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Gary W. Ott
Recorder, Salt Lake County, UT
JONES WALDO HOLBROOK MCDONOUGH
BY: eCASH, DEPUTY - EF 11 P.

WHEN RECORDED, PLEASE RETURN TO:

Susan B. Peterson
Jones, Waldo, Holbrook & McDonough, P.C.
170 South Main Street, Suite 1500
Salt Lake City, Utah 84101

**THIRD AMENDMENT TO
DECLARATION OF CONDOMINIUM FOR HALL'S FIFTH AVENUE
(a Utah Condominium Project)**

THIS THIRD AMENDMENT TO DECLARATION OF CONDOMINIUM FOR HALL'S FIFTH AVENUE (this "Amendment") is entered into as of March 5, 2012, by HALL'S FIFTH AVENUE, INC., a Utah nonprofit corporation (the "Association").

RECITALS

- A. That certain real property located in the Salt Lake County, Utah, and more particularly described in Exhibit A attached hereto is subject to that certain Declaration of Condominium for Hall's Fifth Avenue, recorded as Entry No. 3647653 in Book 5340 at Page 822 in the office of the County Recorder for Salt Lake County, Utah (the "Declaration").
- B. The Declaration has been previously amended by that certain Amendment dated April 14, 2005, recorded on April 15, 2005 as Entry No. 349778 in Book 9118 at Page 3946, and by that certain Amendment dated May 21, 2007, recorded May 22, 2007 as Entry No. 10107917 in Book 9467 at Page 2943.
- C. The Association, acting pursuant to its Bylaws and the Declaration, desires to further amend the Declaration as set forth in this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Declaration is hereby amended as follows:

1. **CAPITALIZED TERMS.** All initially capitalized terms, unless specifically defined herein, shall have the meanings ascribed thereto in the Declaration.

2. AMENDMENTS TO DECLARATION.

2.1 Use of Unit.

- (a) Section 13(a) of Article III of the Declaration is hereby deleted in its entirety and the following substituted therefor:

Each of the Units in the Project is intended to be used for single family residential housing and is restricted to such use.

- (b) The following is hereby added to Section 13(e) of the Declaration:
No Owner shall make any alterations, structural or otherwise, to such Owner's Unit if such alterations would significantly increase the volume of sounds emanating from the Unit. By way of example and not limitation, no Owner shall replace carpet with wood or tile floors without installing appropriate sound barriers so as to prevent an increase in noise created by walking across the floor as heard in Units adjacent to or below such Unit.

2.2 **Pets.** Section 13(g) of Article III of the Declaration is hereby deleted in its entirety and the following substituted therefor:

No pet shall be kept or allowed in any part of the Project without the prior written consent of the Management Committee. Notwithstanding the foregoing, however, nothing in this Section is intended, or shall be deemed or construed, to prohibit service, assistance, support or therapy animals ("Assistance Animals") when necessary to afford persons with disabilities the equal opportunity to use and enjoy a Unit in the Project, as required by the Federal Fair Housing Act, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and other state and local fair housing laws. The Management Committee may promulgate a policy, including reasonable behavioral rules, regarding Assistance Animals.

2.3 **Liens for Nonpayment of Assessments.** Section 17(e) of Article III of the Declaration is hereby deleted in its entirety and the following substituted therefor:

- (e) Lien for Assessments; Interest.

- (i) All sums assessed to any Unit pursuant to this Declaration, together with and any fees, charges, and costs associated with collecting an unpaid assessment, including court costs and reasonable attorney fees, late charges, interest; and any other amount that the Association is entitled to recover under this Declaration, the Act, or any applicable administrative or judicial decision, and any fine that the Association imposes against the Owner, shall be secured by a lien on such Unit in favor of the Association. If an assessment is

payable in installments, the lien described herein shall be for the full amount of the assessment from the time the first installment is due, unless the Association otherwise provides in a notice of assessment. The lien established hereby shall have priority over each other lien and encumbrance on a Unit except (i) a first or second security interest on the Unit secured by a mortgage or deed of trust that is recorded before a recorded notice of lien by or on behalf of the Association; or (ii) a lien for real estate taxes or other governmental assessments or charges against the Unit. Any past due assessment shall accrue interest at the rate of twelve percent (12%) per annum.

- (ii) At any time during which an Owner is delinquent in the payment of assessments or any other amounts due hereunder, the Management Committee may record a written notice of lien setting forth the amount owed, the name of the delinquent Owner, and the legal description of the Owner's Unit. Within thirty (30) days after payment in full of all amounts secured by the lien, the Management Committee shall record a release of the lien.
- (iii) To enforce a lien for delinquent assessments and other amounts due under this Declaration, the Association may, at its option: (i) cause a unit to be sold through nonjudicial foreclosure as though the lien were a deed of trust, in the manner provided by applicable law, (ii) foreclose the lien through a judicial foreclosure in the manner provided by law for the foreclosure of a mortgage; or (iii) enforce the lien in any other manner provided by applicable law. For purposes of a nonjudicial or judicial foreclosure, the Association is considered to be the beneficiary under a trust deed; and the Owner is considered to be the trustor under a trust deed. An Owner's acceptance of an interest in a Unit constitutes a simultaneous conveyance of the Unit in trust, with power of sale, to the trustee designated herein or in any amendment or substitution of trustee recorded hereafter, for the purpose of securing payment of all amounts due under this Declaration. Nothing in this section shall be deemed or construed to prohibit the Association from bringing an action against an Owner to recover an amount for which a lien is created or from taking a deed in lieu of foreclosure, if the action is brought or deed taken before the sale or foreclosure of the Unit. All costs, expenses, and fees incurred by the Association in connection with a foreclosure or other action or proceeding to enforce a lien shall be paid by the delinquent Owner and shall be secured by such lien.
- (iv) In accordance with Section 57-8-45 of the Act, for purposes of non-judicial foreclosure, Kyle V. Leishman is hereby appointed as trustee, and the Units and all improvements to the Units are conveyed to such trustee, in trust, with

power of sale, for the purpose of securing payment of assessments and other amounts owed to the Association under the terms of this Declaration.

2.3 **Additional Rights of Association for Nonpayment of Assessments.** The following provisions are hereby added to Article III of the Declaration as Sections 17(i), 17(j), 17(k), and 17(l) thereof:

(i) Termination of Utility Services for Nonpayment of Assessments.

- (A) If an Owner fails to pay any assessment when due, the Management Committee may terminate such Owner's right to receive a utility service for which the unit owner pays as a common expense. Before terminating a utility service for nonpayment of assessments, the Management Committee shall give the delinquent Owner notice, which notice shall: (i) specify the amount of the assessment due, including any interest or late payment fee; (ii) state that the Management Committee will terminate the Owner's utility service if the Association does not receive payment of all amounts owed within fourteen (14) days after the date on which the Owner receives the notice; (iii) inform the Owner of the Owner's right to request a hearing. The notice may also state the estimated cost of reinstating the utility service if such service is terminated.
- (B) The delinquent Owner may submit a written request to the Management Committee for an informal hearing to dispute the assessment. Such a request, if any, shall be submitted within fourteen (14) days after the date the delinquent Owner receives the notice under the preceding subsection (i). If a request for hearing is submitted, the Management Committee shall conduct an informal hearing in accordance with the standards provided in this Section, the utility service shall not be terminated until after the Management Committee conducts the hearing and enters a final decision.
- (C) If the Management Committee terminates a utility service for nonpayment of assessments, it shall take immediate action to reinstate the service following payment of the assessment, including any interest and late payment fee. The Association may assess the Owner for the cost associated with reinstating the utility service and demand that the estimated cost to reinstate the utility service be paid before the service is reinstated, if the estimated cost is included in the notice provided under Section (i) above.
- (j) Requiring Tenant to Pay Rent to Association if Owner Fails to Pay Assessment.

- (A) As used in this section: (1) "Amount owing" means the total of any assessment that is due and owing and any applicable interest, late fee, and cost of collection that accrues after the Association provides notice to a delinquent Owner in accordance with this section, and (2) "Lease" means an arrangement under which a tenant occupies a Unit in exchange for the Owner of such Unit receiving payment; (3) "Tenant" means a person, other than the Owner, who has regular, exclusive occupancy of the Owner's Unit.
- (B) Subject to Subsections (3) and (4) below, if an Owner fails to pay any assessment within sixty (60) days after such assessment is due, the Management Committee may require a Tenant under a Lease to pay the Association all future lease payments due to the Owner, beginning with the next monthly or periodic payment due from the Tenant and continuing until the Association has received the full amount owed by the Owner, including all late charges or fees and all costs of collection.
- (C) Before requiring a Tenant to pay Lease payments to the Association under this section, the Management Committee shall give the Owner written notice, which notice shall: (1) specify the amount of the assessment due, including any interest, late fee, collection cost, and attorney fees; (2) state that any costs of collection, including attorney fees, and other assessments that become due may be added to the total amount due and to be paid through the collection of Lease payments; and (3) state that the Association intends to demand payment of future Lease payments from the Tenant if the Owner does not pay the amount owing within fifteen (15) days after the Owner's receipt of such notice.
- (D) If an Owner fails to pay the amount owing within fifteen (15) days after the Owner receives the notice, the Management Committee may deliver a written notice to the Tenant., which notice shall state that: (1) due to the Owner's failure to pay an assessment within the required time, the Management Committee has notified the Owner of the Management Committee's intent to collect all Lease payments until the amount owing is paid; (2) the law requires the Tenant to make all future Lease payments, beginning with the next monthly or other periodic payment, to the Association of unit owners, until the amount owing is paid; and (3) the Tenant's payment of Lease payments to the Association does not constitute a default under the terms of the Lease. Concurrently with the delivery of the notice to the Tenant, the Management Committee shall mail a copy of the notice to the Owner.
- (E) A tenant to whom notice is given under this section shall pay to the Association all future Lease payments as they become due and owing to the Owner, beginning with the next monthly or other periodic payment and

continuing until the Management Committee notifies the Tenant that the amount owing is paid.

- (F) An Owner shall credit each payment that the Tenant makes to the Association under this section against any obligation that the Tenant owes to the Owner as though the Tenant made the payment to the Owner, and the Owner may not initiate a suit or other action against a Tenant for failure to make a Lease payment that the Tenant pays to the Association as required under this section.
- (G) Within five business days after the amount owing is paid, the Management Committee shall notify the Tenant in writing that the Tenant is no longer required to pay future Lease payments to the Association, and shall mail a copy of such notice to the Owner.
- (H) The Management Committee shall deposit money paid to the Association under this section in a separate account and disburse that money to the Association until the amount owing, together with administrative costs in the amount of \$25.00, is paid in full. Within five (5) business days after the amount owing is paid, the Management Committee shall pay to the Owner any remaining balance in such separate account.
- (k) Appointment of a Receiver. In an action by the Association to collect an assessment or any other amounts due to the Association from an Owner under this Declaration or to foreclose a lien for unpaid assessments or other amounts owed, the Association shall be entitled, as a matter of right, to have a receiver appointed by the court in such action, which receiver shall collect and hold money alleged to be due to the delinquent Owner before commencement of the action or during the pendency of the action, all the money so collected and held by the receiver shall be paid to the Association to be applied to the amounts owed to the Association by the delinquent Owner.
- (l) Fines. If provided in the rules and regulations of the Association (“Rules and Regulations”), the Management Committee may assess a fine against an Owner, after the requirements of this section have been met, for a violation of the Rules and Regulations. Before assessing a fine, the Management Committee shall give notice to the Owner of the violation and inform the Owner that a fine will be imposed if the violation is not cured within forty-eight (48) hours; provided that if the violation is one which cannot be cured with reasonable diligence within forty-eight (48) hours, the fine shall not be imposed until a reasonable time as determined by the Management Committee, not to exceed five (5) business days, has passed and the violation

has not been cured. The fine shall be in the amount provided in the Rules and Regulations, which amount shall not exceed \$500. Any cumulative fine shall not exceed \$500 per month. An Owner who is assessed a fine may request an informal hearing to protest or dispute the fine within thirty (30) days from the date the fine is assessed. No interest or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

An Owner may appeal a fine in accordance with the Act. A fine assessed which remains unpaid after the time for appeal under the Act has expired becomes a lien against the Owner's Unit in accordance with the same standards as a lien for the nonpayment of assessments.

2.4 Notices. The following is hereby added to Article III of the Declaration as Section 36 thereof:

Notices. Notices given under this Declaration shall be in writing, unless oral notice is reasonable under the circumstances. Written notice may be delivered by hand delivery, by U.S. mail (postage prepaid), or by private carrier. In addition, the Association may provide notice to Owners by electronic means, including text message, email, or by posting the notice on the website of the Association, if the Association maintains a website. Notwithstanding the foregoing, an Owner may, by written demand, require the Association to provide notice to such Owner by mail. Written notice from the Association to an Owner is effective when mailed, if such notice is in a comprehensible form and addressed to the Owner's address shown in the current records of the Association. It shall be the responsibility of each Owner to inform the Association, in writing, of any new address of the Owner for notices. If three successive notices given to an Owner have been returned as undeliverable, further notices to that Owner are not necessary until another address of the Owner is made known to the Association. Oral notice may be communicated in person, by telephone, or by other electronic means, if reasonable. Oral notice is effective when communicated if communicated in a comprehensible manner.

3. MISCELLANEOUS PROVISIONS.

3.1 Confirmation of Declaration and Bylaws. The Association hereby affirms and agrees to be bound by all of the terms of the Declaration and Bylaws, as amended hereby.

3.2 Non-Impairment. Except as expressly provided herein, nothing in this Amendment shall alter or affect any provision, condition, or covenant contained in the Declaration or Bylaws or affect or impair any rights, powers, or remedies of the Association thereunder, it being the intent of the Association that, except as amended hereby, all of the terms, covenants and conditions of the

Declaration and Bylaws shall remain in full force and effect.

3.3 **Entire Agreement.** This Amendment constitutes the entire agreement with respect to the subject matter hereof.

3.4 **Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of Utah.

[Signature Page to Follow]

IN WITNESS WHEREOF, this Amendment has been executed as of the date first set forth above.

HALL'S FIFTH AVENUE, INC.
a Utah nonprofit corporation

By [Signature]
Name:
President

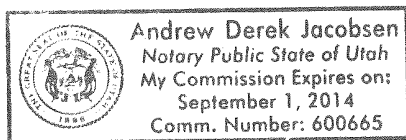
STATE OF Utah)
COUNTY OF Salt Lake) :ss.

The foregoing instrument was acknowledged before me this 22nd day of July, 2014, by Dea Nielsen, President of Hall's Fifth Avenue, Inc., a Utah nonprofit corporation.

[Signature]
NOTARY PUBLIC
Residing at: Salt Lake County

My Commission Expires:

1st September 2014



CERTIFICATION

The undersigned, on behalf of the Management Committee of Hall's Fifth Avenue, Inc., a Utah nonprofit corporation, hereby certify that the foregoing Third Amendment to Declaration of Condominium for Hall's Fifth Avenue, was duly proposed, voted on and passed at a duly called and noticed meeting of the Association.

DATED: 7/22/2014, 2012:

Jeffrey O. Ogden
Name:
Secretary

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

The foregoing certification was acknowledged before me this 22nd day of July, 2014, by Jeffrey O. Ogden, Secretary of Hall's Fifth Avenue, Inc., a Utah nonprofit corporation.

Andrew D. Jacobsen
NOTARY PUBLIC
Residing at: Salt Lake County

My Commission Expires:
1st September 2014

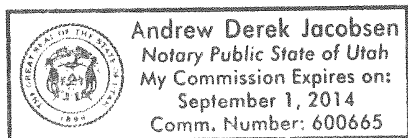


EXHIBIT A
Legal Description

That certain property located in the County of Salt Lake, State of Utah, described as follows:

Units 101, 102, 103, 104, 105, 106, 107, 201, 202, 203, 204, 205, 206 and 207, HALL'S FIFTH AVENUE, a Utah Condominium Project, according to the Record of Survey Map filed for record February 11, 1982 as Entry No. 3547654 in Book 82-2 of Plats at Page 9, together with the appurtenant undivided ownership interest in the "Common Areas and Facilities", all of which is defined and described in the Declaration of Condominium for Hall's Fifth Avenue, a Utah Condominium Project, and the Appendices attached thereto, filed for record as Entry No. 3647653 in Book 5340 at pages 822 through 855 of Official Records.

Parcel No.'s: 09-32-318-002, 09-32-318-003, 09-32-318-004, 09-32-318-005, 09-32-318-005, 09-32-318-006, 09-32-318-007, 09-32-318-008, 09-32-318-009, 09-32-318-010, 09-32-318-011, 09-32-318-012, 09-32-318-013, 09-32-318-014, 09-32-318-015 & 09-32-318-001