)	(13,008,142)	(12,980,615)	(11,554,824)	(10,181,732)
Net change in total pension liability	19,535,526	20,705,547	26,420,738	9,890,580	21,377,147	15,001,558
Total pension liability - beginning	326,086,663	305,381,116	278,960,378	269,069,798	247,692,651	232,691,093
Total pension liability - ending (a)	345,622,189	326,086,663	305,381,116	278,960,378	269,069,798	247,692,651
<b>Plan Fiduciary Net Position</b>						
Contributions - employer	\$24,008,192	\$22,355,434	\$20,506,163	\$19,603,952	\$16,745,254	\$15,366,694
Contributions - members	298,803	223,572	697,576	437,923	916,567	275,663
Net investment income	40,648,932	(16,629,921)	30,598,620	7,591,211	(1,085,458)	5,946,916
Benefits paid	(17,302,699)	(15,474,819)	(13,008,142)	(12,980,615)	(11,554,824)	(10,181,732)
Administrative expense	(434,427)	(440,279)	(324,912)	(249,141)	(244,011)	(219,504)
Net change in plan fiduciary net position	47,218,801	(9,966,013)	38,469,305	14,403,330	4,777,528	11,188,037
Plan fiduciary net position - beginning	194,538,549	204,504,562	166,035,257	151,631,927	146,854,399	135,666,362
Plan fiduciary net position - ending (b)	241,757,350	194,538,549	204,504,562	166,035,257	151,631,927	146,854,399
Net pension liability / (asset) - ending (a-b)	\$103,864,839	\$131,548,114	\$100,876,554	\$112,925,121	\$117,437,871	\$100,838,252
Plan fiduciary net position as a percentage of the total pension liability	69.95%	59.66%	66.97%	59.50%	56.40%	59.29%
Covered payroll	\$141,182,999	\$132,521,079	\$126,690,540	\$115,430,618	\$110,727,134	\$106,004,057
Net pension liability as a percentage of covered payroll	73.24%	99.27%	79.62%	97.83%	106.06%	95.13%

This schedule is intended to present 10 years of information. Subsequent years will be added as the information becomes available.

UTAH TRANSIT AUTHORITY  
 REQUIRED SUPPLEMENTARY INFORMATION  
 Years Ended December 31, 2019 and 2018

**STATEMENT OF REQUIRED EMPLOYER CONTRIBUTION – 10 YEARS**

Year	Actuarial Determined Contribution	Actual Employer Contribution	Contribution Deficiency (Excess)	Projected Covered Payroll	Contribution as Percentage of Covered Payroll
2019	\$22,240,718	\$24,008,192	\$(1,767,474)	\$141,812,999	16.93%
2018	21,600,936	22,355,434	(754,498)	132,521,079	16.87%
2017	20,270,486	20,506,163	(235,677)	126,690,540	16.19%
2016	17,147,568	19,603,952	(2,456,384)	115,430,618	16.98%
2015	16,609,070	16,745,254	(136,184)	110,727,134	15.12%
2014	14,757,446	15,366,694	(609,248)	106,004,057	14.50%
2013	14,352,279	13,338,052	1,014,227	102,099,985	13.06%
2012	12,206,257	11,645,982	560,275	96,750,285	12.04%
2011	10,114,755	10,114,755	-	91,265,129	11.08%
2010	10,047,874	10,047,874	-	93,259,215	10.77%

**MONEY-WEIGHTED RATE OF RETURN – 10 YEARS**

The money-weighted rate of return considers the changing amounts actually invested during a period and weights the amount of pension plan investments by the proportion of time they are available to return during that period. External cash flow are determined on a monthly basis and are assumed to occur at the middle of each month. External cash inflows are netted with external cash outflows, resulting in a net external cash flow each month. The money-weighted rate of return is calculated net of investment expenses.

Fiscal Year Ending December 31	Net Money-Weighted Rate of Return
2019	20.56%
2018	-8.00%
2017	18.01%
2016	4.90%
2015	-7.2%
2014	4.31%

*Schedule is intended to present 10 years.. Additional years will be added as the information becomes available*



UTAH TRANSIT AUTHORITY  
REQUIRED SUPPLEMENTARY INFORMATION  
Years Ended December 31, 2019 and 2018

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**NOTE 1 – VALUATION DATE**

The valuation date is January 1, 2019. This is the date as of which the actuarial valuation is performed. The measurement date is December 31, 2019. This is the date as of which the net pension liability is determined. The reporting date is December 31, 2019. This is the employer’s fiscal year ending date.

**NOTE 2 – METHODS AND ASSUMPTIONS USED TO DETERMINE CONTRIBUTION RATES**

Actuarial cost method	Entry age normal
Amortization method	Level percentage of payroll, open
Remaining amortization period	18 years
Asset valuation method	5-year smoothed market less unrealized
Cost of Living Adjustments	None
Inflation	2.3%
Salary increases	5.40% per annum for the first five years of employment; 3.40% per annum thereafter
Investment rate of return	7.00%, net of investment expenses
Retirement age	Table of Rates by Age and Eligibility
Mortality	RP-2014 Blue Collar Mortality Table, with MP-2014 projection scale



# Supplementary Schedules

For Fiscal Years Ended  
December 31, 2019 and 2018



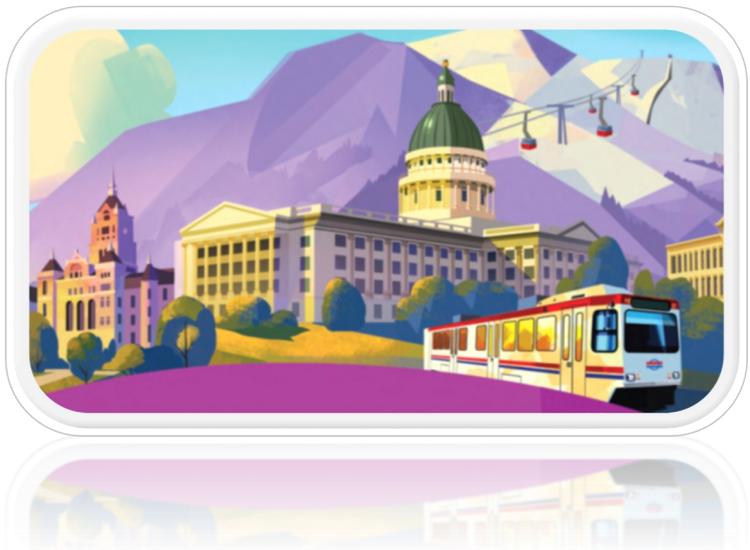
UTAH TRANSIT AUTHORITY  
 Supplementary Schedule (Unaudited)  
 Years Ended December 31, 2019 and 2018

**SCHEDULE OF REVENUES, EXPENSES, AND CHANGES IN NET POSITION**  
**BUDGET (Non-GAAP Budget Basis) AND ACTUAL**

	2019 <u>Budget</u>	2019 <u>Budget Amendments</u>	2019 <u>Actual</u>	<u>Favorable (Unfavorable)</u>
<b>Revenues</b>				
Contributions from other gov'ts, sales tax	\$ 311,796,000	\$ (3,765,000)	\$ 317,797,604	\$ 9,766,604
Federal preventative maintenance grants	66,188,000	-	69,746,231	3,558,231
Passenger revenues	53,420,000	-	52,649,054	(770,946)
Advertising	2,467,000	-	2,462,500	(4,500)
Investment income	8,582,000	-	6,821,490	(1,760,510)
Other income	14,301,000	(1,499,351)	6,000,779	(6,800,870)
Total revenues	<u>456,754,000</u>	<u>(5,264,351)</u>	<u>455,477,658</u>	<u>3,988,009</u>
<b>Operating Expenses</b>				
Bus services	118,536,000	(9,595,283)	104,570,413	4,370,304
Rail services	78,970,000	246,782	77,972,467	1,244,315
Paratransit services	22,918,000	167,277	23,121,527	(36,250)
Other services (less non-operating)	3,221,000	320,000	3,247,699	293,301
Operations support	48,097,000	641,176	47,056,444	1,681,732
Administration (less non-operating)	33,689,000	1,528,342	30,544,000	4,673,342
Total operating expenses	<u>305,431,000</u>	<u>(6,691,706)</u>	<u>286,512,550</u>	<u>12,226,744</u>
<b>Non-Operating Expenses (Revenues)</b>				
Interest expense	93,750,000	\$1,762,318	\$87,541,906	\$7,970,412
Principal	25,768,000	-	24,572,345	1,195,655
Non-operating	6,149,000	(334,963)	6,194,745	(380,708)
Total non-operating expenses	<u>125,667,000</u>	<u>1,427,355</u>	<u>118,308,996</u>	<u>8,785,359</u>
<b>Total Operating and Non-Operating Expenses</b>				
	<u>431,098,000</u>	<u>(5,264,351)</u>	<u>404,821,546</u>	<u>21,012,103</u>
<b>Capital Expenses (Revenues)</b>				
Federal and local grants	(50,031,000)	(12,451,278)	(16,395,068)	(46,087,210)
Local contributions	(15,686,000)	(6,393,432)	(17,383,709)	(4,695,723)
Capital lease	(10,090,000)	(1,013,282)	-	(11,103,282)
Bonds	(19,020,000)	(81,057,792)	-	(100,077,792)
Project Expenses	141,379,000	29,881,222	76,458,075	94,802,147
Total capital expenses (revenues)	<u>\$ 46,552,000</u>	<u>\$ (71,034,562)</u>	<u>\$ 42,679,298</u>	<u>\$ (67,161,860)</u>
Project Expenses-less transfers to Capital Assets in 2019			\$ (57,074,276)	
Operations-less transfers to Capital Assets in 2019			(305,297)	
Capital Maintenance Projects			<u>\$ 19,078,502</u>	
Total Revenues (Operating and Capital)			\$ 489,256,435	
- Less Total Expenses (Operating, Non-Operating, and Capital (after Capitalization))			(423,900,048)	
- Less Depreciation Expense			(146,112,123)	
- Less Net Book Value Loss on Disposals			(51,373,001)	
+ Plus Capital Contributions			1,030,066	
+ Plus Principal Payments on Long-term Debt			24,572,345	
Change in Net Position (Statement of Revenues, Expenses, and Changes in Net Position)			<u>\$ (106,526,326)</u>	

# Statistical

For Fiscal Years Ended  
December 31, 2019 and 2018



UTAH TRANSIT AUTHORITY  
 STATISTICAL SECTION  
 Year Ended December 31, 2019 and 2018

**NET POSITION AS OF December 31 - 10 years**

	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010
Capital Investment in Net Assets	\$ 692,675,681	\$ 827,646,243	\$ 894,275,843	\$ 924,260,135	\$ 1,040,640,236	\$ 1,230,633,230	\$ 1,327,585,097	\$ 1,364,803,454	\$ 1,366,337,801	\$ 1,133,832,808
Restricted	66,948,773	66,559,450	63,399,717	67,381,132	77,983,022	62,779,798	7,172,060	3,872,141	3,929,644	4,071,242
Unrestricted	113,143,840	85,088,927	39,001,957	71,502,447	76,548,154	137,991,170	242,347,746	304,834,237	276,960,064	505,464,819
Total Net Position	872,768,294	979,294,620	993,677,419	1,063,143,714	1,195,171,412	1,431,404,198	1,577,104,903	1,673,509,832	1,647,227,509	1,643,368,869
Restatement Total Net Position, Restated	\$ 872,768,294	\$ 979,294,620	\$ 993,677,419	\$ 1,063,143,714	\$ 1,185,673,891	\$ 1,316,356,931	\$ 1,582,036,460	\$ 1,673,509,832	\$ 1,647,227,509	\$ 1,643,368,869

**CHANGE IN NET POSITION - 10 YEARS**

	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010
Operating Revenues	\$ 55,111,554	\$ 54,464,392	\$ 54,525,870	\$ 52,891,021	\$ 54,346,242	\$ 53,761,223	\$ 52,044,200	\$ 46,422,916	\$ 41,527,090	\$ 36,893,396
Operating Expenses	457,897,920	401,161,541	427,777,940	422,543,342	394,062,733	398,626,029	378,224,993	319,322,223	288,531,160	257,267,580
Operating loss	(402,786,366)	(346,697,149)	(373,252,070)	(369,652,321)	(339,716,491)	(344,864,806)	(326,180,793)	(272,899,307)	(247,004,070)	(220,374,184)
Non-Operating Revenues	261,451,197	268,435,411	246,722,487	226,957,532	209,462,264	182,843,232	173,520,664	200,370,290	205,877,440	219,663,490
Income (loss) before capital contributions	(141,355,169)	(78,261,738)	(126,529,583)	(142,694,789)	(130,254,227)	(162,021,574)	(152,660,129)	(72,529,017)	(41,126,630)	(710,694)
Change in net position	\$ 106,526,326	\$ (14,381,899)	\$ (69,466,295)	\$ (122,530,177)	\$ (121,185,519)	\$ (150,632,263)	\$ (96,404,929)	\$ 26,282,323	\$ 3,858,640	\$ 159,033,380



**Revenue History by Source - 10 Years**

	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010
Operating	\$ 55,111,554	54,464,392	\$ 54,525,870	\$ 52,891,021	\$ 54,346,242	\$ 53,761,223	\$ 52,044,200	\$ 46,422,916	\$ 41,527,090	\$ 36,893,396
Sales taxes	317,797,604	282,933,591	265,770,775	245,008,417	227,703,023	214,683,276	203,806,329	196,693,543	183,091,524	171,893,732
Investment	6,821,490	6,525,872	2,873,787	1,732,939	2,831,406	5,803,226	1,455,039	1,892,549	3,672,397	3,827,161
Other	(45,372,222)	8,155,668	3,954,893	3,108,191	8,314,065	3,724,610	4,347,724	2,351,713	3,483,140	2,929,254
	<u>334,358,426</u>	<u>352,079,523</u>	<u>327,125,325</u>	<u>302,740,568</u>	<u>293,194,736</u>	<u>277,972,335</u>	<u>261,653,292</u>	<u>247,360,721</u>	<u>231,774,151</u>	<u>215,543,543</u>
Federal Grants										
Federal Preventative										
Maintenance Grants	69,746,231	61,820,668	62,313,994	59,772,235	49,452,677	47,760,737	47,986,240	46,719,891	47,735,443	46,500,000
Federal Planning										
Grants	-	-	-	3,562,534	2,547,335	2,994,139	3,868,252	1,985,766	11,583,980	12,637,764
Federal Capital Grants	<u>16,559,238</u>	<u>31,585,104</u>	<u>53,960,024</u>	<u>17,054,298</u>	<u>7,819,096</u>	<u>8,025,628</u>	<u>48,669,408</u>	<u>85,168,542</u>	<u>44,864,016</u>	<u>156,727,641</u>
	<u>86,305,469</u>	<u>93,405,772</u>	<u>116,274,018</u>	<u>80,389,067</u>	<u>59,819,108</u>	<u>58,780,504</u>	<u>100,523,900</u>	<u>133,874,199</u>	<u>104,183,439</u>	<u>215,865,405</u>
Other Capital										
Contributions	<u>18,419,775</u>	<u>32,293,935</u>	<u>3,103,264</u>	<u>3,110,314</u>	<u>1,249,612</u>	<u>3,363,683</u>	<u>7,585,792</u>	<u>13,642,798</u>	<u>121,254</u>	<u>3,046,433</u>
	<u>\$ 439,083,670</u>	<u>\$ 477,779,230</u>	<u>\$ 446,502,607</u>	<u>\$ 386,239,949</u>	<u>\$ 354,263,456</u>	<u>\$ 340,116,522</u>	<u>\$ 369,762,984</u>	<u>\$ 394,877,718</u>	<u>\$ 336,078,844</u>	<u>\$ 434,455,381</u>

**Expense History by Function - 10 Years**

	2019	2018	2018	2016	2015	2014	2013	2012	2011	2010
Bus Service	\$ 104,570,413	\$ 96,719,747	\$ 88,928,063	\$ 85,841,973	\$ 77,092,676	\$ 79,060,631	\$ 78,894,435	\$ 78,894,799	\$ 81,208,651	\$ 79,522,988
Rail Service	77,972,467	75,157,087	72,895,607	84,165,069	67,254,632	70,365,953	61,086,101	46,049,338	38,135,480	33,787,601
Paratransit Service	23,121,527	21,858,532	19,572,367	19,341,116	18,511,580	18,748,699	18,202,211	17,516,117	16,054,555	14,570,401
Other Service	3,247,699	3,056,191	2,982,176	2,949,643	2,918,871	3,183,892	701,656	596,583	535,897	589,356
Operations Support	47,056,444	45,557,749	41,932,571	37,831,682	32,051,926	28,380,563	28,439,826	25,247,271	21,643,830	23,147,075
Administration <sup>1</sup>	36,738,745	39,593,947	31,423,844	38,840,643	35,189,725	35,409,918	28,533,912	26,664,222	26,340,573	22,286,055
Capital Maintenance										
Projects	19,078,502	38,654,111	20,602,425	-	-	-	-	-	-	-
Depreciation	146,112,123	80,565,077	149,440,887	153,573,216	161,043,323	163,476,373	162,366,852	124,353,893	104,612,174	83,364,104
Interest <sup>2</sup>	87,541,906	91,000,388	88,190,962	85,415,870	80,575,328	91,311,842	87,132,004	48,462,258	42,878,130	17,313,507
Recoverable Sales Tax,										
Interlocal <sup>3</sup>	<u>810,914</u>	<u>810,914</u>	<u>810,914</u>	<u>810,914</u>	<u>810,914</u>	<u>810,914</u>	<u>810,914</u>	<u>810,914</u>	<u>810,914</u>	<u>810,914</u>
	<u>\$ 546,250,740</u>	<u>492,973,743</u>	<u>\$ 516,779,816</u>	<u>\$ 508,770,126</u>	<u>\$ 475,448,975</u>	<u>\$ 490,748,785</u>	<u>\$ 466,167,911</u>	<u>\$ 368,595,395</u>	<u>\$ 332,220,204</u>	<u>\$ 275,392,001</u>

<sup>1</sup> Includes major investment studies

<sup>2</sup> Reported as non-capitalized interest

<sup>3</sup> See Notes to the Financial Statement, Note 2.K



**LOCAL CONTRIBUTIONS IN THE FORM OF SALES TAX BY COUNTY - 10 YEARS**

	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009
Box Elder <sup>1</sup>	\$ 2,019,035	\$ 1,898,308	\$ 1,957,740	\$ 1,790,352	\$ 1,552,291	\$ 1,418,268	\$ 1,300,577	\$ 1,279,794	\$ 1,226,730	\$ 1,269,478	\$ 1,297,586
Davis	33,674,864	31,883,835	30,633,547	27,606,440	23,178,724	21,459,683	20,023,042	18,692,038	17,880,017	16,964,089	17,091,892
Salt Lake	196,744,294	174,704,191	163,407,564	153,201,907	146,866,479	139,199,088	132,741,112	129,169,357	120,094,110	112,379,366	112,076,511
Tooele <sup>2</sup>	2,250,563	2,815,189	2,302,492	1,798,971	1,521,097	1,384,631	1,349,366	1,364,179	1,207,539	1,227,109	1,136,816
Utah	55,708,400	45,665,232	43,023,303	38,601,427	36,221,930	33,752,513	31,905,764	30,576,235	27,743,162	25,397,367	25,222,227
Weber	27,400,447	25,966,836	24,446,129	22,009,320	18,362,502	17,469,093	16,486,468	15,611,940	14,939,966	14,656,323	15,029,137
	<u>\$ 317,797,604</u>	<u>\$ 282,933,591</u>	<u>\$ 265,770,775</u>	<u>\$ 245,008,417</u>	<u>\$ 227,703,023</u>	<u>\$ 214,683,276</u>	<u>\$ 203,806,329</u>	<u>\$ 196,693,543</u>	<u>\$ 183,091,524</u>	<u>\$ 171,893,732</u>	<u>\$ 171,854,169</u>

<sup>1</sup> Includes Brigham City, Perry and Willard cities only

<sup>2</sup> Includes the cities of Tooele and Grantsville; and the unincorporated areas of Erda, Lakepoint, Stansbury Park and Lincoln

**LOCAL TRANSIT SALES TAX RATES BY COUNTY - 10 YEARS**

	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009
Box Elder	0.5500%	0.5500%	0.5500%	0.5500%	0.5500%	0.5500%	0.5500%	0.5500%	0.5500%	0.5500%	0.5500%
Davis	0.6500%	0.6500%	0.6500%	0.6500%	0.5500%	0.5500%	0.5500%	0.5500%	0.5500%	0.5500%	0.5500%
Salt Lake	0.7875%	0.6875%	0.6875%	0.6875%	0.6875%	0.6875%	0.6875%	0.6875%	0.6875%	0.6875%	0.6875%
Tooele	0.4000%	0.4000%	0.4000%	0.4000%	0.3000%	0.3000%	0.3000%	0.3000%	0.3000%	0.3000%	0.3000%
Utah	0.6260%	0.5260%	0.5260%	0.5260%	0.5260%	0.5260%	0.5260%	0.5260%	0.5260%	0.5260%	0.5260%
Weber	0.6500%	0.6500%	0.6500%	0.6500%	0.5500%	0.5500%	0.5500%	0.5500%	0.5500%	0.5500%	0.5500%



**PRINCIPAL CONTRIBUTORS OF SALES TAX BY COUNTY - 2010 and 2019**

	2019			2010		
	Rank	Percentage of contributions	Amount	Rank	Percentage of contributions	Amount
Salt Lake County	1	61.91%	\$ 196,744,294	1	65.38%	\$ 112,379,366
Utah County	2	17.53%	55,708,400	2	14.78%	25,397,367
Davis County	3	10.60%	33,674,864	3	9.87%	16,964,089
Weber County	4	8.62%	27,400,447	4	8.53%	14,656,323
Box Elder County	5	0.64%	2,019,035	5	0.74%	1,269,478
Tooele County	6	0.71%	2,250,563	6	0.71%	1,227,109
			<u>\$ 317,797,604</u>			<u>\$ 171,893,732</u>

**FARES - 10 Years**

	2019	2018	2017	2016	2015	2014	2013 (4/1/12)	2012 (5/1/11)	2011 (11/1/10)	2010 (4/1/09)
<b>Cash Fares</b>										
Base Fare	\$ 2.50	\$ 2.50	\$ 2.50	\$ 2.50	\$ 2.50	\$ 2.50	\$ 2.50	\$ 2.35	\$ 2.25	\$ 2.00
Senior Citizen/Disabled	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.15	1.10	1.00
Ski Bus	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.25	4.00	3.50
Paratransit (Flextrans)	4.00	4.00	4.00	4.00	4.00	4.00	4.00	3.50	2.75	2.50
Commuter Rail Base Rate	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.35	2.25	2.00
Commuter Rail Additional Station	0.60	0.60	0.60	0.60	0.60	0.60	0.60	0.55	0.50	0.50
Commuter Rail Maximum Rate	10.30	10.30	10.30	10.30	10.30	10.30	10.30	5.10	5.25	5.00
Express	5.50	5.50	5.50	5.50	5.50	5.50	5.50	5.25	5.00	4.50
Streetcar	1.00	1.00	1.00	1.00	1.00	1.00	1.00	n/a	n/a	n/a
<b>Monthly Passes</b>										
Adult	\$ 83.75	\$ 83.75	\$ 83.75	\$ 83.75	\$ 83.75	\$ 83.75	\$ 83.75	\$ 78.50	\$ 75.00	\$ 67.00
Minor	62.75	62.75	62.75	62.75	62.75	62.75	62.75	58.75	56.25	49.75
College Student	62.75	62.75	62.75	62.75	62.75	62.75	62.75	58.75	56.25	49.75
Senior Citizen/Disabled	41.75	41.75	41.75	41.75	41.75	41.75	41.75	39.25	37.50	33.50
Express	198.00	198.00	198.00	198.00	198.00	198.00	198.00	189.00	180.00	162.00
Paratransit	n/a	n/a	n/a	n/a						
<b>Other Fares</b>										
Day Pass	\$ 6.25	\$ 6.25	\$ 6.25	\$ 6.25	\$ 6.25	\$ 6.25	\$ 6.25	\$ 5.75	\$ 5.50	\$ 5.00
Group Pass	15.00	15.00	15.00	15.00	15.00	15.00	15.00	14.00	13.50	12.00
Summer Youth	99.00	99.00	99.00	99.00	99.00	99.00	99.00	n/a	n/a	n/a
Token - 10-Pack	22.50	22.50	22.50	22.50	22.50	22.50	22.50	21.00	20.25	17.75
Paratransit - 10-Ride Ticket	40.00	40.00	40.00	40.00	40.00	40.00	40.00	35.00	30.00	25.00
Paratransit - 30-Ride Ticket	n/a	n/a	n/a	n/a						
Ski Day Pass	n/a	n/a	8.00	7.00						



UTAH TRANSIT AUTHORITY  
 STATISTICAL SECTION  
 Year Ended December 31, 2019 and 2018

**TOTAL OUTSTANDING DEBT BURDEN PER CAPITA**

Fiscal Year	Total Debt		Sales Taxes Collected (less Proposition 1)	Personal Income of UTA Service Area	Percentage of Personal Income	Per Capita
	Bonds	Leases				
2010	\$ 1,834,459,109	\$ -	\$ 171,893,732	\$ 71,636,728,000.00	2.51%	\$ 833.19
2011	1,927,474,109	-	183,091,524	73,036,786,000.00	2.48%	863.07
2012	2,083,194,109	-	196,693,543	77,738,053,000.00	2.54%	918.99
2013	2,077,184,109	-	203,806,329	82,025,459,000.00	2.42%	901.64
2014	2,072,399,109	-	214,683,276	85,916,480,000.00	2.32%	887.16
2015	2,099,242,069	11,272,688	227,703,023	89,319,546,000.00	2.25%	887.79
2016	2,070,183,567	19,605,173	238,584,981	93,617,901,000.00	2.01%	864.24
2017	2,136,303,567	46,394,866	256,742,750	103,831,295,168.01	1.99%	886.19
2018	2,211,117,114	56,038,716	273,007,256	109,771,147,642.00	1.93%	904.05
2019	2,196,731,498	52,187,203	307,706,422	117,772,743,000.00	n/a	n/a

Source: Note 8  
 Note: Does not include Utah County Provo Orem BRT debt  
 2019 income numbers not available as of June 2020

**DEMOGRAPHIC AND ECONOMIC STATISTICS**

Fiscal Year	Estimated Population	Personal Income in UTA Service Area	Per Capita Personal Income	Unemployment Rate
2010	2,201,736	\$ 73,036,786,000	\$ 33,172	7.5%
2011	2,233,268	77,738,053,000	34,809	6.0%
2012	2,266,836	82,025,459,000	36,185	5.6%
2013	2,303,781	85,916,480,000	37,294	3.5%
2014	2,335,999	89,319,546,000	38,236	3.5%
2015	2,377,256	93,617,901,000	39,381	3.4%
2016	2,418,075	103,772,062,000	42,915	3.1%
2017	2,463,015	108,805,744,000	44,176	3.0%
2018	2,507,775	117,772,743,000	46,963	3.0%
2019	n/a	n/a	n/a	n/a

Source: US Dept of Commerce, Bureau of Economic Analysis, Regional Data (www.bea.gov)  
 Unemployment rate- Utah Department of Workforce Services  
 2019 statistic not available as of June 2020

**YEARLY DEBT SERVICE COVERAGE**

Fiscal Year	Bond Payments		Sales Tax Collected (Less Proposition 1 and 4th quarter cent)	Coverage Ratio Sales Tax
	Principle	Interest		
2010	\$ 6,960,000	\$ 63,782,164	\$ 171,893,732	2.43
2011	7,300,000	71,932,011	183,091,524	2.31
2012	7,615,000	71,837,998	196,693,543	2.48
2013	7,450,000	84,319,531	203,806,329	2.22
2014	7,810,000	91,382,184	214,683,276	2.16
2015	11,445,000	84,785,200	227,703,023	2.37
2016	13,570,000	94,893,898	238,584,981	2.20
2017	8,750,000	77,765,121	256,742,750	2.97
2018	10,845,000	89,110,270	273,007,256	2.73
2019	17,500,000	88,893,270	288,548,490	2.71

Source: Note 8  
 Note: Does not include Utah County Provo Orem BRT debt

**PRINCIPAL EMPLOYERS - 2010 and 2018**

2018					2008				
Employer	Industry	Employees	Rank	% Total Employment	Employer	Employees	Rank	% Total Employment	
Intermountain Healthcare	Health Care	20,000 +	1	1.3%	Intermountain Health Care	20,000+	1	1.7%	
University of Utah (Inc. Hospital)	Higher Education	20,000 +	2	1.3%	State of Utah	20,000+	2	1.7%	
State of Utah	State Government	20,000 +	3	1.3%	University of Utah	20,000+	3	1.7%	
Brigham Young University	Higher Education	15,000-19,999	4	1.0%	Brigham Young University	15,000-19,999	4	1.2%	
Wal-Mart Associates	Warehouse Clubs/Supercenters	15,000-19,999	5	1.0%	Wal Mart Stores	15,000-19,999	5	1.2%	
Hill Air Force Base	Federal Government	10,000-14,999	6	0.6%	Hill Air Force Base	15,000-19,999	6	1.2%	
Davis County School District	Public Education	7,000-9,999	7	0.5%	Granite School District	7,000-9,999	7	0.6%	
Utah State University	Higher Education	7,000-9,999	8	0.5%	Jordan School District	7,000-9,999	8	0.6%	
Smith's Food and Drug Centers	Grocery Stores	7,000-9,999	9	0.5%	Davis County School District	7,000-9,999	9	0.6%	
Granite School District	Public Education	7,000-9,999	10	0.5%	Utah State University	5,000-6,999	10	0.6%	
Zions Bancorporation	Banking	7,000-9,999	11	0.5%	Kroger Group/ Smiths Marketplace	5,000-6,999	11	0.6%	
Alpine School District	Public Education	5,000-6,999	12	0.3%	Salt Lake County	5,000-6,999	12	0.6%	
Jordan School District	Public Education	5,000-6,999	13	0.3%	Alpine School District	5,000-6,999	13	0.6%	
Salt Lake County	Local Government	5,000-6,999	14	0.3%	Internal Revenue Service	5,000-6,999	14	0.6%	
Utah Valley University	Higher Education	5,000-6,999	15	0.3%	US Postal Service	5,000-6,999	15	0.6%	
Total Employment				1,510,208				1,020,408	

Source: <https://jobs.utah.gov/wi/data/firm/majoremployers.html>  
<https://jobs.utah.gov/wi/pubs/cm/annual/current/index.html>

**FULL-TIME EQUIVALENT AUTHORITY EMPLOYEES - 10 YEARS**

	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010
Bus operations	1138	1089	1030	1028	951	945	911	963	950	998
Rail operations	631	611	580	563	527	542	526	506	425	335
Paratransit operations	204	196	191	191.5	188	183	176	168	168	140
Other services	10	8	9	9	12	10	10	12	11	11
Support services	433	413	365	366	349	323	335	293	284	239
Administration	184	180	243	212	210	207	195	217	224	238
Total	2599	2496	2417	2368	2237	2210	2153	2159	2062	1961

Source: UTA Budget Staff



**TREND STATISTICS - 10 YEARS**

	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010
<b>Passengers</b>										
Bus service	20,799,642	19,624,935	19,749,855	20,033,242	20,560,068	20,165,174	19,695,711	21,222,669	21,560,358	21,716,864
Rail service	22,321,887	22,981,884	23,677,677	23,765,873	24,349,674	24,337,451	22,814,274	19,421,608	16,944,264	14,790,418
Paratransit service	388,265	394,816	386,977	389,019	388,169	372,499	383,453	715,034	683,336	509,625
Vanpool service	1,068,364	1,174,696	1,264,410	1,333,780	1,423,675	1,404,285	1,387,816	1,446,766	1,417,183	1,346,949
<b>Total passengers</b>	<b>44,578,158</b>	<b>44,176,331</b>	<b>45,078,919</b>	<b>45,521,914</b>	<b>46,721,586</b>	<b>46,279,409</b>	<b>44,281,254</b>	<b>42,806,077</b>	<b>40,605,141</b>	<b>38,363,856</b>
<b>Revenue Miles</b>										
Bus service	18,158,463	17,911,404	17,454,404	15,462,834	15,367,510	15,660,520	15,706,028	15,091,645	15,869,340	16,412,862
Rail service	11,977,751	12,084,767	12,082,292	12,070,277	11,988,005	11,784,146	11,681,251	7,905,460	6,019,693	5,312,506
Paratransit service	2,881,355	2,798,928	2,727,127	2,505,343	2,293,887	2,513,535	2,932,842	3,252,193	4,094,325	2,799,362
Vanpool service	6,451,812	6,354,828	6,449,439	6,518,150	6,734,487	6,859,802	7,053,191	7,553,978	8,042,756	7,342,322
<b>Total Revenue Miles</b>	<b>39,469,381</b>	<b>39,149,927</b>	<b>38,713,262</b>	<b>36,556,604</b>	<b>36,383,889</b>	<b>36,818,003</b>	<b>37,373,312</b>	<b>33,803,276</b>	<b>34,026,114</b>	<b>31,867,052</b>
<b>Total Miles</b>										
Bus service	20,854,420	20,247,617	19,899,364	17,511,624	17,662,486	17,864,847	17,191,018	16,553,983	17,416,367	18,820,702
Rail service	12,098,162	12,285,634	12,202,976	12,189,876	12,368,934	11,814,332	11,773,929	7,987,022	6,073,807	5,365,270
Paratransit service	3,566,711	3,376,772	3,263,607	3,254,559	3,192,367	2,844,468	3,493,247	4,088,027	5,256,369	3,473,129
Vanpool service	6,451,812	6,354,828	6,449,439	6,518,150	6,734,487	6,859,802	7,053,191	7,553,978	8,042,756	7,342,322
<b>Total miles</b>	<b>42,971,105</b>	<b>42,264,851</b>	<b>41,815,386</b>	<b>39,474,209</b>	<b>39,958,274</b>	<b>39,383,449</b>	<b>39,511,385</b>	<b>36,183,010</b>	<b>36,789,299</b>	<b>35,001,423</b>
<b>Passengers per Mile</b>										
Bus service	1.15	1.10	1.13	1.30	1.34	1.29	1.25	1.41	1.36	1.32
Rail service	1.86	1.90	1.96	1.97	2.03	2.07	1.95	2.46	2.81	2.78
Paratransit service	0.13	0.14	0.14	0.16	0.17	0.15	0.13	0.22	0.17	0.18
Vanpool service	0.17	0.18	0.20	0.20	0.21	0.20	0.20	0.19	0.18	0.18
<b>Ttl. Passengers per Revenue Mile</b>	<b>1.13</b>	<b>1.13</b>	<b>1.16</b>	<b>1.25</b>	<b>1.28</b>	<b>1.26</b>	<b>1.18</b>	<b>1.27</b>	<b>1.19</b>	<b>1.20</b>
<b>Revenue Hours</b>										
Bus service	1,326,660	1,284,186	1,258,448	1,087,055	1,070,139	1,108,894	933,662	834,985	866,268	897,294
Rail service	532,353	527,187	513,389	511,082	506,233	487,435	641,914	536,066	388,826	295,227
Paratransit service	181,749	180,342	162,198	162,734	160,383	164,527	191,016	227,013	300,760	201,994
<b>Total revenue hours</b>	<b>2,040,762</b>	<b>1,991,715</b>	<b>1,934,035</b>	<b>1,760,871</b>	<b>1,736,755</b>	<b>1,760,856</b>	<b>1,766,592</b>	<b>1,598,064</b>	<b>1,555,854</b>	<b>1,394,515</b>
<b>Passengers per Revenue Hour</b>										
Bus service	15.68	15.28	15.69	18.43	19.21	18.18	21.10	25.42	24.89	24.20
Rail service	41.93	43.59	46.12	46.50	48.10	49.93	35.54	36.23	43.58	50.10
Paratransit service	2.14	2.19	2.39	2.39	2.42	2.26	2.01	3.15	2.27	2.52
<b>Total passengers per mile</b>	<b>21.13</b>	<b>21.59</b>	<b>22.65</b>	<b>25.09</b>	<b>26.08</b>	<b>25.48</b>	<b>24.28</b>	<b>25.88</b>	<b>25.19</b>	<b>26.54</b>
<b>Total System</b>										
Fare revenue	\$ 52,649,054	\$ 48,122,586	\$ 52,159,202	\$ 50,624,354	\$ 52,112,909	\$ 51,461,223	\$ 49,977,533	\$ 44,489,583	\$ 39,693,757	\$ 35,160,063
Operating expense	311,785,797	300,954,051	257,734,612	268,970,126	242,516,933	235,149,656	215,858,141	194,968,330	183,918,986	173,903,476
Cost per revenue mile	7.90	7.69	6.66	7.36	6.67	6.39	5.78	5.77	5.41	5.46
Cost per passenger	6.99	6.81	5.72	5.91	5.19	5.08	4.87	4.55	4.53	4.53
Fare revenue per passenger	1.18	1.09	1.16	1.11	1.12	1.11	1.13	1.04	0.98	0.92

Note: Does not include commuter bus or contract transportation.

Source: NTD



**OPERATING INDICATORS AND CAPITAL ASSETS - 10 YEARS**

	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010
Number of bus routes*	117	114	119	125	126	121	119	125	119	127
Number of rail routes										
Light rail	4	4	4	4	4	4	4	3	3	3
Commuter rail	1	1	1	1	1	1	1	1	1	1
Bus Service Miles (weekday)	62,742	57,378	56,162	53,612	49,625	51,629	55,733	64,186	64,493	67,012
Rail Service Miles (weekday)										
Light Rail	8,832	8,853	8,814	8,815	8,828	8,547	8,216	6,978	5,107	3,910
commuter Rail	4,660	4,664	4,623	4,627	4,651	4,638	4,488	2,390	2,327	2,469
Average Passengers (weekday)	152,940	151,901	156,288	155,873	161,862	161,339	152,644	152,934	142,186	134,736
Buses	570	561	582	567	555	535	493	570	495	496
Paratransit vehicles (buses/vans)	198	182	148	129	100	84	113	110	112	96
Rail vehicles										
Light rail	117	146	146	146	146	146	146	122	122	55
Commuter rail	70	81	81	81	81	81	81	57	55	37
Vanpool vehicles	512	453	453	503	495	479	470	494	485	414
Park and ride lots <sup>1</sup>										
Rail Park and Ride	42	42	42	46	41					
Non-Rail and and ride	12	12	12							
Bus Stops	6,247	6,100	6,100	6,196	6,250	6,250	6,273	6,333	6,600	6,645
Rail Staitls										
Light Rail	57	57	57	57	57	51	51	41	41	28
Commuter Rail	17	16	16	16	16	16	16	16	7	8

\* Including flex

<sup>1</sup> As of 2017 started distinguishing between rail and non rail park and ride lots

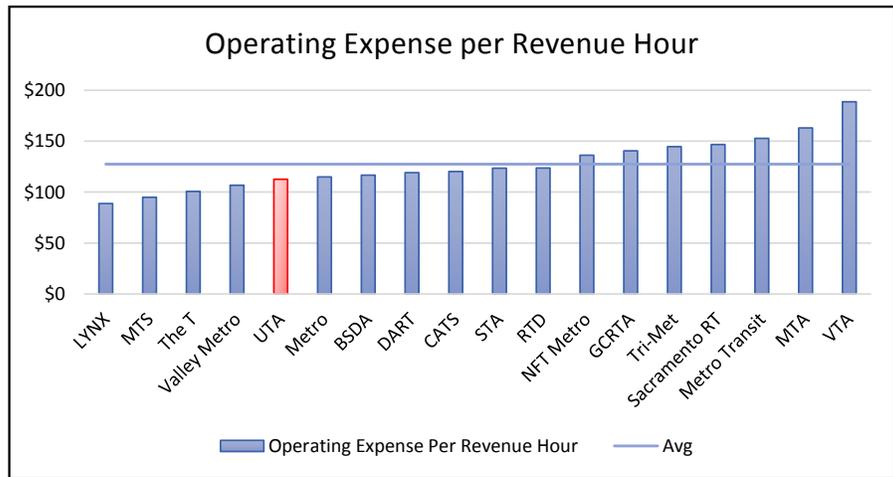
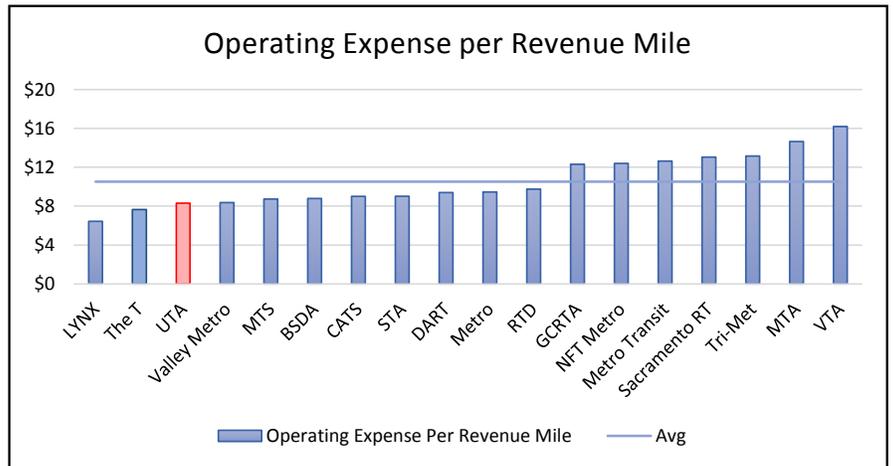


**PERFORMANCE MEASURES - BUS SERVICE**

The following charts contain information from the Federal Transit Administration's National Transit Database (NTD) for the most recent year available (2018), and compares the Authority's performance with other like transit agencies.

**Service Efficiency**

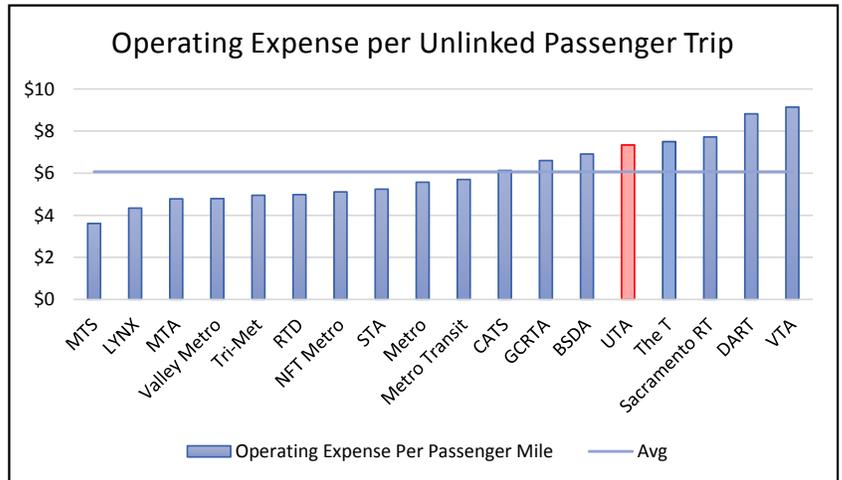
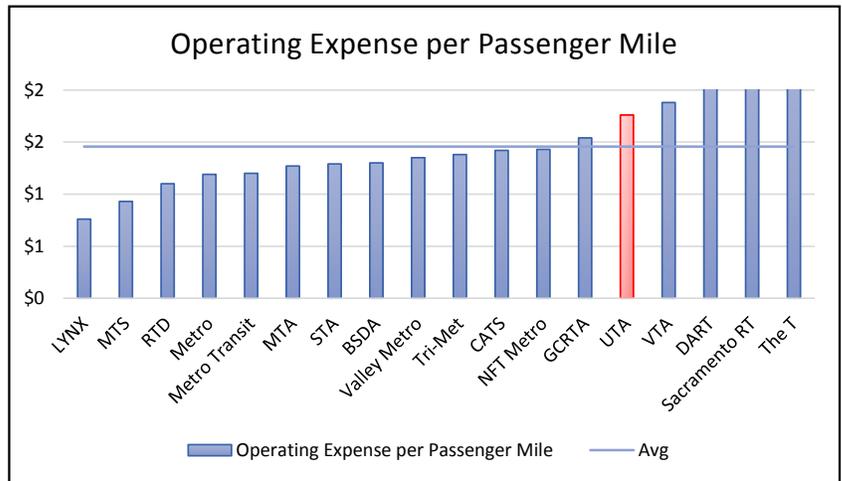
City	Agency	Operating Expense per Revenue Mile	Operating Expense per Revenue Hour
Salt Lake City, UT	UTA	\$ 8.31	\$ 112.63
Baltimore, MD	MTA	14.65	163.00
Buffalo, NY	NFT Metro	12.40	136.22
Charlotte, NC	CATS	9.01	120.19
Cleveland, OH	GCRTA	12.31	140.53
Dallas, TX	DART	9.40	119.10
Denver, CO	RTD	9.75	123.67
Ft Worth, TX	The T	7.65	100.64
Houston, TX	Metro	9.46	114.91
Minneapolis, MN	Metro Transit	12.64	152.79
Orlando, FL	LYNX	6.44	88.77
Phoenix, AZ	Valley Metro	8.37	106.73
Portland, OR	Tri-Met	13.16	144.60
Sacramento, CA	Sacramento RT	13.05	146.72
San Diego	MTS	8.73	94.91
San Jose, CA	VTA	16.19	188.71
Spokane, WA	STA	9.02	123.50
St Louis, MO	BSDA	8.79	116.65
Average		\$ 10.52	\$ 127.46
Maximum		16.19	188.71
Minimum		6.44	88.77
Standard Deviation		2.68	25.35



**PERFORMANCE MEASURES - BUS SERVICE (continued)**

**Cost Effectiveness**

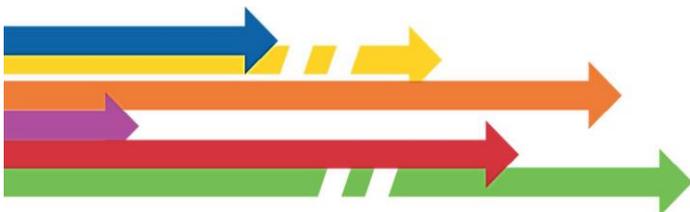
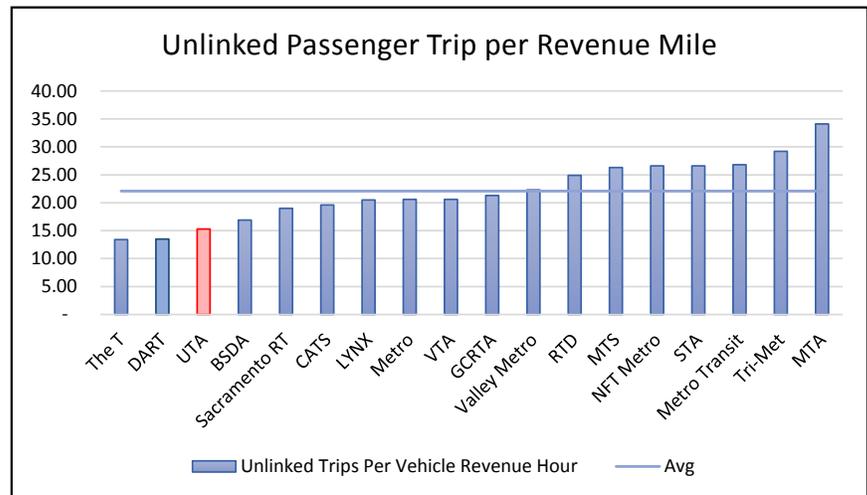
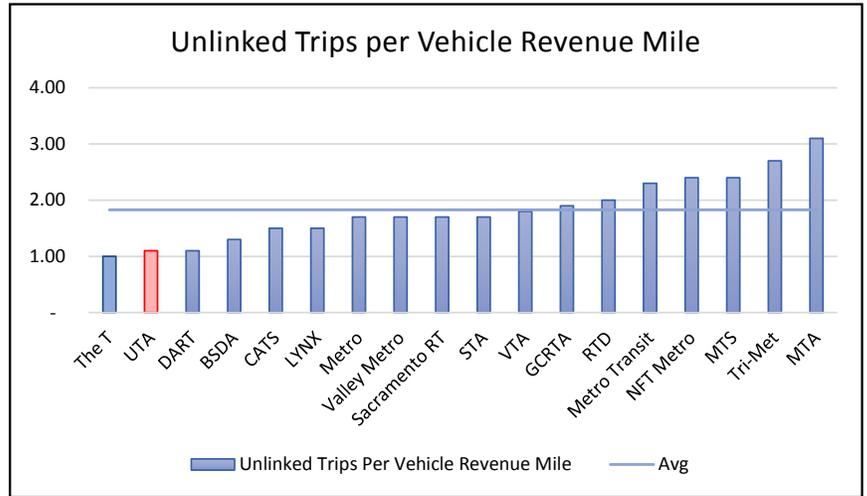
City	Agency	Operating Expense per Passenger Mile	Operating Expense per Unlinked Passenger Trip
Salt Lake City, UT	UTA	\$ 1.76	\$ 7.34
Baltimore, MD	MTA	1.27	4.78
Buffalo, NY	NFT Metro	1.43	5.11
Charlotte, NC	CATS	1.42	6.13
Cleveland, OH	GCRTA	1.54	6.60
Dallas, TX	DART	2.12	8.82
Denver, CO	RTD	1.10	4.98
Ft Worth, TX	The T	2.15	7.50
Houston, TX	Metro	1.19	5.57
Minneapolis, MN	Metro Transit	1.20	5.70
Orlando, FL	LYNX	0.76	4.34
Phoenix, AZ	Valley Metro	1.35	4.79
Portland, OR	Tri-Met	1.38	4.95
Sacramento, CA	Sacramento RT	2.14	7.72
San Diego	MTS	0.93	3.61
San Jose, CA	VTA	1.88	9.14
Spokane, WA	STA	1.29	5.24
St Louis, MO	BSDA	1.30	6.91
Average		\$ 1.46	\$ 6.07
Maximum		2.15	9.14
Minimum		0.76	3.61
Standard Deviation		0.41	1.56



**PERFORMANCE MEASURES - BUS SERVICE (continued)**

**Service Effectiveness**

City	Agency	Unlinked Passenger Trips per Vehicle Revenue Mile	Unlinked Passenger Trips per Vehicle Revenue Hour
Salt Lake City, UT	UTA	1.10	15.30
Baltimore, MD	MTA	3.10	34.10
Buffalo, NY	NFT Metro	2.40	26.60
Charlotte, NC	CATS	1.50	19.60
Cleveland, OH	GCRTA	1.90	21.30
Dallas, TX	DART	1.10	13.50
Denver, CO	RTD	2.00	24.90
Ft Worth, TX	The T	1.00	13.40
Houston, TX	Metro	1.70	20.60
Minneapolis, MN	Metro Transit	2.30	26.80
Orlando, FL	LYNX	1.50	20.50
Phoenix, AZ	Valley Metro	1.70	22.30
Portland, OR	Tri-Met	2.70	29.20
Sacramento, CA	Sacramento RT	1.70	19.00
San Diego	MTS	2.40	26.30
San Jose, CA	VTA	1.80	20.60
Spokane, WA	STA	1.70	26.60
St Louis, MO	BSDA	1.30	16.90
Average		1.83	22.08
Maximum		3.10	34.10
Minimum		1.00	13.40
Standard Deviation		0.57	5.58

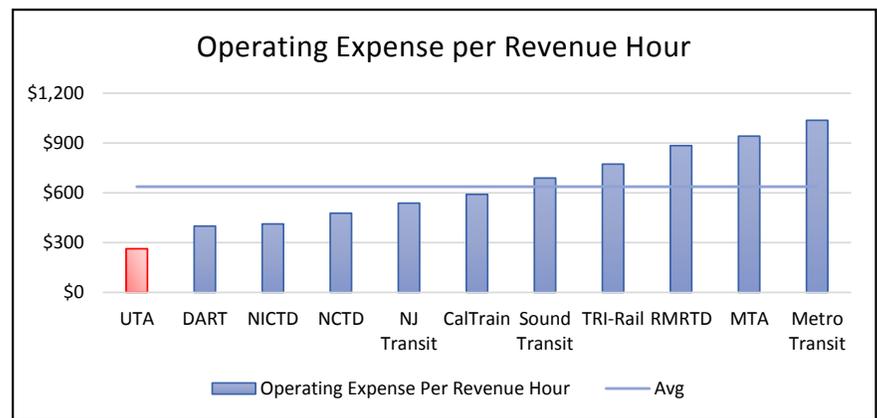
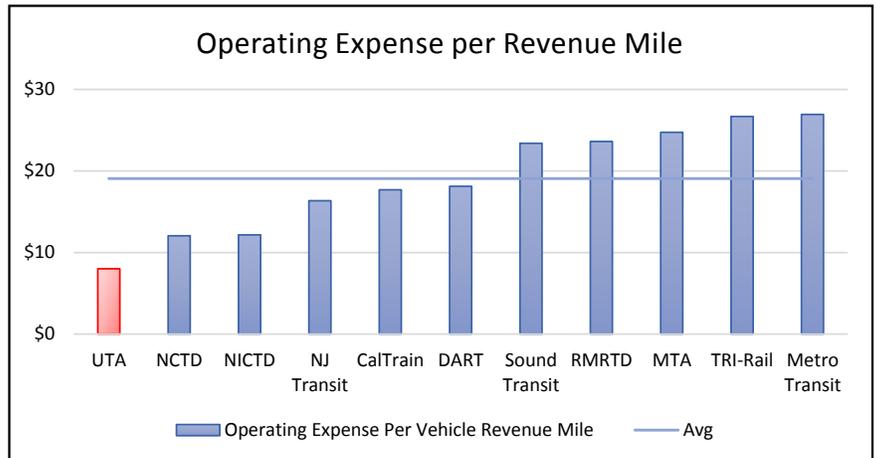


**PERFORMANCE MEASURES - COMMUTER RAIL**

The following charts contain information from the Federal Transit Administration's National Transit Database (NTD) for the most recent year available (2018), and compares the Authority's performance with other like transit agencies.

**Service Efficiency**

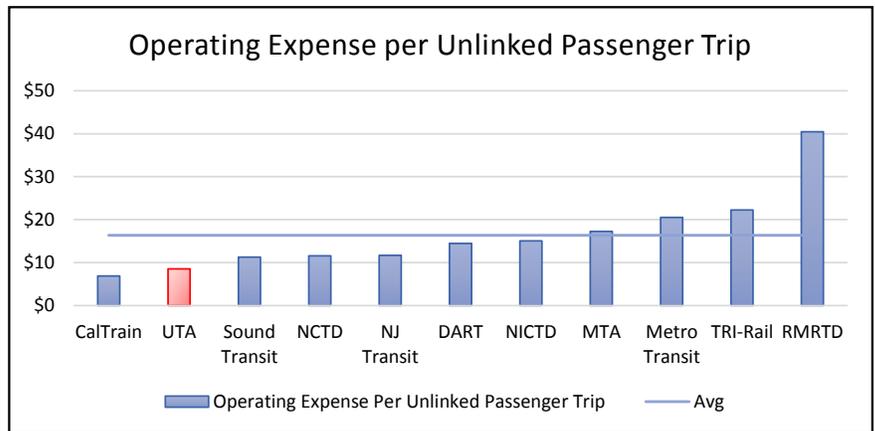
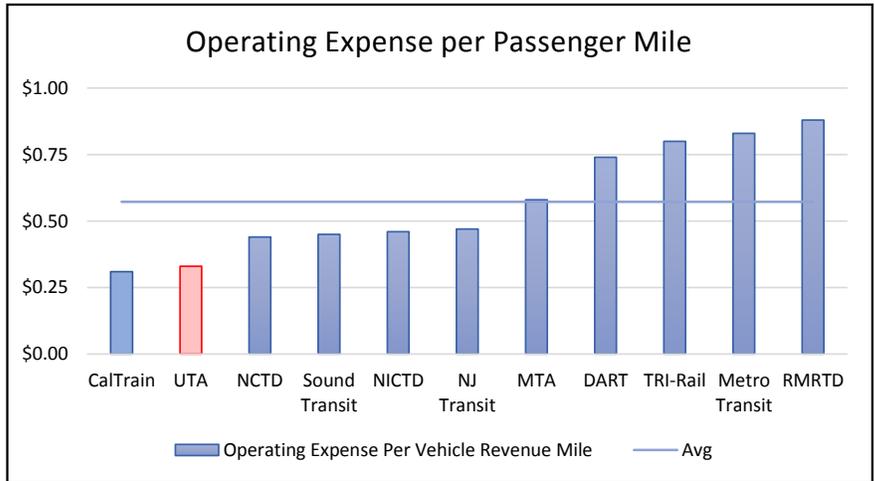
City	Agency	Operating Expense per Vehicle Revenue Mile	Operating Expense per Vehicle Revenue Hour
Salt Lake City, UT	UTA	\$ 8.00	\$ 263.28
Albuquerque, NM	RMRTD	23.61	884.61
Baltimore, MD	MTA	24.74	941.73
Chesterton, IN	NICTD	12.16	412.73
Dallas, TX	DART	18.12	399.84
Minneapolis, MN	Metro Transit	26.93	1,036.99
Newark, NJ	NJ Transit	16.35	538.10
Oceanside, CA	NCTD	12.05	477.52
Pompano Beach, FL	TRI-Rail	26.68	773.23
San Carlos, CA	CalTrain	17.69	591.09
Seattle, WA	Sound Transit	23.39	689.14
Average		\$ 19.07	\$ 637.11
Maximum		26.93	1,036.99
Minimum		8.00	263.28
Standard Deviation		6.49	248.79



**PERFORMANCE MEASURES - COMMUTER RAIL (continued)**

**Cost Effectiveness**

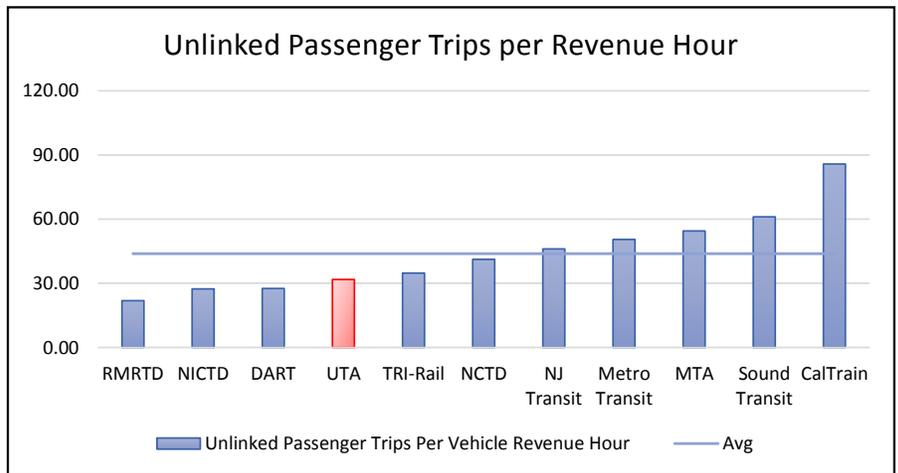
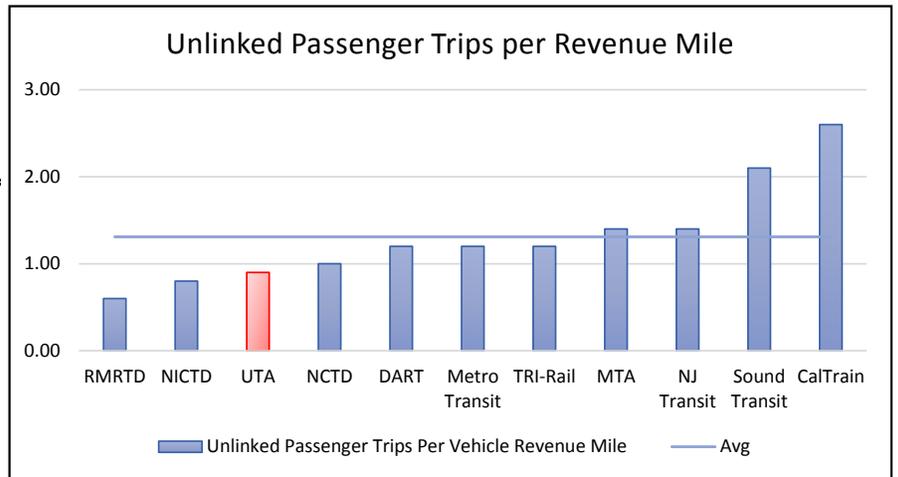
City	Agency	Operating Expenses Per Passenger Mile	Operating Expenses Per Unlinked Passenger Trip
Salt Lake City, UT	UTA	\$ 0.33	\$ 8.54
Albuquerque, NM	RMRTD	0.88	40.46
Baltimore, MD	MTA	0.58	17.26
Chesterton, IN	NICTD	0.46	15.06
Dallas, TX	DART	0.74	14.46
Minneapolis, MN	Metro Transit	0.83	20.52
Newark, NJ	NJ Transit	0.47	11.68
Oceanside, CA	NCTD	0.44	11.58
Pompano Beach, FL	TRI-Rail	0.80	22.25
San Carlos, CA	CalTrain	0.31	6.89
Seattle, WA	Sound Transit	0.45	11.28
Average		\$ 0.57	\$ 16.36
Maximum		0.88	40.46
Minimum		0.31	6.89
Standard Deviation		0.21	9.28



**PERFORMANCE MEASURES - COMMUTER RAIL (continued)**

**Service Effectiveness**

City	Agency	Unlinked Passenger Trips per Vehicle Revenue Mile	Unlinked Passenger Trips per Vehicle Revenue Hour
Salt Lake City, UT	UTA	0.90	31.80
Albuquerque, NM	RMRTD	0.60	21.90
Baltimore, MD	MTA	1.40	54.50
Chesterton, IN	NICTD	0.80	27.40
Dallas, TX	DART	1.20	27.60
Minneapolis, MN	Metro Transit	1.20	50.50
Newark, NJ	NJ Transit	1.40	46.10
Oceanside, CA	NCTD	1.00	41.20
Pompano Beach, FL	TRI-Rail	1.20	34.80
San Carlos, CA	CalTrain	2.60	85.80
Seattle, WA	Sound Transit	2.10	61.10
Average		1.31	43.88
Maximum		2.60	85.80
Minimum		0.60	21.90
Standard Deviation		0.58	18.63

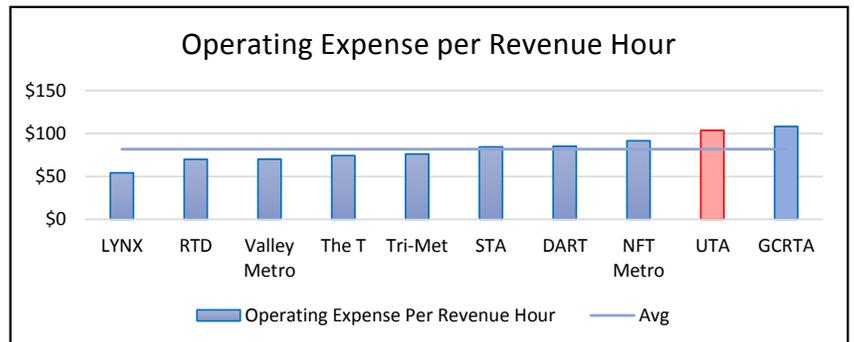
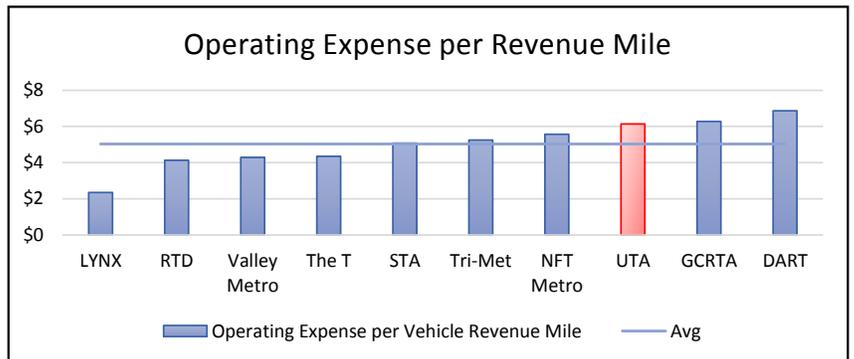


**PERFORMANCE MEASURES - DEMAND RESPONSE**

The following charts contain information from the Federal Transit Administration's National Transit Database (NTD) for the most recent year available (2018), and compares the Authority's performance with other like transit agencies.

**Service Efficiency**

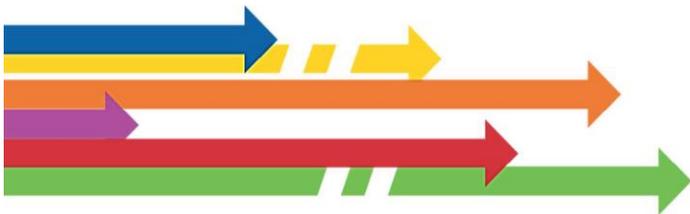
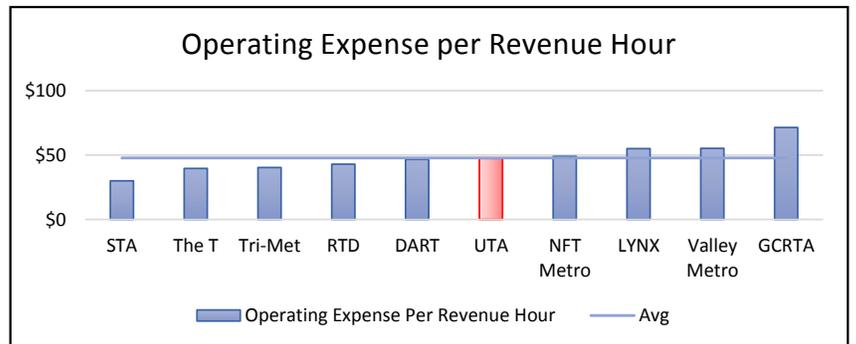
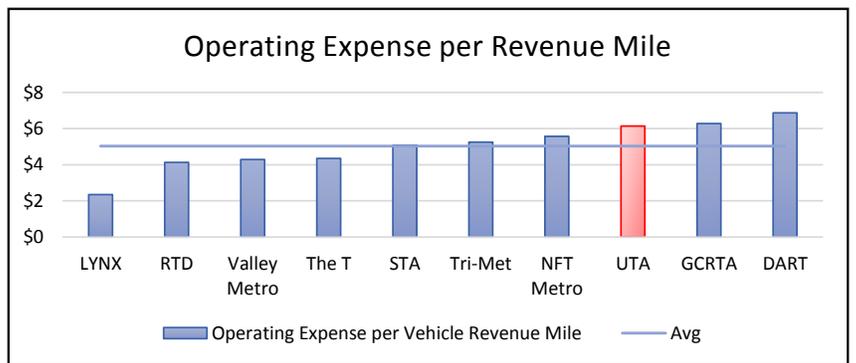
City	Agency	Operating Expense per Vehicle Revenue Mile	Operating Expense per Vehicle Revenue Hour
Salt Lake City, UT	UTA	\$ 6.68	\$ 103.67
Buffalo, NY	NFT Metro	5.94	91.54
Cleveland, OH	GCRTA	7.51	108.21
Dallas, TX	DART	6.91	85.16
Denver, CO	RTD	4.43	69.91
Fort Worth, TX	The T	4.69	74.27
Orlando, FL	LYNX	3.13	54.20
Phoenix, AZ	Valley Metro	5.51	70.05
Portland, OR	Tri-Met	6.09	76.12
Spokane, WA	STA	5.61	84.40
Average		\$ 5.65	\$ 81.75
Maximum		7.51	108.21
Minimum		3.13	54.20
Standard Deviation		1.30	16.39



**PERFORMANCE MEASURES - DEMAND RESPONSE (continued)**

**Cost Effectiveness**

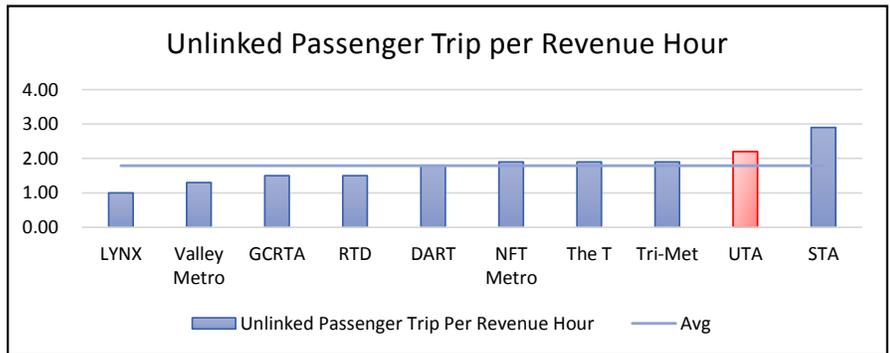
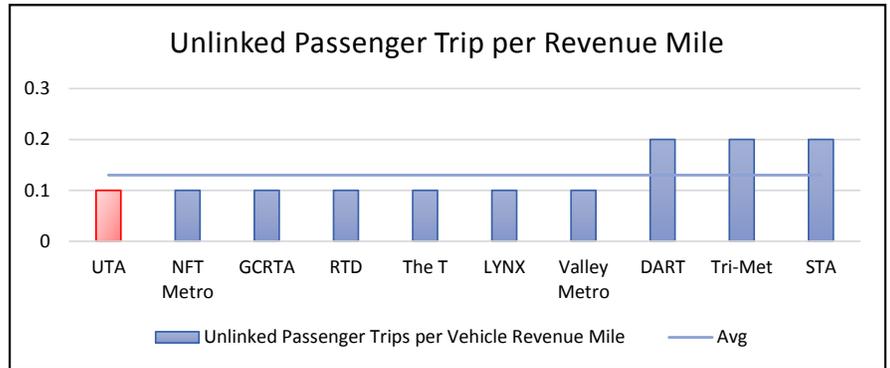
City	Agency	Operating Expense per Vehicle Revenue Mile	Operating Expense per Vehicle Revenue Hour
Salt Lake City, UT	UTA	\$ 4.09	\$ 47.35
Buffalo, NY	NFT Metro	4.86	48.94
Cleveland, OH	GCRTA	9.53	71.41
Dallas, TX	DART	4.23	46.63
Denver, CO	RTD	4.90	42.92
Fort Worth, TX	The T	3.99	39.61
Orlando, FL	LYNX	3.70	55.00
Phoenix, AZ	Valley Metro	5.73	55.22
Portland, OR	Tri-Met	4.36	40.32
Spokane, WA	STA	3.28	29.98
Average		\$ 4.87	\$ 47.74
Maximum		9.53	71.41
Minimum		3.28	29.98
Standard Deviation		1.78	11.21



**PERFORMANCE MEASURES - DEMAND RESPONSE (continued)**

**Service Effectiveness**

City	Agency	Unlinked Passenger Trips per Vehicle Revenue Mile	Unlinked Passenger Trips per Vehicle Revenue Hour
Salt Lake City, UT	UTA	0.10	2.20
Buffalo, NY	NFT Metro	0.10	1.90
Cleveland, OH	GCRTA	0.10	1.50
Dallas, TX	DART	0.10	1.80
Denver, CO	RTD	0.10	1.50
Fort Worth, TX	The T	0.10	1.90
Orlando, FL	LYNX	0.10	1.00
Phoenix, AZ	Valley Metro	0.10	1.30
Portland, OR	Tri-Met	0.20	1.90
Spokane, WA	STA	0.20	2.90
Average		0.12	1.79
Maximum		0.20	2.90
Minimum		0.10	1.00
Standard Deviation		0.04	0.52

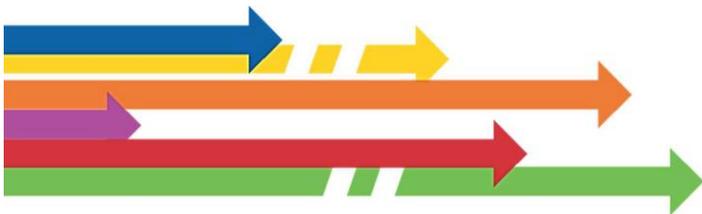
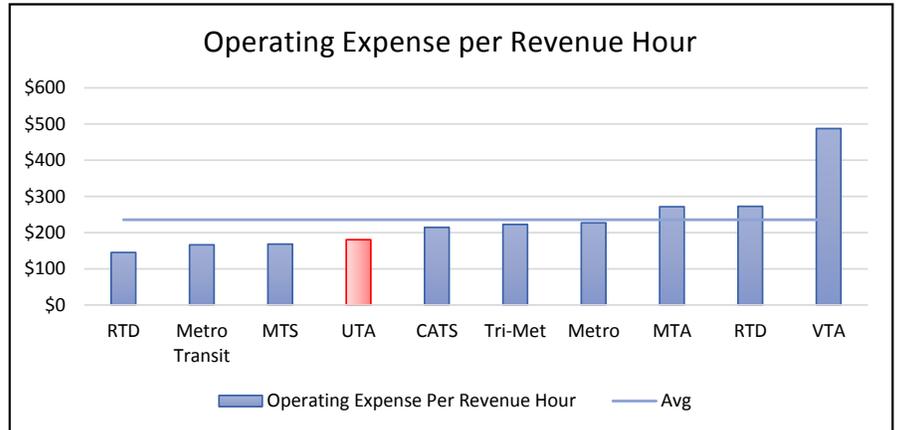
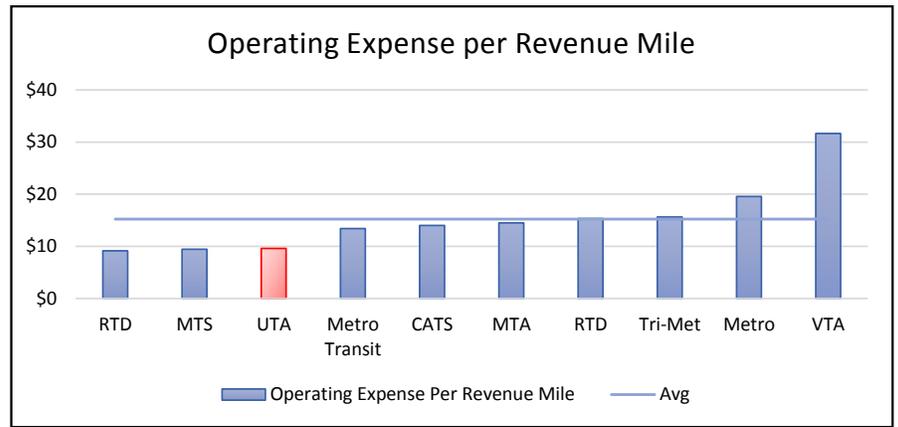


**PERFORMANCE MEASURES - LIGHT RAIL**

The following charts contain information from the Federal Transit Administration's National Transit Database (NTD) for the most recent year available (2018), and compares the Authority's performance with other like transit agencies.

**Service Efficiency**

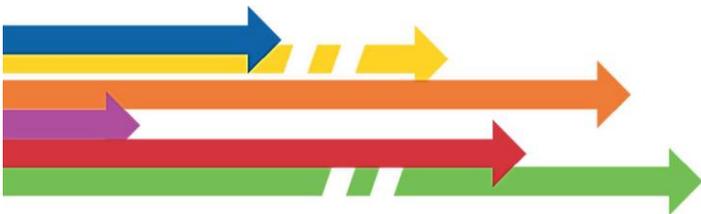
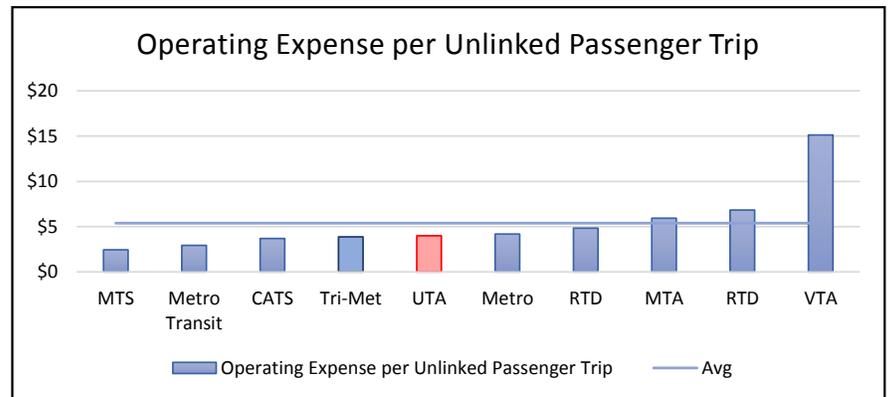
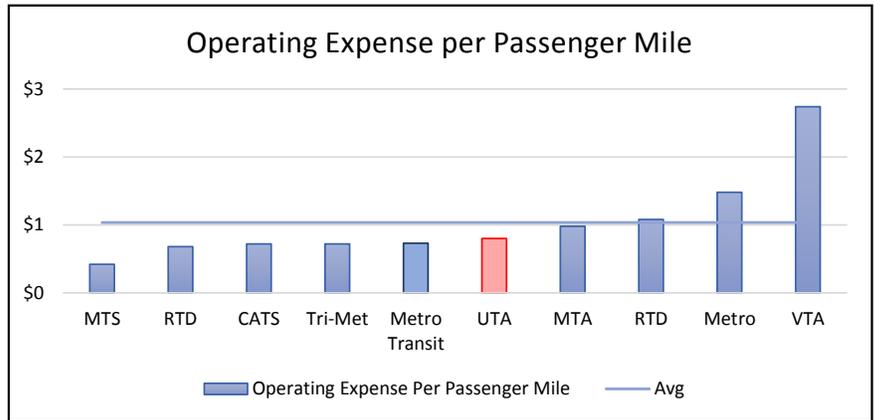
City	Agency	Operating Expense per Vehicle Revenue Mile	Operating Expense per Vehicle Revenue Hour
Salt Lake City, UT	UTA	\$ 10.73	\$ 197.14
Baltimore, MD	MTA	14.70	290.52
Charlotte, NC	CATS	15.04	238.26
Denver, CO	RTD	10.40	169.83
Houston, TX	Metro	22.42	264.14
Minneapolis, MN	Metro Transit	13.68	171.54
Portland, OR	Tri-Met	16.87	240.69
Sacramento, CA	RTD	16.04	285.00
San Diego, CA	MTS	10.43	188.87
San Jose, CA	VTA	38.80	583.09
Average		\$ 16.91	\$ 262.91
Maximum		38.80	583.09
Minimum		10.40	169.83
Standard Deviation		8.51	120.96



**PERFORMANCE MEASURES - LIGHT RAIL (continued)**

**Cost Effectiveness**

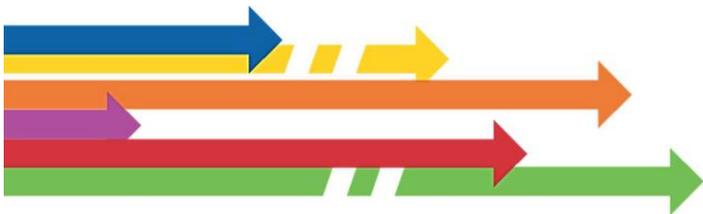
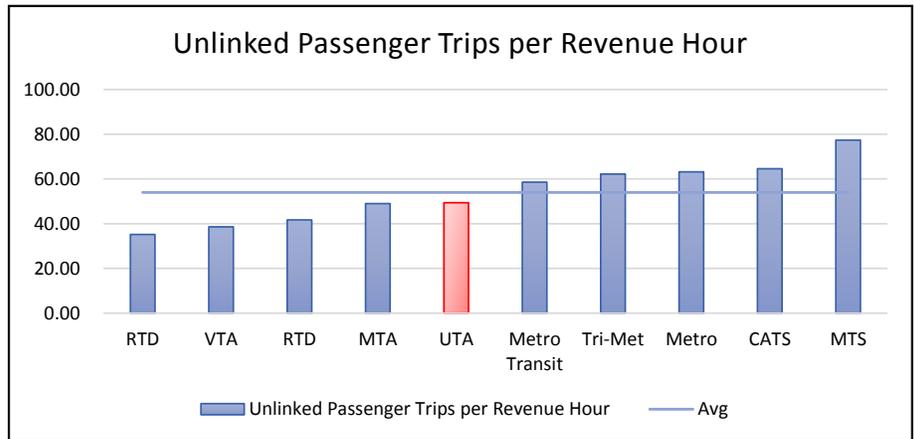
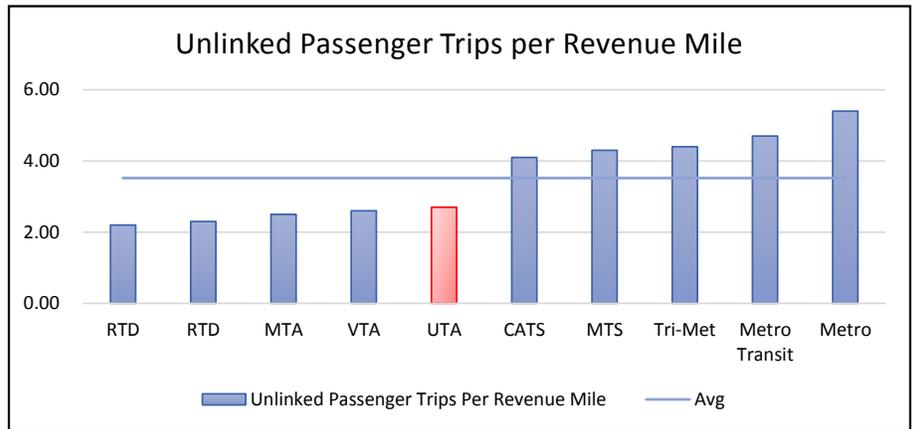
City	Agency	Operating Expense per Passenger Mile	Operating Expense per Unlinked Passenger Trip
Salt Lake City, UT	UTA	\$ 0.80	\$ 3.99
Baltimore, MD	MTA	0.98	5.93
Charlotte, NC	CATS	0.72	3.69
Denver, CO	RTD	0.68	4.83
Houston, TX	Metro	1.48	4.18
Minneapolis, MN	Metro Transit	0.73	2.93
Portland, OR	Tri-Met	0.72	3.87
Sacramento, CA	RTD	1.08	6.83
San Diego, CA	MTS	0.42	2.44
San Jose, CA	VTA	2.74	15.12
Average		\$ 1.04	\$ 5.38
Maximum		2.74	15.12
Minimum		0.42	2.44
Standard Deviation		0.66	3.66



**PERFORMANCE MEASURES - LIGHT RAIL (continued)**

**Service Effectiveness**

City	Agency	Unlinked Passenger Trips per Vehicle Revenue Mile	Unlinked Passenger Trips per Vehicle Revenue Hour
Salt Lake City, UT	UTA	2.70	49.40
Baltimore, MD	MTA	2.50	49.00
Charlotte, NC	CATS	4.10	64.60
Denver, CO	RTD	2.20	35.20
Houston, TX	Metro	5.40	63.20
Minneapolis, MN	Metro Transit	4.70	58.60
Portland, OR	Tri-Met	4.40	62.20
Sacramento, CA	RTD	2.30	41.70
San Diego, CA	MTS	4.30	77.40
San Jose, CA	VTA	2.60	38.60
Average		3.52	53.99
Maximum		5.40	77.40
Minimum		2.20	35.20
Standard Deviation		1.18	13.42



# Compliance

For Fiscal Years Ended  
December 31, 2019 and 2018





KEDDINGTON & CHRISTENSEN, CPAS  
CERTIFIED PUBLIC ACCOUNTANTS

Gary K. Keddington, CPA  
Phyl R. Warnock, CPA  
Marcus K. Arbuckle, CPA  
Steven M. Rowley, CPA

**INDEPENDENT AUDITOR'S REPORT ON INTERNAL  
CONTROL OVER FINANCIAL REPORTING AND  
ON COMPLIANCE AND OTHER MATTERS BASED ON AN  
AUDIT OF FINANCIAL STATEMENTS PERFORMED IN  
ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS***

To the Board of Trustees,  
Utah Transit Authority  
Salt Lake City, Utah

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in the *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the business-type activities, the discretely presented component unit, and the remaining fund information of Utah Transit Authority (the "Authority") (a component unit of the state of Utah) as of and for the years ended December 31, 2019 and 2018, and the related notes to the financial statements, which collectively comprise the Authority's basic financial statements, and have issued our report thereon dated June 2, 2020.

**Internal Control Over Financial Reporting**

In planning and performing our audits of the financial statements, we considered the Authority's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. Accordingly we do not express an opinion on the effectiveness of the Authority's internal control.

*A deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. *A material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. *A significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

**Compliance and Other Matters**

As part of obtaining reasonable assurance about whether the Authority's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

## **Purpose of this Report**

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

*Keddington & Christensen, LLC*

Keddington & Christensen, LLC  
Salt Lake City  
June 2, 2020



KEDDINGTON & CHRISTENSEN, CPAS  
CERTIFIED PUBLIC ACCOUNTANTS

Gary K. Keddington, CPA  
Phyl R. Warnock, CPA  
Marcus K. Arbuckle, CPA  
Steven M. Rowley, CPA

**INDEPENDENT AUDITOR’S REPORT ON COMPLIANCE  
FOR EACH MAJOR PROGRAM AND ON INTERNAL  
CONTROL OVER COMPLIANCE REQUIRED BY  
THE UNIFORM GUIDANCE**

To the Board of Trustees,  
Utah Transit Authority  
Salt Lake City, Utah

**Report on Compliance for Each Major Federal Program**

We have audited Utah Transit Authority’s (the “Authority”) (a component unit of the State of Utah) compliance with the types of compliance requirements described in the *OMB Compliance Supplement* that could have a direct and material effect on each of the Authority’s major federal programs for the year ended December 31, 2019. The Authority’s major federal programs are identified in the summary of auditor’s results section of the accompanying schedule of findings and questioned costs.

***Management’s Responsibility***

Management is responsible for compliance with federal statutes, regulations, and the terms and conditions of its federal awards applicable to its federal programs.

***Auditor’s Responsibility***

Our responsibility is to express an opinion on compliance for each of the Authority’s major federal programs based on our audit of the types of compliance requirements referred to above. We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Those standards and the Uniform Guidance require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about the Authority’s compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

We believe that our audit provides a reasonable basis for our opinion on compliance for each major federal program. However, our audit does not provide a legal determination of the Authority’s compliance.

***Opinion on Each Major Federal Program***

In our opinion, Utah Transit Authority complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on each of its major federal programs for the year ended December 31, 2019.

## Report on Internal Control Over Compliance

Management of Utah Transit Authority is responsible for establishing and maintaining effective internal control over compliance with the types of compliance requirements referred to above. In planning and performing our audit of compliance, we considered the Authority's internal control over compliance with the types of requirements that could have a direct and material effect on each major federal program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion on compliance for each major federal program and to test and report on internal control over compliance in accordance with the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the Authority's internal control over compliance.

*A deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. *A material weakness in internal control over compliance* is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. *A significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Accordingly, this report is not suitable for any other purpose.

*Keddington & Christensen, LLC*

Keddington & Christensen, LLC  
Salt Lake City, Utah  
June 2, 2020

UTAH TRANSIT AUTHORITY  
 Schedule of Expenditures of Federal Funds  
 For the year ended December 31, 2019

**SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS for the year ending December 31, 2019**

Federal Grantor/Pass-Through Grantor/Program or Cluster Title	Federal CFDA Number	Grant Number	Pass-Through Entity Identifying Number	Passed Through to Subrecipients	Total Federal Expenditures
<b>U.S. DEPARTMENT OF TRANSPORTATION</b>					
<b>Federal Transit Cluster - Federal Transit Administration Programs</b>					
Federal Transit - Capital investment Grants	20.500	UT-2017-001-00		\$ -	\$ 1,298,850
Federal Transit - Capital investment Grants	20.500	UT-2017-006-00		-	49,099
				<u>-</u>	<u>1,347,949</u>
Federal Transit - Formula Grant	20.507	UT-2018-009-00		-	3,661,583
Federal Transit - Formula Grant	20.507	UT-2018-005-00		-	663,824
Federal Transit - Formula Grant	20.507	UT-2020-002-00		-	43,954,634
				<u>-</u>	<u>48,280,041</u>
Federal Transit - State of Good Repairs	20.525	UT-2020-001-00		-	17,781,947
Bus and Bus Facilities Formula Program	20.526	UT-2018-010-00		-	2,774,389
				<u>-</u>	<u>20,556,336</u>
				<u>-</u>	<u>-</u>
<b>Federal Transit Cluster - Federal Transit Administration Programs total</b>				<u>-</u>	<u>70,184,326</u>
<b>Transit Services Programs Cluster - Federal Transit Administration Programs</b>					
Federal Transit - Enhanced Mobility for Seniors and Individuals with Disabilities	20.513	UT-16-0006		2,800	3,163
Federal Transit - Enhanced Mobility for Seniors and Individuals with Disabilities	20.513	UT-2016-013		103,249	239,956
Federal Transit - Enhanced Mobility for Seniors and Individuals with Disabilities	20.513	UT-2017-015		186,557	260,194
Federal Transit - Enhanced Mobility for Seniors and Individuals with Disabilities	20.513	UT-2017-016		-	4,454
Federal Transit - Enhanced Mobility for Seniors and Individuals with Disabilities	20.513	UT-2017-017		456,697	456,697
Federal Transit - Enhanced Mobility for Seniors and Individuals with Disabilities	20.513	UT-2019-001		-	68,866
Federal Transit - Enhanced Mobility Pilot Program	20.513	UT-2020-003		-	3,822
				<u>749,303</u>	<u>1,037,152</u>
Utah Department of Transportation - Job Access and Reverse Commute Program	20.516	UT-37-X0005	17-8233	-	143,145
				<u>-</u>	<u>143,145</u>
Utah Department of Transportation - New Freedom Program	20.521	UT-37-X0005	17-8233	-	147,714
				<u>-</u>	<u>147,714</u>
<b>Transit Services Program Cluster - Federal Transit Administration Programs total</b>				<u>\$ 749,303</u>	<u>\$ 1,328,011</u>



UTAH TRANSIT AUTHORITY  
 Schedule of Expenditures of Federal Funds  
 For the year ended December 31, 2019

**SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS for the year ending December 31, 2019**  
**(Continued)**

Federal Grantor/Pass-Through Grantor/Program or Cluster Title	Federal CFDA Number	Grant Number	Pass-Through Entity Identifying Number	Passed Through to Subrecipients	Total Federal Expenditures
<b>National Infrastructure Investment - Federal Transit Administration Programs</b>					
Federal Transit Administration - National Infrastructure Investment (TIGER)	20.933	UT-2018-002		\$ -	\$ 3,901,919
<b>National Infrastructure Investment - Federal Transit Administration Programs total</b>				-	3,901,919
<b>Highway Planning &amp; Construction Cluster - Federal Highway Administration Programs</b>					
Federal Highway Administration - Highway Planning and Construction (CMAQ)	20.205	20-CMAQ.Ogden BRT			1,002,134
Federal Highway Administration - Highway Planning and Construction (CMAQ)	20.205	20-CMAQ.Variou s Projects			2,983,485
<b>Highway Planning &amp; Construction Cluster - Federal Highway Administration Programs total</b>				-	3,985,619
<b>Federal Railroad Administration Program</b>					
Railroad Safety Technology Grants	20.321	UT-2017-011		-	74,589
Consolidated Rail Infrastructure and Safety Improvements	20.325	FR-CRS-022		-	1,512,194
<b>Federal Railroad Administration Program</b>				-	1,586,783
<b>Federal Transit Administration Programs</b>					
Federal Transit - Capital investment Grants	20.514	UT-2017-012-00		-	5,154,887
Federal Transit - Public Transportation Research	20.514	UT-26-0008-02		-	8,880
<b>Federal Transit Administration Program</b>				-	5,163,767
<b>TOTAL U.S. DEPARTMENT OF TRANSPORTATION</b>				749,303	86,150,425
<b>DEPARTMENT OF HOMELAND SECURITY</b>					
FEMA Rail and Transit Security Grant Program	97.075	16-RA-00045		-	28,573
FEMA Rail and Transit Security Grant Program	97.075	17-RA-00042		-	2,500
FEMA Rail and Transit Security Grant Program	97.075	18-RA-00046		-	6,000
<b>TOTAL DEPARTMENT OF HOMELAND SECURITY</b>				-	37,073
<b>TOTAL FEDERAL AWARDS EXPENDED</b>				\$ 749,303	\$ 86,187,498



UTAH TRANSIT AUTHORITY  
 Schedule of Expenditures of Federal Funds  
 For the year ended December 31, 2019

**SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS for the year ending December 31, 2019**  
**(Continued)**

Reconciliation of federal expenditures to federal revenues

Comparative Statement of Revenues, Expenses and Change in Net Position (2019)		
Federal preventative maintenance grants	\$	69,746,231
Capital Contributions Federal grants		16,395,068
Total per Comparative Statement of Revenues, Expenses and Change in Net Position (2019)		86,141,299
Total per Schedule of Expenditures of Federal Awards for the year ending December 31, 2019		86,187,499
Difference	\$	(46,200)

**Previous Over/(Under)stated Revenues reflected in 2019 Statement of Revenues, Expenses and Change in Net Position**

<b>Federal Transit Cluster – Federal Transit Administration Programs</b>			
<b>Amount</b>	<b>CFDA#</b>	<b>Grant #</b>	
Federal Transit – Capital Investment Grants	20.500	UT-2017-001	\$ 2,364
Federal Transit – Capital Investment Grants	20.514	UT-2017-012	(3160)
<b>Total Federal Transit – Federal Transit Administration Program Cluster</b>			<b>\$ (796)</b>
<b>Transit Service Program Cluster Amount</b>	<b>CFDA#</b>	<b>Grant #</b>	
Enhanced Mobility for Seniors and Individuals with Disabilities	20.513	UT-16-0006	\$ (4,937)
Enhanced Mobility for Seniors and Individuals with Disabilities	20.513	UT-2016-013	95,222
Enhanced Mobility for Seniors and Individuals with Disabilities	20.513	UT-2016-013	(74,199)
Job Access and Reverse Commute Program	20.516	UT-37-X0005	13,165
New Freedom Program	20.521	UT-37-X0005	17,734
<b>Transit Service Program Cluster Total</b>			<b>\$ 46,985</b>
<b>National Infrastructure Investment- Federal Transit Administration Programs</b>	<b>CFDA#</b>	<b>Grant #</b>	
Federal Transit Administration – National Infrastructure Investment (TIGER)	20.933	UT-2018-002	\$ (30)
<b>National Infrastructure Investment – Federal Transit Administration Programs Total</b>			
<b>Department of Homeland Security</b>			
FEMA Rail and Transit Security Grant Program			41
<b>Department of Homeland Security Total</b>			
<b>Total Adjustment</b>			<b>\$ 46,200</b>



UTAH TRANSIT AUTHORITY  
NOTES TO THE SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS  
Year Ended December 31, 2019

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A. Basis of Accounting

The supplementary schedule of expenditures of federal awards is prepared on the accrual basis of accounting.

B. Pass-Through Awards

The Authority receives certain expenditures of federal awards from pass through awards of various state and other governmental agencies. The total amount of such pass-through awards is included in the supplementary schedule of expenditures of federal awards.

C. Non-Cash Federal Assistance

No non-cash federal assistance was received during the year ended December 31, 2019.

D. Subrecipients

The Authority provided \$749,303 of federal award funds to subrecipients during the year.

E. Indirect Cost Rate

The Authority did not use the 10 percent de minimis indirect cost rate.



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Section III. Federal Award Findings and Questioned Costs

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**Current Year Finding**

**2019 – None**

**Prior Year Finding**

**2018 – 001 Noncompliance and Internal Control over Compliance Material Weakness**

**Program Name/CFDA Title:** Federal Transit Cluster, Transit Services Program Cluster

**CFDA Numbers:** 20.500, 20.507, 20.525, 20.526, 20.513, 20.516, 20.521

**Federal Agency:** U.S. Department of Transportation

**Questioned Costs:** \$0

**Requirement:** Equipment and Real Property Management

**Criteria:** The Authority is required to properly track and safeguard equipment purchased with federal funds. This is accomplished by maintaining asset records with sufficient descriptions or other identifying information to properly locate assets purchased with federal funds. Additionally, the Authority is required to perform inventory counts of such equipment at least every two years.

**Condition:** During our tests of compliance over Equipment and Real Property Management, it was noted that in our sample of 40 items, in 3 instances the sampled item could not be located.

**Cause:** The 2017 inventory of the Authority’s smaller equipment purchased with federal funds was not sufficiently thorough to ensure disposition of items were properly reflected in the Authority’s records.

**Effect:** If equipment is not tracked more carefully, there is a risk that equipment may be misappropriated or otherwise disposed of and not properly reflected in the records.

**Context:** The Authority maintains asset listings of two main categories: 1) rolling stock (busses, trains, vehicles, etc.) and 2) equipment. Rolling stock makes up the majority of the value of assets related to this compliance requirement. Additionally, rolling stock is necessary to the Authority’s day-to-day operations and are tracked as individual assets with serial numbers, asset numbers, and other identifying information. The discrepancies observed related primarily to equipment which were older and fully depreciated according to the Authority’s records.

**Recommendation:** We recommend the Authority more carefully plan and perform inventory counts over smaller equipment.

**Current Status:** The Authority has corrected the problem in the current year.



UTAH TRANSIT AUTHORITY  
Schedule of Findings and Questioned Costs  
For the year ended December 31, 2019 and 2018

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FEDERAL AWARDS FINDINGS AND QUESTIONED COSTS (continued)

*Views of Responsible Officials from the Prior Year and Planned Corrective Action:*

**2018-001 Views:** Management agrees with the Finding 2018-001. The correction of the capital asset records held by the Authority and the internal controls surrounding the entire inventory started in 2017 but was not planned to be completed by the 2018 audit. After the 2018 inventory is complete by December 31, 2019, UTA will be able to find and identify all asset (including grant funded asset). The items not found should have been removed as part of the 2017 capital asset write-off.



# Other Supplementary Information

For Fiscal Years Ended  
December 31, 2019 and 2018





**KEDDINGTON & CHRISTENSEN, CPAS**  
CERTIFIED PUBLIC ACCOUNTANTS

Gary K. Keddington, CPA  
Phyl R. Warnock, CPA  
Marcus K. Arbuckle, CPA  
Steven M. Rowley, CPA

**INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE AND  
REPORT ON INTERNAL CONTROL OVER COMPLIANCE  
AS REQUIRED BY THE STATE COMPLIANCE AUDIT GUIDE**

To the Board of Trustees,  
Utah Transit Authority  
Salt Lake City, Utah

**Report on Compliance**

We have audited Utah Transit Authority's (the "Authority") (a component unit of the State of Utah), compliance with the applicable state compliance requirements described in the *State Compliance Audit Guide*, issued by the Office of the State Auditor, that could have a direct and material effect on the Authority for the year ended December 31, 2019.

State compliance requirements were tested for the year ended December 31, 2019 in the following areas:

- Budgetary Compliance
- Restricted Taxes and Related Restricted Revenue
- Open and Public Meetings Act
- Treasurer's Bond
- Cash Management

***Management's Responsibility***

Management is responsible for compliance with the state requirements referred to above.

***Auditor's Responsibility***

Our responsibility is to express an opinion on the Authority's compliance based on our audit of the state compliance requirements referred to above. We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States; and the *State Compliance Audit Guide*. Those standards and the *State Compliance Audit Guide* require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the state compliance requirements referred to above that could have a direct and material effect on a state compliance requirement occurred. An audit includes examining, on a test basis, evidence about the Authority's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

We believe that our audit provides a reasonable basis for our opinion on compliance with each state compliance requirement referred to above. However, our audit does not provide a legal determination of the Authority's compliance with those requirements.

***Opinion on Compliance***

In our opinion, Utah Transit Authority complied, in all material respects, with the state compliance requirements referred to above for the year ended December 31, 2019.

## **Report on Internal Control Over Compliance**

Management of the Authority is responsible for establishing and maintaining effective internal control over compliance with the state compliance requirements referred to above. In planning and performing our audit of compliance, we considered the Authority's internal control over compliance with the state compliance requirements referred to above to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing an opinion on compliance with those state compliance requirements and to test and report on internal control over compliance in accordance with the *State Compliance Audit Guide*, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the Authority's internal control over compliance.

A *deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent or to detect and correct noncompliance with a state compliance requirement on a timely basis. A *material weakness in internal control over compliance* is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a state compliance requirement will not be prevented or detected and corrected on a timely basis. A *significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a state compliance requirement that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control and compliance and the results of that testing based on the requirements of the *State Compliance Audit Guide*. Accordingly, this report is not suitable for any other purpose.

*Keddington & Christensen, LLC*

Keddington & Christensen, LLC  
Salt Lake City, Utah  
June 2, 2020



# 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 24, 2020

<b>SUBJECT:</b>	<b>Agency Report</b>
<b>AGENDA ITEM TYPE:</b>	<b>Report</b>
<b>RECOMMENDATION:</b>	Informational report for discussion
<b>DISCUSSION:</b>	Carolyn Gonot, UTA Executive Director will report on recent activities of the agency and other items of interest.



## 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  
Eddy Cumins, Chief Operating Officer

**BOARD MEETING DATE:** June 24, 2020

<b>SUBJECT: Temporary Service Modification Extension Approval</b>	
<b>AGENDA ITEM TYPE:</b>	Action Item
<b>RECOMMENDATION:</b>	Approve extension request and authorize Executive Director to implement necessary temporary service modifications until the August 2020 Change Day or until August 31, 2020.
<b>BACKGROUND:</b>	On March 27, 2020, the UTA Board of Trustees authorized the Executive Director to make temporary service modifications beginning April 5, 2020 in response to reduced ridership due to the COVID-19 pandemic. The authorization period was not to exceed 90 days and is due to expire on July 3, 2020.
<b>DISCUSSION:</b>	UTA staff is requesting the Executive Director be granted an extension to the temporary service modification authorization until the August 2020 Change Day or until August 31, 2020. Led by the Recovery Task Force, the Service Planning and Operations groups are currently working on a system-wide service restoration plan that is anticipated to be implemented for August Change Day currently planned for August 23, 2020. Authorizing the Executive Director an extension to make temporary service modifications during this time will provide flexibility to make changes and enable UTA the necessary time to develop and implement a comprehensive service restoration plan with a primary focus on ridership, financial stability, and rebuilding community confidence in transit.
<b>ALTERNATIVES:</b>	UTA would be required to restore pre-COVID-19 service on July 4, 2020.
<b>FISCAL IMPACT:</b>	Funding is available in the UTA Operating Budget
<b>ATTACHMENTS:</b>	None



## MEMORANDUM TO THE BOARD

**TO:** Utah Transit Authority Board of Trustees  
**FROM:** Kent Millington, Board of Trustees  
**PRESENTER(S):** Kent Millington, Board of Trustees

**BOARD MEETING DATE:** June 24, 2020

<b>SUBJECT:</b>	<b>Pension Committee Report</b>
<b>AGENDA ITEM TYPE:</b>	<b>Report</b>
<b>RECOMMENDATION:</b>	Informational report for discussion
<b>DISCUSSION:</b>	The Pension Committee met on June 17, 2020. Trustee Kent Millington sits on the Pension Committee and will provide an update on Pension Committee activities.
<b>ATTACHMENTS:</b>	None



## 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 24, 2020

**SUBJECT:** Resolution R2020-06-05 Approving the Financial Analysis and Authorizing Execution of the Associated Agreements for Sandy East Village 3 Transit-Oriented Development

**AGENDA ITEM TYPE:** Resolution

**RECOMMENDATION:** Approve Resolution R2020-06-05 approving the East Village 3 Financial Analysis as well as the associated agreements to which UTA is party, including (1) the Operating Agreement of HP-UTA East Village 3 LLC, (2) the Contribution Agreement, (3) the Ground Lease, (4) the Parking Structure Construction, Operation and Easement Agreement (“COREA”), and (5) the Parking Structure Management Agreement, and authorizing the Executive Director to execute the agreements and convey the associated property to the joint venture entity per the terms of the agreements.

**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”).

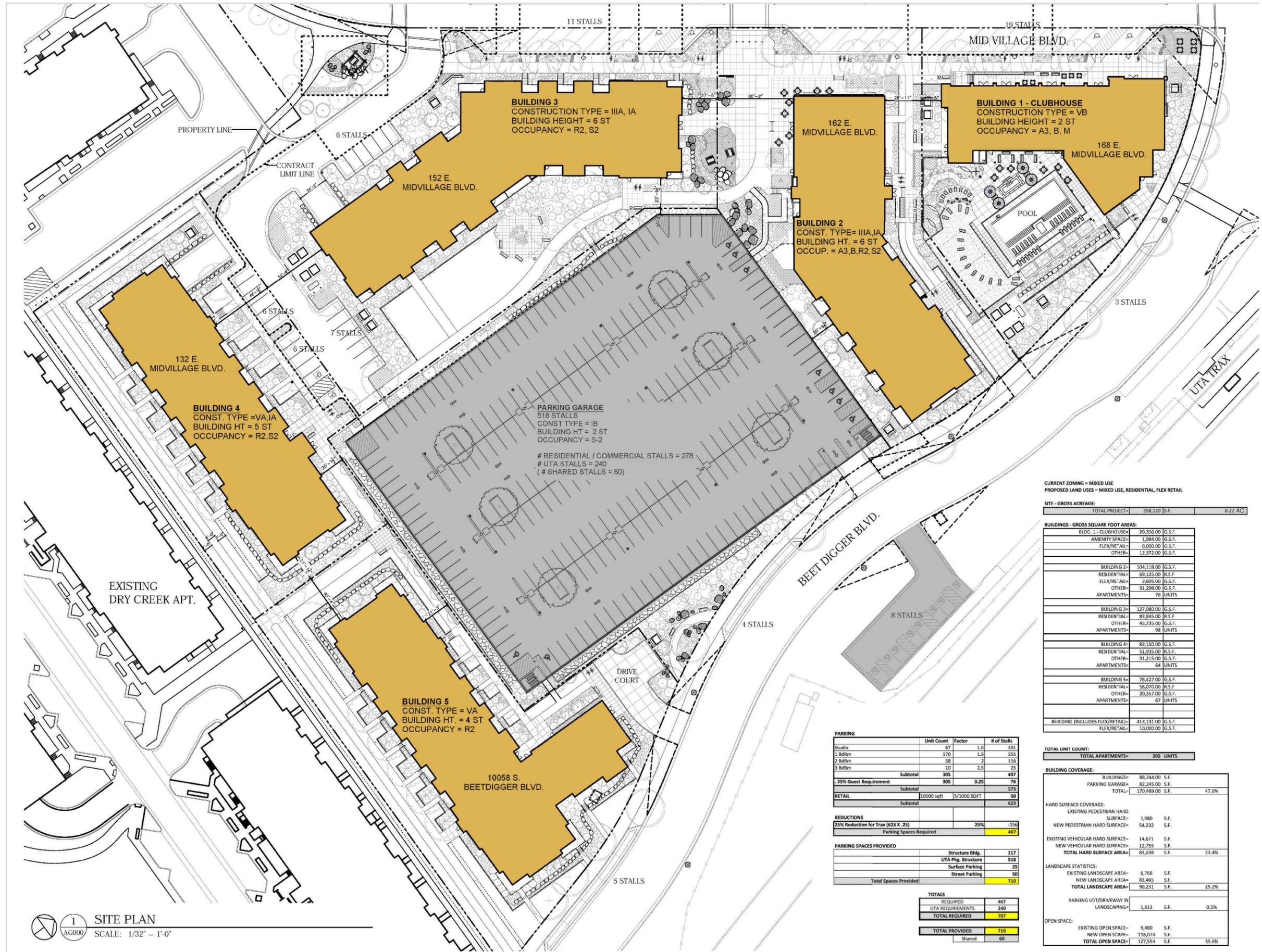
Through their Joint Development program, FTA granted UTA the ability to convey parcels to a joint venture entity on a phase by phase basis. The value of UTA’s land contribution would determine its equity share in the joint venture. Since then, UTA and Hamilton Partners have successfully completed four 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”).

	<p>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.</p> <p>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.</p> <p>Approval of the Financial Analysis and associated agreements will allow UTA and its partners to move forward with this phase of development. With approval, UTA will convey the associated property and receive ownership in the joint venture and claim to its share of the development proceeds.</p> <p>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.</p> <p>At the Board of Trustees meeting on June 17, 2020 a comprehensive overview of the Sandy East Village 3 Financial Analysis and related agreements was reviewed and discussed with Trustees.</p>
<b>ALTERNATIVES:</b>	<p>Disapprove. 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.</p>
<b>FISCAL IMPACT:</b>	<p>UTA to 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.</p>
<b>ATTACHMENTS:</b>	<ol style="list-style-type: none"> <li>1) Site Plan</li> <li>2) Zions Public Finance, Inc. Review Letter – Sandy EV3</li> <li>3) Resolution R2020-06-05 <ol style="list-style-type: none"> <li>a. Operating Agreement of HPUTA East Village 3 LLC</li> <li>b. Limited Liability Company Agreement of East Village 3 LLC</li> <li>c. Pro Forma</li> <li>d. Contribution Agreement</li> <li>e. Ground Lease</li> <li>f. Parking Structure Construction, Operation and Easement Agreement (“COREA”)</li> <li>g. Parking Structure Management Agreement (“PSMA”)</li> </ol> </li> </ol>

# Site Plan - East Village 3



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

<b>SITE - GROSS ACREAGE:</b>	TOTAL PROJECT=	358,120 S.F.	8.22 AC.
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**BUILDINGS - GROSS SQUARE FOOT AREAS:**

BLDG	CLUBHOUSE	G.S.F.
BUILDING 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.
<b>BUILDING 2</b>	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
<b>BUILDING 3</b>	127,080.00	G.S.F.
RESIDENTIAL	83,845.00	R.S.F.
OTHER	43,235.00	G.S.F.
APARTMENTS	98	UNITS
<b>BUILDING 4</b>	83,150.00	G.S.F.
RESIDENTIAL	51,935.00	R.S.F.
OTHER	31,215.00	G.S.F.
APARTMENTS	64	UNITS
<b>BUILDING 5</b>	78,427.00	G.S.F.
RESIDENTIAL	58,070.00	R.S.F.
OTHER	20,357.00	G.S.F.
APARTMENTS	67	UNITS
<b>BUILDING (INCLUDES FLEX/RETAIL)</b>	415,131.00	G.S.F.
FLEX/RETAIL	10,000.00	G.S.F.

**TOTAL UNIT COUNT:**

TOTAL APARTMENTS=	305 UNITS
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**BUILDING COVERAGE:**

BUILDINGS=	88,244.00 S.F.
PARKING GARAGE=	82,245.00 S.F.
<b>TOTAL=</b>	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.
<b>TOTAL HARD SURFACE AREA=</b>	83,638 S.F. 23.4%

**LANDSCAPE STATISTICS:**

EXISTING LANDSCAPE AREA=	6,766 S.F.
NEW LANDSCAPE AREA=	83,465 S.F.
<b>TOTAL LANDSCAPE AREA=</b>	90,231 S.F. 25.2%

**PARKING LOT/DRIVEWAY IN LANDSCAPING=**

1,613 S.F.	0.5%
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**OPEN SPACE:**

EXISTING OPEN SPACE=	9,480 S.F.
NEW OPEN SPACE=	118,074 S.F.
<b>TOTAL OPEN SPACE=</b>	127,554 S.F. 35.6%

**PARKING**

	Unit Count	Factor	# of Stalls
Studio	67	1.5	101
1 BdrRm	170	1.5	255
2 BdrRm	58	2	116
3 BdrRm	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%	-150
<b>Parking Spaces Required</b>		467

**PARKING SPACES PROVIDED**

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

**TOTALS**

REQUIRED	467
UTA REQUIREMENTS	240
<b>TOTAL REQUIRED</b>	707
<b>TOTAL PROVIDED</b>	710
Shared	60



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,

A handwritten signature in blue ink, appearing to read "Benj Becker", with a long horizontal line extending to the right.

Benj Becker  
Vice President, Zions Public Finance Inc.

**RESOLUTION OF THE BOARD OF TRUSTEES OF THE UTAH TRANSIT  
AUTHORITY APPROVING THE FINANCIAL ANALYSIS AND AUTHORIZING  
EXECUTION OF THE ASSOCIATED AGREEMENTS FOR SANDY EAST  
VILLAGE 3 TRANSIT-ORIENTED DEVELOPMENT**

R2020-06-05

June 24, 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 Board Policy 5.1 (the “Policy”) requires Financial Analysis for a Transit Oriented Development be reviewed by the Authority’s TOD, legal, and executive staff, as well by an outside consultant;

WHEREAS, the review should ensure that the terms of the Financial Analysis are market feasible, ethical, and compliant with applicable policy;

WHEREAS, the Financial Analysis, Operating Agreement for HPUTA East Village 3, LLC (“Operating Agreement”), Contribution Agreement, the Ground Lease, Parking Structure, Construction, and Easement Agreement (“COREA”) and Parking Structure Management Agreement (“PSMA”) have been reviewed by the Authority’s TOD, legal, and executive staff, who have found that the analysis and agreements are market feasible, ethical, and complaint with applicable policy;

WHEREAS, the Financial Analysis has been reviewed by an outside consultant, Zions Public Finance Inc., who has also determined that the analysis and agreements are market feasible, ethical, and complaint with applicable policy;

WHEREAS, the Authority wishes to approve the Financial Analysis and authorize its Executive Director to execute the Operating Agreement, Contribution Agreement, Ground Lease, COREA, and PSMA.

NOW, THEREFORE, BE IT RESOLVED BY the Board of Trustees:

1. The Board hereby approves the Financial Analysis, attached as “Exhibit A”, “Exhibit B”, and “Exhibit C” to this Resolution.
2. The Executive Director, or her designee is also authorized to execute the following:

- a. the Operating Agreement in substantially the same form as the one attached as "Exhibit A" to this Resolution;
  - b. the Contribution Agreement in substantially the same form as the one attached as "Exhibit D" to this Resolution;
  - c. the Ground Lease in substantially the same form as the one attached as "Exhibit E" to this Resolution;
  - d. the COREA in substantially the same form as the one attached as "Exhibit F" to this Resolution; and
  - e. the PSMA in substantially in the same form as the one attached as "Exhibit G" to this Resolution.
3. That the Board hereby ratifies any and all actions previously taken by the Authority's management, staff, and counsel in preparing the Financial Analysis, Operating Agreement, Contribution Agreement, Ground Lease, COREA, and PSMA attached as Exhibits A through G.
  4. That the corporate seal be attached hereto.

APPROVED AND ADOPTED this 24<sup>th</sup> day of June 2020.

---

Carlton Christensen, Chair  
Board of Trustees

ATTEST:

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Robert K. Biles, Secretary/Treasurer

(Corporate Seal)

Approved As To Form:

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Legal Counsel

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 REGULATIONS 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.

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**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. EVA13 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 executed 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 ULLCA 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 date hereinabove first written by the following Members, whose respective mailing addresses are 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**

<b>Member</b>	<b>Description of Initial Capital Contribution</b>	<b>Amount</b>
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 said 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 said 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**

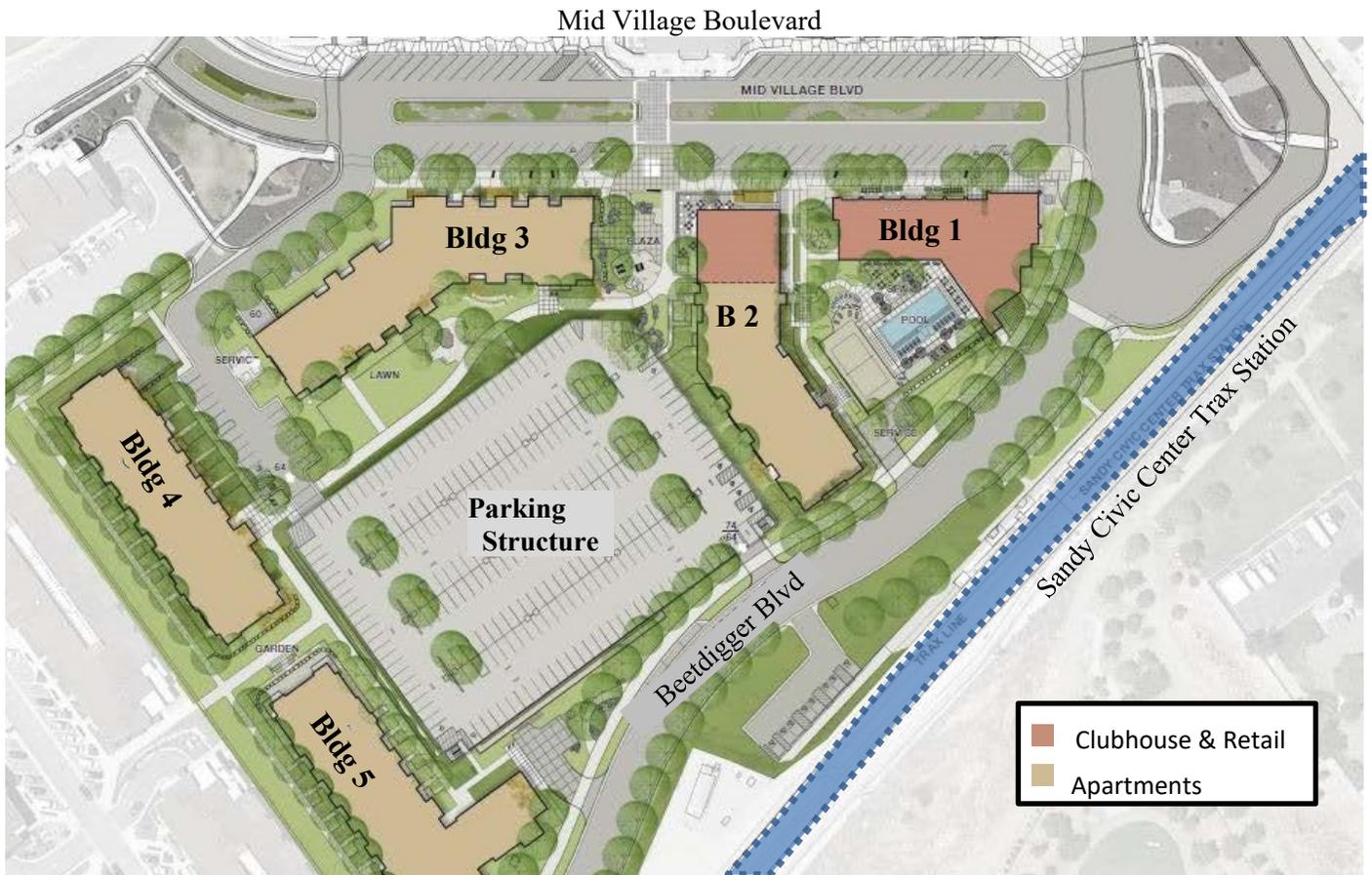
## EXHIBIT C

### 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

<b><u>Est. Pre Dev costs at Closing</u></b>	
<b><u>Hard Costs</u></b>	
Jacobsen Site Prep	980,722
HUNT ELECTRIC, INC.	95,000
Rocky Mountain Power	45,880
	<u>1,121,602</u>
<b><u>Soft Costs</u></b>	
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	<u>1,796,931</u>
<b>TOTAL COSTS</b>	<b><u>2,918,533</u></b>

## 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

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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

<u>Source of Funds</u>	<u>Amounts</u>	
Cash from Ops in Mo 21-47 *	777,271	
<u>Cash from Sale in Mo 48</u>		
Amount to HP-UTA	5,833,101	
HP Developer Promote	<u>9,844,960</u>	63%
subtotal	<u>15,678,061</u>	
Total Source of Funds	<u><u>16,455,332</u></u>	

<u>Use of Funds</u>	
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	<u>1,801,252</u>
subtotal	9,771,823
HP Developer Promote	9,844,960
Shortage of funds	<u>(3,161,451)</u>
Net Shared Promote	<u>6,683,509</u>
Total Use of Funds	<u><u>16,455,332</u></u>

\* Cash from Ops. Is distributed 100% to HP until infrastructure is reimb.

<b>Distribution of Cash Flows</b>				
	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	<u>1,162,452</u>	<u>5,521,057</u>	<u>6,683,509</u>	16,455,332
TOTAL Distributions	<u><u>4,333,061</u></u>	<u><u>12,122,271</u></u>	<u><u>16,455,332</u></u>	

<u>Initial Capital Contributions</u>		
UTA	1,580,316	47%
HP	<u>1,800,182</u>	53%
Total	<u><u>3,380,498</u></u>	

## EXHIBIT F

### EXAMPLE OF AVAILABLE CASH DISTRIBUTIONS UNDER SECTION 6.1

#### Zoning & Entitlements

Land Value	\$ 22.88
6 Ac Parcel, sf	<u>263,386</u>
Total Value	6,027,399
Percent for ZE	<u>15.0%</u>
Value of ZE	<u>904,110</u>

<u>Land Appraisal</u>	
Ap. Value	\$8,200,000
entire site sf	<u>358,325</u>
\$/sf	<u>\$22.88</u>

#### Shared Land Appreciation

<u>Land Value</u>	
Land Value	6,027,399
less Z&E value	<u>(904,110)</u>
Net Land Value	<u>5,123,289</u>

#### Land Basis

Land at \$6/sf	1,580,316	47.6%
HP - MPI	<u>1,741,721</u>	52.4%
Total Basis	<u>3,322,037</u>	

Appreciation	<u>1,801,252</u>
--------------	------------------

#### Allocated Appreciation

UTA Share	856,868	47.6%
HP Share	<u>944,384</u>	52.4%
Total Allocated	<u>1,801,252</u>	

#### Final Distribution in Waterfall, step 7

Cash avail. after step 6		<u>6,683,509</u>
<u>Distributions</u>		
HP Promote	63%	4,196,876
HP share of bal.	20%	1,324,181
UTA Share	<u>17%</u>	<u>1,162,452</u>
TOTAL	100%	<u>6,683,509</u>

## EXHIBIT F

### EXAMPLE OF AVAILABLE CASH DISTRIBUTIONS UNDER SECTION 6.1

<b>UTA Cash Flow</b>	
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%

<u>Summary</u>	
Return Capital	1,580,316
Dist., 1st tier	733,425
Total Distrib.	2,313,741

## Exhibit G

### Reimbursed Pre-development Expense

<b><u>Est. Pre Dev costs at Closing</u></b>	
<b><u>Hard Costs</u></b>	
Jacobsen Site Prep	980,722
HUNT ELECTRIC, INC.	95,000
Rocky Mountain Power	<u>45,880</u>
	1,121,602
<b><u>Soft Costs</u></b>	
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	<u>1,796,931</u>
<b>TOTAL COSTS</b>	<b><u><u>2,918,533</u></u></b>

Exhibit B  
(Limited Liability Company Agreement of East Village 3 LLC)

**LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**EAST VILLAGE 3 LLC**

**Dated as of June \_\_, 2020**

**LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**EAST VILLAGE 3 LLC**

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**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 amount shall 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. “**Two 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 Contributing 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:

$$150\% \times \$24,000(\text{Default Contribution}) = \$36,000$$

$$\$36,000 / \$1,200,000 (\text{Aggregate Capital Contributions}) = 0.03 = 3.00\% (\text{Dilution Percentage})$$

$$12\% (\text{Ownership Percentage before dilution}) - 3.00\% = 9.00\% (\text{Ownership Percentage after dilution})$$

(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)(I).

### 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 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 Sege 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](mailto:bbingham@hpre.com) and [garnold@hpre.com](mailto: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](mailto: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](mailto:jrubin@seyfarth.com)

If to Investor Member:

c/o Bridge Investment Group  
111 E. Segoe Lily Drive, Suite 400  
Sandy, UT 84070  
Attn: Colin Apple  
[Colin.Apple@bridgeig.com](mailto: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](mailto: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](mailto: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; (v) 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 it is 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 said 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 said 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. Segoe Lily Drive, Suite 400 Sandy, UT 84070 Attn: Colin Apple <a href="mailto:Colin.Apple@bridgeig.com">Colin.Apple@bridgeig.com</a>	\$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
<b>Total</b>	<b>305</b>		

## 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	<u>(56,850,000)</u>	67%
Equity	<u>28,333,341</u>	33%

#### **Membership Equity**

UT Land	1,580,316	5.6%
HP Cash	<u>1,819,685</u>	<u>6.4%</u>
HP-UTA	3,400,001	12.0%
Bridge	<u>24,933,340</u>	<u>88.0%</u>
TOTAL	<u>28,333,341</u>	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	<u>07/01/20</u>	<u>11/29/22</u>	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
<u>Land</u> (263,386 sf x \$6.0/sf)	1,580,316	-	1,580,316
<u>Hard Costs</u>			
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
<u>Soft Costs</u>			
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
<u>Financing Costs</u>			
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 bidding 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 delivered or under construction
5. All bidding general contractors will submit a list of 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<sup>®</sup>
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 unvit'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 & Performance Thresholds

Equity & Distribution 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

Distributions 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.

Actual 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	6,637,500
Hamilton Return of Capital	2,587,500	-	575,000	575,000	862,500
Total	22,500,000	-	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
<b>EOP</b>	<b>(19,912,500)</b>	<b>(17,877,000)</b>	<b>(15,597,240)</b>	<b>(13,043,909)</b>	<b>-</b>

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
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>3,265,755</b>

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
<b>EOP</b>	<b>(19,912,500)</b>	<b>(19,071,750)</b>	<b>(18,079,665)</b>	<b>(16,909,005)</b>	<b>-</b>

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
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>9,288,914</b>

## 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
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>13,550,389</b>

<b>Summary of Cash Flows</b>	<b>Closing</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>Net Profit</b>
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
<b>Total Cash Flows</b>	<b>(22,500,000)</b>	<b>5,000,000</b>	<b>5,000,000</b>	<b>5,000,000</b>	<b>40,000,000</b>	<b>32,500,000</b>

**Exhibit I**  
**Permitted Exceptions**

 <b>Schedule BI &amp; BII (Cont.)</b>	<i>First American</i> <b>ALTA Commitment for Title Insurance</b> ISSUED BY <b>First American Title Insurance Company</b> File No: NCS-923401-SLC1
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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.**

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**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
<i>Allocation</i>	58.0%	42.0%	100%
<u>Hard Costs</u>			
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
<u>Soft Costs</u>			
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	<u>5,986,757</u>

#### 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**

<b>Land</b>	
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

<b>Buildings</b>	
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

<b>CIRC</b>	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%
<b>CIBC reviewed NOI 3/31 (new loan &amp; int resv)</b>	
New Loan Amount	56,580,000
Interest	2,453,718
Assumes 30 mo. to complete construction	
Interest rate = Fwd Libor + 2.4% +0.05%	

**Perm Loan**

Closing Costs	0.50%
LTV	0.0%
Going-in Cap	5.75%
Rate	5.0%
Term (Years)	25

**Building Detail & Hard Cost**

Description	TOTAL	Clubhouse	APT	APT	APT	APT	Parking
		Bldg 1	Bldg 2	Bldg 3	Bldg 4	Bldg 5	Garage
<b>Building Details</b>							
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						
<b>Hard Costs</b>							
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-Stub 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

East Village 3 Pro Forma  
Alta Vue Apartments

**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	<u>28,454,728</u>	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	<u>28,454,728</u>	100.0%

<b>CASH FLOW</b>	1 May-21	2 May-22	3 May-23	4 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	<u>(28,454,728)</u>	<u>66,362</u>	<u>3,116,117</u>	<u>61,643,327</u>	<u>36,371,078</u>

**IRR**

Unleveraged IRR	15.1%
Leveraged IRR	25.9%
Multiple	3.54x
Net Profit	36,371,078

**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	<u>85,034,728</u>
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	<u>56,580,000</u>
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	<u>114,747,354</u>
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

**Return on Cost**

Stablized NOI	5,677,637
Dev. Budget	85,034,728
Return on cost	6.7%



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	Amounts	
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
Total Value	6,027,399	\$22.88
Percent for ZE	15.0%	\$/sf
Value of ZE	904,110	

**Shared Land Appreciation**

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	
Distributions		
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)

**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.

**Summary**

Return Capital	1,580,316
Dist., 1st tier	733,425
Total Distrib.	2,313,741

48 2,313,741  
IRR = 10.00%



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**

- Exhibit A-1 Description of the Development Parcel
- Exhibit A-2 Description of the Parking Structure Parcel
- Exhibit A-3 Proposed Plat of Subdivision
- Exhibit B Ground Lease of the Parking Structure Parcel
- Exhibit C Proposed Parking Structure COREA
- Exhibit D Form of Special Warranty Deed
- Exhibit E Parking Structure Budget
  
- Schedule 1 Disclosure Items

**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 or 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
<i>Allocation</i>	58.0%	42.0%	100%
<u>Hard Costs</u>			
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
<u>Soft Costs</u>			
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	<u>5,986,757</u>

#### 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)

**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](mailto: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](mailto:rlunt@hpre.com)

And:

Seyfarth Shaw LLP  
233 South Wacker Drive, Suite 8000  
Chicago, Illinois 60606  
Attention: Tobi L. Pinsky  
Email: [tpinsky@seyfarth.com](mailto: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.

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**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:**

**TENANT:**

**EAST VILLAGE 3, LLC**, a Delaware limited liability company

**UTAH TRANSIT AUTHORITY**, a public transit district organized under the Utah Public Transit District Act

By: HPUTA East Village 3 LLC, a Delaware limited liability company

By: \_\_\_\_\_

Name: Carolyn Gonot

Title: Executive Director

By: East Village Apartment Investments 3 LLC, a Utah limited liability company

By: \_\_\_\_\_

Name: Mary DeLoretto

Title: Chief Service Development Officer

By: HP East Village 3 LLC, its Managing Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## 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 said 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 said 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.

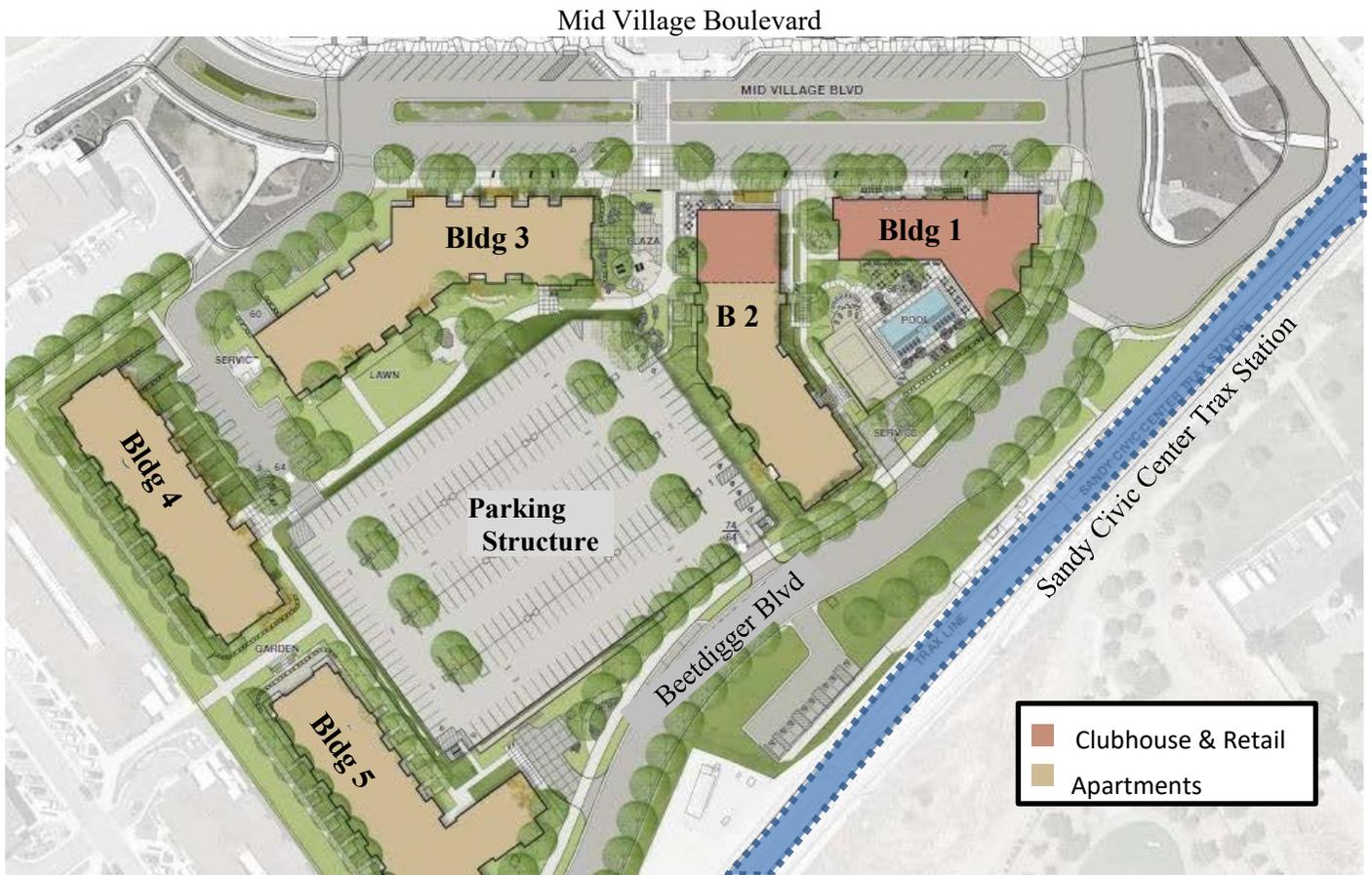
## EXHIBIT B

### 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



**Exhibit C**  
**Permitted Exceptions**

 <p><b>Schedule BI &amp; BII (Cont.)</b></p>	<p><b>ALTA Commitment for Title Insurance</b></p> <p>ISSUED BY</p> <p><b>First American Title Insurance Company</b></p> <p>File No: NCS-923401-SLC1</p>
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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.

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**Title inquiries should be directed to Greg Holbrook @ 801-578-8869 or Aaron Hansen @ 801-578-8845.**

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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 prepared 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 Manager 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 Manager, 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 said 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 said 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.

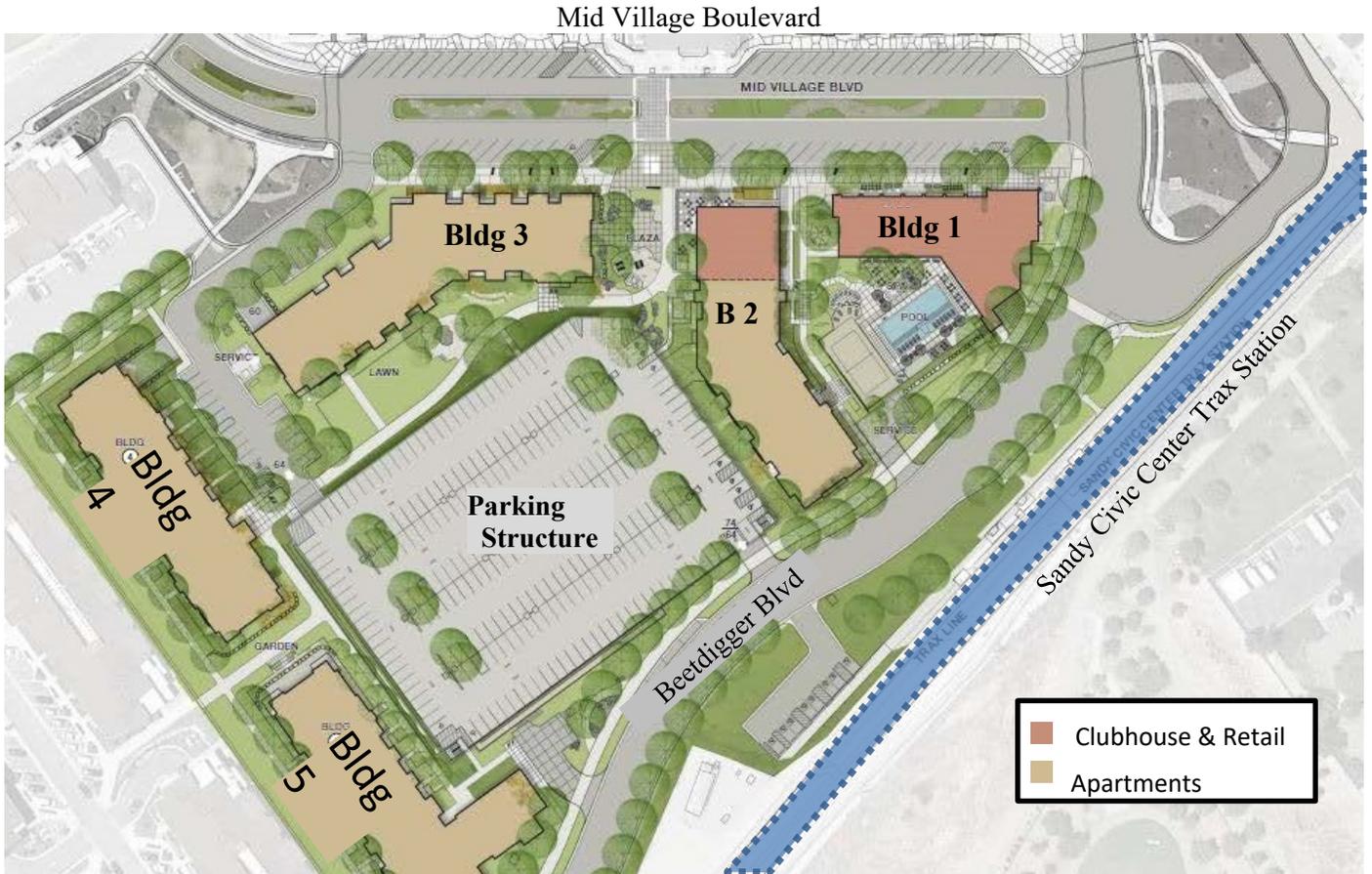
Contains: 358,333 SF or 8.23 AC and 5 Lots.

#### 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**



**EXHIBIT C  
PARKING DRAWINGS**

Designated Parking Stalls

<u>Type</u>	<u>UTA</u>	<u>Res.</u>	<u>ADA Res</u>	<u>Shared</u>	<u>Total</u>
2nd floor	240	-	2	24	266
1st floor	-	213	2	36	251
Total	<u>240</u>	<u>213</u>	<u>4</u>	<u>60</u>	<u>517</u>

<u>UTA stalls</u>		<u>Residential stalls</u>		<u>ADA parking</u>	
1L (AU)	-	1L (AU)	215	L1 Res	2
2L (AU)	<u>240</u>	2L (AU)	<u>2</u>	L2 Res	<u>2</u>
total AU	240	total AU	217	Res total	4
1L shared	36	1L Shared	-	Shared*	<u>7</u>
2L Shared	<u>24</u>	2L Shared	<u>-</u>	Total	<u>11</u>
Total	<u>300</u>	Total	<u>217</u>	*part of 24 on L2	

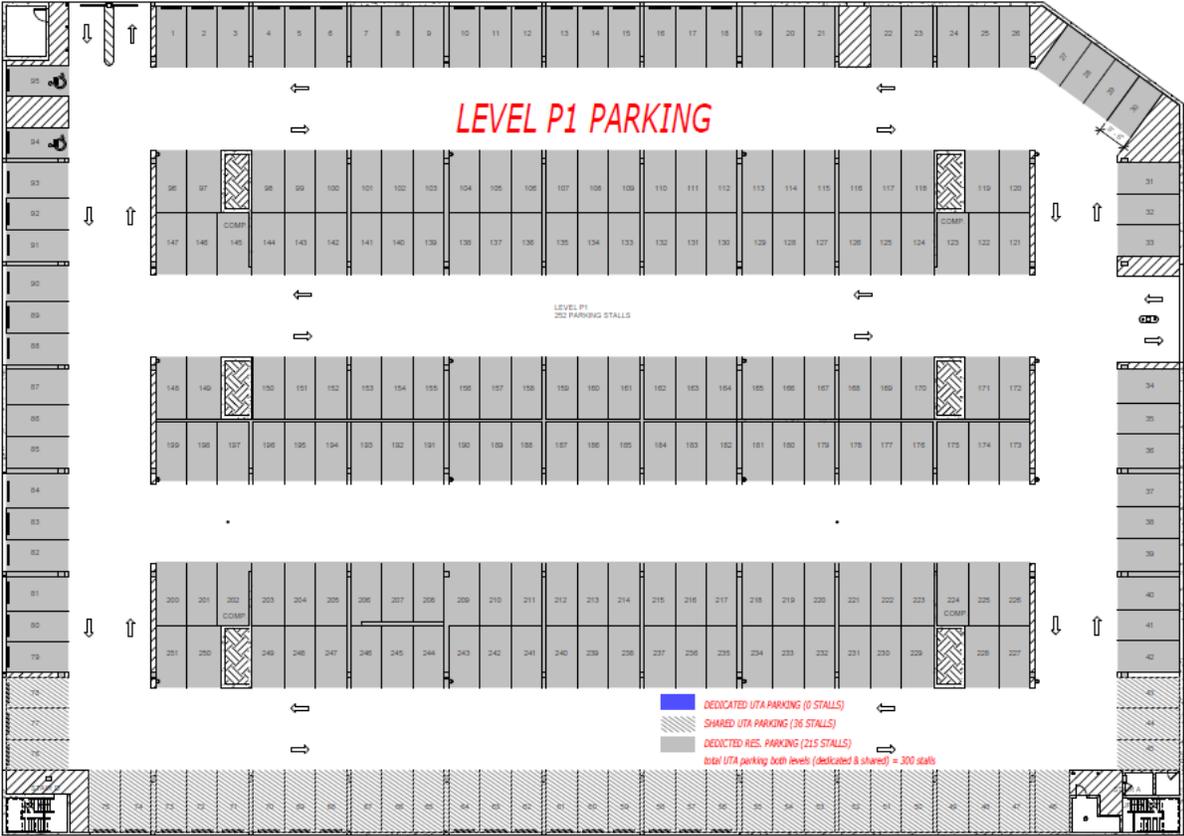
Notes:

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 accommodated on surface parking lots.

# EXHIBIT C PARKING DRAWINGS

FIRST FLOOR

➔ North

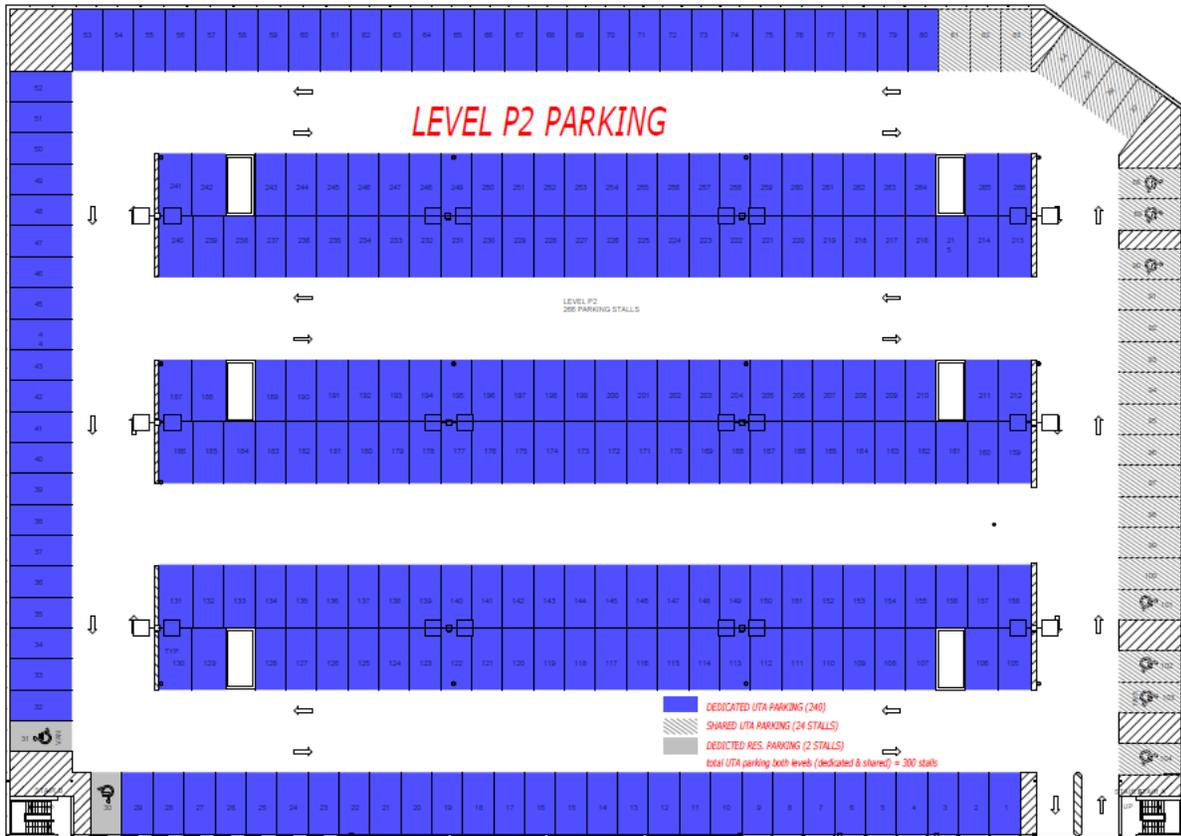


<u>1st Floor Parking Spaces</u>	
Residential Authorized Users	213
Residential AU (ADA in SW corner)	2
Shared Parking Stalls (East perimeter)	36
<b>Total Parking Spaces</b>	<b>251</b>

# EXHIBIT C PARKING DRAWINGS

## SECOND FLOOR

➔ North



### 2nd Floor Parking Spaces

UTA Authorized Users	240
Residential Authorized Users *	2
Shared Parking Stalls **	24
<b>Total Parking Spaces</b>	<b>266</b>

\* 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



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

COMPANY

HP Utah Management LLC, a Delaware limited liability company

East Village 3, LLC, a Utah limited liability company

By: \_\_\_\_\_  
Title: Managing Member

By: \_\_\_\_\_  
Title: Managing Member

Date: \_\_\_\_\_

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.	<u>\$ 6,000</u>
<b>Sub Total</b>	\$ 41,000
Management Fee @ 15%	<u>\$ 5,740</u>
<b>Total</b>	\$ 46,740

Note: Manager will receive a 5% Construction Management Fee for work after the final garage punchlist is done.



# MEMORANDUM TO THE BOARD

**TO:** Utah Transit Authority Board of Trustees  
**THROUGH:** Carolyn Gonot, Executive Director  
**FROM:** Kimberly S. Ulibarri, Chief People Officer  
**PRESENTER(S):** Kimberly S. Ulibarri, Chief People Officer  
 Jacob Gomez, Manager Total Rewards

**BOARD MEETING DATE:** June 24, 2020

<b>SUBJECT:</b> Occupational Medical Services (Intermountain Health Care WorkMed )		
<b>AGENDA ITEM TYPE:</b>	Expense Contract	
<b>RECOMMENDATION:</b>	Approve and ratify the contract and associated disbursements, including option years, with IHC WorkMed and authorize the Executive Director to execute and carry-out the option years in the contract.	
<b>BACKGROUND:</b>	The contract is for IHC WorkMed and the occupational medical services they provide to UTA Employees.	
<b>DISCUSSION:</b>	<p>IHC WorkMed began occupation medical services in March of 2019 and their base contract will expire in February of 2021. The vendor has multiple locations throughout the state of Utah which overlap across all UTA’s Service Units. The vendor provides DOT Physicals, Drug and Alcohol Testing, Worker’s Compensation Examinations, and a variety of other medical services. Overall pricing for their services was lower than the industry standard for DOT physicals.</p> <p>Services are individually priced and the annual cost of \$115,000 is an overall estimation when compared to previous contract years. The annual cost could be higher or lower depending on the volume of services rendered. Three additional option years may be exercised, which would bring the total value of the contract to \$575,000 (total of 5-years if all extensions are exercised).</p> <p>The Board is being asked to ratify the contract which began in March 2019, and authorize the Executive Director to exercise the option years allowed in the agreement.</p>	
<b>CONTRACT SUMMARY:</b>	Contractor Name: IHC WorkMed	
	<table border="1"> <tr> <td>Contract Number: 18-02790-1</td> <td>Existing Contract Value: \$</td> </tr> </table>	Contract Number: 18-02790-1
Contract Number: 18-02790-1	Existing Contract Value: \$	

	Base Contract Effective Dates: 03/01/2019 – 02/28/2021	Extended Contract Dates: 03/01/2021 - 02/29/2024 (3 1yr options)
	Amendment Amount: \$	New/Total Amount Contract Value: \$575,000
	Procurement Method: RFP	Funding Sources: Local
<b>ALTERNATIVES:</b>	In the instance the contract and option years are denied, UTA would have to activate the competitive bidding process (RFP). This could cause a disruption in current service and would require employer to change service providers mid-year.	
<b>FISCAL IMPACT:</b>	Occupational Medical Services are solely funded by the employer and are budgeted on an annual basis in 7800.50353.	
<b>ATTACHMENTS:</b>	1) IHC WorkMed Contract	

**AGREEMENT**

THIS AGREEMENT entered into as of the latest signature date below, by and between the **UTAH TRANSIT AUTHORITY**, a public transit district organized under the laws of the State of Utah, hereinafter referred to as "UTA", and **IHC HEALTH SERVICES, INC., d/b/a INTERMOUNTAIN WORKMED**, hereinafter referred to as "WorkMed", with its principle place of business located at 36 South State Street, Salt Lake City, Utah, 84111, hereinafter referred to as "WorkMed".

**WITNESSETH:**

WHEREAS, on Insert Date, UTA opened sealed proposals for furnishing Occupational Health Services, hereinafter referred to as the "Health Services" according to conditions and specifications prepared by UTA in RFP 18-2790TP; and

WHEREAS, UTA wishes to procure the Health Services according to the specifications, terms, and conditions listed in RFP 18-2790TP; and

WHEREAS, it has been determined that WorkMed was the most responsive and responsible proposer for specific Health Services to be purchased by UTA according to the proposal specifications; and

WHEREAS, UTA notified WorkMed on November 14, 2018, that it was being awarded a contract for specific Health Services as listed herein; and

WHEREAS, WorkMed is willing to furnish the Health Services per the terms and conditions of RFP 18-2790TP, WorkMed's proposal from August 23, 2018, and all terms and conditions as listed herein;

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

**1. AGREEMENT**

UTA hereby retains WorkMed to provide the following specialized occupational health services for all UTA full-time and part-time employees and contracted Paratransit operators within all UTA service areas: Physical exams; occupational injury, illness, and trauma treatment; consultation services on occupational issues; and physical ability testing services. This contract is not connected to any UTA on-site or primary care contracts in the future.

WorkMed hereby accepts such agreement and agrees that it will, to the best of its ability and in a professional manner, perform the specialized occupational health services subject to the terms and conditions of RFP 18-2790TP and WorkMed's proposal dated August 23, 2018, which are incorporated by reference, and this Agreement including Exhibits "A" and "B".

**2. TERM**

Subject to the provisions for termination as hereinafter provided, this Agreement shall be effective from March 1, 2019 through February 28, 2021 with the option to renew up to an additional 3 one-year terms. All terms and conditions of this Agreement shall apply to all services performed by Contractor since March 1, 2019.

**3. PAYMENT**

UTA agrees to pay WorkMed for services rendered at the rates listed in Exhibit B, attached hereto, for the satisfactory performance of the services described herein. Excepting the annual 2.0% price escalator discussed below, the fee schedule set forth in Exhibit B may be amended only by a written instrument signed by both parties and incorporated in this Agreement.

Beginning March 1, 2021, and continuing on each subsequent March 1<sup>st</sup> during the Agreement's existence, the pricing listed in WorkMed's response to RFP 18-2790TP will increase by 2.0% from the prior year's pricing.

WorkMed shall submit a detailed invoice of the services performed to the UTA Contract Manager for approval. Within thirty (30) days after receipt of WorkMed's invoice, UTA shall approve and pay the same or notify WorkMed that it disapproves, in whole or in part, WorkMed's invoice and the reasons for such disapproval.

**4. REIMBURSEMENT OF EXPENSES**

UTA shall not be liable to WorkMed for any expenses paid or incurred by WorkMed unless listed herein or otherwise agreed to in advance in writing by the parties hereto. UTA reserves the right to review and approve all cost items.

**5. EQUIPMENT, TOOLS MATERIALS. OR SUPPLIES**

WorkMed shall supply at its sole expense all equipment, tools, materials, and/or supplies to accomplish the work agreed to be performed as identified herein, unless otherwise agreed to in advance in writing by the parties hereto.

**6. CONTRACT MANAGER**

The UTA Contract Manager for this Agreement shall be Mr. Jacob Gomez, or designee. All correspondence regarding the technical aspects of this Agreement should be addressed to Mr. Gomez, or designee.

**7. CONTRACT ADMINISTRATOR**

The UTA Contract Administrator for this Agreement is Brian Motes, or designee. All questions and correspondence relating to the contractual aspects of this Agreement should be directed to Brian Motes, or designee.

**8. INDEPENDENT CONTRACTOR**

The parties acknowledge that WorkMed is to perform the duties called for hereunder as an independent contractor. Neither WorkMed nor any of WorkMed's employees shall be eligible for any workers compensation insurance, pension, health coverage, or fringe benefits which apply to UTA employees. Neither Federal, nor state, nor local income tax nor payroll tax of any kind shall be withheld or paid by UTA on behalf of WorkMed or the employees of WorkMed. WorkMed acknowledges that it shall be solely responsible for payment of all payroll, income and other taxes generally applicable to independent contractors.

**9. TERMINATION WITHOUT CAUSE**

Either party may terminate this Agreement without cause after giving sixty (60) days prior written notice to the other party of its intent to terminate. The parties shall deal with each other in good faith during the sixty day period after any notice of intent to terminate without cause has been given. After termination pursuant to this Paragraph, an appropriate adjustment shall be made to the payment provided under Paragraph 3 to account for the percentage of work not performed as of the date of termination. The parties shall use Exhibit "A" to determine the percentage of work completed under this Paragraph.

**10. WAIVER**

No term of this Agreement shall be considered waived and no breach excused by either party unless such waiver is made in writing. No consent, waiver or excuse by either party, express or implied, shall constitute a subsequent consent, waiver or excuse.

**11. NO AUTHORITY TO BIND CLIENT**

WorkMed has no authority to enter into contracts or agreements on behalf of UTA. This Agreement does not create a partnership between the parties.

**12. DECLARATION BY INDEPENDENT CONTRACTOR**

WorkMed covenants and warrants that it has complied with all federal, state and local laws regarding business permits, certificates and licenses that may be required to carry out the work to be performed under this Agreement.

**13. INSURANCE REQUIREMENTS**

WorkMed, as an independent contractor, shall be responsible to provide and pay the cost of all its employees' benefits. For the duration of this Agreement and at its own expense, WorkMed shall procure and maintain until all of its obligations have been discharged, including any warranty periods under this Contract are satisfied, 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 WorkMed, its agents, representatives, employees or subcontractors.

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

**13.1 Minimum Scope and Limits of Insurance.** WorkMed 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.

**13.1.1 Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

General Aggregate	\$2,000,000
Each Occurrence	\$1,000,000

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 WorkMed".

**13.1.2 Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

Policy shall contain a waiver of subrogation against UTA. This requirement shall not apply when a contractor or subcontractor is exempt under UCA, **AND** when such contractor or subcontractor executes the appropriate waiver form.

**13.1.3 Professional Liability (Errors and Omissions Liability).** The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

In the event that the professional liability insurance required by this Agreement is written on a claims-made basis, WorkMed warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Agreement is completed.

**13.2 Self Insurance.** WorkMed may, in its sole discretion, fulfill any or all of the insurance requirements herein by self-insuring the risk. WorkMed and its parent corporation are required to comply with state law, which they interpret as prohibiting a self-insured from naming as an additional insured any independent third party. UTA agrees to accept WorkMed's self-insurance program as fully complying with the insurance requirements contained in this Agreement. UTA reserves the right to request public financial information regarding WorkMed's ability to self-insure.

**13.3 Additional Insurance Requirements.** If WorkMed purchases commercial insurance policies, the policies shall include, or be endorsed to include, the following provisions:

1. 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 WorkMed even if those limits of liability are in excess of those required by this Agreement.
2. WorkMed's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

**13.4 Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to UTA, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to the Contract Administrator.

**13.5 Acceptability of Insurers.** Any commercial insurance purchased by WorkMed in fulfillment of these requirements is to be placed with insurers duly licensed or authorized to do business in the State and with an "A.M. Best" rating of not less than A-VII. UTA in

no way warrants that the above-required minimum insurer rating is sufficient to protect WorkMed from potential insurer insolvency.

- 13.6 Verification of Coverage.** When requested by UTA, WorkMed shall furnish UTA with certificates of insurance (ACORD form or equivalent approved by UTA) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be emailed directly to Utah Transit Authority's insurance email address at [insurancecerts@rideuta.com](mailto: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**

- 13.7 Approval.** Any modification or variation from the insurance requirements in this Agreement shall be made by Claims and Insurance Department or the Office of General Counsel, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

#### **14. INDEMNIFICATION**

WorkMed shall indemnify, hold harmless and, not excluding UTA's right to participate, defend UTA, its officers, officials, agents, and employees 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") for bodily injury or personal 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 negligent or willful acts or omissions of WorkMed or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any law, statute, ordinance, rule, regulation or court decree.

UTA shall indemnify, hold harmless and, not excluding WorkMed's right to participate, defend WorkMed, its officers, officials, agents, and employees 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") for bodily injury or personal 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 negligent or willful acts or omissions of UTA or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any law, statute, ordinance, rule, regulation or court decree.

If both UTA and WorkMed are found to be jointly negligent for a given claim, each party shall cover its' respective share of associated costs to settle, defend and resolve the claim. In the event the parties cannot amicably determine how liability should be apportioned, each party agrees to submit that

determination to a mutually agreed upon arbitrator, whose decision will be final.

This indemnity shall survive the termination of this Agreement or final payment. This indemnity is in addition to any other rights or remedies which UTA and the other parties to be indemnified may have under the law or under this Agreement.

**15. HOW NOTICES SHALL BE GIVEN**

Any notice given in connection with this Agreement shall be given in writing and shall be delivered either by hand to the party or by certified mail, return receipt requested, to the party at the party's address stated herein. Any party may change its address stated herein by giving notice of the change in accordance with this paragraph.

UTA: Utah Transit Authority  
ATTN: Brian Motes  
669 West 200 South  
Salt Lake City, UT 84101  
Phone: (801) 287-3059

With copy to:  
ATTN: UTA Legal Counsel  
669 West 200 South  
Salt Lake City, UT 84101  
Phone: (801) 287-2416

WORKMED: IHC Health Services, Inc.  
c/o Intermountain WorkMed  
ATTN: Ross Fulton  
36 South State Street  
Salt Lake City, UT 84111

with copy to:  
Intermountain Healthcare Services, Inc.  
Legal Department, Suite 2200  
36 S. State Street  
Salt Lake City, UT 84111

**16. CHOICE OF LAW**

The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of Utah, without regard to its law on the conflict of laws. Any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction in Salt Lake County, State of Utah. The parties exclude any and all statutes, laws and treaties which would allow or require any dispute to be decided in another forum or by other rules of decision than provided in this Agreement.

**17. SEVERABILITY**

In the event any one or more of the provisions contained in this Agreement are for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement. This Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**18. OWNERSHIP OF DOCUMENTS - RIGHTS OF DATA**

To the extent permitted by law, WorkMed agrees that any files, notes, documents, data, specifications, correspondence, memoranda, drawings, test reports and other material prepared by or furnished to it in connection with its work hereunder shall be UTA property. After the conclusion of this contract, WorkMed agrees to provide copies of medical records to new contract provider, if applicable, within 60 days of the termination of the contract at no additional cost to UTA.

**19. CONFIDENTIALITY**

WorkMed agrees that it shall not divulge to third parties, without the written consent of UTA any information obtained from or through UTA, or developed or obtained by WorkMed in connection with the performance of this Agreement unless: (a) the information is known to WorkMed prior to obtaining it from UTA; (b) the information is, at the time of disclosure by WorkMed, then in the public domain; or (c) the information is obtained by WorkMed from a third party who did not receive it directly or indirectly from UTA.

**20. AMENDMENTS**

This Agreement constitutes the entire agreement and understanding between the parties with respect to the transactions contemplated herein and may not be modified or amended except in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by officers duly authorized to execute the same as of the day and year first above written.

**IHC HEALTH SERVICES, INC.**

**UTAH TRANSIT AUTHORITY**

\_\_\_\_\_  
Signature

\_\_\_\_\_ Date \_\_\_\_\_  
Kim Ulibarri  
Chief People Officer

\_\_\_\_\_  
Printed Name

\_\_\_\_\_ Date \_\_\_\_\_  
Carolyn Gonot  
Executive Director

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

Approved As To Form and Content:

\_\_\_\_\_  
E.I. Number

\_\_\_\_\_ Date \_\_\_\_\_  
Michael Bell  
Assistant Attorney General  
for UTA Legal Counsel  
Approved to Form and Content

\_\_\_\_\_  
Date Signed

**EXHIBIT A**  
**Scope of Services Summary**

**A. Physical Examinations**

1. *Pre-employment examinations* must be completed in a manner consistent with all applicable regulations and the essential functions of the job. Examinations will be performed at WorkMed clinics with providers using the DOT physical examination form. Pricing for all exams are listed in Exhibit B.
2. *DOT examinations* must be performed consistent with DOT regulations. Individuals who do not qualify will be notified at the time of the examination and will be given written instructions regarding qualification, if applicable. WorkMed staff will commit to be trained and updated with current DOT requirements.
3. *Return-to-Work examinations* will be performed only by WorkMed physicians, who will determine if the employee is fit to return to work by reviewing and understanding the employee's medical condition, job demands and working conditions.
4. *Fitness for Duty examinations* will be performed only by WorkMed physicians to determine if employees are fit to perform the functions of their jobs. WorkMed physicians will focus on returning employees safely to the work place.
5. At the time of any exam, WorkMed providers will evaluate any medications listed by the examinee for potential sedating effects or fitness for duty implications. WorkMed providers will consult with the employee's primary care physician as needed.
6. *Follow-up exams* will be completed at WorkMed clinics to assess specific medical issues.
7. WorkMed clinics will promptly report exam results by giving UTA employees the completed paperwork immediately following the exam and emailing results to UTA Human Resources staff by the end of the day. WorkMed will notify UTA HR by telephone of a DOT exam failure within two (2) business hours. In cases where the DOT certification is withheld for medical reasons or is time restricted, the employee will be given a letter from WorkMed requesting specific information to remedy the deficiency. WorkMed will provide the results both verbally and in writing to the employee. Results will be reported to UTA Human Resources after WorkMed receives medical records from the examinee's physician. WorkMed will provide the results for any exam only to designated UTA Human Resources staff.
8. WorkMed will schedule injury follow ups, DOT, fitness for duty and return to work physical examinations on the same day as the request, or the following business day or on a walk-in basis.
9. WorkMed will follow all applicable state, federal, and local laws, rules, and regulations for driver certification, physical examinations, and drug and alcohol testing.
10. Upon completion of exam, WorkMed will provide each examinee with a discharge summary and instructions. WorkMed staff will email an additional copy to the UTA's Human Resources Staff or DER as appropriate.
11. WorkMed is available for DOT physical exams from 7:30 am – 7:00 pm five days a week, excluding WorkMed holidays. WorkMed will charge a fee for any UTA employee who fails to give a 24 hour cancellation notice for appointments between 5:30pm and 7:30 pm on extended hour's days as outlined above.

## **B. Occupational Injury, Illness and Trauma Treatment**

1. WorkMed will complete a post-accident examination when the individual is medically stable to travel to the WorkMed clinic. In the Post-accident examination, WorkMed will address factors such as impairment, injury care, diagnosis, prognosis, follow-up, work restrictions and return to duty. WorkMed will follow injury care guidelines and recommendations established by the American College of Occupational and Environmental Medicine (ACOEM).
2. Upon completion of exam, WorkMed will provide the examinee a discharge summary and instructions. WorkMed staff will email an additional copy to the UTA's Workers Compensation Administrator. Additionally iSYSTOC, a portal in to WorkMed's computer system, will be available any time to UTA with real time data.
3. WorkMed will meet the unique needs of simple as well as complex workers compensation injuries and illnesses.
4. WorkMed treatment providers will have training and experience in workers compensation systems and understand that in addition to the patient, WorkMed customers include the employer and the payer.
5. WorkMed providers and case managers may visit UTA work-sites in order to optimize worker care and enhance business client communication. WorkMed staff will coordinate every aspect of the occupational injury case to facilitate timely return to work and satisfactory case resolution. UTA's Workers Compensation Administrator is the primary communication link between the injured worker, employer, medical provider, therapist and claims adjuster and will coordinate medical care with the WorkMed clinic.
6. WorkMed will accept both walk-ins and appointments for occupational injuries and will see them in order of their severity and arrival time. Urgent post-accident exams will be seen on a walk-in basis without an appointment and will be seen immediately.
7. WorkMed will handle acute injury care including cuts and lacerations, pains and strains, skin irritations, and foreign body removal from eyes, etc. WorkMed providers will be trained in suturing techniques and have trauma rooms fully equipped to deal with wounds. WorkMed clinics will have full digital x-ray in each facility, along with staff trained in splinting techniques.
8. In circumstances requiring more in-depth screening, such as MRI or CT scans, WorkMed case managers will contact UTA's Workers Compensation Administrator for authorization and schedule the exam at an outside facility and obtain the results for the provider.
9. WorkMed providers will encourage independent exercise programs and self-care whenever feasible. Patients will be given written instructions including images illustrating correct techniques before leaving the clinic.

## **C. Protocols and Reporting**

1. WorkMed will routinely follow protocols required by UTA. This information will be entered into the WorkMed information system, allowing all WorkMed locations access to the protocols.
2. WorkMed will provide a monthly numerically detailed report, available the first week of the new month, detailing the number of physical examinations provided by category for the previous month:

- a. Pre-employment exams
- b. Bi-annual renewal DOT exams
- c. K Waiver exams
- d. Return- to-Work exams
- e. Follow-up exams
- f. Fitness for Duty exams
- g. Post-accident exams
- h. Total exams by each category along with the number of those unable to pass the physical exam, to include K-Waivers with the issue or diagnosis
- i. Total number of physical abilities tests by each category (i.e. Operator, Farebox Revenue Processor and Rail Service Employee) along with the number of those unable to pass the test.
- j. Total number of in-clinic drug and alcohol collections for the month.
- k. Total number of appointment no-shows for the month.
- l. Total number of appointment no-shows during extended hours for the month.

**D. Consultation on occupational health medical issues**

1. WorkMed will respond to UTA phone calls inquiries regarding prescription medicine clearance reported on the Medication Approval form for safe driving/working at no charge. WorkMed will provide consultation services at the prices set forth in Exhibit B.
2. WorkMed will review employees outside medical records as needed and consult with employee's physician as needed.
3. WorkMed's Medical Director will provide case consultation and planning on difficult/complex medical and psychological work injury issues.

**E. Drug and Alcohol Testing**

1. All WorkMed collectors will be trained to follow all DOT, FTA, and FRA rules and regulations. WorkMed clinic drug and alcohol testing will be conducted in full compliance with federal, state and local regulations. WorkMed will be audit ready for DOT, FTA and FRA representatives and will respond immediately by taking corrective actions to any suggestions or findings made by these officials.
2. WorkMed will collect split drug and breath alcohol tests related to pre-employment, random, return-to-duty, follow-up, post-accident and reasonable suspicion/causes.
3. WorkMed will follow all UTA, DOT, FTA and FRA policies, rules and regulations for all drug and alcohol testing. All WorkMed locations will have medical staff available and trained to collect blood samples.
4. WorkMed staff will follow all state and DOT drug screen handling procedures as outlined in Title 49 CFR Part 40. Specimens will be transported via Quest Diagnostics courier, or Federal Express. All specimens will be shipped the day of collection. If a courier cannot pick up that day, all specimens will be stored in a secure location and kept in the collector custody until it is release to the courier. Lab will report results to UTA's MRO, who will report results to UTA.
5. WorkMed will ensure the collectors and breath alcohol technicians have a copy of the training materials, proper company identification (photo optional) and current Federal regulations.

6. WorkMed will be proactive to correct all collector errors and procedural violations. All chain of custody forms and alcohol testing forms will receive a comprehensive quality assurance review to protect the accuracy and defensibility of the testing procedures.
7. WorkMed, its collectors and laboratory will maintain confidentiality of any and all protected information. No disclosure will be made to any person other than UTA's designated employer representative (DER) or the Human Resources Manager, unless by court order or as permitted under state and federal laws, rules, and regulations.
8. WorkMed will implement DOT record retention requirements for all tests collected for consistency.
9. WorkMed will report via phone any refusals to test to UTA's DER immediately.
10. Upon special request, WorkMed will work to expedite the reporting of test results to meet UTA's needs and/or will assist in collecting alternate forms of drug testing (hair or oral fluid).
11. WorkMed will ensure only Evidential Breath Testing devices approved by the DOT will be used for all alcohol testing. Each device used for testing will be capable of screening and confirmation tests. The devices will be calibrated as needed or as per manufacture's quality assurance plan. Each calibration performed will be recorded in the calibration log.

**F. Physical Ability Testing**

1. WorkMed will provide the UTA protocol-based, pre-employment testing at Salt Lake WorkMed, 1685 West, 2200 South, by a designated physical therapist with occupational medicine experience performing the testing. Pricing for all physical ability testing as per UTA protocol is listed in Exhibit B.
2. WorkMed will provide training in the UTA protocol for evaluating therapists and will finalize a standard format reporting tool. Each therapist will demonstrate complete competency in the protocol prior to testing.
3. WorkMed will administer the test as developed for UTA and provide written results to UTA's Human Resources Department within two (2) days of the testing via email.

**G. Performance Guarantees**

UTA may, on a monthly basis, decrease the monthly fee paid to WorkMed by the following amounts. UTA would invoke the penalties only after 60 calendar days of attempting to resolve the performance issues with WorkMed without success.

1. Drug Testing
  - a. Collecting a drug or alcohol test which results in a "fatal flaw" as defined by Title 49 CFR Part 40.199 (b) or Title 49 CFR Part 40.267 respectively on any drug or alcohol test collected under Federal mandate and/or non-federal mandate. \$100 per occurrence.
  - b. Failure to contact UTA's DER by telephone within one (1) hour of when a refusal to test has occurred when required for any drugs tests (49 CFR § 40.191(d)) and/or any alcohol tests (49 CFR § 40.261(c)) under Federal mandate and/or non-federal mandate. \$100 per occurrence.

c. Failure to complete the collection process as defined by Title 49 CFR Part 40.73 within two (2) business days. \$50 per day delay.

2. Physical Exams

a. Failure to notify UTA HR by telephone of a DOT exam failure within two (2) business hours. \$25.00 per occurrence.

b. Failure to provide UTA via email the Medical Examination Report for DOT pre-employment, renewals or follow-up exams within twenty-four (24) hours. \$25.00 per occurrence.

c. Failure to provide UTA via email the written results of any return-to-work or fitness-for-duty exams to UTA Human Resources staff by the end of the day by. \$25.00 per occurrence.

d. Failure to have a physician perform all Fit for Duty and Return to Work Exams. \$50.00 per occurrence.

e. Failure to complete a medical examination form in its entirety or correctly. In the instance an error is made it needs to be corrected by the end of the business day. \$25.00 per occurrence.

3. Reports

a. Failure to provide monthly reports as indicated in paragraph C.2 above. \$100 per occurrence.

**EXHIBIT B**  
**2020 WorkMed Price List Summary**

<b>TYPE OF SERVICE</b>	<b>COST</b>
<b>Occupational Medicine:</b>	
Pre-employment DOT physical Exams	\$39.00
Physical Abilities tests	\$66.00
Renewal DOT exams	\$39.00
Drug & Alcohol testing to include after-hours	\$15.00 Collection and \$55.00 after hours
Workers Compensation Examinations	Labor Commission RBRVS Fee Schedule
Fit for Duty exams	\$69.00
Return to Work exams	\$65.00
Follow up exam	\$65.00
<b>Baseline Testing/ Immunizations:</b>	
Hepatitis B Test	\$57.00
Hepatitis C Test	\$45.00
HIV Test	\$25.00
Tuberculosis Blood Test	\$22.00
Hepatitis A Immunization	\$75.00 Each (AB Combo \$97.00)
Hepatitis B Immunization	\$75.00 Each
Tetanus	\$20.00
<b>Drug and Alcohol Testing:</b>	
DOT Drug and Alcohol Testing Collections Only	\$15.00
Non-DOT Drug and Alcohol Testing Collections Only	\$15.00
Random Selections	N/A
Breath Alcohol Collection	\$20.00
On-Site/After-hours testing	\$55.00/ hour
Tracking (Test Results)	Selected MRO Price
MIS Report Preparation/Assistance	Selected MRO Price
DOT Audit Preparation/Assistance	Selected MRO Price
40.25 Previous Employer Checks	Selected MRO Price



## MEMORANDUM TO THE BOARD

**TO:** Utah Transit Authority Board of Trustees  
**THROUGH:** Carolyn Gonot, Executive Director  
**FROM:** Kimberly S. Ulibarri, Chief People Officer  
**PRESENTER(S):** Kimberly S. Ulibarri, Chief People Officer

**BOARD MEETING DATE:** June 24, 2020

<b>SUBJECT:</b> Drug and Alcohol Testing Services (Workforce QA )		
<b>AGENDA ITEM TYPE:</b>	Expense Contract	
<b>RECOMMENDATION:</b>	Approve and ratify the contract and associated disbursements, including option years, with Workforce QA, LLC and authorize the Executive Director to execute and carry-out the option years in the contract.	
<b>BACKGROUND:</b>	The contract is for the drug and alcohol compliance testing program mandated by the FTA, FRA, as well as the UTA Drug & Alcohol Policy.	
<b>DISCUSSION:</b>	<p>Workforce QA began services in March of 2019 and their base contract expired in February of 2020. They provide a comprehensive service including both DOT and Non-DOT testing. The vendor also employs an onsite medical review officer to address employee violations and required medical reviews as applicable.</p> <p>Services and testing are individually priced and annual costs are estimated at \$70,000 when compared to previous contract years. The annual cost could be higher or lower depending on the volume of services/testing rendered. Four additional option years may be exercised, which would bring the total value of the contract to \$350,000 (total contract duration of 5-years if all extensions are exercised).</p> <p>The Board is being asked to ratify the contract which began in 2019, and authorize the Executive Director to exercise the option years allowed in the agreement.</p>	
<b>CONTRACT SUMMARY:</b>	Contractor Name: Workforce QA, LLC	
	Contract Number: 18-02790	Existing Contract Value: \$
	Base Contract Effective Dates: 07/17/2019 – 02/28/2020	Extended Contract Dates: 03/01/2020 - 02/29/2024 (4 1yr Options)
	Amendment Amount: \$	New/Total Amount Contract Value: \$350,000

	Procurement Method: RFP	Funding Sources: Local
<b>ALTERNATIVES:</b>	In the instance the contract and exercise of option years are denied, UTA would have to activate the competitive bidding process (RFP). This could cause a disruption in current service and would require employer to change service providers mid-year.	
<b>FISCAL IMPACT:</b>	Drug and Alcohol Compliance Testing is funded solely by the employer and is budgeted in 7800. 50353.	
<b>ATTACHMENTS:</b>	1) Workforce QA, LLC Contract 2) Workforce QA Modification Number One to Contract	

## **AGREEMENT**

THIS AGREEMENT entered into effective the 17th day of July, 2019, by and between the **UTAH TRANSIT AUTHORITY**, a public transit district organized under the laws of the State of Utah, hereinafter referred to as "UTA", and WorkforceQA, LLC, a Utah Corporation, having an office in Salt Lake City, Utah, hereinafter referred to as "WFQA".

### ***WITNESSETH:***

WHEREAS, on August 23, 2018, UTA opened sealed proposals for furnishing Occupational Health Services, hereinafter referred to as the "Health Services" according to conditions and specifications prepared by UTA in RFP 18-2790TP; and

WHEREAS, UTA wishes to procure the Health Services according to the specifications, terms, and conditions listed in RFP 18-2790TP; and

WHEREAS, it has been determined that WFQA was the most responsive and responsible proposer for specific Health Services to be purchased by UTA according to the proposal specifications; and

WHEREAS, UTA notified WFQA on November 14, 2018, that it was being awarded a contract for specific Health Services as listed herein; and

WHEREAS, WFQA is willing to furnish the Health Services per the terms and conditions of RFP 18-2790TP, WFQA's proposal dated August 23, 2018, and all terms and conditions as listed herein;

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

#### **1. AGREEMENT**

UTA hereby retains WFQA to provide specialized occupational health services which services shall include on-call and on-site drug testing for all UTA full-time and part-time employees. UTA's primary contact for these services shall be WFQA. If for any reason WFQA is unable to provide the requested services, WFQA shall promptly inform UTA and UTA shall have the right to contact another service provider to complete the requested service.

WFQA hereby accepts such agreement and agrees that it will, to the best of its ability and in a professional manner, perform the specialized occupational health services subject to the terms and conditions of RFP 18-2790TP and WFQA's proposal dated August 23, 2018, which are incorporated into this Agreement by reference, and this Agreement including Exhibit "A".

#### **2. TERM**

Subject to the provisions for termination as hereinafter provided, this Agreement shall be effective from March 1, 2019 through March 1, 2020 with the option to renew up to an additional 4 one-year terms.

**3. PAYMENT**

UTA agrees to pay WFQA for services rendered at the fees as listed in Exhibit "A" attached for the satisfactory performance of the services described herein throughout the duration of this Agreement. The fee schedule as listed in Exhibit A may be amended only by a written instrument signed by both parties and incorporated into this Agreement. WFQA shall submit a detailed invoice of the services performed to the UTA Contract Manager for approval, in a timely manner. Within thirty (30) days after receipt of WFQA's invoice, UTA shall approve and pay the same or notify WFQA that it disapproves, in whole or in part, WFQA's invoice and the reasons for such disapproval.

**4. REIMBURSEMENT OF EXPENSES**

UTA shall not be liable to WFQA for any expenses paid or incurred by WFQA unless listed herein or otherwise agreed to in advance in writing by the parties hereto. UTA reserves the right to review and approve all cost items.

**5. EQUIPMENT, TOOLS, MATERIALS, OR SUPPLIES**

WFQA shall supply at its sole expense all equipment, tools, materials, and/or supplies to accomplish the work agreed to be performed as identified herein, unless otherwise agreed to in advance in writing by the parties hereto.

**6. RECORDS**

The parties shall comply with all applicable federal, state, and local laws and regulations governing the handling of medical records.

**7. CONTRACT MANAGER**

The UTA Contract Manager for this Agreement shall be Mr. Jacob Gomez, or designee. All correspondence regarding the technical aspects of this Agreement should be addressed to Mr. Gomez, or designee.

**8. CONTRACT ADMINISTRATOR**

The UTA Contract Administrator for this Agreement is Ms. Teressa Pickett, or designee. All questions and correspondence relating to the contractual aspects of this Agreement should be directed to Ms. Pickett, or designee.

**9. INDEPENDENT CONTRACTOR**

The parties acknowledge that WFQA is to perform the duties called for hereunder as an independent contractor. Neither WFQA nor any of WFQA's employees shall be eligible for any workers' compensation insurance, pension, health coverage, or fringe benefits which apply to UTA employees. Neither Federal, nor state, nor local income tax nor payroll tax of any kind shall be withheld or paid by UTA on behalf of WFQA or the employees of WFQA. WFQA acknowledges that it shall be solely responsible for payment of all payroll, income and other taxes generally applicable to independent contractors.

**10. TERMINATION WITHOUT CAUSE**

Either party may terminate this Agreement without cause after giving sixty (60) days prior written notice to the other party of its intent to terminate. The parties shall deal with each other in good faith during the sixty day period after any notice of intent to terminate without cause has been given. After termination pursuant to this Paragraph, an appropriate adjustment shall be made to the payment provided under Paragraph 3 to account for the percentage of work not performed as of the date of termination. The parties shall use Exhibit A to determine the percentage of work completed under this Paragraph.

**11. WAIVER**

No term of this Agreement shall be considered waived and no breach excused by either party unless such waiver is made in writing. No consent, waiver or excuse by either party, express or implied, shall constitute a subsequent consent, waiver or excuse.

**12. NO AUTHORITY TO BIND CLIENT**

WFQA has no authority to enter into contracts or agreements on behalf of UTA. This Agreement does not create a partnership between the parties.

**13. DECLARATION BY INDEPENDENT CONTRACTOR**

WFQA covenants and warrants that it has complied with all federal, state and local laws regarding business permits, certificates and licenses that may be required to carry out the work to be performed under this Agreement.

**14. INSURANCE REQUIREMENTS**

WFQA, as an independent contractor, shall be responsible to provide and pay the cost of all its employees' benefits. For the duration of this Agreement and at its own expense, WFQA shall procure and maintain until all of its obligations have been discharged, including any warranty periods under this Contract are satisfied, 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 WFQA, its agents, representatives, employees or subcontractors.

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

**14.1 Minimum Scope and Limits of Insurance.** WFQA 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.

**14.1.1 Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

General Aggregate	\$2,000,000	
Products – Completed Operations Aggregate		\$1,000,000
Personal and Advertising Injury	\$1,000,000	

Each Occurrence \$1,000,000

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 WFQA".

**14.1.2 Automobile Liability.** Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$2,000,000

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 WFQA, including automobiles owned, leased, hired or borrowed by WFQA".

**14.1.3 Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

Policy shall contain a waiver of subrogation against UTA. This requirement shall not apply when a contractor or subcontractor is exempt under UCA, AND when such contractor or subcontractor executes the appropriate waiver form.

**14.1.4 Professional Liability (Errors and Omissions Liability).** The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim \$1,000,000  
 Annual Aggregate \$2,000,000

In the event that the professional liability insurance required by this Agreement is written on a claims-made basis, WFQA warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Agreement is completed.

**14.2 Additional Insurance Requirements.** The policies shall include, or be endorsed to include, the following provisions:

1. 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 WFQA even if those limits of liability are in excess of those required by this Agreement.
2. WFQA's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

**14.3 Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to UTA, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to the Contract Administrator.

**14.4 Acceptability of Insurers.** Insurance is to be placed with insurers duly licensed or authorized to do business in the State and with an "A.M. Best" rating of not less than A-VII. UTA in no way warrants that the above-required minimum insurer rating is sufficient to protect WFQA from potential insurer insolvency.

**14.5 Verification of Coverage.** WFQA shall furnish UTA with certificates of insurance (ACORD form or equivalent approved by UTA) as required by this Agreement. 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 Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

All certificates required by this Agreement shall be sent directly to the Contract Administrator. The UTA project/contract number and project description shall be noted on the certificate of insurance. UTA reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO UTA'S CLAIMS AND INSURANCE DEPARTMENT.**

**14.6 Subcontractors.** WFQA's certificate(s) shall include all subcontractors as additional insureds under its policies or WFQA shall furnish to UTA separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

**14.7 Approval.** Any modification or variation from the insurance requirements in this Agreement shall be made by UTA's Claims and Insurance Department, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

## **15. CONFIDENTIALITY**

WFQA agrees that it shall not divulge to third parties, without the written consent of UTA any information obtained from or through UTA, or developed or obtained by WFQA in connection with the performance of this Agreement unless: (a) the information is known to WFQA prior to obtaining it from UTA; (b) the information is, at the time of disclosure by WFQA, then in the public domain; or (c) the information is obtained by WFQA from a third party who did not receive it directly or indirectly from UTA.

## **16. LAWS AND REGULATIONS**

The parties at all times during the performance of Services and term of this Agreement shall abide by all federal, state, and local agencies' laws and regulations.

## **17. INDEMNIFICATION**

WFQA shall indemnify, hold harmless and, not excluding UTA's right to participate, defend UTA, its officers, officials, agents, and employees 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") for bodily injury or personal 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 negligent or

willful acts or omissions of WFQA or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that UTA shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of UTA, be indemnified by WFQA from and against any and all claims. It is agreed that WFQA will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, WFQA agrees to waive all rights of subrogation against UTA, its officers, officials, agents and employees for losses arising from the work performed by WFQA for UTA.

This indemnity shall survive the termination of this Agreement or final payment. This indemnity is in addition to any other rights or remedies which UTA and the other parties to be indemnified may have under the law or under this Agreement.

**18. HOW NOTICES SHALL BE GIVEN**

Any notice given in connection with this Agreement shall be given in writing and shall be delivered either by hand to the party or by certified mail, return receipt requested, to the party at the party's address stated herein. Any party may change its address stated herein by giving notice of the change in accordance with this paragraph.

UTA: Utah Transit Authority  
ATTN: Teresa Pickett  
669 West 200 South  
Salt Lake City, UT 84101  
Phone: (801) 236-4754

With copy to: UTA Legal Counsel  
669 West 200 South  
Salt Lake City, UT 84101

WFQA: WFQA  
ATTN: John Vail  
1430 S. Main St.  
Salt Lake City, UT 84115  
Phone: (801) 503-3400

**19. CHOICE OF LAW**

The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of Utah, without regard to its law on the conflict of laws. Any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction in Salt Lake County, State of Utah. The parties exclude any and all statutes, laws and treaties which would allow or require any dispute to be decided in another forum or by other rules of decision than provided in this Agreement.

**20. SEVERABILITY**

In the event any one or more of the provisions contained in this Agreement are for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not

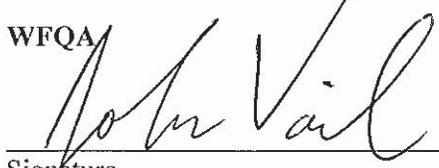
drawings, test reports and other material prepared by or furnished to it in connection with its work hereunder shall be and remain the property of UTA and shall be surrendered by it to UTA at the time of the termination of this Agreement.

**22. AMENDMENTS**

This Agreement constitutes the entire agreement and understanding between the parties with respect to the transactions contemplated herein and may not be modified or amended except in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by officers duly authorized to execute the same as of the day and year first above written.

WFQA



Signature

John Vail  
Printed Name

1430 South Main Street  
Address

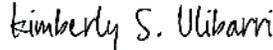
Salt Lake City, Utah 84115  
City, State, Zip

462290079  
E.I. Number

12 August 2019  
Date Signed

**UTAH TRANSIT AUTHORITY**

DocuSigned by:



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Kimberly S. Ulibarri 10/8/2019  
Chief People Officer

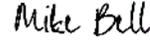
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C5C8DB953F7648E...  
Jacob D. Gomez 9/17/2019  
Benefits and Compliance Manager

Approved As To Form and Content:

DocuSigned by:



361F18F838704A9...  
Michael Bell 9/17/2019  
Assistant Attorney General  
UTA Legal Counsel

## **EXHIBIT A**

### **Scope of Services Summary**

#### **I. Specimen Collections and Alcohol Testing**

##### **A. Technicians/Collectors**

1. WFQA will monitor the collectors and ensure the urine collections and breath alcohol tests are conducted by technicians who have received U.S. DOT approved training in both urine specimen collection procedures and breath alcohol testing and are qualified to do so.
2. WFQA will ensure they are equipped with approved breath testing devices which can be used for both screening and confirmation tests.
3. WFQA and the laboratories will pre-stage specimen collection kits and custody and control forms at each collection site and with all onsite collectors. Training of collection site personnel and on-site collectors/technicians will be confirmed by WFQA on a yearly basis and when requested by UTA.
4. WFQA will be proactive to correct all collector errors and procedural violations.
5. WFQA will inform UTA of any technician problems and the need to replace technicians if they fail to correct any collection procedure problems and/or UTA will inform WFQA of any problems and the need to correct any collection procedure problems.
6. WFQA has 24 hour-7 days per week support made available to all of its technicians should any problem or question arise. In the instance a collector is not available, WFQA will generate a signed addendum as to why this occurred, and what corrective actions have been made to ensure it does not persist.
7. WFQA ensures the collection procedures described below, are followed by its facility and on-site technicians.
8. WFQA will ensure the collectors and breath alcohol technicians have a copy of training materials, proper company identification (photo optional) and current Federal regulations.
9. WFQA will ensure response time to scheduled and unscheduled testing does not exceed 45 minutes in the Salt Lake County area and not exceed 75 minutes to Weber, Davis and Utah County areas.

##### **B. Drug Testing**

1. Restroom is prepared by removing adulterants, placing bluing in the toilet and/or tank, removing sink faucet handles or taping off all access to water, removing all trash receptacles from the restroom, and not allowing access to others while testing is in process.
2. Technicians check donor's photo ID or get positive I.D. from direct supervisor or authorized employer representative.

3. All donors are requested to stay in sight of the technician or under supervision of the manager until they can produce a specimen once they have been notified of the test.
4. Donors are asked to wash their hands before providing a specimen.
5. WFQA will ensure technicians collect split specimens from only *one donor* at a time on all drug tests.
6. Donor remains with the technician until the specimen has been sealed and all paper work completed. He/she will be asked to refrain from washing hands until the specimen has been sealed with a tamper evident seal in order to keep the integrity of the specimen intact.
7. Collector will review the chain of custody with the donor in a professional manner in order to explain the process and double check for errors before excusing the donor.
8. All specimens are to be shipped the day of collection. If a courier cannot pick up that day, all specimens are to be stored in a secure location and kept in the collector custody until it is released to the courier.

**C. Alcohol Testing**

1. The urine specimen collection procedures listed above will also be followed where appropriate (i.e., positive identification of the donor with a picture ID, one collection performed at a time, etc.) for alcohol testing.
2. Ensure all Breath Alcohol Technicians have completed US DOT approved Breath Alcohol Training Program and have displayed proficiency on the instrument they are using.
3. Evidential Breath Testing Devices only approved by the DOT will be used for all alcohol testing. Each device used for testing is capable of doing a screening and confirmation test. The devices are calibrated as needed or as per manufacture's quality assurance plan. Each calibration performed will be recorded in the calibration log.
4. All breath-alcohol tests will be conducted in private with only the technician and the donor present in order to protect the privacy and rights of the donor and from one donor at a time.

**D. Quality Assurance**

1. All chain of custody forms and test results will receive a comprehensive quality assurance review. This is to protect the accuracy and defensibility of the testing procedures.
2. Technicians are provided with 24 hour, 7 days a week support should any problem or a question arise.
3. WFQA, its collectors and laboratory will maintain confidentiality of any and all protected information. No disclosure will be made to any person other than UTA's DER or the Chief People Officer, by court order or permitted under the laws of the State of Utah or Federal rules and regulations.

**II. Re-analysis/Split Specimen Analysis and Additional Testing**

**A. Re-analysis/Split Specimen Analysis**

1. Re-analysis of DOT samples will be handled by WFQA in full accordance with appropriate Federal regulations. WFQA will keep UTA informed of all developments as much as possible while respecting the confidentiality of the donor's medical information. WFQA will work to implement UTA's policy regarding specimen re-analysis. WFQA offers the DOT re-analysis procedures for all test reviews. Each donor is offered the opportunity, at his or her own cost, to challenge the lab result by sending an aliquot of the original sample to a different SAMHSA certified laboratory for re-analysis. WFQA offers this to provide greater protection to UTA and its employee.
2. DOT Regulations require the MRO to immediately send a donor's split sample for re-analysis when requested by the donor. The MRO is not allowed to wait for payment. If needed, WFQA will seek UTA's assistance to collect this fee from the donor. Ultimately UTA will be billed for this fee if the donor does not pay.
3. Occasionally, donors request the quantitative results regarding the analysis of their specimen. Intermountain MRO will always do this when requested by the donor. It is Intermountain MRO's policy to give each donor all the information surrounding his or her test.
4. WFQA will also request specimen adulteration testing when we obtain information or results which indicate the specimen may have been tampered with (e.g., hi/low specimen temperature at the time of collection, bleach smell, unusual color/odor, and, high nitrite concentration).
5. Test samples the laboratory has determined to be adulterated, substituted, or invalid will be reviewed by WFQA. The MRO will interview the donor in an attempt to determine how the sample was adulterated. We will provide a verbal and hard copy MRO report to UTA's designated employer representative documenting the outcome of the interview and any recommendations.

**B. Additional Testing**

1. WFQA is experienced in handling conflicting laboratory analysis results between laboratories. Should this occur, WFQA conducts a review of the entire collection, analysis, and review process to determine if and where any errors could have occurred. All parties involved are interviewed by an MRO. Additional testing may be performed at the discretion of the MRO to determine the true test result.

**III. Reporting and Documentation**

**A. Reporting of Test Results**

1. All test results will be reported to UTA via secure Internet reporting system web results downloads, E-mail, or auto fax to a secure/confidential fax provided by UTA.
2. All MRO verified positive, adulterated, substituted, cancelled, and invalid test results will be called to the DER after completion of the MRO-donor interview. Following the initial verbal report, the MRO test report will be posted on the secure internet web site, and a report signed by a MRO will be transmitted to UTA's designated employer representative.

**B. Turn-around Time**

1. WFQA will typically report out negative test results within 24 to 36 hours of collection and positive test results within 48 to 72 hours of collection (dependent on donor availability for an interview with the MRO and quick laboratory analysis of positive test samples). **These times are based on the assumptions: (1) the sample arrives at the laboratory the morning after collection; and, (2) the collector faxes and mails the MRO copy of the custody and control form to WFQA on the day of collection.**
2. UTA's DER or Chief People Officer will be contacted for assistance in reaching donors only after the MROs have been unsuccessful in contacting them for a MRO-donor interview after a reasonable 24 hours and several phone calls.
3. WFQA will handle the review and reporting of all non-DOT positive test results in the same manner as DOT tests. WFQA has found this provides the employer the greatest liability protection while simultaneously respecting the employee's rights and the confidentiality of the donor's medical information. The Department of Transportation (DOT) regulations specifically prohibit reporting positive test results to the employer prior to the MRO reviewing and/or interviewing the donor. WFQA will strictly follow all DOT and Operating Administration Regulations, UTA's policies and protocols.
4. All tests verified as positive by the MRO will be reported to UTA's designated employer representative **via phone** as soon as the results are verified. Following the initial report, a signed test report will be mailed to UTA's designated employer representatives. WFQA reports very few "no contact positive" test results due to its tenacious pursuit and encouragement of the donor/MRO interview.

**C. Result Reporting and Database Management**

1. All test results are reported to UTA via secure Internet by WFQA at *no charge*. Only the designated employer representative(s) (DER) appointed by UTA, *in writing*, will have access to company employees' drug and alcohol test results. Secure e-mail and auto-fax of test results (to a secure fax provided by UTA) are also available.
2. WFQA will provide monthly summary reports electronically to the DER detailing the number of drug and alcohol tests provided by category (Drug (urine) and alcohol (breath) testing per current DOT/Federal Transit Administration (FTA) regulations for pre-employment, random, follow-up, post accident, and reasonable suspicion causes). The report will list pass and fail by category and will be provided to UTA by the first week of the following month. An annual report, summarizing the preceding year's data will be provided by January 15 of each year.

**D. Records Retention and Storage**

1. WFQA will implement DOT record retention requirements for all tests for consistency.

**IV. Medical Review Officer and Additional Services**

**A. Medical Review Officer Duties**

1. Our MRO duties will be performed per 49 CFR Part 40, DOT Workplace Drug Testing.
2. Dr. Teynor and all MRO's assisting with UTA's Account, meet all current DOT-MRO

requirements and will meet future DOT-MRO requirements

3. WFQA will review DOT and non-DOT tests in the same manner to assure a rigorous, secure, and confidential handling of all tests we see. WFQA will:
  - i. Review and interpret each individual test result.
  - ii. Provide a toll free phone number for donors to call back to WFQA when a MRO interview is required. A toll free fax number is also provided for a donor's use to forward to WFQA any medical or prescription information needed to complete the MRO review of the test.
  - iii. **Ensure only certified MROs who are licensed physicians**, may interpret test results and look for legitimate medical or alternative explanations for a positive test result.
  - iv. Conduct a drug specific medical interview with the tested individual **(Spanish speaking interpreters are available as needed.)**
  - v. Provide a comprehensive quality assurance review of each and every drug test.
  - vi. Request assistance from UTA's designated employer officials in contacting donors to call WFQA for a MRO-donor interview only after a reasonable period of time and several phone call attempts to the donor by the MRO.
  - vii. Order additional testing and re-analysis of the original test sample, as needed.
  - viii. Consult with employer representatives, collection site(s), and laboratory officials.
  - ix. Request quantitative test data, as necessary.
  - x. Arrange for medical examination if required to rule out clinical evidence of opiate substance abuse.
  - xi. Determine and verify whether an alternative medical explanation exists for a lab positive test result.
  - xii. Perform quality assurance/quality control reviews of negative test results to ensure collectors and laboratories are complying with appropriate regulations.
  - xiii. Verify appropriate result, positive or negative, and report back to the appropriate employer official.
  - xiv. **Ensure confidential electronic transfer of test results via secure Internet system or secure fax stay secure.**
  - xv. Mail hard copy test results to UTA.
  - xvi. Provide summary reports to UTA's officials when requested.
  - xvii. Consult with UTA's DER on legal issues, policy implementation, and program design.

#### **B. Litigation Support**

1. Phone depositions or testimony by an MRO is billed at \$150 per hour.
2. If required, in-person "out of area" depositions and court appearances will be billed at \$150/hour plus travel expenses at Per Diem rates set by GSA, with a maximum limit of \$1000/day plus travel expenses. Travel expense will be limited to actual cost of travel. WFQA will obtain the lowest priced travel arrangements to minimize the cost to UTA. This will require the employer to provide WFQA advance notification of hearings, depositions and trial dates.
3. WFQA Litigation Support Package: Upon receipt of an appropriate legal request, WFQA will provide at no cost to UTA the following items:
  - i. Custody and Control form documentation.
  - ii. MRO-donor interview documentation.

- iii. Biomedical information provided by the donor to the MRO.
4. Laboratory Litigation Support Package: The laboratory litigation support package will be provided to UTA at the cost charged by the laboratory.
- i. Phone depositions, conducted from lab offices, will be billed at the lab's standard fee.
  - ii. If required, in-person "out of area" depositions and court appearances, will be billed at the laboratory's standard fee.
  - iii. The laboratory Litigation Support Package will be billed at the laboratory's standard fee.

**C. Technical Assistance**

1. WFQA will be available on a daily basis to answer technical questions, over the phone that UTA officials and its employees may have regarding workplace drug screening, Federal and State regulations, laboratory analysis, collection procedures, and pharmacology of drug abuse. WFQA will consult with UTA and its employees as needed on a case-by-case basis. The MRO is fully accessible and knowledgeable to handle all of your questions. WFQA will also call UTA's DER if we determine any irregularities in the test specimen collection, analysis, and review process are determined. WFQA is especially concerned with the dramatic increase in the availability and use of specimen adulteration products. WFQA will work closely with the laboratory to determine when a test sample may have been adulterated. The DER and Human Resource manager will be contacted as necessary to discuss specimen-tampering occurrences. Technical assistance is considered a normal part of day-to-day operations.
2. Technical assistance and training of a short duration, less than 5 minutes per call, are included in identified fees. Technical assistance and training (other than supervisory training) requiring advance preparation by WFQA or of a long duration will be best performed via conference call or seminar format and will be billed at \$150.00 per hour plus travel expenses at Per Diem rates set by GSA.
3. WFQA will also assist UTA in updating its Substance Abuse and Drug and Alcohol policy.

**D. Random Pool Selection and Management**

1. **Computer generated random selection will be available, if requested.** WFQA will provide UTA with a monthly or quarterly random selection list. UTA will provide an electronic (E-mail) monthly or quarterly update of all personnel changes for those who are subject to random drug and/or breath alcohol test selection.
2. Pool Management Services will be provided by WFQA at no extra charge.
3. Non-DOT Pool fees: **No charge** as long as UTA provide timely random pool updates via E-mail

**E. Supervisor Training-Drug and Alcohol Awareness Training**

1. Supervisory and employee training sessions can be performed for \$300 per session or \$600 per day plus training material reproduction costs and travel expenses (billed at WFQA cost).

2. *WFQA also has Internet based Supervisor Drug and Alcohol Misuse Recognition training. \$49.00 per course*

**V. Third Party Administration**

**A. Program Coordination and Management**

1. Coordination and management of all aspects of the UTA drug and alcohol testing in accordance with Federal regulations, UTA's guidelines and policies. Testing includes DOT and non-DOT random, post-accident, reasonable suspicion, return-to-work, follow-up testing or any other testing as required by UTA policy.
2. Provide technical support to handle administrative, supervisor, and employee requests for information.
3. Compile and retain DOT and non-DOT test results for 5 years.
4. Support all UTA Drug and Alcohol Testing Program audits and inspections by internal or external auditors.
5. Provide specific reports, as requested, detailing Drug and Alcohol Testing Program activity.
6. Arrange out of area collection sites as requested on an ad hoc basis.
7. Provide prompt payment of all invoices from the laboratory and collection sites. (Invoices WFQA receives in error, for clinic services, such as for physicals and post-accident injury care, will be forwarded to UTA for payment.)

**B. Billing/Invoicing**

1. WFQA will provide UTA with a consolidated monthly invoice, detailing collection, laboratory, and MRO services provided, each month. Payment terms: net 30 days from the date of the invoice. Late paying companies will be responsible for all costs of collection and attorney fees if it becomes necessary to refer this account to collections.
2. WFQA will verify and pay collectors and laboratories for work correctly performed in a prompt and timely manner.

**C. Pricing**

1. Our fees are based on performing drug testing services and MRO duties in the same manner for all DOT and non-DOT tests to assure UTA receives the highest quality service available.
2. Our fees include a toll free fax and phone number for the donor's use when needed and technical assistance by an MRO of about 5 minutes per call.

**VI. Full Service Drug and Alcohol Testing**

**A. Urine Drug Testing Fees:**

Tests collected at WFQA Sites	<b>\$32.00</b>
Tests collected at WorkMed	<b>\$38.00</b>
Scheduled tests collected on-site	<b>\$43.00/UDS</b>
Pre-Scheduled after hours tests collected on-site	<b>\$43.00/UDS</b>
<b><u>On-Site Fee (Business Hours)</u></b>	<b><u>\$50.00</u></b>
<b><u>On-Site Fee (After-Hours)</u></b>	<b><u>\$75.00</u></b>

1. Business hours: Monday – Friday from 7:00am to 5:00pm.
2. Pricing is the same for all urine DOT and Non-DOT Panel with expanded opiates drug screens.
3. Includes collection site, shipping, laboratory and MRO fees.
4. WFQA is to review all test results.
5. No additional laboratory charge for GC/MS confirmation, d and l isomer ratio or 6-MAM tests will be billed.
6. Special specimen adulteration testing may require additional laboratory charges. This work will be performed only after WFQA has obtained UTA’s approval to proceed.
7. **Expanded opiates (Hydrocodone and Oxycodone) non-DOT testing panel levels are included in the above fees.** Alternate forms of drug testing (hair or oral fluid), laboratory analysis for Demerol and other special drugs test are available for an additional fee.

**B. Breath Alcohol Testing Fees:**

Tests collected at WFQA Sites	<b>\$20.00</b>
Tests collected at WorkMed Sites	<b>\$25.00</b>
Scheduled tests collected on-site	<b>\$28.00</b>
Pre-Scheduled after hours tests collected on-site	<b>\$28.00</b>

1. Screening and confirmation testing fees are included.

**C. Short notice, After-Hours, Mileage, Collector on-site and Wait Time Collection Fees:**

After hours call out, plus test fee	<b>\$75.00</b>
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**Waiting time, per hour of inactivity** **\$20.00**

1. After hours: Monday – Friday from 5:01pm to 6:59am, including Weekends and Holidays.

**VII. Performance Guarantee**

In the event of performance problems, Utah Transit Authority (UTA) may, on a monthly basis, decrease the monthly fee paid to WFQA by the following amounts:

- a. Failure of a Drug and Alcohol Collector to arrive on-site within thirty (30) minutes of the scheduled collection time. \$50.00 per occurrence. Consideration given to inclement weather.
- b. Collecting a drug or alcohol test which results in a “fatal flaw” as defined by Title 49 CFR Part 40.199 (b) or Title 49 CFR Part 40.267 respectively on any drug or alcohol test collected under Federal mandate and/or non-federal mandate. \$100 per occurrence.
- c. Failure to contact UTA’s DER by telephone within one (1) hour of when a refusal has occurred when required for any drugs tests (49 CFR § 40.191(d)) and/or any alcohol tests (49 CFR § 40.261(c)) under Federal mandate and/or non-federal mandate. \$100 per occurrence.
- d. WFQA employee specimen collector(s) failure to complete the collection process as defined by Title 49 CFR Part 40.73 within two (2) business days. \$50 per day delayed.
- e. Failure to provide test results (Drug/BAT) within 5-business days. \$10 per document. Acceptable exceptions are: (a) for laboratory analysis taking longer than 5 business days and (b) third party collection staff delays in necessary paperwork.
- f. Failure to provide copies of CCF’s or Authorization Forms by the last business day of the calendar month. \$10.00 per document.
- g. Failure to provide any requested audit documents/requirements within 5-business days. \$50 per occurrence.
- h. Any DOT/State Audit violation which leads to a civil penalty, and can be directly attributed to WFQA’s error. 50% of the applicable penalty amount.

**Reports**

- a. Failure to provide monthly reports electronically detailing the number of drug and alcohol tests provided by category (Drug (urine) and alcohol (breath) testing per current DOT/Federal Transit Administration (FTA) regulations for pre-employment, random, follow-up, post-accident, and reasonable suspicion/cause) by the date agreed to by the Respondent and UTA. \$100 per occurrence.

**MODIFICATION NUMBER ONE  
TO CONTRACT FOR PROFESSIONAL SERVICES  
18-2790TP UTA HEALTH SERVICES**

This Modification Number One to Contract Agreement effective as of the latest signature date below, by and between the **UTAH TRANSIT AUTHORITY**, a public transit district organized under the laws of the State of Utah, hereinafter referred to as "UTA", and WorkforceQA, LLC, a Utah Corporation, having an office in Salt Lake City, Utah, hereinafter referred to as "WFQA".

RECITALS

WHEREAS, on August 23, 2018, UTA opened sealed proposals for furnishing Occupational Health Services, hereinafter referred to as the "Health Services" according to conditions and specifications prepared by UTA in RFP 18-2790TP; and

WHEREAS performance of the scope of services was delayed due to several factors involving both Contractor and UTA; and

WHEREAS, UTA contract no. 18-2790TP, was awarded on November 14, 2018 with an effective date of July 17, 2019; with additional four one-year options. The initial period of performance expired on February 28, 2020.

WHEREAS UTA now desires to exercise the first option for one additional year of performance from March 1, 2020 through February 28, 2021.

WHEREAS UTA requires that 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.

NOW THEREFORE, the Parties agree to amend the contract as described below:

CONTRACT AGREEMENT

Based upon the stated Recitals, which are incorporated hereby in reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits to the parties to be derived here from, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

1. Term: The first option period beginning March 1, 2020 and extending through February 28, 2021 is hereby exercised.
2. Other Terms Remain in Effect: All other terms and conditions remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed and delivered the Agreement as to the date written above,

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by officers duly authorized to execute the same as the latest signature date listed below.

**WORKFORCEQA**

**UTAH TRANSIT AUTHORITY**

  
Signature

Michael Watts  
Printed Name

1430 S. Main St.  
Address

SLC, UT 84115  
City, State, Zip

46-2290079  
E.I. Number

4/29/2020  
Date Signed

\_\_\_\_\_  
Date

Kim Ulibarri  
Chief People Officer

\_\_\_\_\_  
Date

Carolyn Gonot  
Executive Director

Approved As To Form and Content:

\_\_\_\_\_  
Date

Michael Bell  
Assistant Attorney General  
for UTA Legal Counsel  
Approved to Form and Content



## MEMORANDUM TO THE BOARD

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

**BOARD MEETING DATE:** June 24, 2020

<b>SUBJECT:</b>	<b>SD160 Auxiliary Power Supply (APS) Replacement (Woojin IS America Inc.)</b>
<b>AGENDA ITEM TYPE:</b>	Expense Contract
<b>RECOMMENDATION:</b>	Approve award and authorize Executive Director to execute contract and associated disbursements with Woojin IS America Inc. in the amount of \$1,262,930
<b>BACKGROUND:</b>	The APS units on 17 SD160 light rail vehicles and two spares need to be replaced. This procurement is part of the light rail overhaul program. The APS units are approximately 20 years old and require a comprehensive midlife overhaul to allow them to continue in service for an additional 15-20 years.
<b>DISCUSSION:</b>	<p>UTA staff is requesting approval of a contract with Woojin IS America Inc. in the amount of \$1,262,930 to replace APS units on UTA's SD160 light rail vehicle fleet. This best value contract with Woojin IS America Inc. is to provide 19 new APS units, all associated hardware, software, tools, installation services, commissioning/testing services, training, and documentation.</p> <p>After extensive review by UTA personnel and external engineers, it was determined that although more expensive, it was advantageous to replace the APS units rather than overhaul them. Overhauling the APS units would replace or overhaul key components, but replacement of the entire APS system would provide all new components and eliminate unknown maintenance issues.</p> <p>In addition to the new APS units having the same form, fit, and function of the current system with higher reliability, other advantages include:</p> <ul style="list-style-type: none"><li>• Reduction of long-term lifecycle costs: Instead of a partial overhaul, a complete replacement would reduce the chance of APS failure over the next 15-20 years.</li><li>• Eliminate existing obsolete components: The replacement would update components to more reliable and updated technology.</li></ul>

	<ul style="list-style-type: none"> <li>Extended warranty: An overhaul has a standard 2-year warranty. The replacement option would increase the warranty to 5 years.</li> </ul> <p>This Contract will commence upon approval and expires December 31, 2022.</p>	
<b>CONTRACT SUMMARY:</b>	Contractor Name: Woojin IS America Inc.	
	Contract Number: 19-03157	Existing Contract Value:
	Base Contract Effective Dates: Upon approval - December 31, 2022	Extended Contract Dates:
	Amendment Amount:	New/Total Amount Contract Value: \$1,262,930.00
	Procurement Method: Best Value	Funding Sources: Local
<b>ALTERNATIVES:</b>	If we do not overhaul the APS we will experience service interruptions. The power system will deteriorate and the faults would be more frequent and maintenance costs would increase.	
<b>FISCAL IMPACT:</b>	The requested amount for 2021-2022 would be covered by the Light Rail Overhaul capital budget.	
<b>ATTACHMENTS:</b>	1) Contract with Woojin IS America Inc.	



## **REQUEST FOR PROPOSALS**

### **GOODS SUPPLY AGREEMENT**

#### **SD160 APS Overhaul**

THIS GOODS SUPPLY AGREEMENT ("Contract") is entered into by and between UTAH TRANSIT AUTHORITY, a public transit district organized under the laws of the State of Utah ("UTA"), and WOOJIN IS AMERICA, INC. (the "Contractor").

#### **RECITALS**

WHEREAS, on January 20, 2020, UTA received competitive proposals to provide replacement Auxiliary Power Supply (APS) units for UTA Light Rail Vehicles and (as applicable) all associated hardware, software, tools, installation services, commissioning and testing services, training and documentation (the "Goods and Services") according to the terms, conditions and specifications prepared by UTA in 19-03157 (the "RFP"); and

WHEREAS, UTA wishes to procure the Goods and Services according to the terms, conditions and specifications listed in the RFP (as subsequently amended through negotiation by the parties); and

WHEREAS, the Proposal dated January 20, 2020 proposal submitted by the Contractor in response to the RFP ("Contractor's Proposal") was deemed to be the most advantageous to UTA; and

WHEREAS, Contractor is willing to furnish the Goods and Services according to the terms, conditions and specifications of the Contract.

#### **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:

#### **GOOD AND SERVICES TO BE PROVIDED BY CONTRACTOR**

Contractor hereby agrees to furnish and deliver the Goods in accordance with the Contract (including performing any installation, testing commissioning and other Services described in the Contract), Exhibit A (Scope of Work), and Exhibit C (Schedule).

#### **TERM**

This Contract shall commence as of the Effective Date. The Contract shall remain in full force and effect until all Goods have been delivered and all Services have been performed in accordance with the Contract (as reasonably determined by UTA). Contractor shall deliver all Goods and perform all Services no later than December 31, 2022. This guaranteed completion date may be extended if Contractor and UTA mutually agree to an extension evidenced by a written Change Order. The rights and obligations of UTA and Contractor under the Contract shall at all times be subject to and conditioned upon the provisions of the Contract.

## **1. COMPENSATION AND FEES**

UTA shall pay Contractor in accordance with Exhibit B (Price). Payments shall be made in accordance with the milestones or other payment provisions detailed in Exhibit B (Price). If Exhibit B (Price) does not specify any milestones or other payment provisions, then payment shall be invoiced after the Goods have been delivered and the Services have been performed.

## **2. 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 Materials Supply Agreement (including any exhibits and attachments hereto).

2. Contractor's Proposal including, without limitation, all federal certifications (as applicable);

3. UTA's RFP including, without limitation, all attached or incorporated terms, conditions, federal clauses (as applicable), drawings, plans, specifications and standards and other descriptions of the Goods and Services;

b. The above-referenced documents are made as fully a part of the Contract as if hereto attached or herein repeated. The Contract (including the documents listed above) constitute the complete contract between the parties.

## **3. INSPECTION, DELIVERY AND TRANSFER OF TITLE**

a. Upon UTA's request, UTA's representative shall be provided access to Contractor's facilities to obtain information on production progress and to make inspections during the manufacturing or assembly process. Contractor will make reasonable efforts to obtain, for UTA, access to subcontractor facilities for the purposes described above. If the specifications include pre-shipment inspection requirements, Goods shall not be shipped until UTA or its designee has inspected the Goods, and authorized Contractor to proceed with the shipment.

b. Delivery of the Goods is a substantial and material consideration under the Contract. Unless otherwise specifically set forth in the pricing schedule: (i) Contractor shall be solely responsible for the delivery of the Goods to the delivery point specified in the Contract (or otherwise designated by UTA) and all costs related thereto are included in the pricing; and (ii) Contractor shall retain all liabilities and risk of loss with respect to the Goods until the Goods are delivered to, and accepted by, UTA.

c. After delivery, the Goods shall be subject to inspection, testing and acceptance by UTA, including any testing or commissioning process described in the specifications. UTA shall have the right to reject any Goods or Services that are defective or do not conform to the specifications or other Contract requirements. Goods or Services rejected shall be replaced, repaired or re-performed so as to conform to the Contract (and to UTA's reasonable satisfaction). Any inspection and testing performed by UTA shall be solely for the benefit of UTA. Neither UTA's inspection of the production processes, production progress and/or Goods or Services (nor its failure to inspect) shall relieve Contractor of its obligations to fulfill the requirements of the Contract, or be construed as acceptance by UTA.

d. Contractor warrants that title to all Goods covered by an invoice for payment will pass to UTA no later than the time of payment. Contractor further warrants that upon submittal of an invoice for payment, all Goods and/or Services for which invoices for payment have been previously issued and payments received from UTA shall be free and clear of liens, claims, security interests or encumbrances in favor of Contractor or any subcontractors, material suppliers, or other persons or entities making a claim by reason

of having provided equipment, materials, and labor related to the equipment and/or work for which payment is being requested.

#### **4. INVOICING PROCEDURES AND RECORDS**

a. Contractor shall submit invoices to UTA's Project Manager for processing and payment in accordance with Exhibit B (Price). If Exhibit B (Price) does not specify invoice instructions, then Contractor shall invoice UTA after delivery of all Goods and satisfactory performance of all Services. Invoices shall be provided in the form specified by UTA. Reasonable supporting documentation demonstrating Contractor'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 Goods or Services. Approval by UTA shall not be unreasonably withheld. UTA shall also have the right to offset (against payments) amounts reasonably reflecting the value of any claim which UTA has against Contractor under the Contract. Payment for all invoice amounts not specifically disapproved or offset by UTA shall be provided to Contractor within thirty (30) calendar days of invoice submittal.

#### **5. WARRANTY OF GOODS AND SERVICES**

a. Contractor warrants that all Goods and Services shall conform to the specifications, drawings, standards, samples, and other descriptions made a part of (or incorporated by reference into) the Contract. Contractor further warrants that all Goods and Services shall be of the quality specified, or of the best grade if no quality is specified, and, unless otherwise provided in the Contract, will be new, and free from defects in design, materials and workmanship.

b. Contractor warrants that all Goods and Services shall be in compliance with applicable federal, state, and local laws and regulations including, without limitation, those related to safety and environmental protection.

c. At any time for a period of two (2) years from the date that all Goods have been delivered and all Services have been performed in accordance with the Contract, Contractor shall at its own expense promptly repair, replace and/or re-perform any Goods or Services that are defective or in any way fail to conform to the Contract requirements.

d. If Contractor fails to promptly make any repair, replacement or re-performance as required herein, UTA may conduct the necessary remedial work at Contractor's expense. Contractor cannot void the warranty for repair, replacement or re-performance performed under these circumstances. Provided that such repair, replacement or re-performance is conducted in a reasonable manner and with workmanship and care consistent with industry standards, Contractor shall reimburse UTA for the cost of any warranty repair, replacement or re-performance self-performed by UTA.

e. The foregoing warranties are not intended as a limitation, but are in addition to all other express warranties set forth in the Contract and such other warranties as are implied by law, custom, and usage of trade.

#### **6. 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 be to the fullest extent necessary to accomplish those purposes, including the right to share same with UTA’s contractors, agent, officers, directors, employees, joint owners, affiliates and consultants.

**7. 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.

**8. INSURANCE REQUIREMENTS**

a. Contractor and subcontractors shall procure and maintain until all of its obligations have been discharged (including satisfaction of all warranty periods under the Contract), 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.

1. **Commercial General Liability – Occurrence Form** - Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$4,000,000
- Products – Completed Operations Aggregate \$2,000,000
- Personal and Advertising Injury \$2,000,000
- Each Occurrence \$2,000,000

The policy shall be endorsed to include the following additional insured language: “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.”

2. **Automobile Liability** - Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of the Contract.

- Combined Single Limit (CSL) \$2,000,000

The policy shall be endorsed to include the following additional insured language: "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."

**3. Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

Policy shall contain a waiver of subrogation against UTA.

d. The policies shall include, or be endorsed to include, the following provisions:

1. 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 Contractor. Insurance limits indicated in the Contract are minimum limits. Larger limits may be indicated after the Contractor's assessment of the exposure for the Contract; for its own protection and the protection of UTA.

2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

e. Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Utah and with an "A.M. Best" rating of not less than A-VII. UTA in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

f. Contractor shall furnish UTA with certificates of insurance (ACORD form or equivalent approved by UTA) as required by the Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

g. Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies or Contractor shall furnish to UTA separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to the minimum requirements identified above.

**9. OTHER INDEMNITIES**

a. Contractor 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 Contractor's performance under the Contract. If notified promptly in writing and given authority, information and assistance, Contractor shall defend, or may settle at its expense, any suit or proceeding against UTA so far as based on a claimed infringement and Contractor shall pay all damages and costs awarded therein against UTA due to such breach. In case any Good or Service is in such suit held to constitute such an infringement or an injunction is filed that interferes with UTA's rights under the Contract, Contractor shall, at its expense and through mutual agreement between UTA and Contractor, either procure for UTA any necessary intellectual property rights, or modify Contractor's Goods and Services such that the claimed infringement is eliminated.

b. Contractor 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 on account of any Goods or Services furnished by subcontractors of any tier; and (ii) keep UTA property free and clear of all liens or claims arising in conjunction with any Goods or Services furnished under the Contract

by Contractor or its subcontractors of any tier. If any lien arising out of the Contract is filed in conjunction with any Goods or Services furnished under the Contract, Contractor, 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 Contractor 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 Contractor 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, Contractor shall assume the defense of such claim within ten (10) calendar days after receiving from UTA written notice of such claim. If Contractor fails to do so, Contractor shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA to satisfy such claim.

#### **10. INDEPENDENT CONTRACTOR**

The parties agree that Contractor, in the carrying out of its duties hereunder, is an independent contractor and that neither Contractor nor any of its employees is or are agents, servants or employees of UTA. Neither Contractor nor any of Contractor's employees shall be eligible for any workers compensation insurance, pension, health coverage, or fringe benefits which apply to UTA's employees. Neither federal, state, nor local income tax nor payroll tax of any kind shall be withheld or paid by UTA on behalf of Contractor or the employees of Contractor. Contractor acknowledges that it shall be solely responsible for payment of all payrolls, income and other taxes generally applicable to independent contractors.

#### **11. USE OF SUBCONTRACTORS**

- a. Contractor shall not subcontract any services to be performed by it under the Contract other than those listed and identified in Contractor's proposal without prior approval of UTA.
- b. Contractor shall pay all subcontractors for satisfactory performance of their contracts no later than ten (10) days from receipt of each payment UTA makes to Contractor, unless other arrangements are agreed to in writing by the parties involved. UTA shall have no obligations to any subcontractors retained by Contractor.

#### **12. CONTRACTOR SAFETY COMPLIANCE**

UTA is an ISO 14001 for Environmental Management Systems, ISO 9001 Quality and Performance Management, and OSHAS 18001 safety systems management company. Contractor, including its employees, subcontractors, authorized agents, and representatives, shall comply with all UTA and industry safety standards, NATE, OSHA, EPA and all other State and Federal regulations, rules and guidelines pertaining to safety, environmental Management and will be solely responsible for any fines, citations or penalties it may receive or cause UTA to receive pursuant to this Contract. Each employee, contractor and subcontractor must be trained in UTA EMS and Safety Management principles. Contractor acknowledges that its Goods and Services might affect UTA's Environmental Management Systems obligations. A partial list of activities, products or Services deemed as have a potential EMS effect is available at the UTA website [www.rideuta.com](http://www.rideuta.com). Upon request by UTA, Contractor shall complete and return a *Contractor Activity Checklist*. If UTA determines that the Goods and/or Services under the Contract has the potential to impact the environment, UTA may require Contractor to submit additional environmental documents. Contractor shall provide one set of the appropriate safety data sheet(s) (SDS) and container label(s) upon delivery of a hazardous material to UTA.

#### **13. ASSIGNMENT OF CONTRACT**

Contractor shall not assign any of its rights or responsibilities, nor delegate its obligations, under this Contract or any part hereof without the prior written consent of UTA, and any attempted transfer in violation of this restriction shall be void.

#### **14. TERMINATION**

- a. 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. If Contractor materially fails to deliver the Goods in accordance with the Contract requirements, fails to perform any Services in the manner called for in the Contract, or fails to comply with any of its obligations under the Contract, and such failure is not cured or a cure initiated to the satisfaction of UTA within seven (7) days after receipt of written notice from UTA, UTA may, at its discretion:
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. 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.
- d. 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. CHANGES**

UTA may direct changes to the Contract. Upon receipt of such direction, Contractor shall prepare an estimate of the cost and schedule impact of the change (if any). No change in the Contract shall be made unless made pursuant to a mutually executed written instrument designated to be a change order or contract amendment. Oral changes to the Contract are not permitted.

#### **16. AUDIT**

Contractor shall retain all books, papers, documents, accounting records and other evidence to support any cost-based billings allowable under Exhibit B (Price), or any other provision of the 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. Contractor shall also retain other books and records related to the performance, quality or management of the Contract and/or Contractor's compliance with the Contract. Records shall be retained by Contractor for a period of at least six (6) years, 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. Contractor agrees that it shall flow-down (as a matter of written contract) these records requirements to all subcontractors utilized in the performance of the Contract at any tier.

#### **17. FINDINGS CONFIDENTIAL**

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

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

1. Information already in the public domain;
2. Information disclosed to Contractor by a third party who is not under a confidentiality obligation;
3. Information developed by or in the custody of Contractor before entering into this Contract;
4. Information developed by Contractor through its work with other clients; and
5. Information required to be disclosed by law or regulation including, but not limited to, subpoena, court order or administrative order.

#### **18. PROJECT MANAGER**

UTA's Project Manager for the Contract is Kyle Stockley, or designee. All questions and correspondence relating to the technical aspects of the Contract should be directed to UTA's Project Manager at UTA offices located at 669 West 200 South, Salt Lake City, Utah 84101, office phone (801) 287-3048.

#### **19. CONTRACT ADMINISTRATOR**

UTA's Contract Administrator for the Contract is Jolene Higgins, Grants & Contracts Administrator, or designee. All questions and correspondence relating to the contractual aspects of the Contract should be directed to UTA's Grants & Contracts Administrator at UTA offices located at 669 West 200 South, Salt Lake City, Utah 84101, office phone (801) 287-1925.

#### **20. PROHIBITED INTEREST**

No member, officer, or employee of UTA during their tenure or one year thereafter shall have any interest, direct or indirect, in the Contract or the proceeds thereof.

#### **21. NOTICES OR DEMANDS**

a. Any and all notices, demands or other communications required hereunder to be given by one party to the other shall be given in writing and will be personally delivered, mailed by US Mail, postage prepaid, or sent by overnight courier service and addressed to such party as follows:

**If to UTA:**

Utah Transit Authority  
ATTN: Grants & Contracts Administrator  
669 West 200 South  
Salt Lake City, UT 84101

**If to Contractor:**

Woojin Is America, Inc.  
ATTN: Vice President and COO  
5108 Azusa Canyon R.  
Irwindale, CA 91706

b. Either party may change the address at which such party desires to receive written notice of such change to any 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.

**22. DISPUTE RESOLUTION**

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

<b>Level of Authority</b>	<b>Time Limit</b>
UTA's Project Manager Kyle Stockley/Contractor's Project Manager Sean Lee	Five calendar days
UTA's Chief Operating officer, Eddy Cumins/Contractor's, Vice President and C.O.O, Joseph Kim	Five calendar days
UTA's Executive Director, Carolyn Gonot/Contractor's, President, Thomas J. Martin	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.

- c. If the dispute cannot be resolved informally in accordance with the escalation procedures set forth above, than either party may commence legal action in accordance with the venue and law provisions of this Contract. If mutually agreed, the parties may also submit the dispute to arbitration or mediation.

**23. GOVERNING LAW**

The validity, interpretation and performance of the Contract shall be governed by the laws of the State of Utah, without regard to its law on the conflict of laws. Any dispute arising out of the Contract that cannot be solved to the mutual agreement of the parties shall be brought in a court of competent jurisdiction in Salt Lake County, State of Utah. Contractor consents to the jurisdiction of such courts.

**24. SEVERABILITY**

Any provision of the 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 the Contract.

**25. AMENDMENTS**

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

**26. NO THIRD PARTY BENEFICIARIES**

The parties enter in to the 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 the Contract.

**27. 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.

**28. 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 facsimile transmission of a signed original of the Contract or any counterpart hereof and the retransmission of any signed facsimile transmission hereof shall be the same as delivery of an original.

**29. 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 7, 8, 9, 10, 11, 16, 18, 19, 22, 24, 25, 26, 28 and 29.

Effectiveness Date. This Agreement will become effective when all parties have fully signed it. The date of this Agreement will be the date it is signed by the last individual to sign it (as indicated by the date associated with that individual’s signature).

*[Signatures on following page]*

IN WITNESS WHEREOF, the parties hereto have caused the Contract to be executed by officers duly authorized to execute the same as of the day and year first above written.

**UTAH TRANSIT AUTHORITY:**

**WOOJIN IS AMERICA, INC.**

By \_\_\_\_\_ Date: \_\_\_\_\_  
Carolyn M. Gonot  
Executive Director

By \_\_\_\_\_ Date \_\_\_\_\_  
Joseph Kim  
Vice President & C.O.O.

BY \_\_\_\_\_ Date: \_\_\_\_\_  
D. Eddy Cumins  
Chief Operating Officer

Approved as to Form and Content

\_\_\_\_\_ Date: \_\_\_\_\_

Michael Bell  
Assistant Attorney General  
UTA Counsel

Reviewed & Recommended

\_\_\_\_\_

Kyle Stockley  
UTA Project Manager

## UTA RFP 19-03157 SD160 APS Overhaul Project

### SCOPE OF WORK

#### A. Introduction

This document summarizes the scope of work to be fulfilled by the Contractor, Woojin IS America, Inc., for the solicited RFP 19-03157 SD160 APS Overhaul project administered by the Customer, Utah Transit Agency. The purpose of this document is to align the scope of work for this project to replace, rather than to overhaul, the existing Auxiliary Power Supply (APS) for UTA SD160 vehicles. This document lays out the technical description, functions and operations, other Customer requirements, and RFP requirements that shall be applied to the replacement system, as mandated by the Customer.

#### B. Technical Description (from WOOJIN Technical Proposal, Section 4)

#### **SYSTEM DESCRIPTION**

WISA will design, manufacture, and deliver 19 units of Auxiliary Power Supply (APS) to UTA. The technical specifications of the proposed APS system are shown in the table below.

**Table 2 - System Specifications**

Item		Specifications
<b>Method</b>	Main Circuit	IGBT PWM Inverter
	Cooling Method	Forced air cooling system
<b>Input</b>	Rated Voltage	750V DC
	Guaranteed Range for Operation	420 ~ 1000V DC
<b>Output (AC)</b>	Rated Capacity	71 kVA
	Power Factor	Heater load: 1.0
		Nominal motor: 0.8
	Rated Voltage	208 V $\pm$ 5% AC, 3-Phase
		120 V $\pm$ 5% AC, 1-Phase
Frequency	60 Hz $\pm$ 1%	
Total harmonic distortion	< 8%	
<b>Output (DC)</b>	Rated Capacity	15 kW
	Rated Voltage	27.4 V $\pm$ 2% DC
	Adjustable Range	26.8 V ~ 27.9 V
<b>Efficiency</b>		$\geq$ 90%
<b>Weight</b>		< 425kg
<b>Dimension</b>		1525(L) x 800(W) x 500(H) [mm] (Designed the same as existing APS)

Please refer to Figure 3 for the main circuit diagram of the proposed APS. The following sections describe the different types of the circuits that are included in the main circuit of the APS.

### INPUT CIRCUIT

The proposed APS uses 750V DC power input from the Overhead Catenary System (OCS) to convert them into lower voltages. The DC input circuit consists of Charging Contactor (CHK), Input Line Contactor (IVK), Charging Resistor (RC) and Filter Reactor (FL) to filter the input voltage and current.

### DC/DC CONVERTER CIRCUIT

The DC/DC converter circuit switches the input voltage to a high frequency and supplies power to the DC Link of the inverter through an isolation transformer.

DC/DC Converter Circuit consists of Filter Capacitor, IGBT 3-phase bridge unit, DC Link Voltage sensor (DCPT), Resonant Capacitor (Cr), Resonant Reactor (LEKL), Transformer (TR), Full bridge diode rectifier unit.

### INVERTER CIRCUIT

The inverter converts the range of Overhead Catenary System (OCS) voltages between 420 to 1000 Vdc to a nominal 208 Vac three-phase and 120 Vac single-phase, 60 Hertz outputs.

In order to obtain a stabilized output voltage, each arm of the Inverter Circuit will use one IGBT, one snubber capacitor, and one gate amplifier board. The IGBT devices are cooled by forced cooling.

Voltage-source DC link circuit consists of Filter Capacitor (FC), Discharging Resistor (DSR) and DC link voltage sensor unit (DCPT). The inverter consists of IGBT 3-phase bridge unit and three Current sensors (CTU, CTV, CTW).

### INVERTER AC OUTPUT CIRCUIT

The PWM voltage output from the inverter unit is converted to a sine wave through the LC filter and supplies power to the output AC load.

The output circuit consists of the IGBT unit, filter capacitor (ACC), filter reactor (ACL) for smoother sine wave 3-phase output and AC voltage sensor (ACPT).

### LVPS DC OUTPUT CIRCUIT

The LVPS DC circuit inverts the input DC voltage into AC via the LVPS inverter. The LVPS inverter consists of The AC voltage is fed through the isolation transformer to step down the voltage and rectified into DC voltage again using Silicon Carbide (SiC) MOSFET switching devices. The LVPS DC output charges the battery and supplies the control voltage of 27.4 Vdc.

SiC MOSFET switching devices are more efficient switching devices than the IGBTs because they reduce heat loss during switching. Also, they can switch at a higher speed and thus output more power with less filtering required.

The LVPS circuit consists of IGBT unit, SiC MOSFET units, filter reactor (BCL) and filter capacitor (BCFC).

### CONTROL UNIT

WOOJIN's proposed control unit will provide the following functions:

- Inverter Control, DC/DC Converter Control, LVPS Control
- Input and output protection against abnormal operation and failure of components
- Self-diagnosis.

The majority of the control logic is controlled by the DSP (Digital Signal Processor). Figure 1 below shows the block diagram of WOOJIN's APS Controller.

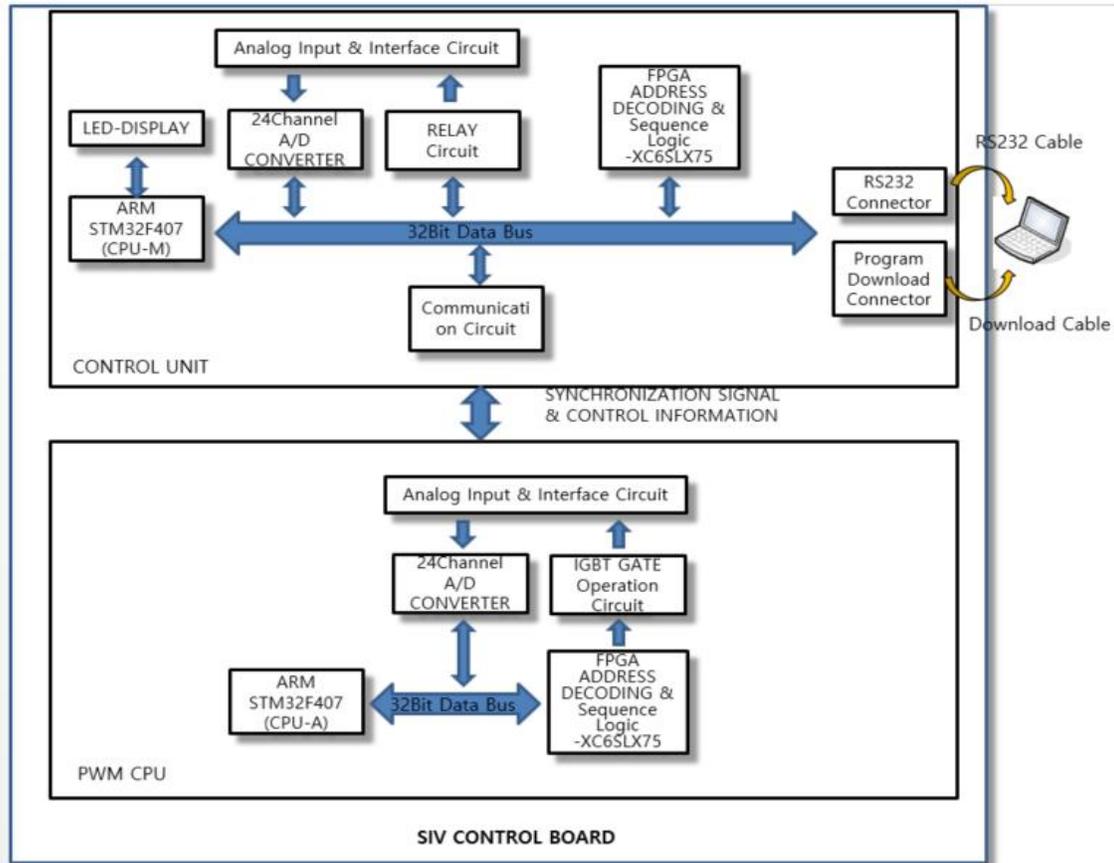
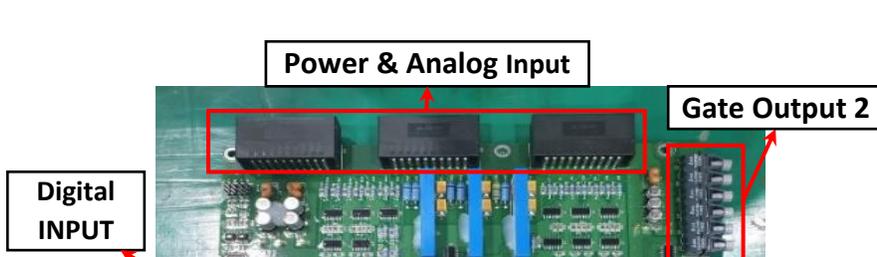


Figure 1 Block Diagram of APS Controller



1. CPU: Control & Communication

2. **Analog Input Circuit:**  
Input voltage, Output voltage, Output current, etc.
3. **Digital Input Part:**  
Digital input signal of 27.4 V
4. **Digital Output Part:**  
Digital output signal of 27.4 V
5. **RS-232 Communication Port:** Communication interface circuits
6. **Gate (PWM) Output 1&2 Ports:** Control of IGBT gate driver

**Figure 2 Controller PCB**

### **Control CPU**

Using the 32-bit DSP STM32F407IG, the control program of the APS is saved as "FROM". The saved program is executed by the CPU with the power permit and controls SIV. There are analog & digital interfaces, the various logic circuits and SRAM which records the fault data. In the logic, the sequence control is executed at FPGA by CPU program, and PWM wave is formed with the PWM width calculated from the CPU, then it drives the Inverter.

### **Monitoring CPU**

The fault data's recording and the interface with vehicle monitoring system are executed here. The RS232 connector can be used to download the fault data using WOOJIN's T-Monitor software.

## FUNCTION AND OPERATION

### MAIN FUNCTION

The main function of the APS is to convert the 750 Vdc from the OCS and convert it to lower voltages for other subsystems to use. There are total of three (3) outputs from the proposed APS, which are three-phase 208 Vac, 120 Vac, and 27.4 Vdc. The 208 Vac has a capacity of 66 kVA, 120 Vac has a capacity of 5 kVA, and 27.4 Vdc has a capacity of 15 kW. The proposed APS will also be designed to interface with the vehicle monitoring system to report its status and faults.

### OPERATION

The starting operation of the APS will be interfaced with the operation of the vehicle. The detailed starting operation will be investigated on the car and implemented on the APS Control Unit. Once the system is started by the vehicle, the APS will run through the starting sequence as shown in Figure 4.

The following provides the sequence descriptions for the starting sequence of Static Inverter.

1. CPU is reset for 3 seconds after the control power (DC 27.4V) is energized.
2. Charging contactor (CHK) closes after the CPU reset.
3. FC1 capacitor starts to charge after CHK closes.
4. IVK contactor closes 3 seconds after CHK closes when the FC capacitor charges up to 750V.
5. DC/DC unit and LVPS are turned on after IVK runs for 1 second.
6. FC2 capacitor starts to charge after DC/DC unit is on.
7. Inverter is turned on after FC2 Capacitor starts to charge.
8. When the control power is cut-off, the inverter stops.

### PROTECTIVE FUNCTIONS

There are two forms of protective measures: hardware-based protection and software-based protection. The software-based protection is used in the general circuit protection, and there is a minimum delay for the software to detect and react against faults, which can cause damage to a part of the circuit. Therefore, hardware protection is also necessary in order to prevent damages to the circuit since it can react instantaneously and much faster than the software-based protection. In example, if analog signals are out of limit, the IGBT gate signals are blocked. The contactors directly receive the IGBT gate signals and opens when the signal is cutoff. Therefore, the reaction time is contingent on the range of OP-AMP's rise time. Please refer to Figure 7 for the input, Figure 8 for the inverter output, and Figure 9 for the LVPS/Battery Charger output fault block diagrams for hardware protection.

The Control Unit controls the various protective functions for the APS components. For this purpose, the various analog data, such as input/output voltages, currents, etc., are measured by converting them into a voltage range between  $-10\text{ V}$  to  $+10\text{ V}$ . These analog signals are converted by A/D converters on the analog interface and are provided to the software processor as well.

#### Table 3 Fault List

No.	CONTENTS	FAULT CLASS	RESTART	PROTECTION
1	OUTPUT SHORT CIRCUIT	B	No	CONTACTOR OFF, GATE OFF
2	OUTPUT OVERLOAD	B	No	CONTACTOR OFF, GATE OFF
3	AC OVER VOLTAGE	A	Yes	CONTACTOR OFF, GATE OFF
5	AC UNDER VOLTAGE	A	Yes	CONTACTOR OFF, GATE OFF
6	INPUT OVER VOLTAGE	A	Yes	CONTACTOR OFF, GATE OFF
7	INPUT UNDER VOLTAGE	A	Yes	CONTACTOR OFF, GATE OFF
8	GATE DRIVER ERROR	A	Yes	CONTACTOR OFF, GATE OFF
9	FC OVER VOLTAGE	A	Yes	CONTACTOR OFF, GATE OFF
10	FC UNDER VOLTAGE	A	Yes	CONTACTOR OFF, GATE OFF

**A: Light Fault,**

**B: Heavy Fault**

### **Light Fault**

If a light fault is detected, the control unit cuts off the IGBT gate signals and opens the CHK and IVK contactors. The operation sequence chart for a light fault is shown in Figure 5 below and the sequence description is as follows.

Light Fault Sequence:

- ① The APS stops all operations and opens contactors.
- ② The APS restarts automatically and attempts to resume its normal operation.
- ③ If a light fault does not recur within 60 seconds, APS continues normal operation.
- ④ If a light fault does recur within 60 seconds, APS repeats steps 1 through 3.
- ⑤ If a light fault occurs total of three (3) times within 60 second intervals between occurrences, the fault is upgraded to a heavy fault and the APS locks out.

### **Heavy Fault**

If a heavy fault is detected, the control unit cuts off all IGBT gate signals and opens the CHK and IVK contactors. The control unit locks out and the APS does not restart automatically. To reset the lockout state and return the APS to normal operation, the control unit needs to be reset. Figure 6 below shows the sequence chart of APS operation when a heavy fault is detected.



requirements. The manual shall also include the forms required for each type of inspection or required maintenance to include tasks to be performed and required parts to be used in the inspection or task.

iv. Illustrated Parts Catalog

The Illustrated Parts Catalog shall enumerate and describe every component with its related parts for the APS, including the supplier's number and the commercial equivalents. Drawings showing subassemblies and components shall be used to permit identification of all parts down to the lowest level of component assembly which consists of a separate individually fabricated part. Commercially available items shall be identified by standard nomenclature adequate to be able to purchase these items through commercial channels, in addition to the Contractor's number.

v. Troubleshooting Guide

vi. Training Materials

### C. RFP Requirements

RFP Section No.	Requirement Description	Supplier Clause by Clause			Supplier Comments
		Comply	Not Comply	Not Applicable	
1.01	System Overview				Heading only
1.01.1	UTA has in operation 17 SD 160 Siemens light rail vehicles. Each vehicle has one APS. UTA also has 2 spare units which shall be included in this overhaul.				Information only
1.01.2	The APS units are approximately 15 years old and require a comprehensive midlife overhaul to allow them to continue in service for a minimum of 15 additional years.				Information only. Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.
1.01.3	The units are powered by the nominal 750 Vdc line voltage and operate over the input voltage range of 420 to 1000 Vdc.				Information only
1.01.4	The dc output voltage of the APS is a nominal $27.4 \pm 0.5\%$ and is adjustable from 26.8 to 27.9 Vdc. Output power of the unit is 15 kW with a maximum total output current of 450 A. Battery charging current is included in this number.				Information only
1.01.5	The ac output voltage of the APS is three phase, 208 Vac, 60 Hz. It is rated to supply 66 kVA continuously. A 120 Vac single phase output with a rating of 5 kVA is also provided.				Information only
1.02	Scope of Work				Heading only
1.02.1	The APS midlife overhaul scope of work will include the cleaning, disassembly, refurbishment, repair (as necessary) and testing of the APS unit			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.
1.02.2	All work and testing shall be conducted in accordance with IEEE 16 and/or IEC 60287-1.	X			

RFP Section No.	Requirement Description	Supplier Clause by Clause			Supplier Comments
		Comply	Not Comply	Not Applicable	
1.02.3	The overhaul procedure shall be in accordance with the OEM manufacturing/repair processes except where otherwise agreed.			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.
1.02.4	UTA personnel shall be responsible for the removal and installation of the APS units and any associated components from the vehicles.	X			
1.02.5	All mounting hardware and fasteners shall also be sourced and fitted by UTA except as otherwise specified below	X			
1.02.6	To the extent possible design improvements that have been made to the type U750DC/208AC3-28DC/P66-14/F60 APS since UTA originally purchased the SD160 fleet shall be incorporated into the overhauled units (subject to UTA approval).			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.
1.02.7	The Proposer shall provide a description of its recent design and manufacturing experience in providing overhaul services for static converters/inverters on rail transit vehicles including work currently being performed as described in Part 2.03.C.	X			
1.02.01	Receiving Inspection and Test				Heading only
1.02.01.1	On receipt, each APS shall undergo a thorough inspection and testing process to ascertain the condition of the unit prior to the commencement of any overhaul activities. APTA-RT-VIM-RP-016-03 shall be used as a guide for the receiving inspection.			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.
1.02.01.2	Prior to initiating the receiving and inspection process the exterior of the APS unit must be cleaned using vacuum cleaners, plastic brushes, and/or dry cloths			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.

RFP Section No.	Requirement Description	Supplier Clause by Clause			Supplier Comments
		Comply	Not Comply	Not Applicable	
1.02.01.3	The Contractor shall perform a functional test of the unit to confirm proper operation prior to beginning any disassembly work. It is the responsibility of the Contractor to change any defective item that is required, whether or not the part is listed in the OEM manuals.			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.
1.02.01.4	Any out of scope work identified shall be brought to the attention of UTA before any remedial work is undertaken. All additional costs of repair or replacement not included in the midlife overhaul scope must be approved by UTA in writing on a caseby-case basis			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.
1.02.02	Overhaul				Heading only
1.02.02.1	During the disassembly process all parts shall be inspected for cracks, breaks and any obvious physical damage.			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.
1.02.02.01.1	Inspect all wires and terminals for any obvious physical damage. If found, replace defective wire or terminals			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.
1.02.02.01.2	Inspect hinges and latches for bends or wear. If found, replace defective hinge or latch.			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.
1.02.02.01.3	Inspect for missing or damaged decals and replace as required			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.
1.02.02.01.4	Report any other damage to UTA for disposition			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.

RFP Section No.	Requirement Description	Supplier Clause by Clause			Supplier Comments
		Comply	Not Comply	Not Applicable	
1.02.02.02	The Contractor shall clean every component using a vacuum and/or approved cleaner agent and lint-free rags. Compressed air shall not be used in cleaning unless specifically approved by UTA			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.
1.02.02.03	All gaskets, sealing compounds, o-rings, and other elastomeric components shall be replaced.			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.
1.02.02.04	All high voltage and liquid filled electrolytic capacitors, including those mounted on printed circuit cards, shall be replaced. Reforming the capacitors is not acceptable.			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.
1.02.02.05	All printed circuit board mounted relays shall be replaced			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.
1.02.02.06	All IGBT modules shall be disassembled and cleaned. All IGBTs, driver boards, load rejection boards, bus bars, and gate wires shall be replaced			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.
1.02.02.07	The board mounted (A09) lithium battery shall be replaced.			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.
1.02.02.08	Each overhauled APS unit must bear a stamp or tag identifying the overhaul date. Whenever it is possible, the overhaul date must be painted on the unit, otherwise an identifying tag can be used.			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.
1.02.03	Modifications and Upgrades				Heading only
1.02.03.1	The Contractor may elect to replace any or all components or printed circuit boards with equivalent components or printed circuit boards after review and approval by UTA.	X			
1.02.04	Testing and Final Inspection				Heading only

RFP Section No.	Requirement Description	Supplier Clause by Clause			Supplier Comments
		Comply	Not Comply	Not Applicable	
1.02.04.1	The Contractor shall reassemble the APS assembly in accordance with the OEM procedures			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.
1.02.04.2	All IGBT modules shall be tested on a high voltage curve tracer and the turn off time curve for each included in the test documentation	X			
1.02.04.3	The Contractor shall submit a test set-up for the APS unit showing all input and output power connections and all input and output connections of the control, monitoring and diagnostic signals to the satisfaction of UTA so that the APS unit shall perform its rated functions without any defect once it is plugged-in in a good operating vehicle. In other words, the testing facility shall simulate that the APS shall operate as if it connected to an actual vehicle.	X			
1.02.04.4	Each overhauled unit shall be operated at full load for one hour as a burn-in test prior to shipment.	X			
1.03	Quantity				Heading only
1.03.1	Using the enclosed price form, the Contractor shall provide a firm fixed price for 19 APS units	X			
1.04	Float Pool				Heading only
1.04.1	The Contractor will be provided with a maximum of 2 APS units at any one time			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit so no float is needed.
1.04.2	To the extent possible, shipments to and from UTA will be in sets of 2 APS units			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit so a round robin approach will not be required.
1.05	Materials and Workmanship				Heading only

RFP Section No.	Requirement Description	Supplier Clause by Clause			Supplier Comments
		Comply	Not Comply	Not Applicable	
1.05.1	The Contractor shall perform all work at their facilities in accordance with all Federal, State and Local regulatory requirements.	X			
1.05.2	The Contractor shall ensure that the refurbished APS unit is functioning and operating properly, was inspected, measured, repaired, and painted according to the procedures mutually agreed upon with UTA.			X	Woojin will ensure that the new APS unit is functioning and operating properly, was inspected, measured, and painted according to the procedures mutually agreed upon with UTA.
1.05.3	The Contractor shall submit tool calibration certificates	X			
1.05.4	The Contractor will be expected to address other issues that are discovered by UTA personnel during delivery or installation that weren't discovered during the initial inspection, evaluation, and repair of the APS unit.			X	
1.06	Shipment				Heading only
1.06.1	The Contractor shall deliver repaired unit assembly to UTA's warehouse at 2264 South 900 West, Salt Lake City, 84119, unless otherwise advised by UTA.	X			Woojin will deliver new units to UTA rather than repaired units.
1.06.2	Any damage incurred in shipping the repaired assembly to UTA is the sole responsibility of the Contractor.	X			
1.06.3	Shipping costs to and from UTA's facility shall be the responsibility of the Contractor	X			
1.07	Documentation				Heading only
1.07.1	Prior to the commencement of work the Contractor shall submit the following documentation in a UTA approved format:	X			
1.07.1.1	Project Schedule – NTP + 30 days	X			
1.07.1.2	Quality Assurance Plan – NTP + 30 days	X			

RFP Section No.	Requirement Description	Supplier Clause by Clause			Supplier Comments
		Comply	Not Comply	Not Applicable	
1.07.1.3	Receiving Inspection and Test Procedures – NTP + 30 days	X			Woojin will submit the receiving inspection and test procedures for inspecting and testing materials that we receive.
1.07.1.4	First Article Inspection Plan – NTP + 30 days	X			
1.07.1.5	Pre-shipment Inspection and Test Procedures – NTP + 30 days	X			
1.07.1.6	Shipping preparation and securement procedures – NTP + 30 days	X			
1.07.1.7	Detailed work procedures – NTP + 30 days	X			
1.07.1.8	Inspection and Test Reports – 5 days prior to Shipment to UTA	X			
1.07.1.9	Repair procedures – as required.			X	Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit.
1.07.2	A Quality Control Log Sheet for each APS unit overhauled. The sheets must be used to record all inspection and test data and must accompany the APS unit from receipt through return to UTA	X			Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit. Woojin will keep a Quality Control Log Sheet for each new APS.
1.07.3	At a minimum, the log sheet must include the serial number of the APS unit, test and inspection procedures and results, dates on which the inspection or test was conducted, and identification of the individual responsible for the work. The sheet must reserve space for the inspector/tester to enter comments for clarification or unusual conditions.	X			Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit. Woojin will include the serial number of the APS unit, test and inspection procedures and results, dates on which inspection or test was conducted, and identification of individual responsible for the work. The sheet will also reserve space for the inspector/tester to enter comments for clarification or unusual conditions.
1.08	Quality Requirements				Heading only

RFP Section No.	Requirement Description	Supplier Clause by Clause			Supplier Comments
		Comply	Not Comply	Not Applicable	
1.08.1	UTA shall have the right to inspect the Contractor's repair shop and any repaired APS before it is returned to UTA. UTA shall also have the right to witness any repairs performed on the unit assembly	X			Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit. UTA shall have the right to inspect the Contractor's facilities. UTA shall also have the right to conduct assessments of the Contractor's quality assurance programs and monitor work in progress.
1.08.2	The Contractor shall prepare and submit a Quality Assurance plan for UTA review and approval.	X			
1.08.3	The Contractor shall notify UTA when repair work will be performed, and when the first unit assembly is ready and available for First Article of Inspection. Sufficient notice shall be provided to allow UTA to be present for the inspections.	X			Woojin is providing a new unit and not completing a mid-life overhaul of the existing unit. The Contractor shall notify UTA when work will be performed, and when the first unit assembly is ready and available for First Article of Inspection and qualification test. Sufficient notice shall be provided to allow UTA to be present for the inspections and tests.
1.08.4	The Contractor shall successfully complete a quality inspection and functional test each unit before the unit is returned to UTA.	X			
1.09	Warranty				Heading only

RFP Section No.	Requirement Description	Supplier Clause by Clause			Supplier Comments
		Comply	Not Comply	Not Applicable	
1.09.1	The contractor shall provide a warranty to repair or replace defective APS units for a period of 2 years from date of acceptance by UTA. The warranty shall be tracked by serial number on a per unit basis. For the defects identified during warranty period, the contractor shall submit the scope of corrective work to UTA for review and approval. The maximum time allowed to carry out such work shall not exceed 10 working days after the Contractor receives the failed unit(s). Hardware repair procedures, and time lines, shall be approved by UTA.	X			Woojin has offered 5 years of warranty rather than 2 years.
1.09.2	When an identical failure of a particular component or, subsystem, product, part, apparatus, article, or other Material occurs within the applicable warranty period on 10% or more of the APS units furnished by the Contractor, then 100% of such item, including those with expired warranty, will be deemed to require an approved redesign, replacement, or adjustment under this warranty.	X			

RFP Section No.	Requirement Description	Supplier Clause by Clause			Supplier Comments
		Comply	Not Comply	Not Applicable	
1.09.3	Such warranty actions will be termed a "fleet defect" and will be cured only by a field modification instruction (FMI) approved by UTA. The FMI must be organized to maximize configuration control, quality, safety, and speed of completion. The FMI program must also ensure that sufficient industrial engineering and Materials planning RFP 19-03157 – 1 – SD160 Auxiliary Power Supply (APS) Overhaul Part 1 - Page 5 of 5 is available for each and every FMI to minimize downtime of the vehicles. The component or, subsystem, product, part, apparatus, article, or other Material affected by the FMI must have their warranty extended by one year from the date of completion of the FMI Work, or until the expiration of the previously effective warranty period, whichever is longer.	X			
1.09.4	UTA will remove defective APS units from the vehicle. If the APS unit requires shipment back to the Contractor, then this shall be at the Contractor's cost.	X			
1.09.5	The Contractor shall provide a Return Authorization for any APS unit sent for repair	X			

Exhibit B

Price

Description	Quantity	Price	Total
SD160 APS Replacement	19	\$66,470.00	\$1,262,930.00

**All shipping costs included in the price above.**





## MEMORANDUM TO THE BOARD

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

**BOARD MEETING DATE:** June 24, 2020

<b>SUBJECT:</b>	<b>Construction Management Fees 2020 – On-Call Maintenance Contract, Task Order #110 (Stacy and Witbeck Inc.)</b>
<b>AGENDA ITEM TYPE:</b>	<b>Change Order</b>
<b>RECOMMENDATION:</b>	Approve task order to on-call maintenance contract and authorize Executive Director to execute the contract and associated disbursements with Stacy and Witbeck Inc. in the amount of \$374,884.
<b>BACKGROUND:</b>	<p>Negotiated rates for Project and Construction Manager fees have been a part of the On-Call Maintenance Contract framework. The purpose of this amendment is to update the approved budget for the Project and Construction Managers in advance of the major construction season.</p> <p>Stacy and Witbeck Inc. currently performs several projects and services for UTA relating to both Rail and Bus modes. Projects typically relate to rail projects and bus stop improvements.</p>
<b>DISCUSSION:</b>	<p>UTA staff is requesting approval of task order #110 with Stacy and Witbeck Inc. in the amount of \$374,884 for project and construction management fees. In accordance with the contract, payment will be made based on actual hours expended (not to exceed 8 hours per day or 40 hours per week regardless of the number of hours worked).</p> <p>By securing these rates for key managers, UTA can better price the work for upcoming task orders with a higher degree of accuracy and consistency. The rates being proposed are consistent with the rates already agreed to in the existing On-Call Maintenance Contract.</p> <p>In addition, other considerations include:</p> <ul style="list-style-type: none"><li>As part of the On-Call contract, the costs associated with the contractor’s management team (Project Manager/Construction Manager) are not included in the task orders.</li></ul>

	<ul style="list-style-type: none"> <li>• The project manager cost is billed monthly for actual hours worked, not to exceed 40 hours per week.</li> <li>• The \$374,884 for this amendment covers the twelve months of 2020.</li> <li>• This enables UTA to cap management costs on task orders and provides full time access to the contractor’s management team.</li> <li>• As part of this contract, the contractor’s management team is also available for emergency response and helping with construction reviews for future task orders.</li> </ul>										
<b>CONTRACT SUMMARY:</b>	<table border="1"> <tr> <td colspan="2" data-bbox="402 548 1563 625">Contractor Name: Stacy and Witbeck Inc.</td> </tr> <tr> <td data-bbox="402 625 1000 703">Contract Number: 16-1846TP</td> <td data-bbox="1000 625 1563 703">Existing Contract Value: \$36,575,956</td> </tr> <tr> <td data-bbox="402 703 1000 825">Base Contract Effective Dates: January 1, 2017 through December 31, 2019</td> <td data-bbox="1000 703 1563 825">Extended Contract Dates: January 1, 2020 through December 31, 2020</td> </tr> <tr> <td data-bbox="402 825 1000 903">Amendment Amount: \$374,884</td> <td data-bbox="1000 825 1563 903">New/Total Amount Contract Value: \$36,950,840</td> </tr> <tr> <td data-bbox="402 903 1000 1020">Procurement Method: RFP best value modification</td> <td data-bbox="1000 903 1563 1020">Funding Sources: SGR and Capital Projects 2020 Budget</td> </tr> </table>	Contractor Name: Stacy and Witbeck Inc.		Contract Number: 16-1846TP	Existing Contract Value: \$36,575,956	Base Contract Effective Dates: January 1, 2017 through December 31, 2019	Extended Contract Dates: January 1, 2020 through December 31, 2020	Amendment Amount: \$374,884	New/Total Amount Contract Value: \$36,950,840	Procurement Method: RFP best value modification	Funding Sources: SGR and Capital Projects 2020 Budget
Contractor Name: Stacy and Witbeck Inc.											
Contract Number: 16-1846TP	Existing Contract Value: \$36,575,956										
Base Contract Effective Dates: January 1, 2017 through December 31, 2019	Extended Contract Dates: January 1, 2020 through December 31, 2020										
Amendment Amount: \$374,884	New/Total Amount Contract Value: \$36,950,840										
Procurement Method: RFP best value modification	Funding Sources: SGR and Capital Projects 2020 Budget										
<b>ALTERNATIVES:</b>	These rates have been agreed to in the existing 2020 contract.										
<b>FISCAL IMPACT:</b>	This budget is included in the 2020 Capital Program.										
<b>ATTACHMENTS:</b>	<ol style="list-style-type: none"> <li>1) Task Order #110</li> <li>2) Original On-Call Maintenance Contract can be referenced in May 1, 2019 Board meeting packet, agenda item 9.b. - <a href="#">linked here</a></li> </ol>										



March 30, 2020

Mr. Dave Hancock  
Project Manager  
Utah Transit Authority  
669 West 200 South  
Salt Lake City, UT 84101

Reference: Contract No.: On Call Maintenance 16-1846TP

Subject: Amendment Number One, Section 2.A. Pre-construction and Construction Management Fees:

In accordance with Amendment Number One, 2.A. Pre-Construction and Construction Management Fees, Exhibit C of the Contract, and coupled with section 10 Key Personnel, SWI is pleased to provide an anticipated budget for construction management fees for 2020. Per Amendment Number One 2.A., and Exhibit C - Contractors Pricing Sheet, the 2020 rates are as follows:

Project Manager – Collin Christensen \$116/Hr.  
Construction Manager – Courtney Beesley \$131/Hr.

Budgeting for 40 hours a week for a complete year (52 weeks) total fee would be:

Project Manager – Collin Christensen	\$241,280
Construction Manager – Courtney Beesley	\$272,480
2020 Combined Budget Total	\$513,760
2020 amount billed to previous TO's	\$138,876
<b>2020 Revised Budget Total</b>	<b>\$374,884</b>

As of Dec. 31, 2019, there was a combined total of \$138,876.00 remaining from Task Orders #1, #38, and #76. SWI will request payment from those task orders for January 2020, February 2020, March 2020, and a partial amount for April 2020, using the 2020 rates. Following the exhaustion of those task orders, the remaining necessary budget for 2020 Construction Management Fees is \$374,884.00.

We appreciate the considerations provided for management compensation and look forward to continuing to deliver a high level of service to UTA this coming year and in future years.

If you have any questions, please contact me.

Sincerely,  
Stacy and Witbeck, Inc.



Collin Christensen  
Project Manager



## MEMORANDUM TO THE BOARD

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

**BOARD MEETING DATE:** June 24, 2020

<b>SUBJECT:</b>	<b>State of Good Repair –Mid Jordan Grade Crossing Replacement – On-Call Maintenance Contract, Task Order # 111 (Stacy and Witbeck, Inc.)</b>	
<b>AGENDA ITEM TYPE:</b>	Change Order	
<b>RECOMMENDATION:</b>	Approve task order to on-call maintenance contract and authorize Executive Director to execute contract and associated disbursements with Stacy and Witbeck, Inc. to conduct two grade crossing replacements on the Mid Jordan line in the amount of \$919,100.	
<b>BACKGROUND:</b>	<p>UTA’s rail infrastructure is at an age where annual replacement and rehabilitation of grade crossings need to occur to maintain a state of good repair. These projects typically address three concerns:</p> <ol style="list-style-type: none"> <li>1) Passenger ride quality</li> <li>2) Automobile cross-traffic ride quality</li> <li>3) Potential stray current issues</li> </ol> <p>To maintain UTA’s rail lines, the agency needs to replace or rehabilitate approximately 5-7 crossings per year. In 2020, UTA has already replaced two crossings and has two scheduled for the end of June. This task order is for the next two crossing projects.</p>	
<b>DISCUSSION:</b>	<p>UTA Staff is requesting approval of the on-call maintenance contract task order #111 with Stacy and Witbeck, Inc. to complete two grade crossing replacement projects in the amount of \$919,100. The scope of this request includes replacement of the 9000 South and 4000 West crossings on the Mid-Jordan Line. These projects typically involve removal and replacement or rehabilitation of the rail, crossing panels, and tubs, as well as earth stabilization efforts. The useful life of these grade crossings are approximately 10 years.</p>	
<b>CONTRACT SUMMARY:</b>	Contractor Name: Stacy and Witbeck Inc.	
	Contract Number: 16-1846TP	Existing Contract Value: \$36,950,840

	Base Contract Effective Dates: January 1, 2017 through December 31, 2019	Extended Contract Dates: January 1, 2020 through December 31, 2020
	Amendment Amount: \$919,100.00	New/Total Amount Contract Value: \$37,869,940
	Procurement Method: RFP best value modification	Funding Sources: SGR and Capital Projects 2020 Budget
<b>ALTERNATIVES:</b>	The project could not proceed but based on the useful life of the grade crossings, the likelihood of failure would be greater and hurt reliability of the rail system.	
<b>FISCAL IMPACT:</b>	This budget is included in the 2020 Capital Program.	
<b>ATTACHMENTS:</b>	<ol style="list-style-type: none"> <li>1) Task Order #111</li> <li>2) Original On-Call Maintenance Contract can be referenced in May 1, 2019 Board meeting packet, agenda item 9.b. - <a href="#">linked here</a></li> </ol>	



# Stacy and Witbeck

May 28, 2020

On Call Services

Mr. Dave Hancock  
Director of asset Management  
Utah Transit Authority  
669 West 200 South  
Salt Lake City, UT 84101

Reference: 9000 South Grade Crossing Replacement  
Contract No: 16-1846TP

Subject: 20-613-R1 – 9000 South Grade Crossing Reconstruction

Dear Dave:

We are pleased to provide the attached cost estimate to remove and replace the at-grade crossing at 9000 South and 4200 West with 473 TF of embedded track crossing. The existing 133# rail will be replaced with 115# rail due to the unavailability of Rail Boot for 133# rail. Stacy and Witbeck has assumed the replacement will take place during one continuous shutdown, with a bus bridge in affect and no trains running through the intersection. We look forward to constructing this project for UTA this year at a mutually agreed upon schedule.

Exclusions:

- Railroad Protective Insurance
- Quality Control Testing and Supervision
- Railroad Flagging
- Track to Earth Testing
- Sales Tax on Permanent Materials

Clarifications:

- Please see detailed list of each bid item below.
- 115# rail and concrete ties to be provided by UTA.
- SWI has assumed the replacement will take place during one continuous shutdown, with a bus bridge in affect and no trains running through the intersection.
- The unit costs for each bid item includes the costs of insurance, bond, and risk at the agreed upon rates.
- We are excluding all utility relocations and conflicts from our pricing. Any conflicts or relocations will need to be addressed as a change of condition.
- The scope of work is inclusive of only the items and scope that are listed below. Any other items of work or changes to the below scope will need to be repriced.

**Bid Item 1000 – Field Engineering and Project Controls – 1 LS – Total of \$54,018.00** – This bid item includes Stacy and Witbeck field support from field engineer to manage construction. The field engineer will also perform pre-task planning and coordination with UTA. This item also includes office manager time for payroll and accounts payable.

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1958 West North Temple  
Salt Lake City, UT 84116  
801.666.7840 (office) 801.432.7849 (fax)

# Stacy and Witbeck

**Bid Item 1100 – Permits and Regulatory Approvals – 1 LS – Total \$2,166.00** – This bid item includes the cost to obtain all necessary permits from West Jordan City to perform the work.

**Bid Item 2000 – Safety Program and Administration – 1 LS – Total of \$5,424.00** – Cost of Safety Supplies, safety personnel to visit the site, and incidental drug testing.

**Bid Item 3000 – Key Personnel Travel & Subsistence – 1 LS – Total \$15,607** – This bid item includes cost to provide travel arrangements and subsistence for 6 key track personnel for the duration of the work.

**Bid Item 5000 – Traffic and Pedestrian Control – 1 LS – Total of \$1,131.00** – This bid item includes the cost to provide UDOT traffic Control drawings for the closure and detours on 9000 South.

**Bid Item 6000 – Construction Survey and Layout – 1 LS – Total \$4,524.00** – This bid item includes the cost for construction layout survey.

**Bid Item 7000 – 9000 S Grade Crossing Replacement – 473 TF - \$970.00 Per TF – Total \$458,810.00** – This bid item includes the following items.

- Item 7010 – Traffic and Pedestrian Control - \$6,219.00 – Includes full closure and detour of 9000 South for the duration of the work.
- Item 7020 – Demo Existing Crossing - \$110,039.00 – Includes saw cutting, removal, haul off and dump fees for roadway, crossing, curb and excavation.
- Item 7030 – Aggregate Base with Fabric - \$43,330.00 – Includes geo-grid fabric and aggregate base course under the embedded track, AC pavement, and curb.
- Item 7050 – Asphalt Cement Roadway Paving - \$51,244.00 – Includes 610 SY of AC paving between the tracks and to tie into the existing roadway on the east and west sides of the tracks.
- Item 7060 – Concrete Sidewalk and Curb - \$14,980.00 – Includes subgrade prep for 360 SF of sidewalk and 118 LF of curb on both sides of the street as required to complete the work. Includes replacement of median curb between tracks.
- Item 7070 – Procure and Handle Track Materials - \$39,147.00 – Includes railboot and steel ties for the embedded track. Includes loading and hauling of UTA provided rail and ties.
- Item 7080 – Thermite Welding - \$34,824.00 – Includes 12 regular welds and 8 comp welds from 133# to 115# rail. Excludes weld testing.
- Item 7090 – Embedded Track Construction - \$129,872.00 – Includes construction of 473 TF of embedded rail per the Sugar House Streetcar details. The dimensions of the track slab will vary from the Sugar House detail by using a 96" x 15" track slab, rather than an 84" x 15" track slab.
- Item 7100 – Ballasted Track Construction - \$8,343.00 – Includes 15 TF (60 TF total) of construction and hand dressing of ballasted track on each end of the embedded track.

**Bid Item 8000 – Stabilization Rock/Fabric – 210 CY - \$232 Per CY – Total \$48,720.00** – Includes 210 CY of stabilization rock and geo-grid fabric to stabilize grade beneath tracks. This also includes the removal and disposal of stabilization excavation.

# Stacy and Witbeck

**Bid Item 10000 – Mobilization – 1 LS – Total \$10,620.00** – This bid item includes the cost for mobilizing heavy equipment to and from the project site prior to each shutdown, and final project cleanup. includes street sweeping, field sanitary expenses, temporary site lighting, field office supplies, and jobsite dumpster.

**Bid Item 100000 – Fee (5.25%) – 1 LS – Total of \$31,553.00** – This is the 5.25% GMGC fee.

The total price for this scope of work is **\$632,573.00**

If you have any questions, please contact me.

Sincerely,  
Stacy and Witbeck, Inc.



Collin Christensen  
Project Manager

05/27/2020 18:13  
 20-613-R1 9000 South Embedded Grade Xing  
 \*\*\* Collin Christensen, CC

**BID TOTALS**

<u>Biditem</u>	<u>Description</u>	<u>Quantity</u>	<u>Units</u>	<u>Unit Price</u>	<u>Bid Total</u>
1000	Field Engineering & Project Controls	1.000	LS	54,018.00	54,018.00
1100	Permits & Regulatory Approvals	1.000	LS	2,166.00	2,166.00
2000	Safety Program & Administration	1.000	LS	5,424.00	5,424.00
3000	Key Personnel Travel & Subsistence	1.000	LS	15,607.00	15,607.00
5000	Traffic & Pedestrian Control	1.000	LS	1,131.00	1,131.00
6000	Construction Survey/Layout	1.000	LS	4,524.00	4,524.00
7000	9000 S Grade Crossing	473.000	TF	970.00	458,810.00
8000	Stabilization Rock/Fabric - 18 inch depth	210.000	CY	232.00	48,720.00
10000	Mobilization	1.000	LS	10,620.00	10,620.00
Subtotal					\$601,020.00
100000	Fee (5.25%)	1.000	LS	31,553.00	31,553.00
Bid Total =====>					\$632,573.00

# Stacy and Witbeck

May 28, 2020

On Call Services

Mr. Dave Hancock  
Director of asset Management  
Utah Transit Authority  
669 West 200 South  
Salt Lake City, UT 84101

Reference: 4000 West Grade Crossing Reconstruction  
Contract No: 16-1846TP

Subject: 20-614-R1– 4000 West Grade Crossing Reconstruction

Dear Dave:

We are pleased to provide the attached cost estimate to remove and replace the at-grade crossing at 4000 West and Old Bingham Hwy with 186 TF of embedded track crossing. The existing 133# rail will be replaced with 115# rail due to the unavailability of Rail Boot for 133# rail. Stacy and Witbeck has assumed the replacement will take place during one continuous shutdown, with a bus bridge in affect and no trains running through the intersection. We look forward to constructing this project for UTA this year at a mutually agreed upon schedule.

Exclusions:

- Railroad Protective Insurance
- Quality Control Testing and Supervision
- Railroad Flagging
- Track to Earth Testing
- Sales Tax on Permanent Materials

Clarifications:

- Please see detailed list of each bid item below.
- 115# rail and concrete ties to be provided by UTA.
- SWI has assumed the replacement will take place during one continuous shutdown, with a bus bridge in affect and no trains running through the intersection.
- The unit costs for each bid item includes the costs of insurance, bond, and risk at the agreed upon rates.
- We are excluding all utility relocations and conflicts from our pricing. Any conflicts or relocations will need to be addressed as a change of condition.
- The scope of work is inclusive of only the items and scope that are listed below. Any other items of work or changes to the below scope will need to be repriced.

**Bid Item 1000 – Field Engineering and Project Controls – 1 LS – Total of \$20,185.00** – This bid item includes Stacy and Witbeck field support from field engineer to manage construction. The field engineer will also perform pre-task planning and coordination with UTA. This item also includes office manager time for payroll and accounts payable.

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1958 West North Temple  
Salt Lake City, UT 84116  
801.666.7840 (office) 801.432.7849 (fax)

# Stacy and Witbeck

**Bid Item 1100 – Permits and Regulatory Approvals – 1 LS – Total \$2,181.00** – This bid item includes the cost to obtain all necessary permits from West Jordan City to perform the work.

**Bid Item 2000 – Safety Program and Administration – 1 LS – Total of \$3,966.00** – Cost of Safety Supplies, safety personnel to visit the site, and incidental drug testing.

**Bid Item 3000 – Key Personnel Travel & Subsistence – 1 LS – Total \$12,414.00** – This bid item includes cost to provide travel arrangements and subsistence for 6 key track personnel for the duration of the work.

**Bid Item 5000 – Traffic and Pedestrian Control – 1 LS – Total of \$1,139.00** – This bid item includes the cost to provide traffic Control drawings for the closure and detours on 4000 West.

**Bid Item 6000 – Construction Survey and Layout – 1 LS – Total \$4,556.00** – This bid item includes the cost for construction layout survey.

**Bid Item 7000 – 9000 S Grade Crossing Replacement – 186 TF - \$1,052.00 Per TF – Total \$195,672.00** – This bid item includes the following items.

- Item 7010 – Traffic and Pedestrian Control - \$5,486.00 – Includes full closure and detour of 4000 west and necessary detours.
- Item 7020 – Demo Existing Crossing - \$36,085.00 – Includes saw cutting, removal, haul off and dump fees for roadway, crossing, curb and excavation.
- Item 7030 – Aggregate Base with Fabric - \$21,578.00 – Includes geo-grid fabric and aggregate base course under the embedded track, AC pavement, and curb.
- Item 7050 – Asphalt Cement Roadway Paving - \$26,982.00 – Includes 301 SY of AC paving between the tracks and to tie into the existing roadway on the north and south sides of the tracks.
- Item 7060 – Concrete Sidewalk and Curb - \$7,714.00 – Includes subgrade prep for 198 SF of sidewalk and 40 LF of curb on both sides of the street as required to complete the work.
- Item 7070 – Procure and Handle Track Materials - \$19,712.00 – Includes railboot and steel ties for the embedded track. Includes loading and hauling of UTA provided rail and ties.
- Item 7080 – Thermite Welding - \$12,000.00 – Includes 8 regular welds and 8 comp welds from 133# to 115# rail. Excludes weld testing.
- Item 7090 – Embedded Track Construction - \$48,278.00 – Includes construction of 186 TF of embedded rail per the Sugar House Streetcar details. The dimensions of the track slab will vary from the Sugar House detail by using a 96" x 15" track slab, rather than an 84" x 15" track slab.
- Item 7100 – Ballasted Track Construction - \$8,351.00 – Includes 15 TF (60 TF total) of construction and hand dressing of ballasted track on each end of the embedded track.

**Bid Item 8000 – Stabilization Rock/Fabric – 83 CY - \$268.00 Per CY – Total \$22,244.00** – Includes 83 CY of stabilization rock and geo-grid fabric to stabilize grade beneath tracks. This also includes the removal and disposal of stabilization excavation.

# Stacy and Witbeck

**Bid Item 10000 – Mobilization – 1 LS – Total \$9,878.00** – This bid item includes the cost for mobilizing heavy equipment to and from the project site prior to each shutdown, and final project cleanup. includes street sweeping, field sanitary expenses, temporary site lighting, field office supplies, and jobsite dumpster.

**Bid Item 100000 – Fee (5.25%) – 1 LS – Total of \$14,292.00** – This is the 5.25% GMGC fee.

The total price for this scope of work is **\$286,527.00**

If you have any questions, please contact me.

Sincerely,  
Stacy and Witbeck, Inc.



Collin Christensen  
Project Manager

05/27/2020 19:22  
 20-614-R1 4000 West Embedded Grade Xing  
 \*\*\* Collin Christensen, CC

**BID TOTALS**

<u>Biditem</u>	<u>Description</u>	<u>Quantity</u>	<u>Units</u>	<u>Unit Price</u>	<u>Bid Total</u>
1000	Field Engineering & Project Controls	1.000	LS	20,185.00	20,185.00
1100	Permits & Regulatory Approvals	1.000	LS	2,181.00	2,181.00
2000	Safety Program & Administration	1.000	LS	3,966.00	3,966.00
3000	Key Personnel Travel & Subsistence	1.000	LS	12,414.00	12,414.00
5000	Traffic & Pedestrian Control	1.000	LS	1,139.00	1,139.00
6000	Construction Survey/Layout	1.000	LS	4,556.00	4,556.00
7000	4000 W Grade Crossing	186.000	TF	1,052.00	195,672.00
8000	Stabilization Rock/Fabric - 18 inch depth	83.000	CY	268.00	22,244.00
10000	Mobilization	1.000	LS	9,878.00	9,878.00
Subtotal					\$272,235.00
100000	Fee (5.25%)	1.000	LS	14,292.00	14,292.00
Bid Total =====>					\$286,527.00

"General Decision Number: UT20200008 02/21/2020

Superseded General Decision Number: UT20190008

State: Utah

Construction Type: Heavy

County: Salt Lake County in Utah.

Including Water and Sewer line and Natural Gas Pipeline Construction

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/03/2020
1	01/31/2020
2	02/21/2020

ELEC0057-002 03/01/2019

	Rates	Fringes
LINE CONSTRUCTION		
Lineman.....	\$ 48.09	15.80

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ENGI0003-005 07/01/2013

	Rates	Fringes
OPERATOR: Power Equipment		
(1)Mechanic-Excluding Natural Gas Pipeline Construction.....	\$ 27.55	15.65
(2A)Blade/Grader.....	\$ 25.89	15.65
(3) Backhoe/Excavator, Front End Loader(Over 5 cu.yds.).....	\$ 25.37	15.65
(4) Asphalt Paver,		

Bulldozer, Front End Loader(2 to 5 cu. yds.), Grade Setter, Oil Distributor, Scraper.....	\$ 24.37	15.65
(5) Asphalt Roller, Bobcat/Skid loader, Front End Loader(Under 2 cu. yds.), Oiler.....	\$ 23.37	15.65
(6) Screed.....	\$ 22.41	15.65
(7) Roller(Dirt and Grade Compaction).....	\$ 21.50	15.65

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ENGI0003-056 07/01/2013

Natural Gas Pipeline Construction Only

	Rates	Fringes
OPERATOR: Power Equipment Backhoe/Excavator/Trackhoe, Blade/Grader, Boom, Bulldozer, Mechanic.....	\$ 35.68	17.57
Oiler.....	\$ 22.03	11.88

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\* IRON0027-001 07/01/2019

	Rates	Fringes
IRONWORKER.....	\$ 28.68	22.60

-----  
LAB00295-006 07/01/2014

Natural Gas Pipeline Construction Only

	Rates	Fringes
LABORER Common or General, Pipelayer.....	\$ 20.59	8.65
Pot Tender and Sand blaster.	\$ 20.85	8.65

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LAB00295-015 07/01/2014

	Rates	Fringes
LABORER (1)Flagger.....	\$ 20.59	8.65
(3)Mason Tender (Cement/Concrete), Hand Held Saw, Jackhammer, Power Saw.....	\$ 20.85	8.65
(5)Hand Held Drill.....	\$ 21.65	8.65

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LAB00295-038 07/01/2014

Excluding Natural Gas Pipeline & Water/Sewer Line Construction

	Rates	Fringes
LABORER (1)Common or General)....	\$ 20.59	8.65

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TEAM0222-001 07/01/2018

NATURAL GAS PIPELINE CONSTRUCTION ONLY

Rates Fringes

TRUCK DRIVER

Group 1:		
Articulated End Dump, Low Boy, Rollagon or Similar type Equipment, Truck Mechanic.....	\$ 36.88	12.12
Group 2:		
A-Frame, Challenger(For transportation purposes), Forklift, Fuel Truck, Gin Pole, Rubber-Tired Tractor, Tandem Float (4 & 5 Axle), Track Truck/All-Track Dumper Equipment, Vacuum Truck, Winch Truck.....	\$ 36.30	12.12
Group 3:		
Ambulance , Bus, Dump Truck (2 and 3 axle), Flatbed Truck (2 and 3 axle), Grease Truck, Hot Pass Truck (3 axle), Jeep, Pick-up, Single Axle Float (3 axle), Skid Truck (2 and 3 axle), Station Wagon, Stringer Bead & Hot Pass (2 axle), Swamp Buggy/ Marsh Buggy, or similar type equipment, Team Driver, Water Truck (2 and 3 axle).	\$ 35.95	12.12

Premium Pay:

Add \$2.25 to the above Rate for the following classifications

- Group 1: Low Boy and Truck Mechanic
- Group 2: Stringer Truck

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SUUT2008-039 08/19/2008

	Rates	Fringes
CARPENTER, Includes Form Work....	\$ 14.63	0.97
CEMENT MASON/CONCRETE FINISHER...	\$ 17.06	3.16
ELECTRICIAN.....	\$ 23.74	7.64
LABORER: Landscape.....	\$ 7.25	0.00
LABORER: Pipelayer (Excluding Natural Gas Pipeline Construction).....	\$ 14.00	0.00
OPERATOR: Crane.....	\$ 28.97	9.40
OPERATOR: Trackhoe (Excluding Natural Gas Pipeline and Water/Sewer Line Construction).....	\$ 19.98	0.00

TRUCK DRIVER (Excluding Natural Gas Pipeline Construction).....	\$ 14.44	3.99
WATER & SEWER LINES:		
Laborer, Common or General.....	\$ 12.81	0.00
WATER & SEWER LINES:		
Operator - Backhoe/Trackhoe.....	\$ 16.50	0.00

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the

most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.)

and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

# 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 24, 2020

<b>SUBJECT:</b>	<b>Supplement No. 3 to TIGER Stakeholder Agreement for Salt Lake City Folsom Trail TIGER Project (Salt Lake City Corporation)</b>
<b>AGENDA ITEM TYPE:</b>	<b>Revenue Contract</b>
<b>RECOMMENDATION:</b>	Approve agreement and authorize the Executive Director to execute Supplement No. 3 to the existing Salt Lake City Corporation TIGER Stakeholder Agreement. Supplement No. 3 provides additional funds for the Folsom Trail Project as part of the TIGER First/Last Mile Program.
<b>BACKGROUND:</b>	UTA executed TIGER Stakeholder Agreement 18-02298BM on February 19, 2019 for the following Salt Lake City Projects: the Folsom Trail Project and the 300 North Pedestrian Bridge Project as part of the TIGER First/Last Mile Program. Supplement No. 1 between UTA and Salt Lake City Corporation was executed on February 19, 2019 for design and construction of the Folsom Trail Project. Supplement No. 2 between UTA and Salt Lake City Corporation was executed on March 6, 2020 for design and construction of the 300 North Pedestrian Bridge Project. The Stakeholder Agreement, including Supplements No. 1 and No. 2, was approved by Resolution R2020-02-05 of the UTA Board of Trustees on February 26, 2020. This Supplement No. 3 is to increase the project budget for the Folsom Trail Project by \$1,369,347 to be funded by Salt Lake City Corporation.
<b>DISCUSSION:</b>	Salt Lake City Corporation received additional funding for the Folsom Trail Project following execution of the Stakeholder Agreement and Supplement No. 1 that needs to be added to the existing Project Budget. The current project estimate is \$3,783,305.
<b>ALTERNATIVES:</b>	Without the additional City funding the design and construction costs would have to remain within the current budget of \$2,413,958.
<b>FISCAL IMPACT:</b>	The additional local project partner funding will increase the overall TIGER Grant Project Budget by \$1,369,347. These dollars are accounted for within the existing 2020 Capital Budget.
<b>ATTACHMENTS:</b>	Supplement No. 3 to the existing Salt Lake City Corporation TIGER Stakeholder Agreement

RECORDED

JUN 17 2020

CITY RECORDER

**SUPPLEMENT NO. 3 TO  
STAKEHOLDER AGREEMENT  
SALT LAKE CITY  
TIGER GRANT  
(FOLSOM TRAIL ONLY)**

TIGER GRANT

<b>TIGER 2016 GRANT NO. 2018-02</b>	<b>UTA CONTRACT NO. 18-02298BM</b>	<b>STAKEHOLDER CONTRACT NO.</b>
<b>SUMMARY OF CITY PROJECTS INCLUDED IN THIS SUPPLEMENT:</b>		<b>PROJECT VALUE OF CITY PROJECT \$ 3,783,305</b>
<b>SLC_MUP_1: FOLSOM TRAIL; JORDAN RIVER TO NORTH TEMPLE</b>		<b>CITY REPRESENTATIVE: Stephanie Toombs / Tom Millar</b>

THIS SUPPLEMENT NO. 3 TO STAKEHOLDER AGREEMENT (“Supplement”), made and entered into this \_\_\_\_ day of June 2020, by and between **UTAH TRANSIT AUTHORITY**, a public transit district (“UTA”), and **SALT LAKE CITY COPORATION**, A Utah municipal corporation (“City”).

The parties hereto entered into a Stakeholder Agreement dated February 19, 2019, (the “Agreement”), which Agreement contemplated execution of Supplements outlining specific details for the City Projects to be completed thereunder.

The parties hereto entered into a Supplement No. 1 to Stakeholder Agreement dated February 19, 2019 to outline specific details for City Project SLC\_MUP1: Folsom Trail; Jordan River to North Temple to be completed thereunder, including the scope, schedule, and estimated budget of the City Project (“Supplement No. 1”).

The parties hereto entered into a Supplement No. 2 to Stakeholder Agreement dated March 6, 2020 to outline specific details for City Project SLC\_OP\_1: Pedestrian Overpass Bridge; 300 North to be completed thereunder, including the scope, schedule, and estimated budget of the City Project.

The parties hereto desire to enter into this Supplement No. 3 (“Supplement No. 3”) to increase the estimated funding (“Additional Funds”) of City Project SLC\_MUP\_1: Folsom Trail; Jordan River to North Temple (the “Trail Project”), and assign the Additional Funds and the previous funding provided under Supplement No. 1 (“Initial Funds”) for certain City purposes related to the Trail Project.

The parties hereto agree to the increase in the estimated budget of the Trail Project, subject to the following:

1. Estimated Total Cost of Work: The parties hereto desire to increase the estimated budget for the Trail Project by **One Million, Three Hundred Sixty Nine Thousand Three Hundred Forty Seven Dollars (\$1,369,347.00)** (the “Additional Funds”), for an estimated total budget of **Three Million Seven Hundred Eighty Three Thousand Three Hundred Five Dollars (\$3,783,305.00)**. The Estimated Total Cost of Work and funding sources are summarized below:

SLC_MUP_1: Folsom Trail; Jordan River to North Temple	SUPPLEMENT NO. 1 (Initial Funds)	SUPPLEMENT NO. 3 (Additional Funds)	TOTAL
<b>ESTIMATED BUDGET:</b>	<b>\$2,413,958</b>	<b>\$1,369,347</b>	<b>\$3,783,305</b>
ESTIMATED AMOUNT OF TIGER PARTICIPATION:	\$1,931,166	\$0	\$1,931,166
ESTIMATED AMOUNT OF CITY PARTICIPATION	\$482,792	\$1,369,347	\$1,852,139

2. Of the Additional Funds, \$1,021,400 may only be used for the following purposes listed below:

- a. Class B or C roads;
- b. Traffic and pedestrian safety, including for class B or C roads;
- c. Sidewalk;
- d. Curb and gutter;
- e. Safety feature;
- f. Traffic sign;
- g. Traffic signal;
- h. Street lighting;
- i. Construction, maintenance, or operation of an active transportation facility that is for non-motorized vehicles and multimodal transportation and connects an origin with a destination; and
- j. Public transit system services.

3. Of the Additional Funds, \$347,947 may only be used for the following purposes for the Folsom Trail project, listed below:

- a. Enhanced trail and landscape design, providing amenities to the community, improving safety, installing improvements (ex. lighting, landscaping, and art), and subsidizing the installation of improvements with the goal of creating a connected greenway.

4. Due to the restrictions related to use of some of the Additional Funds, the Additional Funds shall be used for the purposes set forth in the Plans/Plan Sheets attached to Supplement No. 1 ("Basic Trail Construction"), except for the portion of the Additional Funds that may be used for the purposes listed in Section 3 herein. The Initial Funds (that have not already been used for the Basic Trail Construction) are hereby reassigned and shall be used for the design and construction of enhanced lighting, landscaping, and other trail amenities as agreed to by the City and UTA (the "Trail Enhancements").

5. All permit fees will be paid by the contractor or UTA using either the Initial Funds or Additional Funds.

6. Upon full execution of this Supplement No. 3, UTA will invoice the City for the full amount of the Additional Funds. Invoices shall be paid by the City within sixty (60) days of being invoiced for those costs by UTA. To the extent that the actual total cost of designing and constructing the Trail Project is less than the budget indicated in this Supplement No. 3 and/or Supplement No. 1, City shall be entitled to a refund of the remaining Initial Funds and/or Additional Funds. Any such refund shall be payable to the City within six (6) months after the TIGER Grant for that City Project has been closed out.

7. Upon completion of the Trail Project, UTA shall provide to the City the detailed accounting required to be kept by UTA under Section 6 of the Stakeholder Agreement showing the use of the Initial

Funds and the Additional Funds. The City shall have the right to audit UTA's accounting provided and request additional reasonable details regarding the use of the Initial Funds and the Additional Funds. UTA shall also provide the following summary regarding the Trail Project: the total cost of the Folsom Trail; the cost of the Trail Enhancements; the funding sources that were used; and the groundbreaking and completion dates of the Trail Project.

8. Pursuant to Section 5 of the Stakeholder Agreement, the City and UTA have developed a preliminary budget for the Trail Enhancements, attached as Attachment 1 to this Supplement No. 3.

9. Construction management for the Trail Enhancements shall be same as for the Basic Trail Construction, as specified in Section 4 of Supplement No. 1.

10. All definitions and terms of the Stakeholder Agreement, Supplement No. 1, and Supplement No. 2 remain in full force and effect unless otherwise specified herein.

11. This Supplement No. 3 may be signed in counterparts and/or with electronic signatures.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers as of the day and year first written above.

**UTA:**

**CITY:**

UTAH TRANSIT AUTHORITY

SALT LAKE CITY CORPORATION

By \_\_\_\_\_

By *[Signature]* \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:  
Salt Lake City Attorney's Office

**RECORDED**

**JUN 17 2020**

**CITY RECORDER**

*Megan DePaulis*  
Megan DePaulis (Jun 15, 2020 14:22 MDT)

\_\_\_\_\_  
UTA Legal Counsel

\_\_\_\_\_  
Megan J. DePaulis, Senior City Attorney

ATTEST AND COUNTERSIGN:  
Salt Lake City Recorder's Office

*[Signature]*  
Deputy City Recorder



**PROPERTY OF SALT LAKE  
CITY RECORDER'S OFFICE  
P.O. BOX 145515  
SALT LAKE CITY, UTAH 84114-5515**

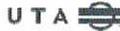
**ATTACHMENT NO. 1**  
**(Detailed Estimated Total Cost of Work)**

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P.O. BOX 145515  
SALT LAKE CITY, UTAH 84114-5515

Attachment No. 1  
Detailed Estimated Total Cost of Work  
SLC\_MUP\_1: Folsom Trail; Jordan River to North Temple

Description of Work	Original Estimated Cost of Work (Supplement No. 1)	Adjusted Estimated Cost of Work (Supplement No. 3)
Program Management	\$199,318.00	\$199,318.00
Design	\$182,308.00	\$345,724.21
Phase 1 Pre-Construction	\$1,802,120.00	\$36,337.00
Phase 2 Construction-Base Trail Construction (Per 100% Contractor Pricing)		\$2,192,612.49
Phase 2 Construction-Trail Enhancements		\$620,000.00
UPRR Preliminary Engineering Agreement	\$50,000.00	\$50,000.00
UPRR Signal Design and Construction	\$0.00	\$50,000.00
Contingency (Min. 10% Phase 2 Construction)	\$180,212.00	\$289,313.30
<b>Estimated Total Cost of Work</b>	<b>\$2,413,958.00</b>	<b>3,783,305.00</b>

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SALT LAKE CITY, UTAH 84114-5515



**PROJECT # PROJECT NAME: Folsom Trail  
FLM Cost Estimate - Concept Level**

Prepared By: Salt Lake City Transportation      Date 5/10/2017      11/1/2018      6/9/2020      reverse calculate from UTA's exhibits

**Proposed Project Scope:**

Approximate Route Reference Mile Post (BEGIN) =	(END) =		
Project Length = 1.390 miles	7,339 ft	7,339 ft	5,200 ft
Current FY Year (July-June) = 2017			
Assumed Construction FY Year = 2018		2019	2019-2020
Assumed Yearly Inflation for Engineering Services (PE and CE) (%/yr) = 3.0%			
Assumed Yearly Inflation for Right of Way (%/yr) = 3.0%		5%	
Items not Estimated (% of Construction) = 20.0%			
Preliminary Engineering (% of Construction + Incentives) = 6.0%		10.16%	11.02%
Construction Engineering (% of Construction + Incentives) = 4.0%		10.29%	0.00%
		11.10%	6.35% uta oversight includes CE

Construction Items	Initial SLC Cost Est	UTA Adjusted Est	UTA Adjusted Est 2020	Remarks
Roadway and Drainage	\$978,000	\$978,000	\$2,228,949.49	12' trail paving, ramp and intersection concrete flatwork, median islands.2020 est incl. RRFBs, PI, Mob, TC, Permits. Granite Pre-Const. 36,337, 1.18%
Traffic and Safety	\$657,000	\$390,000		3 HAWK-Signals RRFBs, Signage, delineator posts, ped.lighting
Landscaping, irrigation, benches, green infrastructure, amenities			\$620,000.00	Evaluate T&S and Is/irr scopes/estimates/funds toward which items.
		-\$149,991		\$240,009
Structures				
Environmental Mitigation				
Mobilization & Traffic Control	\$244,500	\$269,283		25% Roadway. Adj. 15% Const.
Subtotal	\$1,635,000	\$1,487,292	\$2,848,949.49	
Items not Estimated (20%)	\$327,000	\$307,929	\$289,313.30	
Construction Subtotal	\$1,962,000	\$1,795,221	\$3,138,263	
P.E. Cost	P.E. Subtotal \$117,720	\$182,308	\$345,724	6%
C.E. Cost	C.E. Subtotal \$78,480	\$184,757		4%
UTA Oversight		\$199,318	\$199,318	
Right of Way (include exhibit)	Right of Way Subtotal			
Utilities	Utilities Subtotal \$50,000	\$50,000	\$100,000	Review by Union Pacific Railroad
Public Involvement Cost	PI Subtotal \$2,354	\$2,354		2% design. 16.3k Included in Roadway and Drainage 2020 Est.
Miscellaneous	Miscellaneous Subtotal \$390,000	see above	see above	Landscaping, benches, green infrastructure, amenities

**PROJECT TOTAL**      \$2,600,554      \$2,413,958      \$3,783,305.00  
 +mob/tc      \$2,893,954      June 2020 add Transp. 1/4 cent sales tax and RDA funds

**Project Assumptions**

- 1      Landscaping will include irrigation
- 2      Union Pacific will approve existing crossing layout at 600 West and 800 West
- 3      Traffic and Safety includes pedestrian bollard lighting and trail signage
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P.O. BOX 145515  
SALT LAKE CITY, UTAH 84114-5515**



## 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 24, 2020

<b>SUBJECT:</b>	<b>ECO Pass Agreement (State of Utah)</b>
<b>AGENDA ITEM TYPE:</b>	Fare Approval
<b>RECOMMENDATION:</b>	Approve and authorize the Executive Director to execute a contract with the State of Utah (“State”) for their ECO Monthly Pass Agreement in the amount of \$534,000.
<b>BACKGROUND:</b>	<p>The State and UTA have partnered together for many years to offer transit benefits to state employees. In 2015, the State and UTA entered into a 5-year agreement that gives 19,000 state employees access to a premium transit pass. The total value of this contract is \$9M (\$1,800,000 per year) and will terminate June 30, 2020.</p> <p>Ridership has declined each year since 2015 despite UTA and State efforts to market and promote transit usage. It is anticipated that the ridership decline will continue in 2020/21. This is due in part to the State moving to a new office location in Murray which has limited transit service. In addition, the State will implement a new plan to allow a large portion of their workforce to continue to telecommute for the foreseeable future.</p>
<b>DISCUSSION:</b>	<p>Staff recommends continuing to partner with the State to offer a transit pass benefit to their employees.</p> <p>The State has elected to transition away from their current contract and move to an ECO Monthly Pass Agreement starting July 1, 2020. This is a program wherein the State is able to purchase and issue discounted monthly transit passes for their employees to use. ECO Monthly passes are premium transit passes that are valid on all UTA services (Ski, Paratransit, and Park City Services are excluded). 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. They will be billed monthly at the standard ECO Monthly Pass price of \$89.00. The contract term will be 1 year.</p> <p>Pass programs are discounted and specially priced for partners in order to support them in sponsoring fares. Tap data is used to quantify the discount based on how much the passes are used. When pass holders tap, the public base fare rate for each trip is captured and calculated as part of the data obtained from the electronic fare collection</p>

	system. Discounts are computed by comparing the fare value of actual usage to the contract revenue received. Looking at prior usage data, we do not expect the discount to exceed 25%.	
<b>CONTRACT SUMMARY:</b>	Contractor Name: The State of Utah	
	Contract Number: 20-1137JH-2	Existing Contract Value: NA
	Base Contract Effective Dates: July 1, 2020-June 30, 2021	Extended Contract Dates: NA
	Amendment Amount: NA	New/Total Amount Contract Value: \$534,000
	Procurement Method: NA	Funding Sources: NA
<b>ALTERNATIVES:</b>	Not approve the contract and forgo any anticipated revenue and ridership	
<b>FISCAL IMPACT:</b>	It is estimated that the contract revenue will be approximately \$534,000 total. This revenue is estimated based on an average of 500 users per month and takes into account the COVID-19 pandemic.	
<b>ATTACHMENTS:</b>	<ul style="list-style-type: none"> <li>Contract</li> </ul>	

## ECO PASS AGREEMENT

This ECO Pass Agreement (“Agreement”) is made effective the 1st day of July, 2020 (the “Effective Date”) by and between, The State of Utah, the (“Administrator”) and UTAH TRANSIT AUTHORITY, a public transit district, whose address is 669 West 200 South, Salt Lake City, Utah 84101 (hereinafter “UTA”).

### RECITALS

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

WHEREAS, Administrator is an entity that hires employees who work within the public transit district;

WHEREAS, both Administrator and UTA recognize the benefits of public transit for individuals, businesses and the community for 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, UTA has implemented an “ECO Pass Program” or economical transit pass program whereby employers agree to purchase from UTA transit passes for employees at discounted rates; and

WHEREAS, Administrator desires to participate in UTA’s ECO Pass program pursuant to the terms and conditions set forth in this Agreement.

NOW THEREFORE, Administrator and UTA hereby covenant and agree to be bound by the terms and conditions set forth in this Agreement, including Exhibit “A” – Pass Program Election and Pricing and Exhibit “B” – Pass Program Guidelines and Rules, attached hereto and made a part hereof by this reference.

### 1.0 DEFINITIONS

**1.1** The term “**Authorized Services**” means travel on local buses, express buses, TRAX light rail, Streetcar light rail, bus rapid transit, and FrontRunner commuter rail. Authorized Services do not include travel on Park City Connect, Ski-bus, or Paratransit services.

**1.2** The term “**Authorized User**” means Administrator’s employees who have been issued a Pass in compliance with this Agreement.

**1.3** The term “**Pass**” means a card issued by Administrator to an Authorized User under the terms of this Agreement for use on UTA’s transit system.

**1.4** The term “**Qualified Employee**” means (a) an employee who is employed on a full time, part time, seasonal, and/or temporary basis; (b) an employee who is not currently participating in a UTA van pool program; (c) an employee who works shifts when UTA is providing transit services.

**1.5** The term “**Emergency**” means: (a) an unplanned change in the Authorized User’s work schedule which causes the Authorized user to miss a usual or customary scheduled transit trip from work to home and another transit trip is not scheduled within a thirty minute time period; or (b) the illness or injury of the Authorized User or the Authorized User’s Immediate Family Member which requires the Authorized User to immediately leave work to attend to the needs of the Authorized User or an Immediate Family Member and regularly scheduled transit trips will not permit the Authorized User to meet such needs.

**1.6** The term “**Immediate Family Member**” means a spouse, child, step-child of the Authorized User, or other person who resides in the same residence as the Authorized User and is the dependent of the Authorized User.

## **2.0 TERMS AND CONDITIONS**

**2.1 TERM.** This Agreement shall be in effect from Effective Date through June 30, 2021.

**2.2 FORM OF PASSES.** Administrator shall issue electronic fare cards imbedded with micro-chips that are individually numbered on the outside with a unique internal identification number and signature strip for use as Passes. Cards must either be provided by or approved by UTA.

**2.3 NON-TRANSFERRABLE.** A Pass is not transferable.

**2.4 MINIMUM NUMBER OF PASSES.** Monthly Passes. An Administrator that purchases Monthly Passes shall purchase a minimum of fifteen (15) Monthly Passes.

**2.4.1 Paratransit Passes.** If Administrator provides subsidized Passes to Authorized Users, Administrator agrees to purchase similarly subsidized paratransit passes for travel to and from the Authorized User’s place of employment for any Authorized User who is Paratransit eligible and cannot ride UTA’s fixed route services.

**2.5 ISSUING PASSES.** Administrator is responsible for issuing Passes. Administrator shall not issue a Pass to any person who is not an Authorized User under this Agreement. Prior to issuing a Pass, Administrator shall confirm the recipient qualifies as an Authorized User; print the recipient’s name on the Pass in permanent ink, unless the Pass is owned by Administrator with no signature strip; and record the recipient’s name and corresponding Pass number.

**2.6 ACTIVATING PASSES.** UTA will provide Administrator with inactive Passes that Administrator shall activate. To activate Passes for use on the 1<sup>st</sup> day of the month, Administrator shall provide UTA with an electronic file of Pass numbers that conforms to the Bulk Import File Specifications Guide provided by UTA no earlier than the 25<sup>th</sup> of the month and no later than the second to last business day of the month. Administrator may activate Passes at any time during the month but UTA will not prorate the monthly charge for late activations.

**2.7 PAYMENT FOR PASSES.** Administrator shall pay the amount stated on Exhibit “A” for Passes provided by UTA under this Agreement. Administrator is responsible for paying the full amount owed to UTA, regardless of whether Administrator receives payment for Passes from a third party. Administrator shall pay the amount invoiced by the due dates identified below. UTA shall charge Administrator a one percent (1%) per month late fee on balances due under this Agreement that remain unpaid forty-five (45) days from date of invoice.

**2.7.1 Monthly Passes.** UTA shall issue Administrator an invoice at the end of each month for all Passes activated during the month. Payment is due by the 15<sup>th</sup> day of the month following the month in which the passes were activated. In addition to the penalties set forth in Section 2.6, UTA shall suspend Administrator’s ability to activate Passes in the event Administrator has a balance due under this Agreement that remains unpaid for forty-five (45) days from the date of the original invoice.

**2.8 ISSUING REPLACEMENT PASSES.** Administrator is responsible for replacing Passes that are lost, stolen, defective, or otherwise require replacement. Administrator must process all Pass replacements on UTA’s partner website [www.tap2rideuta.com](http://www.tap2rideuta.com).

**2.9 COST OF REPLACEMENT PASSES TO ADMINISTRATOR.** UTA will not charge Administrator for electronic Passes so long as the number of Passes requested does not exceed more than 50% of the number of passes indicated on Exhibit "A." In the event Administrator exceeds the number of passes, Administrator agrees to pay \$3.00 for each additional Pass provided by UTA.

**2.10 COST OF REPLACEMENT PASSES TO AUTHORIZED USERS.** Administrator may charge an Authorized User for a replacement Pass in an amount less than or equal to the amount paid by Administrator to UTA for the replacement Pass. However, at its discretion, Administrator may charge an Authorized User a fee for the administrative costs associated with reissuing a Pass.

**2.11 RESTRICTIONS ON CHARGES TO AUTHORIZED USERS.** Administrator may collect all, or part of its' cost for each Pass from the Authorized User, so long as the amount collected does not exceed the cost per Pass charged to Administrator under this Agreement. Upon the request of UTA, Administrator shall submit an accounting detailing the number of Passes sold, and the amounts paid by Authorized Users for Passes.

**2.12 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 it treats cash. Administrator shall notify UTA of any theft of unissued Passes within three (3) business days of the theft. Administrator agrees to pay any fares associated with the use of the unissued, stolen Passes if it fails to notify UTA within three (3) business days of the theft.

**2.13 DEACTIVATING PASSES.** Administrator shall deactivate a Pass within three business days if a person issued a Pass is no longer an Authorized User or if a Pass is lost or stolen.

**2.14 CONFISCATION OF PASSES.** UTA shall have 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 or if UTA reasonably believes the Pass has been duplicated, altered, or used in an unauthorized way. UTA will immediately deactivate confiscated Passes and notify Administrator. If the Pass is an Administrator-provided card, UTA will return it to Administrator.

**2.15 GUARANTEED RIDE HOME.** In order to accommodate the Emergency needs of Administrator's Authorized Users, UTA agrees that during the term of this Agreement it will provide a guaranteed ride home for an Authorized User who cannot take a customary scheduled transit trip, or another reasonably scheduled transit trip from work to home because of an Emergency. UTA agrees that, in the event of Emergency, UTA, at its expense, will provide alternative transportation to an Authorized User from Administrator's Business Location to Authorized User's home or other location within the boundaries of the public transit district where the Immediate Family Member requiring the Emergency help is located. UTA shall determine the means by which the Authorized User is transported. An Authorized User shall be entitled up to six (6) guaranteed rides home in any calendar year.

**2.16 TERMINATION.** This Agreement shall continue in full force and effect during the term of this Agreement unless it is terminated earlier by either party. Each party may terminate this Agreement in its sole discretion by giving the other party written notice of termination at least thirty (30) days prior to the termination date. No refunds will be issued for Daily, Monthly, or Annual Passes.

**2.17 RETURN OF UNUSED PASSES.** In the event this Agreement is terminated and Administrator does not enter into a subsequent agreement with UTA in which it continues to be responsible for issuing Passes, Administrator shall return all unused Passes to UTA within fifteen (15) days of the termination of this Agreement.

**2.18 RECORD KEEPING.** Administrator is required to maintain the following records for its employees: the Pass number of each issued Pass, including replacement Passes; the name of the person issued each Pass; and the Pass number of each unissued Pass. UTA maintains the right, upon reasonable notice, to inspect Pass issuance records during regular business hours at all times during the term of this Agreement and for a period of one year after the expiration or termination of this Agreement.

### 3.0 MISCELLANEOUS

**3.1 THIRD PARTY INTERESTS.** Except as for the rights provided to Authorized Users, no person not a party to this Agreement shall have any rights or entitlements of any nature under it.

**3.2 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.

**3.3 COSTS AND ATTORNEY’S 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.

**3.4 NOTICES.** All legal notices to be given hereunder shall be sufficient if given in writing in person or by 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. 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.

#### Administrator

Name: Michelle Brown  
Address: 4315 South 2700 West FL 3  
Taylorsville, UT 84129  
Phone: 801-957-7172  
Email: michellebrown@utah.gov

#### Utah Transit Authority

Kensey Kunkel  
669 West 200 South  
Salt Lake City, Utah 84101  
801-741-8806  
kkunkel@rideuta.com

**3.5 INTENT TO BE LEGALLY BOUND.** The undersigned parties have duly caused this Agreement to be executed and any individual signatories executing on behalf of the parties are duly authorized by his or her respective party to execute this Agreement.

**3.6 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, or age in accordance with the requirements of 49 U.S.C. 5332.

**3.7 DEFAULT.** In the event that either party fails to perform any of the terms and conditions required to be performed pursuant to this Agreement, and upon fifteen (15) days' notice of such failure to perform, the non-defaulting party under this Agreement may terminate this Agreement. In the event that Administrator fails to pay UTA, nothing herein shall prevent UTA from recovering the amount of the Purchase Price, including court costs and reasonable attorney's fees after the Agreement has been terminated.

**3.8 SUCCESSORS AND ASSIGNS.** This Agreement shall not be assigned without the written consent of the other party. This Agreement with all of its terms and provisions shall be binding upon and inure to the benefit of any permitted successors and assigns of the Parties hereto.

**3.9 AMENDMENTS.** This Agreement may not be modified or terminated orally, and no claimed modification, rescission or waiver shall be binding upon either party unless in writing signed by a duly authorized representative of each party.

**3.10 INDEMINIFICATION.** Each party hereby agrees to be responsible and assume liability for its own negligent or wrongful acts or omissions or those of its officers, agents or employees to the full extent required by law, and agrees to indemnify and hold the other party harmless from any such liability, damage, expense, cause of action, suit, claim, judgment, or other action arising from participation in this Agreement. The Parties recognize and acknowledge that UTA is a public or governmental agency or entity covered under the provisions of the Utah Governmental Immunity Act as set forth in Sections 63-30-1 to 63-30-38, Utah Code Annotated 1953, as amended, and the limits of liability therein described. Neither party waives any legal defenses or benefits available to them under applicable law, and both agree to cooperate in good faith in resolving any disputes that may arise under this Agreement.

**3.11 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.

**3.12 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth herein.

**STATE OF UTAH**

By:

\_\_\_\_\_  
Signature                      Date

\_\_\_\_\_  
Printed Name                      Title

**UTAH TRANSIT AUTHORITY**

By:

\_\_\_\_\_  
Carolyn Ganot, Executive Director                      Date

By:

\_\_\_\_\_  
Robert Biles, VP of Finance                      Date

ATTEST AND COUNTERSIGN:

By: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Michael Bell  
Assistant Attorney General  
Counsel for UTA

APPROVED AS TO FORM:

By: \_\_\_\_\_

# Exhibit A

## Pass Program Election and Pricing

### Section 1: Partner Information

Fill out the following information so UTA can set-up an account.

Partner Name: State of Utah
Address: 4315 South 2700 West FL 3
City / State / Zip Code: Taylorsville, UT 84129-2128
# Employees at this Address: Varies by Department
Dept./Division/Section/Group: Multiple Departments

### Section 2: Contact Information

Fill out the following information for the point person on this contract.

Contact Name: Michelle Brown
Phone Number: 801-957-7172
Email Address: michellebrown@utah.gov
Title: Coordinator of Resource Stewardship
Department: <u>Executive Director's Office, Department of Administrative Services</u>

### Section 3: Designated Transit Coordinator

Fill out the following information for the employee(s) that will administer the pass program. UTA will contact them to set-up logins on UTA's Partner Website.

Primary Coordinator:	<u>Michelle Brown</u> Name	<u>michellebrown@utah.gov</u> Email Address	<u>801-957-7172</u> Phone Number
Other Coordinator:	_____ Name	_____ Email Address	_____ Phone Number
Other Coordinator:	_____ Name	_____ Email Address	_____ Phone Number
Other Coordinator:	_____ Name	_____ Email Address	_____ Phone Number

## Section 4: Billing Information

Fill out the following billing information.

### Accounts Payable Contact

<u>Michelle Brown</u>	<u>michellebrown@utah.gov</u>	<u>801-957-7172</u>
Name	Email Address	Phone Number
Name	Email Address	Phone Number

### Preferred Invoicing

Method	Check One	Email or Mailing Address
Email	<b>X</b>	michellebrown@utah.gov
USPS	<input type="checkbox"/>	
Invoicing Instructions:		

### Form of Payment

Payment Type	Check One
ACH	<input type="checkbox"/>
Check	<b>X</b>
Wire Transfer	<input type="checkbox"/>

Checks should be made payable to Utah Transit Authority and mailed to the following address: Utah Transit Authority, Accounts Receivable, 669 West 200 South Salt Lake City, Utah 84101

ACH/WIRE Instructions are available upon request.

## Section 5: Programs and Pricing

Fill out the following information and select a pass program.

### **X Monthly** (\$89/Month per Employee)

<i>Description: Monthly payment required from employer to UTA, invoiced at the end of each month, employer must purchase a minimum of 15 passes each month.</i>	
<b>A</b>	Initial Pass Order Quantity: <span style="float: right;">Est. 300 - 500</span>
<b>B</b>	Price per Month: <span style="float: right;">\$89</span>
<b>C</b>	Months in Contract: <span style="float: right;">12</span>
<b>D</b>	Estimated Contract Value (A X B X C): <span style="float: right;">\$320 - \$534K</span>

# **Exhibit B**

## **Pass Program Guidelines and 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.

### **PROCUREMENT OF PASSES**

To request cards, send an email to [passprograms@rideuta.com](mailto:passprograms@rideuta.com) and indicate the quantity of cards and the date needed by.

Administrator can elect to provide their own cards as long as the intent is to integrate electronic contactless technology into a picture identification card or building access badge. Administrator should work closely with UTA to ensure that the cards are compliant with the UTA card data format specification. For a copy of the format specification contact your account representative.

### **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, unless card is owned by Administrator with no signature strip
- Ensure recipient understands the cardholder rules at [http://www.rideuta.com/uploads/EFCCardholderRules\\_2013.pdf](http://www.rideuta.com/uploads/EFCCardholderRules_2013.pdf)
- Record the recipient name and the card number issued to them (see record keeping below)

### **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

### **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 at [www.tap2rideuta.com](http://www.tap2rideuta.com) and click on reports. If you need data not provided on the partner website email [passprograms@rideuta.com](mailto:passprograms@rideuta.com) with your request and someone will contact you.

### **COST OF PASSES**

UTA will provide electronic cards to pass program participants at no charge. If Administrator and UTA determine a card cost is necessary it will not exceed \$3.00 per card which may be passed onto the cardholder.

## **RETURN OF UNUSED CARDS**

Unused cards should be returned, and UTA may demand the return of, if this agreement is terminated.

## **CUSTOMER SERVICE**

TC's are supported by UTA's Product Development and Sales team and are assigned specific account representatives 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.

## **CARD REPLACEMENTS**

Electronic cards are meant to be retained by the cardholder and reused.

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 at [www.tap2rideuta.com](http://www.tap2rideuta.com). For more information on how to replace a card refer to the UTA Partner Web Site User Guide provided during training.

## **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.

## **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 do not have your card 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.

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## MEMORANDUM TO THE BOARD

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

**BOARD MEETING DATE:** June 24, 2020

<b>SUBJECT:</b>	<b>Closed Session</b>
<b>AGENDA ITEM TYPE:</b>	<b>Closed Session</b>
<b>RECOMMENDATION:</b>	Approve moving to closed session for discussion of the purchase, exchange, lease, or sale of real property if public discussion would prevent the Authority from completing the transaction on the best possible terms.
<b>DISCUSSION:</b>	<p>Utah Open and Public Meetings Act allows for the Board of Trustees to meet in a session closed to the public for various specific purposes. The purposes for this closed session are:</p> <ul style="list-style-type: none"><li>• Strategy session to discuss of the purchase, exchange, lease, or sale of real property if public discussion would prevent the Authority from completing the transaction on the best possible terms.</li><li>• Strategy session to discuss pending or reasonably imminent litigation.</li></ul>