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Freehold Licensing
P.O. Box 6193
Round Rock TX. 78683

Ent: 333909 - Pg 1 of 12
Date: 10/27/2009 5:48 PM
Fee: \$41.00 CREDIT CARD
Filed By: MT
CALLEEN B PESHELL, Recorder
Tooele County Corporation
For: SOUTH RIM LC

DECLARATION OF COVENANT

NOTICE TO CLOSING AGENT, SELLER AND PURCHASER

THIS DECLARATION OF COVENANT 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 Declaration. Check ¶6 of this Declaration for exempt sales. For non-exempt sales made before expiration of this Declaration (see ¶2), collect one percent (1%) of the Gross Sales Price from the Seller (see ¶5), retain Closing Agent fee (see ¶13e) and remit balance to Trustee (see ¶9, ¶14). Contact Trustee with inquiries related to this Declaration and for assistance with closing. See also ¶13.

STATE OF Utah

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF Tooele

This Declaration is made by **South Rim, LC, a Utah limited liability company**, whose mailing address is 1443 S. Hogan Rd., South Rim, UT 84071 (hereinafter "Declarant") for the purposes herein set forth as follows:

WITNESSETH:

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

The real property located in Tooele 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 transferred, held, sold, subjected to and conveyed subject to this Declaration of Covenant and all matters set forth in this Declaration ("Covenant"), 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, and subject to the following:

1. **DEFINITIONS.** In addition to words and phrases defined elsewhere in this Declaration, the following when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

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- a. "Beneficiary" shall refer to each party listed in ¶17 of this instrument, including successors and assigns.
 - b. "Closing Agent" or "Settlement 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.
 - 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. "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, or defaults in connection with, this Declaration, as same relates to the Property that is the subject of the Estoppel Certificate.
 - e. "Gross Sales Price" shall mean the total consideration, paid by or on behalf of the purchaser of the Property subject to the Transfer of Title (whether by cash, installment note, trade, agreement, or otherwise), to or for the benefit of the Seller of such Property. The Gross Sales Price shall exclude prorated and prepaid property taxes and interest, title policy fees, escrow fees, and similar transaction fees.
 - 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", "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 Deed, 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.
 - h. "Owner" shall mean the record owner(s) holding fee simple title to all or part of the Property that is subject to this Declaration.
 - i. "Parties to this Declaration" shall mean persons, firms and entities then holding rights or having obligations under this Declaration.
 - j. "Property" and "Land" shall mean the real property described on page one of this Declaration, SAVE AND EXCEPT any portion of the Property that is owned by a governmental entity (whether state, local, federal, or otherwise, hereinafter "Public Property"). This Covenant 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.
 - k. "Reconveyance Fee" shall mean the fee described in ¶5, together with interest, costs and fees associated with unpaid Reconveyance Fees as otherwise described in this Declaration.
 - l. "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 Declaration and the covenants contained herein shall take effect upon filing of this Declaration 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 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 Deed, and takes and conveys title to the acquired Property subject to the provisions of this Declaration. Each Owner acquiring title to all or part of the Property, whether expressed in the Deed or not, covenants and agrees to payment of the Reconveyance Fee as a condition precedent to Owners conveyance of title to said Property.

4. **CONSIDERATION.** By acceptance of a Deed or Transfer of Title, 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 Covenant 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 and this Declaration benefit the Property and the Owner, (said improvements, benefits and consideration in "a-e" jointly and singularly "Improvements"). In addition, each Owner expressly covenants, acknowledges and agrees (i) that the Improvements all and singularly, jointly and severally, are appurtenant to the Property; (ii) the Reconveyance 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 (iii) 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 a 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 Declaration.

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

6. **EXEMPTIONS.** The Reconveyance Fee shall not be assessed or payable in connection with a Transfer of Title (a) by the Declarant; (b) made by the Owner in connection with a mortgage where the transfer of title is for the sole purpose of securing the mortgage or similar indebtedness of the Owner; (c) resulting from death or legal disability or legitimate estate planning purposes, including transfers by will, probate; (d) by or to an institutional lender or trustee made in connection with judicial or non-judicial foreclosure of a mortgage; (e) by or to a governmental agency (whether local, state, federal or otherwise) or 501(c)(3) entity; (f) relating to the creation of any leasehold interest, or the granting of any mortgages; (g) made by order of a court (whether in connection with bankruptcy, divorce or otherwise); (h) where the Trustee cannot be identified by reference to the OPR; (i) where imposition of the Reconveyance Fee is prohibited by applicable law or (j) occurring prior to the date of filing of this Instrument in the OPR.

7. **RESERVATION:** This Declaration and the premises and promises contained herein are intended to operate as a covenant running with the Land and title to the property and as a Deed restriction (whether stated in the deed or not). Whether expressed therein or not, a Deed conveying an interest in the Property shall be deemed to contain therein a reservation providing that the conveyance is expressly subject to this Declaration. Parties acquiring title take title subject to this Declaration and the reservation from conveyance heretofore provided. In the event of any conflict between the provisions of this Declaration and any Deed, this Declaration shall control.

8. **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 upon the Property that was the subject of the Transfer of Title giving rise to the Unpaid Reconveyance Fee ("Lien Property"), which Lien shall thereafter be binding upon such

Property and such Property's Owner, and:

- a. The Lien is effective from and shall relate back to the most recent of the date of recording in the OPR of (1) this Declaration or (2) an Estoppel letter.
- b. The Lien shall secure the unpaid Reconveyance Fees as well as interest and all reasonable costs and attorney's fees incurred incident to the collection process.
- c. The liability of a first mortgagee (including its successor or assignees) for any Unpaid Reconveyance Fee is limited to one percent (1%) of the original first lien mortgage debt.
- d. With the prior written consent of the Beneficiaries then holding a majority interest in this Declaration (which consent shall include instructions pertaining to payment of enforcement costs and disposition of 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 a Lien for unpaid Reconveyance 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. 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 Lien foreclosure action or an action to recover a money judgment for Unpaid Reconveyance Fees.
- e. For the benefit of the Beneficiaries, the Trustee has the power to purchase the subject property at the foreclosure sale and to then hold, lease, mortgage, or convey it.
- f. An Owner acquiring title to Lien Property is liable for, and shall promptly pay to the Trustee, all Unpaid Reconveyance Fees that existed prior to the Transfer of Title to the Owner. This liability is without prejudice to any right the Owner may have to seek contribution or indemnity from prior Seller(s) or owner(s) of the Lien Property.
- g. A first mortgagee (or its successor or assignees) who acquires title to Lien Property by foreclosure (including by Deed in lieu of foreclosure) shall have no liability for Unpaid Reconveyance Fees that became due prior to the mortgagee's acquisition of title to such Lien Property.
- h. 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.
- i. The Trustee shall be a proper party to intervene in any foreclosure proceeding related to Lien Property.
- j. Foreclosure by the Trustee 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 18 percent per year.
- m. 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 10 business days after Trustee's receipt of a written request from an Owner or their designated representative, including any mortgagee or closing agent (the "Requesting Party"), delivered by certified mail, first-class postage prepaid, return receipt requested, or by other commercially reasonable means, with proof of delivery, and which describes with reasonable particularity (i) the Owner; (ii) the approximate date and Gross Sales Price of the Transfer of Title

to Owner; and (iii) the Requesting Party's name, address and contact information; and which (iv) includes a copy of this Declaration, the Trustee shall furnish to such Requesting Party an Estoppel Certificate. An Estoppel Certificate 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. If the Trustee fails to timely respond to a written request made pursuant to this provision, then after an additional five (5) days notice of intent to file a Substitute Estoppel Certificate ("Substitute Estoppel Notice") with a copy of said Substitute Estoppel Certificate contained therein, delivered in a manner permitted above, 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 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. A "Substitute Estoppel Certificate" shall only be valid through the date of mailing of the Substitute Estoppel Notice. In connection with (and as a condition to) issuance of a second Estoppel Certificate made to or on behalf of the same Owner within a twelve month period, the Trustee can charge a reasonable fee.

p. Within 10 business days from date of receipt of a request from Trustee, an Owner or Closing Agent shall promptly provide, upon request of the Trustee, information reasonably requested by the Trustee related to a Transfer of Title to or from an Owner, including date of sale, Gross Sales Price, and a copy of any closing statement prepared in connection therewith (redacted as to each social security number, tax identification number, date of birth and financial account information appearing therein). By acceptance of a deed, each Owner does thereby irrevocably authorize and instruct each Closing Agent involved in closing a Transfer of Title to or from the Owner 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.

q. To the extent the foregoing conflicts with any applicable statute, the statute shall apply.

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

National Covenant Disbursement, LLC
c/o Richard A. Smith, Esq., Trustee
25 Old Route 37, New Fairfield, CT 06812

(including any successor trustee, the "Trustee"). The Trustee shall serve as a neutral third party acting as a fiduciary. Licensors 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 Trustee should be in existence, Beneficiaries holding a majority interest in this Declaration, acting jointly, or upon application of any Beneficiary a court of competent jurisdiction in Tooele County, Utah, shall appoint a Trustee. Upon Trustee's request, parties to this Declaration 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 Declaration 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.** To the extent permitted by law, each Owner, by acceptance of the Deed, 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 brought in the name of

the Trustee or Beneficiaries in a like manner as a mortgage or deed of trust lien 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 prior liens, to other 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 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 the Lien Property's Owner, 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.

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 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 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 Declaration, provided, however, that the re-filed Declaration shall not extend the original Term. Any Lien arising under the re-filed instrument shall relate back to the most recent of date of recordation in the OPR of (i) this Declaration or (ii) an Estoppel Certificate.
- e. with respect to each Transfer of Title retain, as its fee, three percent (3%) of any and all gross Reconveyance Fees and other sums collected and disbursed by the Trustee pursuant to the terms of this Declaration;
- f. retain from any sums due Beneficiaries, on a prorata basis in accordance with each Beneficiaries respective ownership interest in this Declaration, such amounts necessary to reimburse Trustee for reasonable and necessary expenses incurred in initiating or defending legal proceedings in connection with this Declaration;
- g. decline to undertake action under subsection b until such time as the Beneficiaries have made suitable financial arrangements with Trustee for costs and expenses related to same.

12. **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 ownership interest, all income (after permitted deductions and distributions otherwise described herein, the "Net Income") arising out of or related to this Declaration;

b. retain in a separate escrow account five percent (5%) from all Reconveyance 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 Declaration, 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 to this Declaration, including each Owner (by acceptance of a 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 Declaration and the Reconveyance 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 superior 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 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.

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.

13. **CLOSING AGENT ADMINISTRATION.** In connection with any Transfer of Title:

- a. a Closing Agent shall have no 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, 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 Reconveyance Fee, as determined by reference to the OPR, and (2) administer the balance of the Reconveyance Fee applying applicable state escheatment rules. Compliance with the foregoing shall satisfy all sums then due under this Declaration and any Lien securing same.
- c. where neither the Trustee nor one or more Beneficiaries can be located by reference to the OPR, the Reconveyance Fee shall be deemed waived in connection with that Transfer of Title;
- d. upon tender of payment to Trustee of sums due under this Declaration, or upon Closing Agent's written agreement to hold such in trust and unrecorded until tender of payment of such sums to the Trustee, a Closing Agent shall be entitled to an Estoppel Certificate, and Trustee shall issue same upon Closing Agent's request;

e. where permitted by law a Closing Agent shall be and hereby is entitled to withhold from each Reconveyance Fee paid in connection with a Transfer of Title, and retain as a fee, the greater of \$100.00 or two percent (2%) of the Reconveyance 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 Tooele 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 released as to claims resulting from information not contained in the OPR.

14. **PAYMENT AND NOTICE.** Payment shall be deemed made when tendered to the Trustee in good and collected funds. In order to insure proper credit, payment transmittal must reference the recording information of this Declaration. Notice and communications of any kind required under or made in connection with this Declaration 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 Certificate 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 Declaration shall do so upon request of a Closing Agent.

15. **ADDITIONAL RECONVEYANCE FEES PROHIBITED.** During the Term of this Declaration no additional Reconveyance Fee or similar fee payable in connection with each Transfer of Title 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.

16. **RESERVATION.** Trustee shall be entitled to (and upon request of Licensor shall) make technical modifications to 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 necessary to comply with applicable law. No such modification shall be designed or intended to (i) result in an increase in the total consideration contemplated in paragraph 5 of this Article, (ii) affect Owner's rights or obligations under this Declaration, (iii) extend the Term of this Declaration nor (iv) make any modifications to substantive terms that change the general intent of this Declaration. Modification shall be made by recorded instrument ("Amendment"). Upon Trustee's request, all parties to this Declaration 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 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 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 Beneficiaries, acting jointly by the holders of a majority interest in this Declaration.

17. **BENEFICIARIES.** All rights, interest, ownership and privileges in and to this Declaration, SAVE AND EXCEPT "Declarant's Right to Terminate" under ¶25, 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 Declaration in the percentages shown below:

- a. South Rim, LC, a Utah limited liability company, 1443 S. Hogan Rd., South Rim, UT 84071 (50%)
- b. Freehold Licensing, Inc., a Nevada corp., P.O. Box 6193, Round Rock, TX 78683 (24%)
- c. BN, LLC, 1099 W. South Jordan Parkway, South Jordan, UT 84095 (10%)

- d. First Castle, LLC, 1099 W. South Jordan Parkway, South Jordan, UT 84095 (5%)
- e. Dane Kay, 11121 South Conestoga Drive, Spanish Fork, UT 84660 (2%)
- f. Rockbridge Management LLC, an Arizona limited liability company, 4677 E. Redfield Rd., Gilbert, AZ 85234 (5%)
- g. RFR Holdings LLC, a Nevada limited liability company, 448 East 6400 South, Suite 450, Salt Lake City, UT 84107 (2%)
- h. Thor Roundy, 448 East 400 South, Suite 100, Salt Lake City, UT 84111 (2%)

18. **BENEFICIARY SALE/ASSIGNMENT.** Each Beneficiary is entitled to sell, convey, assign, pledge, subordinate and hypothecate, in whole or in part, their beneficial interest in this Declaration, provided however, that any offer to acquire 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 the remaining beneficial interests described under section 17.

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 Declaration 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 Declaration shall, by taking such assignment, have consented and agreed to the terms of this Declaration.

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 Declaration was prepared under license from Freehold Licensing, Inc., a Nevada corporation, (jointly and severally together with its heirs, successors and assigns "Freehold" and "Licensor").

21. **LICENSOR'S AUTHORITY.** If Licensor should at any time hold less than a 5% beneficial interest in this Declaration, and provided that Licensor has not assigned its authority to a successor by document filed in the OPR, authority vested in Licensor by this Declaration shall then vest in Beneficiaries (whether one or more) holding a majority interest in this Declaration.

22. **IMPAIRMENT OF CONSIDERATION.** To the extent that Improvements form, in whole or in part, the basis for consideration for the benefits and burdens imposed by this Declaration, the parties, by acceptance of a Deed, stipulate and agree to the adequacy of said Improvements, and further stipulate and agree, by acceptance of a Deed, whether expressed therein or not, that neither destruction nor obsolescence of, nor defect in, said Improvements 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 beyond the date of recordation of this Declaration, in order for this Declaration to be in full force and effect.

23. **BENEFIT AND BURDEN.** 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. All burdens and benefits are stipulated to be appurtenant to the Land.

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 compensation equal to compensation 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 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 Property to be released and exonerated from this Declaration ("Released Property"); (ii) is recorded in the OPR and (iii) is executed SOLELY by Declarant in Declarant's sole and absolute discretion 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 or will have on Affected Parties. Notwithstanding the foregoing, Declarant shall have no right to record a Termination and no Termination shall be valid or effective after the earlier of the sale, conveyance, transfer or assignment of (x) 51% or more of Declarant's interest in the Released Property or (y) the Beneficial interest described under 17(a), in whole or in part. Within ten (10) days from date of filing a Termination, Declarant shall provide a copy to Trustee, by certified mail. If a Termination is recorded as provided above, the legal description of the Property, for purposes of this Declaration, shall be deemed amended 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 assigned.

26. **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 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 Declaration, or invalidate or modify this Declaration in any way.

27. **LOAN REQUIREMENT.** To the extent that any of the provisions of this Declaration 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 purchaser's or Owner's ability to obtain financing for the Property, Trustee shall have the authority to waive, subordinate, or repeal such provision for purposes of a given loan and, upon request of Licensor or the Beneficiaries holding a majority interest, shall do so.

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 another party to the 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, Trustee 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 as they exist at the time of filing of this Declaration. If any provision of this Declaration 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

South Rim, LC, a Utah limited liability company

Leland Hogan Manager
Leland Hogan, Manager

Acknowledgement

STATE OF Utah §

COUNTY OF Boole §

Before me, the Undersigned Notary, on the 25th day of October, 2009, personally appeared Leland Hogan, Manager of South Rim, LC, 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.

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

Maxine Bryant
Notary Public, State of Utah

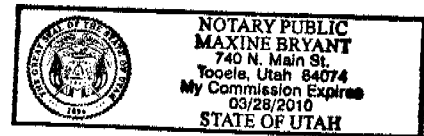
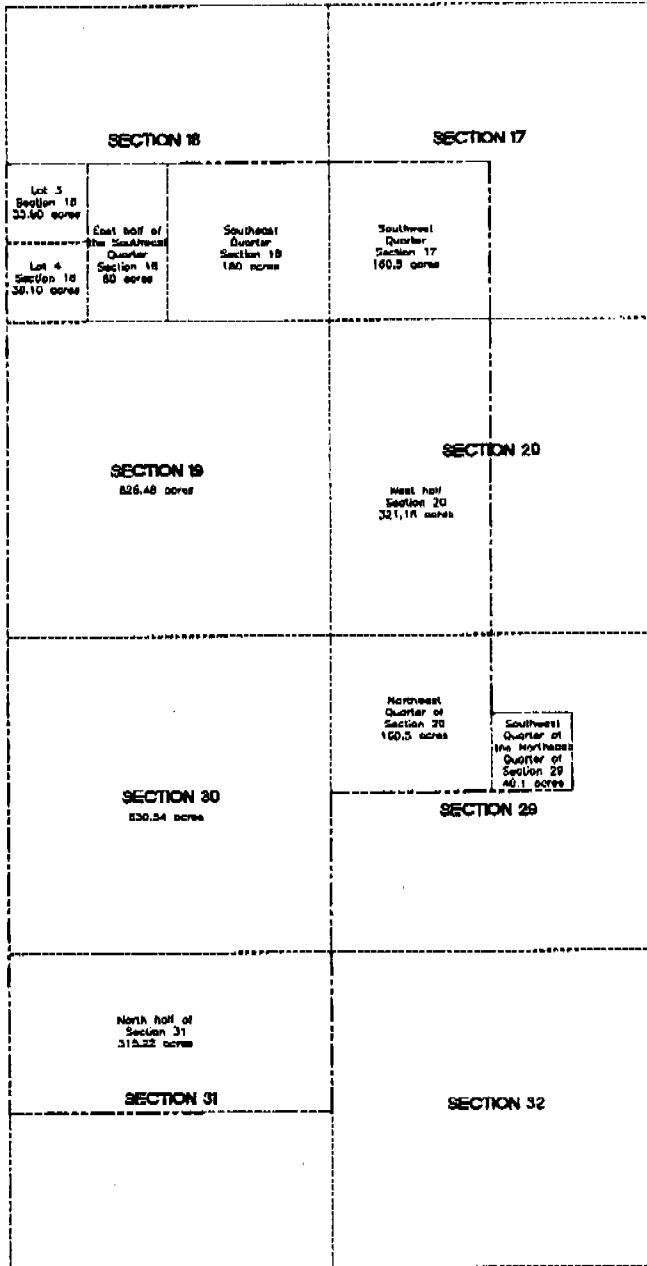


EXHIBIT "A"

WARRANTY DEED ENTRY# 111841
BOOK 0507 PAGE 0382



Section 17
(Warranty Deed Parcel 5)
The Southwest Quarter of Section 17, Township 4 South, Range 5 West, Salt Lake Meridian.(06-015-0-0006)

Section 18
(Warranty Deed Parcel 6)
Lots 3 & 4 and the East Half of the Southwest Quarter, the Southeast Quarter of Section 18, Township 4 South, Range 5 West, Salt Lake Meridian.(06-015-0-0005)

Section 19
(Warranty Deed Parcel 7)
All of Section 19, Township 4 South, Range 5 West, Salt Lake Meridian.(06-018-0-0001)

Section 20
(Warranty Deed Parcel 8)
The West half of Section 20, Township 4 South, Range 5 West, Salt Lake Meridian.(06-018-0-0002)

Section 29
(Warranty Deed a portion of Parcel 9)
the Northwest Quarter, and the Southwest Quarter of the Northwest Quarter of Section 29, Township 4 South, Range 5 West, Salt Lake Meridian. (06-018-0-0005)

Section 30
(Warranty Deed Parcel 10)
All of Section 30, Township 4 South, Range 5 West, Salt Lake Meridian.(06-018-0-0007)

Section 31
(Warranty Deed Parcel 13)
The North half of Section 31, Township 4 South, Range 5 West, Salt Lake Meridian.(06-022-0-0001)

AREAS TAKEN FROM 1886 CADASTRIAL SURVEY PLAT
FILE NAME UT260040S0050WD-C0524A.TIF
TOTAL AREA: 2566.52 acres more or less

**TRANE
ENGINEERING**

South Rim Property Descriptions