

Exhibit “5”

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

NATIONAL NOTE OF UTAH, LC, a Utah
Limited Liability Company and WAYNE
LaMAR PALMER, an individual,

Defendants.

COMPLAINT IN INTERVENTION

Case No: 2:12-CV-591 BSJ

Judge Bruce S. Jenkins

Barclay Associates, LLC ("**Barclay**"), through its undersigned counsel of record,
files this Complaint in Intervention and states as follows:

INTRODUCTION

Under the terms of two instruments described below, Barclay was granted security interests in various parcels of properties which are part of the subject matter of this action. The loans related to those security instruments are in default. Barclay brings this

Complaint in Intervention for the purposes of protecting and enforcing its rights and property interests in the real property described below.

PARTIES

1. Barclay is a California limited liability company with its principal place of business in San Rafael, California.

2. Plaintiff Securities and Exchange Commission (the “SEC”) is an agency of the United States government.

3. Defendant National Note of Utah, LC (“**National Note**”) is a Utah limited liability company.

4. Defendant Wayne LaMar Palmer (“**Palmer**”) is an individual resident of the State of Utah.

5. The Receiver was appointed pursuant to the order of the United States District Court for the District of Utah, Central Division, Judge Bruce S. Jenkins, dated June 25, 2012.

JURISDICTION AND VENUE

6. This Court has declared its jurisdiction over this matter in the Court’s June 25, 2012 Order Appointing Receiver and Staying Litigation. (Doc. 9)

7. Venue is also proper in this Court as stated in the June 25, 2012 Order. (Doc. 9)

STATEMENT OF FACTS

8. The SEC began this action by filing a Complaint on June 25, 2012.
(Doc. 1)

9. On the same date, the Court entered an Order Freezing Assets and Prohibiting Destruction of Documents (Doc. 8) which froze all assets held in the name of the Defendants, including National Note.

A. Barclay's Interest in the Riverbend Property.

10. Riverbend Estates LC ("**Riverbend**"), a company controlled by Defendant National Note of Utah, LC ("**National Note**"), borrowed \$3.7 million from Barclay on or about May 31, 2007 (the "**First Barclay Loan**").

11. The Loan is evidenced by a promissory note ("**Note**") in favor of Barclay dated May 31, 2007 in the principal amount of \$3.7 million at a rate of 11.25% interest. A copy of the Note is attached as *Ex. 1*.

12. Pursuant to a Mortgage, Assignment of Rents, and Security Agreement dated May 31, 2007 (the "**Barclay Mortgage**"), the Note is secured by five parcels of real property totaling approximately 171.3 acres, located in Middleton, Canyon County, Idaho (the "**Main Property**"). A copy of the Barclay Mortgage is attached as *Ex. 2*.

13. The Main Property is identified by parcel numbers 3390900000, 339090100, 339090110, 3391000000, and 3475200000. The legal description for the Main Property is included in *Ex. 2*.

14. The Barclay Mortgage defines the “Mortgaged Property” as expressly including “all current and future rights, including ... **waters, watercourses and appurtenances** related to or benefiting the Land or the Improvements” (*Ex. 2* at 3 (emphasis added).)

15. A separate parcel of real property adjoining the Main Property was acquired by Riverbend on or about June 18, 2007 (the “**First Adjoining Property**”). The First Adjoining Property is identified by parcel number 33900012B0.

16. Another parcel of real property adjoining the Main Property was acquired by Riverbend (the “**Second Adjoining Property**”). The Second Adjoining Property is identified by parcel number 1853700000.

17. The Main Property, the First Adjoining Property, and the Second Adjoining Property are collectively defined as the “**Middleton Property**.”

18. In November 2011, National Note borrowed an additional \$77,000.00 from Barclay (the “**Second Barclay Loan**”), and in exchange National Note transferred an Assignment of Beneficial Interest in Trust Deed to Barclay (“**Assignment of Trust Deed**”). A copy is attached as *Ex. 3*.

19. The Deed of Trust in which an interest was assigned gives Barclay a security interest in the First Adjoining Property. A copy of the Trust Deed is attached as *Ex. 4*.

B. Settlement Agreement with Receiver.

20. Riverbend and National Note are in default of their obligations to Barclay under the First Barclay Loan and the Second Barclay Loan. As of April 30, 2013, Riverbend owed Barclay \$5,129,181.24, including interest and penalties under the First and Second Barclay Loans.

21. Barclay obtained an appraisal of the Middleton Property on September 24, 2012, which valued the Property at \$1.0 million. Pursuant to an updated appraisal on March 26, 2013, the value of the Middleton Property increased by a total of \$8,500.00.

22. Certain real property located adjacent to or near the Middleton Property, referred to herein as the “**Excluded Property**,” is identified as follows (i) .61 acres, including a home, constituting parcel number 339010000; and (ii) .22 acres, including a home, constituting parcel number 1866900000.

23. On June 25, 2012, the Securities and Exchange Commission (the “**SEC**”) filed the Case, and the Court entered its *Order Appointing Receiver and Staying Litigation* and *Order Freezing Assets and Prohibiting Destruction of Documents* (the “**Case Orders**”).

24. Pursuant to the Case Orders, the Receiver was appointed, a Receivership Estate was established, and the Court took “exclusive jurisdiction and possession of the assets, property and interest, of whatever kind and wherever situated of” National Note, Wayne LaMar Palmer (“**Palmer**”), and related and affiliated entities, including Riverbend (collectively, the “**Receivership Parties**”).

25. Pursuant to the Case Orders, the Middleton Property is property of the Receivership Estate.

26. On June 10, 2013, Barclay and the Receiver signed a Settlement Agreement. Pursuant to the Settlement Agreement, and subject to Court approval, the Receiver agreed to convey to Barclay the Middleton Property.

27. Barclay seeks leave to intervene in this Receiver proceeding to seek the Court’s approval of the Settlement Agreement.

FIRST CAUSE OF ACTION
(Declaration of Barclay's Security Interests)

28. Barclay incorporates by reference each allegation set forth in paragraphs 1-27.

29. By virtue of the Barclay Mortgage, Barclay has a security interest in five parcels of real property totaling approximately 171.3 acres referred to above as the Main Property.

30. In the Barclay Mortgage, the "Mortgaged Property" is defined as expressly including "all current and future rights, including ... **waters, watercourses and appurtenances** related to or benefitting the Land or the Improvements" (*Ex. 2 at 3* (emphasis added.))

31. In consideration of a separate loan, National Note assigned to Barclay a beneficial interest in a Trust Deed, giving Barclay a security interest in the First Adjoining Property.

32. Barclay is entitled to a declaratory judgment finding that, pursuant to the Barclay Mortgage and the Assignment of Trust Deed, Barclay had valid security interest in the Main Property and the First Adjoining Property, respectively

SECOND CAUSE OF ACTION
(Approval of Settlement Agreement)

33. Barclay incorporates by reference each allegation set forth in paragraphs 1-32.

34. The Court should approve the Settlement Agreement executed by Barclay and the Receiver, in all respects.

35. Pursuant to the Settlement Agreement, the Court should approve abandonment of the Main Property, the First Adjoining Property, and the Second Adjoining Property, collectively referred to as the Middleton Property.

36. Appraisals of the Main Property and the First Adjoining Property established that the value of the real estate, including water rights, is significantly less than the First Barclay Loan and the Second Barclay Loan, respectively.

37. Therefore, there is no equity in those properties or the Receivership Estate.

38. After abandonment of the property, Barclay would have an unsecured claim in the amount of approximately \$4,000,000. In exchange for the release of that unsecured claim, the Receiver agreed to convey the Second Adjoining Property to Barclay.

39. The Second Adjoining Property is worth only approximately \$8,500. (*See* Appraisal Letter attached as *Ex. 5*.) Additionally, its size, shape, and location are such that no significant if sold separately from the Main Property and the First Adjoining Property.

40. Therefore, the Court should enter an Order approving the Settlement Agreement in all respects and authorizing the Receiver to convey the Middleton Property to Barclay free of any claim or interest on the part of the Receivership Estate.

PRAYER FOR RELIEF

WHEREFORE, Barclay prays for judgment in its favor and against the Receiver, standing in the shoes of Riverbend and National Note, as follows:

1. On the first cause of action, for declaratory judgment establishing Barclay's security interests and contract rights to the Main Property, the First Adjoining Property, and the Second Adjoining Property.

2. On the second cause of action, for an Order enforcing the Settlement Agreement entered between the Receiver and Barclay on June 10, 2013 in all respects.

3. Based on both causes of action, for an Order of the Court authorizing the Receiver to abandon to Barclay all of the property defined above as the Middleton Property.

4. For such other and further relief, including equitable relief, as the Court deems just and proper.

DATED this 15th day of November, 2013.

RICHARDS BRANDT MILLER NELSON

/s/ Matthew C. Barneck
MATTHEW C. BARNECK
CHAD E. FUNK
Attorneys for Barclay Associates, LLC

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Exhibit “1”

CERTIFIED TO BE A TRUE AND CORRECT
COPY OF THE ORIGINAL
TRANSACTION TITLE & ESCROW, INC.

PROMISSORY NOTE

\$3,700,000.00

Middleton, Idaho
May 31, 2007

FOR VALUE RECEIVED, RIVERBEND ESTATES LC, a Utah limited liability company ("Maker"), promises to pay to the order of BARCLAY ASSOCIATES LLC, a California limited liability company, having its principal business located at 100 Drakes Landing Road, Suite 167, Greenbrae, CA 94904 ("Payee"), at such principal address or at such other place as the Holder hereof may designate in writing (the legal holder from time to time of this Note, including Payee as the initial holder, is hereinafter referred to as "**Holder**"), the principal sum of THREE MILLION SEVEN HUNDRED THOUSAND AND NO /100 Dollars (\$3,700,000), or so much thereof as may be advanced to or for the benefit of Maker by Holder (hereinafter referred to as "**Principal Indebtedness**"), together with interest thereon at an annual rate of eleven and twenty-five hundredths percent (11.25%) (the "**Interest Rate**"), in accordance with the provisions hereinafter set forth.

1. Terms of Payment. If the date on which the Principal Indebtedness is advanced to Maker (the "**Advancement Date**") is not the first day of a calendar month, then Maker shall pay to Holder, on the Advancement Date, interest only on the Principal Indebtedness, at the Interest Rate, calculated on the basis of a 365-day year and the number of days from and including the Advancement Date to and including the last day of the calendar month in which the Advancement Date occurs. Commencing on the first day of the second calendar month following the Advancement Date (or on the first day of the first calendar month following the Advancement Date if the Advancement Date is the first day of a calendar month), and on the first day of each calendar month thereafter (hereinafter called the "**Monthly Payment Date**"; provided, however, that if a Monthly Payment Date is not a Business Day (defined below), then the Monthly Payment Date shall be deemed to be the immediately following Business Day) until June 1, 2009, Maker shall pay to Holder monthly interest payments equal to the sum of \$34,687.50 per month (as may be adjusted pursuant to Section 2 or Section 3), to be applied to interest on the Principal Indebtedness from time to time outstanding at the Interest Rate. On June 1, 2009 (the "**Maturity Date**"), Maker shall pay to Holder the entire Principal Indebtedness then remaining unpaid, together with accrued and unpaid interest thereon at the Interest Rate and any other charges due under this Note, the Mortgage (hereinafter defined), and any other documents evidencing or securing or pertaining to the advancement or disbursement of the Principal Indebtedness (collectively, the "**Loan Documents**"); provided, however, that if June 1, 2009 is not a Business Day (defined below), then the Maturity Date shall be the immediately following Business Day. The period from and including the Advancement Date to the Maturity Date will be referred to hereinafter as the "**Term**".

2. Prepayment. Except as specifically provided herein or in the Mortgage, no prepayment of the Principal Indebtedness shall be allowed during the first year following the Advancement Date (the "**Prepayment Period**"). Maker, whether or not a debtor in a proceeding under Title 11, United States Code, may prepay the Principal Indebtedness in whole or in part on any Monthly Payment Date during the Prepayment Period, provided Maker (i) gives Holder at least thirty (30) days prior written notice of Maker's intent to prepay this Note, and (ii) pays,

Promissory Note

along with all accrued, unpaid interest and all other sums due under any of the Loan Documents, any required prepayment fee (the "Prepayment Fee") as described below.

(a) During the Prepayment Period, the Prepayment Fee shall be the Yield Maintenance as defined below. The Prepayment Fee will be due when the loan is prepaid during the Prepayment Period, whether such prepayment is voluntary or results from default, acceleration or any other cause.

(b) After the Prepayment Period, the Principal Indebtedness may be prepaid at par.

"Yield Maintenance" is calculated for each Monthly Payment Date and is the product of (i) the Interest Rate, divided by 365, (ii) multiplied by the amount prepaid, and (iii) multiplied by the number of days remaining during the Prepayment Period.

MAKER HEREBY EXPRESSLY (A) WAIVES ANY RIGHTS IT MAY HAVE UNDER LAW TO PREPAY THIS NOTE, IN WHOLE OR IN PART, WITHOUT PENALTY, UPON ACCELERATION OF THE MATURITY DATE OF THIS NOTE DURING THE FIRST YEAR OF THE TERM OF THIS NOTE AND (B) AGREES THAT IF, FOR ANY REASON, A PREPAYMENT OF ANY OR ALL OF THIS NOTE IS MADE, UPON OR FOLLOWING ANY ACCELERATION OF THE MATURITY DATE OF THIS NOTE DURING THE FIRST YEAR OF THE TERM OF THIS NOTE BY HOLDER ON ACCOUNT OF ANY DEFAULT BY MAKER, INCLUDING, BUT NOT LIMITED TO, ANY TRANSFER OR DISPOSITION AS PROHIBITED OR RESTRICTED BY THE MORTGAGE, THEN MAKER SHALL BE OBLIGATED TO PAY CONCURRENTLY THEREWITH, AS A PREPAYMENT FEE, THE APPLICABLE SUM SPECIFIED IN THIS SECTION. BY INITIALING THIS PROVISION IN THE SPACE PROVIDED BELOW, MAKER HEREBY DECLARES THAT PAYEE'S AGREEMENT TO MAKE THE LOAN EVIDENCED BY THIS NOTE AT THE INTEREST RATE AND FOR THE TERM SET FORTH IN THIS NOTE CONSTITUTES ADEQUATE CONSIDERATION, GIVEN INDIVIDUAL WEIGHT BY MAKER, FOR THIS WAIVER AND AGREEMENT.

Initials: Maker _____

The aforementioned Prepayment Fees do not constitute a penalty, but rather represent the reasonable estimate, agreed to between Maker and Holder, of a fair compensation for the loss that may be sustained by Holder due to prepayment of the Principal Indebtedness prior to the end of the Prepayment Period. Any Prepayment Fee required pursuant to the preceding paragraphs shall be paid without prejudice to the right of Holder to collect any of the amounts owing under this Note or the Mortgage (defined below) or otherwise to enforce any of its rights or remedies arising out of an Event of Default hereunder.

Notwithstanding anything to the contrary in this Section 2, Maker may prepay the Principal Indebtedness without a Prepayment Fee during the last year of the Term.

3. Release. Borrower shall be free to sell any portion of the Property (each, a "Release") in accordance with the terms and provisions of the Loan Agreement without making

any payment on principal, except where Lender determines, in its sole discretion, that any such Release acts to increase the loan to value ratio to 50% or more (each, a "Value Release"). In the event Borrower should make a Value Release, at the time of each such Value Release, Borrower shall pay to Lender a payment (the "Release Payment") equal to that percentage of the remaining unpaid principal of the Note that the Released Property represents to the overall Property securing this Note, but only as that portion of the Value Release which causes the loan to value ratio to exceed fifty percent (50%) ("Excess Value Release"). For purposes of example only, if the overall Property consists of 100 acres, Borrower Releases 65 acres, and the value of 55 acres constitutes fifty percent (50%) of the then-outstanding principal balance under the Note, then Borrower shall pay to Lender a Release payment based on 10 acres of the Property.

Any Release Payment shall be made by paying (i) the amount of principal being prepaid, (ii) all accrued interest, (iii) all other sums due Lender at the time of such Value Release, and (iv) in connection with any Value Release made under this Note during the Prepayment Period, a Prepayment Fee calculated pursuant to Section 2 above with respect to the Excess Value Release. For all purposes, including the accrual of interest, any Release Payment received by Lender shall stop accruing interest on the date when Lender is in possession of immediately available funds from Borrower..

4. Security. This Note is secured by, among other things, a Mortgage, Assignment of Rents and Security Agreement (the "Mortgage") given by Maker to Payee, of even date herewith, constituting a first lien on Maker's fee interest in certain real estate and a first priority security interest in personal property and an assignment of rents and leases (such real and personal property hereinafter referred to collectively as the "Security"), in the County of Canyon, State of Idaho.

5. Location and Medium of Payments. The sums payable under this Note or under the Mortgage or any of the Loan Documents shall be paid to Holder at its principal address hereinabove set forth, or at such other place as Holder may from time to time hereafter designate to Maker in writing, in legal tender of the United States of America.

6. Acceleration of Maturity. At the option of Holder, which may be exercised at any time after one or more of the following events (each being an "Event of Default") shall have occurred and is continuing, the whole of the Principal Indebtedness, together with all interest, applicable prepayment fees, and other charges due under any of the Loan Documents, shall immediately become due and payable ("Acceleration of Maturity"): (a) if any payment of any installment of the Principal Indebtedness, interest and/or any other sum due hereunder is not received by Holder within five (5) Business Days following the date when such payment was due and Borrower fails to cure such default within five (5) Business Days after written notice from Lender; or (b) if a Borrower fails to perform any obligation, or otherwise defaults, under the Mortgage or any other of the Loan Documents in each case where not cured within any applicable grace period afforded therein, if any.

The terms "Business Day" and "Business Days" as used herein shall mean any day other than a Saturday, a Sunday or a Federal or California or Utah holiday or any other day on which the U.S. Postal Service offices are closed for business in San Francisco, California.

7. Late Charges; Interest Following Event of Default. If any payment due under this Note, the Mortgage, or any other Loan Document, is not paid within five (5) Business Days after the date when due, Maker shall pay and Holder shall be entitled to collect a single late payment charge in each instance equal to the lesser of five percent (5%) of such late payment or the maximum amount that the parties may contract for under applicable law, as the reasonable estimate by Holder and Maker of a fair average compensation for the loss that may be sustained by Holder due to the failure of Maker to make timely payments, and such amount shall be secured by the Mortgage and the other Loan Documents. Such late charge shall be paid without prejudice to the right of Holder to collect any other amounts provided to be paid or to declare an Event of Default under this Note or the Mortgage, or any other Loan Document. Notwithstanding anything to the contrary set forth herein, in the event that Maker shall fail to repay the entire principal amount of the Indebtedness and accrued interest thereon on the Maturity Date, the late charge set forth above payable by Maker to Holder for such failure shall be an amount equal to the lesser of five percent (5%) of one monthly interest payment as set forth in Section 1 above or the maximum amount that the parties may contract for under applicable law (the parties agreeing that in no event shall the late charge set forth above payable by Maker to Holder for such failure be charged on the full amount of the Principal Indebtedness).

In addition to any late payment charge which may be due under this Note, Maker shall pay interest on all sums due hereunder at a rate (the "**Default Rate**") equal to the lesser of (i) the Interest Rate plus five percent (5%) per annum, or (ii) the maximum rate that the parties may contract for under applicable law, from and after the first to occur of the following events: if Holder elects to cause the Acceleration of Maturity; if a petition under Title 11, United States Code, shall be filed by Maker or if Maker shall seek or consent to the appointment of a receiver or trustee for itself or for any of the Security, file a petition seeking relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, make a general assignment for the benefit of creditors, or be unable to pay its debts as they become due; if a court shall enter an order, judgment or decree appointing, with or without the consent of Maker, a receiver or trustee for it or for any of the Security or approving a petition filed against Maker which seeks relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, and any such order, judgment or decree shall remain in force, undischarged or unstayed, sixty days after it is entered; or if all sums due hereunder are not paid on the Maturity Date.

8. Collection and Enforcement Costs. Maker, upon demand, shall pay Holder for all costs and expenses, including without limitation reasonable attorneys' fees, paid or incurred by Holder in connection with the collection of any sum due hereunder, or in connection with enforcement of any of Holder's rights or Maker's obligations under this Note, the Mortgage, or any of the other Loan Documents.

9. Continuing Liability. The obligation of Maker to pay the Principal Indebtedness, interest and all other sums due hereunder shall continue in full force and effect and in no way be impaired, until the actual payment thereof to Holder, and in case of a sale or transfer of all or any part of the Security, or in case of any further agreement given to secure the payment of this Note, or in case of any agreement or stipulation extending the time or modifying the terms of payment above recited, Maker shall nevertheless continue to be liable on this Note, as extended or

modified by any such agreement or stipulation, unless released and discharged in writing by Holder.

10. Joint and Several Liability. If more than one person, corporation, partnership or other entity shall execute this Note, then each person and entity shall be fully liable for all obligations of Maker hereunder, and such obligations shall be joint and several.

11. No Oral Changes; Waivers. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of a change is sought. The provisions of this Note shall extend and be applicable to all renewals, amendments, extensions, consolidations, and modifications of the other Loan Documents, and any and all references herein to the Loan Documents shall be deemed to include any such renewals, amendments, extensions, consolidations, or modifications thereof.

Maker and any future indorsers, sureties, and guarantors hereof, jointly and severally, waive presentment for payment, demand, notice of nonpayment, notice of dishonor, protest of any dishonor, notice of protest, and protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default (except notice of default or other notice required hereby or any other Loan Document), or enforcement of the payment of this Note, and they agree that the liability of each of them shall be unconditional without regard to the liability of any other party and shall not be in any manner affected by an indulgence, extension of time, renewal, waiver, or modification granted or consented to by the Holder; and Maker and all future indorsers, sureties and guarantors hereof consent to any and all extensions of time, renewals, waivers, or modifications that may be granted by the Holder hereof with respect to the payment or other provisions of this Note, and to the release of the collateral, or any part thereof, with or without substitution, and agree that additional makers, indorsers, guarantors, or sureties may become parties hereto without notice to them or affecting their liability hereunder.

Holder shall not by any act of omission or commission be deemed to waive any of its rights or remedies hereunder unless such waiver be in writing and signed by Holder, and then only to the extent specifically set forth therein; a waiver on one event shall not be construed as continuing or as a bar to or waiver of such right or remedy on a subsequent event. The acceptance by Holder of payment hereunder that is less than payment in full of all amounts due at the time of such payment shall not without the express written consent of Holder: (i) constitute a waiver of the right to exercise any of Holder's remedies at that time or at any subsequent time, (ii) constitute an accord and satisfaction, or (iii) nullify any prior exercise of any remedy.

No failure to cause an Acceleration of Maturity hereof by reason of an Event of Default hereunder, acceptance of a past due installment other than one which cures such Event of Default, or indulgences granted from time to time shall be construed (i) as a novation of this Note or as a reinstatement of the indebtedness evidenced hereby or as a waiver of such right of acceleration or of the right of Holder thereafter to insist upon strict compliance with the terms of this Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted hereunder or by the laws of the State of Idaho; and, to the maximum extent permitted by law, Maker hereby expressly waives the benefit of any statute or rule of law or equity now provided,

or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

To the maximum extent permitted by law, Maker hereby waives and renounces for itself, its heirs, successors and assigns, all rights to the benefits of any statute of limitations and any moratorium, reinstatement, marshalling, forbearance, valuation, stay, extension, redemption, and appraisal, now provided, or which may hereafter be provided, by the Constitution and laws of the United States of America and of any state thereof, both as to itself and in and to all of its property, real and personal, against the enforcement and collection of the obligations evidenced by this Note.

12. Bind and Inure. This Note shall bind and inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and assigns.

13. GOVERNING LAW; WAIVER OF JURY TRIAL; CONSENT TO JURISDICTION AND VENUE; SERVICE OF PROCESS. The provisions of Section 11.11 of the Loan Agreement (entitled "Governing Law") and Section 11.12 of the Loan Agreement (entitled "WAIVER OF JURY TRIAL; CONSENT TO JURISDICTION AND VENUE; SERVICE OF PROCESS") are hereby incorporated into this Note by this reference to the fullest extent as if the text of each such Section were set forth in its entirety herein.

14. Severability. If any provision of this Note or the application hereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Note nor the application of such provision to any other person or circumstance shall be affected thereby, but rather the same shall be enforced to the greatest extent permitted by law, except that if such provision relates to the payment of a monetary sum, then the Holder may, at its option, declare the entire indebtedness evidenced hereby due and payable upon one hundred eighty (180) days prior written notice to Maker and, provided no Event of Default is then continuing, without prepayment fee or premium.

15. Usury. It is hereby expressly agreed that if from any circumstances whatsoever fulfillment of any provision of this Note, at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other law, with regard to obligations of like character and amount, then ipso facto the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Note that is in excess of the limit of such validity. In no event shall Maker be bound to pay for the use, forbearance or detention of the money loaned pursuant hereto, interest of more than the current legal limit; the right to demand any such excess being hereby expressly waived by Holder.

16. Notices. The provisions of Section 11.10 of the Loan Agreement (entitled "Notices") are hereby incorporated into this Note by this reference to the fullest extent as if the text of such Section were set forth in its entirety herein.

17. Time of the Essence. Time is of the essence in this Note and the other Loan Documents.

18. Attorneys' Fees. Any reference to "attorney fees", "attorney's fees", or "attorneys' fees" in this document includes but is not limited to both the fees, charges and costs incurred by Holder through its retention of outside legal counsel, paralegals and legal assistants and the allocable fees, costs and charges for services rendered by Holder's in-house counsel, paralegals and legal assistants. Any reference to "attorney fees", "attorney's fees", or "attorneys' fees" shall also include but not be limited to those attorneys or legal fees, costs and charges incurred by Holder in the collection of any Principal Indebtedness, the enforcement of any obligations hereunder or under any other Loan Document, the protection of the Security, the foreclosure of the Mortgage, the sale of the Security, the defense of actions arising hereunder or under any other Loan Document and the collection, protection or setoff of any claim the Holder may have in a proceeding under Title 11, United States Code. Attorneys' fees provided for hereunder shall accrue whether or not Holder has provided notice of an Event of Default or of an intention to exercise its remedies for such Event of Default. Attorneys' fees provided for in this Note shall be reasonable.

19. Wire Transfer. Payment by Maker to Holder of the entire indebtedness evidenced by the Note and the other Loan Documents, whether by prepayment, at the Maturity Date, by Acceleration of Maturity, or otherwise, shall be deemed made on a designated Business Day only if such funds are both sent by a federal wire transfer of immediately available funds and are received by Holder on such designated Business Day no later than 2:00 p.m. local time in the State of California. Funds not so received shall continue to bear interest at the applicable rate until payment is received in compliance with the foregoing.

IN WITNESS WHEREOF, Maker has duly executed this Note as of the day and year first above written.

MAKER:

RIVERBEND ESTATES LC, a Utah limited liability company

By: 

Reed H. Larsen
Manager

By: 

Wayne L. Palmer
Manager

20-3747757

Borrower's Social Security/Employer ID Number

Exhibit “2”

INSTRUMENT NO. 2007038714

0700056270 - MGT ①

**MORTGAGE, ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT**
(Riverbend Estates LC)
(Middleton, ID)

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (this "Instrument") is dated as of May 31, 2007, between RIVERBEND ESTATES LC, a Utah limited liability company, whose address is 1549 West 7800 South, West Jordan, UT 84088, as mortgagor ("Borrower"), and BARCLAY ASSOCIATES LLC, a California limited liability company, whose address is 100 Drake's Landing Road, Suite 167, Greenbrae, CA, as mortgagee ("Lender").

WHEREAS, Borrower is a party to that certain Loan Agreement dated as of May 31, 2007, by and among Borrower, Lender and others (the "Loan Agreement").

WHEREAS, the Loan Agreement provides for a loan (the "Loan") to be made by Lender to Borrower, with a term maturing on June 1, 2009, and in an amount equal to \$3,700,000.

WHEREAS, the Loan is evidenced by a promissory note (the "Note") dated the same date of this Instrument, made by Borrower.

TO SECURE TO LENDER (i) the repayment of the Indebtedness, and all renewals, extensions and modifications of the Indebtedness; and (ii) the performance of the covenants and agreements of Borrower contained in the Loan Documents and all other Obligations contained in the Loan Documents, Borrower mortgages, warrants, grants, conveys and assigns to Lender the Mortgaged Property, including the Land located in Canyon County, State of Idaho, and described in Exhibit A attached to this Instrument;

Borrower warrants and represents that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to mortgage, grant, convey and assign the Mortgaged Property and that the Mortgaged Property is unencumbered. Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy issued to Lender contemporaneously with the execution and recordation of this Instrument and insuring Lender's interest in the Mortgaged Property.

Covenants: Borrower and Lender covenant and agree as follows

1. **DEFINITIONS.** The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings, but capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement

(a) "Borrower" means all persons or entities identified as "Borrower" in the first paragraph of this Instrument, together with their successors and assigns

(b) "Event of Default" shall have the meaning set forth in the Loan

Agreement.

(c) **"Fixtures"** means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

(d) **"Governing Jurisdiction"** means, with respect to each provision of this Instrument, the jurisdiction whose laws govern the construction of the provision pursuant to Section 11.11 of the Loan Agreement.

(e) **"Governmental Authority"** means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property.

(f) **"Hazardous Materials"** means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant" within the meaning of any Hazardous Materials Law.

(g) **"Hazardous Materials Laws"** means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials and apply to Borrower or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq., and their state analogs.

(h) "Impositions" and "Imposition Deposits" are defined in Section 7(a).

(i) "Improvements" means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

(j) "Indebtedness" means the principal of, interest on, and all other amounts due at any time under, the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and Advances as provided in Section 7 hereof to protect the security of this Instrument.

(k) "Land" means the land described in Exhibit A.

(l) "Leases" means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals.

(m) "Lender" means the entity identified as "Lender" in the first paragraph of this Instrument and its successors and assigns, or any subsequent holder of the Note.

(n) "Loan Documents" shall have the meaning set forth in the Loan Agreement.

(o) "Loan Servicer" means the entity that from time to time is designated by Lender to collect payments and deposits and receive notices under the Notes, this Instrument and any other Loan Document, and otherwise to service the loan evidenced by the Notes for the benefit of Lender. Unless Borrower receives notice to the contrary, the Loan Servicer is the entity identified as "Lender" in the first paragraph of this Instrument.

(p) "Mortgaged Property" means all of Borrower's present and future right, title and interest in and to all of the following:

- (1) the Land;
- (2) the Improvements;
- (3) the Fixtures;
- (4) the Personality;
- (5) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and

roads which may have been or may in the future be vacated;

- (6) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirement;
- (7) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
- (8) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (9) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;
- (10) all Rents and Leases;
- (11) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Instrument and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;
- (12) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated);
- (13) all tenant security deposits which have not been forfeited by any tenant under any Lease; and
- (14) all names under or by which the Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to of the Mortgaged Property.

(q) "Note" means the Note described on page 1 of this Instrument, including all schedules, riders, allonges and addenda, as such Note may be amended from time to time.

(r) "Personalty" means all equipment, machinery, building materials, and other tangible personal property (other than Fixtures) which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements and all other intangible property and rights relating to the operation of or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land.

(s) "Rents" means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, whether now due, past due, or to become due, and deposits forfeited by tenants.

(t) "Taxes" means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

(u) "Transfer" means a sale, assignment, pledge, transfer or other disposition (whether voluntary or by operation of law) of, or the granting or creating of a lien, encumbrance or security interest in, any estate, right, title or interest in the Mortgaged Property or any portion thereof.

2. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.** This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under, the Uniform Commercial Code, whether acquired now or in the future, and all products and cash and non-cash proceeds thereof (collectively, "UCC Collateral"), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower shall execute and deliver to Lender, upon Lender's request, financing statements, continuation statements and amendments, in such form as Lender may require to perfect or continue the perfection of this security interest. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements that Lender may require. Without the prior written consent of Lender, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies. This Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is now or may become a Fixture.

3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the "Mortgaged Property," as that term is defined in Section 1(p). However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Governing Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of the Borrower that in this circumstance this Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) After the occurrence of an Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Notes and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Instrument. From and after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents shall automatically terminate and Lender shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time on or after the date of Lender's demand for Rents, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender, no tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower shall not interfere with and shall cooperate with Lender's collection of such Rents.

(c) Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents securing

indebtedness that will be paid off and discharged with the proceeds of the loan evidenced by the Notes), that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this Section 3, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Borrower shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents.

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver ex parte if permitted by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon the Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 7.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.

4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property," as that term is defined in Section 1(p). If this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Governing Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property, and it is the intention of the Borrower that in this circumstance this Instrument create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) Until Lender gives notice to Borrower of Lender's exercise of its rights under this Section 4, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses. Lender shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property. Prior to Lender's actual entry into and taking possession of the Mortgaged Property,

Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

(d) Upon delivery of notice by Lender to Borrower of Lender's exercise of Lender's rights under this Section 4 at any time after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be on forms approved by Lender, shall be for initial terms of at least six months and not more than two years, and shall not include options to purchase. If customary in the applicable market, residential Leases with terms of less than six months may be permitted with Lender's prior written consent.

(f) Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and Lender's prior written approval of the Lease agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for nonresidential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (1) such Leases are subordinate to the lien of this Instrument (unless waived in writing by Lender); (2) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (3) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (4) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (5) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (6) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

(g) Borrower shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance.

5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM. See the Loan Agreement and Note for the scope of the obligations under this Section.

6. COMPLIANCE WITH LAWS. Borrower shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, zoning and land use, and Leases. Borrower also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 10. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

7. PROTECTION OF LENDER'S SECURITY.

(a) If Borrower fails to perform any of its obligations under this Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including (1) payment of fees and out-of-pocket expenses of attorneys, accountants, inspectors and consultants, (2) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (3) procurement of the insurance required by Section 13, and (4) payment of amounts which Borrower has failed to pay under Sections 9 and 11.

(b) Any amounts disbursed by Lender under this Section 7, or under any other provision of this Instrument that treats such disbursement as being made under this Section 7, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at a rate equal to the weighted average of each "Default Rate", as defined in each of the Notes, as determined by Lender action.

(c) Nothing in this Section 7 shall require Lender to incur any expense or take any action with respect to the Mortgaged Property.

8. INSPECTION. Lender shall have the right to make entry onto the Mortgaged Property; and to otherwise verify, examine and inspect the amount, quantity, quality, value and condition of, or any other matter relating to the Mortgaged Property; provided, however, that

prior to an Event of Default, all such entries, examinations and inspections shall be conducted at reasonable times during normal business hours.

9. TAXES: OPERATING EXPENSES.

(a) Borrower shall pay, or cause to be paid, all Taxes, when due and before the addition of any interest, fine, penalty or cost for nonpayment.

(b) Borrower shall pay the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added.

10. TRANSFERS; LIENS; ENCUMBRANCES. A Transfer of all or any part of the Mortgaged Property or any interest in and to the Mortgaged Property, with the exception of Transfers expressly permitted under the Loan Agreement and Note shall constitute an Event of Default under this Instrument.

11. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY. Borrower (a) shall not commit waste or permit impairment or deterioration of the Mortgaged Property, (b) shall not abandon the Mortgaged Property, (c) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, (d) shall keep the Mortgaged Property in good repair, and (e) shall give notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument.

12. ENVIRONMENTAL HAZARDS.

(a) Borrower shall not cause or permit any of the following

- (1) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage- tanks), handling, or disposal of any Hazardous Materials on or under the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property
- (2) the transportation of any Hazardous Materials to, from, or across the Mortgaged Property;
- (3) any occurrence or condition on the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws; or
- (4) any violation of or noncompliance with the terms of any

Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property.

The matters described in clauses (1) through (4) above are referred to collectively in this Section 12 as "**Prohibited Activities or Conditions**".

(b) Prohibited Activities or Conditions shall not include the safe and lawful use and storage of quantities of (1) pre-packaged supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of residential properties, (2) cleaning materials, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property; and (J) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property's, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(c) Borrower shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Instrument) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Borrower shall not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition

(d) Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing including, without limitation, in a phase I environmental report provided to Lender in connection with this transaction:

- (1) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;
- (2) To the best of Borrower's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed;
- (3) Except to the extent previously disclosed by Borrower to Lender in writing, the Mortgaged Property does not now contain any underground storage tanks, and, to the best of Borrower's knowledge after reasonable and diligent inquiry, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Property, which has been previously disclosed by Borrower to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws;
- (4) Borrower has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the

foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect, and all such Environmental Permits are in full force and effect;

- (5) No event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit;
- (6) There are no actions, suits, claims or proceedings pending or, to the best of Borrower's knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of or relate to any Prohibited Activity or Condition; and
- (7) Borrower has not received any complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property.

The representations and warranties in this Section 12 shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the Loan evidenced by the Note, until the Indebtedness has been paid in full.

(e) Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events:

- (1) Borrower's discovery of any Prohibited Activity or Condition;
- (2) Borrower's receipt of or knowledge of any complaint, order, notice of violation or other communication from any Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property; and
- (3) Any representation or warranty in this Section 12 becomes untrue after the date of this Agreement.

Any such notice given by Borrower shall not relieve Borrower of, or result in a waiver of any obligation under this Instrument, the Note, or any other Loan Document.

(f) Borrower shall pay promptly the costs of any environmental inspections, tests or audits ("Environmental Inspections") required by Lender in connection with any foreclosure or deed in lieu of foreclosure, or required by Lender following a reasonable

determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including the fees and out-of-pocket costs of attorneys and technical consultants whether incurred in connection with any judicial or administrative process or otherwise), which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 7. The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender and Lender shall have no obligation to disclose or otherwise make available to Borrower or any other party such results or any other information obtained by Lender in connection with its Environmental Inspections. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any of Lender's Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender's Environmental Inspections.

(g) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("Remedial Work") is necessary to comply with any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, Borrower shall, by the earlier of (1) the applicable deadline required by Hazardous Materials Law or (2) 30 days after notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by applicable Hazardous Materials Law. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the cost of doing so. Any reimbursement due from Borrower to Lender shall become part of the Indebtedness as provided in Section 7.

(h) Borrower shall cooperate with any inquiry by any Governmental Authority and shall comply with any governmental or judicial order, which arises from any alleged Prohibited Activity or Condition.

(i) Borrower shall indemnify, hold harmless and defend (i) Lender, (ii) any prior owner or holder of the Note, (iii) the Loan Servicer, (iv) any prior Loan Servicer, (v) the officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (vi) the heirs, legal representatives, successors and assigns of each of the foregoing (collectively, the "Indemnities") from and against all proceedings, claims, damages, penalties and costs (whether initiated or sought by Governmental Authorities or private parties), including fees and out-of-pocket expenses of attorneys and expert witnesses, investigatory fees, and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise.

arising directly or indirectly from any of the following

- (1) Any breach of any representation or warranty of Borrower in this Section 12.
- (2) Any failure by Borrower to perform any of its obligations under this Section 12
- (3) The existence or alleged existence of any Prohibited Activity or Condition;
- (4) The presence or alleged presence of Hazardous Materials on or under the Mortgaged Property or any property of Borrower's that is adjacent to the Mortgaged Property; and
- (5) The actual or alleged violation of any Hazardous Materials Law.

(j) Counsel selected by Borrower to defend Indemnitees shall be subject to the approval of those Indemnitees. Any Indemnitee, however, may elect to defend any claim or legal or administrative proceeding at the Borrower's expense.

(k) Borrower shall not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding (a "**Claim**"), settle or compromise the Claim if the settlement: (1) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Lender of a written release of those Indemnitees, satisfactory in form and substance to Lender or (2) may materially and adversely affect Lender, as determined by Lender in its discretion.

(l) Borrower shall, at its own cost and expense, do all of the following:

- (1) Pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Section 12;
- (2) Reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Section 12; and
- (3) Reimburse Indemnitees for any and all expenses, including fees and out-of-pocket expenses of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Section 12, or in monitoring and participating in any legal or administrative proceeding.

(m) In any circumstances in which the indemnity under this Section 12 applies, Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Lender, with the prior written

consent of Borrower (which shall not be unreasonably withheld, delayed or conditioned), may settle or compromise any action or legal or administrative proceeding. Borrower shall reimburse Lender upon demand for all costs and expenses incurred by Lender, including all costs of settlements entered into in good faith, and the fees and out-of-pocket expenses of such attorneys and consultants.

(n) The provisions of this Section 12 shall be in addition to any and all other obligations and liabilities that Borrower may have under applicable law or under other Loan Documents, and each Indemnitee shall be entitled to indemnification under this Section 12 without regard to whether Lender or that Indemnitee has exercised any rights against the Mortgaged Property or any other security, pursued any rights against any guarantor, or pursued any other rights available under the Loan Documents or applicable law. If Borrower consists of more than one person or entity, the obligation of those persons or entities to indemnify the Indemnitees under this Section 12 shall be joint and several. The obligation of Borrower to indemnify the Indemnitees under this Section 12 shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Instrument.

13. PROPERTY AND LIABILITY INSURANCE.

(a) Borrower shall keep the Improvements, if any, insured at all times against such hazards as Lender may from time to time require, which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage, and business income coverage. Lender's insurance requirements may change from time to time throughout the term of the Indebtedness. If any of the Improvements are located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, and if flood insurance is available in that area, Borrower shall insure such Improvements against loss by flood.

(b) All such policies shall also be in a form approved by Lender. All policies of property damage insurance shall include a non-contributing, non-reporting mortgage clause in favor of and in a form approved by, Lender. Lender shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 13(a). Borrower shall promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums. At least 30 days prior to the expiration date of a policy, Borrower shall deliver to Lender the original (or a duplicate original) of a renewal policy in form satisfactory to Lender.

(c) Borrower shall maintain at all times commercial general liability insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require, not to exceed \$1,000,000 total per claimant and \$2,000,000 total per incident.

(d) All insurance policies and renewals of insurance policies required by this Section 13 shall be in such amounts and for such periods as Lender may from time to time require, and shall be issued by insurance companies satisfactory to Lender.

(e) Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Instrument requires Borrower to maintain.

(f) In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. Nothing contained in this Section 13, however, shall require Lender to incur any expense or take any action. Lender may, at Lender's option, (1) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the "Restoration"), or (2) apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due. To the extent Lender determines to apply insurance proceeds to Restoration, Lender shall do so in accordance with Lender's then-current policies relating to the restoration of casualty damage on similar multifamily properties.

(g) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (2) Lender determines, in its discretion, that there will be sufficient funds to complete the Restoration; (3) Lender determines, in its discretion, that the rental income from the Mortgaged Property after completion of the Restoration will be sufficient to meet all operating costs and other expenses, and loan repayment obligations relating to the Mortgaged Property; and (4) Lender determines, in its reasonable discretion, that the Restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) one year after the date of the loss or casualty; and (5) upon Lender's request, Borrower provides Lender evidence of the availability during and after the Restoration of the insurance required to be maintained by Borrower pursuant to this Section 13.

(h) If the Mortgaged Property is sold at a foreclosure sale or Lender acquires title to the Mortgaged Property, Lender shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

(i) Notwithstanding anything to the contrary in this Section 13, so long as there exists no Event of Default, Borrower shall be entitled to retain, without Lender's consent, insurance proceeds payable with respect to any claim not exceeding \$100,000.00. Borrower agrees to provide Lender prompt written notice of any such claim.

14. CONDEMNATION.

(a) Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of

the Mortgaged Property, whether direct or indirect (a "Condemnation"). Borrower shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. Nothing contained in this Section 14, however, shall require Lender to incur any expense or take any action Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Lender may apply such awards or proceeds, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness, with the balance, if any, to Borrower. Unless Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in the Note or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require.

15. **EVENTS OF DEFAULT.** The occurrence of an "Event of Default", as defined in the Loan Agreement, shall constitute an Event of Default under this Instrument.

16. **REMEDIES CUMULATIVE.** Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

17. **FORBEARANCE.**

(a) Lender may (but shall not be obligated to) agree with Borrower, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, any guarantor or other third party obligor, to take any of the following actions: (i) extend the time for payment of all or any part of the Indebtedness; (ii) reduce the payments due under this Instrument, the Note or any other Loan Document; (iii) release anyone liable for the payment of any amounts under this Instrument, the Note or any other Loan Document; (iv) accept a renewal of the Note; (v) modify the terms and time of payment of the Indebtedness; (vi) join in any extension or subordination agreement; (vii) release any part of the Mortgaged Property; (viii) take or release other or additional security; (ix) modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note; and (x) otherwise modify this Instrument, the Note or any other Loan Document.

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to

require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender's receipt of any awards or proceeds under Sections 13 and 14 shall not operate to cure or waive any Event of Default.

18. **LOAN CHARGES.** If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in any Loan Document, whether considered separately or together with other charges levied in connection with any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the principal of the Indebtedness. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness which constitutes interest, as well as all other charges levied in connection with the Indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

19. **WAIVER OF STATUTE OF LIMITATIONS.** Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce any Loan Document.

20. **WAIVER OF MARSHALLING.** Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Instrument, the Note, any other Loan Document or applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.

21. **FURTHER ASSURANCES.** Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Lender may require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Instrument and the Loan Documents.

22. **ESTOPPEL CERTIFICATE.** Within 10 days after a request from Lender, Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement, (a) that the Loan Documents are unmodified and in full force and effect (or, if there have been

modifications, that the Loan Documents are in full force and effect as modified and setting forth such modifications); (b) the unpaid principal balance of the Note; (c) the date to which interest under the Note has been paid; (d) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Instrument or any of the other Loan Documents (or, if the Borrower is in default, describing such default in reasonable detail); (e) whether or not there are then existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Lender under the Loan Documents; and (f) any additional facts requested by Lender.

23. **GOVERNING LAW; WAIVER OF JURY TRIAL; CONSENT TO JURISDICTION AND VENUE; SERVICE OF PROCESS.** The provisions of Section 11.11 of the Loan Agreement (entitled "Governing Law") and Section 11.12 of the Loan Agreement (entitled "WAIVER OF JURY TRIAL; CONSENT TO JURISDICTION AND VENUE; SERVICE OF PROCESS") are hereby incorporated into this Mortgage by this reference to the fullest extent as if the text of each such Section were set forth in its entirety herein.

24. **NOTICES.** The provisions of Section 11.10 of the Loan Agreement (entitled "Notices") are hereby incorporated into this Mortgage by this reference to the fullest extent as if the text of such Section were set forth in its entirety herein.

25. **SALE OF NOTE; CHANGE IN SERVICER.** The Note or a partial interest in the Note (together with this Instrument and the other Loan Documents) may be sold one or more times without prior notice to Borrower. A sale may result in a change of the Loan Servicer. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given notice of the change.

26. **SUCCESSORS AND ASSIGNS BOUND.** This Instrument shall bind, and the rights granted by this Instrument shall inure to, the respective successors and assigns of Lender and Borrower. However, a Transfer not permitted by Section 10 shall be an Event of Default.

27. **RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.**

(a) The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Lender and Borrower.

(b) No creditor of any party to this Instrument and no other person shall be a third party beneficiary of this Instrument or any other Loan Document. Without limiting the generality of the preceding sentence, (1) any arrangement (a "Servicing Arrangement") between the Lender and any Loan Servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (2) Borrower shall not be a third party beneficiary of any Servicing Arrangement, and (3) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

28. **SEVERABILITY; AMENDMENTS.** The invalidity or unenforceability of any provision of this Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Instrument contains the entire

agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

29. **CONSTRUCTION.** The captions and headings of the sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Agreement includes the plural and use of the plural includes the singular. As used in this Instrument, the term "including" means "including, but not limited to." In the event of conflict between a term or provision of the Loan Agreement and a term or provision of one or more of the other Loan Documents, the term or provision of the Loan Agreement shall control.

30. **LOAN SERVICING.** All actions regarding the servicing of the Loan evidenced by the Note, including the collection of payments, the giving and receipt of notice, inspections of the Property, inspections of books and records, and the granting of consents and approvals, may be taken by the Loan Servicer, unless Borrower receives notice to the contrary. If Borrower receives conflicting notices regarding the identity of the Loan Servicer or any other subject, any such notice from Lender shall govern.

31. **DISCLOSURE OF INFORMATION.** Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including trustees, Master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including any right of privacy.

32. **SUBROGATION.** If and to the extent that the proceeds of the loan evidenced by the Notes are used to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property (a "Prior Lien"), such loan proceeds shall be deemed to have been advanced by Lender at Borrower's request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

33. **ACCELERATION; REMEDIES.** At any time during the existence of an Event of Default, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand, and may foreclose this Instrument by judicial proceeding and may invoke any other remedies permitted by Idaho law or provided in this Instrument or in any other Loan Document. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys' fees permitted by Rules of Court, costs of documentary evidence, abstracts and title reports.

34. **NO CLAIM OF CREDIT FOR TAXES.** Borrower will not make or claim credit on or deduction from the principal or interest on the sums secured by this Instrument by reason of any municipal or governmental taxes, assessments or charges assessed upon the Mortgaged Property, or claim any deduction from the taxable value of the Mortgaged Property by reason of this Instrument.

35. **CROSS-DEFAULT WITH LOAN AGREEMENT.** The occurrence of an Event of Default under the Loan Agreement or the Note shall constitute a default under this Instrument. Upon the occurrence of an Event of Default under the Loan Agreement or the Note, Lender, at Lender's option, may exercise any or all of the remedies to which it may be entitled under this Instrument or other Loan Documents upon the breach of any covenant or agreement by Grantor under this Instrument, including, without limitation, all of the remedies set forth in Section 33 of this Instrument.

36. **ATTACHED EXHIBITS.** The following Exhibits are hereby incorporated into this Instrument:

Exhibit A

Legal Description

IN WITNESS WHEREOF, Borrower has signed and delivered this Instrument or has caused this Instrument to be signed and delivered by its duly authorized representative(s).

RIVERBEND ESTATES LC, a Utah limited liability company

By: 

Reed H. Larsen
Manager

By: 

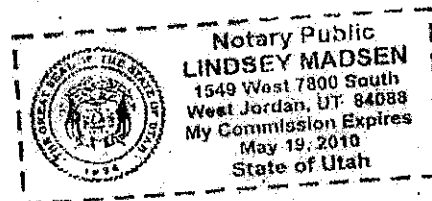
Wayne L. Palmer
Manager

STATE OF UTAH)
) ss.
 COUNTY OF SALT LAKE)

On May 31, 2007, before me, Lindsey Madsen, Notary Public, personally appeared Reed H. Larsen, personally known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Lindsey Madsen
 Notary Public
 My Commission Expires:
 Residing in:



STATE OF UTAH)
) ss.
 COUNTY OF SALT LAKE)

On May 31, 2007, before me, Lindsey Madsen, Notary Public, personally appeared Wayne L. Palmer, personally known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Lindsey Madsen
 Notary Public
 My Commission Expires:
 Residing in:

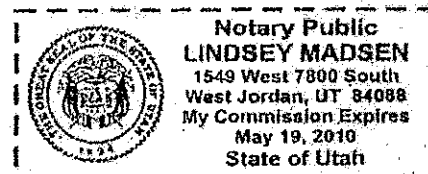


EXHIBIT A

LEGAL DESCRIPTION

Lots 4, 5 and 7, and the Southeast quarter of the Northwest quarter of Section 7, Township 4 North, Range 2 West of the Boise Meridian, Canyon County, Idaho.

AND Lot 1 of Section 12, Township 4 North, Range 3 West of the Boise Meridian, Canyon County, Idaho.

EXCEPTED THEREFROM all of that part of the Southeast quarter of the Northwest quarter of Section 7, Township 4 North, Range 2 West of the Boise Meridian, lying South and East of the South bank of the Middleton Mill Slough, and the right-of-way acquired by Drainage District No. 2 of the County of Canyon, State of Idaho.

Exhibit “3”

2011046121

RECORDED

2011 Nov 18 PM 2 59

CHRIS YAMAMOTO

CANYON CNTY RECORDER

BY J_Crane

Requestor National Note of Utah, LC

Type ASSIGN

Fee \$16.00

ELECTRONICALLY RECORDED BY SIMPLIFILE

When recorded, return to:
National Note of Utah
1549 West 7800 South
West Jordan, UT 84088

ASSIGNMENT OF BENEFICIAL INTEREST IN TRUST DEED

For value received, and to secure the payment of the indebtedness described below, the undersigned National Note of Utah, L.C., ("Assignor") hereby assigns to Barclay Associates L.L.C., ("Assignee") an undivided \$77,000.00 of Assignor's right, title and interest in and to the that beneficial interest in that certain Trust Deed (the "Deed of Trust") dated December 28, 2007, between Riverbend Estates LC, a Utah limited liability company, "Borrower" or "Trustor") in favor of Pioneer Title Company, as Trustee, (the "Trustee") for the benefit of National Note of Utah, LC, as Beneficiary, recorded January 2, 2007, as Entry No. 2008000184, in the official records of the Recorder of Canyon County, State of Idaho against the following described real property in Canyon County, State of Idaho:

See attached Exhibit "A"

which has the address of TBD, Middleton, Idaho 83644

Assignor hereby represents the following to Assignee(s):

1. This assignment includes an assignment equal to \$77,000 (the "Assignment Amount") of the promissory note (the "Note") dated December 28, 2007, which Note is secured by the Deed of Trust. This assignment gives assignee the right to collect the Interest on the Assignment Amount commencing as of November 18, 2011. In addition, upon satisfaction of the Note, partial or otherwise, Assignee shall be entitled to full and absolute priority in the payment to it of the Assignment Amount (and all accrued interest). Assignor shall not be entitled to receive any sums in repayment of the Note until Assignee has been paid the entire Assignment Amount.

2. The Assignor has duly performed all of the conditions imposed on Assignor under said Trust Deed and the related Trust Deed Note.

3. The Note and Deed of Trust are now in full force and effect.

4. The Note and Deed of Trust are assignable.

5. Assignor will act as agent for Assignee, and will deliver Assignee its pro rata share of any periodic payments paid by Trustor to Assignor, said payments to be made within five (5) days of receipt.

6. Assignor shall continue to collect all payments paid under the Note and Deed of Trust hereby assigned and shall enforce all remedies against the Trustor's if there is a default under the Note and/or Deed of Trust.

7. Assignor will follow Assignee's instructions in enforcing the Note and the Deed of Trust in the event of default by Trustor as defined in the Note and/or the Deed of Trust. In addition, and in furtherance of the objectives of this paragraph 6, Assignor hereby grants the following powers to Assignee:

(a) This Agreement constitutes and irrevocable grant of authority to Assignee to initiate and complete foreclosure proceedings in the event of Default by Trustor. This grant of authority constitutes a power coupled with an interest and may be relied on absolutely by the Trustee. Assignor further agrees to defend, indemnify and hold the Trustee harmless with regard to any instruction given to it by Assignee.

(b) Assignor further agrees that it may not substitute the Trustee without the express written consent of Assignee.

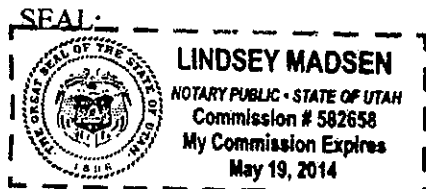
Dated Nov. 18, 2011.

NATIONAL NOTE OF UTAH, L.C.

By [Signature]
Wayne L. Palmer, Manager

STATE OF UTAH)
 ss
COUNTY OF SALT LAKE)

On the 18th day of November, 2011, personally appeared before me Wayne L. Palmer, the Manager of National Note of Utah, L.C., a Utah limited liability company, the signer of the foregoing instrument, who being by me duly sworn, acknowledged to me that he executed the same for and on behalf of said limited liability company.



[Signature]
Notary Public

File No.: 200705270

EXHIBIT A

A portion of Government Lot 3 of Section 7, Township 4 North, Range 2 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

Commencing at the Northwest corner of Government Lot 3, from which the Northwest corner of Government Lot 4 of said Section 7 bears North 89° 44' 28" West 1251.18 feet; thence along the West boundary of said Government Lot 3

South 01° 42' 06" West 111.29 feet to a 5/8" diameter rebar with an aluminum cap monument, witnessing the Northwest corner of said Government Lot 3, said point being the POINT OF BEGINNING; thence leaving said West boundary

North 51° 46' 15" East 52.16 feet to a point on the proposed Westerly boundary of Middleton Lakes Estates Subdivision No. 4; thence along said proposed boundary, 40 feet East of and parallel with the West boundary of Said Government Lot 3;

South 01° 42' 06" West 1548.03 feet; thence leaving said proposed boundary

North 89° 14' 35" West 40.01 feet to a point on the West boundary of said Government Lot 3; thence along said West boundary

North 01° 42' 06" East 1515.20 feet to the POINT OF BEGINNING.

Exhibit “4”

When Recorded Mail To:
National Note of Utah, LC
1549 West 7800 South
West Jordan, Utah 84088

Loan No. 07-NNU-RBE-DZ1
File No. 200705270

[Space Above This Line for Recording Data]

DEED OF TRUST

THIS DEED OF TRUST ("Security Instrument"), made on 28 December, 2007. The Trustor is Riverbend Estates, LC, a Utah limited liability company (Borrower), whose address is 1549 West 7800 South, West Jordan, Utah 84088. The trustee is Pioneer Title Company ("Trustee"). The beneficiary is National Note of Utah, LC ("Lender"), whose address is 1549 West 7800 South, West Jordan, Utah 84088. The Borrower owes Lender the principle sum of TWO HUNDRED TWENTY-SEVEN THOUSAND TWO HUNDRED FIFTY-TWO and 52/100 DOLLARS (U.S. \$227,252.52). This debt is evidenced by Borrower's note dated 19 June, 2007 ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on 1 July, 2009. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in Canyon County, Idaho:

See Attached Exhibit A

Property Address: TBD, Middleton, Idaho 83644

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or thereafter a part of the property. All replacements and additions shall also be covered by this instrument. All of the foregoing is referred to in this Security Instrument as the "Property".

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. § 2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides

2008000184

RECORDED

2008 JUN 2 PM 1 04

WILLIAM H. HURST

CANYON COUNTY RECORDER

BY *[Signature]*

PIONEER TITLE COMPANY

REQUEST

TYPE *[Signature]* FEE 18-

otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower and Funds held by Lender. If, under paragraph 21, Lender shall acquire or sell the Property, Lender prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to any prepayment charges due under the Note; second, to amounts payable under paragraph 2; third, to interest due; fourth, to principal due, and last, to any late charges due under the Note.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contest in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. Hazard or Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 7.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewal. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraph 1 and 2 or change the amount of the payments. If under paragraph 21 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. Occupancy, Preservation, Maintenance and Protection of Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence within sixty days after one year after the date of occupancy, unless Lender otherwise agreed in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate as provided in paragraph 18, by causing the action or proceeding to be dismissed with a ruling that in Lender's good faith determination precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument of Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not merge unless Lender agrees to the merger in writing.

7. Protection of Lender's Rights in the Property. If Borrower fails to perform the covenants and agreements contained in this Security Instrument or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

8. Mortgage Insurance. If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the mortgage insurance in effect. If, for any reason, the mortgage insurance coverage required by Lender lapses or ceases to be in effect, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the mortgage insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the mortgage insurance coverage previously in effect, from an alternate mortgage insurer approved by Lender. If substantially equivalent mortgage insurance coverage is not available, Borrower shall pay to Lender each month a sum equal to one-twelfth of the yearly mortgage insurance premium being paid by Borrower when the insurance coverage lapsed or ceased to be in effect. Lender will accept, use and retain these payments as a loss reserve in lieu of mortgage insurance. Loss reserve payments may no longer be required, at the option of Lender, if mortgage insurance coverage (in the amount and for the period that Lender requires) provided by an insurer approved by Lender again becomes available and is obtained. Borrower shall pay the premiums required to maintain mortgage insurance in effect, or to provide a loss reserve, until the requirement for mortgage insurance ends in accordance with any written agreement between Borrower and Lender or applicable law.

9. Inspection. Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

10. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by the Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment of modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceeding against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17. Borrower's covenants and agreement shall be joint and several. Any borrowers who co-sign this Security Instrument but do not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument of the Note without the Borrower's consent.

13. Loan Charges. If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest of other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

14. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

15. Governing Law; Severability. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument of the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument of the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

16. Borrower's Copy. Borrower shall be given one conformed copy of the Note and of this Security Instrument.

17. Transfer of the Property of a Beneficial Interest in Borrower. If all or any part of the Property of any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

18. Borrower's Right to Reinstate. If Borrower meets certain conditions, Borrower shall have the right to enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment

enforcing this Security Instrument. These conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 17.

19. Sale of Note; Change of Loan Servicer. The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with paragraph 14 above and will also contain any other information required by applicable law.

20. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance of Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 20, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

21. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant of agreement in this Security Instrument (but not prior to acceleration under paragraph 17 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, reasonable attorneys' fees and cost of title evidence.

If the power of sale is invoked, Trustee shall execute a written notice of the occurrence of an event of default and of the election to cause the Property to be sold and shall record such notice in each county in which any part of the Property is located. Lender or Trustee shall mail copies of such notice in the manner prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. Trustee shall give public notice of the sale to the persons and in the manner prescribed by applicable law. After the time required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may in accordance with applicable law, postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it or to the county clerk of the county in which the sale took place.

22. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled to it. Such person or persons shall pay all recordation costs.

23. Substitute Trustee. Lender, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

24. Request for Notices. Borrower request that copies of the notices of default and sale be sent to Borrower's address which is the Property Address.

25. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

[Signatures Appear on Following Page]

File No.: 200705270

EXHIBIT A

A portion of Government Lot 3 of Section 7, Township 4 North, Range 2 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

Commencing at the Northwest corner of Government Lot 3, from which the Northwest corner of Government Lot 4 of said Section 7 bears North 89° 44' 28" West 1251.18 feet; thence along the West boundary of said Government Lot 3

South 01° 42' 06" West 111.29 feet to a 5/8" diameter rebar with an aluminum cap monument, witnessing the Northwest corner of said Government Lot 3, said point being the POINT OF BEGINNING; thence leaving said West boundary

North 51° 46' 15" East 52.16 feet to a point on the West line of Middleton Lakes Subdivision No. 2, according to the Plat filed in Book 37 of Plats page 49, records of Canyon County, Idaho ; thence along the said West boundary and the proposed Westerly boundary of Middleton Lakes Estates Subdivision No. 4, 40 feet East of and parallel with the West boundary of Said Government Lot 3;

South 01° 42' 06" West 1548.03 feet; thence leaving said proposed boundary

North 89° 14' 35" West 40.01 feet to a point on the West boundary of said Government Lot 3; thence along said West boundary

North 01° 42' 06" East 1515.20 feet to the POINT OF BEGINNING.