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GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
CAPITOL PARK HOMEOWNERS ASSN IN  
354 CAPITOL PARK AVE  
ATTN: MATT TYLER  
SLC UT 84103  
BY: KLD, DEPUTY - WI 26 P.

WHEN RECORDED, MAIL TO:

Capitol Park Homeowners Association, Inc.

354 Capitol Park Ave  
Salt Lake City, UT 84103

Attention: Matt Tyler

**MEMORANDUM AND NOTICE OF THE BY-LAWS AND  
FIRST AMENDMENT TO THE BY-LAWS OF  
CAPITOL PARK HOMEOWNERS ASSOCIATION, INC.**

THIS MEMORANDUM AND NOTICE OF THE BY-LAWS AND FIRST AMENDMENT TO THE BY-LAWS OF CAPITOL PARK HOMEOWNERS ASSOCIATION, INC. (this "Memorandum") is made and given as of the \_\_\_\_\_ day of September, 2006, by Capitol Park Homeowners Association, Inc., a Utah nonprofit corporation (the "Association").

1. The original By-Laws of the Association, dated March 13, 1997 (the "Original By-Laws"), were adopted by the Association on or about such date and the Association has been acting pursuant to the terms thereof since their adoption; however, the Original By-Laws were not recorded in the Office of the Salt Lake County Recorder and the original document executed by the President of the Association evidencing such adoption is not available.

2. In order to provide record notice of the terms of the Original Bylaws, a copy thereof is attached hereto as "Exhibit A". The legal description of the real property which is affected by the Original By-Laws and this Memorandum is set forth in attached "Exhibit B" (the "Subject Property").

3. In addition to the foregoing, it is the intent of this Memorandum to provide record notice of that certain First Amendment to the By-Laws of Capitol Park Homeowners Association, Inc. (the "First Amendment") adopted by the Association. Unless otherwise defined in this Memorandum, capitalized terms used in this Memorandum shall have the respective meanings given them in the Original By-Laws.

4. The undersigned Trustees of the Board of the Association hereby certify that the First Amendment was duly adopted by the Members of the Association at a meeting convened in accordance with the Original By-Laws on March 28, 2006. At such meeting, the Original By-Laws were amended by the First Amendment as follows:

a. Section 3.2 of the Original By-Laws was amended by substituting the following provision in lieu thereof:

**EXHIBIT B**

B FLG	BLK/BLDG	IND FLG	LOT/QUAR	PARCEL NUMBER	OBSOLETE?
		L	ST	09-31-203-024-0000	NO
		L	101	09-31-209-002-0000	NO
		L	102	09-31-209-003-0000	NO
		L	103	09-31-209-004-0000	NO
		L	104	09-31-209-005-0000	NO
		L	105	09-31-208-008-0000	NO
		L	106	09-31-208-007-0000	NO
		L	107	09-31-208-006-0000	NO
		L	108	09-31-208-005-0000	NO
		L	109	09-31-208-004-0000	NO
		L	110	09-31-208-003-0000	NO
		L	111	09-31-208-002-0000	NO
		L	112	09-31-208-001-0000	NO
		L	113	09-31-202-005-0000	NO
		L	114	09-31-202-006-0000	NO
		L	AREA	09-31-203-024-0000	NO
		L	ST	09-31-203-024-0000	NO
		L	201	09-31-203-005-0000	NO
		L	202	09-31-203-011-0000	NO
		L	203	09-31-203-010-0000	NO
		L	204	09-31-203-009-0000	NO
		L	205	09-31-203-008-0000	YES
		L	205	09-31-203-025-0000	NO
		L	206	09-31-203-007-0000	NO
		L	207	09-31-203-006-0000	NO
		L	AREA	09-31-203-024-0000	NO
		L	ST	09-31-203-024-0000	NO
		L	301	09-31-203-023-0000	NO
		L	302	09-31-203-022-0000	YES
		L	302	09-31-203-029-0000	NO
		L	303	09-31-203-021-0000	NO
		L	304	09-31-203-020-0000	YES
		L	305	09-31-203-019-0000	YES
		L	306	09-31-203-018-0000	YES
		L	307	09-31-203-017-0000	YES
		L	308	09-31-203-016-0000	NO
		L	309	09-31-203-015-0000	NO
		L	310	09-31-203-014-0000	NO

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(1)

**EXHIBIT B**

B FLG	BLK/BLDG	IND FLG	LOT/QUAR	PARCEL NUMBER	OBSOLETE?
		L	311	09-31-208-009-0000	NO
		L	312	09-31-202-008-0000	NO
		L	313	09-31-202-007-0000	NO
		L	314	09-31-202-009-0000	NO
		L	315	09-31-202-010-0000	NO
		L	316	09-31-202-011-0000	NO
		L	317	09-31-202-012-0000	NO
		L	318	09-31-202-013-0000	NO
		L	AREA	09-31-203-024-0000	NO
		L	ST	09-31-203-024-0000	NO
		L	401	09-31-203-013-0000	NO
		L	402	09-31-203-012-0000	NO
		L	403	09-30-454-019-0000	NO
		L	404	09-30-455-020-0000	NO
		L	405	09-30-455-019-0000	NO
		L	406	09-30-454-018-0000	NO
		L	407	09-30-454-017-0000	NO
		L	408	09-30-455-011-0000	NO
		L	409	09-30-455-012-0000	NO
		L	410	09-30-455-013-0000	NO
		L	411	09-30-455-014-0000	NO
		L	412	09-30-455-015-0000	NO
		L	413	09-30-455-016-0000	NO
		L	414	09-30-455-017-0000	NO
		L	415	09-30-455-018-0000	NO
		L	AREA	09-31-203-024-0000	NO

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“3.2 The Board shall consist of either five or seven trustees. In the event that fewer than seven Members present themselves as candidates, the Board shall consist of five trustees; otherwise the Board shall consist of seven trustees.”

b. Section 6.5 of the Original By-Laws was amended by adding the following provision:

“Any printed or written notice required to be given to a Member under the provisions of these By-Laws may be given by electronic mail, provided that an electronic mail address has been filed with the Secretary of the Association by that Member. Any electronic mail address filed with the Secretary shall be deemed valid until notice of a change in such address is filed with the Secretary. In the event that an electronic mail notice is sent but is returned as undeliverable, such notice shall be deemed invalid.”

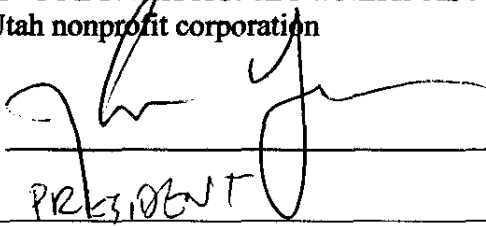
5. In the event of a conflict between any provision of the First Amendment and the Original By-Laws, the provisions of the First Amendment shall control.

**IN WITNESS WHEREOF**, the Association has executed this Memorandum as of the day and year first written above.

CAPITOL PARK HOMEOWNERS ASSOCIATION, INC.,  
a Utah nonprofit corporation

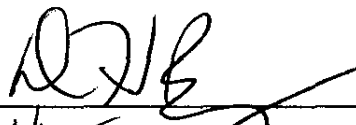
By

Its

  
PRESIDENT

By

Its

  
VICE PRESIDENT

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

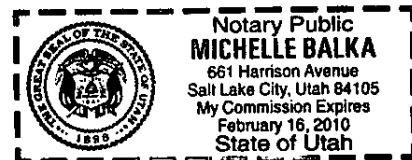
The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of September, 2006, by ~~Michelle Balka~~ DAWN PAYNE, the VP Vice President of Capitol Park Homeowners Association, Inc., a Utah nonprofit corporation

Michelle Balka  
NOTARY PUBLIC

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

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of September, 2006, by ~~Michelle Balka~~ John Yoon, the VP President of Capitol Park Homeowners Association, Inc., a Utah nonprofit corporation

Michelle Balka  
NOTARY PUBLIC



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**EXHIBIT "A"**

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**Copy of the Original By-Laws**

**(attached)**

**BY-LAWS**  
**OF**  
**CAPITOL PARK HOMEOWNERS ASSOCIATION, INC.**

**Article I**  
**Name, Principal Office, and Definitions**

1.1. Name. The name of the corporation is Capitol Park Homeowners Association, Inc. (The Association). It is a Utah non-profit corporation.

1.2. Principal Office. The principal office of the Association shall be located at 6995 Union Park Avenue #100, Salt Lake City, Utah 84047. The Association may have such other offices, either within or outside the State of Utah, as the Board of Trustees may determine or as the affairs of the Association may require.

1.3. Definitions. The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the Declaration of Covenants, Conditions, and Restrictions for Capitol Park filed in the office of the Salt Lake County Recorder as it may be amended from time to time (the "Declaration"), unless the context indicates otherwise.

**Article II**  
**Association: Membership, Meetings, Quorum, Voting, Proxies**

2.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board or the membership administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles and the laws of the State of Utah.

2.2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership as one Member applicable to that Unit subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person

may be exercised by any officer, trustee, partner, or other individuals designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

2.3. Voting. The Association shall have two classes of membership, Class "A" and Class "B".

(a) Class "A": Class "A" Members shall be all Owners except the Class "B" Member, if any.

Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 3.2 of the Declaration; provided, there shall be only one vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 8.10 of the Declaration.

In any situation where there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and the co-Owners shall advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one of the co-Owners seeks to exercise the vote.

(b) Class "B": The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint a majority of the members of the Board of Trustees during the Class "B" Control period, as specified in the By-Laws. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in Section 3.19 of the By-Laws.

The Class "B" membership shall terminate two years after expiration of the Class "B" Control Period pursuant to Article III of the By-Laws unless the Declarant voluntarily terminates such membership earlier by filing a written notice of termination in the Public Records. Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which the Declarant owns.

2.4. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place in Salt Lake County, which is convenient to the Members, as may be designated by the Board.

2.5. Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held prior to March 31, 1997. Subsequent regular annual



meetings shall be set by the Board so as to occur during the month of March of each year on a date and at a time set by the Board.

2.6. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members representing at least 25% of the total Class "A": votes in the Association.

2.7. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 7 nor more than 50 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at its address as it appears on the records of the Association, with postage prepaid.

2.8. Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member or the Member's proxy shall be deemed a waiver by such Member of notice of the time, date, and place thereof, unless such Member or proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.9. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, Members or their proxies holding a majority of the votes represented at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting, then notice shall be given to members in the manner prescribed for regular meetings.

The Members represented at a duly called or held meeting at which a quorum is present may continue to do business until adjournment.

2.10. Proxies. At all meetings of Members, each Member may vote in person (if a corporation, partnership or trust, through any officer, trustee, partner or trustee duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of Utah law.

All proxies shall be in writing specifying the Unit(s) for which it is given, signed by the Member or its duly authorized attorney-in-fact, dated and filed with the Secretary of the Association prior to any meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable. A proxy shall automatically cease upon conveyance of any Unit for which it was given; or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member who is a natural person; or upon written revocation; or upon the expiration of 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

2.11. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence, in person or by proxy, of Members representing 25% of the total Class "A" votes in the Association shall constitute a quorum at all meetings of the Association.

2.12. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote thereon. Such consent shall be filed with the minutes of the Association, and shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

### **Article III**

#### **Board of Trustees: Number, Powers, Meetings**

##### **A. Composition and Selection.**

3.1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Trustees, each of whom shall have one equal vote. Except with respect to trustees appointed by the Class "B" Member, the trustees shall be Members or Residents; provided, no Owner or Resident representing the same Unit may serve on the Board at the same time. A "Resident" shall be any natural person 18 years of age or older whose principal place of residence is a Unit within the Properties. In the case of a Member which is not a natural person, any officer, trustee, partner, employee or trust officer of such Member shall be eligible to serve as a trustee unless otherwise specified by written notice to the Association signed by such Member; provided, no Member may have more than one such representative on the Board at a

time, except in the case of trustees appointed by the Class "B" Member.

3.2. Number of Trustees. The Board shall consist of three to five trustees, as provided in Sections 3.3 and 3.5 below. The initial Board shall consist of three trustees as identified in the Articles of Incorporation.

3.3. Trustees During Class "B" Control Period. Subject to the provisions of Section 3.5. below, the trustees shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the first to occur of the following:

(a) when 75% of the total number of Units proposed by the Master Plan for the property described on Exhibits "A" and "B" of the Declaration have certificates of occupancy issued thereon and have been conveyed to Persons other than Builders;

(b) December 31, 2001; or

(c) when, in its discretion, the Class "B" Member so determines.

3.4. Nomination and Election Procedures.

(a) Nominations and Declaration of Candidacy. Prior to each election of trustees by the Class "A" Members, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a trustee may file as a candidate for any position to be filled by votes of Class "A" Members. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of trustees in a fair, efficient and cost-effective manner. Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

Except with respect to trustees selected by the Class "B" Member, nominations for election to the Board may also be made by a Nominating Committee. The Nominating Committee, if any, shall consist of a Chairperson, who shall be a member of the Board, and three or more Members or representatives of Members. The Board shall appoint the members of the Nominating Committee not less than 30 days prior to each annual meeting to serve a term of one year and until their successors are appointed, and such appointment shall be announced at each annual meeting.

The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing

the diversity which exists within the pool of potential candidates.

(b) Election Procedures. Each Owner may cast the entire vote assigned to his Unit for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Trustees may be elected to serve any number of consecutive terms.

3.5. Election and Term of Office. Notwithstanding any other provision of these By-Laws:

(a) When 25% of the total number of Units proposed by the Master Plan for the property described in Exhibits "A" and "B" of the Declaration, or whenever the Class "B" Member earlier determines, the President shall call for an election by which the Class "A" Members shall be entitled to elect one of the three trustees. The remaining two trustees shall be appointees of the Class "B" Member. The trustee elected by the Class "A" Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (b), whichever is shorter. If such trustee's term expires prior to the happening of the event described in subsection (b), a successor shall be elected for a like term.

(b) When 50% of the total number of Units proposed by the Master Plan for the property described in Exhibits "A" and "B" of the Declaration, or whenever the Class "B" Member earlier determines, the Board shall be increased to five trustees. The President shall call for an election by which the Class "A" Members shall be entitled to elect two of the five trustees. The remaining three trustees shall be appointees of the Class "B" Member. The trustees elected by the Class "A" Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (c) below, whichever is shorter. If such trustees' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) Within 90 days after the termination of the Class "B" Control Period, the President shall call for an election by which the Class "A" Members shall be entitled to elect three of the five trustees, who shall serve as at-large trustees. The remaining two trustees shall be appointees of the Class "B" Member. The trustees elected by the Class "A" Members shall not be subject to removal by the Class "B" Member and shall serve until the first annual meeting following the termination of the Class "B" Control Period. Thereafter, this subsection shall not apply and trustees shall be elected in accordance with subsection (d) below.

(d) Not later than the first annual meeting after the termination of the Class "B" Control Period, four trustees shall be elected by the Class "A" Members, with

the four trustees receiving the largest number of votes being elected for the term of two years. Until termination of the Class "B" membership, the Class "B" Member shall be entitled to appoint one trustee. Upon termination of the Class "B" membership, the trustee elected by the Class "B" Member shall resign and the remaining trustees shall be entitled to appoint a trustee to serve until the next annual meeting, at which the Class "A" Members shall be entitled to elect a trustee to fill such position. Such trustee shall be elected for a term of two years. Upon the expiration of the term of office of each trustee elected by the Class "A" Members, a successor shall be elected to serve a term of two years. The trustees elected by the Class "A" Members shall hold office until their respective successors have been elected.

3.6. Removal of Trustees and Vacancies. Any trustee elected by the Class "A" Members may be removed, with or without cause, by Members holding a majority of the votes entitled to be cast for his or her election. Any trustee whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a trustee, a successor shall be elected by the Class "A" Members to fill the vacancy for the remainder of the term of such trustee.

Any trustee elected by the Class "A" Members who has three or more consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the trustees present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a trustee elected by the Class "A" Members, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members shall elect a successor for the remainder of the term.

This Section shall not apply to trustees appointed by the Class "B" Member nor to any trustee serving as a representative of the Declarant. The Class "B" Member shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a trustee appointed by or elected as a representative of the Class "B" Member.

B. Meetings.

3.7. Organizational Meetings. The first meeting of the Board following each annual meeting of the membership shall be held within 30 days thereafter at such time and place as the Board shall fix.

3.8. Regular Meetings. Regular meetings of the Board may be held at such time and place as a majority of the trustees shall determine, but at least one such meeting shall be

held during each fiscal year.

3.9. Special Meetings. Special meetings of the Board of Trustees shall be held when called by written notice signed by the President or Vice President or by any two trustees. The notice shall specify the time and place of the meeting and the nature of any special business to be considered.

3.10 Notice; Waiver of Notice.

(a) Notice of the time and place of a regular meeting shall be communicated to trustees not less than four calendar days prior to the meeting. Notice of the time and place of a special meeting shall be communicated to trustees not less than 72 hours prior to the meeting. Notice shall be given to each trustee by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) or fax transmission to the trustee's home or office, with confirmation of receipt by the receiving fax. All such notices shall be given at the trustee's telephone or fax number or sent to the trustee's address as shown on the records of the Association. Notices sent by first class mail shall be deemed communicated two business days after being deposited into the United States mail. Notices given by personal delivery or fax shall be deemed communicated when delivered or faxed.

(b) The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each of the trustees not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any trustee who attends the meeting without protesting, before or at its commencement, about the lack of adequate notice.

3.11. Telephone Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.12. Quorum of Board of Trustees. At all meetings of the Board, a majority of the trustees shall constitute a quorum for the transaction of business, and the votes of a majority of the trustees present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. If any meeting of the Board cannot be held because a quorum is not present, a majority of the trustees present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a

quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13. Compensation. Trustees shall not receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any trustee may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other trustees. Nothing herein shall prohibit the Association from compensating a trustee, or any entity with which a trustee is affiliated, for services or supplies furnished to the Association in a capacity other than as a trustee pursuant to the contract or agreement with the Association, provided that such trustee's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Trustees, excluding the interested trustee.

3.14. Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.15. Notice to Owners; Open Meetings. Subject to the provisions of Section 3.16, all meetings of the Board shall be open to all Members, but Members other than trustees may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a trustee. In such case, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.16. Action Without a Formal Meeting. Any action to be taken at a meeting of the trustees or any action that may be taken at a meeting of the trustees may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the trustees, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.17. Powers. The Board of Trustees shall have all the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these By-Laws, the Articles, and as provided by law. The Board may do or cause to be done all acts and things that are not directed by the Declaration, Articles, these By-Laws, or Utah law to be done and exercised exclusively by the membership generally.

3.18. Duties. The duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each owner's share of the Common Expenses;

- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;
- (d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the trustees' best business judgment, in depositories other than banks;
- (f) making and amending use restrictions and rules in accordance with the Declaration;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;
- (i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules of the Association and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action;
- (j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (k) paying the cost of all services rendered to the Association;
- (l) keeping books with detailed accounts of the receipts and expenditures of the Association;



(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers and guarantors of any Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules and all other books, records, and financial statements of the Association, as provided in Section 6.4;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties; and

(o) indemnifying a trustee, officer or committee member, or former trustee, officer or committee member of the Association to the extent such indemnity is required under Utah law, the Articles of Incorporation or the Declaration.

3.19. Right of Class "B" Member to Disapprove Actions. So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of the Declarant or Builders under the Declaration or these By-Laws, or interfere with development of or construction on any portion of the Properties, or diminish the level of services being provided by the Association.

(a) The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to the Board meetings with Sections 3.8, 3.9, 3.10, and 3.11 and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met. The Class "B" Member, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or trustee, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or

the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.20. Management. The Board of Trustees may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board of Trustees may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy making authority or those duties set forth in Sections 3.18(a), 3.18(b), 3.18(f), 3.18(g) and 3.18(i). The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

The Board of Trustees may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.21. Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;
- (d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing good or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;
- (e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;
- (f) commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:
  - (i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period;  
and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (Any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution); and

(g) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year; (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board determines, by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement.

3.22. Borrowing. The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner provided for Special Assessments in Section 8.5. of the Declaration if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 10% of the budgeted gross expenses of the Association for that fiscal year.

3.23. Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhoods and other owners or residents associations, within and outside the Properties; provided, any common management agreement shall require the consent of a majority of the total number of trustees of the Association.

3.24. Enforcement. In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable monetary fines, which shall constitute a lien upon the Unit of the violator, and to suspend an Owner's right to vote for violation of any duty imposed under the Declaration, these By-Laws, or any Association rules. In addition, the Board may suspend any services provided by the Association to an

Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, tenant, employee, guest or invitee of a Unit violates the Declaration, By-Laws, or a rule and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the fine shall be assessed against the Unit and the Owner thereof upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder or under the Declaration, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to Article V; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed; provided, the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If a hearing is requested within the allotted 10 day period, the hearing shall be held before the Covenants Committee, if one, or if none, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, trustee, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. Following a hearing before the Covenants Committee, if one exists, the violator shall have the right to appeal the decision to the Board of Trustees. To exercise this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within 10 days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Declaration, these By-Laws, or the rules of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules)

or, following compliance with the dispute resolution procedures set forth in Article XIV of the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. Any entry onto a Unit for purposes of exercising this power of self-help shall not be deemed as trespass.

#### **Article IV** **Officers**

4.1. **Officers.** The officers of the Association shall be a President, Vice President, and Secretary-Treasurer. The President and Secretary-Treasurer shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries-Treasurers, as it shall deem desirable; such officers shall have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary-Treasurer.

4.2. **Election and Term of Office.** The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Members, to serve until their successors are elected.

4.3. **Removal and Vacancies.** The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. **Powers and Duties.** The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Trustees. The President shall be the chief executive officer of the Association. The Secretary-Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5. **Resignation.** Any officer may resign at any time by giving written notice to the Board of Trustees, the President, or the Secretary-Treasurer. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6. **Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements,

contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of trustees under Section 3.13.

#### **Article V** **Committees**

5.1. General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2. Covenants Committee. In addition to any other committees which the Board may establish pursuant to the Declaration, these By-Laws and, specifically, Section 5.1., the Board may appoint a Covenants Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.24. of these By-Laws. If a Covenants Committee is not appointed, the Board shall function as the hearing tribunal of the Association.

#### **Article VI** **Miscellaneous**

6.1. Fiscal Year. The fiscal year of the Association shall run from March to March unless the Board establishes a different fiscal year by resolution.

6.2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Utah law, the Articles of Incorporation, the Declaration, or these By-Laws.

6.3. Conflicts. If there are conflicts between the provisions of Utah Law, the Articles of Incorporation, the Declaration, or these By-Laws, the conflict shall be resolved by reference to the prior listed authority, as set forth in this sentence.

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage of a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for the purpose reasonably related to his or her

interest in a Unit: the Declaration, By-Laws, and Articles of Incorporation, any amendments to the foregoing, the rules of the Association, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Trustees. Every trustee shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a trustee includes the right to make a copy of relevant documents at the expense of the Association.

6.5. Notices. Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, and other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member; or

(b) if to the Association, the Board of Trustees, or the managing agent, at the principal office of the Association or the managing agent, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6. Amendment.

(a) By Class "B" Member. During the Class "B" Control Period, the Class "B" Member may amend these By-Laws, subject to the requirements of the Declaration, if applicable. Thereafter, the Class "B" Member may amend these By-Laws if such amendment is specifically required to enable the U.S. Department of Veterans Affairs, the U.S. Department of Housing and Urban Development, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation to make,

purchase, insure or guarantee mortgage loans on the Units; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing.

(b) By Members Generally. Except as provided in (a), above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least 51% of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. In addition, the requirements of the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under the clause.

(c) Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon recordation in the Public Records, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

If a Member consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Member has the authority to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

#### CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting President of Capitol Park Homeowners Association, Inc., an Utah corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Trustees thereof held on the 13th day of March, 1997.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 13th day of March, 1997.



President

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**EXHIBIT "B"**

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**Legal Description of the Subject Property**

**(attached)**