

When Recorded
Return To:
Freehold Capital Partners
FDR Station P.O. Box 7298
New York, NY 10150



**NOTICE: THIS DOCUMENT MAY REQUIRE PAYMENT OF
A FEE IN CONNECTION WITH A TRANSFER OF TITLE**

Closing Information: Seller shall pay one percent (1%) of the Gross Sales Price (see ¶5 & ¶6). To obtain an Estoppel Letter (see ¶8) or contact Trustee for assistance with closing (see ¶10 & ¶14).

DECLARATION OF COVENANT

STATE OF UTAH

KNOW ALL MEN BY THESE PRESENTS

County of Utah

This Declaration of Covenant (this "Declaration") is made by **FOX RUN 1, LLC., A UTAH LIMITED LIABILITY COMPANY**, whose mailing address is 1818 S. 100 W., Orem, UT 84058 (hereinafter "Declarant") for the purposes herein set forth as follows:

WITNESSETH:

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

The real property described in Exhibit "A" attached hereto and incorporated herein for all purposes.

NOW THEREFORE, Declarant hereby declares that the Property shall be transferred, held, sold and conveyed subject to this Declaration and all matters set forth in this Declaration, which shall be deemed covenants running with the land and the title to the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof:

1. **DEFINITIONS.** In addition to words and phrases defined elsewhere in this Declaration, the following words when used in this Declaration shall have the following meanings:
 - a. "Beneficial Interest" shall refer to an undivided ownership interest in the rights, interest, ownership and privileges in and to this Declaration, apportioned pursuant to section 17 and thereafter in accordance with section 18 or as otherwise provided herein.
 - b. "Beneficiary" shall refer to the owner of a Beneficial Interest.

c. "Closing Agent" or "Settlement Agent" shall have its customary meaning within the real estate industry, and generally shall refer to the party responsible for conducting and/or facilitating a closing of a conveyance of all or any portion of the Property; usually either a title company, attorney or escrow agent who prepares paperwork and conducts a closing related to the Conveyance.

d. "Consideration" and "Gross Sales Price" mean the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the Conveyance Instrument and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(i) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, Consideration shall include (without limitation) the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(ii) In the case of a creation of a subleasehold interest, Consideration shall include (without limitation) the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(iii) In the case of a Controlling Interest in any entity that owns real property, Consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(iv) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, Consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(v) In the case of (i) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (ii) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, Consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

e. "Controlling Interest" means (i) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (ii) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

f. "Conveyance" means the transfer or transfers of any Real Property Interest by any method, including but not limited to sale, exchange, assignment, surrender, foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a Controlling Interest in any entity with a Real Property Interest. Transfer of a Real Property Interest shall include the creation of a leasehold or sublease only where (i) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (ii) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (iii) the lease or sublease is for substantially all of the premises constituting the portion of the Property that is the subject of the conveyance. Notwithstanding the foregoing, Conveyance shall not include a conveyance pursuant to devise, bequest or inheritance; the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage or deed of trust; or a release of lien of tax.

Except as otherwise exempted by section 6, a Conveyance which would not otherwise be a Conveyance for purposes of this Declaration, but which is subject to a transfer tax, documentary stamps or similar tax that is (1) assessed by a governmental entity, (2) computed on the sales price or consideration given in connection with the conveyance, and (3) payable in connection with a transfer of title (a "Transfer Tax"), shall also be a Conveyance for purposes herein and the Consideration used for calculation of the Transfer Tax shall also be the Consideration for purposes of this Declaration.

- g. "Conveyance Instrument" shall mean the instrument of Conveyance, which shall include (without limitation): warranty deed; trustee deed; quit claim deed; executor's deed; administrator's deed; court order; assignment; or similar instrument recorded in the OPR (as defined below). A Grantee's assumption of the obligations and benefits of ownership of the Property shall constitute acceptance of the Conveyance Instrument for purposes herein.
- h. Where context, statute or custom requires, the term "County" shall be interchangeable with the terms "Parish", "Borough" or similar administrative subdivisions within a State.
- i. "Estoppel Certificate" shall mean a document, in recordable form, signed by the Trustee, that sets forth whether or not there exists, at the time of issuance of the Estoppel Certificate, any amount due under, or defaults in connection with, this Declaration, as the same relates to the Property that is the subject of the Estoppel Certificate.
- j. "Grantor" means the Person making the Conveyance.
- k. "Grantee" means the Person who obtains the Real Property Interest as a result of a Conveyance.
- l. "Lender" shall mean any bank, government sponsored entity, savings and loan association, institutional investor or similar entity that is engaged in the business of owning, servicing or providing mortgages on real property and is licensed to engage in such business if required by applicable law.
- m. "Of Record" shall mean filed in the OPR.
- n. "OPR" shall mean the Office of Public Records (also known as, and also referred to herein as, "official public records", "real property records", "deed records", "county recorder's office", "county clerk's office" and "public records") of the county, municipality, parish, township, town or similar political subdivision in which the Property is located; the recorder's office for recording of deeds, liens and similar real property records. All documents required under this Declaration 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.
- o. "Owner" shall mean the record owner(s) holding fee simple title to all or any part of the Property that is subject to this Declaration.
- p. "Parties to this Declaration" shall mean persons, firms and entities then holding rights or having obligations under this Declaration and their successors and assigns.
- q. "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.
- r. "Property" shall mean the real property described on page one of this Declaration, including (i) any and all buildings, structures, easements, alleys, drives, common areas, rights of way and improvements now or hereafter appurtenant thereto (collectively the "Improvements"); SAVE AND EXCEPT any portion of the Property owned by a governmental entity (whether state, local, city, municipality, federal, or otherwise, hereinafter "Public Property"). This Declaration shall not apply to Public Property. Where the context requires it, the term Property shall refer to that portion of the Property that is sold or acquired in connection with a Conveyance.
- s. "Real Property Interest" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of all or any portion of the Property or the right to receive rents, profits or other income derived from all or any portion of the Property. It shall also include an option or contract to purchase all or any portion of the Property, to the extent that such option or contract gives the Grantee use and occupancy rights of the real property. It shall not include a right of first refusal to purchase all or any portion of the Property.
- t. "Reconveyance Fee" shall mean the fee described in section 5 of this Declaration, together with interest, costs and fees associated with an Unpaid Reconveyance Fee as otherwise described in this Declaration.
- u. Where the context, statute or custom requires, the term "State" shall be interchangeable with the term

"Commonwealth" or "District".

2. **TERM.** Except as otherwise provided herein, this Declaration and the covenants contained herein shall become binding upon the Property and the Parties to this Declaration upon filing of this Declaration in the OPR and shall expire at midnight GMT on November 27, 2113.
3. **CONSENT.** By acceptance of the Conveyance Instrument or Conveyance, each Owner of such Real Property Interest 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 Declaration, intending to be legally bound by same to the maximum extent allowed by law, and to the same extent as if expressed in the Conveyance Instrument, and takes and conveys such Real Property Interest subject to the provisions of this Declaration. Each Owner acquiring the Real Property Interest, whether expressed in the Conveyance Instrument or not, covenants and agrees to payment of the Reconveyance Fee upon a Conveyance by such Owner of such Real Property Interest.
4. **CONSIDERATION FOR BENEFITS AND BURDENS.** By acceptance of a Conveyance Instrument or Conveyance, whether expressed therein or not, 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) this Declaration is an essential component to the future viability of the community and the Property and will allow the Property to be used for other purposes by initial and subsequent owners; (c) the Consideration paid by Owner was based in whole or in part upon the existence of this Declaration; (d) that this Declaration benefits the land within the community in which the Property is located, and, by extension, the Property itself and (e) that the foregoing benefits the Property and the Owner, (said benefits and consideration in "a-e" jointly and singularly "Property Benefits"). In addition, each Owner expressly covenants, acknowledges and agrees (i) that the Property Benefits all and singularly, jointly and severally, are appurtenant to the Property; (ii) the Reconveyance Fee is, in whole or in part, compensation for the Property Benefits, the Consideration, and for the rights granted herein and the benefits flowing therefrom, and (iii) that in consideration therefore, and for other good, valuable, independent and adequate consideration, the receipt and sufficiency of which is intended, acknowledged, stipulated and accepted by Owner's acceptance of a Conveyance Instrument, and as a covenant running with the Property and any portion thereof, the Owner shall be bound by the terms and conditions of this Declaration.
5. **AMOUNT DUE.** Except as otherwise provided herein, contemporaneous with, and as an encumbrance in connection with a Conveyance, the Grantor shall pay to Trustee, as trustee for Beneficiaries, a fee (the "Reconveyance Fee") equal to one percent (1%) of the Consideration paid by or on behalf of the Grantee in connection with the Conveyance.
6. **EXEMPTIONS.** The Reconveyance Fee shall not be assessed or payable in connection with a Conveyance (a) by the Declarant; (b) made by the Owner in connection with a mortgage or deed of trust where the Conveyance is for the sole purpose of securing the indebtedness of the Owner; (c) resulting from death or legal disability of an Owner, including transfers by will or probate; (d) by or to a Lender or Lender's designated trustee when the Conveyance is by or to a Lender in connection with a mortgage made, held or serviced by a Lender. *(The foregoing 6(d) shall be broadly construed, and shall include dispositions made by a Lender post-foreclosure, including dispositions made as a result of acquisition of title by a Lender arising out of a deed in lieu of foreclosure);* (e) by or to a governmental entity or agency (whether local, state, federal or otherwise) or 501(c)(3) entity; (f) made by a Grantor with a Controlling Interest in the Grantee, where the Grantee owns a Controlling Interest in the Grantor, or where a Person owns a Controlling Interest in both the Grantor and Grantee (an "Affiliate Transaction"); (g) made by order of a court (whether in connection with bankruptcy, divorce or otherwise, but excluding an order for specific performance); (h) where the Trustee cannot be identified by reference to this Instrument or the OPR; or (i) occurring prior to November 28, 2014. Exemptions pursuant to section 6(c), 6(d), 6(f) or 6(h) shall be supported by Grantor's written affidavit under oath that the foregoing exemption(s) apply, which shall be filed in the OPR in connection with the Conveyance.
7. **RESERVATION.** This Declaration and the premises and promises contained herein are intended to be a covenant running with the land and title to the real property and as a deed restriction (whether stated in the Conveyance Instrument or not) and shall be binding upon each Owner and its successors and assigns. Whether expressed therein or not, a Conveyance Instrument conveying a Real Property Interest shall be deemed to contain therein a reservation providing that the Conveyance is expressly subject to this Declaration. Parties acquiring any portion of the Real Property Interest take title subject to this Declaration and the reservations herein provided. In the event of any conflict

between the provisions of this Declaration and any Conveyance Instrument, this Declaration shall control.

8. ESTOPPEL CERTIFICATE. Within 2 business days after Trustee's receipt of a written request ("Estoppel Request") from an Owner or their designated representative, including any mortgagee or Closing Agent (the "Requesting Party"), the Trustee shall furnish to such Requesting Party an Estoppel Certificate, and:

- a. an Estoppel Request shall identify with reasonable specificity (i) this Declaration; (ii) the then-current Owner and (iii) the Requesting Party's name, address and contact information. (See www.CovenantClearinghouse.com)
- b. an Estoppel Certificate delivered by the Trustee shall be conclusive and binding upon the Trustee and Beneficiaries, and the Property described in the Estoppel Certificate shall not be subject to liens or claims arising out of this Declaration for any amounts or defaults (including, without limitation, Unpaid Reconveyance Fees) that may have accrued prior to the date of the Estoppel Certificate and which are not otherwise described within the Estoppel Certificate.
- c. if the Trustee fails to timely respond to a written request made pursuant to this provision, then after four (4) business days notice of intent to file a Substitute Estoppel Certificate ("Substitute Estoppel Notice") with a copy of said Substitute Estoppel Certificate contained therein, delivered to Trustee by certified mail, return receipt requested, and provided that the Trustee fails to provide an Estoppel Certificate within said 4 day period, it shall be conclusively deemed that there are no unpaid amounts or defaults as of the date of the request, and the Requesting Party shall have the right to record an affidavit (attaching all prior requests for an Estoppel Certificate) to such effect (a "Substitute Estoppel Certificate") in the OPR, provided that same is recorded within fourteen (14) days from date of mailing of the Substitute Estoppel Notice.

9. LIEN AND PRIORITY; LIABILITY; COLLECTION. To the extent permitted by law, a Reconveyance Fee that is not paid when due ("Unpaid Reconveyance Fee") shall thereupon become a continuing lien and charge ("Lien") upon the portion of the Property that was the subject of the Conveyance giving rise to the Unpaid Reconveyance Fee ("Lien Property"), which Lien shall thereafter be binding upon such Lien Property, and:

- a. the Lien is effective from the date the Unpaid Reconveyance Fee became due.
- b. the Lien shall secure the Unpaid Reconveyance Fee as well as interest and all reasonable costs and attorney's fees incurred incident to the collection process.
- c. the Lien shall be subordinate to a Lender's first mortgage lien or first deed of trust secured by the Property (a "First Mortgage"). The foregoing subordination shall not apply to Unpaid Reconveyance Fees (i) arising from the Conveyance that gave rise to the First Mortgage or (ii) described in a Notice of Lien filed at least 21 days prior to the date of recordation of the First Mortgage.
- d. as a condition precedent to foreclosure of a Lien, the Trustee shall execute and file in the OPR written notice of Unpaid Reconveyance Fees (a "Notice of Lien"). To be valid, a Notice of Lien must identify the Lien Property, the Owner or last known Owner, the name and address of the Trustee, the amount due, and the method and manner of payment. A copy shall be mailed to the Lien Property address.
- e. the liability of a Lender (including its successor or assignees) for any Unpaid Reconveyance Fee is limited to one percent (1%) of the original first lien mortgage debt.
- f. with the prior written consent of the Beneficiaries then holding 51% or more of the Beneficial Interests (which consent shall include instructions pertaining to payment of enforcement costs and disposition of Lien Property ultimately acquired at any foreclosure) the Trustee may bring an action, in its name or on behalf of one or more Beneficiaries, to foreclose the Lien for Unpaid Reconveyance Fees, together with such other sums incident thereto, in the manner a mortgage of real property is foreclosed in the jurisdiction where the property is located (including a power of sale and non-judicial foreclosure if applicable) and may also bring an action to recover a money judgment for such unpaid amounts. The Trustee is entitled to recover from the Owner of the Lien Property (including from the proceeds of the sale, if any) reasonable attorney's fees incurred in either a foreclosure action or an action to recover a money judgment for Unpaid Reconveyance Fees.
- g. for the benefit of the Beneficiaries, the Trustee has the power to purchase the Lien Property at the foreclosure sale and to then hold, lease, mortgage, or convey it.
- h. except as otherwise set forth herein, the Lien Property shall remain subject to Unpaid Reconveyance Fees and any party acquiring title to Lien Property is liable for, and shall promptly pay to the Trustee, all Unpaid Reconveyance Fees accrued prior to the acquisition of the Lien Property by such party. This liability is without prejudice to any right

that such party may have to seek contribution or indemnity from prior Grantor(s) or owner(s) of the Lien Property.

- i. the Trustee shall be a proper party to intervene in any foreclosure proceeding related to Lien Property.
 - j. foreclosure of a Lien, First Mortgage or other similar lien shall not extinguish this Declaration.
 - k. any proceeding under one remedy shall not constitute an election of remedies. Failure to proceed under any remedy shall not be deemed a waiver of that remedy.
 - l. unpaid sums due under this Declaration shall bear interest at the lesser of the maximum non-usurious lawful rate allowed by law or 10 percent per year. Interest shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. This provision overrides other provisions, demands or actions to the contrary.
 - m. except as provided under 11(c), payment received by the 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 Unpaid Reconveyance Fee. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment.
 - n. within ten (10) business days from date of receipt of a written request from Trustee, an Owner shall promptly provide information reasonably requested by the Trustee related to a Conveyance to or from an Owner, including date of Conveyance, the Grantor and Grantee, the Consideration, and a copy of any closing statement prepared in connection therewith (redacted as to each tax identification number and date of birth appearing therein). By acceptance of a Conveyance Instrument, each Owner does thereby irrevocably authorize each Closing Agent involved in closing a Conveyance to comply with the foregoing, and does release said Closing Agent(s) from liability of whatever kind and of whatever nature arising out of or related to a Closing Agent's compliance with this provision. Notwithstanding the foregoing, a Closing Agent shall have no liability for failure or refusal to provide the requested information.
 - o. to the extent the foregoing conflicts with any applicable statute, the statute shall apply.
10. TRUSTEE AND SUCCESSORS. The following shall serve as Trustee:

Covenant Clearinghouse, LLC., a Nevada LLC, (including any successor Trustee, the "Trustee"). See **WWW.COVENANTCLEARINGHOUSE.COM** (the "Trustee Site") for contact information. If the Trustee Site is unavailable, information can be obtained from the Nevada Secretary of State.

The Trustee shall act on behalf of the Beneficiaries in accordance with the rights, privileges and duties granted in this Instrument together with any separate agreement as contemplated herein. Licensor shall have the sole and exclusive authority to appoint (and enter into binding agreements with) successor Trustees, succeeding to all rights and responsibilities of Trustee, including the right to bifurcate and designate the Trustee rights and duties herein into more than one person or entity. A Trustee shall be entitled to appoint a successor Trustee, but such appointment shall be subordinate (and subject) to Licensor's aforementioned right of appointment. Upon Licensor's or Trustee's request, parties to this Declaration shall promptly join in execution of any documents deemed by Trustee or Licensor as reasonably necessary to effectuate this provision, provided however that the failure of one or more parties to do so shall not invalidate same. To the maximum extent permitted by law, all Parties to this Declaration jointly and severally hold Licensor harmless for claims and damages which arise out of or which are related to (i) the appointment of a Trustee made pursuant to this section and (ii) Licensor's ownership interest in, or exercise of control over, Trustee. The foregoing shall not apply to intentional fraud.

11. NON-JUDICIAL FORECLOSURE. To the extent permitted by law, each Owner, by acceptance of the Conveyance Instrument, whether expressed therein or not, hereby expressly vests in the Trustee the power to bring all actions against such Owner personally for the collection of unpaid amounts due hereunder and the power to enforce any Liens by all methods available for enforcement of such Liens, including judicial and non-judicial foreclosure of Lien Property by an action or proceeding brought in the name of the Trustee or Beneficiaries in the manner provided for in the laws of the jurisdiction where the Lien Property is located for mortgage or deed of trust liens on real property, and Owner expressly grants the Trustee a power of sale of the Lien Property. In connection with a non-judicial foreclosure, and subject to any requirements imposed by applicable law, the Trustee shall:

- a. give notice of default, and notice of the foreclosure sale, to the Owner of the Lien Property;
- b. sell and convey the Lien Property to the highest bidder for cash, with conveyance subject to valid prior liens, and other valid and prior exceptions to conveyance and warranty, and to this Declaration; and
- c. from the proceeds of the sale, pay, in this order:
 - i. expenses of foreclosure, including a commission to the Trustee of 3% of the bid;
 - ii. to a non-profit made pursuant to 13(b), five percent of the sums remaining after deducting 11(c)(i);
 - iii. to Beneficiaries, all sums due and unpaid, in accordance with their Beneficial Interest;
 - iii. any amounts required by law to be paid before payment to Owner; and
 - iv. to the Owner of the Lien Property prior to foreclosure, any balance.

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

12. **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, administer and exercise rights and obligations arising out of or related to this Declaration, including, but not limited to, the right to:

- a. collect and disburse sums in connection with this Declaration;
- b. undertake or defend, including retaining others to undertake and defend, legal, arbitration and administrative proceedings;
- c. execute Estoppel Certificates and similar documents;
- d. re-file this Declaration (or an abstract thereof) as a renewal and continuation of this Declaration, and without extinguishment thereof, provided, however, that the re-filed Declaration shall not extend the original Term.
- e. with respect to each Conveyance retain, as its fee, three percent (3%) of (i) the Reconveyance Fee and (ii) other sums collected by the Trustee pursuant to the terms of this Declaration, together with any reimbursements due Trustee under this Declaration. (Notwithstanding the foregoing, the Trustee shall not be entitled to collect a fee for the sale of a Beneficial Interest);
- f. be reimbursed by Beneficiaries (or retain from any sums due Beneficiaries under this Declaration), on a prorata basis in accordance with each Beneficial Interest, amounts necessary to reimburse Trustee for reasonable and necessary expenses incurred in initiating or defending legal proceedings in connection with this Declaration, recordation fees (including fees associated with filing of notice of successor Trustee), and such other fees and expenses as Trustee shall reasonably incur in connection herewith;
- g. decline to undertake action under 12(b) until such time as the Beneficiaries have made suitable financial arrangements with Trustee for costs and expenses related to same.

13. **TRUSTEE DUTIES.** The 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, in proportion to their respective Beneficial Interests, Reconveyance Fees (after permitted deductions and distributions otherwise described herein), arising out of or related to this Declaration;
 - b. retain in a separate escrow account five percent (5%) of the Reconveyance Fee and within ninety days from date of receipt of same pay said funds to one or more secular non-profit organizations for the direct or indirect benefit of the community from which the Reconveyance Fee originates, it being the intention of this Declaration, the Beneficiaries and each owner that a portion of the Reconveyance Fee 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 to this Declaration, including each Owner (by acceptance of a Conveyance Instrument) acknowledge, agree and stipulate that (i) non-profit organizations build better communities and enhance property values; (ii) the foregoing allocation is good, independent and sufficient consideration for this Declaration and the Reconveyance Fee due hereunder and (iii) the foregoing touches and concerns the land, and (iv) the term "community" shall be broadly construed. In no event shall a non-profit (aa) obtain rights or interests in this Instrument as a result of this section 13(b), and (bb) as a condition of acceptance of funds under this section 13(b), 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 section 13 (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 absolute and superior right (but not the obligation) to designate the non-profit(s) for receipt of funds pursuant to this section 13(b), and to designate a foundation or similar entity for disbursement of said funds, and such designation shall be binding;

- c. exercise the rights and duties assigned hereunder;
- d. maintain records of Trustee's receipts and disbursements related to this Declaration;
- e. execute Estoppel Certificates and similar documents reasonably requested by Requesting Parties;
- 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 Declaration; and
- i. have (and is hereby granted) authority to undertake the foregoing as agent for the Beneficiaries.

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 Declaration.

14. CLOSING ADMINISTRATION. In connection with any Conveyance:

- a. neither the Grantor nor a Closing Agent shall have any obligation to investigate or ascertain the location of a Trustee or any other information related to this Declaration by means other than by reference to the OPR.
- b. if for any reason the Trustee cannot be located by reference to the OPR, the Grantor shall (1) remit to each Beneficiary that can be located through reference to the OPR each Beneficiary's prorata portion of the Reconveyance Fee, as determined by reference to the OPR, and (2) administer the balance of the Reconveyance Fee applying applicable state escheatment rules.
- c. upon tender of payment to Trustee of sums due under this Declaration, or upon a Closing Agent's agreement to hold the Estoppel Certificate in trust and unrecorded until tender of payment of such sums to the Trustee, the Grantor shall be entitled to, and Trustee shall issue, an Estoppel Certificate;
- d. where permitted by law, a Closing Agent shall be and hereby is entitled to withhold from each Reconveyance Fee paid in connection with a Conveyance, and retain as a fee, the greater of \$100.00 or two percent (2%) of the Reconveyance Fee collected. Acceptance of the foregoing fee shall not create a duty or contractual relationship, expressed or implied, on the part of the Closing Agent;
- e. when in doubt as to duties or liabilities related to disbursement of funds, the Grantor shall (i) deposit said funds with the clerk of any court of competent jurisdiction in Utah County, Utah, and (ii) provide written notice of same to Trustee, and shall thereafter have no liability with respect to the deposited sums;
- f. the Grantor and the Closing Agent shall be entitled to rely solely upon information contained in the OPR and are hereby released as to claims resulting from information not contained in the OPR;
- g. it is understood that a Closing Agent shall be under no obligation to invest any funds deposited with it, nor shall it be accountable for any incidental benefit attributable to the funds which may be received by Closing Agent while it holds such funds;
- h. the Trustee shall act in the place and stead of the Beneficiaries. Payment to the Trustee shall constitute payment in full to the Beneficiaries, jointly and severally. An estoppel, certification or similar document made by the Trustee shall be binding upon, and shall be deemed the act and deed of, all Beneficiaries, jointly and severally. A Closing Agent shall have no liability arising out of or related to any act, or failure to act, on the part of the Trustee; and
- i. a Closing Agent shall be entitled to rely upon information contained on the Trustee Site, including but not limited to an Estoppel Certificate obtained by means of the Trustee Site.

This section 14 grants the Closing Agent certain rights and accommodations in connection with facilitating a Conveyance. However, nothing herein shall be deemed to impose an obligation upon a Closing Agent to undertake any act or deed. It shall be the Owner's responsibility to remit the Fee in accordance with the terms and conditions of this Declaration, and to undertake all acts, deeds and responsibilities incident thereto. Each Beneficiary, by acceptance of a Beneficial Interest in this Declaration, waives all claims arising out of and related to this Declaration (in law and in equity) against each Closing Agent and title insurance company undertaking any act, or failing or refusing to undertake any act, in connection with this Declaration. The foregoing shall not waive the Beneficiaries' rights against an Owner, Grantor or the Property, shall not operate as an indemnification of the Closing Agent and title insurance company, nor shall the foregoing apply to a Closing Agent's or title insurance company's failure or refusal to insure or close a

transaction based upon the existence of this Declaration.

15. **PAYMENT AND NOTICE.** Payment shall be deemed made to the Beneficiaries when received by the Trustee in good and collected funds.

16. **ADDITIONAL RECONVEYANCE FEES PROHIBITED.** During the term of this Declaration no additional Reconveyance Fee or similar fee payable in connection with a Conveyance shall be imposed upon the Property as a covenant running with the land; provided, however, that the foregoing shall not prohibit fees, charges or assessments of whatever kind or of whatever nature payable to and for the benefit of a homeowner's association, governmental entity or non-profit organization.

17. **BENEFICIARIES.** All rights, interest, ownership and privileges in and to this Declaration, SAVE AND EXCEPT "Declarant's Right to Terminate" under section 25, and rights assigned to Licensor, belong to and are hereby vested in the following Beneficiaries, who/which are each hereby declared the owner(s) of Beneficial Interests in the percentages shown below:

- a. Fox Run 1, LLC., a Utah limited liability company, 1818 S. 100 W., Orem, UT 84058 (50%)
- b. FCP Realty Interests II, LLC., a Nevada limited liability company, FDR Station P.O. Box 7298, New York, NY 10150 (31%)
- c. BAM Enterorises LLC.. a Utah limited liability company. 1748 S Glendell. Orem. UT 84058 (10%)
- d. Matthew Baker. 1748 S Glendell. Orem. UT 84058 (5%)
- e. Matthew Baker. 1748 S Glendell. Orem. UT 84058 (2%)
- f. Matthew Baker. 1748 S Glendell. Orem. UT 84058 (2%)

18. **BENEFICIARY SALE/ASSIGNMENT.** Each Beneficiary is entitled to sell, convey, assign, pledge, subordinate, hypothecate, bequeath and devise, in whole and in part, their Beneficial Interest, provided however, that in order to be capable of acceptance, an arms length offer to acquire all or part of the Beneficial Interest described in 17(a), made within five years from the date this Declaration was recorded in the OPR, shall include an equal offer per one percent interest for all remaining Beneficial Interests. Licensor shall have the sole right (but not the duty) to waive or terminate this section 18.

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

- a. provide notice of a purchase, sale, pledge, assignment or similar conveyance of all or part of a Beneficial Interest by filing notice of same in the OPR, with a copy to Trustee, and in a form and content acceptable to Trustee. Any person, firm or entity who acquires (by sale, assignment or otherwise), in whole or in part, a Beneficial Interest shall, by taking such assignment, have consented and agreed to the terms of this Declaration; and
- b. maintain with Trustee the method and manner of payment to be used for distributions to Beneficiary ("Payment Instructions").

Where neither Payment Instructions nor notice of sale or assignment have been made pursuant to section 18 have been received, Trustee shall pay to the name and address shown in section 17. Payments unclaimed for ten years from date of Trustee's receipt shall be forfeited by the Beneficiary and paid prorata to the remaining Beneficial Interests.

20. **LICENSE.** This Declaration was prepared under license from Freehold Capital Partners, LLC., a Nevada limited liability company (together with its heirs, successors, predecessors, controlled entities, affiliates, and assigns "Freehold" and "Licensor").

21. **LICENSOR'S AUTHORITY.** If Licensor should discontinue operations and cease to exist (as evidenced by forfeiture of Licensor's corporate charter), and provided that the rights and authority granted Licensor under this Declaration ("Licensor's Authority") have not otherwise been assigned, Licensor's Authority shall thereafter be exercisable by Beneficiaries (whether one or more) holding at least 51% of the Beneficial Interests. Reinstatement of Licensor's corporate charter following forfeiture shall reinvest Licensor's Authority solely in Licensor.

22. **IMPAIRMENT OF CONSIDERATION.** Each Owner, by acceptance of a Conveyance Instrument, whether expressed therein or not, stipulates and agrees that neither destruction nor obsolescence of, nor defect in, Improvements or Property Benefits shall directly or indirectly diminish, impair or invalidate this Declaration in any way. No party holding rights in and to this Declaration, as a Beneficiary thereof, shall have an obligation to construct, maintain, warranty, modify, add to, or transfer additional improvements or Property Benefits to the Property beyond the date of recordation of this Declaration, in order for this Declaration to be in full force and effect.

23. **BENEFIT AND BURDEN.** It is the intent of the Parties to this Declaration, and each Owner (by acceptance of a

Conveyance Instrument), that this Declaration 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.

24. **SAVINGS CLAUSE.** In the event any provision in this Declaration, 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 consideration equal to the consideration originally contemplated under this Declaration.

25. **DECLARANT'S RIGHT TO TERMINATE.** Notwithstanding any provision or term to the contrary herein, this Declaration shall terminate and be rendered null, void and of no force and effect in its entirety with respect to any portion of the Property that is the subject of a Termination (hereinafter defined). As used herein, a "Termination" shall refer to a written document that (i) describes the portion of the Property to be Released and Exonerated from this Declaration (the "Released Property"); (ii) contains the following statement made under oath by the Party signing the Termination on behalf of the Declarant: *"Undersigned does swear and affirm upon personal knowledge that neither the Released Property, nor Declarant's Beneficial Interest, nor a Controlling Interest in Declarant, has been sold, conveyed or assigned since the date of filing of the Declaration recorded in [insert recording information of this Declaration]"*; and (iii) is recorded in the OPR. Upon the sale, conveyance or assignment of the Released Property, Declarant's Beneficial Interest, or a Controlling Interest in Declarant, this Article 25 shall become void. A Termination shall be effective without necessity of joinder of the Beneficiary(ies), the Trustee, an Owner, any non-profit designated in this Declaration or any other party affected by this Declaration (jointly and severally the "Affected Parties"). Declarant shall be free to record a Termination notwithstanding any duty or obligation to the Affected Parties and regardless of any financial or legal effect such Termination may have on Affected Parties. Within ten (10) days from date of filing a Termination, Declarant shall provide a copy of the filed Termination to the Trustee. If a valid Termination is recorded as provided above, the legal description of the Property, for purposes of this Declaration, shall be deemed amended, effective as of the date of recordation of the Termination, to exclude the Released Property. Upon Declarant's written request, the Trustee and Affected Parties shall execute any document(s) necessary to effectuate this provision. This right to terminate is personal to the Declarant and cannot be conveyed, assigned or otherwise exercised by another party (including, but not limited to, by any successor, heir or assign of Declarant).

26. **MODIFICATIONS.** Trustee shall be entitled to (and upon request of either Licensor or the holders of a majority of the Beneficial Interest shall) modify this Declaration for the purpose of securing or clarifying rights and obligations intended or contemplated in this Declaration, to correct clerical errors, to clarify ambiguity, to remove any contradiction in the terms hereof, or to make such other changes deemed reasonable or necessary to comply with applicable law or effectuate the purposes and intent of this Instrument; provided, however, that no such modification shall (i) change the percentage in section 5 of this Declaration, (ii) retroactively affect a Lender's lien priority; (iii) extend the Term of this Declaration nor (iv) make any modifications to substantive terms that change the intent of this Declaration. Any modification shall be made by instrument filed in the OPR. All parties to this Declaration 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 pursuant to this section.

27. **NO GENERAL ASSIGNMENT.** Any purported assignment of rights under this Declaration shall be invalid and of no force and effect unless said assignment specifically references this Declaration and is filed Of Record. In particular, but not by way of limitation, a general assignment by Declarant (whether by Conveyance Instrument, 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 Declaration, or invalidate or modify this Declaration.

28. **CONSTRUCTION.** This Declaration 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 Declaration shall be entitled to recover from any other party to this Declaration, costs, including attorney fees, incurred in connection with legal proceedings arising out of or related to this Declaration. Each party to this Declaration, including Owner, and Beneficiaries, hereby jointly and severally waive all claims against each other for exemplary, punitive, consequential, and emotional damages arising out of or related to this Declaration.

30. **APPLICABLE LAW.** This Declaration shall be construed according to the laws of the State of Utah. If any

provision of this Declaration is found to be in violation or 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 Run 1, LLC., a Utah limited liability company

Steven Kelly Manager
Steven Kelly

STATE OF UTAH §

ACKNOWLEDGMENT

COUNTY OF Utah §

Before me, the Undersigned Notary, on the 8 day of March, 2010, personally appeared Steven Kelly, Manager of Fox Run 1, LLC, 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 executed the same in the aforementioned capacity for the purposes therein contained.

Jana Lane
Notary Public, State of UTAH

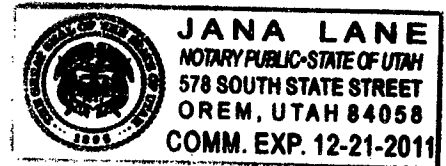


Exhibit "A"

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- 59:033:0002 - NW 1/4 OF SW 1/4; N 1/2 OF SW 1/4 OF SW 1/4; W 3/4 OF S 1/2 OF SW 1/4 OF SW 1/4 OF SEC 1, T6S, R2W, SLM.
AREA 75 ACRES.
- 59:055:0011 - COM AT NW COR. SEC. 23, T6S, R2W, SLB&M.; S 89 DEG 59' 32" E 2665.6 FT; S 0 DEG 21' 29" W 326.83 FT; N 89
DEG 59' 32" W 2665.69 FT; N 0 DEG 22' 24" E 326.83 FT TO BEG. AREA 20.000 AC.