

Idaho Department of Water Resources

T04N, R01E,
S9

Claim No: 63-07740
Prepared By: Kimberly Brown
Date: June 24, 2004



- Point of Diversion
- Place of Use
- Section Lines
- 1/4 1/4



1987 NAPP

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 63-7740
Date Received: 8/8/1989
Receipt No: C009193
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

EAGLE CENTER PROPERTIES LLC
C/O ALBANY BOWL
540 SAN PABLO AVE
ALBANY CA USA 94706

Phone: (510) 526-8818

2. Date of Priority: 03/13/1973

3. Source: GROUND WATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
04N	01E	9	SE SW	ADA	

5. Description of diverting works:

2 WELLS: OLD-12", 370', 7-1/2HP; NEW-10", 211', 7-1/2 HP

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
DOMESTIC	1/01	12/31	0.38	

7. Total Quantity Appropriated is:
0.38 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
04N	01E	9	SE	SW	DOMESTIC	

11. Place of use in counties: ADA

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

Ownership changed by DB 6/25/2004

A SECOND POINT OF DIVERSION IS BEING ADDED AS A PART OF THIS CLAIM. A SECOND WELL WAS DRILLED IN 1986 TO BE USED AS BACK-UP FOR THIS SYSTEM. A SEPARATE APPLICATION FOR PERMIT HAS BEEN FILED TO COVER THE DEVELOPMENT OF AN ADDITIONAL 60+ UNITS.

***** CLAIM AMENDED 9/21/89. HLHT*****

15. Basis of Claim: License

APR 17 2002



NEW PROPERTY OWNER NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

Please print or type
(see instructions on back of page)

RECEIVED

APR 15 2002

WATER RESOURCES
WESTERN REGIONDATE OF CLOSING: 3/20/02

LEGAL DESCRIPTION OF PROPERTY: Township 4N Range 1E
Section 9, SE 1/4 of SW 1/4 of _____, BM.
Lot _____, Block _____, Subdivision/Townsite _____
If you have additional legal descriptions, please attach separate sheet.

See attached Exhibit "A"

- ☐ Served Only by a Public Service Water Supply (all water is received from a city or company who maintains water supply system, owns the water right, and bills the customer on a regular basis)
- ☒ Water Right Number(s) 63-7740
Assigned by IDWR: _____
- ☒ Name and Address of Former Owner/Claimant(s)(Seller): ESCO INC.
2417 BOGUS BASIN ROAD, BOISE, ID 83702
- ☒ New Owner/Claimant (Purchaser): EAGLE CENTER PROPERTIES, LLC, a limited liability company
- ☒ New Mailing Address: C/O ALBANY BOWL, XXX 540 SAN PABLO AVENUE
ALBANY, CA 94706
- ☐ New Telephone Number: (510) 526-8818
- ☐ Does the change in ownership result in a splitting of the water right owned/claimed? yes x no
If yes, then describe the portion of the water right that is now owned/claimed by the new owner:

- ☒ Attach proof of ownership, describe proof attached: Deed copy attached

(proof of ownership must describe either the property conveyed or include the claim number. Proof of ownership is not required if this form is signed by the former owner/claimant.)

- ☐ Signature of New Owner/Claimant(s) EAGLE CENTER PROPERTIES, LLC By: [Signature] Date 3/20/02
- ☐ Signature of Former Owner/Claimant(s) ESCO, Inc. By: [Signature] Date 3-20-02

(Signature of former claimant(s) is not required if proof of ownership is attached.)

FOR IDWR USE ONLY:
Initial Review and Data-Entry
Date: _____ By: _____
Further Action Needed:
Further Action Taken
Date: _____ By: _____
Final Review and Data-Entry
Date: _____ By: _____
Claim Numbers of Split, if any:

RECEIVED

APR 18 2002

WATER RESOURCES
WESTERN REGION

Original to be mailed to Idaho Department of Water Resources
Copies to Former Owner and New Owner

SCANNED

JUN 25 2004

INSTRUCTIONS

This form has been prepared to assist new owners of property to comply with the requirements of Section 42-1409(7), Idaho Code. This statute provides that new property owners notify the Department of Water Resources (IDWR) of any change in ownership of a water right during an adjudication of water rights, and if a claim for the water right has not been filed to file the needed claim(s).

Separate brochures are available from IDWR describing the adjudication of water rights and the requirement to notify IDWR of changes in ownership. If you would like any of these brochures or if you have questions about completing this form please contact your nearest office of IDWR or you may call 1-800-451-4129 (toll-free).

The first line of the form asks for the date of closing so IDWR will have a record of the effective date of the property transfer.

The second line of information requires the legal description of the property being transferred. This information is **ESSENTIAL** and should be available from the documents that will be present at the time of closing. The first two lines of the legal description **MUST** be completed. IDWR's records are based upon legal descriptions using township, range, section and fractions of a section descriptions, and this information must be included on the form. If you also have available a legal description based upon a townsit e or subdivision and lot and block number, please also include this additional information. A lot and block legal description is **NOT** a substitute for the township, range, section and fraction of a section description.

After completing the legal description, if all water is supplied by a public service water supply you may check the first box; complete the name, address and telephone information for yourself, the new owner; sign the form in the space provided and return the form to the IDWR office nearest you.

If there are water rights associated with the property, the seller should be able to provide you with the water right number(s). The water right number(s) for the property are to be put in the space provided at the second box on the form. If you or the seller believe there are water rights for the property but the numbers are unknown, then you may wish to call or come into an office of IDWR for assistance in identifying the water rights for the property involved. If claims for the property have not been filed you will be so advised by IDWR.

After the water right number(s) for the property has been entered on the form, complete the name and address information for **BOTH** the former owner/seller and for yourself, the new owner, in the spaces provided. Please also include your telephone number. If the property you have purchased is only part of the property owned by the former owner/seller, you may be purchasing only part of the total water right held by the seller. This means the water right held by the seller must be split so you get your proportionate share of the water right. Be sure to include a description of the portion of the water right you have purchased. The seller should be able to help you describe the portion of the water right for the property you have purchased.

If the former owner/seller will sign the form and the seller is shown as the claimant of the water right in IDWR's records, then you do not need to attach proof of ownership of the land or the water right. The seller should know if the original claim was filed by him, or if the seller has filed a change in ownership so the seller is shown as the claimant of the water right in IDWR's records. If the seller is not going to sign the form then you must attach some proof of ownership of the property described at the top of the form or proof of ownership referencing the specific water right(s) for the property.

The new owner must sign the form in the space provided. If the former owner/seller is available to sign the form please do so in the space provided.

When complete, the new owner and the former owner/seller should each retain one of the copies and return the original of the form to IDWR. You may return the form to the IDWR office nearest you or to: Idaho Department of Water Resources, Statehouse Mail, Boise, ID 83720-9000, Attention: Adjudication Bureau.

For Office Use Only
\$25 Filing Fee
Receipt# W2039032
Date 4-15-02

RECEIVED

APR 15 2002

WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ASSIGNMENT OF PERMIT

RECEIVED

APR 17 2002

I, Esco, Inc, hereby assign to Eagle Center Properties, LLC
of, c/o Albany Bowl, 540 San Pablo Avenue, Albany, CA 94706
(Full Address) (Phone)

All my right, title, and interest in and to Permit No. 63-7740 to
appropriate the public waters of the State of Idaho.

OR (for partial assignments)

The following described portion of my right, title, and interest in and to
Permit No. _____ to appropriate the public waters of the State of
Idaho. (Describe portion of the permit assigned listing the number of acres in each 40 acre
subdivision, point of diversion location, and the amount of water in cubic feet per second.)

Made this 20th day of March, 19 2002

Esco, Inc. Permit Holder by: [Signature]
Its: [Signature]

State of Idaho

County of Ada

On this 19th day of March, 19 2002, personally appeared before me the signer(s) of the
above instrument, who duly acknowledged to me that he (she) (they) executed the same.

[Signature]
Notary Public residing at
Boise, Idaho



SCANNED

JUN 25 2004

209890 JB/HEH



A Pioneer Company
PIONEER TITLE COMPANY
OF ADA COUNTY
821 W. State St. / Boise, Idaho 83702
(208) 373-3744

ADA COUNTY RECORDER
J. DAVIO NAVARRO
BOISE, IDAHO

2002 MR 20 PM 4:02

RECORDED - REQUEST OF

FEE 10.00 DEPUTY Ali

102032806

PIONEER TITLE

CORPORATE WARRANTY DEED

FOR VALUE RECEIVED,

ESCO, Inc., an Idaho corporation

a corporation duly organized and existing under the laws of the State of Idaho, grantor, does hereby Grant, Bargain, Sell and Convey unto

Eagle Center Properties, LLC, an Idaho limited liability company

whose address is: c/o Albany Bowl, 540 San Pablo Avenue, Albany, CA 94706, grantee, the following described real estate, to-wit:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF.

TAX PARCEL NO. S0509346846

SUBJECT TO current years taxes, irrigation district assessment, public utility easements, subdivision, restrictions, U.S. patent reservations, easements of record and easements visible upon the said premises.

TO HAVE AND TO HOLD The said premises, with their appurtenances unto the said Grantee, his heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in a fee simple of said premises; that they are free from all encumbrances and that it will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, The Grantor, pursuant to a resolution of its Board of Directors has caused its corporate name to be hereunto subscribed by its officers this 19th day of March, 2002.

ESCO, Inc.

By:

Paul E. White
Paul E. White, President

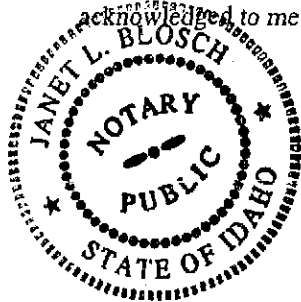
Richard B. Smith
Richard B. Smith, Vice-President

By:

Ruth O. Warfield
Ruth O. Warfield, Secretary-Treasurer

STATE OF IDAHO, County of Ada, ss.

On this 19th day of March, in the year of 2002, before me Janet L. Bloch, a notary public, personally appeared Paul E. White, Richard B. Smith, and Ruth O. Warfield known or identified to me to be the President, Vice-President and Secretary-Treasurer (respectively) of the corporation that executed the instrument or the person/persons who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.



Janet L. Bloch
Janet L. Bloch
Notary Public of Idaho
Residing at Boise, Idaho
Commission expires: March 17, 2005

SCANNED
JUN 25 2004

EXHIBIT A

A tract of land in the Southwest quarter of Section 9, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho more particularly described as follows:

Commencing at the section corner common to Sections 8, 9, 16 and 17, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho;

Thence North 89 degrees 55' East along the section line, 612.60 feet to a point;

Thence North 0 degree 48' East, 703.00 feet to a point;

Thence North 86 degrees 30' East, 393.00 feet to a point;

Thence North 390.47 feet to the South line of County Road;

Thence South 80 degrees 30' East along the South line of County Road, 750.00 feet to the real point of beginning;

Thence South 80 degrees 30' East, 430.84 feet to the point;

Thence South 1 degree 10' West, 890.36 feet to a point in the drain ditch;

Thence North 57 degrees 15' West along said drain ditch, 772.62 feet to a point;

Thence North 9 degrees 30' East, 284.97 feet to a point;

Thence South 80 degrees 30' East 150.00 feet to a point;

Thence North 9 degrees 30' East 291.00 feet to the real point of beginning.

A strip of land situated in the Southeast quarter of the Southwest quarter of Section 9, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho, described as follows:

Commencing at a found brass cap monumenting the Southwest corner of said Section 9,

Thence along the Southerly line of said Section 9 North 89 degrees 55'00" East a distance of 2650.69 feet to a found brass cap monumenting the South quarter corner of said Section 9;

Thence continuing along said Southerly line South 89 degrees 55'00" West a distance of 495.44 feet to a found 5/8 steel pin, said steel pin being the point of beginning;

Thence leaving said Southerly line North 01 degree 19'01" East a distance of 903.55 feet to a found 5/8 steel pin on the Southerly right of way of Idaho State Highway 44;

Thence along said Southerly right of way South 79 degrees 57'23" East a distance of 5.06 feet to a point;

Thence leaving said Southerly right of way South 1 degree 19'01" West a distance of 902.66 feet to a point on the Southerly line of said Section 9;

Thence along said Southerly line South 89 degree 55'00" West a distance of 5.00 feet to the point of beginning.

SCANNED

JUN 25 2004

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A63-07740
Date Received: 9/21/1989
Receipt No: C009193
Received By: Red

AMENDED NOTICE OF CLAIM TO A WATER RIGHT AMENDED
ACQUIRED UNDER STATE LAW

1. Name: ESCO INC. 208-343-5412
Address: C/O RICHARD B. SMITH AGENCY
2417 BOGUS BASIN RD.
BOISE, ID 83702

2. Date of Priority: MAR 13, 1973

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
04N	01E	9	SE	SW			ADA

5. Description of diverting works:
2 WELLS: OLD-12", 370', 7-1/2HP; NEW-10", 211', 7-1/2 HP

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.380		

7. Total Quantity Appropriated is:
0.380 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
D/61 HOMES, MOBILE HOME PARK

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
04N	01E	9	SE	SW		DOMEST	

11. Place of use in counties: ADA

A63-07740

Page 1

Date: 09/21/89

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:

A SECOND POINT OF DIVERSION IS BEING ADDED AS A PART OF THIS CLAIM. A SECOND WELL WAS DRILLED IN 1986 TO BE USED AS BACK-UP FOR THIS SYSTEM. A SEPARATE APPLICATION FOR PERMIT HAS BEEN FILED TO COVER THE DEVELOPMENT OF AN ADDITIONAL 60+ UNITS.

15. Basis of Claim: LICENSE

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 0

For Organizations:

I do solemnly swear or affirm that I am President of
Title

Esco Incorporated, that I have signed the foregoing
Organization
document in the space below as President of
Title

Esco Incorporated and that the statements contained in the
Organization
foregoing document are true and correct.

Barry Smith
Signature of Authorized Agent

President
Title and Organization

9-21-89
Date

MICROFILMED

SCANNED AUG 21 1992

JUN 25 2004

State of Idaho)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this 21st day
of September 19 89

Helen Harrington
Notary Public

Seal

Residing at Helen Harrington, Notary Public
Residing at Boise, Idaho

My Commission Expires December 1, 1994

MICROFILMED

AUG 21 1992

SCANNED

JUN 25 2004

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A63-07740
Date Received: 8/04/1989
Receipt No: C009193
Received By: Lat

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: ESCO INC.
Address: C/O RICHARD B. SMITH AGENCY
2417 BOGUS BASIN RD.
BOISE, ID

83702

208-343-5412
RECEIVED
AUG 08 1989

2. Date of Priority: MAR 13, 1973

3. Source: GROUNDWATER

Trib. to:

Department of Water Resources

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
04N	01E	9	SE	SW			ADA

5. Description of diverting works:
ARTESIAN WELL

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.380		

7. Total Quantity Appropriated is:
0.380 C.F.S. (and/or)

A.F.A.

8. Total consumptive use is

Acre Feet Per Annum.

9. Non-irrigation uses:

D/61 HOMES, MOBILE HOME PARK

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
04N	01E	9	SE	SW		DOMEST	

11. Place of use in counties: ADA

A63-07740

Page

1

Date: 08/04/89

MICROFILMED

AUG 21 1992

SCANNED

JUN 25 2004

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:

NONE

14. Remarks:

15. Basis of Claim: LICENSE

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 0

For Organizations:

I do solemnly swear or affirm that I am President of _____ Title

Eseo Inc. Organization, that I have signed the foregoing document in the space below as _____ Title

Eseo Inc. Organization and that the statements contained in the foregoing document are true and correct.

Bern N. Smith, Jr. Signature of Authorized Agent

Pres - Eseo Inc. Title and Organization

8-7-89 Date

State of Idaho)
County of ADA) SS.

Subscribed and sworn (or affirmed) before me this 7th day

of August 19 89

Sarah L. Zuercher Notary Public

Seal

Residing at Boise, Idaho

My Commission Expires 2-11-94

Date: 08/04/89

A63-07740

Page

2

MICROFILMED

AUG 21 1992

SCANNED

JUN 25 2004

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-7740

NAME AND ADDRESS: EAGLE MEADOWS VILLAGE LLC
540 SAN PABLO AVE
ALBANY CA 94706

~~EAGLE CENTER PROPERTIES LLC~~
~~C/O ALBANY BOWL~~
~~540 SAN PABLO AVE~~
~~ALBANY CA 94706~~

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.380 CFS
73.200 AFY

PRIORITY DATE: 03/13/1973

POINT OF DIVERSION:

T04N R01E S9 SESW Within ADA County

T04N R01E S9 SESW Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
DOMESTIC	01/01 12/31	0.380 CFS 73.20 AFY
Domestic use is for 61 mobile home units.		

PLACE OF USE: DOMESTIC in ADA County

T04N R01E S09 SESW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

PARCEL NO: S0509346846.

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39576

Water Rights: 63-7740

**NOTICE OF COMPLETED
ADMINISTRATIVE
PROCEEDING**

IDWR has completed the following administrative proceeding:

☐ Address change

XX Substitution of Party

☐ IC § 42-222 transfer

☐ Point of diversion

☐ Place of use

☐ Period of use

☐ Nature of use

☐ Split of water right

☐ Change in ownership

☐ Other

☐ IC § 42-219 license

IDWR certifies that it has completed its investigation into the changes to the elements of the water rights listed above as set forth in the attached *Amended Director's Report(s)* for said water right(s). No other changes have been made to the elements of these water rights except as set forth above.

IDWR has served copies of the *Notice of Completed Administrative Proceeding* and *Amended Director's Report(s)* on the claimant(s), prior claimant(s) and all parties in the subcases affected, if any, as reflected on the attached certificate of mailing.

DATED: November 20, 2006



Signature of IDWR Representative

CERTIFICATE OF MAILING

I certify that on November 20, 2006, I delivered the original and copies of this form, including all attachments, to the following persons, postage prepaid if required and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

☐ overnight mail
☒ regular mail
☐ hand-delivered
☐ facsimile

2. Copies to:

Clive Strong
Off ice of the Attorney General
P.O. Box 44449
Boise, ID 83711-4449

☐ overnight mail
☒ regular mail
☐ hand-delivered
☐ facsimile

United States Dept of Justice
Environment & Natural Resource Div
550 West Fort Street MSC 033
Boise ID 83724

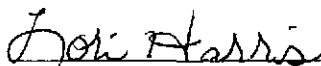
☐ overnight mail
☒ regular mail
☐ hand-delivered
☐ facsimile

3. Copies to all parties to the subcase:

Eagle Meadows Village LLC
540 San Pablo Ave
Albany CA 94706

☐ overnight mail
☒ regular mail
☐ hand-delivered
☐ facsimile

☐ overnight mail
☐ regular mail
☐ hand-delivered
☐ facsimile



Signature of person mailing this document



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

November 20, 2006

JAMES E. RISCH
Governor

KARL J. DREHER
Director

EAGLE MEADOWS VILLAGE LLC
540 SAN PABLO AVE
ALBANY CA 94706

Re: Water Right No. 63-7740

Dear Sir or Madam:

Enclosed is a copy of the above referenced water right, which reflects the change in ownership of the land and appurtenant water rights, covered under the original filing. Also enclosed is a copy of the Notice of Completed Administrative Proceedings, which has been sent to the Snake River Basin Court as notification of the change.

If you have any questions concerning the enclosed water right, please feel free to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Lori Harris".

Lori Harris
Technical Records Specialist 1
Adjudication Section
Western Region Office

LH:l
Enclosures

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

RECEIVED

DEC 09 2005

DEPARTMENT OF
WATER RESOURCES

Please print or type. Attach pages with additional information. Instructions are included at the end of this form.
 Incomplete forms will be returned.

RECEIVED

DEC 17 2005

WATER RESOURCES
WESTERN REGION

Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
63-07740		☒			

RECEIVED

NOV 14 2006

WATER RESOURCES
WESTERN REGION

2. The following **REQUIRED** information must be submitted with this form:

- A. The appropriate **FILING FEE**. See instructions for fee amounts.
- B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
- C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).
OR
 If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s)

EAGLE CENTER PROPERTIES, LLC

4. New Owner/Claimant(s)

EAGLE MEADOWS VILLAGE, LLC

Name Connector (Check one): ☐ and, ☐ or, ☐ and/or

New Mailing Address

540 SAN PABLO AVE

City, State and ZIP Code

ALBANY, CALIF. 94706

New Telephone Number

415, 383-6798

5. Date you acquired the property

11/23/05

SCANNED

NOV 13 2006

6. If the change in ownership affects the entire water right for each water right or adjudication claim number listed in Item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

7. Signature of New Owner(s) or Claimant(s) _____
(include title if applicable) _____

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

For Office Use Only

Received by _____	Date _____	Fee <u>N/A</u>
Receipted by _____	Date _____	Receipt No. _____
Processed by <u>add</u> AJ	Date <u>11-20-06</u>	WR _____ Date _____

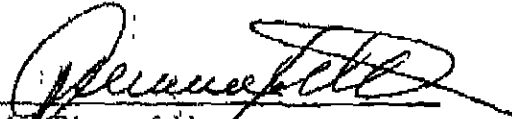
SCANNED

NOV 13 2006

↓

185178827

Eagle Center Properties, LLC


By: Max Blumenfeld
Its: Member

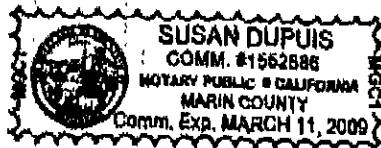
STATE OF CALIFORNIA)

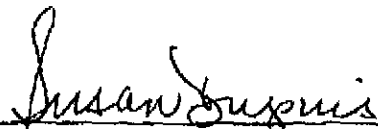
) ss.

County of Marin)

On this 21st day of NOVEMBER, 2005, before me, a Notary Public, personally appeared Kenneth J. Friedman, known or identified to me to be a Member of Eagle Center Properties, LLC, an Idaho Limited Liability Company, and the person who executed the foregoing instrument on behalf of said company, and acknowledged to me that he executed the same for and on behalf of Eagle Center Properties, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.




Notary Public for California
Residing at: SAN SALITO, CA
My Commission Expires: 3-11-09

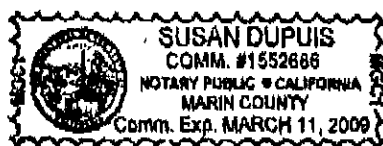
STATE OF CALIFORNIA)

) ss.

County of Marin)

On this 21st day of November, 2005, before me, a Notary Public, personally appeared Joseph Nadel, known or identified to me to be a Member of Eagle Center Properties, LLC, an Idaho Limited Liability Company, and the person who executed the foregoing instrument on behalf of said company, and acknowledged to me that he executed the same for and on behalf of Eagle Center Properties, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Susan Dupuis
Notary Public for California
Residing at: Sausalito, CA
My Commission Expires: 3-11-09

STATE OF CALIFORNIA)

) ss.

County of Marin)

On this 21st day of November, 2005, before me, a Notary Public, personally appeared Max Blumenfeld, known or identified to me to be a Member of Eagle Center Properties, LLC, an Idaho Limited Liability Company, and the person who executed the foregoing instrument on behalf of said company, and acknowledged to me that he executed the same for and on behalf of Eagle Center Properties, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Susan Dupuis
Notary Public for California
Residing at: Sausalito, CA
My Commission Expires: 3-11-09

WARRANTY DEED - Page 3

SCANNED

NOV 13 2006

EXHIBIT A**GRANTOR REAL PROPERTY
(Eagle Meadows MHP)**

The following described real property located in Ada County, State of Idaho, more particularly described as follows, to wit:

A tract of land in the Southwest quarter of Section 9, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho, described as follows:

Commencing at the South quarter corner of Section 9, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho, and running thence South $89^{\circ}55'00''$ West along section line 489.59 feet;

Thence North $01^{\circ}10'00''$ East, 30.08 feet to a point on the North bank of Dry Creek, said point being the POINT OF BEGINNING;

Thence North $01^{\circ}10'00''$ East, 721.79 feet;

Thence North $80^{\circ}21'48''$ West, 455.27 feet;

Thence South $09^{\circ}30'00''$ West, 125.30 feet;

Thence North $81^{\circ}02'41''$ West, 151.53 feet;

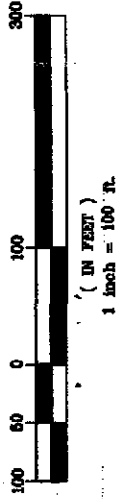
Thence South $09^{\circ}11'29''$ West, 283.53 feet;

Thence South $57^{\circ}15'00''$ East, 772.62 feet along said North bank of Dry Creek to the POINT OF BEGINNING.

SCANNED

NOV 13 2006

PART OF
THE SE 1/4 OF THE SW 1/4 OF
SECTION 9, T. 4 N., R. 1 E.B.M.
CITY OF EAGLE, ADA COUNTY, IDAHO



OWNER'S CERTIFICATE

This is to certify that the undersigned, Kenneth J. Friedman, a representative of Eagle Center Properties, LLC, are the owners of the following described property:

A tract of land recorded as Instrument No. 97033277 in the Southwest 1/4 of Section 9, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho described as follows:

Commencing at the Southwest Corner of Section 9, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho, thence N89°55'00"E along section line 612.60 feet to a point; thence N00°48'00"E 703.00 feet to a point; thence N86°30'00"E 393.00 feet to a point; thence N00°00'00"E 390.47 feet to the South-line of county road; thence S80°39'00"E along the South-line of county road 750.00 feet to the real POINT OF BEGINNING; thence S80°30'00"E 430.84 feet to a point; thence S01°10'00"W 890.36 feet to a point in the drain ditch; thence N57°15'00"W along said drain ditch 772.62 feet to a point; thence N09°11'29"E 283.53 feet to a found rebar; thence S81°02'41"E 151.53 feet to a point; thence N09°30'00"E 291.00 feet back to the POINT OF BEGINNING.

Said Parcel contains 9.56 Acres

And that they agree to this Eagle Division.

Maryanne Mendez
Eagle Center Properties, LLC; Representative

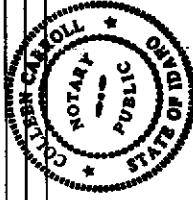
ACKNOWLEDGMENT

STATE OF IDAHO S.S.
COUNTY OF ADA

ON THIS 5 DAY OF March, 2003, BEFORE ME THE UNDERSIGNED, A NOTARY IN AND FOR THE SAID STATE PERSONALLY APPEARED Kenneth J. Friedman KNOWN TO ME TO BE THE PERSON(S) WHOSE NAME(S) IS (ARE) SUBSCRIBED TO THE FOREGOING "OWNER'S CERTIFICATE" AND ACKNOWLEDGED TO ME THAT THEY DID EXECUTE THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

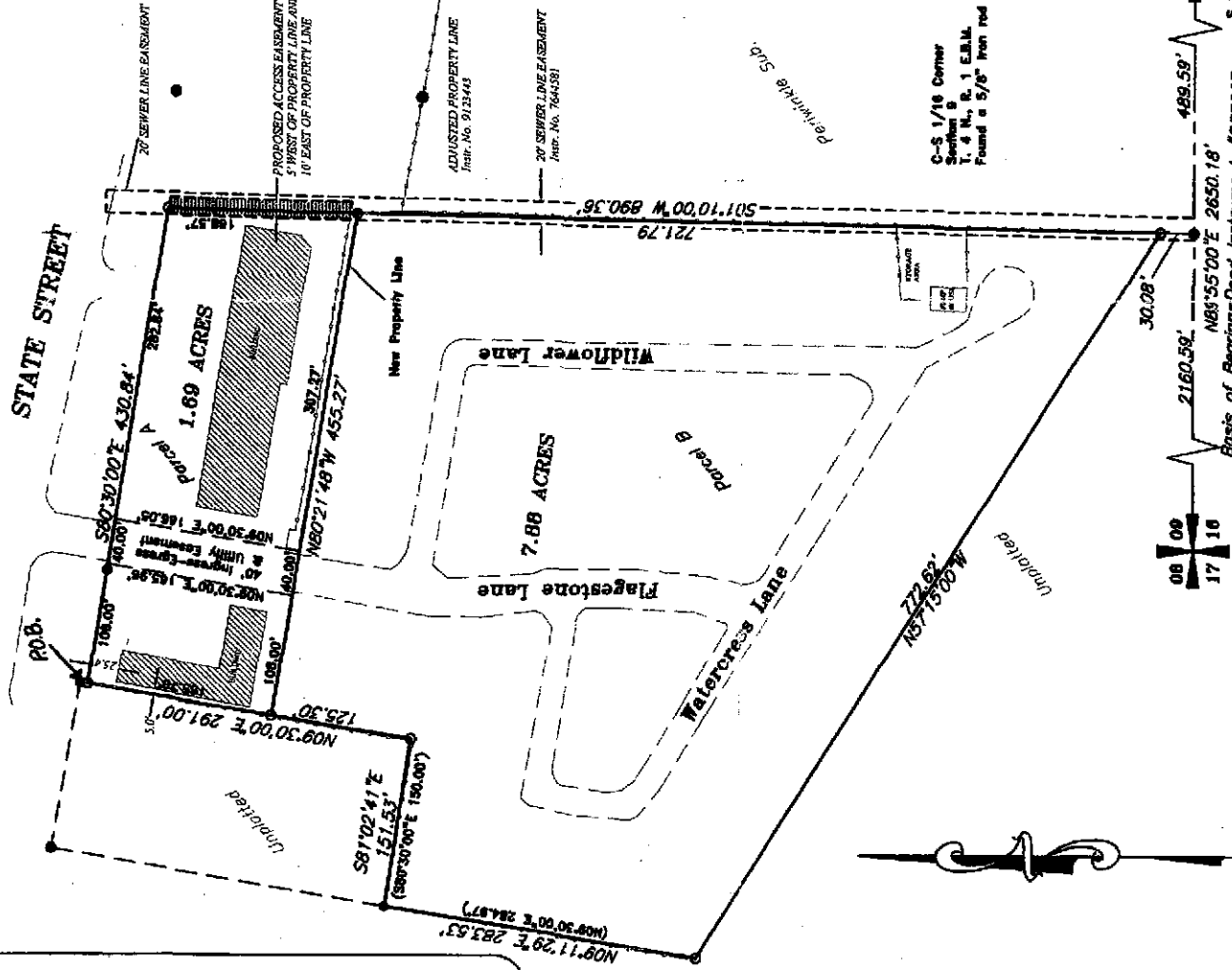
NOTARY PUBLIC
RESIDING AT Star
MY COMMISSION EXPIRES: 6-27-07



APPROVAL OF CITY ENGINEER

I, THE UNDERSIGNED, CITY ENGINEER IN AND FOR THE CITY OF EAGLE, ADA COUNTY, IDAHO, HEREBY APPROVE THIS LOT SPLIT RECORD OF SURVEY.

Thomas J. Grier
CITY ENGINEER
DATE 2/19/03



RECORDER'S CERTIFICATE

STATE OF IDAHO S.S.
COUNTY OF ADA

INSTRUMENT NO. 103039936
FEE: \$65.00

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD AT THE REQUEST OF ARROW ENGINEERING & SURVEYING, AT 1:30 MINUTES PAST 10 O'CLOCK A.M. ON THE 12 DAY OF March, 2003.

David Navarro
DAVID NAVARRO, RECORDER
DEPUTY

NOTE:

1. Zoning: C8D
2. Redevelopment or future amending of the record of survey for either parcel, subsequent to this parcel division, shall be in compliance with all codes and the comprehensive plan.
3. Access to property is provided via existing road which is signed and addressed. Depicted hereon is the easement for said private roadway in its current location, subject to the provisions regarding maintenance, repair and location as stated in that certain Easement and Road Maintenance Agreement dated March 10, 2003, under Ada County Recorder File Number 104039936, containing among other provisions, the rights of each created parcel to have access, ingress and egress rights over Parcel "A" for access to State Street, and to equally share in the maintenance and repair thereof, and further including lien rights for non-payment of said costs and expenses.

SURVEYOR'S CERTIFICATE

I, DARREN R. LEAVITT, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR, LICENSED BY THE STATE OF IDAHO, AND THAT THIS MAP HAS BEEN PREPARED FROM AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY SUPERVISION, AND THAT THIS MAP IS AN ACCURATE REPRESENTATION OF SAID SURVEY.



DARREN R. LEAVITT, P.L.S.
IDAHO LICENSE NO. 7323

LEGEND

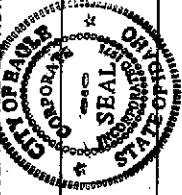
- Found Section Corner
- Placed 1/2" X 24" Iron rod with cap marked P.L.S. 7323
- Found 1/2" Iron rod
- Found 5/8" Iron rod
- Fence line
- Dead Bearing & Distance



ENGINEERING & SURVEYING
CITY ENGINEER AND LAND SURVEYOR
100 S. STATE STREET SUITE 200, EAGLE, IDAHO 83601
(208) 888-7323 FAX (208) 888-7321
GPS, SURVEYING,
TOPOGRAPHIC AND ALL I.T.A. SURVEYS,
AND CONSTRUCTION STAKING

I, Thomas J. Grier, CITY CLERK IN AND FOR THE CITY OF EAGLE, ADA COUNTY, DO HEREBY CERTIFY THAT AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 27 DAY OF August, 2003, THIS PARCEL DIVISION WAS DULY ACCEPTED AND APPROVED.

Thomas J. Grier
EAGLE CITY CLERK



LOT SPLIT
RECORD OF SURVEY NO.

EAGLE CENTER PROPERTIES, LLC
SEC. 9, T. 4 N., R. 1 E.B.M.

DATE	1-27-03	PROJECT	02-009	OF	1
DRAWN BY	DL	CHECKED BY	DL	DATE	1

SCANNED

NOV 13 2006

RECEIVED

DEC 06 2005

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**Notice of Security Interest in a Water Right**And Request for Notification of a Change in Ownership or Any Proposed
Or Final Action to Amend, Transfer, or Otherwise Modify a Water RightPlease print or type. Attach pages with additional information. Instructions are on the back of this page.
Incomplete forms will be returned.

1. Water Right No(s): 63-07740
Adjudication Claim No(s): 63-07740
2. The following **REQUIRED** information must be submitted with this form:
 - A) Evidence of the security interest. This may be a copy of a **DEED of TRUST, MORTGAGE, CONTRACT OF SALE** or other legal document indicating your interest in the property and water rights or claims in question, **WITH ATTACHED LEGAL DESCRIPTION.**
 - B) A **FEE** of \$25.00 per water right or adjudication claim.
3. Name and Mailing Address of Person or Company holding Security Interest
Collateral Mortgage Capital, LLC
524 Lorna Square
Birmingham, Alabama 35216
Phone: 205-978-1271
4. Name of Water Right Owner/Claimant(s) Eagle Meadows Village LLC
5. Expiration Date of Notification Period December 1, 2015
6. Is this a Renewal of Request for Notification? ☐ YES ☒ NO
7. Signature(s) (and title if applicable) See Attached

For Office Use OnlyReceived by MM

Receipted by

Processed by

AJ

Date

Date

Date

Fee

Receipt No

WR

Date

SCANNED

JAN 24 2006

Collateral Mortgage Capital, LLC,
a Delaware limited liability company

By: Collateral Management, LLC,
a Delaware limited liability company
Its Manager

By: 
Brett N. Blackwood
Its Managing Director

SCANNED
10/11/2008

0500035316 LAB

ADA COUNTY RECORDER J. JAVIER NAVARRO
BOISE IDAHO 11/23/05 04:29 PM
DEPUTY Nikola Olson
RECORDED - REQUEST OF
Transaction Title

AMOUNT 156.00 52



Prepared by, and after recording
return to:
Phillip D. Corley, Jr., Esq.
Wallace, Jordan, Ratliff & Brandt, L.L.C.
800 Shades Creek Parkway, Suite 400
Birmingham, Alabama 35209

MULTIFAMILY DEED OF TRUST,
ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND
FIXTURE FILING

FANNIE MAE MULTIFAMILY SECURITY INSTRUMENT -
IDAHO

Form 4013

11/01

© 1998-2001 Fannie Mae

SCANNED

JAN 2 4 2006

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**MULTIFAMILY DEED OF TRUST,
ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND
FIXTURE FILING**

THIS MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "**Instrument**") is dated as of the 23rd day of November, 2005 by **Eagle Meadows Village LLC**, a limited liability company organized and existing under the laws of Idaho, whose address is c/o Kenneth J. Friedman, 529 Brookline Avenue, Mill Valley, CA 94941, as grantor ("**Borrower**"), to **Transnation Title & Escrow, Inc.**, a Delaware corporation, whose address is 1750 Front Street, Suite 120, Boise, Idaho 83702, as trustee ("**Trustee**"), for the benefit of **Collateral Mortgage Capital, LLC**, a limited liability company organized and existing under the laws of Delaware, whose address is 524 Lorna Square, Birmingham, Alabama 35216, as beneficiary ("**Lender**").

Borrower, in consideration of the Indebtedness and the trust created by this Instrument, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the Mortgaged Property, including the Land located in the County of Ada, State of Idaho, and described in Exhibit A attached to this Instrument.

TO SECURE TO LENDER the repayment of the Indebtedness evidenced by Borrower's Multifamily Note payable to Lender, dated as of the date of this Instrument, and maturing on December 1, 2015, in the principal amount of \$1,252,500.00, and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in the Loan Documents.

Borrower represents and warrants 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 specially 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:

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

(b) **"Collateral Agreement"** means any separate agreement between Borrower and Lender for the purpose of establishing replacement reserves for the Mortgaged Property, establishing a fund to assure completion of repairs or improvements specified in that agreement, or assuring reduction of the outstanding principal balance of the Indebtedness if the occupancy of or income from the Mortgaged Property does not increase to a level specified in that agreement, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account.

(c) **"Environmental Permit"** means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(d) **"Event of Default"** means the occurrence of any event listed in Section 22.

(e) **"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.

(f) **"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.

(g) **"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.

(h) **"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, and their state analogs.

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

(j) **"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.

(k) **"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 12 to protect the security of this Instrument.

(l) [Intentionally omitted]

(m) **"Key Principal"** means the natural person(s) or entity identified as such at the foot of this Instrument, and any person or entity who becomes a Key Principal after the date of this Instrument and is identified as such in an amendment or supplement to this Instrument.

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

(o) **"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.

(p) **"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.

(q) **"Loan Documents"** means the Note, this Instrument, all guaranties, all indemnity agreements, all Collateral Agreements, O&M Programs, and any other documents now or in the

future executed by Borrower, Key Principal, any guarantor or any other person in connection with the loan evidenced by the Note, as such documents may be amended from time to time.

(r) **"Loan Servicer"** means the entity that from time to time is designated by Lender to collect payments and deposits and receive notices under the Note, this Instrument and any other Loan Document, and otherwise to service the loan evidenced by the Note 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.

(s) **"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 Personalty;
- (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 benefitting 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 Imposition Deposits;
 - (13) 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);
 - (14) all tenant security deposits which have not been forfeited by any tenant under any Lease; and
 - (15) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.

(t) **"Note"** means the Multifamily Note described on page 1 of this Instrument, including the Acknowledgment and Agreement of Key Principal to Personal Liability for Exceptions to Non-Recourse Liability (if any), and all schedules, riders, allonges and addenda, as such Multifamily Note may be amended from time to time.

(u) **"O&M Program"** is defined in Section 18(a).

(v) **"Personalty"** means all equipment, inventory, general intangibles 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, including furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) 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.

(w) **"Property Jurisdiction"** is defined in Section 30(a).

(x) **"Rents"** means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including subsidy payments received from any sources (including, but not limited to payments under any Housing Assistance Payments Contract), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.

(y) **"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.

(z) **"Transfer"** means (A) a sale, assignment, transfer or other disposition (whether voluntary, involuntary or by operation of law); (B) the granting, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary or by operation of law); (C) the issuance or other creation of an ownership interest in a legal entity, including a partnership interest, interest in a limited liability company or corporate stock; (D) the withdrawal, retirement, removal or involuntary resignation of a partner in a partnership or a member or manager in a limited liability company; or (E) the merger, dissolution, liquidation, or consolidation of a legal entity. "Transfer" does not include (i) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument or (ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code. For purposes of defining the term "Transfer," the term "partnership" shall mean a general partnership, a limited partnership, a joint venture and a limited liability partnership, and the term "partner" shall mean a general partner, a limited partner and a joint venturer.

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 hereby authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Borrower agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. 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. In exercising any remedies, 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 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(s). However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property 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, and Borrower shall, upon Borrower's receipt of any Rents from any sources (including, but not limited to subsidy payments under any Housing Assistance Payments Contract), pay the total amount of such receipts to the 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 Note 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 Note), 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 12.

(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(s). However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property 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

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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 non-residential 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.

Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents. Borrower shall pay a prepayment premium in connection with certain prepayments of the Indebtedness, including a payment made after Lender's exercise of any right of acceleration of the Indebtedness, as provided in the Note.

6. EXCULPATION.

Borrower's personal liability for payment of the Indebtedness and for performance of the other obligations to be performed by it under this Instrument is limited in the manner, and to the extent, provided in the Note.

7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.

(a) Borrower shall deposit with Lender on the day monthly installments of principal or interest, or both, are due under the Note (or on another day designated in writing by Lender), until the Indebtedness is paid in full, an additional amount sufficient to accumulate with Lender the entire sum required to pay, when due (1) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Mortgaged Property, (2) the premiums for fire and other hazard insurance, rent loss insurance and such other insurance as Lender may require under Section 19, (3) Taxes, and (4) amounts for other charges and expenses which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Lender's interests, all as reasonably estimated from time to time by Lender. The amounts deposited under the preceding sentence are collectively referred to in this Instrument as the "**Imposition Deposits**". The obligations of Borrower for which the Imposition Deposits are required are collectively referred to in this Instrument as "**Impositions**". The amount

of the Imposition Deposits shall be sufficient to enable Lender to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added. Lender shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Lender are held for the purpose of paying Taxes, insurance premiums and each other obligation of Borrower for which Imposition Deposits are required. Any waiver by Lender of the requirement that Borrower remit Imposition Deposits to Lender may be revoked by Lender, in Lender's discretion, at any time upon notice to Borrower.

(b) Imposition Deposits shall be held in an institution (which may be Lender, if Lender is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency. Lender shall not be obligated to open additional accounts or deposit Imposition Deposits in additional institutions when the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. Lender shall apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Unless applicable law requires, Lender shall not be required to pay Borrower any interest, earnings or profits on the Imposition Deposits. Borrower hereby pledges and grants to Lender a security interest in the Imposition Deposits as additional security for all of Borrower's obligations under this Instrument and the other Loan Documents. Any amounts deposited with Lender under this Section 7 shall not be trust funds, nor shall they operate to reduce the Indebtedness, unless applied by Lender for that purpose under Section 7(e).

(c) If Lender receives a bill or invoice for an Imposition, Lender shall pay the Imposition from the Imposition Deposits held by Lender. Lender shall have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by Lender. Lender may pay an Imposition according to any bill, statement or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition.

(d) If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Lender, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition is less than the amount reasonably estimated by Lender to be necessary, Borrower shall pay to Lender the amount of the deficiency within 15 days after notice from Lender.

(e) If an Event of Default has occurred and is continuing, Lender may apply any Imposition Deposits, in any amounts and in any order as Lender determines, in Lender's discretion, to pay any Impositions or as a credit against the Indebtedness. Upon payment in full of the Indebtedness, Lender shall refund to Borrower any Imposition Deposits held by Lender.

8. COLLATERAL AGREEMENTS.

Borrower shall deposit with Lender such amounts as may be required by any Collateral Agreement and shall perform all other obligations of Borrower under each Collateral Agreement.

9. APPLICATION OF PAYMENTS.

If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Neither Lender's acceptance of an amount which is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Instrument and the Note shall remain unchanged.

10. 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.

11. USE OF PROPERTY.

Unless required by applicable law, Borrower shall not (a) except for any change in use approved by Lender, allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Instrument was executed, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property, or (d) establish any condominium or cooperative regime with respect to the Mortgaged Property.

12. 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 19, and (4) payment of amounts which Borrower has failed to pay under Sections 15 and 17.

(b) Any amounts disbursed by Lender under this Section 12, or under any other provision of this Instrument that treats such disbursement as being made under this Section 12, 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 the "**Default Rate**", as defined in the Note.

(c) Nothing in this Section 12 shall require Lender to incur any expense or take any action.

13. INSPECTION.

Lender, its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours, or at any other reasonable time.

14. BOOKS AND RECORDS; FINANCIAL REPORTING.

(a) Borrower shall keep and maintain at all times at the Mortgaged Property or the management agent's offices, and upon Lender's request shall make available at the Mortgaged Property, complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property, and copies of all written contracts, Leases, and other instruments which affect the Mortgaged Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender.

(b) Borrower shall furnish to Lender all of the following:

- (1) within 120 days after the end of each fiscal year of Borrower, a statement of income and expenses for Borrower's operation of the Mortgaged Property for that fiscal year, a statement of changes in financial position of Borrower relating to the Mortgaged Property for that fiscal year and, when requested by Lender, a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of that fiscal year;
- (2) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a rent schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date

through which rent has been paid, and any related information requested by Lender;

- (3) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts;
- (4) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a statement that identifies all owners of any interest in Borrower and the interest held by each, if Borrower is a corporation, all officers and directors of Borrower, and if Borrower is a limited liability company, all managers who are not members;
- (5) upon Lender's request, a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender; and
- (6) upon Lender's request, a balance sheet, a statement of income and expenses for Borrower and a statement of changes in financial position of Borrower for Borrower's most recent fiscal year; and
- (7) if required by Lender, a statement of income and expense for the Mortgaged Property for the prior month or quarter.

(c) Each of the statements, schedules and reports required by Section 14(b) shall be certified to be complete and accurate by an individual having authority to bind Borrower, and shall be in such form and contain such detail as Lender may reasonably require. Lender also may require that any statements, schedules or reports be audited at Borrower's expense by independent certified public accountants acceptable to Lender.

(d) If Borrower fails to provide in a timely manner the statements, schedules and reports required by Section 14(b), Lender shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness as provided in Section 12.

(e) If an Event of Default has occurred and is continuing, Borrower shall deliver to Lender upon written demand all books and records relating to the Mortgaged Property or its operation.

(f) Borrower authorizes Lender to obtain a credit report on Borrower at any time.

(g) If an Event of Default has occurred and Lender has not previously required Borrower to furnish a quarterly statement of income and expense for the Mortgaged Property, Lender may require Borrower to furnish such a statement within 45 days after the end of each fiscal quarter of Borrower following such Event of Default.

15. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Section 15(c) and Section 15(d), 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) Subject to the provisions of Section 15(c), 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.

(c) As long as no Event of Default exists and Borrower has timely delivered to Lender any bills or premium notices that it has received, Borrower shall not be obligated to pay Taxes, insurance premiums or any other individual Imposition to the extent that sufficient Imposition Deposits are held by Lender for the purpose of paying that specific Imposition. If an Event of Default exists, Lender may exercise any rights Lender may have with respect to Imposition Deposits without regard to whether Impositions are then due and payable. Lender shall have no liability to Borrower for failing to pay any Impositions to the extent that any Event of Default has occurred and is continuing, insufficient Imposition Deposits are held by Lender at the time an Imposition becomes due and payable or Borrower has failed to provide Lender with bills and premium notices as provided above.

(d) Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (1) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (2) the Mortgaged Property is not in danger of being sold or forfeited, (3) Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (4) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender, which may include the delivery to Lender of the reserves established by Borrower to pay the contested Imposition.

(e) Borrower shall promptly deliver to Lender a copy of all notices of, and invoices for, Impositions, and if Borrower pays any Imposition directly, Borrower shall promptly furnish to Lender receipts evidencing such payments.

16. LIENS; ENCUMBRANCES.

Borrower acknowledges that, to the extent provided in Section 21, the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a "Lien") on the Mortgaged Property (other than the lien of this Instrument) or on certain ownership interests in Borrower, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Instrument, is a "Transfer" which constitutes an Event of Default.

17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY.

(a) Borrower (1) shall not commit waste or permit impairment or deterioration of the Mortgaged Property, (2) shall not abandon the Mortgaged Property, (3) 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, (4) shall keep the Mortgaged Property in good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality, (5) shall provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Lender under a contract approved by Lender in writing, and (6) 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. Borrower shall not (and shall not permit any tenant or other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property except in connection with the replacement of tangible Personalty.

(b) If, in connection with the making of the loan evidenced by the Note or at any later date, Lender waives in writing the requirement of Section 17(a)(5) above that Borrower enter into a written contract for management of the Mortgaged Property and if, after the date of this Instrument, Borrower intends to change the management of the Mortgaged Property, Lender shall have the right to approve such new property manager and the written contract for the management of the Mortgaged Property and require that Borrower and such new property manager enter into an Assignment of Management Agreement on a form approved by Lender. If required by Lender (whether before or after an Event of Default), Borrower will cause any Affiliate of Borrower to whom fees are payable for the management of the Mortgaged Property to enter into an agreement with Lender, in a form approved by Lender, providing for subordination of those fees and such other provisions as Lender may require. "Affiliate of Borrower" means any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls Borrower (the term "control" for these

purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

18. ENVIRONMENTAL HAZARDS.

(a) Except for matters covered by a written program of operations and maintenance approved in writing by Lender (an "O&M Program") or matters described in Section 18(b), 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 18 as "Prohibited Activities or Conditions".

(b) Prohibited Activities and 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 comparable multifamily 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 (3) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property's parking areas, 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) If an O&M Program has been established with respect to Hazardous Materials, Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons present on the Mortgaged Property to comply with the O&M Program. All costs of performance of Borrower's obligations under any O&M Program shall be paid by Borrower, and Lender's out-of-pocket costs incurred in connection with the monitoring and review of the O&M Program and Borrower's performance shall be paid by Borrower upon demand by Lender. Any such out-of-pocket costs of Lender which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12.

(e) Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing:

- (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 18 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.

(f) 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 18 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.

(g) 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 as a condition of Lender's consent to any Transfer under Section 21, 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 12. 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.

(h) 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 12.

(i) 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.

(j) 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 "**Indemnitee**") 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 18;
- (2) any failure by Borrower to perform any of its obligations under this Section 18;
- (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 that is adjacent to the Mortgaged Property; and
- (5) the actual or alleged violation of any Hazardous Materials Law.

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

(l) Borrower shall not, without the prior written consent of those Indemnitee 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 Indemnitee, satisfactory in form and substance to Lender; or (2) may materially and adversely affect Lender, as determined by Lender in its discretion.

(m) Lender agrees that the indemnity under this Section 18 shall be limited to the assets of Borrower and Lender shall not seek to recover any deficiency from any natural persons who are general partners of Borrower.

(n) 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 Indemnitee in any legal or administrative proceeding incident to any matters against which Indemnitee are entitled to be indemnified under this Section 18;
- (2) reimburse Indemnitee for any expenses paid or incurred in connection with any matters against which Indemnitee are entitled to be indemnified under this Section 18; and
- (3) reimburse Indemnitee 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 Indemnitee of their rights under this Section 18, or in monitoring and participating in any legal or administrative proceeding.

(o) In any circumstances in which the indemnity under this Section 18 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.

(p) The provisions of this Section 18 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 18 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 Indemnitee under this Section 18 shall be joint and several. The obligation of Borrower to indemnify the Indemnitee under this Section 18 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.

19. PROPERTY AND LIABILITY INSURANCE.

(a) Borrower shall keep the Improvements 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 Lender so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. If any of the Improvements is 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 premiums on insurance policies required under Section 19(a) shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. 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 19(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, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require.

(d) All insurance policies and renewals of insurance policies required by this Section 19 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. However, nothing contained in this Section 19 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, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; (4) Lender determines, in its 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 19.

(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.

20. 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. However, nothing contained in this Section 20 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, Section 7 of this Instrument or any Collateral Agreement, 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.

21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER.

(a) The occurrence of any of the following events shall constitute an Event of Default under this Instrument:

- (1) a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property;
- (2) a Transfer of a Controlling Interest in Borrower;
- (3) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling Interest in Borrower;

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- (4) a Transfer of all or any part of Key Principal's ownership interests (other than limited partnership interests) in Borrower, or in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower;
- (5) if Key Principal is an entity, (A) a Transfer of a Controlling Interest in Key Principal, or (B) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling Interest in Key Principal;
- (6) if Borrower or Key Principal is a trust, the termination or revocation of such trust; and
- (7) a conversion of Borrower from one type of legal entity into another type of legal entity, whether or not there is a Transfer.

Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 21.

(b) The occurrence of any of the following events shall not constitute an Event of Default under this Instrument, notwithstanding any provision of Section 21(a) to the contrary:

- (1) a Transfer to which Lender has consented;
- (2) a Transfer that occurs by devise, descent, or by operation of law upon the death of a natural person;
- (3) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;
- (4) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by the Loan Documents or consented to by Lender;
- (5) the grant of an easement, if before the grant Lender determines that the easement will not materially affect the operation or value of the Mortgaged Property or Lender's interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request; and

- (6) the creation of a tax lien or a mechanic's, materialman's or judgment lien against the Mortgaged Property which is bonded off, released of record or otherwise remedied to Lender's satisfaction within 30 days of the date of creation.

(c) Lender shall consent, without any adjustment to the rate at which the Indebtedness secured by this Instrument bears interest or to any other economic terms of the Indebtedness, to a Transfer that would otherwise violate this Section 21 if, prior to the Transfer, Borrower has satisfied each of the following requirements:

- (1) the submission to Lender of all information required by Lender to make the determination required by this Section 21(c);
- (2) the absence of any Event of Default;
- (3) the transferee meets all of the eligibility, credit, management and other standards (including any standards with respect to previous relationships between Lender and the transferee and the organization of the transferee) customarily applied by Lender at the time of the proposed Transfer to the approval of borrowers in connection with the origination or purchase of similar mortgages, deeds of trust or deeds to secure debt on multifamily properties;
- (4) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition that are customarily applied by Lender at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgages on multifamily properties;
- (5) in the case of a Transfer of all or any part of the Mortgaged Property, or direct or indirect ownership interests in Borrower or Key Principal (if an entity), if transferor or any other person has obligations under any Loan Document, the execution by the transferee or one or more individuals or entities acceptable to Lender of an assumption agreement (including, if applicable, an Acknowledgement and Agreement of Key Principal to Personal Liability for Exceptions to Non-Recourse Liability) that is acceptable to Lender and that, among other things, requires the transferee to perform all obligations of transferor or such person set forth in such Loan Document, and may require that the transferee comply with any provisions of this Instrument or any other Loan Document which previously may have been waived by Lender;
- (6) if a guaranty has been executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, the Borrower causes

one or more individuals or entities acceptable to Lender to execute and deliver to Lender a guaranty in a form acceptable to Lender; and

- (7) Lender's receipt of all of the following:
 - (A) a non-refundable review fee in the amount of \$3,000 and a transfer fee equal to 1 percent of the outstanding Indebtedness immediately prior to the Transfer.
 - (B) In addition, Borrower shall be required to reimburse Lender for all of Lender's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request, to the extent such expenses exceed \$3,000.

(d) For purposes of this Section, the following terms shall have the meanings set forth below:

- (1) **"Initial Owners"** means, with respect to Borrower or any other entity, the persons or entities who on the date of the Note own in the aggregate 100% of the ownership interests in Borrower or that entity.
- (2) A Transfer of a **"Controlling Interest"** shall mean, with respect to any entity, the following:
 - (i) if such entity is a general partnership or a joint venture, a Transfer of any general partnership interest or joint venture interest which would cause the Initial Owners to own less than 51% of all general partnership or joint venture interests in such entity;
 - (ii) if such entity is a limited partnership, a Transfer of any general partnership interest;
 - (iii) if such entity is a limited liability company or a limited liability partnership, a Transfer of any membership or other ownership interest which would cause the Initial Owners to own less than 51% of all membership or other ownership interests in such entity;
 - (iv) if such entity is a corporation (other than a Publicly-Held Corporation) with only one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than 51% of voting stock in such corporation;
 - (v) if such entity is a corporation (other than a Publicly-Held Corporation) with more than one class of voting stock, a Transfer of

any voting stock which would cause the Initial Owners to own less than a sufficient number of shares of voting stock having the power to elect the majority of directors of such corporation; and

- (vi) if such entity is a trust, the removal, appointment or substitution of a trustee of such trust other than (A) in the case of a land trust, or (B) if the trustee of such trust after such removal, appointment or substitution is a trustee identified in the trust agreement approved by Lender.

- (3) **"Publicly-Held Corporation"** shall mean a corporation the outstanding voting stock of which is registered under Section 12(b) or 12(g) of the Securities and Exchange Act of 1934, as amended.

22. EVENTS OF DEFAULT.

The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument:

- (a) any failure by Borrower to pay or deposit when due any amount required by the Note, this Instrument or any other Loan Document;

- (b) any failure by Borrower to maintain the insurance coverage required by Section 19;

- (c) any failure by Borrower to comply with the provisions of Section 33;

- (d) fraud or material misrepresentation or material omission by Borrower, or any of its officers, directors, trustees, general partners or managers, Key Principal, Key Individual or any guarantor in connection with (A) the application for or creation of the Indebtedness, (B) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, or (C) any request for Lender's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement;

- (e) any Event of Default under Section 21;

- (f) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property;

- (g) any failure by Borrower to perform any of its obligations under this Instrument (other than those specified in Sections 22(a) through (f)), as and when required, which continues for a period of 30 days after notice of such failure by Lender to Borrower, but no such notice or grace period shall apply in the case of any such failure which could, in Lender's judgment, absent

immediate exercise by Lender of a right or remedy under this Instrument, result in harm to Lender, impairment of the Note or this Instrument or any other security given under any other Loan Document;

(h) any failure by Borrower to perform any of its obligations as and when required under any Loan Document other than this Instrument which continues beyond the applicable cure period, if any, specified in that Loan Document; and

(i) any exercise by the holder of any other debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property of a right to declare all amounts due under that debt instrument immediately due and payable.

23. 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.

24. 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: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Instrument, the Note, or any other Loan Document; release anyone liable for the payment of any amounts under this Instrument, the Note, or any other Loan Document; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; 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 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 19 and 20 shall not operate to cure or waive any Event of Default.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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, (i) 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); (ii) the unpaid principal balance of the Note; (iii) the date to which interest under the Note has been paid; (iv) 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); (v) 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 (vi) any additional facts requested by Lender.

30. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

(a) This Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the jurisdiction in which the Land is located (the "**Property Jurisdiction**").

(b) Borrower agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

31. NOTICE.

(a) All notices, demands and other communications ("**notice**") under or concerning this Instrument shall be in writing. Each notice shall be addressed to the intended recipient at its address set forth in this Instrument, and shall be deemed given on the earliest to occur of (1) the date when the notice is received by the addressee; (2) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (3) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 31, the term "Business Day" means any day other than a Saturday, a Sunday or any other day on which Lender is not open for business.

(b) Any party to this Instrument may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 31. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 31, that it will acknowledge, in writing, the receipt of any notice upon request by the other

party and that any notice rejected or refused by it shall be deemed for purposes of this Section 31 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

(c) Any notice under the Note and any other Loan Document which does not specify how notices are to be given shall be given in accordance with this Section 31.

32. 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.

33. SINGLE ASSET BORROWER.

Until the Indebtedness is paid in full, Borrower (a) shall not acquire any real or personal property other than the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property; (b) shall not operate any business other than the management and operation of the Mortgaged Property; and (c) shall not maintain its assets in a way difficult to segregate and identify.

34. 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 21 shall be an Event of Default.

35. JOINT AND SEVERAL LIABILITY.

If more than one person or entity signs this Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

36. 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.

37. 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.

38. 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."

39. 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.

40. 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.

41. NO CHANGE IN FACTS OR CIRCUMSTANCES.

All information in the application for the loan submitted to Lender (the "**Loan Application**") and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

42. SUBROGATION.

If, and to the extent that, the proceeds of the loan evidenced by the Note 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.

43. 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 invoke the power of sale and any one or more other remedies permitted by applicable law or provided in this Instrument or in any other Loan Document. Borrower acknowledges that the power of sale granted in this Instrument may be exercised by Lender without prior judicial hearing. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys' fees, costs of documentary evidence, abstracts and title reports.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an Event of Default and of Lender's election to cause the Mortgaged Property to be sold and shall cause the notice to be recorded in each county in which the Mortgaged Property or some part of the Mortgaged Property is located. Lender or Trustee shall mail copies of the notice in the manner prescribed by the laws of Idaho to Borrower and to the other persons prescribed by the laws of Idaho. Trustee shall give notice of sale and shall sell the Mortgaged Property according to the laws of Idaho. Trustee may sell the Mortgaged Property at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any part of the Mortgaged Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Mortgaged Property at any sale.

Trustee shall deliver to the purchaser at the sale, within a reasonable time after the sale, Trustee's deed conveying the Mortgaged Property so sold without any covenant or warranty, express or implied. The recitals in Trustee's deed shall be prima facie evidence of the truth of the statements made in those recitals. Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including Trustee's and attorneys' fees and costs of

title evidence; (b) to the Indebtedness in such order as Lender, in Lender's discretion, directs; and (c) the excess, if any, to the person or persons legally entitled to it.

As an alternative to invoking the power of sale, at any time after Lender has declared the Indebtedness to be immediately due and payable, Lender may commence an action to judicially foreclose this Instrument as a mortgage. The Mortgaged Property may be sold at one or more sales, as a whole or in such parcels or lots, with such elements of real and/or personal property, and in such manner or order as Lender, in its discretion, may elect. Lender shall be entitled to possession of the Mortgaged Property during any redemption period allowed under the laws of the State of Idaho. However, if Borrower remains in possession of the Mortgaged Property after it has been sold, Borrower shall become a tenant at will of the purchaser of the Mortgaged Property and shall pay a reasonable rental for use of the Mortgaged Property while it is in Borrower's possession. During any redemption period, the purchaser may make such repairs and alterations to the Mortgaged Property as may be reasonably necessary for its proper operation, care, preservation or protection; pay any Impositions which become due; insure the Mortgaged Property against loss by casualty and itself against liability arising from its ownership and use of the Mortgaged Property; pay liens not extinguished by the foreclosure; and pay any other amounts relating to the Mortgaged Property as they become due. All sums so paid, together with interest thereon from the date of the expenditure at the rate allowed under Idaho law during the period of redemption, shall be included in the amount required to be paid to redeem the Mortgaged Property.

44. RECONVEYANCE.

Upon payment of the Indebtedness, Lender shall request Trustee to reconvey the Mortgaged Property and shall surrender this Instrument and all notes evidencing the Indebtedness to Trustee. Trustee shall reconvey the Mortgaged Property without warranty to the person or persons legally entitled to the Mortgaged Property. Such person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Mortgaged Property.

45. SUBSTITUTE TRUSTEE.

Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee. Without conveyance of the Mortgaged Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee in this Instrument and by applicable law.

46. AREA AND LOCATION OF LAND.

Either the Land is not more than 40 acres in area or the Land is located within an incorporated city or village.

47. FINANCING STATEMENT.

As provided in Section 2, this Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture and for the purposes of such

financing statement: (a) the Debtor shall be Borrower and the Secured Party shall be Lender; (b) the addresses of Borrower as Debtor and of Lender as Secured Party are as specified above in the first paragraph of this Instrument; (c) the name of the record owner is Borrower; and (d) the types or items of collateral consist of any part of the Mortgaged Property which is or may become a Fixture.

48. WAIVER OF TRIAL BY JURY.

BORROWER AND LENDER EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

ATTACHED EXHIBITS. The following Exhibits are attached to this Instrument:

☒	Exhibit A	Description of the Land (required).
☒	Exhibit B-1	Modifications to Instrument
☒	Exhibit B-2	Modifications to Instrument
☒	Exhibit C	

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.

BORROWER:

Eagle Meadows Village LLC,
an Idaho limited liability company

By:


Kenneth J. Friedman
Its Manager

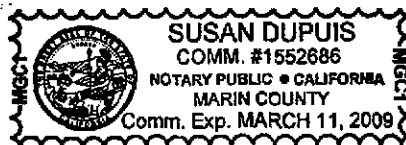
STATE OF CALIFORNIA)

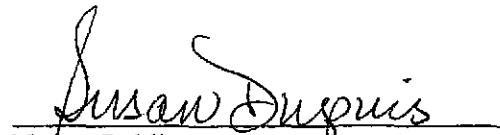
County of Marin)

) ss.

On this 21st day of November, 2005, before me, a Notary Public, personally appeared Kenneth J. Friedman, known or identified to me to be the Manager of Eagle Meadows Village LLC, an Idaho Limited Liability Company, and the person who executed the foregoing instrument on behalf of said company, and acknowledged to me that he executed the same for and on behalf of Eagle Meadows Village LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.




Notary Public
Residing at: Sausalito, CA
My Commission Expires: 3-11-09

KEY PRINCIPAL

Key Principal

Name: Kenneth J. Friedman

Address: 529 Brookline Avenue
Mill Valley, California 94941

Key Principal

Name: Joseph Nadel

Address: 6 Starboard Court
Mill Valley, California 94941

Key Principal

Name: Max Stanley Blumenfeld

Address: 46 Tan Oak Circle
San Rafael, California 94903

EXHIBIT A

DESCRIPTION OF THE LAND

PARCEL A

A tract of land in the Southwest quarter of Section 9, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho, described as follows:

Commencing at the South quarter corner of Section 9, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho; and running thence
South 89°55'00" West along section line 489.59 feet; thence
North 01°10'00" East, 30.08 feet to a point on the North bank of Dry Creek, said point being the POINT OF BEGINNING; thence
North 01°10'00" East, 721.79 feet; thence
North 80°21'48" West, 455.27 feet; thence
South 09°30'00" West, 125.30 feet; thence
North 81°02'41" West, 151.53 feet; thence
South 09°11'29" West, 283.53 feet; thence
South 57°15'00" East, 772.62 feet along said North bank of Dry Creek to the POINT OF BEGINNING.

*Per all View - SESW
RP 50509346846*

PARCEL B

An ingress and egress easement as depicted on Exhibit A attached to Easement and Road Maintenance Agreement as created by said easement executed March 6, 2003, recorded March 10, 2003 as Instrument No. 103039099, of Official Records, described as follows:

A tract of land located in the Southwest quarter of Section 9, Township 4 North, Range 1 East of the Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the South quarter corner of Section 9; thence
South 89°55'00" West a distance of 489.59 feet; thence
North 01°10'00" East a distance of 751.87 feet; thence
North 80°21'48" West a distance of 307.27 feet to the TRUE POINT OF BEGINNING;
thence continuing
North 80°21'48" West a distance of 40.00 feet; thence
North 09°30'00" East a distance of 165.96 feet; thence
South 80°30'00" East a distance of 40.00 feet; thence
South 09°30'00" West a distance of 166.05 feet to the POINT OF BEGINNING.

EXHIBIT B-1

MODIFICATIONS TO INSTRUMENT (Key Principal Transfers)

The following modifications are made to the text of the Instrument that precedes this Exhibit:

1. Section 21 is modified to add new Section 21(e) as follows:

“(e) The requirement to pay a 1% transfer fee as provided in Section 21(c)(7)(A) shall not apply to Transfers of the Mortgaged Property or of ownership interests held by any person or entity to (i) one or more Key Principals or (ii) any entity or entities in which a Key Principal has a direct or indirect Controlling Interest (“Affiliated Entities”). However, such Transfers to Affiliated Entities shall be subject to all other requirements of Section 21(c) herein.”
2. Section 21(b) is modified to delete the period at the end of Section 21(b)(6) and substitute “; and” therefor and to add a new Section 21(b)(7):

“(7) a Transfer of the Mortgaged Property or of ownership interests held by an individual or entity Key Principal in Borrower, or in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower, to (i) other Key Principals; (ii) Immediate Family Members; or (iii) trusts established for the benefit of the transferor and/or Immediate Family Members; provided, however, that such Transfer of ownership interests will not cause a change in the management and control of Borrower (or other intermediate entity), and after which Transfer, the transferor Key Principal shall maintain the same right and ability to manage and control Borrower (or other intermediate entity) as existed prior to the Transfer.”
3. Section 1 is modified to add the following defined term:

“(aa) “**Immediate Family Members**” means a non-minor child, grandchild, spouse, or parent, of a transferor under Section 21.”

4. All capitalized terms used in this Exhibit not specifically defined herein shall have the meanings set forth in the text of the Instrument that precedes this Exhibit.

EAGLE MEADOWS VILLAGE, LLC
BORROWER'S INITIALS

A handwritten signature in black ink, consisting of a stylized, cursive script that appears to be the name of the entity.

EXHIBIT B-2

MODIFICATION TO SECURITY INSTRUMENT (Manufactured Housing Community)

The following modifications are made to the text of the Instrument that precedes this Exhibit:

1. **Additional Definitions.** Section 1 of the Instrument is amended to add the following definitions:

"Manufactured Home" or "Home" means a "manufactured home" as that term is defined in the Manufactured Housing Construction and Safety Standards Act of 1974 as amended (42 USC Chapter 70), and in 24 CFR § 3280.2, and any related fixtures and personal property;

"Site" means a lot in the Mortgaged Property leased to a consumer under a Lease;

"Retail Creditor" means any party holding a consensual lien on a Home placed on the Mortgaged Property;

2. **Amendment to Existing Definitions.** Provisions (b), (j), and (v) of Section 1 of the Instrument are amended as follows:

(b) **"Collateral Agreement"** means any separate agreement between Borrower and Lender for the purpose of establishing replacement reserves for the Mortgaged Property, establishing a fund to assure completion of repairs or improvements specified in that agreement, establishing a working capital reserve fund where there are pre-paid rents, or assuring reduction of the outstanding principal balance of the Indebtedness if the occupancy of or income from the Mortgaged Property does not increase to a level specified in that agreement, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account.

(j) **"Improvements"** means the buildings, structures, improvements, Sites, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions. Improvements include Manufactured Homes now or hereafter owned by Borrower ("Borrower's Homes), if so categorized by State or local law. As of this date, the Borrower's Homes are those listed in Exhibit C annexed hereto.

(v) **"Personalty"** means all equipment, inventory, general intangibles 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, including furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) 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. Personalty includes Manufactured Homes now or hereafter owned by Borrower ("Borrower's Homes), if so categorized by State or local law. As of this date, the Borrower's Homes are those listed in Exhibit C annexed hereto.

3. **Lender's Security Interest.** Section 2 of the Instrument is amended to read as follows:

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 hereby authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Borrower agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. 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. In exercising any remedies, 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 that is or may become a Fixture.

4. **Leases.**

(a) Section 4(e) of the Security Instrument is amended to read as follows:

Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each Lease for a Site then in effect. All Leases for Sites shall comply with applicable law. All Leases for Sites 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, Leases for Sites with terms of less than six months may be permitted with Lender's prior written consent. Borrower shall give Lender thirty (30) days written notice of any material changes to the form of the Lease.

(b) Section 4(g) of the Security Instrument is deleted in its entirety and the following substituted in lieu thereof:

Upon consummation of the Loan, and upon the eleventh day of each month thereafter, (each, a **"Reserve Determination Date"**), if the aggregate annualized amount of Rents paid more than thirty (30) days in advance of their respective due dates (**"Pre-paid Rents"**) exceeds five percent of the total annual Rent Roll, Borrower shall deposit and maintain with Lender an escrow fund (**"Seasonal Working Capital Reserve Fund" or "Fund"**). The Fund shall be in an amount determined by Lender in its sole discretion, but in any event not less than the total annualized amount of Pre-paid Rents (**"Seasonal Working Capital Contribution"**). Upon thirty (30) days prior notice by the Lender, Borrower shall add to the Fund such amounts as Lender deems appropriate. The Fund shall be held pursuant to the terms of a Seasonal Working Capital Reserve Fund and Security Agreement executed by the Borrower and the Lender concurrently with the execution of this Instrument.

5. **Events of Default.** Section 22 of the Instrument is amended to add the following new paragraph (j):

(j) any change by Borrower in the occupancy requirements or leases on sites in the Mortgaged Property regarding age restrictions.

6. **Single Asset Borrower.** Section 33 of the Instrument is amended to add a new final paragraph to read as follows:

In particular, and without limiting the foregoing, the Borrower is not and shall not engage in the retail sale or financing of Manufactured Homes. Borrower shall not rent Homes under Leases providing that upon payment of the stipulated rent or a nominal charge, the Borrower shall convey title to the Home to the lessee.

7. **Remedies.** Section 43 of the Instrument is amended to add the following new paragraphs:

At Lender's option, Lender may repossess the Borrower's Homes peacefully without Borrower's permission. Lender also may require Borrower to make the Borrower's Homes available to Lender at a place Lender designates that is reasonably convenient to Borrower and Lender. At Lender's option, Lender may detach and remove Borrower's Home from the Mortgaged Property, or Lender may take possession of it and leave it on the Mortgaged Property. Borrower agrees to cooperate with Lender if Lender exercises these rights.

After Lender repossesses, Lender may then sell the Borrower's Home and apply what Lender receives to Lender's reasonable repossession, repair, storage, and sale expenses, and then toward any other amounts Borrower owes under the Loan Documents, as allowed by law.

8. **New Provision.** The following new paragraph is added to the Instrument:

49. Each Borrower's Home shall be personal property no matter how it is placed or affixed. Until all amounts owed under the Loan Documents are paid in full, the Manufactured Home shall be located on the Mortgaged Property at the address indicated on Exhibit C ("Collateral Site"). Borrower shall not move the Home from the Collateral Site without Lender's prior written permission.

EAGLE MEADOWS VILLAGE, LLC

by
Borrower's Initials: KDR

Exhibit C

None.

SCANNED

JAN 26 2005

05/31/2005

RECEIVED

JUL 15 2005

WATER RESOURCES
WESTERN REGION

NOTICE OF ERROR
REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: July 15, 2005

Water right number: 63-7740

EAGLE CENTER PROPERTIES LLC
C/O ALBANY BOWL
540 SAN PABLO AVE
ALBANY CA 94706
Telephone Number: (510) 526-8818

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

2. Describe the changes you wish to make in the proposed recommendation:

3. Give a brief explanation as to why you disagree with these portions:

☒ I AGREE with this proposed recommendation: ~~no changes need to be made.~~

DATE:

7/9/05

SIGNATURE:



Please print your name:

KENNETH J. FRIEDMAN, MANAGING MEMBER

of Eagle Center Properties, LLC

IDWR Regional Office, 2735 Airport Wy, Boise, ID 83705, 2083342190

05/31/2005

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-7740

NAME AND ADDRESS: EAGLE CENTER PROPERTIES LLC
C/O ALBANY BOWL
540 SAN PABLO AVE
ALBANY CA 94706

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.380 CFS
73.20 AFY

PRIORITY DATE: 03/13/1973

POINT OF DIVERSION:

T04N R01E S9 SESW Within ADA County
T04N R01E S9 SESW Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
DOMESTIC	01/01 12/31	0.380 CFS 73.20 AFY
Domestic use is for 61 mobile home units.		

PLACE OF USE: DOMESTIC Within ADA County
T04N R01E S09 SESW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License
PARCEL NO: S0509346846.

06/25/2004

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-7740

NAME AND ADDRESS: EAGLE CENTER PROPERTIES LLC
C/O ALBANY BOWL
540 SAN PABLO AVE
ALBANY CA 94706

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.380 CFS
73.200 AFY

PRIORITY DATE: 03/13/1973

POINT OF DIVERSION:

T04N R01E S9 SESW Within ADA County
T04N R01E S9 SESW Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

DOMESTIC

01/01 12/31

0.380 CFS

73.20 AFY

Domestic use is for 61 mobile home units.

PLACE OF USE: DOMESTIC Within ADA County

T04N R01E S09 SESW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: License

PARCEL NO: S0509346846.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 25, 2004

EAGLE CENTER PROPERTIES LLC
C/O ALBANY BOWL
540 SAN PABLO AVE
ALBANY CA 94706

Re: Notice of Claim to a Water Right No. 63-07740

Dear Claimant(s):

Enclosed is a copy of the above referenced claim(s), which reflect the change in ownership of the land and appurtenant water rights, covered under the original filing.

Please note that the enclosed Notice of Claim to a Water Right is not a final determination of your water right. This claim was filed during claims taking in the Snake River Basin Adjudication (SRBA) and has not yet been verified by this Department. Water rights are established and maintained by beneficial use of water for the uses designated on this claim form dating back to the priority date listed. This claim will be investigated, verified and recommended to the SRBA Court for court decree sometime in the near future. You will be notified prior to the beginning of any verification of this water right.

Thank you for your patience and cooperation, as we have had several water right changes to process. If you have any questions concerning the enclosed information, please feel free to contact this office.

Sincerely,

Adjudication Section
Western Region Office

DB: db

Enclosure

SCANNED

JUN 25 2004

06/25/2004

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-7740

NAME AND ADDRESS: ESCO INC
C/O RICHARD B SMITH AGENCY
2417 BOGUS BASIN RD
BOISE ID 83702

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.380 CFS
73.200 AFY

PRIORITY DATE: 03/13/1973

POINT OF DIVERSION:

T04N R01E S9 SESW Within ADA County

T04N R01E S9 SESW Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

DOMESTIC

01/01 12/31

0.380 CFS

73.20 AFY

Domestic use is for 61 mobile home units.

PLACE OF USE: DOMESTIC Within ADA County

T04N R01E S09 SESW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: License

PARCEL NO: S0509346846.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-7740 V1

WATER RIGHT NUMBER: 63-7740 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	ESCO INC C/O RICHARD B SMITH AGENCY 2417 BOGUS BASIN RD BOISE, ID 83702 (208)343-5412

Priority Date: 03/13/1973

Basis: License

Status: Active

<u>Source</u>	<u>Tributary</u>
---------------	------------------

GROUND WATER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
DOMESTIC	01/01 to 12/31	0.380 CFS	73.20 AF
	<u>Total Diversion:</u>	0.380 CFS	73.20 AF

Location of Point(s) of Diversion

GROUND WATER	SE1/4SW1/4	Sec. 9,	Twp 04N,	Rge 01E, B.M.
ADA County				
GROUND WATER	SE1/4SW1/4	Sec. 9,	Twp 04N,	Rge 01E, B.M.
ADA County				

Place of Use

DOMESTIC

Twp	Rge	Sec	NE				NW				SW				SE				Totals
04N	01E	9	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
														X					

Conditions of Approval:

1. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
2. X01 Domestic use is for 61 mobile home units.

Remarks:

1. Explanatory PARCEL NO: S0509346846.

SCANNED
JUN 25 2004

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommendation Report 63-7740 V1

Comments:

1. kbrown 6/25/2004 Amended Claim 9/21/89

Comment: A second point of diversion was added to cover a well that was drilled in 1986 to be used as a back-up for this system.

SCANNED
JUN 25 2004

Idaho Department of Water Resources

**T04N, R01E,
S9**

Claim No: 63-07740

Prepared By: Kimberly Brown

Date: June 24, 2004

● Point of Diversion

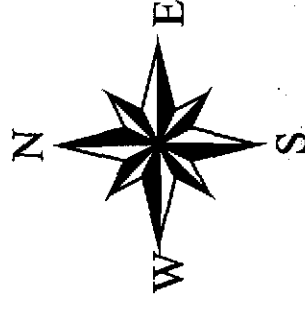


Place of Use

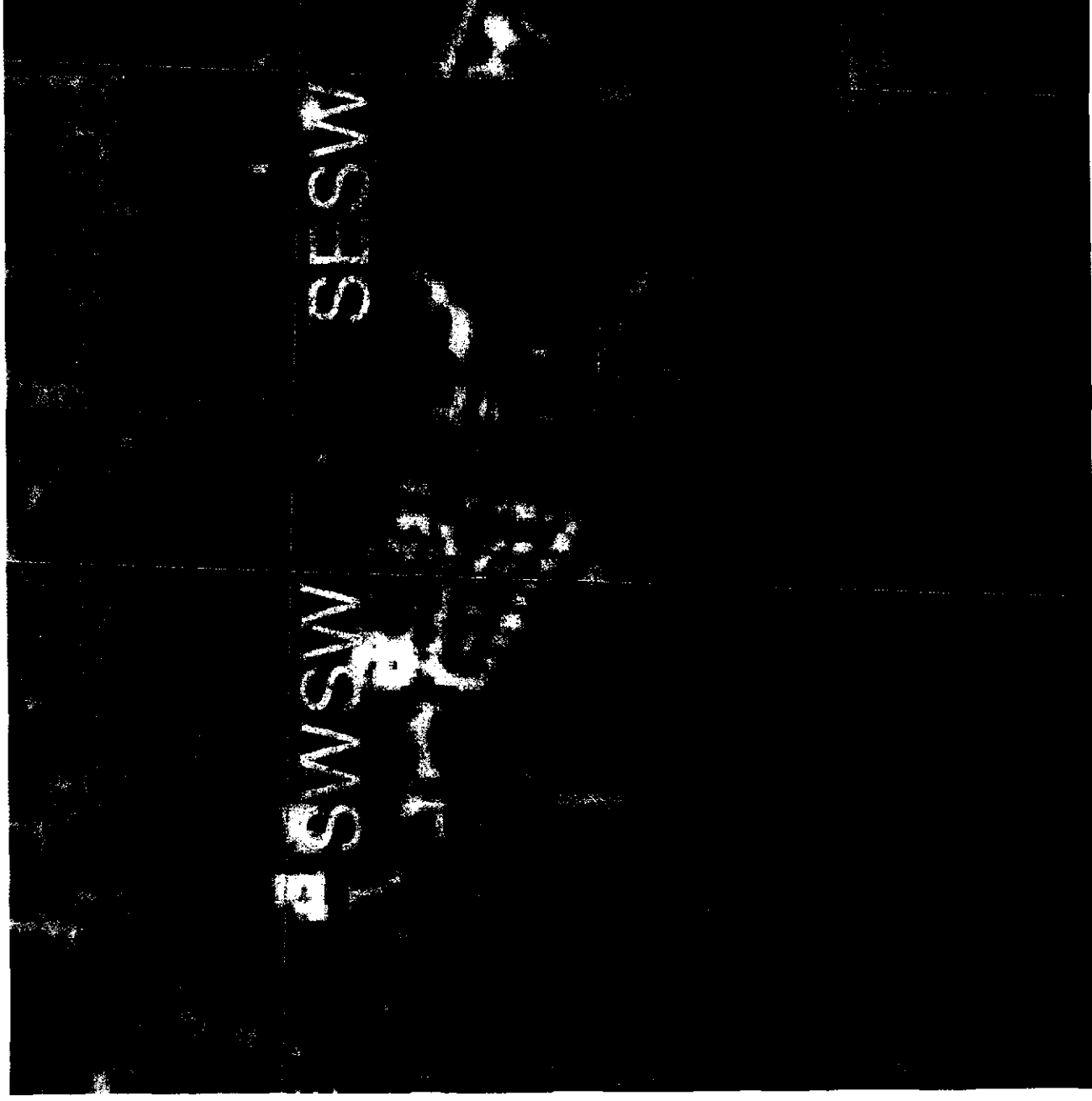


Section Lines

1/4 1/4



1987 NAPP



0 0.1 0.2 0.3 0.4 Miles

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-7740

WATER RIGHT NUMBER: 63-7740 ✓

Current Owner:Eagle Center Properties LLC
40 Albany Blvd
540 San Pablo Ave.
Albany, CA 94706Owner Type

Current Owner

Name and AddressESCO INC ✓
C/O RICHARD B SMITH AGENCY
2417 BOGUS BASIN RD
BOISE, ID 83702
(208)343-5412

Priority Date: 03/13/1973 ✓

Basis: License ✓

Status: Active

Source

GROUND WATER ✓

TributaryBeneficial Use

DOMESTIC ✓

(includes irr. of lawns)

From To

1/01 to 12/31 ✓

Diversion Rate

0.380 CFS ✓

Annual Volume

73.2 AF

Total Diversion:

0.380 CFS ✓

73.2 AF

Location of Point(s) of Diversion

GROUND WATER

ADA County ✓

SE1/4SW1/4 ✓

Sec. 9, Twp 04N, Rge 01E, B.M. ✓

ADD: SE 1/4 SW 1/4Place of Use

DOMESTIC ✓

⊛ 2 PODs

Twp	Rge	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
✓ 04N	01E	9												X					

Therefore, 59 of the total 120 mobile home units are not covered...
 (+) 1973 well this license covers

Conditions of Approval:

#63-10971 is a lapsed permit for a 10" well drilled in 1986 to cover yards for 120 domestic sites & 24 commercial units.

Remarks:

1. General

A SECOND POINT OF DIVERSION IS BEING ADDED AS A PART OF THIS CLAIM. A SECOND WELL WAS DRILLED IN 1986 TO BE USED AS BACK-UP FOR THIS SYSTEM. A SEPARATE APPLICATION FOR PERMIT HAS BEEN FILED TO COVER THE DEVELOPMENT OF AN ADDITIONAL 60+ UNITS. CLAIM AMENDED 9/21/89. HLHT***** is the only w.r. for this mobile home court

Comments:

ADD X01 - Domestic use is for 61 mobile home units.

SCANNED

JUN 25 2004

Parcel No: 80509346846.

* electronic back file available

Field Exam Date 6.24.04

(in office)

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION FIELD REPORT

Prior to Field Exam

- ☒ Copy of Claim, claim has been signed, sealed, and dated by notary?
- ☒ Check fees paid \$88.00
- ☐ Well logs (if needed) N/A
- ☒ Copy of topo or NAPP
- ☒ Check of Govt. Lots, if needed, Govt. Plat/Tax lot information
- ☒ Check POD & POU overlap, see below - include overlapping right for exam
- ☐ Evidence of Priority - if none, talk with claimant N/A

CLAIMANT INFORMATION - verify contact information is complete

Claim No(s) A63-7740

Owner: Esco Inc. Phone No. (208) 343-5412

Current Address: 2417 Bogus Basin Rd, Boise 83702

- ☐ No change NAME IS THE SAME
- ☒ NEW OWNER Eagle Center Properties LLC, c/o Albany Bowl
- ☐ No change Address
- ☒ NEW ADDRESS 540 San Pablo Ave., Albany CA 94706
- ☐ How long owned property?

Accompanied by: N/A

PRIORITY DATE

- ☒ No change - Complete evidence submitted or not necessary
- ☐ Incomplete - Claimant should be asked when water was first used and submit proof of date.
- ☐ Priority date is acceptable/within mandatory filing dates?

Priority date, per claimant, is:

3/13/1973

(If priority date, based on your exam, seems questionable, explain below.)

Source: _____ Tributary to _____

- ☒ No Change - SAME SOURCE
- ☐ Source found is different than claimed: _____

POINT OF DIVERSION

2 PODs (drilled 1973 & 1986)

Amended claim added

- ☒ No change
- ☐ POD found is different than claimed: _____
- ☐ If different, when did POD change? _____

SCANNED

JUN 25 2004

Property location:

589 E. State St.

Eagle 83716

DIVERSION AND DELIVERY SYSTEM

Points of Diversion:

ID #	Govt Lot #	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks GPS ID

Description of diverting works

*See Field Report.***OVERLAP REVIEW**

Other water rights with the same point of diversion:

*63-10971**(same well for an additional 59 units, making it a total of 120 units for the mobile home court.)*

Does overlap add acres or uses to existing system, increase rate of flow or volume, or other? Explain:

*No, 63-10971 is a lapsed permit.***WATER USES***Domestic use is for 61 mobile home units.*☐ No change☐ Different Uses

Use *Domestic* From _____ To _____ Amount _____ CFS *73.2* AFA

Use _____ From _____ To _____ Amount _____ CFS _____ AFA

Use _____ From _____ To _____ Amount _____ CFS _____ AFA

TOTAL VOLUME – Groundwater only

- ☒ Incomplete on claim, the total is, Amount _____ CFS *73.2* AFA
- ☐ Changes found, the new total is, Amount _____ CFS _____ AFA
- ☐ More than 1" per Acre? Yes _____ (claimant must complete excess flow sheet)

NON-IRRIGATION USES:

- ☒ No change
- ☐ Changes Exam found: Domestic # of homes _____ Stock # _____
- Types _____ Additional comments: _____

PLACE OF USE:

- ☒ No Change
- ☐ Changes shown below:

Place of Use			NE				NW				SW				SE				Totals
TWP	RGE	SEC	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Overlap with other water rights: 63-10971 (Lapsed Permit)

Does overlap increase rate of flow, volume, additional acres, different source for same acres? Explain:

No. 63-10971 is a lapsed permit and covers an additional 59 mobile home units to make to total 120 domestic units.

Delivery System Narrative: See Field Report.

Well or Diversion Identification No GPS ID	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge size

FLOW MEASUREMENTS:

Attach appropriate documents

NARRATIVE/REMARKS/COMMENTS

(OVER)

SCANNED
JUN 25 2004

Domestic use is for 61 mobile home units.

Parcel No: 80505346846.

AFTER EXAM THE FILE SHOULD CONTAIN:

- ☒ Completed claim checklist
- ☐ Photographs of POD's and POU N/A
- ☐ GPS readings N/A
- ☒ Completed map and or GIS layout showing POD's and POU

DATE EXAM CONDUCTED: 6.24.04 (in office)

FIELD EXAMINER: Kimberly Brown

overlap review-

**IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM FOR REVIEW REPORT
ADJUDICATION CLAIM NUMBER: 63-7740**

06/25/2004

1

Right #	Type	Twp	Rge	Sec	QQ	Q	Lot	Purpose of Use	Acres/Total	Name
125K	Claim	04N	01E	9	SE	SW		IRRIGATION	7/	NEW DRY CREEK DITCH CO
126G	Claim	04N	01E	9	SE	SW		IRRIGATION	7/	NEW DRY CREEK DITCH CO
161L	Claim	04N	01E	9	SE	SW		IRRIGATION	7/2964	NEW DRY CREEK DITCH CO
-205	Claim	04N	01E	9	SE	SW		IRRIGATION	7/2964	NEW DRY CREEK DITCH CO
-206	Claim	04N	01E	9	SE	SW		IRRIGATION	7/2964	NEW DRY CREEK DITCH CO
258B	Claim	04N	01E	9	SE	SW		IRRIGATION	7/2964	NEW DRY CREEK DITCH CO
-263	Claim	04N	01E	9	SE	SW		IRRIGATION	7/2964	NEW DRY CREEK DITCH CO
-286	Claim	04N	01E	9	SE	SW		IRRIGATION	7/2964	NEW DRY CREEK DITCH CO
288B	Claim	04N	01E	9	SE	SW		IRRIGATION	7/2964	NEW DRY CREEK DITCH CO
2406	Claim	04N	01E	9	SE	SW		IRRIGATION	37/29248	DRAINAGE DIST NO 2
17468	Claim	04N	01E	9	SE	SW		IRRIGATION	7/2964	NEW DRY CREEK DITCH CO
28977	Claim	04N	01E	9	SE	SW		IRRIGATION	7/2964	NEW DRY CREEK DITCH CO
31778	Claim	04N	01E	9	SE	SW		IRRIGATION	7/14	NEW DRY CREEK DITCH CO
31806	Claim	04N	01E	9	SE	SW		IRRIGATION	7/	NEW DRY CREEK DITCH CO
258B	Water Right	04N	01E	9	SE	SW		IRRIGATION		ELIZABETH CHARTERS
-259	Water Right	04N	01E	9	SE	SW		IRRIGATION	10/10	WILLIAM HUCKBA
260B	Water Right	04N	01E	9	SE	SW		IRRIGATION		CHARLES H SCHMELZER
2406	Water Right	04N	01E	9	SE	SW		IRRIGATION	37/29248	DRAINAGE DIST NO 2
2463	Water Right	04N	01E	9	SE	SW		IRRIGATION	5/5	WILLIAM F HUCKBA
4173	Water Right	04N	01E	9	SE	SW		IRRIGATION	2/42	LEONA D HOUSE
17581	Water Right	04N	01E	9	SE	SW		STOCKWATER		CLIFFORD R STEPHENSON
7074	Claim	04N	01E	9	SE	SW		DOMESTIC <i>diff. source</i>		WILLIAM N BARNHILE
7740	Claim	04N	01E	9	SE	SW		DOMESTIC		ESCO INC
7074	Water Right	04N	01E	9	SE	SW		DOMESTIC		✓ MOBILE MANOR
7368	Water Right	04N	01E	9	SE	SW		DOMESTIC 1970 <i>Golf Course</i>		EAGLE RANCH WATER CO INC
7740	Water Right	04N	01E	9	SE	SW		DOMESTIC		✓ ESCO INC
17581	Water Right	04N	01E	9	SE	SW		DOMESTIC 1970 <i>diff. source</i>		CLIFFORD R STEPHENSON

SCANNED

JUN 25 2004

overlap review -

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM POD REVIEW REPORT
ADJUDICATION CLAIM NUMBER: 63-7740

06/25/2004

1

ater Right #	Type	Twp	Rge	Sec	QQ	Q	Lot	Source	Name
63-7074	Claim	04N	01E	9	SE	SW	diff. source	GROUND WATER	Dom "Eagle Point Community" WILLIAM N BARNHIE V1
63-7740	Claim	04N	01E	9	SE	SW		GROUND WATER	Dom. ESCO INC
63-17581	Claim	04N	01E	9	SE	SW	1890 dif.	GROUND WATER	D & S CLIFFORD R STEPHENSON
63-2463	Water Right	04N	01E	9	SE	SW	diff. source 1931	GROUND WATER	Dom & Inn WILLIAM F HUCKBA
63-7074 ✓	Water Right	04N	01E	9	SE	SW		GROUND WATER	✓ MOBILE MANOR
63-7740 ✓	Water Right	04N	01E	9	SE	SW		GROUND WATER	✓ ESCO INC
63-17581 ✓	Water Right	04N	01E	9	SE	SW		GROUND WATER	✓ CLIFFORD R STEPHENSON

SCANNED
JUN 25 2004

IDAHO DEPARTMENT OF WATER RESOURCES

Water Permit Report 63-10971

WATER RIGHT NUMBER: 63-10971

Owner Type

Original Owner

Name and Address

ESCO INC
C/O RICHARD B SMITH AGENCY
2417 BOGUS BASIN RD
BOISE, ID 83702
(208)343-5412

Current Owner

EAGLE CENTER PROPERTIES LLC
C/O ALBANY BOWL
540 SAN PABLO AVE
ALBANY, CA 94706

Water Appl. - Closed

Water Permit - Active

Priority Date: 01/28/1998

Basis:

Status: Active

Source

GROUND WATER

TributaryBeneficial UseFrom ToDiversion RateAnnual Volume

DOMESTIC

1/01 to 12/31

0.600 CFS

COMMERCIAL

1/01 to 12/31

0.600 CFS

IRRIGATION

3/15 to 11/15

0.300 CFS

Total Diversion:

1.200 CFS

Location of Point(s) of Diversion

GROUND WATER

SE1/4SW1/4

Sec. 9, Twp 04N, Rge 01E, B.M.

ADA County

Place of Use

IRRIGATION

Filed to cover a 10" well drilled in 1986 for
120 mobile home units (w/ lawns) and 24
commercial units (laundromat, restaurant, offices, etc.)

Twp	Rge	Sec	NE				NW				SW				SE				Totals
04N	01E	9	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	15.0
																			15.0

Total Acres: 15

DOMESTIC same as IRRIGATIONCOMMERCIAL same as IRRIGATIONConditions of Approval:

- 01G Prior to the diversion of water under this right a flow measurement port or other device as specified by the Department shall be installed to provide for the installation of measuring equipment and the determination of the rate of diversion by the Department.
- 026 Permit holder shall commence the excavation or construction of diverting works within one year of the date this permit is issued and shall proceed diligently until the project is complete.
- 03A The rate of diversion of water for irrigation under this right and all other water rights on the same land

SCANNED

JUN 25 2004

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit Report 63-10971

Remarks:

Comments:

1. VAULT 10/31/1994 Extension of Time Received
Comment: Extension of Time Received
2. VAULT 11/16/1994 Proof of Beneficial Use Rcvd
Comment: Proof of Beneficial Use Rcvd
3. VAULT 11/1/1997 Extension of Time Received
Comment: Extension of Time Received
4. JYARBROU 12/11/1997 Lapse Notice Sent
Comment: Lapse Notice Sent

ReceiptID	Amount	BasinNumber	SequenceNum	SplitSuffix	Type
C009193	88.00	63	7740		Claim

http://wenet/apps/appworkflow/framebuild.asp - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Go Back Forward Stop Search Favorites History

Address http://wenet/apps/appworkflow/framebuild.asp

Links Customize Links Free Hotmail Windows Media Windows

Basin	Seqno	Subs	Verio	Source Table	Basin	Status	Priority Date	DI	Source Unit	Water Use List	Qwr
63	7740			wwIndication	License	Active	1973-03-13	0.38	GROUND WA	DOMESTIC	ESC
63	7740			wwWaterApplica...		Closed	1973-03-13	0.38	GROUND WA	DOMESTIC	ESC
63	7740			wwWaterRight	License	Active	1973-03-13	0.38	GROUND WA	DOMESTIC	ESC
63	7740			wwWaterFormal		Closed	1973-03-13	0.38	GROUND WA	DOMESTIC	ESC

Show References Show History Previous Steps: Screen ID: 446

Done Local intranet

Sally -
 This one's for you. I will process the
 refund with Debbie Allen that was paid
 on the assignment.

☺
 Sari Lynn
 4.16.02

RECEIVED

APR 18 2002

WATER RESOURCES
 WESTERN REGION

SCANNED

JUN 25 2004

Idaho Department of Water Resources Receipt

Receipt ID W029022

Payment Amount \$50.00 Date Received 4/15/2002 2:35:04 PM Region Western Status ☐
 Payment Type Check Check Number 2-19364

Payer PIONEER TITLE OF ADA COUNTY

Comment ASSIGNMENT OF PERMIT: 63-7740 & 63-10971 (\$25 EA)

Fee Detail

Amount	Description	Fund	FD	PCA	SO
\$50.00	ASSIGNMENTS	0229	21	62103	1155

Sally -
FYI!

Kari Lynn
4.16.02



Signature Line (Dept. Representative)

DEBBIE . . .

PLEASE ARRANGE FOR A \$25.00 REFUND TO:

PIONEER TITLE CO OF ADA COUNTY
821 W STATE ST
BOISE ID 83702

THE FEE WAS COLLECTED IN ERROR FOR AN ASSIGNMENT OF PERMIT ON WR 63-7740.
THE OWNERSHIP CHANGE FOR WR 63-7740 WILL BE HANDLED BY AJ AND THERE IS
NO CHARGE REQUIRED.

THANK YOU,

Kari Lynn
4.16.02

SCANNED

JUN 25 2004

INTER-DEPARTMENT ~~SECRET~~ — 1

DATE Sept. 21, 1989

FROM Helen Harrington-Thorn

TO File AG3-07740

SUBJECT Amended claim.

This claim was amended to add the second well because it is used as a back-up to the original well and 61 units. A new application for permit has been filed to deal with the new units they are developing.

MICROFILMED

AUG 21 1992



SIGNATURE
SCANNED

JUN 25 2004



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705 - (208) 334-2190

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

September 12, 1989

Mr. Barr Smith, Jr.
Esco Inc.
2417 Bogus Basin Road
Boise, Id. 83702

Re: Water Rights 63-07740 and 63-10971

Dear Mr. Smith:

License 63-07740 includes a 1973 twelve inch well for domestic use at 61 mobile home units. Application for Permit 63-10971 covers the same well and a 1986 ten inch well for 120 mobile home units and commercial use. Both rights are involved with the development in Section 9 near Eagle.

From the information in Application 63-10971, it appears that the ten inch well was added to the 61 unit system in 1986. The newer well needs to be added to License 63-07740 as an additional point of diversion. Two methods are available to update the license and comply with Idaho statutes.

One, an Application for Transfer may be filed to add a point of diversion to the water right. Two, an Adjudication Claim may be filed to show the right as it has existed. Adjudication Claims are required under the terms of the Snake River Basin Adjudication to maintain most water rights in a valid state. License 63-07740 is a right that requires such a Claim. Without filing a Claim, the right will be recommended as invalid by this department in its role as a technical advisor to the court in the adjudication.

Adjudication Claims may be filed to reflect differences that exist between the water right record and the actual water use practices. In other words, a Claim may be filed to add the newer well to the older license. Because a Claim should be filed as explained above and because the Claim may include the newer well for use at the 61 units, this alternative is preferable to the Transfer choice. One filing and one fee is involved with an Adjudication Claim.

Claims for Ada County should have been filed by September 8, 1989 to avoid late fees. A computer search did not reveal a claim for 63-07740, although one may have been filed but not data entered yet. If you filed a claim and identified both wells for use under the protection of the license, the record is clarified. However, if both wells were not identified or if a claim was not filed, immediate action is required to protect your water right and uses of ground water as defined by Idaho statutes.

MICROFILMED

AUG 21 1992

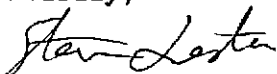
SCANNED

JUN 25 2004

Letter to Esco, Inc.
page 2

Please check your records and respond within thirty (30) days to avoid complications related to license 63-07740. Meanwhile, the application for expanded use at the site will be advertised and processed. Let me know if I may provide additional help.

Sincerely,



Steve Lester
Sr. Water Resource Agent

SL: sl

MICROFILMED

AUG 21 1992

SCANNED

JUN 25 2004



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705 - (208) 334-2190

September 12, 1989

Mr. Barr Smith, Jr.
Esco Inc.
2417 Bogus Basin Road
Boise, Id. 83702

RECEIVED

SEP 12 1989

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

Department of Water Resources

Re: Water Rights ~~63-07740~~ and 63-10971

Dear Mr. Smith:

License 63-07740 includes a 1973 twelve inch well for domestic use at 61 mobile home units. Application for Permit 63-10971 covers the same well and a 1986 ten inch well for 120 mobile home units and commercial use. Both rights are involved with the development in Section 9 near Eagle.

From the information in Application 63-10971, it appears that the ten inch well was added to the 61 unit system in 1986. The newer well needs to be added to License 63-07740 as an additional point of diversion. Two methods are available to update the license and comply with Idaho statutes.

One, an Application for Transfer may be filed to add a point of diversion to the water right. Two, an Adjudication Claim may be filed to show the right as it has existed. Adjudication Claims are required under the terms of the Snake River Basin Adjudication to maintain most water rights in a valid state. License 63-07740 is a right that requires such a Claim. Without filing a Claim, the right will be recommended as invalid by this department in its role as a technical advisor to the court in the adjudication.

Adjudication Claims may be filed to reflect differences that exist between the water right record and the actual water use practices. In other words, a Claim may be filed to add the newer well to the older license. Because a Claim should be filed as explained above and because the Claim may include the newer well for use at the 61 units, this alternative is preferable to the Transfer choice. One filing and one fee is involved with an Adjudication Claim.

Claims for Ada County should have been filed by September 8, 1989 to avoid late fees. A computer search did not reveal a claim for 63-07740, although one may have been filed but not data entered yet. If you filed a claim and identified both wells for use under the protection of the license, the record is clarified. However, if both wells were not identified or if a claim was not filed, immediate action is required to protect your water right and uses of ground water as defined by Idaho statutes.

Van/4
for file
63.07740

SCANNED
JUN 25 2004

Letter to Esco, Inc.
page 2

Please check your records and respond within thirty (30) days to avoid complications related to license 63-07740. Meanwhile, the application for expanded use at the site will be advertised and processed. Let me know if I may provide additional help.

Sincerely,

Steve Lester
Sr. Water Resource Agent

SL: sl

SCANNED
JUN 25 2004

WATER RIGHT ANALYSIS FORM

- DATA ENTRY -

Identification No. 163-7740
 Old No. _____ New No. _____

Record

1. Original Owner: Esco Inc.

Present Owner: _____

2. Address: c/o Richard B. Smith Agency, 2417 Bogus Basin Rd.

3. City: Boise State: Id Zip: 83702

4. A. Source of Water: gr

B. Tributary of: _____

5. A. Stage (A,P,L,D,S,J): P

B. Status (D,L,R,C,A,I,F - leave blank if valid): _____

C. Priority Date: 3-13-1973

D. County: 01

E. Total Diversion Rate: 2.25

F. Total Diversion Volume: _____

G. Transfer/Amendment (P,T of A or blank): _____

H. Water District: _____

I. DLE/Carey Act (D,C or blank): _____

J. Right Basis (for adjudication claims A,B,C only): _____

	Tract	Sec.	Twp.	Rge.	Gov't Lot	Rediv.
6. A. Point of Diversion	<u>SES</u>	<u>W</u>	<u>9</u>	<u>4N</u>	<u>1E</u>	

7. Period of Use, Use, Diversion Rate/Volume:

from 1-1 to 12-31 for 0 purposes. Amount 2.25
 (cfs or AG-Ft/yr)

from _____ to _____ for _____ purposes. Amount _____

from _____ to _____ for _____ purposes. Amount _____

from _____ to _____ for _____ purposes. Amount _____

from _____ to _____ for _____ purposes. Amount _____

from _____ to _____ for _____ purposes. Amount _____

from _____ to _____ for _____ purposes. Amount _____

SCANNEL
 JUN 25 2004

8. Use Code: 0

[illegible]

9. A. Decree Name:

B. Decree Date:

10. Remarks: A. *reinstated* 7-13-1979.
B.
C.
D.
E.

11. Other Uses (Non-irrigation explanatory information):

D/120 homes.

12. Other Rights for Same Use:

13. A. Proof Due Date: 5-1-1979

B. Date Permit Approved or Denied: 4-9-1973

C. Protested Date:

D. Hearing Date:

E. Old Number:

F. Proof Made (P or blank): P

G. Field Exam Made (P,R,F or blank):

H. Conditions of Approval: O.B.

14. Diversion Means (brief narrative):

well, pump & tank

SCANNED
JUN 25 2004

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

**PROOF OF APPLICATION
OF WATER TO BENEFICIAL USE**

RECEIVED
JUN 6 1979
Department of Water Resources

1. a) Name of permit holder ESCO INC.
- b) Post office address 2417 BOGUS BASIN ROAD BOISE, IDAHO 83702 % Richard B. Smith Real Estate Inc.
2. Permit number 63-7740
3. Date of priority that you are prepared to establish 4/9/73
4. a) Source from which water was appropriated GROUNDWATER
- b) Location of the point of diversion: SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 9
Township 4N, Range 1E Boise Meridian. Other points of diversion: NONE
5. a) The amount of water and use to which the water has been applied:

Amount <u>2.25 CFS</u> (cfs &/or acre-feet per annum)	for <u>DOMESTIC</u>	purposes from <u>JAN 1</u> (month-day)	to <u>DEC 1</u> (month-day)	incl.
Amount _____ (cfs &/or acre-feet per annum)	for _____	purposes from _____ (month-day)	to _____ (month-day)	incl.
Amount _____ (cfs &/or acre-feet per annum)	for _____	purposes from _____ (month-day)	to _____ (month-day)	incl.
- b) Total amount appropriated 2.25 cfs and/or acre-feet per annum.
- c) Describe how and by whom measurement of rate of flow or amount of storage was made and the qualifications of the person making the measurement:
METER
6. If the means of diversion and conveyance are owned by someone other than the permit holder:
 - a) Give the name or description of the canal, ditch or other works by which the water is conducted to the place of use:

 - b) Describe the agreement of understanding by which you take water from the works:

7. a) Briefly describe the works for diverting and conveying the water to the place of use, (if from a subterranean source, give the pump size, motor size, size of well casing, depth of well; if from surface water, give brief description of diversion structure and/or canal or ditch):
7.5 HP PUMP WITH 3,000 GALLONS STORAGE TANK 12 INC WELL DIAMETER 370 FEET DEPTH
- b) Describe the provision for making a measurement which you have at your point of diversion:
(i.e., installed measuring device, access port, other)
CUMULATIVE TOTAL METER AND CONTROL

Exam typed 7/2/79 by af

SCANNED
JUN 25 2004

c) Give well driller's name and address and the date the well was completed: PHIPPS WELL DRILLING
MAY 1973

8. If for other than irrigation, describe the beneficial use to which you have applied the water and the place of use:

~~DOMESTIC WATER - MOBILE HOME COURT AND COMMERCIAL BUILDINGS~~

9. Irrigation uses: describe the lands irrigated by giving the acreages irrigated within each 40 acre subdivision:

[illegible]

Total number of acres irrigated-- 10

10. Remarks:

The above information is a true statement of the extent to which the above numbered permit has been developed.

ESCO ENC.

MAY 1, 1979

(Date)

BY:

BARR N. SMITH, JR. (Signature) PRESIDENT

State of

County of ADA

55.

On this 4th day of MAY, 19 79, personally appeared before me the
signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Notary Public

Residing at BOYSE, IDAHO

My commission expires _____

3	13	83
---	----	----

SCANNED
JUN 25 2007

WATER RIGHT LICENSE

SCANNED
JUN 25 2004

DEPARTMENT OF WATER RESOURCES
FIELD REPORT

1. Name of permit holder Esco, Inc.
Post office address 2417 Oregon Basin Rd. Boise Phone 344-8674
Person to contact: 1/2 Richard B. Smith Real Estate Phone _____

2. Source of water supply: Groundwater ☒ Surface water ☐ _____
(name spring, stream, etc.)
Tributary to _____

3. Water will be used for the following purposes:

Amount 2.25 c.f.s. for domestic (120)
 _____ AF/Annum (nature of use)

Period of Use: from 1/1 to 12/31
(mo.-day) inclusive (mo.-day)

Amount _____ c.f.s. for _____
 _____ AF/Annum (nature of use)

Period of Use: from _____ to _____
(mo.-day) inclusive (mo.-day)

Amount _____ c.f.s. for _____
 _____ AF/Annum (nature of use)

Period of Use: from _____ to _____
(mo.-day) inclusive (mo.-day)

Other uses: _____

4. Total amount to be appropriated:

Max Rate of Diversion 0.25 cubic feet per second and annual volume _____ AF/Annum.

5. Location of Point(s) of Diversion:

Township 40 N/S, Range 1E E/W, B.M., Section 9, Subdivision SE 1/4 SW 1/4 Ida County

Township _____ N/S, Range _____ E/W, B.M., Section _____, Subdivision _____ $\frac{1}{4}$ _____ $\frac{1}{4}$ _____

Township _____ N/S, Range _____ E/W, B.M., Section _____, Subdivision _____ 1/4 _____ 1/4 _____

Other Points of Diversions: _____

Description of diverting works: 7.5' x 370' 740 pump, 3,000 gal. storage tank, 12' x 370'

Measuring device required: yes ☒ no ☐

6. Lands to be irrigated or place of use.

[illegible]**TOTAL ACREAGE**

SCANNED
JUN 25 2004

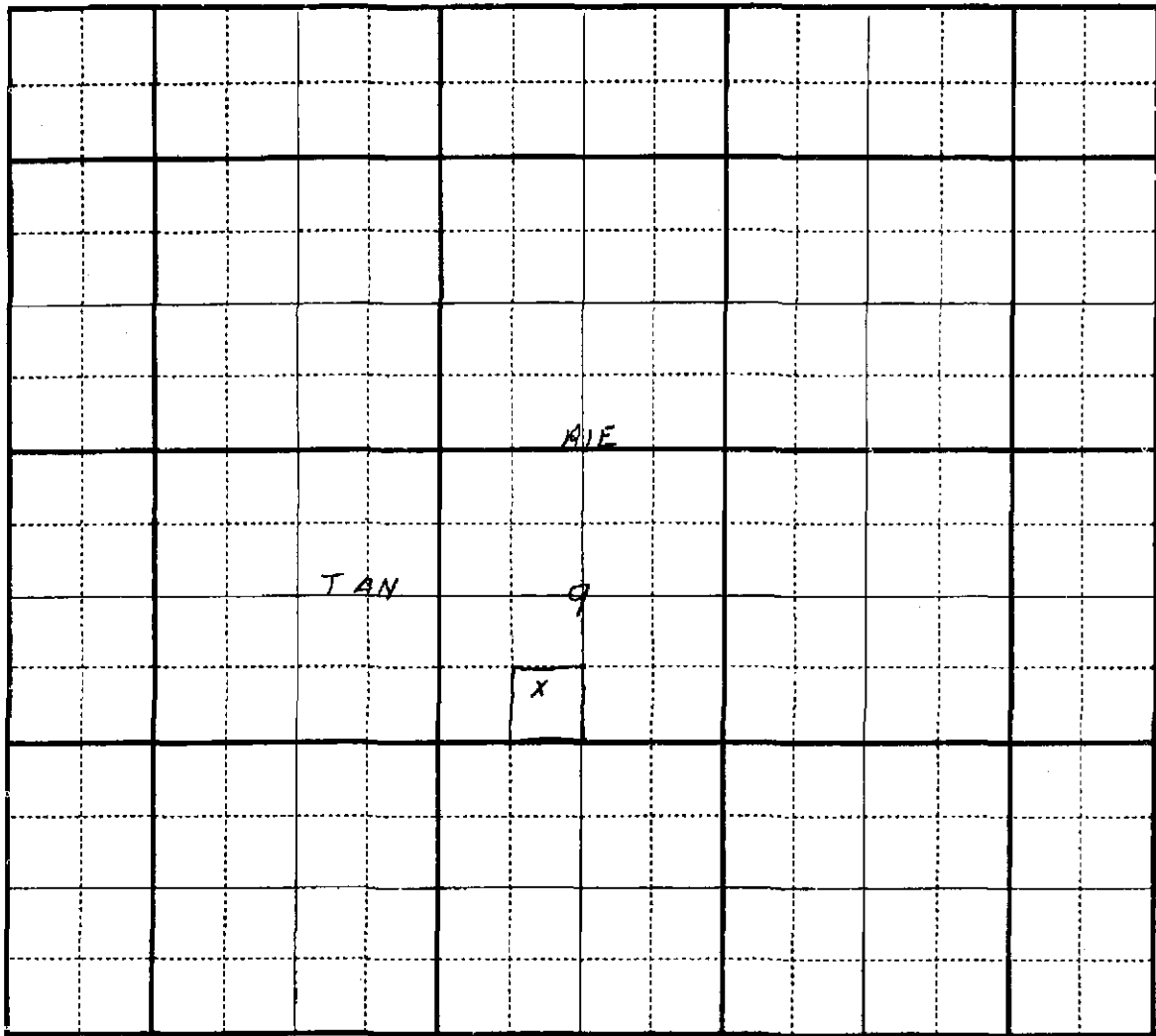
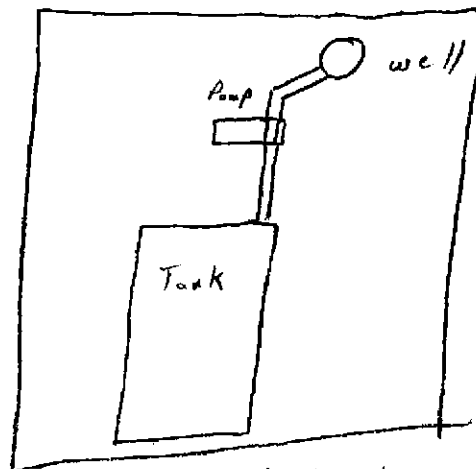


Diagram of System



well located at south east
corner of trailer park in
well house

SCANNED
JUN 25 2004

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 63-7740)

IN THE NAME OF ESCO, INCORPORATED)

ORDER OF REINSTATEMENT

WHEREAS, on March 6, 1973, ESCO, INCORPORATED filed with the Department of Water Resources an application for permit to appropriate 2.25 cubic feet per second of water from a groundwater source, to be diverted within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 9, Twp. 4N, Rge. 1E, B.M., Ada County, to be used for domestic purposes; and,

WHEREAS, on April 9, 1973, the Department approved said application and issued Permit No. 63-7740 with the condition that proof of construction of works and application of water to beneficial use be submitted to the Department on or before May 1, 1974; and,

WHEREAS, on April 11, 1974, said permit holder requested and was granted an extension of time until May 1, 1979; and,

WHEREAS, on February 28, 1979, the Department notified the permit holders by certified mail that proof of beneficial use was due and instructed the permit holders as to the steps to be taken to make said proof; and,

WHEREAS, on May 1, 1979, Permit No. 63-7740 automatically lapsed for failure to submit proof of beneficial use; and,

WHEREAS, Section 42-218a of the Idaho Code provides that a permit may be reinstated upon a showing of reasonable cause within 60 days from the date of lapsing; and,

WHEREAS, the permit holder has provided a reasonable showing as to why said permit should be reinstated by submitting proof of beneficial use on May 8, 1979;

IT IS, THEREFORE, HEREBY ORDERED that Permit No. 63-7740 be REINSTATED and the priority advanced to March 13, 1973.

Dated this 13th day of July, 1979.


L. GLEN SAXTON
Chief, Operations Bureau

MICROFILMED

SCANNED
JUN 25 2004

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE
STATE OF IDAHO

IN THE MATTER OF CHANGING THE MEASURING }
DEVICE REQUIREMENT FOR PERMIT NO. 63-7740 }

ORDER

WHEREAS, the above numbered permit was approved with the condition that a measuring device of a type approved by the Department be permanently installed and maintained as part of the diverting works; and,

WHEREAS, on July 1, 1978, the Department adopted a new water measurement condition which states: "An access port or other device as specified by the Department shall be installed by the permit holder to provide for the installation of measuring equipment and the determination of the rate of diversion by the Department"; and,

WHEREAS, the former condition required the permit holder to purchase and install a measuring device or hire a professional engineer to certify the rate of diversion; and,

WHEREAS, the measuring device condition effective July 1, 1978, requires less capital expenditure by the permit holder; and,

WHEREAS, to be equitable to holders of permits issued prior to July 1, 1978, the new condition should be retroactive;

NOW THEREFORE, it is hereby ordered that the condition of approval of this permit related to water measurement is hereby changed as follows: "The permit holder shall either install a measuring device or provide a certified measurement by a professional engineer or install an access port or other device as specified by the Department".

Dated this 18th day of August, 1978.


C. STEPHEN ALLRED
Director

MICROFILMED

SCANNED
JUN 25 2004

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

APPLICATION FOR EXTENSION OF TIME

RECEIVED
APR 22 1974

Department of Water Administration

State of Idaho)
County of ADA)

Permit No. 63-7740

ESCO, INC.

of

2417 Bogus Basin Rd.

(name)

(address)

State of IDAHO, being first duly sworn, upon his oath deposes and says:

That he is the holder, or the duly authorized agent of the holder *, of Permit to Appropriate the Public Waters of the State of Idaho No. 63-7740.

That under the terms and conditions of said permit, work thereunder was required to be completed on or before May 1, 19 74.

That he has heretofore performed the following work described under said permit:

installed well with casing, pump, pressure
system, and distribution system

Costing \$ 22,000.00

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit: not all the units have hooked
on and won't for some time

Wherefore, he asks that the Department of Water Administration extend the time for the completion of obligations under said permit to

May 1, 19 79.

ESCO, INC. BY:

Jeffrey B. Smith, TREAS.
(signature) *

Subscribed and sworn before me this 9th day of April, 19 74.

seal

Baron Smith Jr.
(notary public)

My commission expires 5/13/76

ACTION OF THE DEPARTMENT OF WATER ADMINISTRATION

I, R. KEITH HIGGINSON, Director of the Idaho Department of Water Administration, State of Idaho, hereby approve the above application for extension of time for Permit No. 63-7740 to May 1, 1979.

Witness my hand this 12 day of April, 19 74.

R. Keith Higgins
Director

* IF OTHER THAN HOLDER, Power of Attorney must be supplied. Forms are available through the Department of Water Administration, Statehouse - Annex 2, Boise, Idaho, 83707.

63 7740

SCANNED
JUN 25 2004

Identification No. _____

Application No. 63-7740

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

APPLICATION FOR PERMIT

APPROVED

To Appropriate the Public Waters of the State of Idaho
(TYPE OR PRINT IN INK)

1. Name of applicant ESCO, INCORPORATED
c/o Richard B. Smith Agency, 2417 Bogus Basin Road
post office address Boise, Idaho 83702 Ph. 344-8634
2. Source of water supply groundwater which is a tributary of _____
3. a. Location of point of diversion is SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 9 Township 4 N.
Range 1 E. B.M. Ada County; additional points of diversion if any: _____
- b. If water is not consumed, it will be discharged into _____ at a point in _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____ Range _____ B.M. _____
4. Water will be used for the following purposes:
Amount 2.25 cfs for Domestic purpose from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:
a. 2.25 cubic feet per second and/or
b. _____ acre feet per annum.
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. A 7.5 HP pump with 3000 gal. storage tank with a cumulative total meter and controls.
- b. Height of storage dam _____ feet, active reservoir capacity _____ acre feet; total reservoir capacity _____ acre feet, materials used in storage dam: _____
Period of year during which storage will occur _____ to _____ inclusive.
(Mo. Day) (Mo. Day)
- c. Proposed well diameter is 12 inches; proposed depth of well is 370 feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use is 0.25 years ~~allow 1 year~~
b. Estimated construction cost is \$ 10,000.
8. Description of proposed uses:
a. If water is not for irrigation:
(1) Give the place of use of water: SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 9 Township 4 N.
Range 1 E. B.M.
(2) Amount of power to be generated: _____ hp under _____ feet of head.
(3) List number of each kind of livestock to be watered _____
(4) Name of municipality to be served _____, or number of families to be supplied with domestic water 120.
(5) If water is to be used for other purposes describe: _____

63 7740

SCANNED
JUN 25 2004

63 2750

[illegible]

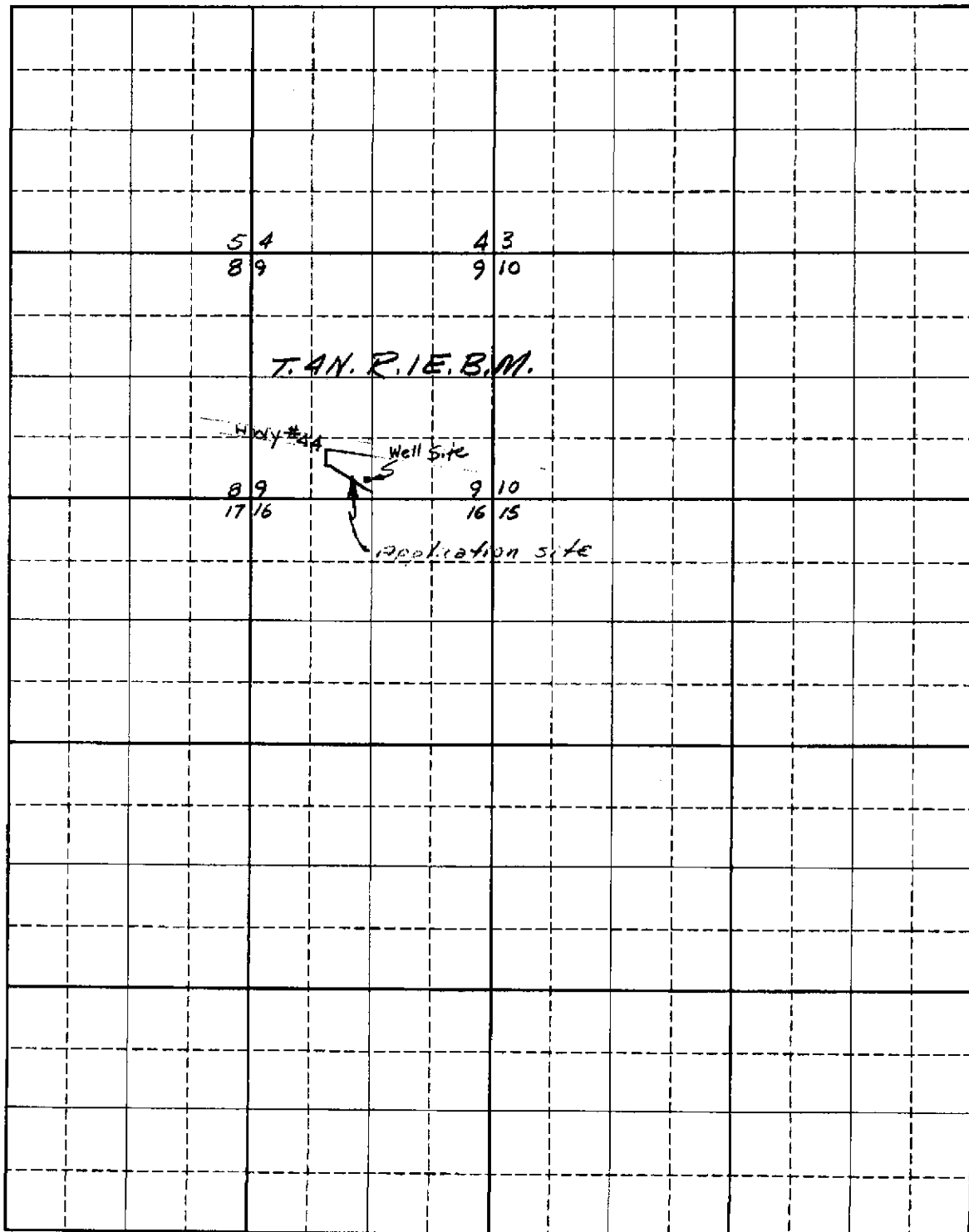
Total number of acres to be irrigated_____

c. Describe any other water rights used for the same purposes as described above. _____

9. a. Who owns the property at the point of diversion ESCO, INC.
 b. Who owns the land to be irrigated or place of use ESCO, INC.
 c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing _____

[illegible]

11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

B. Lee Rose - President
(Applicant)

FOR: ESCO INCORPORATED

63 7740

SCANNED
JUN 25 2004

Proposed Priority 3-6-1973

Received by Wjz Date 3-6-73 Time 2:30 PM
Preliminary check by Wjz Fee \$ 45.00
Receipted by Wjz Date 3-6-73 # 10,002
Publication prepared by Wjz Date 3-8-73
Published in Idaho Statesman
Publication dates 3-15 & 3-22-73
Publication approved Wjz Date 4-2-73
Priority ~~reduced~~ to 3-6-73 Reason _____

63-7740-3

Protests filed by: _____

Copies of protests forwarded by: _____

Hearing held by: _____ Date _____

Recommended for approval denial by Wjz Wjz

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER ADMINISTRATION

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 63-7740, and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and conditions:

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before May 1, 19 74.
- c. Other: A measuring device of a type approved by this Department shall be permanently installed and maintained as part of the diverting works.

2. Denial of said application is for the following reasons: _____

Witness my hand this 9th day of April, 19 73.

L. Kirk Higg
Director

SCANNED
JUN 25 2004

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Notice of Security Interest in a Water Right

And Request for Notification of a Change in Ownership or Any Proposed
Or Final Action to Amend, Transfer, or Otherwise Modify a Water Right

Please print or type. Attach pages with additional information. Instructions are on the back of this page.
Incomplete forms will be returned.

RECEIVED

DEC 06 2005

DEPARTMENT OF
WATER RESOURCES

RECEIVED

FEB 21 2007

WATER RESOURCES
WESTERN REGION

- Water Right No(s): 63-07740
Adjudication Claim No(s): 63-07740
- The following **REQUIRED** information must be submitted with this form:

MORTGAGE, CONTRACT OF
water rights or claims in question,

Coni Harris—
pls file in

tal, LLC

16

e-LLC

Thx. Jnl
2-20-07

- Signature(s) (and title if applicable) See Attached

For Office Use Only

Received by [Signature] Date 12-16-05 Fee \$25.00/xx
 Receipted by [Signature] Date 2-20-07 Receipt No. 1079800
 Processed by [Signature] Date 2-20-07 WR Date

SCANNED

12/17/05

RECEIVED

DEC 06 2005

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**Notice of Security Interest in a Water Right****And Request for Notification of a Change in Ownership or Any Proposed
Or Final Action to Amend, Transfer, or Otherwise Modify a Water Right**

RECEIVED

FEB 21 2007

WATER RESOURCES
WESTERN REGIONPlease print or type. Attach pages with additional information. Instructions are on the back of this page.
Incomplete forms will be returned.

1. Water Right No(s): 63-07740
Adjudication Claim No(s): 63-07740
2. The following **REQUIRED** information must be submitted with this form:
 - A) Evidence of the security interest. This may be a copy of a **DEED of TRUST, MORTGAGE, CONTRACT OF SALE** or other legal document indicating your interest in the property and water rights or claims in question, **WITH ATTACHED LEGAL DESCRIPTION.**
 - B) A **FEE** of \$25.00 per water right or adjudication claim.
3. Name and Mailing Address of Person or Company holding Security Interest
Collateral Mortgage Capital, LLC
524 Lorna Square
Birmingham, Alabama 35216
Phone: 205-978-1271
4. Name of Water Right Owner/Claimant(s)
Eagle Meadows Village LLC
5. Expiration Date of Notification Period December 1, 2015
6. Is this a Renewal of Request for Notification? ☐ YES ☒ NO
7. Signature(s) (and title if applicable) See Attached

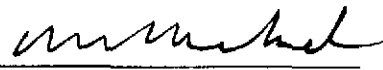
For Office Use OnlyReceived by [Signature]
Receipted by [Signature]
Processed by [Signature]Date 12-6-05 Fee \$25.00/xx
Date 12-6-05 Receipt No. 0079850
Date 2-20-07 WR Date

SCANNED

12/21/05

Collateral Mortgage Capital, LLC,
a Delaware limited liability company

By: Collateral Management, LLC,
a Delaware limited liability company
Its Manager

By: 
Brett N. Blackwood
Its Managing Director

SCANNED
JAN 24 2008

0500035316 LAB

ADA COUNTY RECORDER J. JAVID NAVARRO
BOISE IDAHO 11/23/05 04:29 PM
DEPUTY Nikola Olson
RECORDED - REQUEST OF
Transaction Title

AMOUNT 156.00 52



Prepared by, and after recording
return to:
Phillip D. Corley, Jr., Esq.
Wallace, Jordan, Ratliff & Brandt, L.L.C.
800 Shades Creek Parkway, Suite 400
Birmingham, Alabama 35209

MULTIFAMILY DEED OF TRUST,
ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND
FIXTURE FILING

FANNIE MAE MULTIFAMILY SECURITY INSTRUMENT -
IDAHO

Form 4013

11/01

© 1998-2001 Fannie Mae

SCANNED

JAN 1 2006

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**MULTIFAMILY DEED OF TRUST,
ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND
FIXTURE FILING**

THIS MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "**Instrument**") is dated as of the 23rd day of November, 2005 by **Eagle Meadows Village LLC**, a limited liability company organized and existing under the laws of Idaho, whose address is c/o Kenneth J. Friedman, 529 Brookline Avenue, Mill Valley, CA 94941, as grantor ("**Borrower**"), to **Transnation Title & Escrow, Inc.**, a Delaware corporation, whose address is 1750 Front Street, Suite 120, Boise, Idaho 83702, as trustee ("**Trustee**"), for the benefit of **Collateral Mortgage Capital, LLC**, a limited liability company organized and existing under the laws of Delaware, whose address is 524 Lorna Square, Birmingham, Alabama 35216, as beneficiary ("**Lender**").

Borrower, in consideration of the Indebtedness and the trust created by this Instrument, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the Mortgaged Property, including the Land located in the County of Ada, State of Idaho, and described in Exhibit A attached to this Instrument.

TO SECURE TO LENDER the repayment of the Indebtedness evidenced by Borrower's Multifamily Note payable to Lender, dated as of the date of this Instrument, and maturing on December 1, 2015, in the principal amount of \$1,252,500.00, and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in the Loan Documents.

Borrower represents and warrants 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 specially 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:

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

(b) **"Collateral Agreement"** means any separate agreement between Borrower and Lender for the purpose of establishing replacement reserves for the Mortgaged Property, establishing a fund to assure completion of repairs or improvements specified in that agreement, or assuring reduction of the outstanding principal balance of the Indebtedness if the occupancy of or income from the Mortgaged Property does not increase to a level specified in that agreement, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account.

(c) **"Environmental Permit"** means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(d) **"Event of Default"** means the occurrence of any event listed in Section 22.

(e) **"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.

(f) **"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.

(g) **"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.

(h) **"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, and their state analogs.

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

(j) **"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.

(k) **"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 12 to protect the security of this Instrument.

(l) [Intentionally omitted]

(m) **"Key Principal"** means the natural person(s) or entity identified as such at the foot of this Instrument, and any person or entity who becomes a Key Principal after the date of this Instrument and is identified as such in an amendment or supplement to this Instrument.

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

(o) **"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.

(p) **"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.

(q) **"Loan Documents"** means the Note, this Instrument, all guaranties, all indemnity agreements, all Collateral Agreements, O&M Programs, and any other documents now or in the

future executed by Borrower, Key Principal, any guarantor or any other person in connection with the loan evidenced by the Note, as such documents may be amended from time to time.

(r) **"Loan Servicer"** means the entity that from time to time is designated by Lender to collect payments and deposits and receive notices under the Note, this Instrument and any other Loan Document, and otherwise to service the loan evidenced by the Note 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.

(s) **"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 Personalty;
- (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 benefitting 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 Imposition Deposits;
- (13) 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);
- (14) all tenant security deposits which have not been forfeited by any tenant under any Lease; and
- (15) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.

(t) "Note" means the Multifamily Note described on page 1 of this Instrument, including the Acknowledgment and Agreement of Key Principal to Personal Liability for Exceptions to Non-Recourse Liability (if any), and all schedules, riders, allonges and addenda, as such Multifamily Note may be amended from time to time.

(u) "O&M Program" is defined in Section 18(a).

(v) "Personalty" means all equipment, inventory, general intangibles 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, including furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) 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.

(w) **"Property Jurisdiction"** is defined in Section 30(a).

(x) **"Rents"** means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including subsidy payments received from any sources (including, but not limited to payments under any Housing Assistance Payments Contract), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.

(y) **"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.

(z) **"Transfer"** means (A) a sale, assignment, transfer or other disposition (whether voluntary, involuntary or by operation of law); (B) the granting, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary or by operation of law); (C) the issuance or other creation of an ownership interest in a legal entity, including a partnership interest, interest in a limited liability company or corporate stock; (D) the withdrawal, retirement, removal or involuntary resignation of a partner in a partnership or a member or manager in a limited liability company; or (E) the merger, dissolution, liquidation, or consolidation of a legal entity. "Transfer" does not include (i) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument or (ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code. For purposes of defining the term "Transfer," the term "partnership" shall mean a general partnership, a limited partnership, a joint venture and a limited liability partnership, and the term "partner" shall mean a general partner, a limited partner and a joint venturer.

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 hereby authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Borrower agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. 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. In exercising any remedies, 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 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(s). However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property 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, and Borrower shall, upon Borrower's receipt of any Rents from any sources (including, but not limited to subsidy payments under any Housing Assistance Payments Contract), pay the total amount of such receipts to the 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 Note 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

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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 Note), 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 12.

(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(s). However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property 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

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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 non-residential 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.

Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents. Borrower shall pay a prepayment premium in connection with certain prepayments of the Indebtedness, including a payment made after Lender's exercise of any right of acceleration of the Indebtedness, as provided in the Note.

6. EXCULPATION.

Borrower's personal liability for payment of the Indebtedness and for performance of the other obligations to be performed by it under this Instrument is limited in the manner, and to the extent, provided in the Note.

7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.

(a) Borrower shall deposit with Lender on the day monthly installments of principal or interest, or both, are due under the Note (or on another day designated in writing by Lender), until the Indebtedness is paid in full, an additional amount sufficient to accumulate with Lender the entire sum required to pay, when due (1) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Mortgaged Property, (2) the premiums for fire and other hazard insurance, rent loss insurance and such other insurance as Lender may require under Section 19, (3) Taxes, and (4) amounts for other charges and expenses which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Lender's interests, all as reasonably estimated from time to time by Lender. The amounts deposited under the preceding sentence are collectively referred to in this Instrument as the "**Imposition Deposits**". The obligations of Borrower for which the Imposition Deposits are required are collectively referred to in this Instrument as "**Impositions**". The amount

of the Imposition Deposits shall be sufficient to enable Lender to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added. Lender shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Lender are held for the purpose of paying Taxes, insurance premiums and each other obligation of Borrower for which Imposition Deposits are required. Any waiver by Lender of the requirement that Borrower remit Imposition Deposits to Lender may be revoked by Lender, in Lender's discretion, at any time upon notice to Borrower.

(b) Imposition Deposits shall be held in an institution (which may be Lender, if Lender is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency. Lender shall not be obligated to open additional accounts or deposit Imposition Deposits in additional institutions when the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. Lender shall apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Unless applicable law requires, Lender shall not be required to pay Borrower any interest, earnings or profits on the Imposition Deposits. Borrower hereby pledges and grants to Lender a security interest in the Imposition Deposits as additional security for all of Borrower's obligations under this Instrument and the other Loan Documents. Any amounts deposited with Lender under this Section 7 shall not be trust funds, nor shall they operate to reduce the Indebtedness, unless applied by Lender for that purpose under Section 7(e).

(c) If Lender receives a bill or invoice for an Imposition, Lender shall pay the Imposition from the Imposition Deposits held by Lender. Lender shall have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by Lender. Lender may pay an Imposition according to any bill, statement or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition.

(d) If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Lender, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition is less than the amount reasonably estimated by Lender to be necessary, Borrower shall pay to Lender the amount of the deficiency within 15 days after notice from Lender.

(e) If an Event of Default has occurred and is continuing, Lender may apply any Imposition Deposits, in any amounts and in any order as Lender determines, in Lender's discretion, to pay any Impositions or as a credit against the Indebtedness. Upon payment in full of the Indebtedness, Lender shall refund to Borrower any Imposition Deposits held by Lender.

8. COLLATERAL AGREEMENTS.

Borrower shall deposit with Lender such amounts as may be required by any Collateral Agreement and shall perform all other obligations of Borrower under each Collateral Agreement.

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9. APPLICATION OF PAYMENTS.

If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Neither Lender's acceptance of an amount which is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Instrument and the Note shall remain unchanged.

10. 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.

11. USE OF PROPERTY.

Unless required by applicable law, Borrower shall not (a) except for any change in use approved by Lender, allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Instrument was executed, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property, or (d) establish any condominium or cooperative regime with respect to the Mortgaged Property.

12. 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 19, and (4) payment of amounts which Borrower has failed to pay under Sections 15 and 17.

(b) Any amounts disbursed by Lender under this Section 12, or under any other provision of this Instrument that treats such disbursement as being made under this Section 12, 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 the "**Default Rate**", as defined in the Note.

(c) Nothing in this Section 12 shall require Lender to incur any expense or take any action.

13. INSPECTION.

Lender, its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours, or at any other reasonable time.

14. BOOKS AND RECORDS; FINANCIAL REPORTING.

(a) Borrower shall keep and maintain at all times at the Mortgaged Property or the management agent's offices, and upon Lender's request shall make available at the Mortgaged Property, complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property, and copies of all written contracts, Leases, and other instruments which affect the Mortgaged Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender.

(b) Borrower shall furnish to Lender all of the following:

- (1) within 120 days after the end of each fiscal year of Borrower, a statement of income and expenses for Borrower's operation of the Mortgaged Property for that fiscal year, a statement of changes in financial position of Borrower relating to the Mortgaged Property for that fiscal year and, when requested by Lender, a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of that fiscal year;
- (2) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a rent schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date

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through which rent has been paid, and any related information requested by Lender;

- (3) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts;
- (4) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a statement that identifies all owners of any interest in Borrower and the interest held by each, if Borrower is a corporation, all officers and directors of Borrower, and if Borrower is a limited liability company, all managers who are not members;
- (5) upon Lender's request, a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender; and
- (6) upon Lender's request, a balance sheet, a statement of income and expenses for Borrower and a statement of changes in financial position of Borrower for Borrower's most recent fiscal year; and
- (7) if required by Lender, a statement of income and expense for the Mortgaged Property for the prior month or quarter.

(c) Each of the statements, schedules and reports required by Section 14(b) shall be certified to be complete and accurate by an individual having authority to bind Borrower, and shall be in such form and contain such detail as Lender may reasonably require. Lender also may require that any statements, schedules or reports be audited at Borrower's expense by independent certified public accountants acceptable to Lender.

(d) If Borrower fails to provide in a timely manner the statements, schedules and reports required by Section 14(b), Lender shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness as provided in Section 12.

(e) If an Event of Default has occurred and is continuing, Borrower shall deliver to Lender upon written demand all books and records relating to the Mortgaged Property or its operation.

(f) Borrower authorizes Lender to obtain a credit report on Borrower at any time.

(g) If an Event of Default has occurred and Lender has not previously required Borrower to furnish a quarterly statement of income and expense for the Mortgaged Property, Lender may require Borrower to furnish such a statement within 45 days after the end of each fiscal quarter of Borrower following such Event of Default.

15. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Section 15(c) and Section 15(d), 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) Subject to the provisions of Section 15(c), 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.

(c) As long as no Event of Default exists and Borrower has timely delivered to Lender any bills or premium notices that it has received, Borrower shall not be obligated to pay Taxes, insurance premiums or any other individual Imposition to the extent that sufficient Imposition Deposits are held by Lender for the purpose of paying that specific Imposition. If an Event of Default exists, Lender may exercise any rights Lender may have with respect to Imposition Deposits without regard to whether Impositions are then due and payable. Lender shall have no liability to Borrower for failing to pay any Impositions to the extent that any Event of Default has occurred and is continuing, insufficient Imposition Deposits are held by Lender at the time an Imposition becomes due and payable or Borrower has failed to provide Lender with bills and premium notices as provided above.

(d) Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (1) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (2) the Mortgaged Property is not in danger of being sold or forfeited, (3) Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (4) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender, which may include the delivery to Lender of the reserves established by Borrower to pay the contested Imposition.

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(e) Borrower shall promptly deliver to Lender a copy of all notices of, and invoices for, Impositions, and if Borrower pays any Imposition directly, Borrower shall promptly furnish to Lender receipts evidencing such payments.

16. LIENS; ENCUMBRANCES.

Borrower acknowledges that, to the extent provided in Section 21, the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a "**Lien**") on the Mortgaged Property (other than the lien of this Instrument) or on certain ownership interests in Borrower, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Instrument, is a "**Transfer**" which constitutes an Event of Default.

17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY.

(a) Borrower (1) shall not commit waste or permit impairment or deterioration of the Mortgaged Property, (2) shall not abandon the Mortgaged Property, (3) 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, (4) shall keep the Mortgaged Property in good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality, (5) shall provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Lender under a contract approved by Lender in writing, and (6) 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. Borrower shall not (and shall not permit any tenant or other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property except in connection with the replacement of tangible Personalty.

(b) If, in connection with the making of the loan evidenced by the Note or at any later date, Lender waives in writing the requirement of Section 17(a)(5) above that Borrower enter into a written contract for management of the Mortgaged Property and if, after the date of this Instrument, Borrower intends to change the management of the Mortgaged Property, Lender shall have the right to approve such new property manager and the written contract for the management of the Mortgaged Property and require that Borrower and such new property manager enter into an Assignment of Management Agreement on a form approved by Lender. If required by Lender (whether before or after an Event of Default), Borrower will cause any Affiliate of Borrower to whom fees are payable for the management of the Mortgaged Property to enter into an agreement with Lender, in a form approved by Lender, providing for subordination of those fees and such other provisions as Lender may require. "Affiliate of Borrower" means any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls Borrower (the term "control" for these

purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

18. ENVIRONMENTAL HAZARDS.

(a) Except for matters covered by a written program of operations and maintenance approved in writing by Lender (an "O&M Program") or matters described in Section 18(b), 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 18 as "**Prohibited Activities or Conditions**".

(b) Prohibited Activities and 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 comparable multifamily 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 (3) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property's parking areas, 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) If an O&M Program has been established with respect to Hazardous Materials, Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons present on the Mortgaged Property to comply with the O&M Program. All costs of performance of Borrower's obligations under any O&M Program shall be paid by Borrower, and Lender's out-of-pocket costs incurred in connection with the monitoring and review of the O&M Program and Borrower's performance shall be paid by Borrower upon demand by Lender. Any such out-of-pocket costs of Lender which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12.

(e) Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing:

- (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 18 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.

(f) 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 18 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.

(g) 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 as a condition of Lender's consent to any Transfer under Section 21, 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 12. 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.

(h) 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 12.

(i) 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.

(j) 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 "**Indemnitee**") 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 18;
- (2) any failure by Borrower to perform any of its obligations under this Section 18;
- (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 that is adjacent to the Mortgaged Property; and
- (5) the actual or alleged violation of any Hazardous Materials Law.

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

(l) Borrower shall not, without the prior written consent of those Indemnitee 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 Indemnitee, satisfactory in form and substance to Lender; or (2) may materially and adversely affect Lender, as determined by Lender in its discretion.

(m) Lender agrees that the indemnity under this Section 18 shall be limited to the assets of Borrower and Lender shall not seek to recover any deficiency from any natural persons who are general partners of Borrower.

(n) 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 Indemnitee in any legal or administrative proceeding incident to any matters against which Indemnitee are entitled to be indemnified under this Section 18;
- (2) reimburse Indemnitee for any expenses paid or incurred in connection with any matters against which Indemnitee are entitled to be indemnified under this Section 18; and
- (3) reimburse Indemnitee 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 Indemnitee of their rights under this Section 18, or in monitoring and participating in any legal or administrative proceeding.

(o) In any circumstances in which the indemnity under this Section 18 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.

(p) The provisions of this Section 18 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 18 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 Indemnitee under this Section 18 shall be joint and several. The obligation of Borrower to indemnify the Indemnitee under this Section 18 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.

19. PROPERTY AND LIABILITY INSURANCE.

(a) Borrower shall keep the Improvements 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 Lender so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. If any of the Improvements is 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 premiums on insurance policies required under Section 19(a) shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. 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 19(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, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require.

(d) All insurance policies and renewals of insurance policies required by this Section 19 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. However, nothing contained in this Section 19 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, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; (4) Lender determines, in its 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 19.

(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.

20. 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. However, nothing contained in this Section 20 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, Section 7 of this Instrument or any Collateral Agreement, 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.

21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER.

(a) The occurrence of any of the following events shall constitute an Event of Default under this Instrument:

- (1) a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property;
- (2) a Transfer of a Controlling Interest in Borrower;
- (3) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling Interest in Borrower;

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- (4) a Transfer of all or any part of Key Principal's ownership interests (other than limited partnership interests) in Borrower, or in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower;
- (5) if Key Principal is an entity, (A) a Transfer of a Controlling Interest in Key Principal, or (B) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling Interest in Key Principal;
- (6) if Borrower or Key Principal is a trust, the termination or revocation of such trust; and
- (7) a conversion of Borrower from one type of legal entity into another type of legal entity, whether or not there is a Transfer.

Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 21.

(b) The occurrence of any of the following events shall not constitute an Event of Default under this Instrument, notwithstanding any provision of Section 21(a) to the contrary:

- (1) a Transfer to which Lender has consented;
- (2) a Transfer that occurs by devise, descent, or by operation of law upon the death of a natural person;
- (3) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;
- (4) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by the Loan Documents or consented to by Lender;
- (5) the grant of an easement, if before the grant Lender determines that the easement will not materially affect the operation or value of the Mortgaged Property or Lender's interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request; and

- (6) the creation of a tax lien or a mechanic's, materialman's or judgment lien against the Mortgaged Property which is bonded off, released of record or otherwise remedied to Lender's satisfaction within 30 days of the date of creation.

(c) Lender shall consent, without any adjustment to the rate at which the Indebtedness secured by this Instrument bears interest or to any other economic terms of the Indebtedness, to a Transfer that would otherwise violate this Section 21 if, prior to the Transfer, Borrower has satisfied each of the following requirements:

- (1) the submission to Lender of all information required by Lender to make the determination required by this Section 21(c);
- (2) the absence of any Event of Default;
- (3) the transferee meets all of the eligibility, credit, management and other standards (including any standards with respect to previous relationships between Lender and the transferee and the organization of the transferee) customarily applied by Lender at the time of the proposed Transfer to the approval of borrowers in connection with the origination or purchase of similar mortgages, deeds of trust or deeds to secure debt on multifamily properties;
- (4) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition that are customarily applied by Lender at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgages on multifamily properties;
- (5) in the case of a Transfer of all or any part of the Mortgaged Property, or direct or indirect ownership interests in Borrower or Key Principal (if an entity), if transferor or any other person has obligations under any Loan Document, the execution by the transferee or one or more individuals or entities acceptable to Lender of an assumption agreement (including, if applicable, an Acknowledgement and Agreement of Key Principal to Personal Liability for Exceptions to Non-Recourse Liability) that is acceptable to Lender and that, among other things, requires the transferee to perform all obligations of transferor or such person set forth in such Loan Document, and may require that the transferee comply with any provisions of this Instrument or any other Loan Document which previously may have been waived by Lender;
- (6) if a guaranty has been executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, the Borrower causes

one or more individuals or entities acceptable to Lender to execute and deliver to Lender a guaranty in a form acceptable to Lender; and

(7) Lender's receipt of all of the following:

- (A) a non-refundable review fee in the amount of \$3,000 and a transfer fee equal to 1 percent of the outstanding Indebtedness immediately prior to the Transfer.
- (B) In addition, Borrower shall be required to reimburse Lender for all of Lender's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request, to the extent such expenses exceed \$3,000.

(d) For purposes of this Section, the following terms shall have the meanings set forth below:

- (1) **"Initial Owners"** means, with respect to Borrower or any other entity, the persons or entities who on the date of the Note own in the aggregate 100% of the ownership interests in Borrower or that entity.
- (2) A Transfer of a **"Controlling Interest"** shall mean, with respect to any entity, the following:
 - (i) if such entity is a general partnership or a joint venture, a Transfer of any general partnership interest or joint venture interest which would cause the Initial Owners to own less than 51% of all general partnership or joint venture interests in such entity;
 - (ii) if such entity is a limited partnership, a Transfer of any general partnership interest;
 - (iii) if such entity is a limited liability company or a limited liability partnership, a Transfer of any membership or other ownership interest which would cause the Initial Owners to own less than 51% of all membership or other ownership interests in such entity;
 - (iv) if such entity is a corporation (other than a Publicly-Held Corporation) with only one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than 51% of voting stock in such corporation;
 - (v) if such entity is a corporation (other than a Publicly-Held Corporation) with more than one class of voting stock, a Transfer of

any voting stock which would cause the Initial Owners to own less than a sufficient number of shares of voting stock having the power to elect the majority of directors of such corporation; and

- (vi) if such entity is a trust, the removal, appointment or substitution of a trustee of such trust other than (A) in the case of a land trust, or (B) if the trustee of such trust after such removal, appointment or substitution is a trustee identified in the trust agreement approved by Lender.
- (3) **"Publicly-Held Corporation"** shall mean a corporation the outstanding voting stock of which is registered under Section 12(b) or 12(g) of the Securities and Exchange Act of 1934, as amended.

22. EVENTS OF DEFAULT.

The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument:

(a) any failure by Borrower to pay or deposit when due any amount required by the Note, this Instrument or any other Loan Document;

(b) any failure by Borrower to maintain the insurance coverage required by Section 19;

(c) any failure by Borrower to comply with the provisions of Section 33;

(d) fraud or material misrepresentation or material omission by Borrower, or any of its officers, directors, trustees, general partners or managers, Key Principal, Key Individual or any guarantor in connection with (A) the application for or creation of the Indebtedness, (B) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, or (C) any request for Lender's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement;

(e) any Event of Default under Section 21;

(f) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property;

(g) any failure by Borrower to perform any of its obligations under this Instrument (other than those specified in Sections 22(a) through (f)), as and when required, which continues for a period of 30 days after notice of such failure by Lender to Borrower, but no such notice or grace period shall apply in the case of any such failure which could, in Lender's judgment, absent

immediate exercise by Lender of a right or remedy under this Instrument, result in harm to Lender, impairment of the Note or this Instrument or any other security given under any other Loan Document;

(h) any failure by Borrower to perform any of its obligations as and when required under any Loan Document other than this Instrument which continues beyond the applicable cure period, if any, specified in that Loan Document; and

(i) any exercise by the holder of any other debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property of a right to declare all amounts due under that debt instrument immediately due and payable.

23. 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.

24. 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: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Instrument, the Note, or any other Loan Document; release anyone liable for the payment of any amounts under this Instrument, the Note, or any other Loan Document; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; 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 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 19 and 20 shall not operate to cure or waive any Event of Default.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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, (i) 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); (ii) the unpaid principal balance of the Note; (iii) the date to which interest under the Note has been paid; (iv) 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); (v) 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 (vi) any additional facts requested by Lender.

30. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

(a) This Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the jurisdiction in which the Land is located (the "**Property Jurisdiction**").

(b) Borrower agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

31. NOTICE.

(a) All notices, demands and other communications ("**notice**") under or concerning this Instrument shall be in writing. Each notice shall be addressed to the intended recipient at its address set forth in this Instrument, and shall be deemed given on the earliest to occur of (1) the date when the notice is received by the addressee; (2) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (3) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 31, the term "Business Day" means any day other than a Saturday, a Sunday or any other day on which Lender is not open for business.

(b) Any party to this Instrument may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 31. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 31, that it will acknowledge, in writing, the receipt of any notice upon request by the other

party and that any notice rejected or refused by it shall be deemed for purposes of this Section 31 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

(c) Any notice under the Note and any other Loan Document which does not specify how notices are to be given shall be given in accordance with this Section 31.

32. 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.

33. SINGLE ASSET BORROWER.

Until the Indebtedness is paid in full, Borrower (a) shall not acquire any real or personal property other than the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property; (b) shall not operate any business other than the management and operation of the Mortgaged Property; and (c) shall not maintain its assets in a way difficult to segregate and identify.

34. 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 21 shall be an Event of Default.

35. JOINT AND SEVERAL LIABILITY.

If more than one person or entity signs this Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

36. 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.

37. 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.

38. 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."

39. 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.

40. 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.

41. NO CHANGE IN FACTS OR CIRCUMSTANCES.

All information in the application for the loan submitted to Lender (the "**Loan Application**") and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

42. SUBROGATION.

If, and to the extent that, the proceeds of the loan evidenced by the Note 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.

43. 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 invoke the power of sale and any one or more other remedies permitted by applicable law or provided in this Instrument or in any other Loan Document. Borrower acknowledges that the power of sale granted in this Instrument may be exercised by Lender without prior judicial hearing. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys' fees, costs of documentary evidence, abstracts and title reports.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an Event of Default and of Lender's election to cause the Mortgaged Property to be sold and shall cause the notice to be recorded in each county in which the Mortgaged Property or some part of the Mortgaged Property is located. Lender or Trustee shall mail copies of the notice in the manner prescribed by the laws of Idaho to Borrower and to the other persons prescribed by the laws of Idaho. Trustee shall give notice of sale and shall sell the Mortgaged Property according to the laws of Idaho. Trustee may sell the Mortgaged Property at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any part of the Mortgaged Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Mortgaged Property at any sale.

Trustee shall deliver to the purchaser at the sale, within a reasonable time after the sale, Trustee's deed conveying the Mortgaged Property so sold without any covenant or warranty, express or implied. The recitals in Trustee's deed shall be prima facie evidence of the truth of the statements made in those recitals. Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including Trustee's and attorneys' fees and costs of

title evidence; (b) to the Indebtedness in such order as Lender, in Lender's discretion, directs; and (c) the excess, if any, to the person or persons legally entitled to it.

As an alternative to invoking the power of sale, at any time after Lender has declared the Indebtedness to be immediately due and payable, Lender may commence an action to judicially foreclose this Instrument as a mortgage. The Mortgaged Property may be sold at one or more sales, as a whole or in such parcels or lots, with such elements of real and/or personal property, and in such manner or order as Lender, in its discretion, may elect. Lender shall be entitled to possession of the Mortgaged Property during any redemption period allowed under the laws of the State of Idaho. However, if Borrower remains in possession of the Mortgaged Property after it has been sold, Borrower shall become a tenant at will of the purchaser of the Mortgaged Property and shall pay a reasonable rental for use of the Mortgaged Property while it is in Borrower's possession. During any redemption period, the purchaser may make such repairs and alterations to the Mortgaged Property as may be reasonably necessary for its proper operation, care, preservation or protection; pay any Impositions which become due; insure the Mortgaged Property against loss by casualty and itself against liability arising from its ownership and use of the Mortgaged Property; pay liens not extinguished by the foreclosure; and pay any other amounts relating to the Mortgaged Property as they become due. All sums so paid, together with interest thereon from the date of the expenditure at the rate allowed under Idaho law during the period of redemption, shall be included in the amount required to be paid to redeem the Mortgaged Property.

44. RECONVEYANCE.

Upon payment of the Indebtedness, Lender shall request Trustee to reconvey the Mortgaged Property and shall surrender this Instrument and all notes evidencing the Indebtedness to Trustee. Trustee shall reconvey the Mortgaged Property without warranty to the person or persons legally entitled to the Mortgaged Property. Such person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Mortgaged Property.

45. SUBSTITUTE TRUSTEE.

Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee. Without conveyance of the Mortgaged Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee in this Instrument and by applicable law.

46. AREA AND LOCATION OF LAND.

Either the Land is not more than 40 acres in area or the Land is located within an incorporated city or village.

47. FINANCING STATEMENT.

As provided in Section 2, this Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture and for the purposes of such

financing statement: (a) the Debtor shall be Borrower and the Secured Party shall be Lender; (b) the addresses of Borrower as Debtor and of Lender as Secured Party are as specified above in the first paragraph of this Instrument; (c) the name of the record owner is Borrower; and (d) the types or items of collateral consist of any part of the Mortgaged Property which is or may become a Fixture.

48. WAIVER OF TRIAL BY JURY.

BORROWER AND LENDER EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

ATTACHED EXHIBITS. The following Exhibits are attached to this Instrument:

☒	Exhibit A	Description of the Land (required).
☒	Exhibit B-1	Modifications to Instrument
☒	Exhibit B-2	Modifications to Instrument
☒	Exhibit C	

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.

BORROWER:

Eagle Meadows Village LLC,
an Idaho limited liability company

By:


Kenneth J. Friedman
Its Manager

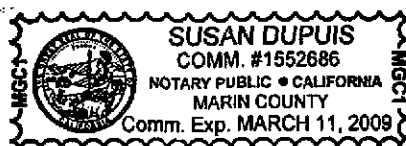
STATE OF CALIFORNIA)

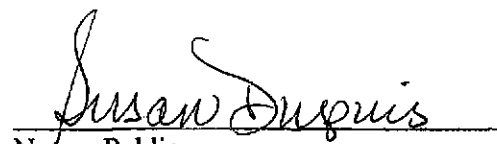
County of Marin)

) ss.

On this 21st day of November, 2005, before me, a Notary Public, personally appeared Kenneth J. Friedman, known or identified to me to be the Manager of Eagle Meadows Village LLC, an Idaho Limited Liability Company, and the person who executed the foregoing instrument on behalf of said company, and acknowledged to me that he executed the same for and on behalf of Eagle Meadows Village LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.




Notary Public
Residing at: Sausalito, CA
My Commission Expires: 3-11-09

KEY PRINCIPAL

Key Principal

Name: Kenneth J. Friedman
Address: 529 Brookline Avenue
Mill Valley, California 94941

Key Principal

Name: Joseph Nadel
Address: 6 Starboard Court
Mill Valley, California 94941

Key Principal

Name: Max Stanley Blumenfeld
Address: 46 Tan Oak Circle
San Rafael, California 94903

EXHIBIT A

DESCRIPTION OF THE LAND

PARCEL A

A tract of land in the Southwest quarter of Section 9, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho, described as follows:

Commencing at the South quarter corner of Section 9, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho; and running thence
South 89°55'00" West along section line 489.59 feet; thence
North 01°10'00" East, 30.08 feet to a point on the North bank of Dry Creek, said point being the POINT OF BEGINNING; thence
North 01°10'00" East, 721.79 feet; thence
North 80°21'48" West, 455.27 feet; thence
South 09°30'00" West, 125.30 feet; thence
North 81°02'41" West, 151.53 feet; thence
South 09°11'29" West, 283.53 feet; thence
South 57°15'00" East, 772.62 feet along said North bank of Dry Creek to the POINT OF BEGINNING.

Per all View - SESW
RP 50509346846

PARCEL B

An ingress and egress easement as depicted on Exhibit A attached to Easement and Road Maintenance Agreement as created by said easement executed March 6, 2003, recorded March 10, 2003 as Instrument No. 103039099, of Official Records, described as follows:

A tract of land located in the Southwest quarter of Section 9, Township 4 North, Range 1 East of the Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the South quarter corner of Section 9; thence
South 89°55'00" West a distance of 489.59 feet; thence
North 01°10'00" East a distance of 751.87 feet; thence
North 80°21'48" West a distance of 307.27 feet to the TRUE POINT OF BEGINNING;
thence continuing
North 80°21'48" West a distance of 40.00 feet; thence
North 09°30'00" East a distance of 165.96 feet; thence
South 80°30'00" East a distance of 40.00 feet; thence
South 09°30'00" West a distance of 166.05 feet to the POINT OF BEGINNING.

EXHIBIT B-1

MODIFICATIONS TO INSTRUMENT (Key Principal Transfers)

The following modifications are made to the text of the Instrument that precedes this Exhibit:

1. Section 21 is modified to add new Section 21(e) as follows:

“(e) The requirement to pay a 1% transfer fee as provided in Section 21(c)(7)(A) shall not apply to Transfers of the Mortgaged Property or of ownership interests held by any person or entity to (i) one or more Key Principals or (ii) any entity or entities in which a Key Principal has a direct or indirect Controlling Interest (“Affiliated Entities”). However, such Transfers to Affiliated Entities shall be subject to all other requirements of Section 21(c) herein.”

2. Section 21(b) is modified to delete the period at the end of Section 21(b)(6) and substitute “; and” therefor and to add a new Section 21(b)(7):

“(7) a Transfer of the Mortgaged Property or of ownership interests held by an individual or entity Key Principal in Borrower, or in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower, to (i) other Key Principals; (ii) Immediate Family Members; or (iii) trusts established for the benefit of the transferor and/or Immediate Family Members; provided, however, that such Transfer of ownership interests will not cause a change in the management and control of Borrower (or other intermediate entity), and after which Transfer, the transferor Key Principal shall maintain the same right and ability to manage and control Borrower (or other intermediate entity) as existed prior to the Transfer.”

3. Section 1 is modified to add the following defined term:

“(aa) “**Immediate Family Members**” means a non-minor child, grandchild, spouse, or parent, of a transferor under Section 21.”

4. All capitalized terms used in this Exhibit not specifically defined herein shall have the meanings set forth in the text of the Instrument that precedes this Exhibit.

EAGLE MEADOWS VILLAGE, LLC
BORROWER'S INITIALS

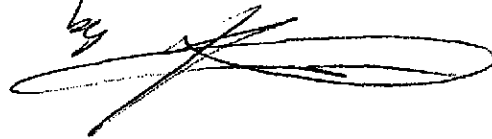
by 

EXHIBIT B-2

MODIFICATION TO SECURITY INSTRUMENT (Manufactured Housing Community)

The following modifications are made to the text of the Instrument that precedes this Exhibit:

1. **Additional Definitions.** Section 1 of the Instrument is amended to add the following definitions:

"Manufactured Home" or "Home" means a "manufactured home" as that term is defined in the Manufactured Housing Construction and Safety Standards Act of 1974 as amended (42 USC Chapter 70), and in 24 CFR § 3280.2, and any related fixtures and personal property;

"Site" means a lot in the Mortgaged Property leased to a consumer under a Lease;

"Retail Creditor" means any party holding a consensual lien on a Home placed on the Mortgaged Property;

2. **Amendment to Existing Definitions.** Provisions (b), (j), and (v) of Section 1 of the Instrument are amended as follows:

(b) **"Collateral Agreement"** means any separate agreement between Borrower and Lender for the purpose of establishing replacement reserves for the Mortgaged Property, establishing a fund to assure completion of repairs or improvements specified in that agreement, establishing a working capital reserve fund where there are pre-paid rents, or assuring reduction of the outstanding principal balance of the Indebtedness if the occupancy of or income from the Mortgaged Property does not increase to a level specified in that agreement, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account.

(j) **"Improvements"** means the buildings, structures, improvements, Sites, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions. Improvements include Manufactured Homes now or hereafter owned by Borrower ("Borrower's Homes), if so categorized by State or local law. As of this date, the Borrower's Homes are those listed in Exhibit C annexed hereto.

(v) **"Personalty"** means all equipment, inventory, general intangibles 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, including furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) 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. Personalty includes Manufactured Homes now or hereafter owned by Borrower ("Borrower's Homes"), if so categorized by State or local law. As of this date, the Borrower's Homes are those listed in Exhibit C annexed hereto.

3. **Lender's Security Interest.** Section 2 of the Instrument is amended to read as follows:

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 hereby authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Borrower agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. 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. In exercising any remedies, 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 that is or may become a Fixture.

4. **Leases.**

(a) Section 4(e) of the Security Instrument is amended to read as follows:

Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each Lease for a Site then in effect. All Leases for Sites shall comply with applicable law. All Leases for Sites 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, Leases for Sites with terms of less than six months may be permitted with Lender's prior written consent. Borrower shall give Lender thirty (30) days written notice of any material changes to the form of the Lease.

(b) Section 4(g) of the Security Instrument is deleted in its entirety and the following substituted in lieu thereof:

Upon consummation of the Loan, and upon the eleventh day of each month thereafter, (each, a "**Reserve Determination Date**"), if the aggregate annualized amount of Rents paid more than thirty (30) days in advance of their respective due dates ("**Pre-paid Rents**") exceeds five percent of the total annual Rent Roll, Borrower shall deposit and maintain with Lender an escrow fund ("**Seasonal Working Capital Reserve Fund**" or "**Fund**"). The Fund shall be in an amount determined by Lender in its sole discretion, but in any event not less than the total annualized amount of Pre-paid Rents ("**Seasonal Working Capital Contribution**"). Upon thirty (30) days prior notice by the Lender, Borrower shall add to the Fund such amounts as Lender deems appropriate. The Fund shall be held pursuant to the terms of a Seasonal Working Capital Reserve Fund and Security Agreement executed by the Borrower and the Lender concurrently with the execution of this Instrument.

5. **Events of Default.** Section 22 of the Instrument is amended to add the following new paragraph (j):

(j) any change by Borrower in the occupancy requirements or leases on sites in the Mortgaged Property regarding age restrictions.

6. **Single Asset Borrower.** Section 33 of the Instrument is amended to add a new final paragraph to read as follows:

In particular, and without limiting the foregoing, the Borrower is not and shall not engage in the retail sale or financing of Manufactured Homes. Borrower shall not rent Homes under Leases providing that upon payment of the stipulated rent or a nominal charge, the Borrower shall convey title to the Home to the lessee.

7. **Remedies.** Section 43 of the Instrument is amended to add the following new paragraphs:

At Lender's option, Lender may repossess the Borrower's Homes peacefully without Borrower's permission. Lender also may require Borrower to make the Borrower's Homes available to Lender at a place Lender designates that is reasonably convenient to Borrower and Lender. At Lender's option, Lender may detach and remove Borrower's Home from the Mortgaged Property, or Lender may take possession of it and leave it on the Mortgaged Property. Borrower agrees to cooperate with Lender if Lender exercises these rights.

After Lender repossesses, Lender may then sell the Borrower's Home and apply what Lender receives to Lender's reasonable repossession, repair, storage, and sale expenses, and then toward any other amounts Borrower owes under the Loan Documents, as allowed by law.

8. **New Provision.** The following new paragraph is added to the Instrument:

49. Each Borrower's Home shall be personal property no matter how it is placed or affixed. Until all amounts owed under the Loan Documents are paid in full, the Manufactured Home shall be located on the Mortgaged Property at the address indicated on Exhibit C ("Collateral Site"). Borrower shall not move the Home from the Collateral Site without Lender's prior written permission.

EAGLE MEADOWS VILLAGE, LLC

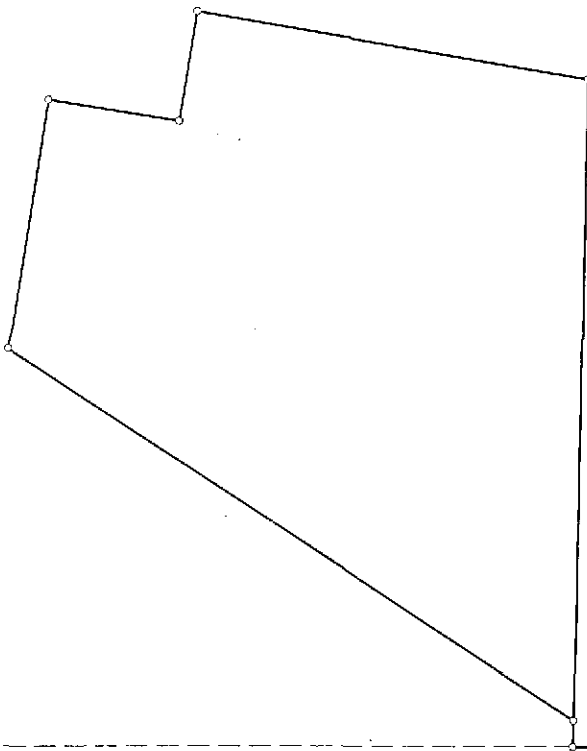
by
Borrower's Initials: KDP

Exhibit C

None.

SCANNED

JAN 21 2008



Title: <u>Panel A</u>		Date: 01-24-2006
Scale: 1 inch = 220 feet	File:	
Tract 1: 3.724 Acres: 162228 Sq Feet: Closure = s86.3349e 489.86 Feet: Precision = 1/ 6: Perimeter = 3030 Feet 001=SW,SW,SE,9,4N,1E 005=N80.2148W 455.27 009=S57.1500E 772.62 002=S89.5500W 489.59 006=S09.3000W 125.30 003=N01.1000E 30.08 007=N81.0241W 151.53 004=N01.1000E 721.79 008=S09.1129W 283.53		

Per Aerial view

RP S0509346846

owner Eagle Center Properties LLC
SESW sec 9 4N, 1E

SCANNED

10/24/2006

Am View

RP 50509346846

Eagle center properties LLC

8ESW sec 9 4N 1E

800-441-5770
TAX 24 HOURS