

Matthew T. Christensen  
ANGSTMAN JOHNSON  
3649 N. Lakeharbor Lane  
Boise, Idaho 83703  
Telephone: (208) 384-8588  
Facsimile: (208) 853-0117  
Christensen ISB: 7213

Attorney for the Independent Fiduciary, Jeanne Bryant

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

HILDA L. SOLIS, Secretary of the United  
States Department of Labor,

Plaintiff,

vs.

MATTHEW D. HUTCHESON,  
HUTCHESON WALKER ADVISORS, LLC,  
GREEN VALLEY HOLDINGS, LLC, and the  
RETIREMENT SECURITY PLAN AND  
TRUST, f/k/a PENSION LIQUIDITY PLAN  
AND TRUST,

Defendants.

Case No. 1:12-cv-236-EJL

MEMORANDUM IN SUPPORT OF  
MOTION TO APPROVE COMPROMISE  
AND VOTING PROCEDURES

COME NOW the Independent Fiduciary, by and through her counsel of record,  
ANGSTMAN JOHNSON, and submits this Memorandum in Support of Motion to Approve  
Compromise and Voting Procedures, as follows:

MEMORANDUM IN SUPPORT OF MOTION TO APPROVE COMPROMISE AND  
VOTING PROCEDURES – PAGE 1

## FACTUAL HISTORY<sup>1</sup>

In October, 2010, Matthew Hutcheson (“Hutcheson”) was acting as the fiduciary of the Retirement Security Plan and Trust (“RSPT”). At that time, Hutcheson was interested in owning all, or a portion, of the Tamarack Resort located in Donnelly, Idaho. He set up a new company, Green Valley Holdings, LLC (“GVH”), for the purpose of purchasing the resort assets. At that time, as the fiduciary of RSPT, he had RSPT make a loan to GVH, evidenced by a Promissory Note in the amount of \$3.5 million (the “RSPT Note”). (The funds were actually transferred from RSPT to GVH in December 2010.)<sup>2</sup> At the time of the RSPT Note, Green Valley granted a security interest to RSPT in all of the assets of GVH (which were described in the security agreement as a “first lien position” on the golf course and Osprey Meadows Lodge located at Tamarack Resort) (the “RSPT Pledge”).<sup>3</sup> No UCC filing appears to have been recorded, evidencing this security interest granted to RSPT.<sup>4</sup>

After receiving the funds from RSPT, Hutcheson used the funds to purchase a Promissory Note from Pacific Continental Bank (secured by a deed of trust on the Tamarack Resort golf course and lodge – these assets are referred to herein as the “PCB Assets”).<sup>5</sup> At that point, Hutcheson obtained actual possession of the PCB Assets, thus perfecting the security interest previously granted to RSPT (Hutcheson was the fiduciary for RSPT at the time he received the PCB Assets).

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<sup>1</sup> The facts listed herein appear to be undisputed. The Independent Fiduciary has chosen not to provide specific citations to the background facts in this Memorandum. However, if the court requires, the Independent Fiduciary can produce required documents and/or testimonial evidence to verify each of the facts listed herein.

<sup>2</sup> See *Exhibit A*, attached hereto, for a copy of the RSPT Note.

<sup>3</sup> See *Exhibit B*, attached hereto, for a copy of the RSPT Pledge.

<sup>4</sup> Since this case was filed, the Independent Fiduciary has recorded a Notice of Claim of Lien. See *Exhibit C*, attached hereto.

<sup>5</sup> See *Exhibit D*, attached hereto, for a copy of the PCB Assets purchased by Hutcheson.

Subsequent to that purchase, GVH and/or Hutcheson borrowed approximately \$425,000.00 from James W. Fletcher, III (“Fletcher”). These funds were to be repaid pursuant to the terms of a Promissory Note between Fletcher and GVH (the “Fletcher Note”).<sup>6</sup> These funds appear to have been used by Hutcheson and/or GVH as follows:

1. Interest to Fletcher - \$42,500.00
2. Fees to Fletcher – \$34,000.00
3. Commissions to Fletcher’s agent - \$21,250.00
4. Escrow/recording fees – \$3,129.00
5. Payment of past-due taxes on golf course property - \$78,418.00
6. Saved for new appraisal - \$15,000.00
7. Paid to “Peterson Partners 401k” - \$160,000.00
8. Fees for “Capital Raising” - \$15,000.00
9. Loan payment to “Hawkes Motors” - \$55,703.00

Thus, it appears that several of the items paid for with the funds from Fletcher were personal obligations of Hutcheson, not GVH debts.

The loan from Fletcher was secured by a lien on the PCB Note and Deed of Trust (the same security that had previously been pledged to RSPT, and later perfected by Hutcheson’s possession of the PCB Assets) (the “Fletcher Pledge”).<sup>7</sup> While it does not appear a UCC statement was filed by Fletcher, the Independent Fiduciary believes Fletcher was provided the original PCB Assets, and still has them in his possession. (This pledge of the PCB Assets by GVH/Hutcheson, and transfer of the actual documents to Fletcher, was done notwithstanding the fact that RSPT had a previously-perfected security interest in those exact assets.)

The Fletcher Note has a principal amount of \$425,000.00<sup>8</sup> with non-default interest accruing at the rate of five percent (5%) per month. Default interest (“Past Due Interest”) would

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<sup>6</sup> See *Exhibit E*, attached hereto, for a copy of the Fletcher Note, including all amendments.

<sup>7</sup> See *Exhibit F*, attached hereto, for a copy of the Fletcher Pledge.

<sup>8</sup> This amount represents the original amount loaned to GVH, without including the penalties that were incurred when the original maturity date passed.

accrue at the rate of twenty four percent (24%) per month. The Maturity date of the Note was July 5, 2011. Thus, as of the date of this Motion, the Note is approximately 18 months past-due (adding approximately \$382,500.00 of additional interest at the non-default rate – for a total due of approximately \$807,500.00).<sup>9</sup>

The U.S. Department of Labor began an investigation of RSPT and Hutcheson, which led to this case being filed. The Independent Fiduciary has examined the documents attached hereto as Exhibits, and has explored the RSPT plan's options related to the Fletcher Note and Fletcher Pledge, and has engaged in extensive negotiations with Fletcher. Based on her examination of the documents, and the potential avenues to recover against Fletcher, the Independent Fiduciary has negotiated a solution with Fletcher that will greatly reduce the potential risk to the RSPT plan of non-recovery of the assets, and provide an avenue for potential recovery of nearly all of the funds RSPT originally loaned to GVH.

**POTENTIAL AVENUES TO AVOID FLETCHER'S LIEN**

**ON THE PCB ASSETS AND RISKS THERETO**

The potential avenues identified by the Independent Fiduciary to avoid Fletcher's lien on the PCB Assets, and the attendant risks thereto, are described in the "Disclosure Statement for RSPT Plan Participants regarding Compromise with Fletcher", attached hereto as *Exhibit G*. The discussion of recovery and risks contained therein is explicitly incorporated here.

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<sup>9</sup> Of course, the Fletcher Note is in default. With a default interest rate of 24% per month, the Fletcher Note would have accrued default interest of \$1,836,000.00 (\$102,000.00 per month for 18 months) with interest continuing to accrue at the rate of \$102,000.00 per month. Additionally, Fletcher has alleged that interest is compounded – thereby exponentially increasing the default interest amount owed.

### **PROPOSED COMPROMISE WITH FLETCHER**

The Independent Fiduciary has negotiated with Fletcher for several months regarding the terms of a proposed compromise. Those negotiations ultimately led to the compromise outlined on *Exhibit H*, attached hereto.

In general terms, the compromise is as follows:

- Fletcher will immediately (upon final approval of the agreement) turn over actual possession of the PCB Assets to the Independent Fiduciary.
- Upon receipt of the PCB Assets, the Independent Fiduciary will immediately take steps required to foreclose on the PCB Assets (recalling that all the RSPT plan now holds is a security interest in those assets).
- Once actual ownership of the PCB Assets is obtained, the Independent Fiduciary will take all necessary steps to foreclose upon and liquidate the golf course and lodge (the real property secured by the PCB Deed of Trust).
- After paying all closing costs of the sale of the golf course and lodge, Fletcher will be entitled to the first payment of funds, in the amount of \$700,000.00. RSPT will then be entitled to the next funds, up to a payment of \$4,000,000.00. Any net proceeds in excess of \$4,700,000.00 will be paid to Fletcher.
- Interest will only begin accruing on the amounts due to Fletcher beginning 18 months after the agreement is finalized.
- If the real property is not sold by the Independent Fiduciary within four (4) years of the final approval of the agreement, Fletcher shall be entitled to foreclose on his \$700,000.00 claim, plus whatever interest and attorney fees have accrued to him by that time

Based on the terms of the compromise, the Independent Fiduciary estimates a net recovery by the RSPT plan (after paying all applicable attorney fees) of between \$1,200,060.00 and \$2,933,400.00 – depending on the sale price of the real property. The Independent Fiduciary believes, in her best business judgment, that this compromise is the best possible outcome for the RSPT Plan, short of protracted and risky litigation with Fletcher.

**PROCEDURES FOR SOLICITING AND RECEIVING**

**VOTES ON PROPOSED COMPROMISE**

The Compromise is contingent upon the approval of the RSPT plan participants (i.e., the employees) who have a claim related to the PCB transaction. The Independent Fiduciary proposes that each relevant participant be mailed a copy of the Disclosure Statement (attached hereto as Exhibit G) and the Ballot (attached hereto as *Exhibit I*). The Disclosure Statement explains the compromise with Fletcher, including a discussion of why the Independent Fiduciary believes the compromise is a good resolution, and attaches a copy of the actual agreement.

Each relevant plan participant will have twenty-one (21) days from the date of mailing the Disclosure Statement and Ballot to return their ballot. The Independent Fiduciary will file a Certificate of Service showing the date that the Disclosure Statement and Ballot were mailed. All ballots will be returned to the Independent Fiduciary's contingency counsel, who will then prepare a Ballot Report, showing all ballots cast, and indicating whether approval of the compromise was received. A majority of the ballots cast will be necessary for the compromise to be approved. (Note that this will require a majority of the participants who actually vote. If a participant fails to return a ballot, their vote is not counted in calculating the majority required for approval.) Provided sufficient participants vote to approve the compromise, the Independent Fiduciary will then execute the Agreement and proceed with collection and liquidation of the assets.

**REQUEST FOR COURT APPROVAL**

By this Motion, the Independent Fiduciary requests court approval of (a) the terms of the compromise with Fletcher, (b) the form of the Disclosure Statement and Ballot, and (c) the voting procedures for obtaining plan participant's votes.

DATED this 18<sup>th</sup> day of January, 2013.

/s/ Matt Christensen

MATTHEW T. CHRISTENSEN  
Attorney for the Independent Fiduciary

CERTIFICATE OF SERVICE

I hereby certify that on this 18<sup>th</sup> day of January, 2013, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the individual(s) so noted below.

Jamila B. Minnicks	minnicks.jamila@dol.gov
Michael R. Hartman	hartman.michael@dol.gov
Michael A. Schloss	schloss.michael@dol.gov
Raymond E. Patricco	raymond.patricco@usdoj.gov
Michael J. Elia	mje@mbelaw.net
J. Graham Matherne	gmatherne@wyattfirm.com
Matthew T. Christensen	mtc@angstman.com

All others as listed on the Court's ECF Notice.

I further certify that on the 18<sup>th</sup> day of January, 2013, I served a copy of the foregoing notice on the following individuals or entities via US Mail, postage prepaid.

Matthew D. Hutcheson  
33 Pinnacle Court  
Donnelly, ID 83615

Monty W. Walker  
c/o R. Bradford Huss  
Trucker Huss, APC  
One Embarcadero Center, 12<sup>th</sup> Floor  
San Francisco, CA 94111

DATED: January 18, 2013

/s/ Matt Christensen  
Matthew T. Christensen

# EXHIBIT A



GREEN VALLEY HOLDINGS LLC  
14% APR PROMISSORY NOTE

October 10, 2010

Up to \$3,500,000 Million USD

**Section 1. General Provisions:**

Green Valley Holdings, L.L.C, an Idaho Limited Liability Company (hereinafter called "Company"), for value received, promises to pay in accordance with the terms hereof to the order of the Retirement Security Plan and Trust, a qualified retirement plan within the meaning of Internal Revenue Code section 401(a) ("Holder"), the principal sum of Three Million Five Hundred Thousand (\$3,500,000 - or other amount if less) in lawful money of the United States on January 29, 2011 (the "Maturity Date").

Company shall also pay interest on said principal on a per annum basis hereof through the earlier of (a) the Maturity Date and (b) the date on which the principal amount of this Note is prepaid or accelerated at an interest rate equal to fifteen percent (14%) per annum.

This Note is payable in whole, principal and accrued interest, on the Maturity Date. Failure to pay note in full on Maturity Date shall cause an additional annualized interest rate of 4% to accrue until such date note is repaid.

Whenever any payment to be made hereunder shall be due on a date, which is not a business day, the payment shall be made on the next succeeding business day and such extension of time shall be included in the computation of the payment of interest with respect to such payment.

Interest shall be calculated hereunder on the basis of a 360-day year for the actual number of days elapsed.

**Section 2. Place of Payment:**

The principal and interest of this Note shall be payable at Amerititle Escrow Company in McCall Idaho, (or at such other place as Holder specifies in writing).

**Section 3. Pre-Payment:**

Company may pre-pay this Note at any time in whole or in part, without payment of any premium or penalty, provided that so long as any Senior Debt is outstanding, this Note may not be prepaid in whole or in part unless expressly permitted under Senior Debt.

**Section 4. Events of Default:**

The occurrence of any of the following events shall constitute an Event of Default hereunder:

- 4.1 failure to pay any amount payable on account of principal on this Note when due;
- 4.2 failure to pay any amount payable on account of interest on this Note when due, and such failure continues for 360 days after written notice to Company of such failure; or
- 4.3 the commencement of an involuntary case or the filing of a petition against Company seeking reorganization, arrangement, adjustment or composition of or in respect of Company under the federal bankruptcy laws, as now or hereafter constituted, or under any other applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or seeking the appointment of a receiver, liquidator, custodian, trustee (or similar official) of Company for any substantial part of its property, or seeking the winding up or liquidation of its affairs (and such Involuntary case of petition is not dismissed within 90 days after the filing thereof), or the commencement by Company of a voluntary case or the institution by Company of proceedings, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, under the federal bankruptcy laws as now or hereafter constituted, or any other applicable federal or state bankruptcy or insolvency or other similar law, or the consent by Company to the appointment of or taking possession by a receiver, liquidator, trustee, custodian (or other similar official) of Company for any substantial part of its property, or the making by it of any assignment for the benefit of creditors or the admission by it in writing of its inability to pay its debts generally as they become due or the taking of any corporate action by Company of its stockholders or Board of Directors or any committee thereof in furtherance of any of the foregoing.

**Section 5. Remedies Upon Default:**

If an Event of Default occurs, Holder may at its option, by written notice to Company, declare the entire unpaid balance of principal with interest accrued thereon and all other sums due under this Note to be immediately due and payable, provided that if there shall occur an Event of Default described in Section 4.3, the entire unpaid balance of principal with interest accrued thereon and all other sums due under this Note shall be immediately due and payable without notice to Company. If the entire unpaid balance with interest accrued thereon shall, as a result of the preceding sentence, be immediately due and payable, the unpaid balance of principal shall accrue interest at the rate specified above to the date of default and thereafter at a rate which shall be two percent (4%) per annum higher than the rate specified above, and payment thereof may be enforced and recovered in whole or in part at any time by one or more of the remedies provided to Holder in this Note or under applicable law. If this Note is placed in the hands of an attorney for collection, or is collected through probate or bankruptcy court, or through other legal proceedings, Holder may also recover all costs of collection and other expenses in connection therewith together with reasonable attorney's fees and disbursements.

**Section 6. Senior Debt:**

This note is intended to be non-subordinated debt.

**Section 7. Company Waivers:**

Except as herein above expressly otherwise provided, Company waives presentment for payment, notice of protest, and protest of this Note, and agrees that its liability shall remain outstanding without regard to the liability of any other party.

The enumeration in this Note of any waivers or consents by Company shall not be deemed exclusive of any additional waivers or consents by Company that may be deemed to exist in law or equity.

**Section 8. Binding Nature of Note:**

This Note shall be binding upon Company and its successors and assigns.

**Section 9. No Waiver, Indulgences, etc.:**

All rights and remedies of Holder under this Note and any applicable law are separate and cumulative, and neither the failure nor any delay on the part of the Holder to exercise any right, remedy, power or privilege under this Note shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by Holder asserted to have granted such waiver. Any waiver or amendment to this Note may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument, and all signatures need not appear on any one counterpart. Any party hereto may execute and deliver a counterpart of any such waiver or amendment by delivering by facsimile transmission a signature page signed by such party, and such facsimile signature shall be treated in all respects as having the same effect as an original signature.

**Section 10. Severability:**

If any provision of this Note is held to be invalid or unenforceable by a court of competent jurisdiction, the other provisions of this Note shall remain in full force and effect and shall be liberally construed in favor of Holder in order to effect the provisions of this Note.

**Section 11. Notices:**

All notices required or permitted by this Note shall be in writing and shall be deemed to have been duly given (a) when personally delivered to any officer of the party to whom it is addressed, (b) on the earlier of actual receipt thereof or three (3) days following posting thereof by certified or registered mail, postage pre-paid, return receipt requested, (c) upon actual receipt thereof when sent by a recognized overnight delivery service or (d) upon actual receipt thereof when sent by telecopier with telephone communication confirming receipt and subsequently confirmed by registered, certified or overnight mail to such party. Either party may change the address to which notices are to be sent by giving notice of such change of address in conformity with the foregoing provisions.

**Section 12. No Guarantees or Third Party Liability:**

No recourse shall be had for the payment of the principal or interest of this Note, or for any premium or other claim based hereon, or otherwise in respect hereof, against any incorporator, shareholder, partner, member, employee, agent, officer or director, past, present or future of Company or any affiliate thereof, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly waived and released by Holder's acceptance of this Note.

**Section 13. Non-Registration; Investment Intent:**

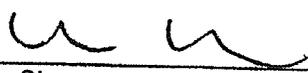
THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT") OR THE SECURITIES LAW OF ANY STATE. THIS NOTE HAS BEEN ACQUIRED BY HOLDER FOR INVESTMENT PURPOSES ONLY AND MAY NOT BE SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH NOTE UNDER THE ACT, UNLESS IN THE OPINION OF COUNSEL (WHICH OPINION SHALL BE IN FORM AND SUBSTANCE SATISFACTORY TO COMPANY AND SUCH COUNSEL SHALL BE SATISFACTORY TO COMPANY), SUCH REGISTRATION IS NOT REQUIRED UNDER SAID ACT. By acceptance of this Note, Holder represents and warrants to Company that the Holder is acquiring this Note for the Holder's investment account, and not with a view to distribution or resale.

**Section 14. WAIVER OF JURY TRIAL:**

COMPANY AND HOLDER, HAVING BEEN ADVISED BY COUNSEL, HEREBY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY OR AGAINST EITHER OF THEM DIRECTLY OR INDIRECTLY RELATING TO THIS NOTE OR ITS ISSUANCE.

IN WITNESS WHEREOF, Company has caused this Note to be duly executed on October 10, 2010.

GREEN VALLEY HOLDINGS, LLC

By: 

Larry Givens  
CEO and Founder

# EXHIBIT B

EXECUTION COPY



PLEDGE AND SECURITY AGREEMENT

This PLEDGE AND SECURITY AGREEMENT, dated as of October 10, 2010 (as amended, supplemented, amended and restated or otherwise modified from time to time, this "Security Agreement"), is made by the Retirement Security Plan and Trust ("RSPT" or "Lender") and Green Valley Holdings, LLC, the "Borrower."

WITNESSETH:

WHEREAS, pursuant to a "Promissory Note," dated as of October 10, 2010 (as amended, supplemented, amended and restated or otherwise modified from time to time, between the Borrower, Green Valley Holdings, LLC, an Idaho Limited Liability Company, and the lending parties thereto (the "Lenders"), have extended Commitments to provide debt financing to the Borrower; and

WHEREAS, as a condition precedent to the debt financing under the Promissory Note, each Grantor is required to execute and deliver this Security Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Grantor agrees, for the benefit of each Secured Party, as follows:

SECURITY INTEREST

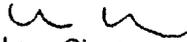
Grant of Security Interest. Larry Givens, on behalf of Green Valley Holdings, LLC pledges the assets of Green Valley Holdings, LLC in exchange for up to \$3,500,000.00 (three and one half million dollars) debt financing.

Collateral is first lien position on \$70,000,000.00 (seventy million dollars) Robert Trent Jones championship golf course and the Osprey Meadows Lodge located at Tamarack Resort, Tamarack, Idaho 83615.

Pledged this, the 10<sup>th</sup> day of October, 2010.

Accepted

By:

  
Larry Givens  
Green Valley Holdings, LLC  
Chief Executive Officer

By:

  
Matthew Hutcheson  
Retirement Security Plan and Trust  
Trustee/Named Fiduciary

# EXHIBIT C

Instrument # 373027

VALLEY COUNTY, CASCADE, IDAHO  
10-30-2012 09:56:57 No. of Pages: 22  
Recorded for : ANGSTMAN JOHNSON  
ARCHIE N. BANBURY Fee: 73.00  
Ex-Officio Recorder Deputy *Alisa Johnson*  
Index to: LIEN

**NOTICE AND CLAIM OF LIEN**

NOTICE IS HEREBY GIVEN that **Green Valley Holdings, LLC**, an Idaho limited liability company, did, on or about the 10<sup>th</sup> day of October, 2010, grant a security interest in the Promissory Note and Deed of Trust attached hereto as **Exhibits A and B**, to secure a Promissory Note for a loan of funds to Green Valley Holdings, LLC, from **Retirement Security Plan and Trust, f/k/a Pension Liquidity Plan and Trust**, in the amount of \$3,500,000.00. The Promissory Note attached hereto as Exhibit A is secured by the Deed of Trust attached hereto as Exhibit B, which encumbers the Real Property described in Exhibit B. The Deed of Trust attached hereto as Exhibit B (and subsequent pledge of that Deed of Trust to Retirement Security Plan and Trust) represents an interest in the Real Property described in Exhibit B.

The name of the current owner(s) and/or reputed owner(s) of the lands, buildings and improvements to be charged with this lien is **West Mountain Golf, LLC**, with a last known address of PO Box 670, Meridian, Idaho 83680.

Dated this 17<sup>th</sup> day of October, 2012.

Retirement Security Plan & Trust

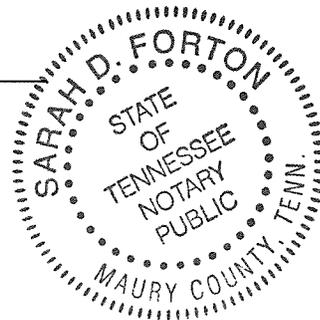
*Jeanne Bryant*  
By: Jeanne Bryant  
Title: Trustee/Independent Fiduciary

State of Tennessee )  
County of Davidson ) ss.

On this 17<sup>th</sup> day of October, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Jeanne Bryant, known or identified to me to be the Independent Fiduciary for the Retirement Security Plan & Trust, whose name is subscribed to the within instrument, and she acknowledged to me that she executed the same on its behalf.

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

*Sarah D Forton*  
Notary Public for Tennessee  
My Commission expires:  
May 20, 2013



## PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No.	Call/Coll	Account	Officer	Initials
\$3,500,000.00	08-24-2005	09-01-2010	170011639				
References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing ***** has been omitted due to text length limitations.							

Borrower: WEST MOUNTAIN GOLF, LLC Lender: NORTHWEST BUSINESS BANK  
 960 BROADWAY AVE, STE 100 1100 OLIVE WAY, SUITE 102  
 BOISE, ID 83706 SEATTLE, WA 98101  
 (206) 676-8880

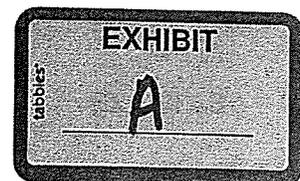
Principal Amount: \$3,500,000.00

Date of Note: August 24, 2005

**PROMISE TO PAY.** WEST MOUNTAIN GOLF, LLC ("Borrower") promises to pay to NORTHWEST BUSINESS BANK ("Lender"), or order, in lawful money of the United States of America, the principal amount of Three Million Five Hundred Thousand & 00/100 Dollars (\$3,500,000.00), together with interest on the unpaid principal balance until paid in full.

**PAYMENT.** Borrower will pay this loan in full immediately upon Lender's demand. If no demand is made, Borrower will pay this loan in one principal payment of \$3,500,000.00 plus interest on September 1, 2010. This payment due on September 1, 2010, will be for all principal and all accrued interest not yet paid. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning October 1, 2005, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

**VARIABLE INTEREST RATE.** The initial interest rate on this Note is 6.90% per annum. The interest rate is subject to change on an annual basis beginning September 1, 2006 (the "Interest Rate Change Date") with all subsequent Interest Rate Change Dates to be due on the same day of each year after that. The interest rate is based on the Federal Home Loan Bank of Seattle ("FHLBS") 365 day Short Term Advances (Fixed), rounded up to the nearest one-tenth of one-percent (0.100%) (the "Index"). The new interest rate will be the Index in effect on the Interest Rate Change Date (or on the immediately preceding day that the FHLBS publishes the Index, if the Index is not published on the Interest Rate Change Date), plus a margin of 2.500 percentage points. The Index is currently published on the FHLBS website, [www.fhlbsea.com/fhlbsea/main/rates](http://www.fhlbsea.com/fhlbsea/main/rates). If the Index is no longer published by FHLBS, the Index shall be a substantially similar index rate selected by Lender.



On the annual adjustment immediately following payoff of the 1st Independent Bank construction loan, the interest rate margin shall be reduced from 2.50 percentage points, to 2.25 percentage points, provided Loan is performing as agreed and is then in a first lien position on the commercial portions of the Member's Lodge and Spa at the Tamarack property.

**PREPAYMENT.** Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Upon prepayment of this Note, Lender is entitled to the following prepayment penalty: **AMOUNTS OF PREPAYMENTS.** This Note may be prepaid in minimum amount of ONE THOUSAND AND 00/100THS DOLLARS (\$1,000.00), or in its entirety, upon Borrower giving Lender written notice at least three (3) business days prior to the date of prepayment, provided such notice is accompanied by a prepayment premium calculated as provided below. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender.

**AMOUNT OF PREPAYMENT PREMIUM.** The prepayment premium shall be equal to one percent (1.0%) of the principal balance prepaid, if prepayment is made during months one (1) through twelve (12) of the Loan Term. There shall be no premium due for prepayment after month twelve (12) of the Loan Term. For prepayment purposes, month one of the "Loan Term" shall begin September 1, 2005.

**LATE CHARGE.** If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$15.00, whichever is greater.

**INTEREST AFTER DEFAULT.** Upon default, including failure to pay upon final maturity, Lender, at its option, may, if permitted under applicable law, increase the variable interest rate on this Note by 10.000 percentage points. The interest rate will not exceed the maximum rate permitted by applicable law.

**DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Note:

**Payment Default.** Borrower fails to make any payment when due under this Note

**Other Defaults.** Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

**Environmental Default.** Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with any loan.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Death or Insolvency.** The dissolution of Borrower (regardless of whether election to continue is made), any member withdraws from Borrower, or any other termination of Borrower's existence as a going business or the death of any member, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the Indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

**Cure Provisions.** If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured (and no event of default will have occurred) if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within ten (10) days; or (2) if the cure requires more than ten (10) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**LENDER'S RIGHTS.** Upon default, Lender may declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

**ATTORNEYS' FEES; EXPENSES.** Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

**GOVERNING LAW.** This Note will be governed by, construed and enforced in accordance with federal law and the laws of the State of Washington. This Note has been accepted by Lender in the State of Washington.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account.) This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

**\*\*\*\*\*SPECIAL NOTICE. ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

**SUCCESSOR INTERESTS.** The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

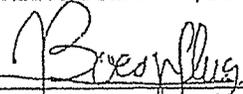
**GENERAL PROVISIONS.** Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:  
WEST MOUNTAIN GOLF, LLC

By: TAMARACK RESORT, LLC. Manager of WEST MOUNTAIN GOLF, LLC

By:   
\_\_\_\_\_  
Jean-Pierre Boespflug, CEO of Tamarack Resort, LLC

RECORDATION REQUESTED BY:  
 NORTHWEST BUSINESS BANK  
 1100 OLIVE WAY, SUITE 102  
 SEATTLE, WA 98101

**Instrument # 300330**  
 VALLEY COUNTY, CASCADE, IDAHO  
 2005-09-20 11:07:12 No. of Pages: 16  
 Recorded for : AMERITITLE  
 LELAND G. HEINRICH  
 Ex-Officio Recorder Deputy *J N* Fee: 48.00  
 Index to: MORTGAGE

WHEN RECORDED MAIL TO:  
 NORTHWEST BUSINESS BANK  
 1100 OLIVE WAY, SUITE 102  
 SEATTLE, WA 98101

SEND TAX NOTICES TO:  
 NORTHWEST BUSINESS BANK  
 1100 OLIVE WAY, SUITE 102  
 SEATTLE, WA 98101

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

**MORTGAGE**

THIS MORTGAGE dated August 24, 2006, is made and executed between WEST MOUNTAIN GOLF, LLC, whose address is 960 BROADWAY AVE, SUITE 100, BOISE, ID 83706 (referred to below as "Grantor") and NORTHWEST BUSINESS BANK, whose address is 1100 OLIVE WAY, SUITE 102, SEATTLE, WA 98101 (referred to below as "Lender").

**GRANT OF MORTGAGE.** For valuable consideration, Grantor mortgages, grants, bargains, sells and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters. (the "Real Property") located in VALLEY County, State of Idaho:

SEE ATTACHED EXHIBIT "A"

The Real Property or its address is commonly known as 2099 WEST MOUNTAIN ROAD, DONNELLY, ID 83615. The Real Property tax identification number is See Exhibit B.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Mortgage, Grantor shall pay to Lender all amounts secured by this Mortgage as they become due and shall strictly perform all of Grantor's obligations under this Mortgage.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property. The following provisions relate to the use of the Property or to other limitations on the Property.

**Duty to Maintain.** Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

**Removal of Improvements.** Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

**Lender's Right to Enter.** Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

**Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Duty to Protect.** Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

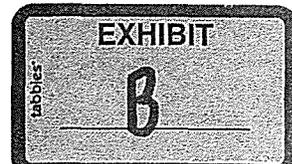
**DUE ON SALE - CONSENT BY LENDER.** Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Idaho law.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are part of this Mortgage:

**Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over or equal to the interest of Lender under this Mortgage, except for those liens specifically agreed to in writing by Lender, and except for the lien of taxes and assessments not due as further specified in the Right to Contest paragraph.

**Right to Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**Evidence of Payment.** Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.



MORTGAGE  
(Continued)

Loan No: 170011639

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**Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialman's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Mortgage:

**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgage clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption and boiler insurance as Lender may require. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of thirty (30) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

**Grantor's Report on Insurance.** Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Mortgage or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Mortgage or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Mortgage also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

**WARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Mortgage:

**Title.** Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage; and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

**Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Grantor in this Mortgage shall survive the execution and delivery of this Mortgage, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

**CONDEMNATION.** The following provisions relating to condemnation proceedings are a part of this Mortgage:

**Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

**Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the condemnation.

**IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

**Current Taxes, Fees and Charges.** Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

**Taxes.** The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Mortgage or upon all or any part of the indebtedness secured by this Mortgage; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the indebtedness secured by this type of Mortgage; (3) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

**Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

**SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage:

**MORTGAGE  
(Continued)**

Loan No: 170011639

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**Security Agreement.** This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

**Addresses.** The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Mortgage.

**FURTHER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage:

**Further Assurances.** At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or re-recorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Mortgage, and the Related Documents, and (2) the liens and security interests created by this Mortgage as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** If Grantor pays all the indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

**EVENTS OF DEFAULT.** Each of the following, at Lender's option, shall constitute an Event of Default under this Mortgage:

**Payment Default.** Grantor fails to make any payment when due under the indebtedness.

**Default on Other Payments.** Failure of Grantor within the time required by this Mortgage to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

**Environmental Default.** Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

**Other Defaults.** Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Mortgage or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Mortgage or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Defective Collateralization.** This Mortgage or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Breach of Other Agreement.** Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**Right to Cure.** If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Mortgage within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within ten (10) days; or (2) if the cure requires more than ten (10) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of an Event of Default and at any time thereafter, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

**Accelerate Indebtedness.** Lender shall have the right at its option without notice to Grantor to declare the entire indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the

MORTGAGE  
(Continued)

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power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

**Judicial Foreclosure.** Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

**Nonjudicial Sale.** If permitted by applicable law, Lender may foreclose Grantor's interest in all or in any part of the Personal Property or the Real Property by non-judicial sale.

**Deficiency Judgment.** If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

**Tenancy at Sufferance.** If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

**Other Remedies.** Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

**Sale of the Property.** To the extent permitted by applicable law, Grantor hereby waives any and all right to have the Property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

**Notice of Sale.** Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

**Election of Remedies.** Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Mortgage, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Lender following an Event of Default, or in any way to limit or restrict the rights and ability of Lender to proceed directly against Grantor and/or against any other co-maker, guarantor, surety or endorser and/or to proceed against any other collateral directly or indirectly securing the Indebtedness.

**Attorneys' Fees/Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

**NOTICES.** Any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile unless otherwise required by law, when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Mortgage. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**ASSOCIATION OF UNIT OWNERS.** The following provisions apply if the Real Property has been submitted to unit ownership law or similar law for the establishment of condominiums or cooperative ownership of the Real Property:

**Power of Attorney.** Grantor grants an irrevocable power of attorney to Lender to vote in Lender's discretion on any matter that may come before the association of unit owners. Lender shall have the right to exercise this power of attorney only after Grantor's default; however, Lender may decline to exercise this power as Lender sees fit.

**Insurance.** The insurance as required above may be carried by the association of unit owners on Grantor's behalf, and the proceeds of such insurance may be paid to the association of unit owners for the purpose of repairing or reconstructing the Property. If not so used by the association, such proceeds shall be paid to Lender.

**Default.** Grantor's failure to perform any of the obligations imposed on Grantor by the declaration submitting the Real Property to unit ownership, by the bylaws of the association of unit owners, or by any rules or regulations thereunder, shall be an event of default under this Mortgage. If Grantor's interest in the Real Property is a leasehold interest and such property has been submitted to unit ownership, any failure by Grantor to perform any of the obligations imposed on Grantor by the lease of the Real Property from its owner, any default under such lease which might result in termination of the lease as it pertains to the Real Property, or any failure of Grantor as a member of an association of unit owners to take any reasonable action within Grantor's power to prevent a default under such lease by the association of unit owners or by any member of the association shall be an Event of Default under this Mortgage.

**DUE ON ENCUMBRANCE.** An exhibit, titled "DUE ON ENCUMBRANCE," is attached to this Mortgage and by this reference is made a part of this Mortgage just as if all the provisions, terms and conditions of the Exhibit had been fully set forth in this Mortgage.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Mortgage:

**Amendments.** This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Annual Reports.** If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

**Caption Headings.** Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

**Governing Law.** With respect to procedural matters related to the perfection and enforcement of Lender's rights against the Property, this Mortgage will be governed by federal law applicable to Lender and to the extent not preempted by federal law, the laws of the State of Idaho. In all other respects, this Mortgage will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Washington without regard to its conflicts of law provisions. However, if there ever is a question about whether any provision of this Mortgage is valid or enforceable, the provision that is questioned will be governed by whichever state or federal law would find the provision to be valid and enforceable. The loan transaction that is evidenced by the Note and this Mortgage has been applied for, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of Washington.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Mortgage shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Mortgage, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be

MORTGAGE  
(Continued)

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granted or withheld in the sole discretion of Lender

**Severability.** If a court of competent jurisdiction finds any provision of this Mortgage to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Mortgage. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Mortgage shall not affect the legality, validity or enforceability of any other provision of this Mortgage.

**Merger.** There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Successors and Assigns.** Subject to any limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Mortgage.

**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Idaho as to all indebtedness secured by this Mortgage.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Mortgage. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Borrower.** The word "Borrower" means WEST MOUNTAIN GOLF, LLC and includes all co-signers and co-makers signing the Note.

**Default.** The word "Default" means the Default set forth in this Mortgage in the section titled "Default".

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Mortgage in the events of default section of this Mortgage.

**Grantor.** The word "Grantor" means WEST MOUNTAIN GOLF, LLC.

**Guaranty.** The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

**Improvements.** The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expanded or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Mortgage, together with interest on such amounts as provided in this Mortgage.

**Lender.** The word "Lender" means NORTHWEST BUSINESS BANK, its successors and assigns.

**Mortgage.** The word "Mortgage" means this Mortgage between Grantor and Lender.

**Note.** The word "Note" means the promissory note dated August 24, 2005, in the original principal amount of \$3,500,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of this Mortgage is September 1, 2010. NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Mortgage.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

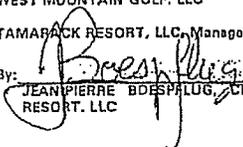
**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

WEST MOUNTAIN GOLF, LLC

TAMARACK RESORT, LLC, Manager of WEST MOUNTAIN GOLF, LLC

By:   
JEAN-PIERRE BDESPLUG, CEO of TAMARACK  
RESORT, LLC

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF IDAHO )  
 )  
COUNTY OF ADA ) SS  
 )

On this 6<sup>th</sup> day of SEPTEMBER, in the year 2009, before me JANICE E LINDSEY, a notary public in and for the State of Idaho, personally appeared JEAN-PIERRE BOESPFLUG, CEO of TAMARACK RESORT, LLC, known or identified to me (or proved to me on the oath of JEAN-PIERRE BOESPFLUG), to be one of the members or designated agents in the limited liability company of WEST MOUNTAIN GOLF, LLC, and the member or designated agent or one of the members or designated agents who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that he or she executed the same in said limited liability company name.

Jean-Pierre Boespflug Residing at BOISE ID  
Notary Public for Idaho  
My Commission Expires 1/27/2010

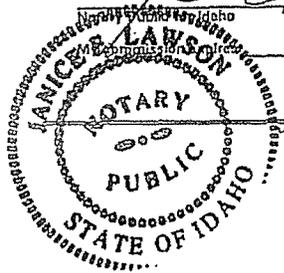




EXHIBIT A

PARCELS A THRU D:

LEGAL DESCRIPTION  
OF  
TAMARACK RESORT GOLF COURSE

Four parcels of land located in Sections 5 and 8, Township 15 North, Range 3 East, Boise Meridian, Valley County, Idaho, more particularly described as follows:

Parcel A:

COMMENCING at the north 1/4 corner of said Section 5; thence along the north line of said Section 5,

- A.) S. 89° 27' 05" E., 296.16 feet; thence, departing said section line;
- B.) S. 0° 32' 55" W., 1537.60 feet to the POINT OF BEGINNING; thence,
  - 1.) N. 86° 22' 47" E., 230.17 feet; thence,
  - 2.) N. 77° 32' 59" E., 268.40 feet; thence,
  - 3.) N. 70° 08' 24" E., 202.53 feet; thence,
  - 4.) S. 69° 26' 41" E., 143.67 feet; thence,
  - 5.) S. 89° 50' 07" E., 143.20 feet; thence,
  - 6.) S. 75° 12' 40" E., 63.95 feet; thence,
  - 7.) S. 61° 52' 53" E., 159.81 feet; thence,
  - 8.) S. 71° 58' 25" E., 161.98 feet; thence,
  - 9.) S. 35° 04' 12" E., 136.31 feet; thence,
  - 10.) S. 14° 07' 03" E., 132.00 feet; thence,

EXHIBIT A

PARCELS A THRU D:

- 11.) S.59°40'35"E., 272.48 feet; thence,
- 12.) S.25°59'04"W , 276.18 feet; thence,
- 13.) S.21°23'20"W., 502.77 feet; thence,
- 14.) S.12°45'17"W., 169.07 feet; thence,
- 15.) S.20°06'59"W., 663.00 feet; thence,
- 16.) S.82°26'28"E., 444.78 feet; thence,
- 17.) S.22°35'30"E., 392.70 feet; thence,
- 18.) S.0°05'04"E., 163.10 feet; thence,
- 19.) S.28°16'52"W., 394.85 feet; thence,
- 20.) S.42°47'08"W., 829.09 feet; thence,
- 21.) S.58°17'13"W., 291.47 feet; thence,
- 22.) S.26°21'09"E., 316.06 feet; thence,
- 23.) S.26°15'45"W., 122.10 feet to a point on the south line of said Section 5;  
thence, along said section line,
- 24.) S.89°56'25"W., 585.80 feet to a point on the boundary of Tamarack Resort  
Planned Unit Development Phase 1; thence, along said boundary through the  
following courses:
- 25.) N.4°01'06"E., 138.16 feet; thence,
- 26.) N.16°10'36"E., 140.67 feet; thence,
- 27.) N.2°48'29"E., 46.17 feet; thence,
- 28.) N.24°29'12"W., 208.21 feet; thence,

## EXHIBIT A

## PARCELS A THRU D:

- 29.) N.2°32'19"E., 47.12 feet; thence,
- 30.) N.28°04'26"E., 19.54 feet; thence,
- 31.) N.39°02'59"E., 116.48 feet; thence,
- 32.) N.43°20'51"E., 730.13 feet; thence,
- 33.) N.40°01'59"W., 200.93 feet; thence,
- 34.) S.87°54'29"W., 138.39 feet; thence,
- 35.) S.70°18'13"W., 313.36 feet; thence,
- 36.) S.78°11'10"W., 80.86 feet; thence,
- 37.) N.73°02'13"W., 86.12 feet; thence
- 38.) N.49°16'48"W., 176.90 feet; thence,
- 39.) N.48°31'25"W., 250.98 feet; thence,
- 40.) S.43°58'05"W., 125.46 feet to a point on a non-tangent curve; thence,
- 41.) Northwesterly along said curve to the left having a radius of 205.00 feet, an arc length of 62.63 feet, through a central angle of 17°30'16", and a chord bearing and distance of N.42°44'47"W., 62.39 feet; thence, tangent from said curve,
- 42.) N.51°29'55"W., 245.10 feet to the beginning of a tangent curve; thence,
- 43.) Northwesterly along said curve to the left having a radius of 825.00 feet, an arc length of 128.61 feet, through a central angle of 8°55'56", and a chord bearing and distance of N.55°57'53"W., 128.49 feet; thence,
- 44.) N.62°52'29"E., 170.63 feet; thence,
- 45.) N.06°08'21"W., 363.79 feet; thence,

EXHIBIT A

PARCELS A THRU D:

- 46.) N.69°30'18"W., 420.12 feet; thence,
- 47.) N.43°19'35"W., 422.80 feet; thence,
- 48.) N.13°49'07"W., 432.15 feet; thence,
- 49.) N.20°18'50"W., 244.95 feet; thence,
- 50.) N.32°12'25"E., 180.50 feet; thence,
- 51.) N.53°15'28"E., 176.77 feet; thence
- 52.) N.69°09'56"E., 378.53 feet; thence,
- 53.) N.16°20'42"E., 161.54 feet; thence
- 54.) N.59°21'40"E., 60.00 feet; thence
- 55.) S.86°01'23"E., 170.22 feet; thence
- 56.) N.56°08'22"E., 98.34 feet; thence,
- 57.) N.75°10'48"E., 573.57 feet to the POINT OF BEGINNING.

Parcel B:

COMMENCING at the north 1/4 corner of said Section 8; thence, along the west line of the northwest 1/4 of the northeast 1/4 of said Section 8,

- A.) S.0°07'41"W., 1325.76 feet to the C-N 1/16 corner of said Section 8; thence,
- B.) S.89°53'46"E., 240.24 feet to the POINT OF BEGINNING; thence,
- 1.) S.89°53'46"E., 1162.17 feet; thence,
- 2.) S.15°32'21"E., 288.21 feet; thence,

EXHIBIT A

PARCELS A THRU D:

- 3.) S.45°59'25"E., 187.80 feet; thence,
- 4.) S.0°00'00"E., 43.69 feet; thence,
- 5.) S.51°07'48"W., 302.18 feet; thence,
- 6.) S.20°00'03"W., 324.47 feet; thence,
- 7.) S.36°46'50"W., 255.08 feet; thence,
- 8.) S.9°22'20"W., 253.95 feet; thence,
- 9.) S.20°15'09"W., 213.84 feet; thence,
- 10.) N.57°05'33"W., 586.31 feet; thence,
- 11.) N.83°17'17"W., 328.92 feet; thence,
- 12.) S.75°08'04"W., 252.38 feet; thence,
- 13.) S.78°09'30"W., 191.69 feet; thence,
- 14.) N.36°21'59"W., 141.59 feet; thence,
- 15.) N.26°23'49"E., 152.89 feet; thence,
- 16.) N.68°16'04"W., 378.45 feet; thence,
- 17.) N.11°43'53"W., 84.70 feet; thence,
- 18.) N.82°23'28"E., 162.44 feet; thence,
- 19.) S.87°47'57"E., 172.45 feet; thence,
- 20.) N.69°50'16"E., 135.18 feet; thence,
- 21.) N.82°23'28"E., 217.18 feet; thence,

EXHIBIT A

PARCELS A THRU D:

- 22.) N. 72° 38' 14" E., 221.45 feet; thence,
- 23.) N. 12° 20' 03" E., 279.94 feet; thence,
- 24.) N. 6° 26' 52" W., 377.77 feet; thence,
- 25.) N. 22° 03' 29" W., 77.55 feet to the POINT OF BEGINNING.

Parcel C:

All that certain lot, piece or parcel of land, situate in Valley County, Idaho, and shown as Lot 11, Block 19, of Tamarack Resort Planned Unit Development, Phase 1 Village, a plat which is recorded in the office of the Recorder of Valley County, Idaho.

Parcel D:

All that certain lot, piece or parcel of land, situate in Valley County, Idaho, and shown as Lot 12, Block 19, of Tamarack Resort Planned Unit Development, Phase 1 Village, a plat which is recorded in the office of the Recorder of Valley County, Idaho.

## EXHIBIT A

## PARCELS A THRU D:

Together with an easement for ingress and egress, a 30 foot wide strip of land, 15 feet either side of the following centerline.

COMMENCING at the north 1/4 corner of said Section 5; thence, along the north line of said Section 5,

- A.) S.89°27'05"E., 842.30 feet; thence, departing said section line,
  - B.) S.19°38'29"W., 371.11 feet; thence,
  - C.) S.71°02'32"E., 54.96 feet to the POINT OF BEGINNING; thence,
- 1.) Southwesterly along a curve to the left with a radius of 80.00 feet, an arc length of 68.91 feet, through a central angle of 48°50'21", and a chord bearing and distance of S.0°23'51"W., 66.15 feet; thence, tangent from said curve,
  - 2.) S.24°01'19"E., 54.34 feet to the beginning of a tangent curve; thence,
  - 3.) Southeasterly along said curve to the left with a radius of 84.00 feet, an arc length of 31.84 feet, through a central angle of 21°43'14", and a chord bearing and distance of S.34°52'56"E., 31.65 feet; thence,
  - 4.) Southwesterly along said curve to the right with a radius of 130.00 feet, an arc length of 211.53 feet, through a central angle of 93°13'42", and a chord bearing and distance of S.0°52'18"W., 188.95 feet; thence, tangent from said curve,
  - 5.) S.47°29'09"W., 163.59 feet to the beginning of a tangent curve; thence,
  - 6.) Southwesterly along said curve to the left with a radius of 350.00 feet, an arc length of 183.81 feet, through a central angle of 30°05'23", and a chord bearing and distance of S.32°26'28"W., 181.70 feet to the POINT OF TERMINATION.

EXHIBIT A

PARCEL F:

Condominium Units L1-01, L1-02, L1-04, L1-06, L1-07, L1-08, P1-40, P1-41, P1-44, P2-01, and P2-04, Tamarack Resort Members Lodge Condominium, as shown on the condominium plat for Tamarack Resort Members Lodge Condominium, appearing in the records of Valley County, Idaho as Instrument No. 291359, and as defined and described in that Condominium Declaration for Tamarack Resort Members Lodge Condominium, recorded in the records of Valley County, Idaho as Instrument No. 291363.

## EXHIBIT B - TAXES 2004

PARCELS A AND B:  
(INCLUDES MORE PROPERTY.)

<u>Tax Parcel No.</u>	<u>Amount</u>	
RP 15N 03E 050 155A	\$ 253.96	First half paid / Second half due June 20, 2005.
RP 15N 03E 051 955A	\$ 8,217.12	First half paid / Second half due June 20, 2005.
RP 15N 03E 054 725A	\$ 305.46	First half paid / Second half due June 20, 2005.
RP 15N 03E 081 205A	\$ 662.84	First half paid / Second half due June 20, 2005.
RP 000 250 000 020A	\$ 380.74	First half paid / Second half due June 20, 2005.
RP 000 250 000 030A	\$ 356.70	First half paid / Second half due June 20, 2005.
RP 000 250 000 040A	\$ 331.26	First half paid / Second half due June 20, 2005.
RP 000 250 000 050A	\$ 492.74	First half paid / Second half due June 20, 2005.
RP 000 250 000 060A	\$ 225.48	First half paid / Second half due June 20, 2005.
RP 000 250 000 070A	\$ 238.28	Paid in full
RP 000 250 000 080A	\$ 386.94	First half paid / Second half due June 20, 2005.
RP 000 250 000 090A	\$ 314.32	First half paid / Second half due June 20, 2005.
RP 000 250 000 220A	\$ 275.72	Paid in full
RP 000 250 000 230A	\$ 353.96	Paid in full
RP 000 250 000 270A	\$ 297.82	First half paid / Second half due June 20, 2005.
RP 000 250 000 280A	\$ 297.52	First half paid / Second half due June 20, 2005.
RP 000 250 000 290A	\$ 291.42	First half paid / Second half due June 20, 2005.
RP 000 250 000 300A	\$ 290.32	First half paid / Second half due June 20, 2005.
RP 000 250 000 310A	\$ 264.36	First half paid / Second half due June 20, 2005.
RP 000 250 000 320A	\$ 300.58	First half paid / Second half due June 20, 2005.
RP 000 250 000 330A	\$ 307.78	First half paid / Second half due June 20, 2005.
RP 000 250 000 340A	\$ 218.96	First half paid / Second half due June 20, 2005.

PARCELS C AND D AND F:  
(INCLUDES MORE PROPERTY.)

PP 004 920 190 000A	\$ 905.84	Paid in full
RP 004 920 190 000A	\$ 6,132.62	Paid in full

# EXHIBIT D

## PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No.	Call/Coll	Account	Officer	Initials
\$3,500,000.00	08-24-2005	09-01-2010	170011639				
References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing ***** has been omitted due to text length limitations.							

Borrower: WEST MOUNTAIN GOLF, LLC Lender: NORTHWEST BUSINESS BANK  
 960 BROADWAY AVE, STE 100 1100 OLIVE WAY, SUITE 102  
 BOISE, ID 83706 SEATTLE, WA 98101  
 (206) 676-8880

Principal Amount: \$3,500,000.00

Date of Note: August 24, 2005

**PROMISE TO PAY.** WEST MOUNTAIN GOLF, LLC ("Borrower") promises to pay to NORTHWEST BUSINESS BANK ("Lender"), or order, in lawful money of the United States of America, the principal amount of Three Million Five Hundred Thousand & 00/100 Dollars (\$3,500,000.00), together with interest on the unpaid principal balance until paid in full.

**PAYMENT.** Borrower will pay this loan in full immediately upon Lender's demand. If no demand is made, Borrower will pay this loan in one principal payment of \$3,500,000.00 plus interest on September 1, 2010. This payment due on September 1, 2010, will be for all principal and all accrued interest not yet paid. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning October 1, 2005, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

**VARIABLE INTEREST RATE.** The initial interest rate on this Note is 6.90% per annum. The interest rate is subject to change on an annual basis beginning September 1, 2006 (the "Interest Rate Change Date") with all subsequent Interest Rate Change Dates to be due on the same day of each year after that. The interest rate is based on the Federal Home Loan Bank of Seattle ("FHLBS") 365 day Short Term Advances (Fixed), rounded up to the nearest one-tenth of one-percent (0.100%) (the "Index"). The new interest rate will be the Index in effect on the Interest Rate Change Date (or on the immediately preceding day that the FHLBS publishes the Index, if the Index is not published on the Interest Rate Change Date), plus a margin of 2.500 percentage points. The Index is currently published on the FHLBS website, [www.fhlbsea.com/fhlbsea/main/rates](http://www.fhlbsea.com/fhlbsea/main/rates). If the Index is no longer published by FHLBS, the Index shall be a substantially similar index rate selected by Lender.



On the annual adjustment immediately following payoff of the 1st Independent Bank construction loan, the interest rate margin shall be reduced from 2.50 percentage points, to 2.25 percentage points, provided Loan is performing as agreed and is then in a first lien position on the commercial portions of the Member's Lodge and Spa at the Tamarack property.

**PREPAYMENT.** Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Upon prepayment of this Note, Lender is entitled to the following prepayment penalty: **AMOUNTS OF PREPAYMENTS.** This Note may be prepaid in minimum amount of ONE THOUSAND AND 00/100THS DOLLARS (\$1,000.00), or in its entirety, upon Borrower giving Lender written notice at least three (3) business days prior to the date of prepayment, provided such notice is accompanied by a prepayment premium calculated as provided below. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender.

**AMOUNT OF PREPAYMENT PREMIUM.** The prepayment premium shall be equal to one percent (1.0%) of the principal balance prepaid, if prepayment is made during months one (1) through twelve (12) of the Loan Term. There shall be no premium due for prepayment after month twelve (12) of the Loan Term. For prepayment purposes, month one of the "Loan Term" shall begin September 1, 2005.

**LATE CHARGE.** If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$15.00, whichever is greater.

**INTEREST AFTER DEFAULT.** Upon default, including failure to pay upon final maturity, Lender, at its option, may, if permitted under applicable law, increase the variable interest rate on this Note by 10.000 percentage points. The interest rate will not exceed the maximum rate permitted by applicable law.

**DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Note:

**Payment Default.** Borrower fails to make any payment when due under this Note

**Other Defaults.** Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

**Environmental Default.** Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with any loan.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Death or Insolvency.** The dissolution of Borrower (regardless of whether election to continue is made), any member withdraws from Borrower, or any other termination of Borrower's existence as a going business or the death of any member, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the Indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

**Cure Provisions.** If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured (and no event of default will have occurred) if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within ten (10) days; or (2) if the cure requires more than ten (10) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**LENDER'S RIGHTS.** Upon default, Lender may declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

**ATTORNEYS' FEES; EXPENSES.** Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

**GOVERNING LAW.** This Note will be governed by, construed and enforced in accordance with federal law and the laws of the State of Washington. This Note has been accepted by Lender in the State of Washington.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account.) This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

**\*\*\*\*\*SPECIAL NOTICE. ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

**SUCCESSOR INTERESTS.** The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

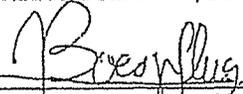
**GENERAL PROVISIONS.** Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:  
WEST MOUNTAIN GOLF, LLC

By: TAMARACK RESORT, LLC. Manager of WEST MOUNTAIN GOLF, LLC

By:   
\_\_\_\_\_  
Jean-Pierre Boespflug, CEO of Tamarack Resort, LLC

RECORDATION REQUESTED BY:  
 NORTHWEST BUSINESS BANK  
 1100 OLIVE WAY, SUITE 102  
 SEATTLE, WA 98101

**Instrument # 300330**  
 VALLEY COUNTY, CASCADE, IDAHO  
 2005-09-20 11:07:12 No. of Pages: 16  
 Recorded for : AMERITITLE  
 LELAND G. HEINRICH  
 Ex-Officio Recorder Deputy *J N* Fee: 48.00  
 Index to: MORTGAGE

WHEN RECORDED MAIL TO:  
 NORTHWEST BUSINESS BANK  
 1100 OLIVE WAY, SUITE 102  
 SEATTLE, WA 98101

SEND TAX NOTICES TO:  
 NORTHWEST BUSINESS BANK  
 1100 OLIVE WAY, SUITE 102  
 SEATTLE, WA 98101

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

**MORTGAGE**

THIS MORTGAGE dated August 24, 2006, is made and executed between WEST MOUNTAIN GOLF, LLC. whose address is 960 BROADWAY AVE, SUITE 100, BOISE, ID 83706 (referred to below as "Grantor") and NORTHWEST BUSINESS BANK, whose address is 1100 OLIVE WAY, SUITE 102, SEATTLE, WA 98101 (referred to below as "Lender").

**GRANT OF MORTGAGE.** For valuable consideration, Grantor mortgages, grants, bargains, sells and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters. (the "Real Property") located in VALLEY County, State of Idaho:

SEE ATTACHED EXHIBIT "A"

The Real Property or its address is commonly known as 2099 WEST MOUNTAIN ROAD, DONNELLY, ID 83615. The Real Property tax identification number is See Exhibit B.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Mortgage, Grantor shall pay to Lender all amounts secured by this Mortgage as they become due and shall strictly perform all of Grantor's obligations under this Mortgage.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property. The following provisions relate to the use of the Property or to other limitations on the Property.

**Duty to Maintain.** Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

**Removal of Improvements.** Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

**Lender's Right to Enter.** Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

**Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Duty to Protect.** Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

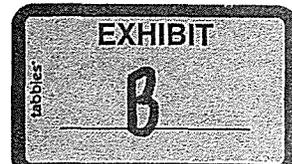
**DUE ON SALE - CONSENT BY LENDER.** Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Idaho law.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are part of this Mortgage:

**Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over or equal to the interest of Lender under this Mortgage, except for those liens specifically agreed to in writing by Lender, and except for the lien of taxes and assessments not due as further specified in the Right to Contest paragraph.

**Right to Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**Evidence of Payment.** Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.



Loan No: 170011639

**MORTGAGE**  
(Continued)

Page 2

**Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialman's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Mortgage:

**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgage clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption and boiler insurance as Lender may require. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of thirty (30) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

**Grantor's Report on Insurance.** Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Mortgage or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Mortgage or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Mortgage also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

**WARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Mortgage:

**Title.** Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage; and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

**Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Grantor in this Mortgage shall survive the execution and delivery of this Mortgage, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

**CONDEMNATION.** The following provisions relating to condemnation proceedings are a part of this Mortgage:

**Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

**Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the condemnation.

**IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

**Current Taxes, Fees and Charges.** Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

**Taxes.** The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Mortgage or upon all or any part of the indebtedness secured by this Mortgage; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the indebtedness secured by this type of Mortgage; (3) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

**Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

**SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage:

**MORTGAGE  
(Continued)**

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**Security Agreement.** This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

**Addresses.** The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Mortgage.

**FURTHER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage:

**Further Assurances.** At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or re-recorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Mortgage, and the Related Documents, and (2) the liens and security interests created by this Mortgage as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** If Grantor pays all the indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

**EVENTS OF DEFAULT.** Each of the following, at Lender's option, shall constitute an Event of Default under this Mortgage:

**Payment Default.** Grantor fails to make any payment when due under the indebtedness.

**Default on Other Payments.** Failure of Grantor within the time required by this Mortgage to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

**Environmental Default.** Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

**Other Defaults.** Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Mortgage or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Mortgage or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Defective Collateralization.** This Mortgage or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Breach of Other Agreement.** Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**Right to Cure.** If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Mortgage within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within ten (10) days; or (2) if the cure requires more than ten (10) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of an Event of Default and at any time thereafter, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

**Accelerate Indebtedness.** Lender shall have the right at its option without notice to Grantor to declare the entire indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the

MORTGAGE  
(Continued)

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power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

**Judicial Foreclosure.** Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

**Nonjudicial Sale.** If permitted by applicable law, Lender may foreclose Grantor's interest in all or in any part of the Personal Property or the Real Property by non-judicial sale.

**Deficiency Judgment.** If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

**Tenancy at Sufferance.** If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

**Other Remedies.** Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

**Sale of the Property.** To the extent permitted by applicable law, Grantor hereby waives any and all right to have the Property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

**Notice of Sale.** Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

**Election of Remedies.** Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Mortgage, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Lender following an Event of Default, or in any way to limit or restrict the rights and ability of Lender to proceed directly against Grantor and/or against any other co-maker, guarantor, surety or endorser and/or to proceed against any other collateral directly or indirectly securing the Indebtedness.

**Attorneys' Fees/Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

**NOTICES.** Any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile unless otherwise required by law, when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Mortgage. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**ASSOCIATION OF UNIT OWNERS.** The following provisions apply if the Real Property has been submitted to unit ownership law or similar law for the establishment of condominiums or cooperative ownership of the Real Property:

**Power of Attorney.** Grantor grants an irrevocable power of attorney to Lender to vote in Lender's discretion on any matter that may come before the association of unit owners. Lender shall have the right to exercise this power of attorney only after Grantor's default; however, Lender may decline to exercise this power as Lender sees fit.

**Insurance.** The insurance as required above may be carried by the association of unit owners on Grantor's behalf, and the proceeds of such insurance may be paid to the association of unit owners for the purpose of repairing or reconstructing the Property. If not so used by the association, such proceeds shall be paid to Lender.

**Default.** Grantor's failure to perform any of the obligations imposed on Grantor by the declaration submitting the Real Property to unit ownership, by the bylaws of the association of unit owners, or by any rules or regulations thereunder, shall be an event of default under this Mortgage. If Grantor's interest in the Real Property is a leasehold interest and such property has been submitted to unit ownership, any failure by Grantor to perform any of the obligations imposed on Grantor by the lease of the Real Property from its owner, any default under such lease which might result in termination of the lease as it pertains to the Real Property, or any failure of Grantor as a member of an association of unit owners to take any reasonable action within Grantor's power to prevent a default under such lease by the association of unit owners or by any member of the association shall be an Event of Default under this Mortgage.

**DUE ON ENCUMBRANCE.** An exhibit, titled "DUE ON ENCUMBRANCE," is attached to this Mortgage and by this reference is made a part of this Mortgage just as if all the provisions, terms and conditions of the Exhibit had been fully set forth in this Mortgage.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Mortgage:

**Amendments.** This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Annual Reports.** If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

**Caption Headings.** Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

**Governing Law.** With respect to procedural matters related to the perfection and enforcement of Lender's rights against the Property, this Mortgage will be governed by federal law applicable to Lender and to the extent not preempted by federal law, the laws of the State of Idaho. In all other respects, this Mortgage will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Washington without regard to its conflicts of law provisions. However, if there ever is a question about whether any provision of this Mortgage is valid or enforceable, the provision that is questioned will be governed by whichever state or federal law would find the provision to be valid and enforceable. The loan transaction that is evidenced by the Note and this Mortgage has been applied for, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of Washington.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Mortgage shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Mortgage, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be

MORTGAGE  
(Continued)

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granted or withheld in the sole discretion of Lender

**Severability.** If a court of competent jurisdiction finds any provision of this Mortgage to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Mortgage. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Mortgage shall not affect the legality, validity or enforceability of any other provision of this Mortgage.

**Merger.** There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Successors and Assigns.** Subject to any limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Mortgage.

**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Idaho as to all indebtedness secured by this Mortgage.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Mortgage. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Borrower.** The word "Borrower" means WEST MOUNTAIN GOLF, LLC and includes all co-signers and co-makers signing the Note.

**Default.** The word "Default" means the Default set forth in this Mortgage in the section titled "Default".

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Mortgage in the events of default section of this Mortgage.

**Grantor.** The word "Grantor" means WEST MOUNTAIN GOLF, LLC

**Guaranty.** The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

**Improvements.** The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expanded or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Mortgage, together with interest on such amounts as provided in this Mortgage.

**Lender.** The word "Lender" means NORTHWEST BUSINESS BANK, its successors and assigns.

**Mortgage.** The word "Mortgage" means this Mortgage between Grantor and Lender.

**Note.** The word "Note" means the promissory note dated August 24, 2005, in the original principal amount of \$3,500,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of this Mortgage is September 1, 2010. NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Mortgage.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

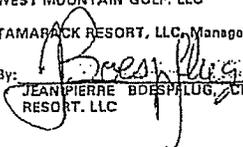
**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

WEST MOUNTAIN GOLF, LLC

TAMARACK RESORT, LLC, Manager of WEST MOUNTAIN GOLF, LLC

By:  JEAN-PIERRE BDESPLUG, CEO of TAMARACK RESORT, LLC

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF IDAHO )  
 )  
COUNTY OF ADA ) SS  
 )

On this 6<sup>th</sup> day of SEPTEMBER, in the year 2009, before me JANICE E LINDSEY, a notary public in and for the State of Idaho, personally appeared JEAN-PIERRE BOESPFLUG, CEO of TAMARACK RESORT, LLC, known or identified to me (or proved to me on the oath of JEAN-PIERRE BOESPFLUG), to be one of the members or designated agents in the limited liability company of WEST MOUNTAIN GOLF, LLC, and the member or designated agent or one of the members or designated agents who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that he or she executed the same in said limited liability company name.

Jean-Pierre Boespflug Residing at BOISE ID

Notary Public for Idaho  
My Commission Expires 1/27/2010

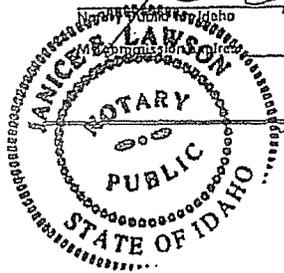




EXHIBIT A

PARCELS A THRU D:

LEGAL DESCRIPTION  
OF  
TAMARACK RESORT GOLF COURSE

Four parcels of land located in Sections 5 and 8, Township 15 North, Range 3 East, Boise Meridian, Valley County, Idaho, more particularly described as follows:

Parcel A:

COMMENCING at the north 1/4 corner of said Section 5; thence along the north line of said Section 5,

- A.) S. 89° 27' 05" E., 296.16 feet; thence, departing said section line;
- B.) S. 0° 32' 55" W., 1537.60 feet to the POINT OF BEGINNING; thence,
  - 1.) N. 86° 22' 47" E., 230.17 feet; thence,
  - 2.) N. 77° 32' 59" E., 268.40 feet; thence,
  - 3.) N. 70° 08' 24" E., 202.53 feet; thence,
  - 4.) S. 69° 26' 41" E., 143.67 feet; thence,
  - 5.) S. 89° 50' 07" E., 143.20 feet; thence,
  - 6.) S. 75° 12' 40" E., 63.95 feet; thence,
  - 7.) S. 61° 52' 53" E., 159.81 feet; thence,
  - 8.) S. 71° 58' 25" E., 161.98 feet; thence,
  - 9.) S. 35° 04' 12" E., 136.31 feet; thence,
  - 10.) S. 14° 07' 03" E., 132.00 feet; thence,

EXHIBIT A

PARCELS A THRU D:

- 11.) S.59°40'35"E., 272.48 feet; thence,
- 12.) S.25°59'04"W , 276.18 feet; thence,
- 13.) S.21°23'20"W., 502.77 feet; thence,
- 14.) S.12°45'17"W., 169.07 feet; thence,
- 15.) S.20°06'59"W., 663.00 feet; thence,
- 16.) S.82°26'28"E., 444.78 feet; thence,
- 17.) S.22°35'30"E., 392.70 feet; thence,
- 18.) S.0°05'04"E., 163.10 feet; thence,
- 19.) S.28°16'52"W., 394.85 feet; thence,
- 20.) S.42°47'08"W., 829.09 feet; thence,
- 21.) S.58°17'13"W., 291.47 feet; thence,
- 22.) S.26°21'09"E., 316.06 feet; thence,
- 23.) S.26°15'45"W., 122.10 feet to a point on the south line of said Section 5;  
thence, along said section line,
- 24.) S.89°56'25"W., 585.80 feet to a point on the boundary of Tamarack Resort  
Planned Unit Development Phase 1; thence, along said boundary through the  
following courses:
- 25.) N.4°01'06"E., 138.16 feet; thence,
- 26.) N.16°10'36"E., 140.67 feet; thence,
- 27.) N.2°48'29"E., 46.17 feet; thence,
- 28.) N.24°29'12"W., 208.21 feet; thence,

## EXHIBIT A

## PARCELS A THRU D:

- 29.) N.2°32'19"E., 47.12 feet; thence,
- 30.) N.28°04'26"E., 19.54 feet; thence,
- 31.) N.39°02'59"E., 116.48 feet; thence,
- 32.) N.43°20'51"E., 730.13 feet; thence,
- 33.) N.40°01'59"W., 200.93 feet; thence,
- 34.) S.87°54'29"W., 138.39 feet; thence,
- 35.) S.70°18'13"W., 313.36 feet; thence,
- 36.) S.78°11'10"W., 80.86 feet; thence,
- 37.) N.73°02'13"W., 86.12 feet; thence
- 38.) N.49°16'48"W., 176.90 feet; thence,
- 39.) N.48°31'25"W., 250.98 feet; thence,
- 40.) S.43°58'05"W., 125.46 feet to a point on a non-tangent curve; thence,
- 41.) Northwesterly along said curve to the left having a radius of 205.00 feet, an arc length of 62.63 feet, through a central angle of 17°30'16", and a chord bearing and distance of N.42°44'47"W., 62.39 feet; thence, tangent from said curve,
- 42.) N.51°29'55"W., 245.10 feet to the beginning of a tangent curve; thence,
- 43.) Northwesterly along said curve to the left having a radius of 825.00 feet, an arc length of 128.61 feet, through a central angle of 8°55'56", and a chord bearing and distance of N.55°57'53"W., 128.49 feet; thence,
- 44.) N.62°52'29"E., 170.63 feet; thence,
- 45.) N.06°08'21"W., 363.79 feet; thence,

EXHIBIT A

PARCELS A THRU D:

- 46.) N.69°30'18"W., 420.12 feet; thence,
- 47.) N.43°19'35"W., 422.80 feet; thence,
- 48.) N.13°49'07"W., 432.15 feet; thence,
- 49.) N.20°18'50"W., 244.95 feet; thence,
- 50.) N.32°12'25"E., 180.50 feet; thence,
- 51.) N.53°15'28"E., 176.77 feet; thence
- 52.) N.69°09'56"E., 378.53 feet; thence,
- 53.) N.16°20'42"E., 161.54 feet; thence
- 54.) N.59°21'40"E., 60.00 feet; thence
- 55.) S.86°01'23"E., 170.22 feet; thence
- 56.) N.56°08'22"E., 98.34 feet; thence,
- 57.) N.75°10'48"E., 573.57 feet to the POINT OF BEGINNING.

Parcel B:

COMMENCING at the north 1/4 corner of said Section 8; thence, along the west line of the northwest 1/4 of the northeast 1/4 of said Section 8,

- A.) S.0°07'41"W., 1325.76 feet to the C-N 1/16 corner of said Section 8; thence,
- B.) S.89°53'46"E., 240.24 feet to the POINT OF BEGINNING; thence,
- 1.) S.89°53'46"E., 1162.17 feet; thence,
- 2.) S.15°32'21"E., 288.21 feet; thence,

## EXHIBIT A

## PARCELS A THRU D:

- 3.) S.45°59'25"E., 187.80 feet; thence,
- 4.) S.0°00'00"E., 43.69 feet; thence,
- 5.) S.51°07'48"W., 302.18 feet; thence,
- 6.) S.20°00'03"W., 324.47 feet; thence,
- 7.) S.36°46'50"W., 255.08 feet; thence,
- 8.) S.9°22'20"W., 253.95 feet; thence,
- 9.) S.20°15'09"W., 213.84 feet; thence,
- 10.) N.57°05'33"W., 586.31 feet; thence,
- 11.) N.83°17'17"W., 328.92 feet; thence,
- 12.) S.75°08'04"W., 252.38 feet; thence,
- 13.) S.78°09'30"W., 191.69 feet; thence,
- 14.) N.36°21'59"W., 141.59 feet; thence,
- 15.) N.26°23'49"E., 152.89 feet; thence,
- 16.) N.68°16'04"W., 378.45 feet; thence,
- 17.) N.11°43'53"W., 84.70 feet; thence,
- 18.) N.82°23'28"E., 162.44 feet; thence,
- 19.) S.87°47'57"E., 172.45 feet; thence,
- 20.) N.69°50'16"E., 135.18 feet; thence,
- 21.) N.82°23'28"E., 217.18 feet; thence,

EXHIBIT A

PARCELS A THRU D:

- 22.) N. 72° 38' 14" E., 221.45 feet; thence,
- 23.) N. 12° 20' 03" E., 279.94 feet; thence,
- 24.) N. 6° 26' 52" W., 377.77 feet; thence,
- 25.) N. 22° 03' 29" W., 77.55 feet to the POINT OF BEGINNING.

Parcel C:

All that certain lot, piece or parcel of land, situate in Valley County, Idaho, and shown as Lot 11, Block 19, of Tamarack Resort Planned Unit Development, Phase 1 Village, a plat which is recorded in the office of the Recorder of Valley County, Idaho.

Parcel D:

All that certain lot, piece or parcel of land, situate in Valley County, Idaho, and shown as Lot 12, Block 19, of Tamarack Resort Planned Unit Development, Phase 1 Village, a plat which is recorded in the office of the Recorder of Valley County, Idaho.

## EXHIBIT A

## PARCELS A THRU D:

Together with an easement for ingress and egress, a 30 foot wide strip of land, 15 feet either side of the following centerline.

COMMENCING at the north 1/4 corner of said Section 5; thence, along the north line of said Section 5,

- A.) S.89°27'05"E., 842.30 feet; thence, departing said section line,
  - B.) S.19°38'29"W., 371.11 feet; thence,
  - C.) S.71°02'32"E., 54.96 feet to the POINT OF BEGINNING; thence,
- 1.) Southwesterly along a curve to the left with a radius of 80.00 feet, an arc length of 68.91 feet, through a central angle of 48°50'21", and a chord bearing and distance of S.0°23'51"W., 66.15 feet; thence, tangent from said curve,
  - 2.) S.24°01'19"E., 54.34 feet to the beginning of a tangent curve; thence,
  - 3.) Southeasterly along said curve to the left with a radius of 84.00 feet, an arc length of 31.84 feet, through a central angle of 21°43'14", and a chord bearing and distance of S.34°52'56"E., 31.65 feet; thence,
  - 4.) Southwesterly along said curve to the right with a radius of 130.00 feet, an arc length of 211.53 feet, through a central angle of 93°13'42", and a chord bearing and distance of S.0°52'18"W., 188.95 feet; thence, tangent from said curve,
  - 5.) S.47°29'09"W., 163.59 feet to the beginning of a tangent curve; thence,
  - 6.) Southwesterly along said curve to the left with a radius of 350.00 feet, an arc length of 183.81 feet, through a central angle of 30°05'23", and a chord bearing and distance of S.32°26'28"W., 181.70 feet to the POINT OF TERMINATION.

EXHIBIT A

PARCEL F:

Condominium Units L1-01, L1-02, L1-04, L1-06, L1-07, L1-08, P1-40, P1-41, P1-44, P2-01, and P2-04, Tamarack Resort Members Lodge Condominium, as shown on the condominium plat for Tamarack Resort Members Lodge Condominium, appearing in the records of Valley County, Idaho as Instrument No. 291359, and as defined and described in that Condominium Declaration for Tamarack Resort Members Lodge Condominium, recorded in the records of Valley County, Idaho as Instrument No. 291363.

## EXHIBIT B - TAXES 2004

PARCELS A AND B:  
(INCLUDES MORE PROPERTY.)

<u>Tax Parcel No.</u>	<u>Amount</u>	
RP 15N 03E 050 155A	\$ 253.96	First half paid / Second half due June 20, 2005.
RP 15N 03E 051 955A	\$ 8,217.12	First half paid / Second half due June 20, 2005.
RP 15N 03E 054 725A	\$ 305.46	First half paid / Second half due June 20, 2005.
RP 15N 03E 081 205A	\$ 662.84	First half paid / Second half due June 20, 2005.
RP 000 250 000 020A	\$ 380.74	First half paid / Second half due June 20, 2005.
RP 000 250 000 030A	\$ 356.70	First half paid / Second half due June 20, 2005.
RP 000 250 000 040A	\$ 331.26	First half paid / Second half due June 20, 2005.
RP 000 250 000 050A	\$ 492.74	First half paid / Second half due June 20, 2005.
RP 000 250 000 060A	\$ 225.48	First half paid / Second half due June 20, 2005.
RP 000 250 000 070A	\$ 238.28	Paid in full
RP 000 250 000 080A	\$ 386.94	First half paid / Second half due June 20, 2005.
RP 000 250 000 090A	\$ 314.32	First half paid / Second half due June 20, 2005.
RP 000 250 000 220A	\$ 275.72	Paid in full
RP 000 250 000 230A	\$ 353.96	Paid in full
RP 000 250 000 270A	\$ 297.82	First half paid / Second half due June 20, 2005.
RP 000 250 000 280A	\$ 297.52	First half paid / Second half due June 20, 2005.
RP 000 250 000 290A	\$ 291.42	First half paid / Second half due June 20, 2005.
RP 000 250 000 300A	\$ 290.32	First half paid / Second half due June 20, 2005.
RP 000 250 000 310A	\$ 264.36	First half paid / Second half due June 20, 2005.
RP 000 250 000 320A	\$ 300.58	First half paid / Second half due June 20, 2005.
RP 000 250 000 330A	\$ 307.78	First half paid / Second half due June 20, 2005.
RP 000 250 000 340A	\$ 218.96	First half paid / Second half due June 20, 2005.

PARCELS C AND D AND F:  
(INCLUDES MORE PROPERTY.)

PP 004 920 190 000A	\$ 905.84	Paid in full
RP 004 920 190 000A	\$ 6,132.62	Paid in full

# EXHIBIT E

EXHIBIT A



**GREEN VALLEY HOLDINGS, LLC  
30 DAY PROMISSORY NOTE**

March 29, 2011

Four Hundred Twenty Five Thousand U.S. Dollars (\$425,000.00)

**Section 1. General Provisions:**

Green Valley Holdings, LLC, an Idaho Limited Liability Company (hereinafter called "Company"), and Matthew D. Hutcheson and Annette Hutcheson, individually, as guarantors of payment, for value received, promise to pay in accordance with the terms hereof to the order of: James W. Fletcher III, P.O. BOX 298 SPERRYVILLE, VA 22740

An Individual ("Holder"), the principal sum of Four Hundred Twenty Five Thousand U.S. Dollars (\$425,000.00) in lawful money of the United States on April 29, 2011 (the "Maturity Date").

Company shall also pay interest on said principal on a per monthly basis hereof through the earlier of (a) the Maturity Date and (b) the date on which the principal amount of this Note is prepaid or accelerated at an interest rate equal to five percent (5%) per month.

This Note is payable in whole, principal and accrued interest, on the Maturity Date.

Whenever any payment to be made hereunder shall be due on a date, which is not a business day, the payment shall be made on the next succeeding business day and such extension of time shall be included in the computation of the payment of interest with respect to such payment.

Interest shall be calculated hereunder on the basis of a 30-day month. An additional (5%) is due at the beginning of the next 30 days with lender approval.

**Section 1a. Security and Collateral:** This Promissory Note is secured and collateralized by an asset of Green Valley Holdings, LLC; a \$3.5 million dollar face value note that holds first lien position on a Robert Trent Jones II golf course and the Osprey Lodge at Tamarack Resort.

**Section 2. Place of Payment:**

The principal and interest of this Note shall be payable at:  
James W. Fletcher III, P.O. BOX 298 SPERRYVILLE, VA 22740 (or at such other place as Holder specifies in writing).

**Section 3. Pre-Payment:**

Company may pre-pay this Note at any time in whole or in part, without payment of any premium or penalty.

**Section 4. Events of Default:**

The occurrence of any of the following events shall constitute an Event of Default hereunder:

4.1 failure to pay any amount payable on account of principal on this Note when due;

4.2 failure to pay any amount payable on account of interest on this Note when due. or

4.3 the commencement of an involuntary case or the filing of a petition against Company seeking reorganization, arrangement, adjustment or composition of or in respect of Company under the federal bankruptcy laws, as now or hereafter constituted, or under any other applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or seeking the appointment of a receiver, liquidator, custodian, trustee (or similar official) of Company for any substantial part of its property, or seeking the winding up or liquidation of its affairs (and such involuntary case or petition is not dismissed within 90 days after the filing thereof), or the commencement by Company of a voluntary case or the institution by Company of proceedings, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, under the federal bankruptcy laws as now or hereafter constituted, or any other applicable federal or state bankruptcy or insolvency or other similar law, or the consent by Company to the appointment of or taking possession by a receiver, liquidator, trustee, custodian (or other similar official) of Company for any substantial part of its property, or the making by it of any assignment for the benefit of creditors or the admission by it in writing of its inability to pay its debts generally as they become due or the taking of any corporate action by Company of its stockholders or Board of Directors or any committee thereof in furtherance of any of the foregoing.

**Section 5. Remedies Upon Default:**

If an Event of Default occurs, Holder may at its option, by written notice to Company, declare the entire unpaid balance of principal with interest accrued thereon and all other sums due under this Note to be immediately due and payable, provided that if there shall occur an Event of Default described in Section 4.3, the entire unpaid balance of principal with interest accrued thereon and all other sums due under this Note shall be immediately due and payable without notice to Company. If default is not remedied, title ownership of collateral shall be immediately recorded.

**Section 6. Senior Debt:**

This note is intended to be non-subordinated debt.

**Section 7. Company Waivers:**

Except as herein above expressly otherwise provided, Company waives presentment for payment, notice of protest, and protest of this Note, and agrees that its liability shall remain outstanding without regard to the liability of any other party.

The enumeration in this Note of any waivers or consents by Company shall not be deemed exclusive of any additional waivers or consents by Company that may be deemed to exist in law or equity.

**Section 8. Binding Nature of Note:**

This Note shall be binding upon Company and its successors and assigns.

**Section 9. No Waiver, Indulgences, etc.:**

All rights and remedies of Holder under this Note and any applicable law are separate and cumulative, and neither the failure nor any delay on the part of the Holder to exercise any right, remedy, power or privilege under this Note shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by Holder asserted to have granted such waiver. Any waiver or amendment to this Note may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument, and all signatures need not appear on any one counterpart. Any party hereto may execute and deliver a counterpart of any such waiver or amendment by delivering by facsimile transmission a signature page signed by such party, and such facsimile signature shall be treated in all respects as having the same effect as an original signature.

**Section 10. Severability:**

If any provision of this Note is held to be invalid or unenforceable by a court of competent jurisdiction, the other provisions of this Note shall remain in full force and effect and shall be liberally construed in favor of Holder in order to effect the provisions of this Note.

**Section 11. Notices:**

All notices required or permitted by this Note shall be in writing and shall be deemed to have been duly given (a) when personally delivered to any officer of the party to whom it is addressed, (b) on the earlier of actual receipt thereof or three (3) days following posting thereof by certified or registered mail, postage pre-paid, return receipt requested, (c) upon actual receipt thereof when sent by a recognized overnight delivery service or (d) upon actual receipt thereof when sent by telecopier with telephone communication confirming receipt and subsequently confirmed by registered, certified or overnight mail to such party. Either party may change the address to which notices are to be sent by giving notice of such change of address in conformity with the foregoing provisions.

**Section 12. Non-Registration; Investment Intent:**

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT") OR THE SECURITIES LAW OF ANY STATE. THIS NOTE HAS BEEN ACQUIRED BY HOLDER FOR INVESTMENT PURPOSES ONLY AND MAY NOT BE SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH NOTE UNDER THE ACT,

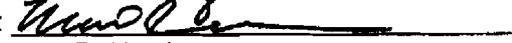
UNLESS IN THE OPINION OF COUNSEL (WHICH OPINION SHALL BE IN FORM AND SUBSTANCE SATISFACTORY TO COMPANY AND SUCH COUNSEL SHALL BE SATISFACTORY TO COMPANY), SUCH REGISTRATION IS NOT REQUIRED UNDER SAID ACT. By acceptance of this Note, Holder represents and warrants to Company that the Holder is acquiring this Note for the Holder's own individual investment account, and not with a view to distribution or resale.

**Section 13. WAIVER OF JURY TRIAL:**

COMPANY AND HOLDER, HAVING BEEN ADVISED BY COUNSEL, HEREBY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY OR AGAINST EITHER OF THEM DIRECTLY OR INDIRECTLY RELATING TO THIS NOTE OR ITS ISSUANCE.

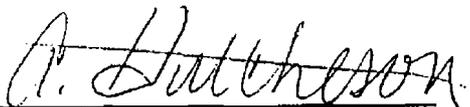
IN WITNESS WHEREOF, Company has caused this Note to be duly executed on March 29, 2011.

GREEN VALLEY HOLDINGS, LLC

  
By:   
Matthew D. Hutcheson  
Chief Executive Manager/Chairman

Guarantors:

  
Matthew D. Hutcheson  
Individually

  
Annette Hutcheson  
individually and as Member of  
Green Valley Holdings, LLC

# EXHIBIT B

## MEMORANDUM OF UNDERSTANDING

RE: NEGOTIATED TERMS

1. \$50,000.00 to be paid in ten days from the date hereof as fees for extending the loan.
2. \$20,000.00 of said fee shall be paid by May 20, 2011.
3. All attorney's fees are to be paid to James W. Fletcher, III.
4. Transfer of ownership of hotel plot but not to include the two Fairmont plots. James W. Fletcher, III shall have his choice of any of the other 15 plots.

Appropriate documents are to be prepared by Green Valley Holding to James W. Fletcher, III concerning the transfer of said tract by June 1, 2011. .

5. James W. Fletcher further agrees to withhold any collection of the note for seventy (70) days from May 6, 2011.

Given under our hands this 6<sup>th</sup> day of May, 2011.

GREEN VALLEY HOLDINGS, LLC

By: 

Matthew Hutchinson, Managing Member

  
Matthew Hutchinson

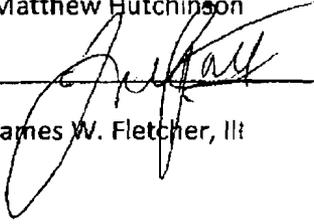
  
James W. Fletcher, III

EXHIBIT C

**AMENDMENT TO PROMISSORY NOTE**

THIS AMENDMENT TO PROMISSORY NOTE is dated as of this May 6th, 2011, and is executed among GREEN VALLEY HOLDINGS, LLC ("**Borrower**"), MATTHEW D. HUTCHESON and ANNETTE HUTCHESON (collectively, the "**Guarantors**") and JAMES W. FLETCHER, III ("**Lender**").

**RECITALS:**

- A. Borrower executed and delivered to Lender that certain Promissory Note dated as of March 29, 2011, in the original principal amount of \$425,000.00 (the "**Note**"), which Note is hereinafter amended by this Amendment to Promissory Note (this "**Amendment**"). The Note, as amended by this Amendment, is hereinafter called the Amended Note. The Guarantors guaranteed the Note as therein provided.
- B. As of the date of this Amendment, the current outstanding balance of the Note is \$438,900.00, which represents the aggregate of the outstanding principal balance of \$425,000, accrued interest of \$ 7,500.00 and reasonable attorney's fees of \$ 6,400.00.
- C. Borrower, the Guarantors and the Lender wish to amend the Note as hereinafter provided.

**AGREEMENTS:**

NOW, THEREFORE, for \$10 and other valuable consideration, the receipt and sufficiency of which is acknowledged, the Borrower, the Guarantors and the Lender hereby amend the Note as follows:

1. The parties hereto agree that the foregoing Recitals are true and correct and are incorporated herein by reference. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Note.
2. The Maturity Date of the Amended Note is hereby extended to July 5th, 2011, and the new, outstanding principal balance of the Amended Note is \$500,000.
3. If the amount payable by Borrower under the Amended Note is not paid on the Maturity Date, as herein extended (and there are no applicable grace periods), such amount shall thereafter bear interest at the Past Due Rate (as defined below) to the fullest extent permitted by applicable law. Accrued and unpaid interest on the outstanding principal amount evidenced by the Amended Note or any other past due amounts shall be due and payable, at a per month rate, and NOT a per annum rate, of twenty-four percent (24%) (the "**Past Due Rate**").
4. This Amendment shall be physically attached to and kept with the Note.

5. The Borrower hereby ratifies and affirms all of the provisions of the Note, as amended hereby. Except as specifically set forth herein, all provisions of the Note shall remain in full force and effect. In the event of a conflict between the Note and this Amendment, this Amendment shall prevail and control.
6. Guarantors, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, hereby consent to and join in this Amendment and hereby declares to and agrees with the Lender that their respective guarantees of the Note, as therein contained, is and shall continue to be in full force and effect for the benefit of Lender with respect to the obligations described therein, as herein amended and modified ("**Obligations**"), that there are no offsets, claims, counterclaims, cross-claims or defenses of the Guarantors with respect to such guaranty nor, to Guarantors' knowledge, with respect to the Obligations, that their guaranty is not released, diminished or impaired in any way by this Amendment or the transactions contemplated hereby, and that such guaranty is hereby ratified and confirmed in all respects. Guarantors hereby acknowledge that without this consent and reaffirmation, the Lender would not accept this Amendment from the Borrower or otherwise consent to its terms.
7. Time is of the essence with respect to every provision of the Note, as herein amended.
8. Borrower shall pay all of Lender's reasonable expenses incurred to enforce or collect the Amended Note or pursue his remedies, including, without limitation, reasonable paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any trial, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.
9. If at any time the effective interest rate under the Amended Note would, but for this paragraph, exceed the maximum lawful rate, the effective interest rate under the Amended Note shall be the maximum lawful rate, and any amount received by Lender in excess of such rate shall be applied to principal and then to fees and expenses, or, if no such amounts are owing, returned to Borrower.
10. The Amended Note shall be governed by and construed under the laws of the Commonwealth of Virginia (the "**State**") without regard to the State's conflict of laws principles. Borrower and Guarantors irrevocably agree to non-exclusive personal jurisdiction in the State. If any provision of the Amended Note shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the Amended Note or other such document.
11. The loan evidenced by the Amended Note was made for business purposes only.  
[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Borrower, intending to be legally bound, has duly executed and delivered this Amendment to Promissory Note as of the day and year first above written.

**BORROWER:**

GREEN VALLEY HOLDINGS, LLC

By:  (seal)  
Matthew D. Hutcheson  
Chief Executive Manager/Chairman

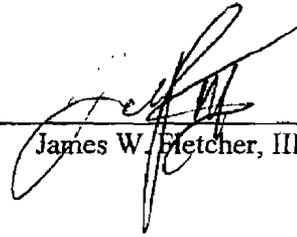
The undersigned Guarantors hereby execute this Amendment to Promissory Note to acknowledge and consent to the Obligations imposed upon them hereby.

**GUARANTORS:**

  
\_\_\_\_\_ (Seal)  
Matthew D. Hutcheson

\_\_\_\_\_  
Annette Hutcheson (Seal)

Lender hereby joins in this Amendment to Promissory Note to acknowledge and accept the amendments and modifications reflected therein.



James W. Fletcher, III

Amendment to Promissory Note #31041284 (v.2).doc

# EXHIBIT F

EXHIBIT B

EXECUTION COPY



**PLEDGE AND SECURITY AGREEMENT**

This **PLEDGE AND SECURITY AGREEMENT**, dated as of March 29, 2011 (as amended, supplemented, amended and restated or otherwise modified from time to time, this "Pledge and Security Agreement"), is made by: James W. Fletcher III P.O. BOX 298 SPERRYVILLE, VA 22740

An Individual ("Lender") and Green Valley Holdings, LLC, and Matthew D. Hutcheson and Annette Hutcheson, the "Borrowers."

**WITNESSETH:**

WHEREAS, pursuant to a "Promissory Note," dated as of March 29, 2011 (as amended, supplemented, amended and restated or otherwise modified from time to time, between the Borrowers, Green Valley Holdings, LLC, an Idaho Limited Liability Company, Matthew D. Hutcheson and Annette Hutcheson, and the lending parties thereto (the "Lender"), has extended Commitments to provide debt financing to the Borrowers; and

WHEREAS, as a condition precedent to the debt financing under the Promissory Note, each Party is required to execute and deliver this Pledge and Security Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Grantor agrees, for the benefit of each Secured Party, as follows:

**SECURITY INTEREST:**

Grant of Security Interest. Matthew D. Hutcheson, on behalf of Green Valley Holdings, LLC pledges a beneficiary first position lien on Green Valley Holdings, LLC, pursuant to "Collateral" described below, in exchange for \$425,000 (four hundred twenty five thousand) in debt financing delivered and held in escrow with the office of the settlement company, AmeriTitle of Cascade, Idaho. Promissory note and security interest documents, along with any other associated documents, shall be immediately returned to borrower upon payment in full on or before maturity date. It is agreed that lender intends to release borrower from any and all obligation, and will return to borrower in full, unencumbered collateral upon payment in full on or before maturity date.

Lien Documents. The "Lender" and the "Borrowers" agree to escrow the lien documents in lieu of immediate recordings to prevent back and forth lien position recordings. The recording of the lien will be held in abeyance in anticipation of loan repayment. If loan is not repaid within 30 (thirty days), at which time the lien shall be immediately recorded by AmeriTitle.

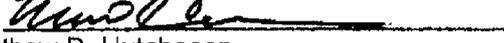
Collateral. The collateral for the \$425,000 (four hundred twenty five thousand) is a \$3.5 million dollar face value note in a beneficiary first lien position on the Robert Trent Jones II

championship golf course and the Osprey Meadows Lodge note, together estimated valued at over \$70,000,000.00 (seventy million dollars) with both secured and collateralized real properties being located at Tamarack Resort, Valley County, Tamarack, Idaho 83615.

Pledged this, the 29th day of March, 2011

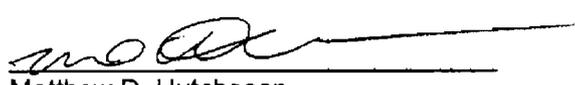
Accepted  
GREEN VALLEY HOLDINGS, LLC



By: 

Matthew D. Hutcheson  
Chief Executive Manager/Chairman

Guarantors:

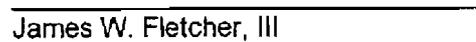


Matthew D. Hutcheson  
Individually



Annette Hutcheson  
individually and as Member of  
Green Valley Holdings, LLC

Lender:



James W. Fletcher, III

championship golf course and the Osprey Meadows Lodge note, together estimated valued at over \$70,000,000.00 (seventy million dollars) with both secured and collateralized real properties being located at Tamarack Resort, Valley County, Tamarack, Idaho 83615.

Pledged this, the 29th day of March, 2011

Accepted  
GREEN VALLEY HOLDINGS, LLC

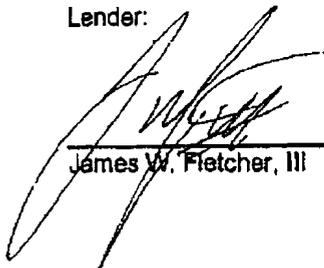
By:   
Matthew D. Hutcheson  
Chief Executive Manager/Chairman

Guarantors:

\_\_\_\_\_  
Matthew D. Hutcheson  
Individually

\_\_\_\_\_  
Annette Hutcheson  
individually and as Member of  
Green Valley Holdings, LLC

Lender:

  
\_\_\_\_\_  
James W. Fletcher, III

**Instrument # 359390**  
VALLEY COUNTY, CASCADE, IDAHO  
03-29-2011 16:03:34 No. of Pages: 2  
Recorded for: AMERITITLE MCCALL  
ARCHIE N. BANBURY Fee: \$13.00  
Ex-Officio Recorder Deputy: RK  
Electronically Recorded by Simplifile

Recorded By:

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And When Recorded Mail To:

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(Space above this line for Recorder's use)

COLLATERAL ASSIGNMENT OF MORTGAGE

Green Valley Holdings, LLC, an Idaho limited liability company ("Assignor"), having an address of P.O. Box 9467, Boise, Idaho 83708, the holder of the Assignment of Mortgage dated August 24, 2005 from West Mountain Golf, LLC, recorded September 20, 2005 in the records of Valley County, Idaho as Instrument No. 357384 (together with any amendments, renewals, extensions, or modifications thereto, the "Mortgage"), hereby grants, bargains, sells, conveys, transfers, and assigns all of Assignor's right, title and interest in the Mortgage (the "Pledged Interest") to James W. Fletcher, III ("Assignee") with an address of P.O. Box 298, 80 Fletcher's Mill Road, Sperryville, VA 22740, and his successors and assigns forever, to be held as collateral security for the [Promissory Note dated March 29, 2011 in the original principal amount of \$ 425,000.00, payable by Assignor to Assignee (the "New Note")]. Assignee's security interest in the Pledged Interest will terminate immediately upon full payment or discharge of the New Note. This assignment is made without recourse, representations or warranties of any kind.

[THE REMAINDER OF THIS PAGE WAS LEFT BLANK INTENTIONALLY]

EXHIBIT C

IN WITNESS WHEREOF, Assignor has duly executed this Assignment as of 3-29, 2011,

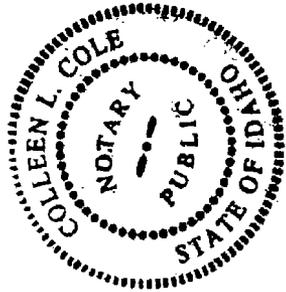
GREEN VALLEY HOLDINGS, LLC

  
By: MATTHEW HUTCHESON  
Its: CHIEF EXEC MGR / CHAIRMAN

STATE OF IDAHO            )  
  )  
County of Ada Valley    )

On this 29 day of March, 2011, before me, the undersigned, a Notary Public for and in said State, personally appeared Matthew D. Hutcherson, known or identified to me, to be the manager or a member of the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company and acknowledged to me that such limited liability company executed the same.

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



  
Notary Public for Cascade, Ida.  
Residing at \_\_\_\_\_  
Commission expires 6-10-2011

# EXHIBIT G

Matthew T. Christensen  
ANGSTMAN JOHNSON  
3649 N. Lakeharbor Lane  
Boise, Idaho 83703  
Telephone: (208) 384-8588  
Facsimile: (208) 853-0117  
Christensen ISB: 7213

Attorney for the Independent Fiduciary, Jeanne Bryant

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

HILDA L. SOLIS, Secretary of the United  
States Department of Labor,

Plaintiff,

vs.

MATTHEW D. HUTCHESON,  
HUTCHESON WALKER ADVISORS, LLC,  
GREEN VALLEY HOLDINGS, LLC, and the  
RETIREMENT SECURITY PLAN AND  
TRUST, f/k/a PENSION LIQUIDITY PLAN  
AND TRUST,

Defendants.

Case No. 1:12-cv-236-EJL

DISCLOSURE STATEMENT FOR RSPT  
PLAN PARTICIPANTS REGARDING  
COMPROMISE WITH FLETCHER

This Disclosure Statement is being provided to all RSPT plan participants with an investment related to the loan by RSPT to Green Valley Holdings, LLC, to purchase a loan from Pacific Continental Bank, regarding the proposed compromise with James W. Fletcher, III (“Fletcher”).

## **FACTUAL BACKGROUND**<sup>1</sup>

In October, 2010, Matthew Hutcheson (“Hutcheson”) was acting as the fiduciary of the Retirement Security Plan and Trust (“RSPT”). At that time, Hutcheson was interested in owning all, or a portion, of the Tamarack Resort located in Donnelly, Idaho. He set up a new company, Green Valley Holdings, LLC (“GVH”), for the purpose of purchasing the resort assets. At that time, as the fiduciary of RSPT, he had RSPT make a loan to GVH, evidenced by a Promissory Note in the amount of \$3.5 million (the “RSPT Note”). (The funds were actually transferred from RSPT to GVH in December 2010.) At the time of the RSPT Note, Green Valley granted a security interest to RSPT in all of the assets of GVH (which were described in the security agreement as a “first lien position” on the golf course and Osprey Meadows Lodge located at Tamarack Resort) (the “RSPT Pledge”). No UCC filing appears to have been recorded, evidencing this security interest granted to RSPT.

After receiving the funds from RSPT, Hutcheson used the funds to purchase a Promissory Note from Pacific Continental Bank (secured by a deed of trust on the Tamarack Resort golf course and lodge – these assets are referred to herein as the “PCB Assets”). At that point, Hutcheson obtained actual possession of the PCB Assets, thus perfecting the security interest previously granted to RSPT (Hutcheson was the fiduciary for RSPT at the time he received the PCB Assets).

Subsequent to that purchase, GVH and/or Hutcheson borrowed approximately \$425,000.00 from James W. Fletcher, III (“Fletcher”). These funds were to be repaid pursuant to the terms of a Promissory Note between Fletcher and GVH (the “Fletcher Note”). These funds appear to have been used by Hutcheson and/or GVH as follows:

1. Interest to Fletcher - \$42,500.00
2. Fees to Fletcher – \$34,000.00
3. Commissions to Fletcher’s agent - \$21,250.00
4. Escrow/recording fees – \$3,129.00
5. Payment of past-due taxes on golf course property - \$78,418.00
6. Saved for new appraisal - \$15,000.00
7. Paid to “Peterson Partners 401k” - \$160,000.00
8. Fees for “Capital Raising” - \$15,000.00
9. Loan payment to “Hawkes Motors” - \$55,703.00

Thus, it appears that several of the items paid for with the funds from Fletcher were personal obligations of Mr. Hutcheson, not GVH debts.

The loan from Fletcher was secured by a lien on the PCB Note and Deed of Trust (the same security that had previously been pledged to RSPT, and later perfected by Hutcheson’s

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<sup>1</sup> The factual assertions made below are based on a multitude of facts and investigation by the Independent Fiduciary and her counsel. In the event a party wishes a copy of any document referenced herein, an email should be sent to the Independent Fiduciary’s counsel, Matthew T. Christensen, at mtc@angstman.com, and the document(s) will be emailed as requested.

possession of the PCB Assets) (the “Fletcher Pledge”). While it does not appear a UCC statement was filed by Fletcher, the Independent Fiduciary believes Fletcher was provided the original PCB Assets, and still has them in his possession. (This pledge of the PCB Assets by GVH/Hutcheson, and transfer of the actual documents to Fletcher, was done notwithstanding the fact that RSPT had a previously-perfected security interest in those exact assets.)

The Fletcher Note has a principal amount of \$425,000.00<sup>2</sup> with non-default interest accruing at the rate of five percent (5%) per month. Default interest (“Past Due Interest”) would accrue at the rate of twenty four percent (24%) per month. The Maturity date of the Note was July 5, 2011. Thus, as of the date of this Motion, the Note is approximately 18 months past-due (approximately \$382,500.00 of additional interest at the non-default rate – for a total due of approximately \$807,500.00).<sup>3</sup>

The U.S. Department of Labor began an investigation of RSPT and Hutcheson, which led to this case being filed. The Independent Fiduciary has examined the documents attached hereto as Exhibits, and has explored the RSPT plan’s options related to the Fletcher Note and Fletcher Pledge, and has engaged in extensive negotiations with Fletcher. Based on her examination of the documents, and the potential avenues to recover against Fletcher, the Independent Fiduciary has negotiated a solution with Fletcher that will reduce the risk to the RSPT plan, and provide an avenue for potential recovery of nearly all of the funds RSPT originally loaned to GVH.

**POTENTIAL AVENUES TO AVOID  
FLETCHER’S LIEN ON THE PCB ASSETS**

It appears that RSPT was granted a security interest in the PCB Assets prior in time to Fletcher, which RSPT later perfected through actual possession of the PCB Assets. Since Fletcher currently has possession of the PCB Assets, RSPT would need to prove either (a) that Fletcher had knowledge of the previously-granted and -perfected security interest in the PCB Assets at the time he took them as security, or (b) that he only obtained “thieves title” to those assets. With regard to the first element, Fletcher has affirmatively stated in the settlement agreement that he had no knowledge of the RSPT Note or RSPT Pledge prior to loaning the funds to GVH. Thus, RSPT would be left with proving that GVH only had “thieves title” to the PCB Assets (due to the previously-granted and -perfected RSPT security interest), then Fletcher potentially never had a valid perfected security interest in the PCB Assets. Even absent a prior security interest, however, there remain other potential options for avoiding Fletcher’s lien.

If the Independent Fiduciary can get control of GVH (either through negotiation with Hutcheson or through order of this Court), then she may be able to file a Chapter 11 bankruptcy

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<sup>2</sup> This amount represents the original amount loaned to GVH, without including the penalties that were incurred when the original maturity date passed.

<sup>3</sup> Of course, the Fletcher Note is in default. With a default interest rate of 24% per month, the Fletcher Note would have accrued default interest of \$1,836,000.00 (\$102,000.00 per month for 18 months) with interest continuing to accrue at the rate of \$102,000.00 per month. Additionally, Fletcher has alleged that interest is compounded – thereby exponentially increasing the default interest amount owed.

petition on behalf of GVH. A chapter 11 bankruptcy will provide the Independent Fiduciary with several options with regard to Fletcher.

First, due to the nature of the RSPT plan participants (largely retirement pension funds), and the fact that they held a security interest in the PCB Assets prior to Fletcher's involvement, a case could be made for equitably subordinating Fletcher's security interest to that of the RSPT participants. *See, e.g., 11 U.S.C. §510(c); In re Yellowstone Mountain Club, LLC*, Case No. 08-6150-11, Adv. Case No. 09-00014 (Partial and Interim Order) (Bankr. D. Mont., May 13, 2009) (Docket No. 289) (using Section 510(c) to equitably subordinate Credit Suisse's security interest in the Yellowstone Club resort).

Section 510(c)(1) allows for subordination of otherwise allowed claims when the principles of equity would be so offended by the allowance of such claims on a parity with those of other creditors. If the subordinated claim is secured by a lien [as Fletcher's is here], under §[510](c)(2), the lien is transferred to the debtor's estate. The subordinated lien claim becomes unsecured and the property securing such claim becomes part of the debtor's estate.

*Lehman Commer. Paper, Inc. v. Palmdale Hills Prop., LLC*, (*In re Palmdale Hills Prop., LLC*), 423 B.R. 655, 666 (9<sup>th</sup> Cir. BAP, 2009).

An Idaho bankruptcy judge may find that Fletcher's claim should be equitably subordinated to the RSPT claim in the PCB Assets, which would leave Fletcher with an unsecured claim against GVH, junior in priority to the secured claim of RSPT.

Second, under Ninth Circuit interpretations of the Bankruptcy Code, GVH could potentially avoid all default interest claimed by Fletcher. *See Great Western Bank & Trust v. Entz-White Lumber & Supply, Inc. (In re Entz-White Lumber & Supply, Inc.)*, 850 F.2d 1338 (9<sup>th</sup> Cir., 1988). Thus, through a confirmed Chapter 11 Plan, GVH could potentially avoid all default penalties imposed by Fletcher and cure the default by paying Fletcher the principal and market interest.<sup>4</sup>

Third, as it appears that not all of the funds paid by Fletcher actually benefitted GVH, and due to RSPT's previously-perfected security interest in the PCB Assets, there may be ways to avoid Fletcher's lien based on fraudulent transfer claims (both under 11 U.S.C. §548 and Idaho Code §55-913 and -914).

Lastly, there remains a claim of unconscionable interest. While a Virginia or Idaho state court may decide that Fletcher's default interest rate was not unconscionable, an Idaho bankruptcy judge may take a different view. This is true not just of the 24% per month default rate, but also the 5% per month non-default rate. An Idaho bankruptcy judge could rule that Fletcher's interest rates were unconscionable towards a debtor that already had over \$3.5 million

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<sup>4</sup> This option would likely require RSPT obtain some sort of financing to pay Fletcher's claim, as it could not be paid through a sale of the assets securing his claim. *See Entz-White, supra*. Whether RSPT has the regulatory or financial ability to obtain such financing is a strong concern.

owed to RSPT, which it had already secured with the security it later provided to Fletcher. This could result in Fletcher receiving much less interest than what he currently hopes to receive.

### **WEAKNESSES IN CLAIMS AGAINST FLETCHER**

Of course, all of the above-listed avenues of recovery against Fletcher involve some sort of litigation by RSPT against Fletcher. Inherent in any sort of litigation is the uncertainty of an outcome. In this case, Fletcher is claiming compounding default interest, accruing at the rate of \$102,000.00 per month. In the event Fletcher prevails on any claims made by RSPT, his claims would eclipse any value in the assets that could then be repaid to RSPT. In other words, RSPT would not recover anything from the PCB Assets. Alternatively, a court could find that, while Fletcher is not entitled to default interest, he is entitled to his contract rate of interest (5% per month). Even with that rate of interest, at present the balance owed to Fletcher would be over \$800,000.00.

Fletcher is a sophisticated investor, who works with investment brokers to find his investments. He is an attorney located in Virginia. He has certified that he had no knowledge of the RSPT Note or RSPT Pledge prior to his involvement with Hutcheson. Hutcheson told Fletcher he was using his own funds to purchase the PCB Assets – no mention was made of RSPT or its involvement with GVH. Fletcher does not have any duty to investigate Hutcheson’s statements or verify the source of funds used to purchase the PCB Assets.<sup>5</sup> Similarly, Hutcheson himself was a sophisticated investor – he was the fiduciary for multiple retirement plans and pensions. No court will find that these two individuals were unsophisticated investment novices. Proving unreasonably high interest rates typically requires the parties prove that the borrower was an unsophisticated party. *See, e.g.*, Idaho Code §28-45-106 (allowing the unenforceability of unconscionable terms, but limited to “regulated consumer credit sales” and “regulated consumer loans”); *Wattenbarger v. A.G. Edwards & Sons, Inc.*, 150 Idaho 308, 246 P.3d 961 (2010) (requiring both substantive and procedural unconscionability before amending the terms of a contract); *Lovey v. Regence Blueshield of Idaho*, 139 Idaho 37, 72 P.3d 877 (2003).

While a Chapter 11 bankruptcy may present options for avoiding Fletcher’s claim, there are certain hurdles to getting a bankruptcy filed. First, the Independent Fiduciary would have to take control of GVH. There’s no guarantee that this could happen. Second, even if she gets control, the bankruptcy is susceptible to dismissal on Fletcher’s Motion that it is basically a single-creditor dispute (RSPT vs. Fletcher). Assuming both of those hurdles are crossed, then the Independent Fiduciary still must convince a bankruptcy judge to either equitably subordinate Fletcher’s claims, or that his interest was somehow obtained fraudulently<sup>6</sup>. All of these are risks with the bankruptcy solution.

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<sup>5</sup> Indeed, Pacific Continental Bank also had no duty to investigate the source of funds used to purchase its assets.

<sup>6</sup> Important to any fraudulent transfer claim is the fact that RSPT had a valid, perfected security interest in the PCB Assets. Allegations have apparently been made in Hutcheson’s criminal case, Case No. 12-cr-00083-EJL, that Hutcheson forged the signatures on the RSPT Pledge. If the signatures were, in fact, forged, then the validity of RSPT’s lien in the PCB Assets becomes an issue, thus further weakening any claims to avoid Fletcher’s lien.

Having reviewed each of the claims against Fletcher, and weighed the potential chances of success with the risk of failure (and of a non-recovery by the RSPT plans), the Independent Fiduciary has worked out a negotiated solution with Fletcher.

### **PROPOSED COMPROMISE WITH FLETCHER**

The Independent Fiduciary has negotiated with Fletcher for several months regarding the terms of a proposed compromise. Initially, Fletcher wanted all of the default interest that had accrued, and an immediate payment to get him to release any claim to the PCB Assets. As the RSPT plans do not have the funding for an immediate payment, and as default interest would easily eclipse the value of the PCB Assets, that was the starting point for negotiations. Those negotiations ultimately led to the compromise outlined on *Exhibit A*, attached hereto.

In general terms, the compromise is as follows:

- Fletcher will immediately (upon final approval of the agreement) turn over actual possession of the PCB Assets to the Independent Fiduciary.
- Upon receipt of the PCB Assets, the Independent Fiduciary will immediately take steps required to foreclose on the PCB Assets (recalling that all the RSPT plan holds now is a security interest in those assets).
- Once ownership of the PCB Assets is obtained, the Independent Fiduciary will take all necessary steps to foreclose upon and liquidate the golf course and lodge (the real property secured by the PCB Deed of Trust).
- After paying all closing costs of the sale of the golf course and lodge, Fletcher will be entitled to the first payment of funds, in the amount of \$700,000.00. RSPT will then be entitled to the next funds, up to a payment of \$4,000,000.00. Any net proceeds in excess of \$4,700,000.00 will be paid to Fletcher.
- Interest will only begin accruing on the amounts due to Fletcher beginning 18 months after the agreement is finalized.
- If the real property is not sold by the Independent Fiduciary within four (4) years of the final approval of the agreement, Fletcher shall be entitled to foreclose on his \$700,000.00 claim, plus whatever interest and attorney fees have accrued to him by that time.

The Independent Fiduciary has obtained a Broker's Price Opinion of the real property, which values the property at \$2,690,000.00. However, the Independent Fiduciary believes that, if she could sell the property as part of the sale of the entire resort, a significantly higher price could be obtained. However, for purposes of disclosure of the potential recovery by the RSPT plans, the Independent Fiduciary uses that BPO amount. Based on the terms of the agreement with Fletcher, the maximum recovery by the RSPT plan from the sale of the property would be \$4,000,000.00. Based on the attorney fees that would be paid to the Independent Fiduciary's

contingency counsel (as outlined in the engagement letter for these matters<sup>7</sup>), the following two scenarios develop, based on potential net proceeds of \$4,700,000.00 and \$2,500,000.00:

Net Proceeds	\$4,700,000.00
Less payment to Fletcher	-\$700,000.00
Gross to RSPT group	\$4,000,000.00
Less attorney fees	-\$1,066,600.00
Net to RSPT group	\$2,933,400.00

Net Proceeds	\$2,500,000.00
Less payment to Fletcher	-\$700,000.00
Gross to RSPT group	\$1,800,000.00
Less attorney fees	-\$599,940.00
Net to RSPT group	\$1,200,060.00

Thus, after paying applicable attorney fees, the maximum recovery by the RSPT plan from the sale of the property would be \$2,933,400.00. This is approximately \$300,000.00 or so less than the amount paid to GVH. If marketed correctly as part of the overall resort purchase, the golf course property could bring in significantly more than the \$2,500,000.00 listed above. On the other hand, the Independent Fiduciary believes that the sale of the real property is not likely to bring in significantly more than the \$4,700,000.00 net proceeds listed above. In other words, the Independent Fiduciary does not believe there is significant risk to Fletcher getting paid much more than the \$700,000.00 the Agreement allows.

As part of the compromise, Fletcher made certain affirmative representations under oath regarding his knowledge of the RSPT agreements. *See paragraph 5(c) (including subparagraphs)*. If, at any time, RSPT or the Independent Fiduciary becomes aware of any facts which would show that Fletcher was aware of the RSPT Note or RSPT Pledge prior to his loan to GVH, or acceptance of the PCB Assets, then the terms of the agreement are void and unenforceable. *See paragraph 6(c) of the Agreement*.

### **APPROVAL OF COMPROMISE**

The compromise with Fletcher is contingent upon receiving court approval of the compromise, and approval by a majority of the RSPT plan participants with an investment related to the RSPT Note who vote on the compromise. (Note that this will require a majority of the plan participant who actually vote. If a plan participant fails to return a ballot, their vote is not counted in calculating the majority required for approval.) Plan members entitled to vote on the compromise will receive a copy of this Disclosure Statement (including the attached proposed compromise) and a ballot. Plan members receiving ballots (i.e., plan members with participation in the RSPT Note) will have 21 days from the date this Disclosure Statement was mailed to return the ballots. (As evidenced by a Certificate of Service, which will be filed with the court.) All ballots will be returned to the Independent Fiduciary's contingency counsel, who will prepare a report of all ballots cast. Provided sufficient participants approve the compromise,

<sup>7</sup> Attorney fees are calculated based on a final sale of the property more than 18 months after contingency counsel were employed (33.33% of funds received up to \$2,000,000.00; 20% of any funds received in excess of \$2,000,000.00). Attorney fees may be less if the property can be sold within the 18-month period.

the Independent Fiduciary will then execute the Agreement and proceed with the collection and liquidation of the assets.

DATED this \_\_\_\_ day of January, 2013.

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MATTHEW T. CHRISTENSEN  
Attorney for the Independent Fiduciary

# EXHIBIT A

**Agreement and Assignment of Sale Proceeds**

**THIS AGREEMENT AND ASSIGNMENT OF SALE PROCEEDS** (“Assignment”), is entered into this \_\_\_ day of November, 2012, between **RETIREMENT SECURITY PLAN AND TRUST (“RSPT”)** and **JAMES W. FLETCHER, III (“FLETCHER”)**, an individual.

**WITNESSETH:**

**WHEREAS**, certain disputes have arisen between RSPT and Fletcher regarding loans provided to Matthew Hutcheson (“Hutcheson”) and/or Green Valley Holdings, LLC (“GVH”);

**WHEREAS**, RSPT and Fletcher both claim a security interest in a Promissory Note and Deed of Trust previously owned by Pacific Continental Bank (the “PCB Loan Documents”). The PCB Loan Documents are attached hereto as Exhibits A and B, respectively;

**WHEREAS**, Jeanne Bryant (the independent fiduciary for RSPT) has explored options to recover the PCB Loan Documents from Fletcher and possesses potential claims against Fletcher on behalf of RSPT; and

**WHEREAS**, Fletcher disputes the claims asserted by Bryant (on behalf of RSPT), and contends that he is the rightful pledgee of the PCB Loan Documents.

**NOW, THEREFORE**, in settlement of Bryant’s claims and recognition of Fletcher’s potential defenses to those claims, and in order to effect the orderly liquidation of the PCB Loan Documents (including foreclosure and sale of the assets securing the PCB loan), Bryant (on behalf of RSPT) and Fletcher have agreed as follows:

**1. Agreement.**

- a. Upon this agreement becoming effective (including any contingencies described herein), Fletcher will forthwith transfer the original PCB Loan Documents to Bryant (or her designee).
- b. Upon receiving the original PCB Loan Documents from Fletcher, Bryant (on behalf of RSPT) will take all steps necessary to receive full right and title to the PCB Loan Documents from GVH, including, but not limited to, pursuing a claim against GVH (if necessary) to foreclose on the PCB Loan Documents.
- c. Fletcher shall be entitled to acceptable title insurance reflecting perfection of RSPT’s assignment as described herein, provided by RSPT at its expense.
- d. Upon recovering the PCB Loan Documents, RSPT will initiate and complete judicial foreclosure proceedings of the Real Property secured by the PCB Loan Documents, thereby receiving title to the Tamarack Resort Osprey Meadows golf course and certain portions of the Osprey Meadows Lodge (subject only to Fletcher’s claim in the proceeds (described further below) and any right of redemption that may exist under Idaho law after the foreclosure sale). In the event a successful money bid is received at the sheriff’s sale in the judicial foreclosure proceedings, the funds received from the Sheriff’s sale will be distributed as described herein.

- e. As soon as possible after the foreclosure proceedings (including the termination of any redemption period, and assuming RSPT acquires the Real Property with a credit bid), RSPT shall market and sell the Real Property. During the redemption period, Fletcher shall be provided notice of any actions taken to market the Real Property. After the redemption period has run, Fletcher shall be provided a quarterly report of any actions taken to market the Real Property.
  - f. RSPT will, and by this Agreement does, grant Fletcher an assignment of the Net Proceeds of the PCB Loan Documents in the initial principal amount of \$700,000.00.
  - g. RSPT shall then be entitled to Net Proceeds of the PCB Loan Documents in the amount of \$4,000,000.00, which shall be paid after the initial \$700,000.00 Net Proceeds payment to Fletcher.
  - h. After paying the initial \$700,000.00 of Net Proceeds to Fletcher, and the next \$4,000,000.00 in Net Proceeds to RSPT, Fletcher shall be entitled to all Net Proceeds in excess of \$4,700,000.00.
  - i. These assignments of Net Proceeds to Fletcher shall be evidenced by the filing of a UCC Financing Statement with the Idaho Secretary of State. This UCC Financing Statement shall be prepared and filed by Bryant.
  - j. The term "Net Proceeds," as used in this Agreement, means the net proceeds paid after the sale of the Real Property, after paying all closing costs of sale and advances made to preserve the Real Property (including, but not limited to, costs of Sheriff's foreclosure sale, title company closing costs, title insurance, applicable Realtor<sup>®</sup>/broker fees, property taxes, and reasonable costs to preserve and protect the Real Property, but not including any attorney or legal fees incurred in the sale).
  - k. In the event the Real Property is not sold within eighteen (18) months of the final approval of this Agreement, interest shall then begin to accrue on the \$700,000.00 due to Fletcher in the amount of six (6) percent per annum.
  - l. In the event the Real Property is not sold within four (4) years of the final approval of this Agreement, Fletcher shall be entitled to accelerate his assignment and declare the balance of \$700,000.00, plus interest and applicable and reasonable attorney fees, due and payable.
2. **Contingent nature of Agreement.** This Agreement is contingent upon approval by (a) a majority of the RSPT plan participants and (b) the judge presiding over the *Solis v. Hutcheson* civil matter (Case No. 12-cv-00236-EJL), Edward J. Lodge. In the event this Agreement is not approved by both parties, it shall be considered null and void.
3. **Filings and Further Assurances.**
- a. Bryant shall effect the due filing of financing and continuation statements, shall make all other filings and recordings, shall give all notices, and take such other action as required by law so that this Agreement shall create a valid assignment of proceeds. Fletcher hereby authorizes and empowers Bryant to file any financing or continuation statement and any amendments thereto with respect to the filing or recording of the assignment in accordance with the laws of the State of Idaho, whether pursuant to the Uniform

Commercial Code or any other applicable law, without the signatures of Fletcher whenever permitted by applicable law.

- b. Bryant shall at any time and from time to time duly execute and deliver any and all such other and further assurances and documents and take such actions as in the reasonable judgment of Fletcher may be necessary, useful or desirable to obtain or maintain the full benefits of this Agreement.
- c. Fletcher shall at any time and from time to time duly execute and deliver any and all such other and further assurances and documents and take such actions as in the reasonable judgment of Bryant may be necessary, useful or desirable to obtain or maintain the full benefits of this Agreement.
- d.

**4. Representations and Warranties (Bryant and/or RSPT).**

- a. Bryant and RSPT hereby represent, warrant and agree that except for this Agreement it has not assigned, pledged or otherwise granted a security interest in or lien on, and hereby agrees that they will not assign, pledge or otherwise grant a security interest in or lien on the whole or any part of the rights, titles and interests hereby assigned to anyone other than Fletcher, or his successors or assigns.
- b. Bryant and RSPT represent and warrant that they possess all required authority to enter into this Agreement, subject only to the contingencies described herein.

**5. Representations and Warranties (Fletcher).**

- a. Fletcher hereby represents, warrants and agrees that he has not assigned, pledged or otherwise granted a security interest in or lien on, and hereby agrees that he will not assign, pledge or otherwise grant a security interest in or lien on the whole or any part of the rights, titles and interests in the PCB Loan Documents.
- b. Fletcher represents and warrants that he possesses all required authority to enter into this Agreement, subject only to the contingencies described herein.
- c. Fletcher specifically represents and warrants the following:
  - i. At all times prior to contact by the Department of Labor, RSPT, Bryant or any representatives of the same, Fletcher was unaware of the existence of RSPT or its involvement with Hutcheson or GVH.
  - ii. At the time he made his loan to GVH, Fletcher was unaware of the existence of the loan from RSPT to GVH, or pledge of the PCB Loan Documents by GVH to RSPT.
  - iii. At the time he made his loan to GVH, Fletcher was told (by Hutcheson) that Hutcheson used his own funds to purchase the PCB Loan Documents. Fletcher was unaware that the funds used by GVH to purchase the PCB Loan Documents had been misappropriated, taken or received from any other party.

- iv. At the time he made his loan to GVH, Fletcher was unaware that Hutcheson had caused RSPT to loan funds to GVH which were used to purchase the PCB Loan Documents.
- v. Had Fletcher been aware of the existence of the loan from RSPT to GVH, or pledge of the PCB Loan Documents to RSPT by GVH, he would not have made a loan to GVH.

**6. Miscellaneous Terms.**

- a. **Prompt Distribution.** RSPT shall promptly distribute any monies received under this Agreement, after payment of all closing costs from sale of the Real Property, including any amounts due to Fletcher.
- b. **Governing Law and Jurisdiction.** This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the laws of the State of Idaho and any applicable federal statutes. The parties hereby consent to the jurisdiction and venue of the courts of the State of Idaho and the United States District Court for the District of Idaho.
- c. **Effect of Representations and Warranties.** In the event any of the representations and warranties contained in this Agreement prove false or otherwise untrue, the terms of this Agreement shall be void and unenforceable.
- d. **Prepayment of Obligation.** The assignment hereunder shall terminate and be of no further force or effect upon the repayment or prepayment in full of the initial \$700,000.00 due to Fletcher (including any interest accrued thereon and attorney fees or other costs incurred) at any time prior to the expiration of four (4) years from the date this Agreement is final.
- e. **Attorney Fees.** In any dispute arising out of this Agreement, the prevailing party shall be entitled to reasonable attorney fees from the non-prevailing party. Determination of the prevailing party in any such dispute shall be made on the basis of the factors enumerated in Rule 54 of the Idaho Rules of Civil Procedure, as the same now exists or may subsequently be amended. Attorney fees may be awarded pursuant to this paragraph whether litigation actually ensues, whether any litigation settled prior to trial, or whether litigation is pursued through trial (and subsequent appeal).
- f. **Merger.** This contract is the entire agreement of the parties and supercedes any previous oral or written agreements.
- g. **Amendments and/or Modifications.** No term of this Agreement may be changed, waived, discharged, amended, modified or terminated orally or in any other manner other than by a written agreement signed by all the parties hereto.
- h. **Counterparts.** This Agreement may be executed by the parties in one or more counterparts, all of which taken together shall constitute one instrument. Facsimile or e-mail counterparts may be executed provided that each party executing a facsimile or e-

mail counterpart shall cause the original counterpart to be delivered to the other within seven (7) days after execution.

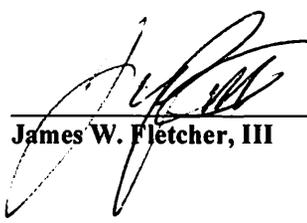
- i. **Waiver.** Failure by either party at any time to require performance by the other of any of the provisions hereof shall in no way affect a party's rights hereunder to enforce the same.

*(signature page to follow)*

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed and sealed as of the day and year first above written.

RETIREMENT SECURITY PLAN & TRUST

By: Jeanne Bryant  
Its: Independent Fiduciary

  
James W. Fletcher, III

State of Tennessee )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_ day of November, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared **Jeanne Bryant**, known or identified to me to be the Independent Fiduciary for the Retirement Security Plan & Trust, whose name is subscribed to the within instrument, and she acknowledged to me that, as to the representations and warranties contained in paragraphs 4(a) and 4(b) of the within instrument, she subscribed and swore to the same on its behalf.

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

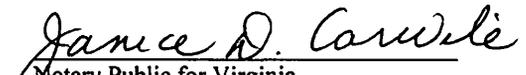
\_\_\_\_\_  
Notary Public for Tennessee  
My Commission expires:

State of Virginia )  
 ) ss.  
County of Rappahannock )  
December

On this 12 day of ~~November~~ December, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared **James W. Fletcher**, known or identified to me to be the individual whose name is subscribed to the within instrument, and he acknowledged to me that, as to the representations and warranties contained in paragraphs 5(a) and 5(b) and 5(c) (including all subparts) of the within instrument, he subscribed and swore to the same.

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

**Janice D. Carwile, Notary Public**  
**Commonwealth of Virginia at Large**  
**Registration No. 164703**  
**Commission Expires January 31, 2008**  
2016

  
Notary Public for Virginia  
My Commission expires: 1/31/2016

## PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No.	Call/Coll	Account	Officer	Initials
\$3,500,000.00	08-24-2005	09-01-2010	170011639				
References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing ***** has been omitted due to text length limitations.							

Borrower: WEST MOUNTAIN GOLF, LLC Lender: NORTHWEST BUSINESS BANK  
960 BROADWAY AVE, STE 100 1100 OLIVE WAY, SUITE 102  
BOISE, ID 83706 SEATTLE, WA 98101  
(206) 676-8880

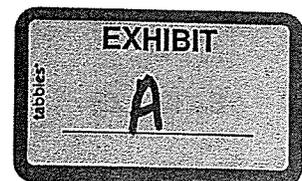
Principal Amount: \$3,500,000.00

Date of Note: August 24, 2005

**PROMISE TO PAY.** WEST MOUNTAIN GOLF, LLC ("Borrower") promises to pay to NORTHWEST BUSINESS BANK ("Lender"), or order, in lawful money of the United States of America, the principal amount of Three Million Five Hundred Thousand & 00/100 Dollars (\$3,500,000.00), together with interest on the unpaid principal balance until paid in full.

**PAYMENT.** Borrower will pay this loan in full immediately upon Lender's demand. If no demand is made, Borrower will pay this loan in one principal payment of \$3,500,000.00 plus interest on September 1, 2010. This payment due on September 1, 2010, will be for all principal and all accrued interest not yet paid. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning October 1, 2005, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

**VARIABLE INTEREST RATE.** The initial interest rate on this Note is 6.90% per annum. The interest rate is subject to change on an annual basis beginning September 1, 2006 (the "Interest Rate Change Date") with all subsequent Interest Rate Change Dates to be due on the same day of each year after that. The interest rate is based on the Federal Home Loan Bank of Seattle ("FHLBS") 365 day Short Term Advances (Fixed), rounded up to the nearest one-tenth of one-percent (0.100%) (the "Index"). The new interest rate will be the Index in effect on the Interest Rate Change Date (or on the immediately preceding day that the FHLBS publishes the Index, if the Index is not published on the Interest Rate Change Date), plus a margin of 2.500 percentage points. The Index is currently published on the FHLBS website, [www.fhlbsea.com/fhlbsea/main/rates](http://www.fhlbsea.com/fhlbsea/main/rates). If the Index is no longer published by FHLBS, the Index shall be a substantially similar index rate selected by Lender.



On the annual adjustment immediately following payoff of the 1st Independent Bank construction loan, the interest rate margin shall be reduced from 2.50 percentage points, to 2.25 percentage points, provided Loan is performing as agreed and is then in a first lien position on the commercial portions of the Member's Lodge and Spa at the Tanarack property.

**PREPAYMENT.** Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Upon prepayment of this Note, Lender is entitled to the following prepayment penalty: **AMOUNTS OF PREPAYMENTS.** This Note may be prepaid in minimum amount of ONE THOUSAND AND 00/100THS DOLLARS (\$1,000.00), or in its entirety, upon Borrower giving Lender written notice at least three (3) business days prior to the date of prepayment, provided such notice is accompanied by a prepayment premium calculated as provided below. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender.

**AMOUNT OF PREPAYMENT PREMIUM.** The prepayment premium shall be equal to one percent (1.0%) of the principal balance prepaid, if prepayment is made during months one (1) through twelve (12) of the Loan Term. There shall be no premium due for prepayment after month twelve (12) of the Loan Term. For prepayment purposes, month one of the "Loan Term" shall begin September 1, 2005.

**LATE CHARGE.** If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$15.00, whichever is greater.

**INTEREST AFTER DEFAULT.** Upon default, including failure to pay upon final maturity, Lender, at its option, may, if permitted under applicable law, increase the variable interest rate on this Note by 10.000 percentage points. The interest rate will not exceed the maximum rate permitted by applicable law.

**DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with any loan.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Death or Insolvency.** The dissolution of Borrower (regardless of whether election to continue is made), any member withdraws from Borrower, or any other termination of Borrower's existence as a going business or the death of any member, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the Indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

**Cure Provisions.** If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured (and no event of default will have occurred) if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within ten (10) days; or (2) if the cure requires more than ten (10) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**LENDER'S RIGHTS.** Upon default, Lender may declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

**ATTORNEYS' FEES; EXPENSES.** Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

**GOVERNING LAW.** This Note will be governed by, construed and enforced in accordance with federal law and the laws of the State of Washington. This Note has been accepted by Lender in the State of Washington.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account.) This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

**\*\*\*\*\*SPECIAL NOTICE. ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

**SUCCESSOR INTERESTS.** The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

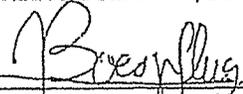
**GENERAL PROVISIONS.** Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:  
WEST MOUNTAIN GOLF, LLC

By: TAMARACK RESORT, LLC. Manager of WEST MOUNTAIN GOLF, LLC

By:   
\_\_\_\_\_  
Jean-Pierre Boespflug, CEO of Tamarack Resort, LLC

RECORDATION REQUESTED BY:  
NORTHWEST BUSINESS BANK  
1100 OLIVE WAY, SUITE 102  
SEATTLE, WA 98101

WHEN RECORDED MAIL TO:  
NORTHWEST BUSINESS BANK  
1100 OLIVE WAY, SUITE 102  
SEATTLE, WA 98101

SEND TAX NOTICES TO:  
NORTHWEST BUSINESS BANK  
1100 OLIVE WAY, SUITE 102  
SEATTLE, WA 98101

Instrument # 300330  
VALLEY COUNTY, CASCADE, IDAHO  
2005-09-20 11:07:12 No. of Pages: 16  
Recorded for : AMERITITLE  
LELAND G. HEINRICH  
Ex-Officio Recorder Deputy *J N* Fee: 48.00  
Index to: MORTGAGE

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

### MORTGAGE

THIS MORTGAGE dated August 24, 2006, is made and executed between WEST MOUNTAIN GOLF, LLC, whose address is 960 BROADWAY AVE, SUITE 100, BOISE, ID 83706 (referred to below as "Grantor") and NORTHWEST BUSINESS BANK, whose address is 1100 OLIVE WAY, SUITE 102, SEATTLE, WA 98101 (referred to below as "Lender").

**GRANT OF MORTGAGE.** For valuable consideration, Grantor mortgages, grants, bargains, sells and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters. (the "Real Property") located in VALLEY County, State of Idaho:

SEE ATTACHED EXHIBIT "A"

The Real Property or its address is commonly known as 2099 WEST MOUNTAIN ROAD, DONNELLY, ID 83615. The Real Property tax identification number is See Exhibit B.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Mortgage, Grantor shall pay to Lender all amounts secured by this Mortgage as they become due and shall strictly perform all of Grantor's obligations under this Mortgage.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property. The following provisions relate to the use of the Property or to other limitations on the Property.

**Duty to Maintain.** Grantor shall maintain the Property in tenable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

**Removal of Improvements.** Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

**Lender's Right to Enter.** Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

**Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Duty to Protect.** Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**DUE ON SALE - CONSENT BY LENDER.** Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Idaho law.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are part of this Mortgage:

**Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over or equal to the interest of Lender under this Mortgage, except for those liens specifically agreed to in writing by Lender, and except for the lien of taxes and assessments not due as further specified in the Right to Contest paragraph.

**Right to Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**Evidence of Payment.** Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.



Loan No: 170011639

**MORTGAGE**  
(Continued)

Page 2

**Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialman's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Mortgage:

**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgage clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption and boiler insurance as Lender may require. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of thirty (30) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

**Grantor's Report on Insurance.** Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Mortgage or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Mortgage or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Mortgage also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

**WARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Mortgage:

**Title.** Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage; and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

**Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Grantor in this Mortgage shall survive the execution and delivery of this Mortgage, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

**CONDEMNATION.** The following provisions relating to condemnation proceedings are a part of this Mortgage:

**Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

**Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the condemnation.

**IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

**Current Taxes, Fees and Charges.** Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

**Taxes.** The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Mortgage or upon all or any part of the indebtedness secured by this Mortgage; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the indebtedness secured by this type of Mortgage; (3) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

**Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

**SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage:

**MORTGAGE  
(Continued)**

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Page 3

**Security Agreement.** This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

**Addresses.** The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Mortgage.

**FURTHER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage:

**Further Assurances.** At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or re-recorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Mortgage, and the Related Documents, and (2) the liens and security interests created by this Mortgage as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** If Grantor pays all the indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

**EVENTS OF DEFAULT.** Each of the following, at Lender's option, shall constitute an Event of Default under this Mortgage:

**Payment Default.** Grantor fails to make any payment when due under the indebtedness.

**Default on Other Payments.** Failure of Grantor within the time required by this Mortgage to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

**Environmental Default.** Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

**Other Defaults.** Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Mortgage or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Mortgage or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Defective Collateralization.** This Mortgage or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Breach of Other Agreement.** Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**Right to Cure.** If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Mortgage within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within ten (10) days; or (2) if the cure requires more than ten (10) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of an Event of Default and at any time thereafter, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

**Accelerate Indebtedness.** Lender shall have the right at its option without notice to Grantor to declare the entire indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the

MORTGAGE  
(Continued)

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power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

**Judicial Foreclosure.** Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

**Nonjudicial Sale.** If permitted by applicable law, Lender may foreclose Grantor's interest in all or in any part of the Personal Property or the Real Property by non-judicial sale.

**Deficiency Judgment.** If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

**Tenancy at Sufferance.** If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

**Other Remedies.** Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

**Sale of the Property.** To the extent permitted by applicable law, Grantor hereby waives any and all right to have the Property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

**Notice of Sale.** Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

**Election of Remedies.** Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Mortgage, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Lender following an Event of Default, or in any way to limit or restrict the rights and ability of Lender to proceed directly against Grantor and/or against any other co-maker, guarantor, surety or endorser and/or to proceed against any other collateral directly or indirectly securing the Indebtedness.

**Attorneys' Fees/Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

**NOTICES.** Any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile unless otherwise required by law, when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Mortgage. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**ASSOCIATION OF UNIT OWNERS.** The following provisions apply if the Real Property has been submitted to unit ownership law or similar law for the establishment of condominiums or cooperative ownership of the Real Property:

**Power of Attorney.** Grantor grants an irrevocable power of attorney to Lender to vote in Lender's discretion on any matter that may come before the association of unit owners. Lender shall have the right to exercise this power of attorney only after Grantor's default; however, Lender may decline to exercise this power as Lender sees fit.

**Insurance.** The insurance as required above may be carried by the association of unit owners on Grantor's behalf, and the proceeds of such insurance may be paid to the association of unit owners for the purpose of repairing or reconstructing the Property. If not so used by the association, such proceeds shall be paid to Lender.

**Default.** Grantor's failure to perform any of the obligations imposed on Grantor by the declaration submitting the Real Property to unit ownership, by the bylaws of the association of unit owners, or by any rules or regulations thereunder, shall be an event of default under this Mortgage. If Grantor's interest in the Real Property is a leasehold interest and such property has been submitted to unit ownership, any failure by Grantor to perform any of the obligations imposed on Grantor by the lease of the Real Property from its owner, any default under such lease which might result in termination of the lease as it pertains to the Real Property, or any failure of Grantor as a member of an association of unit owners to take any reasonable action within Grantor's power to prevent a default under such lease by the association of unit owners or by any member of the association shall be an Event of Default under this Mortgage.

**DUE ON ENCUMBRANCE.** An exhibit, titled "DUE ON ENCUMBRANCE," is attached to this Mortgage and by this reference is made a part of this Mortgage just as if all the provisions, terms and conditions of the Exhibit had been fully set forth in this Mortgage.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Mortgage:

**Amendments.** This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Annual Reports.** If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

**Caption Headings.** Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

**Governing Law.** With respect to procedural matters related to the perfection and enforcement of Lender's rights against the Property, this Mortgage will be governed by federal law applicable to Lender and to the extent not preempted by federal law, the laws of the State of Idaho. In all other respects, this Mortgage will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Washington without regard to its conflicts of law provisions. However, if there ever is a question about whether any provision of this Mortgage is valid or enforceable, the provision that is questioned will be governed by whichever state or federal law would find the provision to be valid and enforceable. The loan transaction that is evidenced by the Note and this Mortgage has been applied for, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of Washington.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Mortgage shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Mortgage, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be

MORTGAGE  
(Continued)

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granted or withheld in the sole discretion of Lender

**Severability.** If a court of competent jurisdiction finds any provision of this Mortgage to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Mortgage. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Mortgage shall not affect the legality, validity or enforceability of any other provision of this Mortgage.

**Merger.** There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Successors and Assigns.** Subject to any limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Mortgage.

**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Idaho as to all indebtedness secured by this Mortgage.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Mortgage. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Borrower.** The word "Borrower" means WEST MOUNTAIN GOLF, LLC and includes all co-signers and co-makers signing the Note.

**Default.** The word "Default" means the Default set forth in this Mortgage in the section titled "Default".

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Mortgage in the events of default section of this Mortgage.

**Grantor.** The word "Grantor" means WEST MOUNTAIN GOLF, LLC.

**Guaranty.** The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

**Improvements.** The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expanded or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Mortgage, together with interest on such amounts as provided in this Mortgage.

**Lender.** The word "Lender" means NORTHWEST BUSINESS BANK, its successors and assigns.

**Mortgage.** The word "Mortgage" means this Mortgage between Grantor and Lender.

**Note.** The word "Note" means the promissory note dated August 24, 2005, in the original principal amount of \$3,500,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of this Mortgage is September 1, 2010. NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Mortgage.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

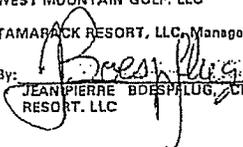
GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

WEST MOUNTAIN GOLF, LLC

TAMARACK RESORT, LLC, Manager of WEST MOUNTAIN GOLF, LLC

By:

  
JEAN-PIERRE BDESPLUG, CEO of TAMARACK  
RESORT, LLC

Loan No: 170011639

MORTGAGE  
(Continued)

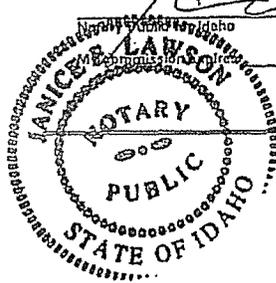
Page 6

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF IDAHO )  
 )  
 ) SS  
COUNTY OF ADA )

On this 6<sup>th</sup> day of SEPTEMBER, in the year 2009, before me JANICE E LINDSEY, a notary public in and for the State of Idaho, personally appeared JEAN-PIERRE BOESPFLUG, CEO of TAMARACK RESORT, LLC, known or identified to me (or proved to me on the oath of \_\_\_\_\_), to be one of the members or designated agents in the limited liability company of WEST MOUNTAIN GOLF, LLC, and the member or designated agent or one of the members or designated agents who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that he or she executed the same in said limited liability company name.

Jean-Pierre Boespflug Residing at BOISE ID  
Notary Public for Idaho  
My Commission Expires 1/27/2010



### DUE ON ENCUMBRANCE

This DUE ON ENCUMBRANCE is attached to and by this reference is made a part of the Mortgage, dated August 24, 2005, and executed in connection with a loan or other financial accommodations between NORTHWEST BUSINESS BANK and WEST MOUNTAIN GOLF, LLC.

Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon any further encumbrance, without Lender's prior written consent, of all or any part of the Real Property, or any right, title or interest in the Real Property.

An "encumbrance" means the mortgage of, or grant of a security interest in, or grant of a lien on, any part of the Real Property, or any right, title or interest in the Real Property.

THIS DUE ON ENCUMBRANCE IS EXECUTED ON AUGUST 24, 2005.

GRANTOR:

WEST MOUNTAIN GOLF, LLC

TAMARACK RESORT, LLC, Manager of WEST MOUNTAIN GOLF, LLC

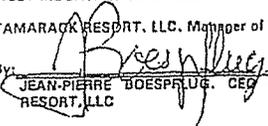
By:   
JEAN-PIERRE BOESPRUG, CEO of TAMARACK  
RESORT, LLC

EXHIBIT A

PARCELS A THRU D:

LEGAL DESCRIPTION  
OF  
TAMARACK RESORT GOLF COURSE

Four parcels of land located in Sections 5 and 8, Township 15 North, Range 3 East, Boise Meridian, Valley County, Idaho, more particularly described as follows:

Parcel A:

COMMENCING at the north 1/4 corner of said Section 5; thence along the north line of said Section 5,

- A.) S. 89° 27' 05" E., 296.16 feet; thence, departing said section line;
- B.) S. 0° 32' 55" W., 1537.60 feet to the POINT OF BEGINNING; thence,
  - 1.) N. 86° 22' 47" E., 230.17 feet; thence,
  - 2.) N. 77° 32' 59" E., 268.40 feet; thence,
  - 3.) N. 70° 08' 24" E., 202.53 feet; thence,
  - 4.) S. 69° 26' 41" E., 143.67 feet; thence,
  - 5.) S. 89° 50' 07" E., 143.20 feet; thence,
  - 6.) S. 75° 12' 40" E., 63.95 feet; thence,
  - 7.) S. 61° 52' 53" E., 159.81 feet; thence,
  - 8.) S. 71° 58' 25" E., 161.98 feet; thence,
  - 9.) S. 35° 04' 12" E., 136.31 feet; thence,
  - 10.) S. 14° 07' 03" E., 132.00 feet; thence,

EXHIBIT A

PARCELS A THRU D:

- 11.) S.59°40'35"E., 272.48 feet; thence,
- 12.) S.25°59'04"W , 276.18 feet; thence,
- 13.) S.21°23'20"W., 502.77 feet; thence,
- 14.) S.12°45'17"W., 169.07 feet; thence,
- 15.) S.20°06'59"W., 663.00 feet; thence,
- 16.) S.82°26'28"E., 444.78 feet; thence,
- 17.) S.22°35'30"E., 392.70 feet; thence,
- 18.) S.0°05'04"E., 163.10 feet; thence,
- 19.) S.28°16'52"W., 394.85 feet; thence,
- 20.) S.42°47'08"W., 829.09 feet; thence,
- 21.) S.58°17'13"W., 291.47 feet; thence,
- 22.) S.26°21'09"E., 316.06 feet; thence,
- 23.) S.26°15'45"W., 122.10 feet to a point on the south line of said Section 5;  
thence, along said section line,
- 24.) S.89°56'25"W., 585.80 feet to a point on the boundary of Tamarack Resort  
Planned Unit Development Phase 1; thence, along said boundary through the  
following courses:
- 25.) N.4°01'06"E., 138.16 feet; thence,
- 26.) N.16°10'36"E., 140.67 feet; thence,
- 27.) N.2°48'29"E., 46.17 feet; thence,
- 28.) N.24°29'12"W., 208.21 feet; thence,

## EXHIBIT A

## PARCELS A THRU D:

- 29.) N.2°32'19"E., 47.12 feet; thence,
- 30.) N.28°04'26"E., 19.54 feet; thence,
- 31.) N.39°02'59"E., 116.48 feet; thence,
- 32.) N.43°20'51"E., 730.13 feet; thence,
- 33.) N.40°01'59"W., 200.93 feet; thence,
- 34.) S.87°54'29"W., 138.39 feet; thence,
- 35.) S.70°18'13"W., 313.36 feet; thence,
- 36.) S.78°11'10"W., 80.86 feet; thence,
- 37.) N.73°02'13"W., 86.12 feet; thence
- 38.) N.49°16'48"W., 176.90 feet; thence,
- 39.) N.48°31'25"W., 250.98 feet; thence,
- 40.) S.43°58'05"W., 125.46 feet to a point on a non-tangent curve; thence,
- 41.) Northwesterly along said curve to the left having a radius of 205.00 feet, an arc length of 62.63 feet, through a central angle of 17°30'16", and a chord bearing and distance of N.42°44'47"W., 62.39 feet; thence, tangent from said curve,
- 42.) N.51°29'55"W., 245.10 feet to the beginning of a tangent curve; thence,
- 43.) Northwesterly along said curve to the left having a radius of 825.00 feet, an arc length of 128.61 feet, through a central angle of 8°55'56", and a chord bearing and distance of N.55°57'53"W., 128.49 feet; thence,
- 44.) N.62°52'29"E., 170.63 feet; thence,
- 45.) N.06°08'21"W., 363.79 feet; thence,

EXHIBIT A

PARCELS A THRU D:

- 46.) N.69°30'18"W., 420.12 feet; thence,
- 47.) N.43°19'35"W., 422.80 feet; thence,
- 48.) N.13°49'07"W., 432.15 feet; thence,
- 49.) N.20°18'50"W., 244.95 feet; thence,
- 50.) N.32°12'25"E., 180.50 feet; thence,
- 51.) N.53°15'28"E., 176.77 feet; thence
- 52.) N.69°09'56"E., 378.53 feet; thence,
- 53.) N.16°20'42"E., 161.54 feet; thence
- 54.) N.59°21'40"E., 60.00 feet; thence
- 55.) S.86°01'23"E., 170.22 feet; thence
- 56.) N.56°08'22"E., 98.34 feet; thence,
- 57.) N.75°10'48"E., 573.57 feet to the POINT OF BEGINNING.

Parcel B:

COMMENCING at the north 1/4 corner of said Section 8; thence, along the west line of the northwest 1/4 of the northeast 1/4 of said Section 8,

- A.) S.0°07'41"W., 1325.76 feet to the C-N 1/16 corner of said Section 8; thence,
- B.) S.89°53'46"E., 240.24 feet to the POINT OF BEGINNING; thence,
- 1.) S.89°53'46"E., 1162.17 feet; thence,
- 2.) S.15°32'21"E., 288.21 feet; thence,

EXHIBIT A

PARCELS A THRU D:

- 3.) S.45°59'25"E., 187.80 feet; thence,
- 4.) S.0°00'00"E., 43.69 feet; thence,
- 5.) S.51°07'48"W., 302.18 feet; thence,
- 6.) S.20°00'03"W., 324.47 feet; thence,
- 7.) S.36°46'50"W., 255.08 feet; thence,
- 8.) S.9°22'20"W., 253.95 feet; thence,
- 9.) S.20°15'09"W., 213.84 feet; thence,
- 10.) N.57°05'33"W., 586.31 feet; thence,
- 11.) N.83°17'17"W., 328.92 feet; thence,
- 12.) S.75°08'04"W., 252.38 feet; thence,
- 13.) S.78°09'30"W., 191.69 feet; thence,
- 14.) N.36°21'59"W., 141.59 feet; thence,
- 15.) N.26°23'49"E., 152.89 feet; thence,
- 16.) N.68°16'04"W., 378.45 feet; thence,
- 17.) N.11°43'53"W., 84.70 feet; thence,
- 18.) N.82°23'28"E., 162.44 feet; thence,
- 19.) S.87°47'57"E., 172.45 feet; thence,
- 20.) N.69°50'16"E., 135.18 feet; thence,
- 21.) N.82°23'28"E., 217.18 feet; thence,

EXHIBIT A

PARCELS A THRU D:

- 22.) N. 72° 38' 14" E., 221.45 feet; thence,
- 23.) N. 12° 20' 03" E., 279.94 feet; thence,
- 24.) N. 6° 26' 52" W., 377.77 feet; thence,
- 25.) N. 22° 03' 29" W., 77.55 feet to the POINT OF BEGINNING.

Parcel C:

All that certain lot, piece or parcel of land, situate in Valley County, Idaho, and shown as Lot 11, Block 19, of Tamarack Resort Planned Unit Development, Phase 1 Village, a plat which is recorded in the office of the Recorder of Valley County, Idaho.

Parcel D:

All that certain lot, piece or parcel of land, situate in Valley County, Idaho, and shown as Lot 12, Block 19, of Tamarack Resort Planned Unit Development, Phase 1 Village, a plat which is recorded in the office of the Recorder of Valley County, Idaho.

## EXHIBIT A

## PARCELS A THRU D:

Together with an easement for ingress and egress, a 30 foot wide strip of land, 15 feet either side of the following centerline.

COMMENCING at the north 1/4 corner of said Section 5; thence, along the north line of said Section 5,

- A.) S.89°27'05"E., 842.30 feet; thence, departing said section line,
- B.) S.19°38'29"W., 371.11 feet; thence,
- C.) S.71°02'32"E., 54.96 feet to the POINT OF BEGINNING; thence,
- 1.) Southwesterly along a curve to the left with a radius of 80.00 feet, an arc length of 68.91 feet, through a central angle of 48°50'21", and a chord bearing and distance of S.0°23'51"W., 66.15 feet; thence, tangent from said curve,
- 2.) S.24°01'19"E., 54.34 feet to the beginning of a tangent curve; thence,
- 3.) Southeasterly along said curve to the left with a radius of 84.00 feet, an arc length of 31.84 feet, through a central angle of 21°43'14", and a chord bearing and distance of S.34°52'56"E., 31.65 feet; thence,
- 4.) Southwesterly along said curve to the right with a radius of 130.00 feet, an arc length of 211.53 feet, through a central angle of 93°13'42", and a chord bearing and distance of S.0°52'18"W., 188.95 feet; thence, tangent from said curve,
- 5.) S.47°29'09"W., 163.59 feet to the beginning of a tangent curve; thence,
- 6.) Southwesterly along said curve to the left with a radius of 350.00 feet, an arc length of 183.81 feet, through a central angle of 30°05'23", and a chord bearing and distance of S.32°26'28"W., 181.70 feet to the POINT OF TERMINATION.

EXHIBIT A

PARCEL F:

Condominium Units L1-01, L1-02, L1-04, L1-06, L1-07, L1-08, P1-40, P1-41, P1-44, P2-01, and P2-04, Tamarack Resort Members Lodge Condominium, as shown on the condominium plat for Tamarack Resort Members Lodge Condominium, appearing in the records of Valley County, Idaho as Instrument No. 291359, and as defined and described in that Condominium Declaration for Tamarack Resort Members Lodge Condominium, recorded in the records of Valley County, Idaho as Instrument No. 291363.

## EXHIBIT B - TAXES 2004

PARCELS A AND B:  
(INCLUDES MORE PROPERTY.)

<u>Tax Parcel No.</u>	<u>Amount</u>	
RP 15N 03E 050 155A	\$ 253.96	First half paid / Second half due June 20, 2005.
RP 15N 03E 051 955A	\$ 8,217.12	First half paid / Second half due June 20, 2005.
RP 15N 03E 054 725A	\$ 305.46	First half paid / Second half due June 20, 2005.
RP 15N 03E 081 205A	\$ 662.84	First half paid / Second half due June 20, 2005.
RP 000 250 000 020A	\$ 380.74	First half paid / Second half due June 20, 2005.
RP 000 250 000 030A	\$ 356.70	First half paid / Second half due June 20, 2005.
RP 000 250 000 040A	\$ 331.26	First half paid / Second half due June 20, 2005.
RP 000 250 000 050A	\$ 492.74	First half paid / Second half due June 20, 2005.
RP 000 250 000 060A	\$ 225.48	First half paid / Second half due June 20, 2005.
RP 000 250 000 070A	\$ 238.28	Paid in full
RP 000 250 000 080A	\$ 386.94	First half paid / Second half due June 20, 2005.
RP 000 250 000 090A	\$ 314.32	First half paid / Second half due June 20, 2005.
RP 000 250 000 220A	\$ 275.72	Paid in full
RP 000 250 000 230A	\$ 353.96	Paid in full
RP 000 250 000 270A	\$ 297.82	First half paid / Second half due June 20, 2005.
RP 000 250 000 280A	\$ 297.52	First half paid / Second half due June 20, 2005.
RP 000 250 000 290A	\$ 291.42	First half paid / Second half due June 20, 2005.
RP 000 250 000 300A	\$ 290.32	First half paid / Second half due June 20, 2005.
RP 000 250 000 310A	\$ 264.36	First half paid / Second half due June 20, 2005.
RP 000 250 000 320A	\$ 300.58	First half paid / Second half due June 20, 2005.
RP 000 250 000 330A	\$ 307.78	First half paid / Second half due June 20, 2005.
RP 000 250 000 340A	\$ 218.96	First half paid / Second half due June 20, 2005.

PARCELS C AND D AND F:  
(INCLUDES MORE PROPERTY.)

PP 004 920 190 000A	\$ 905.84	Paid in full
RP 004 920 190 000A	\$ 6,132.62	Paid in full

# EXHIBIT H

**Agreement and Assignment of Sale Proceeds**

**THIS AGREEMENT AND ASSIGNMENT OF SALE PROCEEDS** (“Assignment”), is entered into this \_\_\_ day of November, 2012, between **RETIREMENT SECURITY PLAN AND TRUST (“RSPT”)** and **JAMES W. FLETCHER, III (“FLETCHER”)**, an individual.

**WITNESSETH:**

**WHEREAS**, certain disputes have arisen between RSPT and Fletcher regarding loans provided to Matthew Hutcheson (“Hutcheson”) and/or Green Valley Holdings, LLC (“GVH”);

**WHEREAS**, RSPT and Fletcher both claim a security interest in a Promissory Note and Deed of Trust previously owned by Pacific Continental Bank (the “PCB Loan Documents”). The PCB Loan Documents are attached hereto as Exhibits A and B, respectively;

**WHEREAS**, Jeanne Bryant (the independent fiduciary for RSPT) has explored options to recover the PCB Loan Documents from Fletcher and possesses potential claims against Fletcher on behalf of RSPT; and

**WHEREAS**, Fletcher disputes the claims asserted by Bryant (on behalf of RSPT), and contends that he is the rightful pledgee of the PCB Loan Documents.

**NOW, THEREFORE**, in settlement of Bryant’s claims and recognition of Fletcher’s potential defenses to those claims, and in order to effect the orderly liquidation of the PCB Loan Documents (including foreclosure and sale of the assets securing the PCB loan), Bryant (on behalf of RSPT) and Fletcher have agreed as follows:

**1. Agreement.**

- a. Upon this agreement becoming effective (including any contingencies described herein), Fletcher will forthwith transfer the original PCB Loan Documents to Bryant (or her designee).
- b. Upon receiving the original PCB Loan Documents from Fletcher, Bryant (on behalf of RSPT) will take all steps necessary to receive full right and title to the PCB Loan Documents from GVH, including, but not limited to, pursuing a claim against GVH (if necessary) to foreclose on the PCB Loan Documents.
- c. Fletcher shall be entitled to acceptable title insurance reflecting perfection of RSPT’s assignment as described herein, provided by RSPT at its expense.
- d. Upon recovering the PCB Loan Documents, RSPT will initiate and complete judicial foreclosure proceedings of the Real Property secured by the PCB Loan Documents, thereby receiving title to the Tamarack Resort Osprey Meadows golf course and certain portions of the Osprey Meadows Lodge (subject only to Fletcher’s claim in the proceeds (described further below) and any right of redemption that may exist under Idaho law after the foreclosure sale). In the event a successful money bid is received at the sheriff’s sale in the judicial foreclosure proceedings, the funds received from the Sheriff’s sale will be distributed as described herein.

- e. As soon as possible after the foreclosure proceedings (including the termination of any redemption period, and assuming RSPT acquires the Real Property with a credit bid), RSPT shall market and sell the Real Property. During the redemption period, Fletcher shall be provided notice of any actions taken to market the Real Property. After the redemption period has run, Fletcher shall be provided a quarterly report of any actions taken to market the Real Property.
  - f. RSPT will, and by this Agreement does, grant Fletcher an assignment of the Net Proceeds of the PCB Loan Documents in the initial principal amount of \$700,000.00.
  - g. RSPT shall then be entitled to Net Proceeds of the PCB Loan Documents in the amount of \$4,000,000.00, which shall be paid after the initial \$700,000.00 Net Proceeds payment to Fletcher.
  - h. After paying the initial \$700,000.00 of Net Proceeds to Fletcher, and the next \$4,000,000.00 in Net Proceeds to RSPT, Fletcher shall be entitled to all Net Proceeds in excess of \$4,700,000.00.
  - i. These assignments of Net Proceeds to Fletcher shall be evidenced by the filing of a UCC Financing Statement with the Idaho Secretary of State. This UCC Financing Statement shall be prepared and filed by Bryant.
  - j. The term "Net Proceeds," as used in this Agreement, means the net proceeds paid after the sale of the Real Property, after paying all closing costs of sale and advances made to preserve the Real Property (including, but not limited to, costs of Sheriff's foreclosure sale, title company closing costs, title insurance, applicable Realtor<sup>®</sup>/broker fees, property taxes, and reasonable costs to preserve and protect the Real Property, but not including any attorney or legal fees incurred in the sale).
  - k. In the event the Real Property is not sold within eighteen (18) months of the final approval of this Agreement, interest shall then begin to accrue on the \$700,000.00 due to Fletcher in the amount of six (6) percent per annum.
  - l. In the event the Real Property is not sold within four (4) years of the final approval of this Agreement, Fletcher shall be entitled to accelerate his assignment and declare the balance of \$700,000.00, plus interest and applicable and reasonable attorney fees, due and payable.
2. **Contingent nature of Agreement.** This Agreement is contingent upon approval by (a) a majority of the RSPT plan participants and (b) the judge presiding over the *Solis v. Hutcheson* civil matter (Case No. 12-cv-00236-EJL), Edward J. Lodge. In the event this Agreement is not approved by both parties, it shall be considered null and void.
3. **Filings and Further Assurances.**
- a. Bryant shall effect the due filing of financing and continuation statements, shall make all other filings and recordings, shall give all notices, and take such other action as required by law so that this Agreement shall create a valid assignment of proceeds. Fletcher hereby authorizes and empowers Bryant to file any financing or continuation statement and any amendments thereto with respect to the filing or recording of the assignment in accordance with the laws of the State of Idaho, whether pursuant to the Uniform

Commercial Code or any other applicable law, without the signatures of Fletcher whenever permitted by applicable law.

- b. Bryant shall at any time and from time to time duly execute and deliver any and all such other and further assurances and documents and take such actions as in the reasonable judgment of Fletcher may be necessary, useful or desirable to obtain or maintain the full benefits of this Agreement.
- c. Fletcher shall at any time and from time to time duly execute and deliver any and all such other and further assurances and documents and take such actions as in the reasonable judgment of Bryant may be necessary, useful or desirable to obtain or maintain the full benefits of this Agreement.
- d.

**4. Representations and Warranties (Bryant and/or RSPT).**

- a. Bryant and RSPT hereby represent, warrant and agree that except for this Agreement it has not assigned, pledged or otherwise granted a security interest in or lien on, and hereby agrees that they will not assign, pledge or otherwise grant a security interest in or lien on the whole or any part of the rights, titles and interests hereby assigned to anyone other than Fletcher, or his successors or assigns.
- b. Bryant and RSPT represent and warrant that they possess all required authority to enter into this Agreement, subject only to the contingencies described herein.

**5. Representations and Warranties (Fletcher).**

- a. Fletcher hereby represents, warrants and agrees that he has not assigned, pledged or otherwise granted a security interest in or lien on, and hereby agrees that he will not assign, pledge or otherwise grant a security interest in or lien on the whole or any part of the rights, titles and interests in the PCB Loan Documents.
- b. Fletcher represents and warrants that he possesses all required authority to enter into this Agreement, subject only to the contingencies described herein.
- c. Fletcher specifically represents and warrants the following:
  - i. At all times prior to contact by the Department of Labor, RSPT, Bryant or any representatives of the same, Fletcher was unaware of the existence of RSPT or its involvement with Hutcheson or GVH.
  - ii. At the time he made his loan to GVH, Fletcher was unaware of the existence of the loan from RSPT to GVH, or pledge of the PCB Loan Documents by GVH to RSPT.
  - iii. At the time he made his loan to GVH, Fletcher was told (by Hutcheson) that Hutcheson used his own funds to purchase the PCB Loan Documents. Fletcher was unaware that the funds used by GVH to purchase the PCB Loan Documents had been misappropriated, taken or received from any other party.

- iv. At the time he made his loan to GVH, Fletcher was unaware that Hutcheson had caused RSPT to loan funds to GVH which were used to purchase the PCB Loan Documents.
- v. Had Fletcher been aware of the existence of the loan from RSPT to GVH, or pledge of the PCB Loan Documents to RSPT by GVH, he would not have made a loan to GVH.

**6. Miscellaneous Terms.**

- a. **Prompt Distribution.** RSPT shall promptly distribute any monies received under this Agreement, after payment of all closing costs from sale of the Real Property, including any amounts due to Fletcher.
- b. **Governing Law and Jurisdiction.** This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the laws of the State of Idaho and any applicable federal statutes. The parties hereby consent to the jurisdiction and venue of the courts of the State of Idaho and the United States District Court for the District of Idaho.
- c. **Effect of Representations and Warranties.** In the event any of the representations and warranties contained in this Agreement prove false or otherwise untrue, the terms of this Agreement shall be void and unenforceable.
- d. **Prepayment of Obligation.** The assignment hereunder shall terminate and be of no further force or effect upon the repayment or prepayment in full of the initial \$700,000.00 due to Fletcher (including any interest accrued thereon and attorney fees or other costs incurred) at any time prior to the expiration of four (4) years from the date this Agreement is final.
- e. **Attorney Fees.** In any dispute arising out of this Agreement, the prevailing party shall be entitled to reasonable attorney fees from the non-prevailing party. Determination of the prevailing party in any such dispute shall be made on the basis of the factors enumerated in Rule 54 of the Idaho Rules of Civil Procedure, as the same now exists or may subsequently be amended. Attorney fees may be awarded pursuant to this paragraph whether litigation actually ensues, whether any litigation settled prior to trial, or whether litigation is pursued through trial (and subsequent appeal).
- f. **Merger.** This contract is the entire agreement of the parties and supercedes any previous oral or written agreements.
- g. **Amendments and/or Modifications.** No term of this Agreement may be changed, waived, discharged, amended, modified or terminated orally or in any other manner other than by a written agreement signed by all the parties hereto.
- h. **Counterparts.** This Agreement may be executed by the parties in one or more counterparts, all of which taken together shall constitute one instrument. Facsimile or e-mail counterparts may be executed provided that each party executing a facsimile or e-

mail counterpart shall cause the original counterpart to be delivered to the other within seven (7) days after execution.

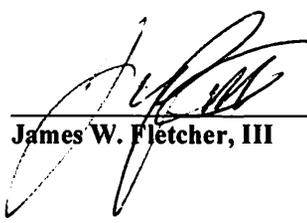
- i. **Waiver.** Failure by either party at any time to require performance by the other of any of the provisions hereof shall in no way affect a party's rights hereunder to enforce the same.

*(signature page to follow)*

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed and sealed as of the day and year first above written.

RETIREMENT SECURITY PLAN & TRUST

By: Jeanne Bryant  
Its: Independent Fiduciary

  
James W. Fletcher, III

State of Tennessee )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_ day of November, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared **Jeanne Bryant**, known or identified to me to be the Independent Fiduciary for the Retirement Security Plan & Trust, whose name is subscribed to the within instrument, and she acknowledged to me that, as to the representations and warranties contained in paragraphs 4(a) and 4(b) of the within instrument, she subscribed and swore to the same on its behalf.

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

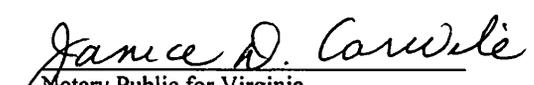
\_\_\_\_\_  
Notary Public for Tennessee  
My Commission expires:

State of Virginia )  
 ) ss.  
County of Rappahannock )

On this 12 day of ~~November~~ December, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared **James W. Fletcher**, known or identified to me to be the individual whose name is subscribed to the within instrument, and he acknowledged to me that, as to the representations and warranties contained in paragraphs 5(a) and 5(b) and 5(c) (including all subparts) of the within instrument, he subscribed and swore to the same.

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

**Janice D. Carwile**, Notary Public  
Commonwealth of Virginia at Large  
Registration No. 164703  
Commission Expires January 31, 2008  
2016

  
Notary Public for Virginia  
My Commission expires: 1/31/2016

## PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No.	Call/Coll	Account	Officer	Initials
\$3,500,000.00	08-24-2005	09-01-2010	170011639				
References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing ***** has been omitted due to text length limitations.							

Borrower: WEST MOUNTAIN GOLF, LLC Lender: NORTHWEST BUSINESS BANK  
 960 BROADWAY AVE, STE 100 1100 OLIVE WAY, SUITE 102  
 BOISE, ID 83706 SEATTLE, WA 98101  
 (206) 676-8880

Principal Amount: \$3,500,000.00

Date of Note: August 24, 2005

**PROMISE TO PAY.** WEST MOUNTAIN GOLF, LLC ("Borrower") promises to pay to NORTHWEST BUSINESS BANK ("Lender"), or order, in lawful money of the United States of America, the principal amount of Three Million Five Hundred Thousand & 00/100 Dollars (\$3,500,000.00), together with interest on the unpaid principal balance until paid in full.

**PAYMENT.** Borrower will pay this loan in full immediately upon Lender's demand. If no demand is made, Borrower will pay this loan in one principal payment of \$3,500,000.00 plus interest on September 1, 2010. This payment due on September 1, 2010, will be for all principal and all accrued interest not yet paid. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning October 1, 2005, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

**VARIABLE INTEREST RATE.** The initial interest rate on this Note is 6.90% per annum. The interest rate is subject to change on an annual basis beginning September 1, 2006 (the "Interest Rate Change Date") with all subsequent Interest Rate Change Dates to be due on the same day of each year after that. The interest rate is based on the Federal Home Loan Bank of Seattle ("FHLBS") 365 day Short Term Advances (Fixed), rounded up to the nearest one-tenth of one-percent (0.100%) (the "Index"). The new interest rate will be the Index in effect on the Interest Rate Change Date (or on the immediately preceding day that the FHLBS publishes the Index, if the Index is not published on the Interest Rate Change Date), plus a margin of 2.500 percentage points. The Index is currently published on the FHLBS website, [www.fhlbsea.com/fhlbsea/main/rates](http://www.fhlbsea.com/fhlbsea/main/rates). If the Index is no longer published by FHLBS, the Index shall be a substantially similar index rate selected by Lender.



On the annual adjustment immediately following payoff of the 1st Independent Bank construction loan, the interest rate margin shall be reduced from 2.50 percentage points, to 2.25 percentage points, provided Loan is performing as agreed and is then in a first lien position on the commercial portions of the Member's Lodge and Spa at the Tamarack property.

**PREPAYMENT.** Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Upon prepayment of this Note, Lender is entitled to the following prepayment penalty: **AMOUNTS OF PREPAYMENTS.** This Note may be prepaid in minimum amount of ONE THOUSAND AND 00/100THS DOLLARS (\$1,000.00), or in its entirety, upon Borrower giving Lender written notice at least three (3) business days prior to the date of prepayment, provided such notice is accompanied by a prepayment premium calculated as provided below. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender.

**AMOUNT OF PREPAYMENT PREMIUM.** The prepayment premium shall be equal to one percent (1.0%) of the principal balance prepaid, if prepayment is made during months one (1) through twelve (12) of the Loan Term. There shall be no premium due for prepayment after month twelve (12) of the Loan Term. For prepayment purposes, month one of the "Loan Term" shall begin September 1, 2005.

**LATE CHARGE.** If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$15.00, whichever is greater.

**INTEREST AFTER DEFAULT.** Upon default, including failure to pay upon final maturity, Lender, at its option, may, if permitted under applicable law, increase the variable interest rate on this Note by 10.000 percentage points. The interest rate will not exceed the maximum rate permitted by applicable law.

**DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with any loan.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Death or Insolvency.** The dissolution of Borrower (regardless of whether election to continue is made), any member withdraws from Borrower, or any other termination of Borrower's existence as a going business or the death of any member, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the Indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

**Cure Provisions.** If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured (and no event of default will have occurred) if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within ten (10) days; or (2) if the cure requires more than ten (10) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**LENDER'S RIGHTS.** Upon default, Lender may declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

**ATTORNEYS' FEES; EXPENSES.** Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

**GOVERNING LAW.** This Note will be governed by, construed and enforced in accordance with federal law and the laws of the State of Washington. This Note has been accepted by Lender in the State of Washington.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account.) This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

**\*\*\*\*\*SPECIAL NOTICE. ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

**SUCCESSOR INTERESTS.** The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

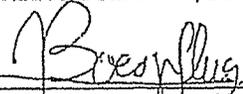
**GENERAL PROVISIONS.** Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:  
WEST MOUNTAIN GOLF, LLC

By: TAMARACK RESORT, LLC. Manager of WEST MOUNTAIN GOLF, LLC

By:   
\_\_\_\_\_  
Jean-Pierre Boespflug, CEO of Tamarack Resort, LLC

RECORDATION REQUESTED BY:  
NORTHWEST BUSINESS BANK  
1100 OLIVE WAY, SUITE 102  
SEATTLE, WA 98101

WHEN RECORDED MAIL TO:  
NORTHWEST BUSINESS BANK  
1100 OLIVE WAY, SUITE 102  
SEATTLE, WA 98101

SEND TAX NOTICES TO:  
NORTHWEST BUSINESS BANK  
1100 OLIVE WAY, SUITE 102  
SEATTLE, WA 98101

Instrument # 300330  
VALLEY COUNTY, CASCADE, IDAHO  
2005-09-20 11:07:12 No. of Pages: 16  
Recorded for : AMERITITLE  
LELAND G. HEINRICH  
Ex-Officio Recorder Deputy *J N* Fee: 48.00  
Index to: MORTGAGE

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

MORTGAGE

THIS MORTGAGE dated August 24, 2006, is made and executed between WEST MOUNTAIN GOLF, LLC. whose address is 960 BROADWAY AVE, SUITE 100, BOISE, ID 83706 (referred to below as "Grantor") and NORTHWEST BUSINESS BANK, whose address is 1100 OLIVE WAY, SUITE 102, SEATTLE, WA 98101 (referred to below as "Lender").

GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages, grants, bargains, sells and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters. (the "Real Property") located in VALLEY County, State of Idaho:

SEE ATTACHED EXHIBIT "A"

The Real Property or its address is commonly known as 2099 WEST MOUNTAIN ROAD, DONNELLY, ID 83615. The Real Property tax identification number is See Exhibit B.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Mortgage, Grantor shall pay to Lender all amounts secured by this Mortgage as they become due and shall strictly perform all of Grantor's obligations under this Mortgage.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property. The following provisions relate to the use of the Property or to other limitations on the Property.

Duty to Maintain. Grantor shall maintain the Property in tenable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Idaho law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Mortgage:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over or equal to the interest of Lender under this Mortgage, except for those liens specifically agreed to in writing by Lender, and except for the lien of taxes and assessments not due as further specified in the Right to Contest paragraph.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.



MORTGAGE  
(Continued)

Loan No: 170011639

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**Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialman's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Mortgage:

**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgage clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption and boiler insurance as Lender may require. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of thirty (30) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

**Grantor's Report on Insurance.** Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Mortgage or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Mortgage or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Mortgage also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

**WARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Mortgage:

**Title.** Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage; and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

**Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Grantor in this Mortgage shall survive the execution and delivery of this Mortgage, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

**CONDEMNATION.** The following provisions relating to condemnation proceedings are a part of this Mortgage:

**Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

**Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the condemnation.

**IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

**Current Taxes, Fees and Charges.** Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

**Taxes.** The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Mortgage or upon all or any part of the indebtedness secured by this Mortgage; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the indebtedness secured by this type of Mortgage; (3) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

**Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

**SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage:

**MORTGAGE  
(Continued)**

Loan No: 170011639

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**Security Agreement.** This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

**Addresses.** The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Mortgage.

**FURTHER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage:

**Further Assurances.** At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or re-recorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Mortgage, and the Related Documents, and (2) the liens and security interests created by this Mortgage as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** If Grantor pays all the indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

**EVENTS OF DEFAULT.** Each of the following, at Lender's option, shall constitute an Event of Default under this Mortgage:

**Payment Default.** Grantor fails to make any payment when due under the indebtedness.

**Default on Other Payments.** Failure of Grantor within the time required by this Mortgage to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

**Environmental Default.** Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

**Other Defaults.** Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Mortgage or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Mortgage or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Defective Collateralization.** This Mortgage or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Breach of Other Agreement.** Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**Right to Cure.** If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Mortgage within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within ten (10) days; or (2) if the cure requires more than ten (10) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of an Event of Default and at any time thereafter, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

**Accelerate Indebtedness.** Lender shall have the right at its option without notice to Grantor to declare the entire indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the

MORTGAGE  
(Continued)

Loan No: 170011639

Page 4

power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

**Judicial Foreclosure.** Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

**Nonjudicial Sale.** If permitted by applicable law, Lender may foreclose Grantor's interest in all or in any part of the Personal Property or the Real Property by non-judicial sale.

**Deficiency Judgment.** If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

**Tenancy at Sufferance.** If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

**Other Remedies.** Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

**Sale of the Property.** To the extent permitted by applicable law, Grantor hereby waives any and all right to have the Property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

**Notice of Sale.** Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

**Election of Remedies.** Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Mortgage, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Lender following an Event of Default, or in any way to limit or restrict the rights and ability of Lender to proceed directly against Grantor and/or against any other co-maker, guarantor, surety or endorser and/or to proceed against any other collateral directly or indirectly securing the Indebtedness.

**Attorneys' Fees/Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

**NOTICES.** Any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile unless otherwise required by law, when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Mortgage. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**ASSOCIATION OF UNIT OWNERS.** The following provisions apply if the Real Property has been submitted to unit ownership law or similar law for the establishment of condominiums or cooperative ownership of the Real Property:

**Power of Attorney.** Grantor grants an irrevocable power of attorney to Lender to vote in Lender's discretion on any matter that may come before the association of unit owners. Lender shall have the right to exercise this power of attorney only after Grantor's default; however, Lender may decline to exercise this power as Lender sees fit.

**Insurance.** The insurance as required above may be carried by the association of unit owners on Grantor's behalf, and the proceeds of such insurance may be paid to the association of unit owners for the purpose of repairing or reconstructing the Property. If not so used by the association, such proceeds shall be paid to Lender.

**Default.** Grantor's failure to perform any of the obligations imposed on Grantor by the declaration submitting the Real Property to unit ownership, by the bylaws of the association of unit owners, or by any rules or regulations thereunder, shall be an event of default under this Mortgage. If Grantor's interest in the Real Property is a leasehold interest and such property has been submitted to unit ownership, any failure by Grantor to perform any of the obligations imposed on Grantor by the lease of the Real Property from its owner, any default under such lease which might result in termination of the lease as it pertains to the Real Property, or any failure of Grantor as a member of an association of unit owners to take any reasonable action within Grantor's power to prevent a default under such lease by the association of unit owners or by any member of the association shall be an Event of Default under this Mortgage.

**DUE ON ENCUMBRANCE.** An exhibit, titled "DUE ON ENCUMBRANCE," is attached to this Mortgage and by this reference is made a part of this Mortgage just as if all the provisions, terms and conditions of the Exhibit had been fully set forth in this Mortgage.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Mortgage:

**Amendments.** This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Annual Reports.** If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

**Caption Headings.** Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

**Governing Law.** With respect to procedural matters related to the perfection and enforcement of Lender's rights against the Property, this Mortgage will be governed by federal law applicable to Lender and to the extent not preempted by federal law, the laws of the State of Idaho. In all other respects, this Mortgage will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Washington without regard to its conflicts of law provisions. However, if there ever is a question about whether any provision of this Mortgage is valid or enforceable, the provision that is questioned will be governed by whichever state or federal law would find the provision to be valid and enforceable. The loan transaction that is evidenced by the Note and this Mortgage has been applied for, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of Washington.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Mortgage shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Mortgage, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be

MORTGAGE  
(Continued)

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granted or withheld in the sole discretion of Lender

**Severability.** If a court of competent jurisdiction finds any provision of this Mortgage to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Mortgage. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Mortgage shall not affect the legality, validity or enforceability of any other provision of this Mortgage.

**Merger.** There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Successors and Assigns.** Subject to any limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Mortgage.

**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Idaho as to all indebtedness secured by this Mortgage.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Mortgage. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Borrower.** The word "Borrower" means WEST MOUNTAIN GOLF, LLC and includes all co-signers and co-makers signing the Note.

**Default.** The word "Default" means the Default set forth in this Mortgage in the section titled "Default".

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Mortgage in the events of default section of this Mortgage.

**Grantor.** The word "Grantor" means WEST MOUNTAIN GOLF, LLC

**Guaranty.** The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

**Improvements.** The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expanded or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Mortgage, together with interest on such amounts as provided in this Mortgage.

**Lender.** The word "Lender" means NORTHWEST BUSINESS BANK, its successors and assigns.

**Mortgage.** The word "Mortgage" means this Mortgage between Grantor and Lender.

**Note.** The word "Note" means the promissory note dated August 24, 2005, in the original principal amount of \$3,500,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of this Mortgage is September 1, 2010. NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Mortgage.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

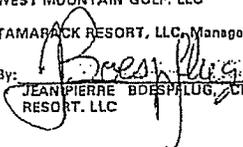
**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

WEST MOUNTAIN GOLF, LLC

TAMARACK RESORT, LLC, Manager of WEST MOUNTAIN GOLF, LLC

By:   
JEAN-PIERRE BDESPLUG, CEO of TAMARACK RESORT, LLC

Loan No: 170011639

MORTGAGE  
(Continued)

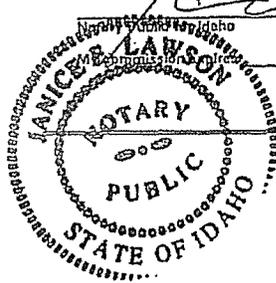
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LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF IDAHO )  
 )  
 ) SS  
COUNTY OF ADA )

On this 6<sup>th</sup> day of SEPTEMBER, in the year 2009, before me JANICE E LINDSEY, a notary public in and for the State of Idaho, personally appeared JEAN-PIERRE BOESPFLUG, CEO of TAMARACK RESORT, LLC, known or identified to me (or proved to me on the oath of \_\_\_\_\_), to be one of the members or designated agents in the limited liability company of WEST MOUNTAIN GOLF, LLC, and the member or designated agent or one of the members or designated agents who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that he or she executed the same in said limited liability company name.

Jean-Pierre Boespflug Residing at BOISE ID  
Notary Public for Idaho  
My Commission Expires 1/27/2010



### DUE ON ENCUMBRANCE

This DUE ON ENCUMBRANCE is attached to and by this reference is made a part of the Mortgage, dated August 24, 2005, and executed in connection with a loan or other financial accommodations between NORTHWEST BUSINESS BANK and WEST MOUNTAIN GOLF, LLC.

Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon any further encumbrance, without Lender's prior written consent, of all or any part of the Real Property, or any right, title or interest in the Real Property.

An "encumbrance" means the mortgage of, or grant of a security interest in, or grant of a lien on, any part of the Real Property, or any right, title or interest in the Real Property.

THIS DUE ON ENCUMBRANCE IS EXECUTED ON AUGUST 24, 2005.

GRANTOR:

WEST MOUNTAIN GOLF, LLC

TAMARACK RESORT, LLC, Manager of WEST MOUNTAIN GOLF, LLC

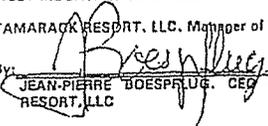
By:   
JEAN-PIERRE BOESPRUG, CEO of TAMARACK  
RESORT, LLC

EXHIBIT A

PARCELS A THRU D:

LEGAL DESCRIPTION  
OF  
TAMARACK RESORT GOLF COURSE

Four parcels of land located in Sections 5 and 8, Township 15 North, Range 3 East, Boise Meridian, Valley County, Idaho, more particularly described as follows:

Parcel A:

COMMENCING at the north 1/4 corner of said Section 5; thence along the north line of said Section 5,

- A.) S. 89° 27' 05" E., 296.16 feet; thence, departing said section line;
- B.) S. 0° 32' 55" W., 1537.60 feet to the POINT OF BEGINNING; thence,
  - 1.) N. 86° 22' 47" E., 230.17 feet; thence,
  - 2.) N. 77° 32' 59" E., 268.40 feet; thence,
  - 3.) N. 70° 08' 24" E., 202.53 feet; thence,
  - 4.) S. 69° 26' 41" E., 143.67 feet; thence,
  - 5.) S. 89° 50' 07" E., 143.20 feet; thence,
  - 6.) S. 75° 12' 40" E., 63.95 feet; thence,
  - 7.) S. 61° 52' 53" E., 159.81 feet; thence,
  - 8.) S. 71° 58' 25" E., 161.98 feet; thence,
  - 9.) S. 35° 04' 12" E., 136.31 feet; thence,
  - 10.) S. 14° 07' 03" E., 132.00 feet; thence,

EXHIBIT A

PARCELS A THRU D:

- 11.) S.59°40'35"E., 272.48 feet; thence,
- 12.) S.25°59'04"W , 276.18 feet; thence,
- 13.) S.21°23'20"W., 502.77 feet; thence,
- 14.) S.12°45'17"W., 169.07 feet; thence,
- 15.) S.20°06'59"W., 663.00 feet; thence,
- 16.) S.82°26'28"E., 444.78 feet; thence,
- 17.) S.22°35'30"E., 392.70 feet; thence,
- 18.) S.0°05'04"E., 163.10 feet; thence,
- 19.) S.28°16'52"W., 394.85 feet; thence,
- 20.) S.42°47'08"W., 829.09 feet; thence,
- 21.) S.58°17'13"W., 291.47 feet; thence,
- 22.) S.26°21'09"E., 316.06 feet; thence,
- 23.) S.26°15'45"W., 122.10 feet to a point on the south line of said Section 5;  
thence, along said section line,
- 24.) S.89°56'25"W., 585.80 feet to a point on the boundary of Tamarack Resort  
Planned Unit Development Phase 1; thence, along said boundary through the  
following courses:
- 25.) N.4°01'06"E., 138.16 feet; thence,
- 26.) N.16°10'36"E., 140.67 feet; thence,
- 27.) N.2°48'29"E., 46.17 feet; thence,
- 28.) N.24°29'12"W., 208.21 feet; thence,

## EXHIBIT A

## PARCELS A THRU D:

- 29.) N.2°32'19"E., 47.12 feet; thence,
- 30.) N.28°04'26"E., 19.54 feet; thence,
- 31.) N.39°02'59"E., 116.48 feet; thence,
- 32.) N.43°20'51"E., 730.13 feet; thence,
- 33.) N.40°01'59"W., 200.93 feet; thence,
- 34.) S.87°54'29"W., 138.39 feet; thence,
- 35.) S.70°18'13"W., 313.36 feet; thence,
- 36.) S.78°11'10"W., 80.86 feet; thence,
- 37.) N.73°02'13"W., 86.12 feet; thence
- 38.) N.49°16'48"W., 176.90 feet; thence,
- 39.) N.48°31'25"W., 250.98 feet; thence,
- 40.) S.43°58'05"W., 125.46 feet to a point on a non-tangent curve; thence,
- 41.) Northwesterly along said curve to the left having a radius of 205.00 feet, an arc length of 62.63 feet, through a central angle of 17°30'16", and a chord bearing and distance of N.42°44'47"W., 62.39 feet; thence, tangent from said curve,
- 42.) N.51°29'55"W., 245.10 feet to the beginning of a tangent curve; thence,
- 43.) Northwesterly along said curve to the left having a radius of 825.00 feet, an arc length of 128.61 feet, through a central angle of 8°55'56", and a chord bearing and distance of N.55°57'53"W., 128.49 feet; thence,
- 44.) N.62°52'29"E., 170.63 feet; thence,
- 45.) N.06°08'21"W., 363.79 feet; thence,

EXHIBIT A

PARCELS A THRU D:

- 46.) N.69°30'18"W., 420.12 feet; thence,
- 47.) N.43°19'35"W., 422.80 feet; thence,
- 48.) N.13°49'07"W., 432.15 feet; thence,
- 49.) N.20°18'50"W., 244.95 feet; thence,
- 50.) N.32°12'25"E., 180.50 feet; thence,
- 51.) N.53°15'28"E., 176.77 feet; thence
- 52.) N.69°09'56"E., 378.53 feet; thence,
- 53.) N.16°20'42"E., 161.54 feet; thence
- 54.) N.59°21'40"E., 60.00 feet; thence
- 55.) S.86°01'23"E., 170.22 feet; thence
- 56.) N.56°08'22"E., 98.34 feet; thence,
- 57.) N.75°10'48"E., 573.57 feet to the POINT OF BEGINNING.

Parcel B:

COMMENCING at the north 1/4 corner of said Section 8; thence, along the west line of the northwest 1/4 of the northeast 1/4 of said Section 8,

- A.) S.0°07'41"W., 1325.76 feet to the C-N 1/16 corner of said Section 8; thence,
- B.) S.89°53'46"E., 240.24 feet to the POINT OF BEGINNING; thence,
- 1.) S.89°53'46"E., 1162.17 feet; thence,
- 2.) S.15°32'21"E., 288.21 feet; thence,

EXHIBIT A

PARCELS A THRU D:

- 3.) S.45°59'25"E., 187.80 feet; thence,
- 4.) S.0°00'00"E., 43.69 feet; thence,
- 5.) S.51°07'48"W., 302.18 feet; thence,
- 6.) S.20°00'03"W., 324.47 feet; thence,
- 7.) S.36°46'50"W., 255.08 feet; thence,
- 8.) S.9°22'20"W., 253.95 feet; thence,
- 9.) S.20°15'09"W., 213.84 feet; thence,
- 10.) N.57°05'33"W., 586.31 feet; thence,
- 11.) N.83°17'17"W., 328.92 feet; thence,
- 12.) S.75°08'04"W., 252.38 feet; thence,
- 13.) S.78°09'30"W., 191.69 feet; thence,
- 14.) N.36°21'59"W., 141.59 feet; thence,
- 15.) N.26°23'49"E., 152.89 feet; thence,
- 16.) N.68°16'04"W., 378.45 feet; thence,
- 17.) N.11°43'53"W., 84.70 feet; thence,
- 18.) N.82°23'28"E., 162.44 feet; thence,
- 19.) S.87°47'57"E., 172.45 feet; thence,
- 20.) N.69°50'16"E., 135.18 feet; thence,
- 21.) N.82°23'28"E., 217.18 feet; thence,

EXHIBIT A

PARCELS A THRU D:

- 22.) N. 72° 38' 14" E., 221.45 feet; thence,
- 23.) N. 12° 20' 03" E., 279.94 feet; thence,
- 24.) N. 6° 26' 52" W., 377.77 feet; thence,
- 25.) N. 22° 03' 29" W., 77.55 feet to the POINT OF BEGINNING.

Parcel C:

All that certain lot, piece or parcel of land, situate in Valley County, Idaho, and shown as Lot 11, Block 19, of Tamarack Resort Planned Unit Development, Phase 1 Village, a plat which is recorded in the office of the Recorder of Valley County, Idaho.

Parcel D:

All that certain lot, piece or parcel of land, situate in Valley County, Idaho, and shown as Lot 12, Block 19, of Tamarack Resort Planned Unit Development, Phase 1 Village, a plat which is recorded in the office of the Recorder of Valley County, Idaho.

## EXHIBIT A

## PARCELS A THRU D:

Together with an easement for ingress and egress, a 30 foot wide strip of land, 15 feet either side of the following centerline.

COMMENCING at the north 1/4 corner of said Section 5; thence, along the north line of said Section 5,

- A.) S.89°27'05"E., 842.30 feet; thence, departing said section line,
- B.) S.19°38'29"W., 371.11 feet; thence,
- C.) S.71°02'32"E., 54.96 feet to the POINT OF BEGINNING; thence,
- 1.) Southwesterly along a curve to the left with a radius of 80.00 feet, an arc length of 68.91 feet, through a central angle of 48°50'21", and a chord bearing and distance of S.0°23'51"W., 66.15 feet; thence, tangent from said curve,
- 2.) S.24°01'19"E., 54.34 feet to the beginning of a tangent curve; thence,
- 3.) Southeasterly along said curve to the left with a radius of 84.00 feet, an arc length of 31.84 feet, through a central angle of 21°43'14", and a chord bearing and distance of S.34°52'56"E., 31.65 feet; thence,
- 4.) Southwesterly along said curve to the right with a radius of 130.00 feet, an arc length of 211.53 feet, through a central angle of 93°13'42", and a chord bearing and distance of S.0°52'18"W., 188.95 feet; thence, tangent from said curve,
- 5.) S.47°29'09"W., 163.59 feet to the beginning of a tangent curve; thence,
- 6.) Southwesterly along said curve to the left with a radius of 350.00 feet, an arc length of 183.81 feet, through a central angle of 30°05'23", and a chord bearing and distance of S.32°26'28"W., 181.70 feet to the POINT OF TERMINATION.

EXHIBIT A

PARCEL F:

Condominium Units L1-01, L1-02, L1-04, L1-06, L1-07, L1-08, P1-40, P1-41, P1-44, P2-01, and P2-04, Tamarack Resort Members Lodge Condominium, as shown on the condominium plat for Tamarack Resort Members Lodge Condominium, appearing in the records of Valley County, Idaho as Instrument No. 291359, and as defined and described in that Condominium Declaration for Tamarack Resort Members Lodge Condominium, recorded in the records of Valley County, Idaho as Instrument No. 291363.

## EXHIBIT B - TAXES 2004

PARCELS A AND B:  
(INCLUDES MORE PROPERTY.)

<u>Tax Parcel No.</u>	<u>Amount</u>	
RP 15N 03E 050 155A	\$ 253.96	First half paid / Second half due June 20, 2005.
RP 15N 03E 051 955A	\$ 8,217.12	First half paid / Second half due June 20, 2005.
RP 15N 03E 054 725A	\$ 305.46	First half paid / Second half due June 20, 2005.
RP 15N 03E 081 205A	\$ 662.84	First half paid / Second half due June 20, 2005.
RP 000 250 000 020A	\$ 380.74	First half paid / Second half due June 20, 2005.
RP 000 250 000 030A	\$ 356.70	First half paid / Second half due June 20, 2005.
RP 000 250 000 040A	\$ 331.26	First half paid / Second half due June 20, 2005.
RP 000 250 000 050A	\$ 492.74	First half paid / Second half due June 20, 2005.
RP 000 250 000 060A	\$ 225.48	First half paid / Second half due June 20, 2005.
RP 000 250 000 070A	\$ 238.28	Paid in full
RP 000 250 000 080A	\$ 386.94	First half paid / Second half due June 20, 2005.
RP 000 250 000 090A	\$ 314.32	First half paid / Second half due June 20, 2005.
RP 000 250 000 220A	\$ 275.72	Paid in full
RP 000 250 000 230A	\$ 353.96	Paid in full
RP 000 250 000 270A	\$ 297.82	First half paid / Second half due June 20, 2005.
RP 000 250 000 280A	\$ 297.52	First half paid / Second half due June 20, 2005.
RP 000 250 000 290A	\$ 291.42	First half paid / Second half due June 20, 2005.
RP 000 250 000 300A	\$ 290.32	First half paid / Second half due June 20, 2005.
RP 000 250 000 310A	\$ 264.36	First half paid / Second half due June 20, 2005.
RP 000 250 000 320A	\$ 300.58	First half paid / Second half due June 20, 2005.
RP 000 250 000 330A	\$ 307.78	First half paid / Second half due June 20, 2005.
RP 000 250 000 340A	\$ 218.96	First half paid / Second half due June 20, 2005.

PARCELS C AND D AND F:  
(INCLUDES MORE PROPERTY.)

PP 004 920 190 000A	\$ 905.84	Paid in full
RP 004 920 190 000A	\$ 6,132.62	Paid in full

# EXHIBIT I

Matthew T. Christensen  
ANGSTMAN JOHNSON  
3649 N. Lakeharbor Lane  
Boise, Idaho 83703  
Telephone: (208) 384-8588  
Facsimile: (208) 853-0117  
Christensen ISB: 7213

Attorney for the Independent Fiduciary, Jeanne Bryant

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

HILDA L. SOLIS, Secretary of the United  
States Department of Labor,

Plaintiff,

vs.

MATTHEW D. HUTCHESON,  
HUTCHESON WALKER ADVISORS, LLC,  
GREEN VALLEY HOLDINGS, LLC, and the  
RETIREMENT SECURITY PLAN AND  
TRUST, f/k/a PENSION LIQUIDITY PLAN  
AND TRUST,

Defendants.

Case No. 1:12-cv-236-EJL

BALLOT FOR ACCEPTING OR  
REJECTING PROPOSED COMPROMISE  
WITH FLETCHER

The Independent Fiduciary, Jeanne B. Bryant, has received court approval of a compromise with James W. Fletcher, III (“Fletcher”) in the above-entitled case. A Disclosure Statement has also been prepared by the Independent Fiduciary and approved by the court and contains information regarding the proposed compromise to assist you in deciding how to vote your ballot. That Disclosure Statement is being sent to you with this Ballot.

You should review the Disclosure Statement and proposed compromise before you vote.

BALLOT FOR ACCEPTING OR REJECTING PROPOSED COMPROMISE WITH  
FLETCHER – PAGE 1

**If your ballot is not received by the Independent Fiduciary’s counsel on or before the date specified below, your vote will not count as either an acceptance or rejection of the compromise.**

**If sufficient votes to approve the compromise are received, it will be signed by the Independent Fiduciary and it will be binding on you whether or not you vote.**

ACCEPTANCE OR REJECTION OF THE COMPROMISE

The undersigned,

- Accepts
- Rejects

the compromise with Fletcher.

Signature: \_\_\_\_\_  
 Print or type name of individual: \_\_\_\_\_  
 Name of Employer: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**THIS BALLOT MUST BE RETURNED TO THE FOLLOWING ADDRESS ON OR BEFORE \_\_\_\_\_ (Twenty-one days after it was mailed to you).**

Matthew T. Christensen  
 ANGSTMAN JOHNSON  
 3649 N. Lakeharbor Lane  
 Boise, ID 83703  
 mtc@angstman.com