DIRK KEMPTHORNE
GOVERNOR

GAVIN M. GEE
DIRECTOR

STATE OF IDAHO
DEPARTMENT OF FINANCE
700 W. STATE STREET, 2ND FLOOR
P. O. BOX 83720
BOISE ID 83720-0031
Website: http://finance.state.id.us

September 21, 2005

[redacted]

RE: Request for Opinion

Dear [redacted]:

This is in response to your opinion request dated July 28, 2005. The purpose of this letter is to clarify the requirements for offering and selling mortgage-related securities under Idaho securities laws.

It is our understanding that [redacted] "Company") is an Idaho company that offers a financing option to individuals (Tenant Buyers) who cannot secure home financing with a traditional lender. This financing option matches a single Tenant Buyer with a single private investor and permits the private investor to become the Tenant Buyer's financing source for a short period of time, typically a 2-3 year period. The Company is strictly responsible for the preparation and design of a short-term Lease with Purchase Option Agreement (Agreement) between the single Tenant Buyer and the single private investor. This Agreement specifies the terms and conditions of the Agreement including the purchase price, rent credits, equity splits between the parties and how it is to be applied to the Tenant Buyers permanent loan with a traditional lender at the conclusion of the Agreement. The Agreement legally binds the Tenant Buyer to the property he intends to purchase from the investor. The Company's services are limited to providing the Agreement and matching the parties; it is not involved in providing ongoing services to the parties or the properties. The investors and Tenant Buyers have complete control of their property and monies invested. The Company does not receive any compensation/remuneration in connection with the equity split provision contained within the Agreement.

The Uniform Securities Act (2004) ("Act") defines a "security" as:

"any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement,...investment contract...or, in general, any interest or instrument commonly known as a security."

Under this definition, any note or other evidence of indebtedness secured by a deed of trust or mortgage is a security and the offer, sale or issuance of such security is subject to regulation under the Idaho securities laws. The Act prohibits the offer or sale of a security unless the security has been registered with the

Department or qualifies for an exemption from registration. The Act further requires any person who offers or sells a security in this state to be licensed as a securities salesperson or broker-dealer unless an exclusion from such requirement exists.

Based on the information provided, it appears that the Company's Agreement would be considered a "security" under the Act.

A typical real estate transaction involving a single buyer and a single seller where the purchase is financed by a note secured by a deed of trust or mortgage involves the issuance of a security under the above definition. However, the transaction is exempt from registration by virtue of Section 30-14-202(11) of the Act. Section 30-14-202(11) exempts:

"A transaction in a note, bond, debenture or other evidence of indebtedness secured by a mortgage or other security agreement if:

(a) The note, bond, debenture or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;
(b) A general solicitation or general advertisement of the transaction is not made; and
(c) A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this chapter as a broker-dealer or as an agent.

The important condition of this exemption is that the entire note and deed of trust or mortgage must be sold as a unit. The Department has adopted an interpretive rule (see Rule 55) that defines "offered and sold as a unit" to mean: "an offer and sale of the entire mortgage or other security agreement to a single purchaser at a single sale" (emphasis added).

Under this interpretation, the exemption is clearly not available if there is a "pooling" of interests. Both notes sold "as a unit" and the sale of a partial interest in a note (or the "pooling" of interests to purchase a single note) constitute the offer and sale of a security. The two types of transactions differ in that a note secured by a deed of trust or mortgage may be offered and sold "as a unit" in reliance upon the above exemption without filing a registration application with, or receiving written approval from, the Department. Notes that are sold to a "pool" of investors do not qualify for the exemption and may be sold only if they are registered or qualify for a different exemption.

You should also be aware that on June 17, 2005 the Director executed an Order that pertains to Section 30-14-202(11). New requirements were included in Section 30-14-202(11) of the Act due to problems that had been experienced by other state regulators in this area. To date, the Department has not experiences similar problems. Thus, the Director is currently waiving the conditions for exemption from registration contained in Section 30-14-202(11) (b) and (c) of the Act. I have enclosed a copy of the June 17, 2005 Order for your review.

Based on the facts and circumstances presented in the July 28, 2005 letter and the Agreement submitted on August 18, 2005, it appears that the described transaction, between one Tenant Buyer and one investor, qualifies for the exemption from registration pursuant to Section 30-14-202(11.) Please be aware that the position taken in this letter is based solely on the facts and circumstances presented in the July 28, 2005 letter and the Agreement submitted on August 18, 2005. Should the facts change or be altered in a material way, our view may be different. Finally, please be advised that this opinion should not be used to reference the Department's approval as to the merits of the securities offering.

If you have any questions regarding this matter, please contact the undersigned.

Sincerely,

Ax (file)

Nancy C. Ax
Securities Analyst

July 28, 2005

Idaho Department of Finance
Attn: Mr. Jim Burns
700 W. State St.
Boise, ID 83702

Dear Mr. Burns,

This letter is in response to your request that we detail the scope of [redacted] business practices to the Idaho Department of Finance. Our goals are 2 fold and described in detail in the following paragraphs.

Goal #1:

[redacted]s owned and operated by a small team of dedicated professionals who provide creative financing options for individuals that cannot secure home financing with a traditional lender. We have over 20 years of combined investing & financing experience and strive to provide a secure & comfortable environment for our clients to explore alternate real estate financing options. These individuals include, but are not limited to, those who have suffered financial loss, bankruptcy, death, lost job, credit problems, collections, judgments, foreclosure, etc. We refer to these individuals as our Tenant Buyer. Our goal in this situation is to design a financing program for our tenant buyers, which will allow them to purchase a home with the helping hand of a private investor. Our program utilizes the private investor in the capacity by which the investor becomes the tenant buyer's financing source for a short period of time, typically 2-3 years in length. We structure a short-term agreement between the tenant buyer and our investor, which we refer to as a Lease With Option to Purchase Agreement or Lease Option Agreement, which has been prepared and approved by our attorneys. The Lease Option Agreement specifies the terms and conditions of the agreement including the purchase price, rent credits, equity splits between the parties and how it is to be applied to the tenant buyers permanent loan with a traditional lender at the conclusion of the Lease Option contract. The Lease Option Agreement legally binds the tenant buyer to the property in which they intend to purchase from the investor. This agreement gives the tenant buyer time to work out the financial issues that have caused traditional financing problems while occupying the residence as their own home. Over the term of the Lease Option Agreement, the tenant buyer agrees to work with a qualified loan officer to prepare a reasonable step-by-step plan to solve their financial issues so that they may exercise the Lease Option Agreement within the time limit specified in the agreement.

Goal #2:
According to an article published by Northern Trust Funding over $5.8 trillion US dollars were lost in the stock market between September 11, 2001 and July 2002. Entire investment portfolios were lost in a day. [redacted] has been vigorously developing a program by which investors can recover some of their financial losses and use real estate as a "backbone" to support their financial investments. We understand that the real estate market is just that, a market. We understand that the bond market fluctuates every moment of every day and that interest rates are tied to various markets. We have designed an innovative program for investors, which allow them to maximize cash flow and leverage their money to maximize profits. The choice to participate in each individual program is completely at the investor's discretion. Our investors are active participants in the design of each individual program so that both the tenant buyers and the investors needs are met. [redacted] provides the investor with a comprehensive cash flow analysis that completely details each individual transaction based on current market activity and a projection as to what we expect the bond market to support in 2-3 years. Since we are making a projection over the next 2-3 years based on knowledge and experience, we can make no guarantees to our investors of what the return on their investment will actually realize. We attempt to make the best evaluation we can with the current information available. The risk of loss or gain is accepted by each investor when they sign the Lease Option Agreement. The investors have complete control over their investment. The investor collects his/her own rents and option money. [redacted] does not manage the investor's property or monetary accounts. Investors can decline to participate in our program based on the evaluation of information for each individual situation prior to the signing of the Lease Option Agreement. Once the Lease Option Agreement is signed, both the tenant buyer and the investor are legally bound by the terms and the conditions of the agreement. Ultimately, some deals are riskier than others and our investors have the choice to accept or decline any deal that we present.

[redacted] is not a real estate or mortgage broker and we do not sell real estate or mortgages. We are compensated by our investors for designing the Lease Option Agreement unique to each individual situation. It is not a real estate commission, simply a preparation fee.

Thank you for your time and consideration. Please contact us with any questions you may have.

([redacted]

[redacted], President
[redacted], Vice President

[redacted]