

RECORDING REQUESTED BY:

Wells Fargo Foothill, LLC

AND WHEN RECORDED MAIL TO:

Paul, Hastings, Janofsky & Walker LLP
515 South Flower Street
25th Floor
Los Angeles, CA 90071
Attn: John Francis Hilson
Re: American Blue Ribbon Holdings, LLC



W2525118

E# 2525118 PG 1 OF 8
ERNEST D ROWLEY, WEBER COUNTY RECORDER
28-APR-11 12:26 PM FEE \$24.00 DEP SY
REC FOR: LAWYERS TITLE INSURANCE CORPOR
ELECTRONICALLY RECORDED

Space above this line for recorder's use only

WAIVER AND CONSENT BY REAL PROPERTY OWNER(S)
("Waiver and Consent")

THIS WAIVER AND CONSENT is made and entered into between **WELLS FARGO Foothill, LLC**, a Delaware limited liability company ("**WFF**"), as arranger and administrative agent for certain lenders (in such capacity, "**Agent**"), and RealtyNet, LLC, 1031 Exchange PL LC MPP, Van E. Burgess, Markham & Shirley Miller, Austin L. Hayward, Karen & Mark Mitchell, Shyam & Elaine Advani, ("**Owner**"), and affects that real property in the City or Town of Ogden, County of Weber, State of UT, fully described on Exhibit A attached hereto and made a part hereof by this reference, and more commonly known as 322 12th Street, Ogden, UT 84404-5713 (hereinafter referred to as the "**Premises**").

WHEREAS, this Waiver and Consent is executed pursuant to (i) that certain Credit Agreement, dated as of March 27, 2009 (as amended, restated, modified or supplemented from time to time, the "Credit Agreement") by and among WFF, Ableco Finance LLC, a Delaware limited liability company, and A3 Funding LP, a Cayman Islands limited partnership, as lenders (such lenders, together with their respective successors and permitted assigns, the "**Lenders**"), Fidelity Newport Holdings, LLC, a Delaware limited liability company ("**Parent**"), American Blue Ribbon Holdings, LLC, a Delaware limited liability company ("**Borrower**"), and Agent; and (ii) other agreements related thereto (hereinafter collectively referred to as the "Agreements") by and among the Lenders, Agent, Borrower and certain affiliates of Borrower (together with Borrower, individually and collectively, jointly and severally, the "**Obligors**"), which Agreements, among other things, were given by the Obligors to Agent for the purpose of securing the repayment of all obligations and the performance of all duties now or hereafter owing by the Obligors to the Lender Group, of every kind and description. This Waiver and Consent does not amend any of the terms of the Agreements and reference thereto is made for further particulars;

WHEREAS, by the Agreements, the Lender Group has loaned or has agreed to loan monies and/or extend other financial accommodations against the security of, among other collateral, all of the personal property of each of the Obligors, including, but not limited to the inventory, equipment, furniture, furnishings, trade fixtures, machinery, and tools of each of the Obligors, together with all additions, substitutions, replacements, and improvements to the same (hereinafter referred to as "Goods"), which Goods are or are to be located on and may be affixed to the Premises or be improvements thereon; and

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LEGAL_US_W# 61208745.2

WHEREAS, AMERICAN BLUE RIBBON HOLDINGS, LLC ("Tenant") has leased the Premises from Owner by that certain Lease Agreement dated 5/14/2001 (the "Lease"). This Waiver and Consent does not amend any of the terms of the Lease and reference thereto is made for further particulars.

Agent and Owner agree that:

1. Owner acknowledges that (i) the Lease is in full force and effect and constitutes the legal, valid and binding obligation of Owner enforceable against Owner in accordance with its terms except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally, (ii) this Waiver and Consent constitutes the legal, valid and binding obligation of Owner enforceable against the Owner in accordance with its terms except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally, and (iii) as of the date hereof, Owner is not aware of any existing default under the Lease or any such default which would result from the execution, delivery and performance of the Agreements.
2. The Goods shall be and remain personal property notwithstanding the manner of their annexation to the Premises, their adaptability to the uses and purposes for which the Premises are used, or the intentions of the party making the annexation.
3. Owner hereby subordinates to Agent and the Lenders any rights which Owner may claim to have in and to the Goods, no matter how arising, including, without limitation, all rights of levy or distraint or liens for rent.
4. Owner consents to the installation of the Goods on the Premises, agrees that Agent may do to and with the Goods any or all of the acts below enumerated, and grants Agent the right, as set forth below, to enter into possession of the Premises to do any or all of the following (the "Permitted Actions") with respect to the Goods: assemble, have appraised, display, sever, remove, maintain, prepare for sale or lease, advertise, inspect, repair, lease, transfer, and/or sell (at public auction or private sale). Agent shall have the right and license to enter into and to occupy the Premises, for the purposes described above, for an actual occupancy period of up to one hundred twenty (120) days (at Agent's discretion), following the later of (a) Owner placing Agent in possession of the Premises; and (b) abandonment or surrender of the Premises by Tenant, whether voluntary or involuntary; provided, however, if Agent is prohibited by any process or injunction issued by any court, or by reason of any bankruptcy or insolvency proceeding involving the Tenant, from enforcing its security interest in the Goods, the one hundred twenty (120) day period shall commence upon termination of such prohibition. In consideration of the foregoing, Agent agrees (to the extent not paid by the Tenant) to pay to Owner, for the use and occupancy of the Premises by Agent as provided above, per diem rent (based upon then current base rent and the Tenant's pro rata share of operating costs, utilities and taxes payable by the Tenant under the Lease but excluding any supplemental rent or other costs, expenses or amounts or any indemnities payable thereunder, upon default or otherwise) for each day Agent actually uses or occupies the Premises as provided above, based upon a thirty (30) day month for actual days of occupancy by Agent. Any extensions of the foregoing period shall be with the written consent of Owner and at the same rate. All physical damage to the Premises

caused by the removal of the Goods shall be reimbursed or repaired by Agent at the Lender Group's expense.

5. Owner acknowledges that at any time prior to Owner placing Agent in possession of the Premises, or abandonment of or surrender of the Premises by Tenant, Agent may take any or all of the Permitted Actions subject only to Agent's Agreements with the Obligors.

6. Owner agrees to give Agent written notice (a) within five (5) business days after any default under or termination of the Lease by Tenant, or any abandonment or surrender of the Premises by the Tenant, and (b) thirty (30) days prior to any termination of the Lease or repossession of the Premises by Owner, said notice to be sent to the following address:

Wells Fargo Foothill, LLC,
2450 Colorado Boulevard, Suite 3000 West
Santa Monica, California 90404
Attention: Business Finance Manager

7. Agent shall have the right, without the obligation, to cure any event of default under the Lease within ten (10) days after the receipt of such notice. Any of the foregoing done by Agent shall be effective to cure an event of default as if the same had been done by the Tenant and shall not be deemed an assumption of the Lease or any of the Tenant's obligations thereunder by Agent. Owner agrees that Agent shall not have any obligations to Owner under the Lease or otherwise or any obligation to assume the Lease or any obligations thereunder.

8. This Waiver and Consent shall continue until such time as all the Obligors' obligations to Agent and the Lender Group under the Agreements, and expenses (including, without limitation, attorneys' fees) incurred in connection therewith, have been paid in full and all covenants and conditions as more specifically enumerated in the Agreements have been fully performed.

9. This Waiver and Consent may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Waiver and Consent. Delivery of an executed counterpart of this Waiver and Consent by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Waiver and Consent. Any party delivering an executed counterpart of this Waiver and Consent by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Waiver and Consent but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Waiver and Consent. This Waiver and Consent may not be supplemented, amended or modified except in writing executed by the parties hereto.

10. This Waiver and Consent or a memorandum hereof may be recorded in the real property records of the county in which the Premises are located.

11. This Waiver and Consent shall inure to the benefit of and be binding upon the successors, heirs, and assigns of Owner and Agent.

12. THE VALIDITY OF THIS WAIVER AND CONSENT, ITS CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT, AND THE RIGHTS OF THE PARTIES HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS WAIVER AND CONSENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE IN WHICH THE PREMISES ARE LOCATED.

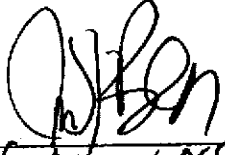
[Signature pages to follow]

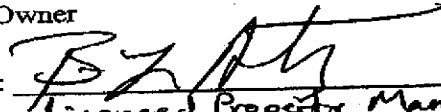
Dated: 8/25/09

Dated: 5-11-09

WELLS FARGO FOOTHILL, LLC,
a Delaware limited liability company,
as Agent

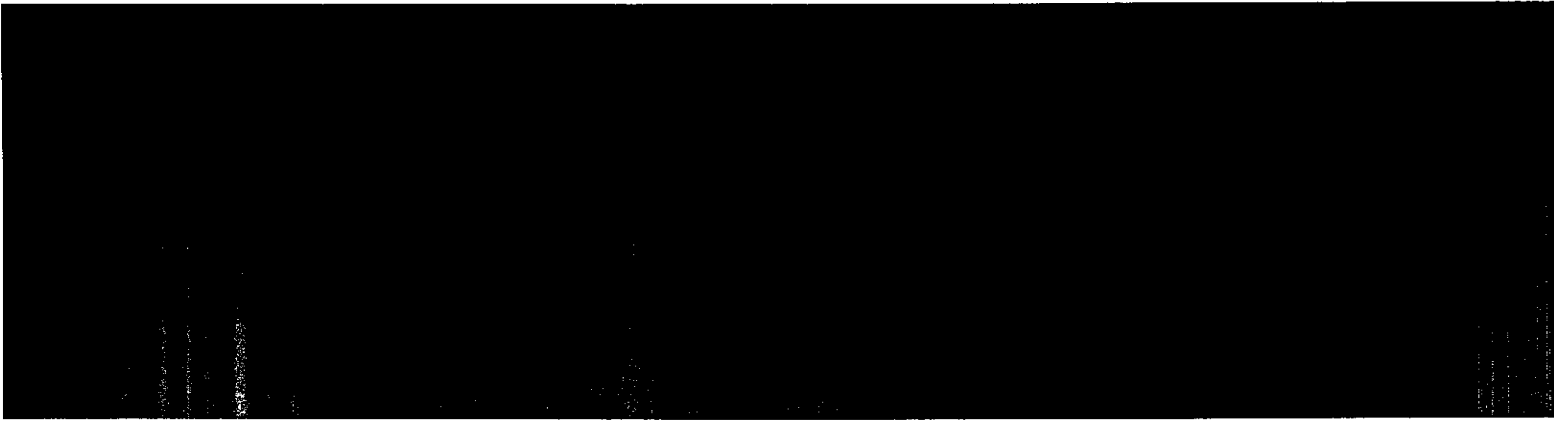
RealtyNet, LLC, 1031 Exchange PL LC MPP, Van
E. Burgess, Markham & Shirley Miller, Austin L.
Hayward, Karen & Mark Mitchell, Shyam &
Elaine Advani,

By: 
Its: Sr Account Officer, VA
James Belanger

as Owner
By: 
Its: Licensed Property Manager,
Principal Broker
Bruce Armstrong

Address: 2450 Colorado Avenue
Suite 3000 West
Santa Monica, California 90404

Address: 560 South State St., #K-4
Orem, UT 84058




STATE OF Utah)
) ss.
 COUNTY OF Utah)

On May 11 2009 before me, Cherie Anderson, a Notary Public, appeared Bruce Armstrong personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within Waiver and Consent and acknowledged to me that she/he executed the same in her/his authorized capacity, and that by her/his signature on the Waiver and Consent, the entity upon behalf of which the person acted, executed the Waiver and Consent.

WITNESS my hand and official seal.

Cherie Anderson
 Notary Public

Cherie Anderson
 Name (Typed or Printed)



CHERIE ANDERSON
 NOTARY PUBLIC-STATE OF UTAH
 1280 SOUTH 800 EAST
 OREM, UTAH 84097
 COMM. EXP. 6-27-2012

ACKNOWLEDGMENT

State of California
County of Los Angeles

On August 26, 2009 before me, D'Nira S. Walden, Notary Public
(insert name and title of the officer)

personally appeared James Belanger
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in
his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.




Signature *[Handwritten Signature]* (Seal)

Exhibit "A"

Legal Description

Village Inn #10750/Weber County, Ogden, UT

Part of the Northeast Quarter of Section 20, Township 6 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey: Beginning at a point on the North line of the State Road which is South 88°59'53" East (South 89°20'47" East) 320.01 feet along said North line from the intersection of said North line from the East line of Childs Avenue, said point is also North 0°58' East 46.57 feet and South 88°59'53" East (South 89°20'47" East) 320.01 feet from the intersection of the original North line of 12th Street and the East line of Childs Avenue; thence South 88°59'53" East (South 89°20'47" East) 250.00 feet along said North line to a point 404.5 feet West of the West line of Washington Blvd.; thence North 0°50'15" East 337.04 feet; thence North 89°09'45" West 250.00 feet; thence South 0°50'15" West 337.84 feet to the point of beginning.

The following is shown for informational purposes only: Tax Parcel No. 12-110-0045 

110750