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When Recorded
Return To
Thor Roundy, Esq.
448 East 400 South, Ste. 100
Salt Lake City, UT 84111

ENT 26763:2008 PG 1 of 13
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2008 Aug 29 2:49 pm FEE 384.00 BY SS
RECORDED FOR SIMONSEN, SCOTT

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

NOTICE TO CLOSING AGENT, SELLER AND PURCHASER

THIS INSTRUMENT MAY REQUIRE COLLECTION OF A FEE,
CHARGE OR ASSESSMENT IN CONNECTION WITH CONVEYANCE OF TITLE.

Instructions to Closing Agent: Check the official public records for subsequent amendments to this Instrument. Check paragraph 6 of this Instrument for exempt sales. For non-exempt sales made before expiration of this Instrument (see paragraph 2), collect one percent (1%) of the Gross Sales Price from the Seller (see paragraph 5), retain Closing Agent fee (see ¶13e) and remit balance to Trustee (see paragraphs 9, 14). Contact Trustee with inquiries related to this Instrument and for assistance with closing. See also ¶13.

KNOW ALL MEN BY THESE PRESENTS THAT this Declaration is made by **FOX HOLLOW SARATOGA, LLC, A UTAH LIMITED LIABILITY COMPANY**, whose mailing address is 3750 West 500, South Salt Lake City, UT 84104 (hereinafter "Declarant") together with all of Declarant's heirs, successors and assigns and is as follows:

WITNESSETH:

WHEREAS, Declarant is the present owner of that certain real property ("Property") located in Utah County, State of Utah, described as follows:

Assessor Parcel #(s): _____

The real property located in Utah County, Utah, as more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that Declarant hereby declares that the Property shall be held, sold, subjected to and conveyed subject to the following covenants, conditions, restrictions, charges, obligations, duties and Liens, ("Covenants");

1. **DEFINITIONS.** In addition to words and phrases defined elsewhere in this Instrument, the following definitions shall apply:
 - a. "Beneficiary" shall refer to each party entitled to all or part of a Transfer Fee paid pursuant to this Instrument. The plural term "Beneficiaries" shall refer to all parties entitled

to a portion of the Transfer Fee.

b. "Closing Agent" shall have its customary meaning within the real estate industry, and generally shall refer to the party responsible for facilitating a closing, usually either a title company, attorney or escrow agent who prepares paperwork and conducts a closing related to the Transfer of Title. Also referred to as the "settlement agent".

c. "Deed" shall mean the means of conveyance of an ownership interest in the Property, which shall include but not be limited to: warranty deed; trustee deed; quit claim deed; executor's deed; administrator's deed; order; title or other instrument of conveyance.

d. "Gross Sales Price" shall mean the total consideration for that portion of the Property being conveyed, paid by or on behalf of the purchaser of the Property (whether by cash, installment note, trade, agreement, or otherwise), to or for the benefit of the Seller of the Property. The Gross Sales Price shall exclude prorated and prepaid property taxes and interest, title policy fees, escrow fees, and similar fees and expenses.

e. "Instrument" shall mean this document.

f. "Of Record" shall mean filed in the OPR.

g. "OPR" shall mean the Office of Public Records (also known as, and also referred to herein as, "official public records", "deed records", "county recorder's office", "county clerk's office" and "public records") of the county and/or town in which the Property is located; the recorder's office for recording of deed, Liens and similar real property records. All documents required under this Instrument to be filed in the OPR shall be filed in recordable form, with all filing fees paid, and with a copy to the Trustee by certified mail.

h. "Owner" shall mean each party (whether one or more) holding title to all or part of the Property that is subject to this Instrument, including their heirs, successors, assigns and others acquiring title by or through them.

i. "Parties to this Instrument" shall mean persons, firms and entities then holding rights or having obligations under this Instrument.

j. "Property" and "Land" shall mean the real property described or referenced on page one of this Instrument.

k. "Transfer of Title" shall mean transfer of an ownership interest in the Property, in whole or in part, whether by deed, instrument, title or otherwise.

2. TERM. Except as otherwise provided herein, this Instrument and the covenants contained herein shall take effect upon filing of this Instrument in the OPR and shall expire at midnight ninety nine (99) years from the date referenced in 6(j) hereof.

3. CONSENT. By acceptance of an ownership interest in the Property, each Owner covenants, acknowledges, consents and agrees to the terms, conditions, promises, stipulations, grant of rights and authority, covenants, charges, Liens, obligations, duties and restrictions contained in this Instrument, intending to be legally bound by same to the maximum extent allowed by law, and to the same extent as if expressed in the Deed, and takes and conveys title to the Property subject to the provisions of this Instrument. Each Owner acquiring title, whether expressed in the deed or not, covenants and agrees to payment of the Transfer Fee (as defined below) as a condition precedent to Owners conveyance of title to the Property.

4. CONSIDERATION. Each Owner consents and agrees (a) that Declarant has caused one or more tangible and intangible improvements to, impressed benefits upon, or created common areas and easements appurtenant to, the Property; (b) the consideration paid by Owner was based in whole or in part upon the existence of this Instrument; (c) that this Instrument benefits the land within the community in which the Property is located, and, by extension, the Property itself and (d) that the foregoing and this Instrument benefit the Property and the Owner, (said improvements, benefits and consideration in "a-d" jointly and singularly "Improvements"). Each Owner expressly covenants, acknowledges and agrees (1) that the Improvements all and

singularly benefit the Owner and are appurtenant to the Property; (2) the Transfer Fee is, in whole or in part, compensation for the Improvements, the consideration paid for the Property, and for the rights granted herein and the benefits flowing therefrom, and (3) that in consideration therefore, and for other good, valuable, independent and adequate consideration, the receipt and sufficiency of which is intended and acknowledged by Owner's acceptance of the Deed, and as a covenant running with the land, a contract, and a deed restriction, the Owner shall be bound by the terms and conditions of this Instrument.

5. AMOUNT DUE. Except as otherwise provided herein, contemporaneous with, and as a condition to, Transfer of Title to the Property, the party conveying title ("Seller") shall pay to Trustee, as agent for Beneficiaries, a fee (the "Transfer Fee") equal to one percent (1%) of the "Gross Sales Price" of the property being conveyed.

6. EXEMPTIONS. The Transfer Fee shall be waived for each Transfer of Title (a) by the Declarant; (b) between spouses; (c) where title transfers solely by will, probate or pursuant to bankruptcy or judicial proceedings; (d) by an institutional lender or trustee made in connection with judicial or non-judicial foreclosure of a trust deed (interchangeably referred to herein as a "mortgage"); (e) where title is held or acquired solely by a governmental agency (whether local, state, federal or otherwise), (f) by a Beneficiary; (g) by the Trustee; (h) where the Trustee cannot be identified by reference to the official public records; (i) where imposition of the Transfer Fee is prohibited by applicable law or (j) occurring prior to filing of this Instrument in the OPR.

7. DEED RESTRICTION: This Instrument and the premises and promises contained herein are intended to operate as a covenant running with the land and as a deed restriction (whether stated in the deed or not). Whether expressed therein or not, a deed by Declarant conveying all or part of Declarant's interest in the Property shall be deemed to contain therein a reservation providing that the conveyance is expressly subject to this Instrument. Successors, heirs and assigns acquiring title by or through Declarant (including by or through Declarant's heirs, successors and assigns) take title subject to the premises and promises contained within this Instrument and the reservation from conveyance heretofore provided. In the event of any conflict between the provisions of this Instrument and the deed of conveyance, this Instrument shall control.

8. LIEN AND PRIORITY; LIABILITY; COLLECTION. To the extent permitted by law unpaid Transfer Fees shall give rise to one or more Liens (whether vendor's, statutory, constitutional and contractual Liens, jointly and severally "Lien" or "Claim of Lien") upon the subject property, subject to the following:

a. The Lien is effective from and shall relate back to the most recent of (1) recording of the original Transfer Fee covenant or (2) recording of the most recent estoppel letter of record.

b. Where an estoppel letter has been issued by a Trustee in connection with the Transfer of Title, and payment is made in accordance therewith, no Lien shall arise.

c. The liability of a first mortgagee, or its successor or assignees, is limited to the lesser of (1) the unpaid Transfer Fee arising out of the Transfer of Title that gave rise to the mortgage; or (2) 1% of the original first lien mortgage debt.

d. The liability of a Closing Agent, including a title company issuing a policy of title insurance, is limited to one percent of the Gross Sales Price, together with court costs and fees incurred by Trustee in connection with collection of same.

e. The foregoing limits of liability do not apply to sums described in a Claim of Lien filed of record by a Trustee and which existed at the time the first mortgage or title policy was created.

f. For purposes of this subsection, the term "successor or assignee" as used with respect to a first mortgagee includes only a subsequent holder of the first mortgage.

g. As a condition precedent to foreclosure a Trustee shall file a Claim of Lien for any unpaid Transfer Fees, including interest and fees in connection therewith. To be valid, a

Claim of Lien must state the description of the subject property, the name of the record owner, the name and address of the Trustee, the amount due, and the due dates. It must be executed and acknowledged by the Trustee. No such claim (or Lien securing same) shall be effective longer than 6 years after the Transfer Fee was due unless, within that time, an action to enforce the Lien is commenced. The 6-year period shall automatically be extended for any length of time during which the Trustee is prevented from filing a claim or foreclosure action as the result of an automatic stay arising from a bankruptcy petition filed by the subject property owner or any other person claiming an interest in the subject property. The Claim of Lien shall secure all unpaid Transfer Fees as well as interest and all reasonable costs and attorney's fees incurred incident to the collection process. Upon payment in full, the person making the payment is entitled to a release of the Lien.

h. By recording a notice in substantially the following form, an owner may require the Trustee to enforce a recorded Claim of Lien against the subject property or a portion thereof:

NOTICE OF CONTEST OF LIEN

TO: (Name and address of Trustee) You are notified that the undersigned contests the Claim of Lien filed by you on _____, 20____ and recorded in the public records of Utah County, Utah at Book/Vol _____, Page _____, and that the time within which you may file suit to enforce your Lien is limited to 90 days from the date of service of this notice.

Executed this _____ day of _____, (year).

Signed: (Owner or Attorney)

i. Filing of a frivolous notice of contest of Lien shall obligate the owner for reasonable attorney fees and costs incurred by Trustee in connection therewith as well as sanctions that may be assessed within the discretion of the court. A notice is frivolous if there exists no reasonable legal basis for disputing the Claim of Lien.

j. After Notice of Contest of Lien has been recorded, a true and correct copy of the recorded notice shall be mailed to the Trustee by certified mail, return receipt requested, at the address shown in the Claim of Lien or most recent amendment to it and shall certify to the service on the face of the notice. After service, the Trustee has 90 days in which to file an action to enforce the Lien; and, if the action is not filed within the 90-day period, the Lien is void. However, the 90-day period shall be extended for any length of time that the Trustee is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the owner or by any other person claiming an interest in the subject property.

k. The Trustee may bring an action, in its name or on behalf of one or more Beneficiaries, to foreclose a Lien for unpaid Transfer Fees, together with such other sums incident thereto, in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid sums without waiving any Claim of Lien. The Trustee is entitled to recover reasonable attorney's fees incurred in either a Lien foreclosure action or an action to recover a money judgment for unpaid Transfer Fees.

l. No foreclosure judgment may be entered until at least 30 days after the Trustee gives written notice to the subject property owner of its intention to foreclose its Lien to collect the unpaid Transfer Fee. If this notice is not given at least 30 days before the foreclosure action is filed, and if the unpaid Transfer Fee is paid before the entry of a final judgment of foreclosure, the Trustee shall not be entitled to recover attorney's fees or costs. The notice must be given by delivery of a copy of the notice to the owner or by certified or registered mail, return receipt requested, addressed to the owner at his or her last known address, and, upon such mailing, the notice shall be deemed to have been given. The notice requirements of this subsection do not apply if an action to foreclose a mortgage on the subject property is pending before any court; if the rights of the Trustee or Beneficiaries would be affected by such foreclosure; and if actual, constructive, or substitute service of process has been made on the owner.

- m. The Trustee has the power to purchase the subject property at the foreclosure sale and to then hold, lease, mortgage, or convey it.
- n. An owner acquiring title is jointly and severally liable with prior owners for any unpaid Transfer Fee that existed or arose at the time of Transfer of Title to the owner. This liability is without prejudice to any right the owner may have to recover from prior owners any amounts paid by the owner.
- o. A person acquiring title to property where one or more Transfer Fees was due but unpaid shall within 30 days after written notice of default pay to the Trustee the amount owed. Failure to pay the full amount when due shall entitle the Trustee to record a Claim of Lien against the property and proceed as otherwise provided herein.
- p. A first mortgagee or its successor or assignees who acquire title to property by foreclosure or by deed in lieu of foreclosure shall have no liability for unpaid Transfer Fees that became due prior to the mortgagee's acquisition of title. The provisions of this subsection shall not be available in any case where the unpaid Transfer Fee sought to be recovered was secured by a Claim of Lien recorded prior to the recording of the mortgage.
- q. The Trustee shall be a proper party to intervene in any foreclosure proceeding to seek equitable relief.
- r. Neither foreclosure by a lender nor foreclosure by a Trustee shall extinguish this Instrument if this Instrument was of record prior to the date of foreclosure.
- s. Any proceeding under one remedy shall not constitute an election of remedies.
- t. Transfer fees which are not paid when due bear interest at the lesser of the maximum rate allowed by law or 18 percent per year.
- u. Any payment received by a Trustee shall be applied first to any permissible accrued interest, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent Transfer Fee. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment.
- v. To the extent the foregoing a-u conflicts with any applicable statute, the statute shall apply.

9. TRUSTEE AND SUCCESSORS. The following shall serve as Trustee:

National Covenant Clearinghouse, Attn: Rjon Robins, Esq., 6300 NW 5th Way,
Ft. Lauderdale, Fl. 33309

(including any successor trustee, the "Trustee"). Licensor and Trustee, jointly or severally, shall be entitled to appoint a Successor Trustee, succeeding to all rights and responsibilities of Trustee. In the event neither Licensor nor acting Trustee should be in existence, the then-existing Beneficiaries, acting jointly, or upon application of a Beneficiary a court of competent jurisdiction in Utah County, Utah, shall appoint a Trustee. Upon Trustee's request, parties to this Instrument shall promptly join in execution of any appointment made pursuant to this provision together with any documents necessary to effectuate same. However, failure of one or more party to provide written consent shall not invalidate an appointment. Appointment shall be in writing and filed of record. To the extent permitted by law, all parties to this Instrument jointly and severally waive any and all claims against Licensor and Trustee which arise out of or which are related to acts undertaken pursuant to this section.

10. NON-JUDICIAL FORECLOSURE. In the event non-judicial sale of the Property is permitted by law and initiated by Trustee, each Owner, by acceptance of the deed, whether expressed therein or not, expressly grants Trustee a power of sale in connection with the Liens. Trustee, subject to any requirements imposed by applicable law, shall:

- a. give notice of default and notice of the foreclosure sale;
- b. sell and convey all or part of the Property to the highest bidder for cash, with conveyance subject to prior liens, to other exceptions to conveyance and warranty, and to this Instrument; and
- c. from the proceeds of the sale, pay, in this order

- i. expenses of foreclosure, including a commission to Trustee of 3% of the bid;
- ii. to Beneficiaries, all sums due and unpaid, in accordance with their respective interest;
- iii. any amounts required by law to be paid before payment to Owner; and
- iv. to Owner, any balance.

Recitals in any Trustee's deed conveying the Property will be presumed true. Foreclosure of sums due and secured by the Lien shall not discharge this Instrument. Trustee is authorized to undertake any lawful action necessary to effectuate this provision.

11. TRUSTEE RIGHTS. To the maximum extent permitted by law, Beneficiaries jointly and severally grant unto Trustee the right to undertake on behalf of Beneficiaries, as agent thereof, any action Trustee deems reasonably necessary or appropriate to prosecute, defend and exercise rights and obligations arising out of or related to this Instrument, including, but not limited to, the right to:

- a. collect and disburse sums in connection with this Instrument;
- b. undertake or defend, including retaining others to undertake and defend, legal, arbitration and administrative proceedings;
- c. execute estoppels and similar documents;
- d. refile this Instrument (or a document containing the terms and conditions thereof, including any abstract or similar document) if necessary to comply with any statutes (including recording statutes) that limit the duration or validity of, or liability for, this Instrument. Any Lien arising under the refiled instrument shall relate back to date of recordation of this Instrument, however, the re-filed Instrument shall not extend the Initial Term;
- e. retain, as its fee, three percent (3%) of any and all gross Transfer Fees collected and disbursed by the Trustee pursuant to the terms of this Instrument;

12. TRUSTEE DUTIES. Trustee shall, to the maximum extent allowed by law, and as agent for Beneficiaries:

- a. hold in trust for, and not more than ninety days from date of receipt pay to, the Beneficiaries all income arising out of or related to this Instrument;
- b. retain in a separate escrow account five percent (5%) from all Transfer Fee funds received and within ninety days from date of receipt of same pay said funds to one or more non-profit or not-for-profit entities ('non-profit' or 'charity') engaged in non-political, non-religious activities for the direct or indirect benefit of the community within which the Property is located, it being the intention of this Instrument, the beneficiaries and each owner that a portion of the funds arising from the Property be reinvested in the community for the direct or indirect betterment of the Property and land within the community. The parties, including each owner (by acceptance of the deed) acknowledge, agree and stipulate that (i) charities build better communities and enhance property values; (ii) the foregoing charitable allocation is good, independent and sufficient consideration for this Instrument and the transfer fee due hereunder and (iii) the foregoing touches and concerns the land. In no event shall a non-profit, as a condition of acceptance of funds, be required to segregate or trace the funds to the Property or the community. The Trustee's discretion and determination as to the interpretation and application of this subparagraph "b" shall be conclusive and no Beneficiary shall have a right or claim to the aforementioned funds or authority as to the disbursement of same, provided however that Licensor shall have the primary right (but not the obligation) to designate the non-profit(s) for receipt of funds pursuant to, and for the purposes stated in, this provision;
- c. exercise the rights and duties assigned hereunder;
- d. maintain records of Trustee's receipts and disbursements;
- e. execute estoppels and similar documents reasonably requested by the Closing Agent in

connection with each Transfer of Title;

- f. exercise the Trustee Rights when reasonable or necessary to do so;
- g. comply with any other written agreements between Trustee and Beneficiaries;
- h. accept as agent for each Beneficiary service of process and other notices related to this Instrument; and
- i. have (and is hereby granted) authority to undertake the foregoing as agent.

Notwithstanding the foregoing, Trustee shall have no obligation to (i) issue payment to a non-profit or beneficiary until the gross sum due and unpaid thereto exceeds One Hundred Dollars \$100.00 or (ii) pay or distribute interest accrued or collected on funds held by Trustee in accordance with this Instrument.

13. CLOSING AGENT ADMINISTRATION. In connection with the closing of a Transfer of Title related to this Instrument:

- a. a Closing Agent shall have no obligation to investigate or ascertain the location of a Trustee or any other information related to this Instrument by any means other than by reference to the official public records.
- b. if for any reason a Trustee cannot be located by reference to the OPR, a Closing Agent shall (1) remit to each Beneficiary that can be located through reference to the OPR each Beneficiary's prorata portion of the Transfer Fee, as determined by reference to the OPR, and (2) administer the balance of the Transfer Fee applying applicable state escheatment rules. Compliance with the foregoing shall satisfy all sums then due under this Instrument and any Lien securing same.
- c. where neither the Trustee nor one or more Beneficiaries can be located by reference to the official public records, the Transfer Fee shall be deemed waived in connection with the Transfer of Title;
- d. upon tender of payment to Trustee of sums due under this Instrument, or upon agreement to hold same in trust and unrecorded until tender of payment, a Closing Agent shall be entitled to an estoppel letter from Trustee;
- e. where permitted by law a Closing Agent shall be and hereby is entitled to withhold from each Transfer Fee collected and retain as a fee the greater of \$100.00 or two percent (2%) of the Transfer Fee collected;
- f. when in doubt as to duties or liabilities related to disbursement of funds, a Closing Agent shall be entitled to deposit said funds with the clerk of any court of competent jurisdiction in Utah County and shall thereafter have no liability with respect to the deposited sums; and
- g. a Closing Agent shall be entitled to rely solely upon information contained in the OPR and is hereby indemnified as to claims resulting from unrecorded information.

14. PAYMENT AND NOTICE. Payment shall be deemed made when tendered to the Trustee in good and collected funds. Payment transmittal should reference the recording information of this Instrument. Notice and communications of any kind required under or made in connection with this Instrument shall be deemed made when (1) sent by certified mail, return receipt requested to the Trustee or (2) acknowledged in writing by the Trustee. An estoppel letter or similar written acknowledgment of payment shall not be required in order to satisfy the then-existing indebtedness but Trustee shall be authorized to provide same and in accordance with this Instrument shall do so upon request of the Closing Agent.

15. ADDITIONAL TRANSFER FEES PROHIBITED. Neither the Property nor any portion thereof shall be made subject to any additional Transfer Fee (or similar fee) imposed on a "for profit" basis in connection with each Transfer of Title, except (a) upon expiration or termination of this Instrument and (b) then only pursuant to a License from Licensor under Licensor's then-existing terms and conditions. This provision shall survive expiration and termination of this Instrument.

16. RESERVATION. Upon request of Licensor, Trustee shall (and is hereby granted authority

to) make technical modifications to this Instrument for the purpose of securing or clarifying rights and obligations intended or contemplated in this Instrument or as necessary to comply with any applicable law. No such modification shall be designed or intended to result in an increase in the total consideration contemplated in paragraph 5 of this Article nor to extend the Initial Term of this Instrument nor to make any modifications to substantive terms that change the general intent of this Instrument. Modification shall be made by recorded instrument ("Amendment"). Upon Trustee's request, all parties to this Instrument shall promptly join in execution of any document necessary to effectuate this provision, but failure to do so shall not impair any action taken pursuant to this provision. All parties to this Instrument jointly and severally waive any and all claims against Licensor and Trustee which arise out of or which are related to any modification undertaken in good faith by Trustee or Licensor pursuant to this section. In the event neither Licensor nor any heir, successor or assign thereof should be in existence then the foregoing rights shall automatically vest in the Trustee and, where no Trustee exists, in the Beneficiaries, acting jointly.

17. **BENEFICIARIES.** All rights, interest, ownership and privileges in and to this Instrument, SAVE AND EXCEPT "Declarant's Right to Terminate", belong to and are hereby vested in the following Beneficiaries, who/which are each hereby declared the owner(s) of an undivided interest in this Instrument in the percentages shown below:

- a. Fox Hollow Saratoga, LLC, a Utah limited liability company, 3750 West 500, South Salt Lake City, UT 84104 (50%)
- b. Freehold Licensing, Inc., a Nevada corp., P.O. Box 6193, Round Rock, TX 78683 (29%)
- c. Dane Kay, 11121 South Conestoga Drive, Spanish Fork, UT 84660 (10%)
- d. Sean Kay, 4677 E. Redfield Rd., Gilbert, Az 85234 (5%)
- e. Tim Kay, 9152 Renaissance Dr., Cedar Hills, UT 84062 (2%)
- f. Thor Roundy, 448 East 400 South, Ste. 100, Salt Lake City, UT 84111 (2%)
- g. David Steffensen, 448 East 6400 South, Suite 450, Salt Lake City, UT 84107 (2%)

18. **BENEFICIARY SALE/ASSIGNMENT.** Each Beneficiary is entitled to sell, convey, assign, pledge, subordinate and hypothecate, in whole or in part, their interest in this Instrument.

19. **BENEFICIARY DUTIES.** Each Beneficiary shall:

- a. provide notice of a purchase, sale, pledge, assignment or similar conveyance of all or part of Beneficiary's interest in this Instrument by filing notice of same in the OPR, with a copy to Trustee. The foregoing notice shall generally meet the content requirements of a deed, containing therein a complete description of the parties, the interest conveyed and reference to the recording information of the document by which the grantor/assignor obtained title. Any person, firm or entity who acquires (by sale, assignment or otherwise), in whole or in part, rights in and to this Instrument shall, by taking such assignment, have consented and agreed to the terms of this Instrument.
- b. notify Trustee, in a method and manner reasonably required by Trustee, of any change in Beneficiary's mailing address or other material information and, failing to do, shall be subject to forfeiture to the state of Utah, applying state escheatment rules, all unpaid sums.

20. **LICENSE.** This Instrument was prepared under license from Freehold Licensing, Ltd., and Freehold Licensing, Inc., (jointly and severally together with their heirs, successors and assigns "Freehold" and "Licensor") licensing unto Declarant the exclusive business system described in Patent Application 11/176,724, United States Patent and Trademark Office styled "*Springing Interests Flowing from Benefits that Run with Land*". Each Owner taking title to all or part of the Property, and for additional good, valuable and acknowledged consideration, jointly and severally acknowledges the benefits of said business system and agrees to hold Declarant and Licensor harmless from all claims of, by or through Owner, whether said claims are known or unknown, arising heretofore or hereafter, which arise out of or are related to this Instrument, and agrees not to engage in a similar or competing activity, including imposition or ownership of

Transfer Fees on a for-profit basis, except when same have been licensed by Licensor. Invalidity of the business system or related patent(s), in whole or in part, shall in no way affect the validity of this Instrument. Imposition of Transfer Fees upon the Property or any portion thereof at any time subsequent to the Initial Term shall be undertaken solely in connection with a license from Licensor under terms and conditions reasonably similar to those herein. Provided that Licensor shall then be in existence, this paragraph shall survive cancellation, termination or expiration of this Instrument.

21. **LICENSOR'S AUTHORITY.** If Licensor should dispose of all of Licensor's beneficiary interest in this Instrument, and provided that Licensor has not assigned its authority to a successor, authority vested in Licensor by this Instrument shall then vest in Beneficiaries (whether one or more) holding a majority interest in this Instrument.

22. **NO WARRANTY.** Neither Declarant nor Beneficiaries shall be (a) liable for any defects in material or workmanship related to any improvements that may form the basis for consideration for the benefits and burdens imposed by this Instrument nor (b) under any obligation to construct, maintain, warranty, modify, add to, or transfer additional improvements beyond the date of recordation of these Covenants. Destruction or obsolescence of, or defect in, Improvements shall not directly or indirectly diminish, impair or invalidate this Instrument in any way.

23. **BENEFIT AND BURDEN.** This Instrument and the benefits, burdens, premises and promises contained herein run with the land and shall be binding upon and shall inure to the burden and benefit of each Owner and the Beneficiaries, together with their respective successors, heirs and assigns. All burdens and benefits are stipulated to be appurtenant to the land.

24. **SAVINGS CLAUSE.** In the event any provision in this Instrument, including any modification thereto, is adjudicated impermissible or unenforceable, then the offending provision shall be deemed modified to the extent possible and necessary to comply with applicable law and to preserve each Beneficiary's right to compensation equal to compensation originally contemplated under this Instrument.

25. **DECLARANT'S RIGHT TO TERMINATE.** Declarant reserves unto itself the right to terminate this Instrument as to all or any legally identifiable part of the Property owned by Declarant provided that same is done by written instrument executed by Declarant and filed of record prior to Declarant's first Transfer of Title to the property to be released. Declarant shall provide a copy of the release to Trustee and all Beneficiaries, by certified mail. Upon Declarant's Transfer of Title to all or part of the Property this reservation shall terminate forevermore as to the legally identifiable property so conveyed. This right to terminate is personal to the Declarant and shall not be assignable. If any portion of the Property is released by Declarant pursuant to this provision the legal description of the Property, for purposes of this Instrument, shall be deemed amended accordingly.

26. **NO GENERAL ASSIGNMENT.** Any purported assignment of rights under this Instrument shall be invalid and of no force and effect unless said assignment specifically references this Instrument and is filed of record. In particular, but not by way of limitation, a general assignment by Declarant (whether by deed, contract for sale, or otherwise), executed in connection with a sale of the Property or otherwise, shall not constitute a valid sale or assignment of Declarant's rights under this Instrument, or invalidate or modify this Instrument in any way.

27. **LOAN REQUIREMENT.** To the extent that any of these covenants shall be found to be contrary to the promulgated rules and regulations of the Federal Housing Administration, the Veterans Administration or any other recognized lending institution or agency (public or private) primarily engaged in granting or insuring loans, to such an extent that same unreasonably interferes with a buyer's or owner's ability to obtain financing for the property, Trustee shall have the authority to alter, amend, waive, subordinate, or repeal such provision, either for purposes of a given loan or permanently, and, upon request of Licensor, shall do so.

28. CONSTRUCTION. This Instrument shall be liberally construed in and for the interest, benefit and protection of Beneficiaries.

29. LIMITATION ON DAMAGES. Except as otherwise provided herein no party to this Instrument shall be entitled to recover from another party to the Instrument, costs, including attorney fees, incurred in connection with legal proceedings arising out of or related to this Instrument. Each party to this Instrument, including Owner, Trustee and Beneficiaries, hereby jointly and severally waive all claims against each other for exemplary, punitive, consequential, emotional and damages arising out of or related to this Instrument.

30 . APPLICABLE LAW. This Instrument shall be construed according to the laws of the State of Utah. If any provision of this Instrument is found to be in conflict with applicable law then said provision shall be amended only to the extent necessary to comply with the applicable law, but shall otherwise remain in full force and effect.

IN WITNESS WHEREOF, this Declaration is executed on the date indicated below.

DECLARANT

Fox Hollow Saratoga, LLC, a Utah limited liability company

[Handwritten signature of Richard T. Wolper]

Richard T. Wolper,
Managing Member of WSJ Development, LLC,
a Utah limited liability company,
the Managing Member of Fox Hollow Saratoga, LLC,
a Utah limited liability company

Acknowledgement

STATE OF Utah §
COUNTY OF Salt Lake §

Before me, the Undersigned Notary, on the 29th day of August, 2008, personally appeared Richard T. Wolper, Managing Member of WSJ Development, LLC, a Utah limited liability company, the Managing Member of Fox Hollow Saratoga, LLC, a Utah limited liability company, signer of the foregoing instrument, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged that s/he/they executed the same in the aforementioned capacity for the purposes therein contained.

[Handwritten signature of Notary Public]
Notary Public, State of Utah

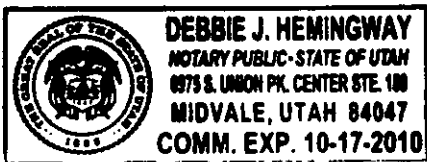


EXHIBIT A

Parcel One:

Beginning at the West Quarter corner of Section 12, Township 6 South, Range 1 West, Salt Lake Base and Meridian; thence North $89^{\circ}42'52''$ East along Quarter Section line 3910.47 feet to the Easterly boundary of the Village of Fox Hollow, Plat 1; thence the following three courses and distances along said Easterly boundary: 1) South $23^{\circ}52'14''$ East 209.27 feet; 2) along the arc of a 2897.79 foot radius curve to the left, 276.57 feet through a central angle of $05^{\circ}28'06''$ (chord bears South $26^{\circ}29'14''$ East 276.47 feet); and 3) South $65^{\circ}39'53''$ West 3.56 feet to the Westerly right of way of redwood road; thence the following three courses and distances along said Westerly right of way: 1) along the arc of a 2897.79 foot radius curve to the left 400.10 feet through a central angle of $07^{\circ}54'39''$ (chord bears South $31^{\circ}07'54''$ East for 399.78 feet); 2) South $37^{\circ}07'44''$ East 254.89 feet; and 3) South $35^{\circ}05'14''$ East 434.06 feet; thence North $89^{\circ}57'46''$ West 1727.21 feet; thence South $41^{\circ}05'44''$ West 412.10 feet to Quarter Section line; thence South $00^{\circ}34'37''$ East along Quarter Section line 1006.90 feet to the South Quarter corner of said Section 12; thence North $89^{\circ}46'43''$ West along the Section line 1375.31 feet to the Northeast corner of the Northwest Quarter of the Northwest Quarter of Section 13, Township 6 South, Range 1 West; thence South $00^{\circ}13'35''$ West 1311.94 feet to the Southeast corner of the Northwest Quarter of the Northwest Quarter of said Section 13; thence North $89^{\circ}45'00''$ West 1374.37 feet to the Northeast corner of the South half of the Northeast Quarter of Section 14, Township 6 South, Range 1 West; thence South $00^{\circ}11'07''$ West along Section line 1311.26 feet to the East Quarter corner of said Section 14; thence North $89^{\circ}40'29''$ West along Quarter Section line 1347.98 feet to the Northeast corner of the Northwest Quarter of the Southeast Quarter of said Section 14; thence South $00^{\circ}20'25''$ East 1314.61 feet to the Southeast corner of the Northwest Quarter of the Southeast Quarter of said Section 14; thence North $89^{\circ}40'19''$ West 1334.69 feet to the Southwest corner of the Northwest Quarter of the Southeast Quarter of said Section 14; thence North $00^{\circ}55'09''$ West along Quarter line 1314.787 feet to the Southeast corner of the East half of the Northwest Quarter of said Section 14; thence North $89^{\circ}40'29''$ West along Quarter Section line 1347.81 feet to the Southwest corner of the East half of the Northwest Quarter of said Section 14; thence North $01^{\circ}27'21''$ West 2618.47 feet to the Northwest corner of the East half of the Northwest Quarter of said Section 14; thence South $89^{\circ}47'40''$ East along Section line 1372.29 feet to the North Quarter corner of said Section 14; thence South $00^{\circ}55'09''$ East along Quarter Section line 1310.34 feet to the Northwest corner of the South half of the Northeast Quarter of said Section 14; thence South $89^{\circ}42'01''$ East 1360.60 feet to the Southwest corner of the Northeast Quarter of the Northeast Quarter of said Section 14; thence North $00^{\circ}22'00''$ West 1310.74 feet to the Northwest corner of the Northeast Quarter of the Northeast Quarter of said Section 14; thence South $89^{\circ}43'32''$ East along Section line 1373.23 feet to the Southwest corner of said Section 12; thence North $00^{\circ}17'21''$ East along Section 2635.06 feet to the point of beginning. Less and excepting any and all lands located within the Village of Fox Hollow Plats 1, 2, 3, 4, 5, and 6; and The Village of Fox Hollow Plat Neighborhood 2 phase 2 thru phase 4. Also Less and excepting Lots 3101 thru 3116, 3128 and 3130 of The Village of Fox Hollow Plat, Neighborhood "3-A". Also less and excepting any portion within the following

described parcel of land: The South half of the Southeast 1/4 of Section 12, Township 6 South, Range 1 West, Salt Lake Base and Meridian. Less and excepting that portion that lies Easterly of the Western right of way line of state highway 68; and less and excepting that portion on the Northwesterly corner of this parcel that is included within the legal description of the parcel of land for tax id no. 59-012-0010 which legal description is described as follows: beginning at the West Quarter corner of Section 12, Township 6 South, Range 1 West, Salt Lake Base and Meridian; thence North 89°50'38" East 2,710.59 feet along the Quarter Section line to the center of said Section; thence North 89°50'38" East 1,199.88 feet along the Quarter Section line; thence South 23°51'28" East 84.23 feet; thence South 9°02'49" West 90.95 feet; thence South 55°41'49" West 171.89 feet; thence on a 16.50 foot radius curve to the left 38.60 feet, having a central angle of 134°01'46" and whose long chord bears South 11°18'11" East 30.38 feet; thence South 78°18'11" East 282.80 feet; thence on a 2,897.79 foot radius curve to the left 104.55 feet, having a central angle of 2°04'02" and whose long chord bears South 28°16'01" East 104.54 feet; thence South 65°58'00" West 748.59 feet; thence on a 640.00 foot radius curve to the right 60.31 feet, having a central angle of 5°23'58" and whose long chord bears South 68°39'59" West 60.29 feet; thence South 11°28'54" West 185.01 feet; thence South 41°06'30" West 918.29 feet; thence North 48°53'30" West 263.28 feet; thence North 55°55'52" West 79.81 feet; thence South 34°45'07" West 41.74 feet; thence North 56°03'37" West 56.00 feet; thence on a 15.00 foot radius curve to the left 22.78 feet, having a central angle of 87°01'17" and whose long chord bears North 9°34'16" West 20.65 feet; thence on a 322.00 foot radius curve to the left 196.34 feet, having a central angle of 34°56'11" and whose long chord bears North 72°13'47" West 193.31 feet; thence North 89°41'53" West 505.51 feet; thence on a 928.00 foot radius curve to the right 119.14 feet, having a central angle of 7°21'20" and whose long chord bears North 86°01'13" West 119.05 feet; thence North 82°20'33" West 126.60 feet; thence on a 15.00 foot radius curve to the left 24.01 feet, having a central angle of 91°42'19" and whose long chord bears South 51°48'18" West 21.53 feet; thence on a 1,460.00 foot radius curve to the left 81.65 feet, having a central angle of 3°12'15" and whose long chord bears South 4°21'01" West 81.64 feet; thence South 2°44'53" West 595.30 feet; thence on a 1,640.00 foot radius curve to the right 213.60 feet, having a central angle of 7°27'45" and whose long chord bears South 6°28'45" West 213.45 feet; thence on a 25.00 foot radius curve to the left 38.40 feet, having a central angle of 88°00'14" and whose long chord bears South 33°47'29" East 34.73 feet; thence South 12°12'24" West 66.00 feet; thence on a 25.00 foot radius curve to the left 38.40 feet, having a central angle of 88°00'13" and whose long chord bears South 58°12'18" West 34.73 feet; thence North 77°06'33" West 80.02 feet; thence on a 25.00 foot radius curve to the left 41.02 feet, having a central angle of 94°00'36" and whose long chord bears North 32°44'05" West 36.57 feet; thence North 79°44'23" West 69.32 feet; thence North 78°33'17" West 85.87 feet; thence North 77°33'10" West 64.43 feet; thence on a 628.00 foot radius curve to the right 162.08 feet, having a central angle of 14°47'15" and whose long chord bears North 70°09'33" West 161.63 feet; thence North 62°45'55" West 88.50 feet; thence on a 228.00 foot radius curve to the right 250.97 feet, having a central angle of 63°04'02" and whose long chord bears North 31°13'54" West 238.49 feet; thence North 0°18'07" East 148.09 feet; thence on a 228.00 foot radius curve to the right 80.89 feet, having a central angle of 20°19'35" and whose long chord bears North 10°27'54" East 80.46 feet; thence on a 15.00 foot radius curve to the left 20.89 feet, having a central angle of 79°48'27" and whose long chord bears North 19°16'32" West 19.25 feet; thence North 59°10'45" West 209.91 feet; thence on a 15.00 foot radius curve to the left 28.03 feet, having a central angle of 107°04'48" and whose long chord bears South 67°16'51" West 24.13 feet; thence North 59°12'40" West 59.22 feet; thence on a 15.65 foot radius curve to the left 28.18 feet, having a central angle of 103°08'05" and whose long chord bears North 6°45'11" West 24.53 feet; thence North 59°10'45" West 196.10 feet; thence North 59°09'47" West 88.24 feet; thence on a 272.00 foot radius curve to the left 124.81 feet, having a central angle of 26°17'27" and whose

long chord bears North 76°28'45" West 123.72 feet; thence North 89°37'29" West 96.30 feet; thence North 0°18'07" East 1,358.75 feet along the West Section line of the Southwest Quarter of Section 12 (said Section line being the basis of bearing of this description), Township 6 South, Range 1 West, Salt Lake Base and Meridian to the point of beginning.

Parcel Two:

Lots 411, 413 and 418 Plat "4", The Village of Fox Hollow Subdivision, as on record in the Office of the Utah County Recorder, State of Utah.

Lots 504, 508, 510, 511, 512 and 513 Plat "5", The Village of Fox Hollow Subdivision, as on record in the Office of the Utah County Recorder, State of Utah.

Lot 606 thru 618, 620 and 622 of Plat "6", The Village of Fox Hollow Subdivision, as on record in the Office of the Utah County Recorder, State of Utah.