



## BLAINE COUNTY HOUSING AUTHORITY

### BOARD MEETING AGENDA MEMO

Meeting Date:  Staff Member:

Agenda Item:

#### Recommended Action:

I move to adopt the new deed covenant templates for 1) Affordable Rental, 2) Affordable Ownership and 3) Local Ownership, as well as the Subordinate Program Mortgage to be used with both Ownership covenants.

#### Reasons for Recommendation:

- Staff have worked with Grounded Solutions Network's industry-approved template, a national nonprofit housing policy organization, to establish a new covenants
- New covenants provide a more thorough range of enforcement and compliance mechanisms to steward and preserve the units in the BCHA portfolio
- New ownership covenants follow Grounded Solution Network's Fannie Mae and Freddie Mac vetted guidelines to ensure feasibility for lending
- New covenants follow legal guidance on deed restriction terms to ensure viability

#### Policy Analysis and Background (non-consent items only):

##### **Background**

For the past year and a half, staff have engaged in updating the deed restrictions and receiving feedback on templates that will be recorded on ownership and rental units in the BCHA portfolio. Deed restrictions are covenants that encumber a property and establish specific terms and allowed uses. They "run with the land" and bind current and future owners of the property to abide by the terms. Deed restrictions may also establish an administrative entity responsible for administering and enforcing the terms, as well as specific enforcement powers.

Since the creation of Ketchum's Housing Department two years ago and identification of subsequent compliance challenges with owners and property managers of deed restricted units, staff determined that the BCHA deed restriction in use in the portfolio was lacking in adequate enforcement powers and would benefit from review and update.

It is common for housing organizations to amend deed restriction templates from time to time to address policy changes, legal guidance, and incorporate learnings.

At the March 13 BCHA Board Meeting, staff provided a staff report and presentation on the key proposed changes in the covenants. The staff report from the March 13 meeting is attached.

**Overview of Changes**

- **Deed Restriction Term:** Shift from a perpetual deed restriction term to a 70-year term, which is renewed with each transaction, per legal counsel recommendation.
- **Clarified and Expanded Enforcement Mechanisms**
  - Fees for Ineligible Renters
  - Fee for unoccupied home
  - The right to void any sale, lease, conveyance or other transfer of the home
  - Exercise a Purchase Option in the event of foreclosure to preserve the unit
  - Require payment of money damages for the cost of acquiring a comparable dwelling unit
- **Clarification of Ownership of Residential Real Estate Policy:** Owners of ownership units cannot own other residential real estate, per Program Policies
- **Clarified role of the City / Program Administrator to enforce the deed covenant**
- **Maximum Appreciation for Ownership Units limited to an average of 3% annually**

Attachments:

1. Resolution 2024-16
2. Template: Declaration of Rental Affordability Covenant
3. Template: Declaration of Affordable Ownership Covenant
4. Template: Declaration of Local Ownership Covenant (Category Local)
5. Template: Subordinate Program Mortgage
6. March 13 Staff Report on Proposed Updates to Covenants

RESOLUTION 2024-16  
BEFORE THE BOARD OF COMMISSIONERS  
OF THE BLAINE COUNTY HOUSING AUTHORITY  
BLAINE COUNTY, IDAHO

A RESOLUTION OF THE BLAINE COUNTY HOUSING AUTHORITY BOARD OF COMMISSIONERS  
AUTHORIZING THE ADOPTION OF UPDATED TEMPLATES FOR BLAINE COUNTY HOUSING AUTHORITY DEED  
COVENANTS AND SUBORDINATE PROGRAM MORTGAGE

WHEREAS, the BCHA administrative staff have reviewed the existing BCHA deed covenants and have developed updated deed covenants and a subordinate program mortgage; and

WHEREAS, the purpose of the deed covenants are to 1) ensure compliance with the goals of the Blaine County Housing Authority and its Community Guidelines for occupancy of Community Homes, 2) enable enforcement mechanisms for stewardship of the Community Homes, 3) preserve the Community Homes as part of the Blaine County Housing Authority's portfolio, 4) describe the regulations regarding occupancy, renting, purchasing, transfer, and financing of Community Homes within Blaine County; and

WHEREAS, the BCHA administrative staff prepared and presented to the BCHA Board for its review a staff report and presentation on the proposed updates at the March 13, 2024 BCHA Board Meeting, including enhancing enforcement mechanisms, establishing a legally defensible term, and limiting average annual appreciation of ownership homes to 3% annually; and

WHEREAS, the BCHA administrative staff prepared for the BCHA Board for its review and approval three deed covenant templates for rental and ownership community homes and a subordinate program mortgage for use with ownership covenants;

NOW, THEREFORE, be it resolved by the Board of Commissioners of the Blaine County Housing Authority, Blaine County, Idaho, as follows:

Section 1. The Blaine County Housing Authority Board of Commissioners approves adopting the updated BCHA Templates for: 1) Declaration of Rental Affordability Covenant, 2) Declaration of Affordable Ownership Covenant, 3) Declaration of Local Ownership Covenant, and 4) Subordinate Program Mortgages (the "BCHA TEMPLATES") on May 8, 2024, as attached and incorporated herein,

Section 2. The Blaine County Housing Authority Board of Commissioners authorizes the Executive Director to use the BCHA TEMPLATES as adopted by this Board on May 8, 2024, attached and incorporated herein.

*[This space left intentionally blank]*

DATED this \_\_\_\_ day of \_\_\_\_\_, 2024

ATTEST:

BLAINE COUNTY HOUSING AUTHORITY  
BOARD OF COMMISSIONERS

\_\_\_\_\_

\_\_\_\_\_

Executive Director

Chair

Recording Requested By and  
When Recorded Return to:

Blaine County Housing Authority  
In-person pickup preferred (208-788-6102)  
P.O. Box 4045  
Ketchum, ID 83340

# DEED COVENANT

## DECLARATION OF RENTAL AFFORDABILITY COVENANT

[development title]  
[address]

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This Deed Covenant is entered into between [FULL NAMES OF OWNERS], [each] an [individual, business, LLC] ([together, and] with permitted heirs, successors, and assigns the “**Owner**”) having a mailing address of [ADDRESS OF DEVELOPER/OWNER] and the Blaine County Housing Authority, an Idaho independent public body and politic, including successors and assigns (“**BCHA**”). The Parties make this Declaration of Affordability Covenant (this “**Declaration**”) as of [Month Date], 20[Year] (the “**Effective Date**”), for the purpose of encumbering the improved real estate described on attached Exhibit A (the “**Home**”), having an address of [Street Address, City, State, Zip Code].

## RECITALS

1. To satisfy a condition of approval, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and the BCHA are entering into this Covenant and Declaration.
2. The BCHA operates a program to preserve community housing opportunities through the stewardship of homes whose owners, at the time of permitting, have agreed to accept certain covenants, conditions, and restrictions in exchange for an exceedance of development standards or other incentives (the “Program”).
3. The purpose of this Declaration is to continue to include the Home[s] in the Program, as per [DESCRIBE MECHANISM: former Deed Covenant # or plat Exceedance Agreement] dated [Month Date], 20[Year]. Consistent with the Program, this Declaration includes terms that affect the use and rental price of the Home and are designed to ensure that the Home

continues to be affordable to low- and moderate-income households over an extended period and through a succession of owners.

4. Pursuant to the terms and conditions of this Deed Covenant, Owner hereby grants to the BCHA an interest in the Property, as more specifically set forth herein. This interest must allow the BCHA to administer the terms and conditions of this Deed Covenant and of the Guidelines, defined below, but is not to be construed to impair the ability of a mortgagee to remedy a default or foreclose under the terms of a mortgage and/or deed of trust. Notwithstanding the BCHA's interest in the Property set forth herein, the Owner is the sole owner of a fee simple estate in the Property.
5. Owner and the BCHA hereby agree that the Property must be exclusively and permanently dedicated for use and occupancy by a "Qualified Renter," defined below, as outlined in the Program Policies and in this Deed Covenant.
6. The Property has [REDACTED] restricted unit(s) and, pursuant to the terms of this covenant, is restricted for Income Category [REDACTED]. See Exhibit B for details.

## **Article I. Submission of Real Estate, Defined Terms**

1. Submission of Real Estate. By signing this Declaration, the Owner submits the Home to the covenants, conditions, and restrictions of this Declaration for the benefit of the BCHA. The BCHA, including through any Program Administrator the BCHA may appoint from time to time, will have the right to enforce this Declaration.
2. Consideration; Value Exchanged. The Owner recognizes that the Home would otherwise be market rate but the Owner is voluntarily building in exceedance of existing code requirements or receiving other detailed incentive in exchange for the inclusion of deed-restricted units in the development.
3. Any Excess Proceeds of Transfer Go to BCHA.
  - A. The Owner recognizes that it would be contrary to the purposes of this Declaration if the Owner could receive more than the as-is restricted and encumbered value of the property ("Maximum Sale Price") as the result of an eminent domain proceeding or foreclosure. It would also be contrary to the purposes of this Declaration if the Owner could receive financial benefit by violating Article II.2 ("Home may not be leased, Short-term Rented, Encumbered, Sold, or Transferred"). Therefore, the Owner hereby irrevocably assigns to BCHA any net proceeds of eminent domain proceeding or foreclosure, that would otherwise have been payable to the Owner after satisfaction of all Mortgages, if applicable, and that exceed the amount of proceeds that the Owner would have received if the property had been sold only for the Maximum Sale Price or

used only in accordance with this Article (I.3 “Any Excess Proceeds of Transfer Go To BCHA”). For the avoidance of doubt, the Owner authorizes and instructs any party conducting any eminent domain proceeding or foreclosure to pay such Excess Proceeds directly to BCHA. If, for any other reason, Excess Proceeds are paid to Owner, Owner hereby agrees to promptly pay such amount to BCHA.

- B. The BCHA must have, and the Owner hereby grants and consents to, a lien upon the Home for any Excess Proceeds. Such lien will be prior to all other liens and encumbrances on the Home except (i) liens and encumbrances recorded before the recording of this Declaration and (ii) liens for real property taxes and other governmental assessments or charges against the Home.

#### 4. Term of Declaration.

- A. This Declaration will remain in effect for seventy (70) years after the Effective Date (the “Term”), unless terminated earlier by recordation of a new Declaration upon transfer of the Home to a new Owner in accordance with Article VII; or (ii) foreclosure and expiration of the Purchase Option under Article VI.
- B. Upon expiration of the full Term, the Owner will have the option either to (i) record an amendment to this Declaration encumbering the Home for an additional term; or (ii) pay to the BCHA the Excess Proceeds that would be received by the Owner if the Owner, upon expiration of the Term, were to sell the Home unencumbered by this Declaration to a third party in a bona fide arm’s length transaction. If the Owner does not elect option (i) by recording an amendment before expiration of the Term, the Owner will be deemed to have elected option (ii). Excess Proceeds will be calculated and paid under option (ii) as follows:
  - i. The BCHA, at its sole cost and expense, will obtain an Appraisal of the Home to include the Maximum Sale Price (as-is restricted and encumbered value of the property) and the fair market, unencumbered value;
  - ii. The BCHA will calculate Excess Proceeds by subtracting the Maximum Sale Price from the fair market value of the Home, as determined by the Appraisal; and
    - 1) If the calculation in this subparagraph (ii) results in a negative number (in other words, if the Maximum Sale Price is higher than the fair market value), the Owner will not owe any Excess Proceeds, and the BCHA will promptly record a release of this Declaration; or
    - 2) If the calculation in this subparagraph (ii) results in a positive number (in other words, if the Maximum Sale Price is lower than the fair market value), the Owner must pay the Excess Proceeds to the BCHA within 90 days after receiving the BCHA’s calculation, and the BCHA will then promptly record a release of this Declaration.

#### 5. Covenants to Run with the Land. The Owner intends, declares, and covenants (a) that this

Declaration, including all restrictions, rights and covenants contained herein, are covenants running with the land, encumbering the Home for the Term, and are binding upon the Owner and the Owner's successors in title and assigns, (b) are not merely personal covenants of the Owner, and (c) inure to the benefit of and be enforceable by the BCHA and its Program Administrator, successors and assigns, for the Term. Because the Declaration runs with the land, it encumbers the Home for the Term and is binding upon the Owner's successors in title and assigns regardless of whether such successors in title and assigns agree in writing to be bound by the Declaration or execute a new Declaration at the time of resale, as provided in Article VIII.

6. Local Laws Applicable to Program Apply. This Declaration, including all restrictions, rights and covenants contained herein, and implements the Program Policies, as administered by the BCHA, including any amendments thereto if the amendments do not have a materially adverse effect on the interests of the Owner.
7. Defined Terms. Owner and BCHA agree on the following definitions of key terms used in this Declaration.
  - A. **"Appraisal"**: Fair market valuations of the Home performed by a duly licensed appraiser, conducted by analysis and comparison of comparable properties, (a) disregarding all of the restrictions of this Declaration and (b) the as-is, restricted value based on restrictions in this Declaration.
  - C. **"BCHA"**: Blaine County Housing Authority, its successors and assigns, is an Idaho independent public body corporate and politic.
  - D. **"Maximum Housing Cost"**: The Maximum Housing Cost is determined annually by BCHA and corresponds with the Income Category of the designated unit(s) (see Exhibit B.) and accounts for rent plus the estimated cost of essential utilities (electricity, gas, water, sewer, trash, and any other fees including HOA fees).
  - E. **"Qualified Renter"**: A person or group of persons who at the time of signing a lease agreement is in full compliance with the qualifications and conditions set forth in the Program Policies in effect and who has a complete and current application on file with the BCHA, and is prioritized on BCHA's waitlist or renting the unit with BCHA's approval, which has been delivered in written or electronic mail form to Owner by BCHA. Owner reserves the exclusive right to conduct its own interviews and other relevant authentication into each Qualified Renter. Owner must also follow Program Policies process requirements with regards to rejecting Qualified Renters.
  - F. **"Event of Default"**: Any violation of the terms of this Declaration unless the violation has been corrected ("**cured**") by the Owner in the period of time specified in a written Notice of Default has been given by the BCHA. See Article VIII. Enforcement.
  - G. **"Ineligible Renter"**: A person or group of persons, or a person and their spouse, not meeting the requirements to be eligible as a Qualified Renter and not approved by the BCHA at lease-up.

- H. **“Intent-to-Sell Notice”**: Owner’s notification to the BCHA and BCHA that the Owner wishes to sell the Home with Owner’s current phone and email information.
- I. **“Mortgage”**: A loan secured by a lien or security interest in the Home, together with any modifications, which may be made from time to time, by agreement between the Owner and the Mortgagee.
- J. **“Mortgagee”**: The lender shown on the security instrument securing a Mortgage, its assignees and the owner of such Mortgage.
- K. **“Out of Compliance Owner”** An owner who does not adhere to the Program Guidelines and has not cured being out of compliance, per the BCHA’s requirements and Program Policies.
- L. **“Out of Compliance Renter”** A renter who does not adhere to the Program Guidelines and has not cured being out of compliance, per the BCHA’s requirements and Program Policies.
- M. **“Program Administrator”**: Any entity designated by the BCHA to administer and manage compliance with this deed covenant. Program Administrator has the same enforcement rights as the BCHA.
- N. **“Purchase Option”**: As described more fully in Article VII, BCHA’s option to purchase the Site at the Mortgage obligation, which is triggered by (i) BCHA’s receipt of notice of a Foreclosure Action under Article VI, (ii) any sale or transfer resulting from a Foreclosure Action under Article VI, and/or (ii) an Event of Default under Article VIII (any of the foregoing, an **“Option Trigger Event”**).
- O. **“Program Policies”** are the Community Housing Guidelines or future Policies adopted by BCHA and such Guidelines as may be amended and recorded in BCHA’s discretion from time to time. In the event of any conflict between guidelines and this deed covenant, the deed covenant will prevail. Without limiting the foregoing, the most current Guidelines or Policies were adopted by the Blaine County Housing Authority on \_\_\_\_\_. By signing this Declaration, Owner acknowledges and agrees that they have notice of the existence of the current Program Policies, as well as the possibility of adoption of future Policies by the BCHA, and that they agree to comply with these Policies and any amendments thereto.

## **Article II. Use of Home**

1. Owner must use Lease Addendum supplied by BCHA in the Program Policies. If BCHA has a current lease addendum in the Program Policies, it must be used for each lease.
2. Owner must rent the Home for use as a primary residence to a Qualified Renter.
  - A. The Qualified Renter may use the Home only for residential purposes and any activities related to residential use that are permitted by local zoning law, except for short-term

rental. Additional criteria are in Program Policies. A lease is required for a minimum of a twelve (12) month term.

- B. If the Home remains unoccupied by a Qualified Renter for more than two months and the BCHA has fulfilled their role outlined in Article III, then the BCHA reserves the right to charge a fee as specified in Article VII and, without cure, default as described in Article VIII.3.
3. Home May Not be Leased, Short-term Rented, Encumbered, Sold, or Transferred Except as Provided in Articles VI and VII. No interest in the Home, including without limitation a fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entirety, life estate, limited estate, leasehold estate, tenancy, easement, mortgage, deed, lien, security interest, or other encumbrance, whether voluntary or involuntary, may be granted, sold, assigned, conveyed, or transferred except in accordance with Articles VI (“Financing and Foreclosure”) and VIII (“Transfer and Turnover of Home”) of this Declaration.
4. Owner cannot charge above the Maximum Housing Cost. Owner is obligated to ensure that no more than the Maximum Housing Cost is charged, accounting for the estimated cost of essential utilities. BCHA may, in the event of an over-income Qualified Renter, charge the Qualified Renter the difference between the Maximum Housing Cost associated with the unit’s income designation and the Maximum Housing Cost of the Qualified Renter’s new income level.
5. Owner Rent Increases are Limited. For any given Qualified Renter, the Owner cannot increase the rent by more than the greater of 4% of current rent every twelve (12) months at lease renewal, without pre-approval of the BCHA. The Owner is obligated to first give the BCHA thirty (30) days written notice of intent to raise above the allowable amount and respond in a timely manner to the BCHA’s requests for documentation that justifies such an increase. Then, if approved, the Owner must give the Qualified Renter at least ninety (90) days written notice.
6. Owner Must Work with BCHA to Lease-Up. Owner must notify the BCHA (i) simultaneously with sending Qualified Renter a notice of default, noncompliance, eviction, or lease renewal (which adheres to Lease Addendum, if available in the Program Policies); and (ii) within five (5) days of receipt of notice from Qualified Renter of intent to vacate or not renew lease.
7. Owner Must Maintain the Home Responsibly and in Compliance with the Law and Other Recorded Documents. The Owner must maintain all parts of the Home in good working order, in a safe, sound and habitable condition, and in full compliance with all laws and regulations. Owner must comply, and cause the Home and all occupants to comply, with all declarations, easements, and other documentation recorded against the Home in the local real estate records. If the requirements of any recorded documents are inconsistent with the requirements of this Declaration, the Owner must comply and must cause the Home and all occupants to comply, with the stricter requirement. Qualified Renters have the right to inspect the home before executing a lease.

### **Article III. Role of BCHA**

1. BCHA Has a Right to Conduct Annual Meetings with the Owner and Qualified Renter. The BCHA may conduct annual meetings with the Owner in the offices of the BCHA or in the Home or some other mutually convenient location (or via mutually convenient electronic means) for purposes of obtaining occupancy certifications and addressing any other Program requirements. Meetings with Owner and Tenant may be conducted separately. The Owner will cooperate with the BCHA in scheduling and attending these meetings and will provide BCHA with the requested information. The BCHA may opt to request such information from the Owner by phone, mail, email, or some other method instead of conducting an in-person (or electronically facilitated) meeting, and the Owner will then promptly provide the BCHA with the requested information using the alternative method.
2. BCHA Has a Right to Inspect the Home. The BCHA may inspect any part of the Home on an annual basis at any reasonable time, to be scheduled with the Qualified Renter or, if vacant, the Owner. If occupied, the BCHA must notify the Owner at least three (3) days before carrying out such inspection. The Owner will cooperate with the BCHA's efforts to schedule and conduct the inspection, and if negative property conditions are identified, the BCHA has the right to re-inspect until they are resolved. The inspection will include a review that the Home is decent, safe, and sanitary and in good repair and in conformance with local code.
3. BCHA has Right to Review Lease. The BCHA has the right to review the lease at lease-up before execution and at any point thereafter. BCHA may also discuss lease terms with the Qualified Tenant.
4. BCHA Will Identify Prospective Qualified Renters. At initial and any subsequent lease-ups, the BCHA will refer Qualified Renters to the Owner. The BCHA will work with the Owner as provided in Article II and VIII, as applicable.
5. BCHA's Administrator, Successors, and Assigns. The BCHA may designate a Program Administrator, a successor or assign to its rights and obligations under this Declaration, provided that such Program Administrator, successor or assign is a governmental body, governmental agency, or entity (non-profit or for-profit) with a purpose consistent with the Program.
6. Nonliability of BCHA for Negligence, Loss or Damage. The Owner understands and agrees that the relationship between the Owner and BCHA is solely that of an Owner and a program administrator. The BCHA does not owe a duty of care to protect the Owner against negligent, faulty, inadequate, or defective building or construction or any condition of the Home. Owner agrees that neither Owner nor Owner's heirs, successors or assigns must ever claim, have, or assert any right or action against the BCHA for any loss, damage, or other matter arising out of or resulting from any condition of the Home and will hold the BCHA harmless from any liability, loss, or damage for these things.

## **Article IV. Fees, Taxes, and Assessments**

1. Fees owed to BCHA. For the avoidance of doubt, Owner's obligation to pay BCHA any amounts under this Declaration, including the Fees provided in this Article IV, shall be subordinate in all respects to any Mortgagee's right to receive payment of all amounts secured by a Mortgage. The Owner and the BCHA agree that they will execute such other and further documents as are useful for a Mortgagee to prioritize payment of the amounts owed to it and they will not execute any document that contradicts such priority.
2. Owner Is Responsible for Paying all Fees, Taxes and Assessments. Owner must pay directly, when due, all fees, taxes, governmental and Owner association assessments that relate to the Home, unless such taxes and assessments are to be escrowed and paid by an Owner, in which case payment must be made as directed by that Owner.
3. If Payment Is Late, Interest Can Be Charged. If the BCHA has not received any amounts due under this Declaration on or before the required date (the "Due Date"), the BCHA can require the Owner to pay interest on the unpaid amount from the Due Date through and including the date such payment or installment is received by the BCHA, at a rate not to exceed 5% per annum or the maximum amount permitted by law, whichever is less. Such interest shall be deemed additional Program Fee and shall be paid by the Owner to the BCHA upon demand.
4. BCHA Can Collect Unpaid Amounts When Home Is Sold. In the event that any amounts due under this Declaration remain unpaid when the Home is sold, including without limitation amounts due to BCHA under this Article IV and any enforcement fees under Article VIII, the outstanding amount, including any interest (the "Unpaid Amounts"), must be paid to the BCHA out of any proceeds from the sale that would otherwise be due to the Owner. Any amounts paid pursuant to this Article may be paid to the BCHA only after amounts owed under the Mortgage have been disbursed to the Mortgagee. The BCHA shall have, and the Owner hereby grants and consents to, a lien upon the Home for such Unpaid Amounts. Such lien shall be prior to all other liens and encumbrances on the Home except (a) liens and encumbrances recorded before the recording of this Declaration, (b) Mortgages; (c) liens for real property taxes and other governmental assessments or charges against the Home; and (d) the lien for Excess Proceeds under Section 1.03. For the avoidance of doubt, the BCHA's right to enforce collection of Unpaid Amounts through foreclosure of its lien and this Section 4.04 shall be subordinate in all respects to the lien of any Mortgagee under a Mortgage.

## **Article V. Insurance, Damage or Destruction, Taking for Public Use**

1. Owner Must Insure the Home Against Loss. The Owner must, at the Owner's expense, keep the Home continuously insured against accidental direct physical loss with a coverage limit equal to the estimated full replacement cost of the Home, that is, the amount necessary to

rebuild the Home as opposed to the Home's market value. The insurance policy must satisfy all requirements of any Mortgage of record, and certificates of insurance must be delivered to BCHA upon request.

2. What Happens if Home Is Damaged or Destroyed. In the event of fire or other damage to the Home, the Owner must take all steps necessary to assure the repair of such damage and the restoration of the Home to its condition immediately prior to the damage. All such repairs and restoration must be completed as promptly as possible. Owner must also promptly take all steps necessary to assure that the damaged Home does not constitute a danger to persons or property. For clarity, the obligations of the Owner to repair and restore the Home are the same in a case of insufficient insurance proceeds as in a case of excess insurance proceeds; in either case the Owner must still repair and restore the Home, obtaining additional funds (in the case of insufficient insurance proceeds) or, if permitted by the terms of the policy and the terms of any Mortgage, retaining excess funds (in the case of excess insurance proceeds). In a case where repair and restoration are not feasible (for example, in the case of sinkhole or other condition that materially adversely impacts and precludes restoration of the structure of the Home), the Owner must provide reasonably acceptable documentation of such circumstance to BCHA, and in such case will be excused from repairing and restoring the Home, provided that the Owner uses available insurance proceeds to pay off any lien on the Home and the Owner provides the BCHA with Excess Proceeds as applicable.
  - a) Liability. The BCHA is not liable, by way of being a Party to this Declaration, for any damage to the Home that is not the result of any negligent, reckless, or intentional act or omission of the BCHA, the BCHA's agents, or employees.
3. What Happens if Some or All of the Home Is Taken for Public Use.
  - A. If all of the Home is taken by eminent domain or otherwise for public purposes, or if so much of the Home is taken that the Home is lost or damaged beyond repair, this Declaration will terminate as of the date when Owner is required to give up possession of the Home, provided, however, that any Excess Proceeds (defined in Article I) arising from eminent domain or other public use proceedings will be paid to BCHA.
  - B. In the event of a taking of a portion of the Home that results in damage to the Home that can reasonably be restored to a residential use consistent with this Declaration, then this Declaration will remain in full force and effect and the damage must be treated as damage is treated in Article V.2 above.

## **Article VI. Financing and Foreclosure**

1. By Signing Declaration, BCHA Gives Permission for Original Mortgage. By signing this Declaration, the BCHA gives written permission for the first and second priority mortgage or deed of trust signed by the Owner and financing the Owner's purchase and development of

the residential portion of the site (“the **Site**”).

2. Survival of Declaration Upon Exercise of Remedies by Mortgagees.
  - A. If the Mortgagee, deed of trust, or other encumbrance on the Site conducts a foreclosure sale, accepts a deed in lieu of foreclosure, or exercises any other right or remedy that results in the Owner no longer having title to the Site (any such right or remedy, a “**Foreclosure Action**”), this Declaration must run with the land pursuant to Article I.4 above and will continue to encumber the Home as follows:
    - i. With respect to any Mortgagee, this Declaration shall survive until expiration of the BCHA’s Purchase Option under Article VI.3 below, specifically 60 days to exercise the Purchase Option and 90 days to complete the purchase. If the BCHA exercises the Purchase Option, completes purchase of the Home, and satisfies the amounts owed under the Mortgage, this Declaration shall continue in full force and effect. If the BCHA fails to exercise the Purchase Option, or exercises the Purchase Option but fails to complete the purchase within the 90-day period allowed by Article VI.3, or fails to satisfy the amounts owed under the Mortgage, then this Declaration shall terminate and be of no further force and effect, and the BCHA shall cooperate with the Mortgagee or transferee at the Foreclosure Action to record a termination and release.
  - B. The Owner expressly authorizes any Mortgagee to provide BCHA with any information requested by BCHA with respect to the obligations secured by a mortgage, deed of trust, or other security instrument encumbering the Site, including without limitation, the original or maximum principal amount of the loan, the interest rate and other terms governing repayment, payment history, including any history of delinquent payments, current payments of principal, interest, and late fees due or delinquent, and the amount of total obligations currently secured by the Mortgage.
  - C. The Owner understands and agrees that nothing in this Declaration (i) in any way constitutes a promise or guarantee by the BCHA that the Mortgagee will actually receive the Mortgage Satisfaction Amount or any other price for the Site, or (ii) impairs the rights and remedies of the Mortgagee in the event of a deficiency.
3. If Potential Foreclosure, the BCHA Has an Option to Purchase the Site.
  - A. At least 60 days prior to any potential Foreclosure Action, the Owner must notify the BCHA of (i) the name of the lender on the note triggering the potential foreclosure activity; (ii) the original amount and date of the note, the existing balance, and the annual debt cost; (iii) the position of the note relative to other liabilities on the property; (iv) a detailed description of the circumstances that have prevented timely payment of interest on the note; (v) a detailed description of efforts between the owner and the holder of the note to reach an agreement to modify the terms of the note to prevent foreclosure; and (vi) any relationship between the holder of the note and the owner of the property by familial relationships, common principals, owners or

employees.

- B. Upon (i) BCHA's receipt of notice of a Foreclosure Action under Article VI; (ii) any sale or transfer resulting from a Foreclosure Action under Article VI; and/or (iii) an Event of Default under Article VIII (any of the foregoing, an "Option Trigger Event"), the BCHA will have the option to purchase the Site at the amount of such total obligations under the Mortgage (the "Purchase Option"). For purposes of subparagraph (iii), (A) the amount of total obligations owed to the Mortgagee must be calculated as of the date the sale to the BCHA closes, and (B) no Option Trigger Event occurring after a sale or transfer resulting from a Foreclosure Action must trigger an additional Purchase Option (rather, the BCHA must be limited to the single Purchase Option initially triggered by the sale or transfer resulting from the Foreclosure Action). The Purchase Option is designed to further the purpose of preserving the affordability of the Home for succeeding Qualified Renters while taking fair account of the investment by the Owner.
  - C. If the BCHA elects to purchase the Home, the BCHA will exercise the Purchase Option by notifying the current Owner and any Mortgagee in writing of such election (the "Notice of Exercise of Option") within 180 days after the Option Trigger Event, or the Option may expire. Having given such notice, the BCHA may (i) proceed to purchase the Site directly or (ii) assign the Purchase Option to another entity that would maintain a similar deed restriction program.
  - D. The purchase (by BCHA or BCHA's assignee) will be completed within 90 days after the BCHA's Notice of Exercise of Option, or the Purchase Option will be of no further force and effect with respect to such Option Trigger Event. Except in the case of a Foreclosure Action, the Purchase Option will remain in effect with respect to Option Trigger Events occurring after the subject Option Trigger Event. The time permitted for the completion of the purchase may be extended by mutual agreement of the BCHA or its assignee and the Owner and, if applicable, the Mortgagee undertaking the Foreclosure Action.
4. Distribution of Sales Proceeds. In the event that the BCHA does not exercise the Purchase Option, the proceeds of any sale conducted in accordance with this Article VI must be distributed as follows: first to satisfy Mortgages in order of priority, second to pay the BCHA's Unpaid Amounts and Excess Proceeds, third to pay taxes, Owner association assessments, and any statutory or municipal fees currently due and payable, fourth to pay amounts owed to any other secured lien holders.

## **Article VII. Transfer and Turnover of the Home**

1. At transfer or sale of the Home, new Owner is subject to the same terms. Any new Owner will take title subject to all the terms and conditions of this Declaration, including the Term, unless a new Declaration is recorded and must execute and record such documents as the BCHA may require and/or approve.

- A. In the event of transfer or sale, the BCHA shall record an additional covenant confirming and commensurate with BCHA's interest in preserving the Community Housing portion of the property as deed-restricted.
  - B. Before proceeding with a sale, the Owner must give the BCHA at least 30 days prior written notice that Owner has received a bona fide offer from a third party to purchase the property (hereinafter "Transfer Notice"). A copy of said third party offer shall be attached to the Transfer Notice. BCHA shall have thirty (30) days after receipt of such Transfer Notice within which to agree to purchase the Site or interest therein, upon the terms and conditions set forth in the third-party offer. Such agreement to purchase shall be evidenced by recording BCHA's Notice of Acceptance. If BCHA does not agree to purchase the Property within said thirty (30)-day period, Owner shall thereafter have the absolute right to sell or transfer the Property to the third party, so long as such sale or transfer is at a price not less than and on terms not more favorable than the price and terms stated in the third party offer attached to the Transfer Notice.
  - C. If such sale is not in fact consummated by the closing date specified in the third-party offer attached to the Transfer Notice, or if any of the terms or conditions of the proposed sale are materially modified, then compliance with this paragraph shall again be required prior to sale of the premises.
  - D. If such sale is proceeding, the Owner must provide the BCHA with the buyer's contact information a minimum of ten (10) business days before closing, and any other related documentation requested by the BCHA.
  - E. In the event the Owner transfers ownership of the Community Housing portion of the Property to a third-party buyer that is not the BCHA, the Owner shall, at closing, pay an administrative fee to the BCHA in an amount equal to one percent (1%) of that portion's sales price, calculated using BCHA's sales price for new development that is restricted to the designated unit's Income Category.
2. Repairs and Turnover Procedures. The Owner is required to make necessary repairs when the Home is turned over as follows:
- A. The Owner will provide an Inspection Checklist in the lease that the Qualified Renter must, prior to signing the lease, use (i) with an inspector at their sole expense or (ii) to self-inspect and the BCHA has the option of inspecting. The inspection is to ensure that the Home is in decent, safe, and sanitary condition and identify any additional needed repairs. The Owner must cooperate fully with the inspection.
  - B. The Owner will repair specific reported defects or conditions necessary to bring the Home into full compliance with the checklist and deed restriction prior to transferring the Home.
  - C. The Owner will bear the full cost of the necessary repairs and replacements.

## **Article VIII. Enforcement**

1. What Happens if Owner Violates Other (Nonmonetary) Terms of the Declaration. It will be an event of default if the Owner fails to abide by any other requirement or restriction stated in this Declaration and/or any other document of record encumbering the Home, and such failure is not cured by the Owner or a Mortgagee within 60 days after notice of such failure is given by the BCHA to the Owner and any Mortgagee. Notwithstanding the foregoing, the Owner will not be entitled to a cure period for any violation of the construction or statutory lien provisions in Article V, the financing provisions in Article VI, the transfer provisions in Article VII and Article II, or the provisions of Article VIII below, and the BCHA will be entitled to exercise the rights and remedies under Article VIII.4 for any such violation immediately upon notice of such violation being given by the BCHA to the Owner and any Mortgagee.
2. What Happens if Owner Defaults as a Result of Judicial Process. It is an event of default if the Home is taken on execution or by other process of law, or if any assignment is made of the Home for the benefit of creditors, or if a receiver, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of any substantial part of the Home by a court of competent jurisdiction, or if a petition is filed for the reorganization of Owner under any provisions of the Bankruptcy Act now or hereafter enacted, or if Owner files a petition for such reorganization, or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for payment of debts.
3. Owner Must Pay a Fee for Unoccupied Home. Owners must lease vacated unit within 30 days of vacation to a Qualified Renter. If BCHA provided owner with Qualified Renter(s) in a timely manner (after receiving required notice in II.5) and determines that the Owner is not, in good faith, proceeding with signing a lease and moving in new tenants, the BCHA may determine that the Owner is in violation of Article II. Any owner in violation Article II must pay monetary damages to the BCHA that equal the Maximum Housing Cost for the duration of the known violation. Property vacant for more than three months or ninety (90) days constitutes default.
4. Owner Must Pay a Fee for Renting to Ineligible Renter. If BCHA is notified that the Owner may be leasing to an Ineligible Renter, the BCHA will notify the Owner and request documentation and clarification. If the BCHA confirms occupation by an Ineligible Renter, monetary damages must be paid to the BCHA that equal the difference between the Maximum Housing Cost and (i) the monthly rent charged, confirmed by bank statements, a signed lease, a signed tenant statement, or other documentation accepted by the BCHA for the duration of the violation or (ii), if (i) is unavailable, then Market Rent, as determined by BCHA (Median Advertised Rent per bedroom size and location), for the number of months in violation. Upon that determination, the Owner must work with the BCHA on transitioning out the current Ineligible Renter to a Qualified Renter. In addition,
  - A. Owner must provide Ineligible Renter at least a ninety (90) day eviction notice, during which the Ineligible Renter will continue to pay rent to the Owner;

- B. Owner must pay Ineligible Renter relocation expenses in an amount equal to six (6) times the tenant's monthly rent paid by the Owner.
5. BCHA-approved correction of Out of Compliance Renter. Owner may be required to lease to a new tenant, either through a thirty (30) day notice or lease non-renewal, if the BCHA determines that the current lease is with an Out of Compliance Renter.
  6. Default (Uncured Violation) Gives BCHA the Right to Exercise Rights and Remedies. Upon the occurrence of an event of default that continues beyond any applicable cure period, the BCHA will have, in addition to all other rights and remedies provided at law or in equity, the right, at the BCHA's option, without further notice or demand of any kind, to take any one or more of the following actions:
    - A. The right to enforce this Declaration independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief on account of any violations including without limitation relief requiring restoration of the Home to the condition, affordability or occupancy which existed prior to the violation impacting such condition, affordability or occupancy (it being agreed that there must be no adequate remedy at law for such violation), and will be in addition to, and not in limitation of, any other rights and remedies available to the BCHA.
    - B. In the case of a default under Article VIII.1 or VIII.2, including without limitation the institution of foreclosure by judicial proceeding or private sale;
    - C. Without limitation of any other rights or remedies of the BCHA, or its successors and assigns, in the event of any rent, conveyance, financing, refinancing, or other transfer or occupancy of the Home in violation of the provisions of this Declaration, the following rights and remedies, which will be cumulative and not mutually exclusive:
      - a. Specific performance of the provisions of this Declaration;
      - b. Money damages for Excess Proceeds and Unpaid Amounts, if applicable;
      - c. The right to void any contract for lease, conveyance or other transfer of the Home in violation of the provisions of this Declaration, by an action in equity to enforce this Declaration; and
      - d. Money damages for the cost of acquiring a comparable dwelling unit for a Qualified Renter, as determined by the unrestricted value in an Appraisal paid for by the Owner.
    - D. In addition to the foregoing, the Owner hereby agrees and will be obligated to pay all fees and expenses (including legal fees) of the BCHA in the event successful enforcement action is taken against the Owner or Owner's successors or assigns.
    - E. The Owner for themselves and their successors and assigns, hereby grants to the BCHA the right to take all actions with respect to the Home which the BCHA may determine to be necessary or appropriate pursuant to applicable law, court order, or the consent of the Owner to prevent, remedy or abate any violation of this Declaration.

F. All rights and remedies set forth in this Section 9.04 are subordinate to the rights of Mortgagees as set forth in Article I and Article IV of this Declaration.

### **Article IX. Mediation**

1. Mediation. Nothing in this Declaration will be construed as preventing the parties from utilizing any process of mediation in which the parties agree to engage for the purpose of resolving a dispute.

### **Article X. Notices and Other Provisions**

1. Notices. Whenever this Declaration requires either party to give notice to the other, the notice must be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by like written notice:

If to BCHA:

Blaine County Housing Authority  
P.O. Box 4045  
Ketchum, ID 83340  
Attn: Housing

If to Owner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

All notices, demands and requests will be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

2. Severability. If any part of this Declaration is unenforceable or invalid, such material will be read out of this Declaration and will not affect the validity of any other part of this Declaration or give rise to any cause of action of Owner or BCHA against the other, and the remainder of this Declaration will be valid and enforced to the fullest extent permitted by law.
3. Waiver.
  - A. The waiver by BCHA at any time of any requirement or restriction in this Declaration, or the failure of BCHA to take action with respect to any breach of any such requirement or restriction, will not be deemed to be a waiver of such requirement or restriction with

regard to any subsequent breach of such requirement or restriction, or of any other requirement or restriction in the Declaration. BCHA may grant waivers in the terms of this Declaration, but such waivers must be in writing and signed by BCHA before being effective. Notwithstanding the foregoing, the BCHA may not waive the provisions of Article I.3.B. and Article VI.2.B. of this Declaration. THIS PROVISION DOES NOT WAIVE ANY OTHER AGREEMENTS, LAND USE ENTITLEMENTS, OR EXCEEDANCE AGREEMENTS FOR THE PROPERTY.

- B. The subsequent acceptance by BCHA of any late payments will not be deemed to be a waiver of any preceding breach by Owner of any requirement or restriction in this Declaration, other than the failure of the Owner to make the particular payment so accepted, regardless of BCHA's knowledge of such preceding breach at the time of acceptance of such payment.
4. Headings and Table of Contents. The headings, subheadings and table of contents appearing in this Declaration are for convenience only and do not in any way limit or amplify the terms or conditions of this Declaration.
  5. Parties Bound. This Declaration sets forth the entire agreement between BCHA and Owner with respect to the subject matter of this Declaration. This Declaration is binding upon and inures to the benefit of these parties and, in accordance with the provisions of this Declaration, their respective successors in interest. This Declaration may be altered or amended only by written notice executed by BCHA and Owner or their legal representatives or, in accordance with the provisions of this Declaration, their successors in interest.
  6. Governing Law. This Declaration will be interpreted in accordance with and governed by the laws of the State of Idaho. The language in all parts of this Declaration will be, in all cases, construed according to its fair meaning and not strictly for or against BCHA or Owner.
  7. Revocation of Prior Declarations. In addition to the terms stated in Section 11.05, the Parties agree that the execution of this Declaration shall also evidence an agreement by the Parties to revoke, terminate, and/or replace any and all prior Declarations and Deed Covenants by and between the BCHA or the Program Administrator and their predecessors in interest, and Owner and its predecessors in interest, including the \_\_\_\_\_, recorded \_\_\_\_\_ as Instrument No. \_\_\_\_\_, in the records of Blaine County, regardless of whether such prior Declarations and Deed Covenants have separately been terminated or released in writing or otherwise, and that this Declaration restates and supersedes in every respect any such prior Declarations and Deed Covenants, as applicable.

IN WITNESS WHEREOF, the parties have caused this Declaration to be executed as of the Effective Date.

BLAINE COUNTY HOUSING AUTHORITY

By:

\_\_\_\_\_

Title:

OWNER

By:

\_\_\_\_\_

State of Idaho

County of Blaine

This record was acknowledged before me on the \_\_\_\_\_, day of \_\_\_\_\_ 202\_\_\_\_,  
by \_\_\_\_\_, Owner.

\_\_\_\_\_  
Notary Public

Commission Expires: \_\_\_\_\_

**Exhibit A. Legal Description**  
**of the Home(s) with unit #s**

## Exhibit B. Income Restrictions

Owner developed property addressed as [REDACTED], Idaho 833 [REDACTED] for a [REDACTED] square foot retail/service/office/residential/etc. building. This development generated the obligation to provide Community Housing in accordance with [REDACTED] Approval. Owner is restricting:

- Unit [REDACTED], with [REDACTED] number of bedrooms with Income Range [REDACTED], Category [REDACTED].
- Unit [REDACTED], with [REDACTED] number of bedrooms with Income Range [REDACTED], Category [REDACTED].
- Unit [REDACTED], with [REDACTED] number of bedrooms with Income Range [REDACTED], Category [REDACTED].

**Green** = Must fill in information and/or choose one of the options provided. Language can be edited.

**Red** = Must include exact language to satisfy Government Sponsored Enterprise requirements; do not edit. Note that red language sometimes appears within yellow language; if the yellow optional language is used, the red language must be included (if the yellow language is deleted, the red language can be deleted along with it).

**Yellow** = Must be included for homes derived from design approval by Ketchum City Council or plat Exceedance Agreement

Recording Requested By and When Recorded Return to:

Blaine County Housing Authority  
In-person pickup preferred (208-788-6102)  
P.O. Box 4045  
Ketchum, ID 83340

## **DEED COVENANT DECLARATION OF AFFORDABLE OWNERSHIP COVENANT**

**[development title]**  
**[address]**

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***Based on Grounded Solutions Network 2021 Model Declaration***

This Deed Covenant is entered into between [FULL NAMES OF OWNERS], [each] an [individual, business, LLC] ([together, and] with permitted heirs, successors, and assigns the “Owner”) having a mailing address of [ADDRESS OF OWNER], and the Blaine County Housing Authority, an Idaho independent public body corporate and politic, including successors and assigns (the “BCHA”). The Parties make this Declaration of Affordability Covenant (this “Declaration”) as of [Month Date], 20[Year] (the “Effective Date”), for the purpose of encumbering the improved real estate described on attached Exhibit A (the “Home”), having an address [Street Address, City, State, Zip Code].

**RECITALS**

1. To satisfy a condition of approval, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and the BCHA are entering into this Covenant and Declaration.
2. The BCHA operates a program to preserve local housing opportunities through the stewardship of homes whose owners, at the time of permitting, have agreed to accept certain covenants, conditions, and restrictions in exchange for an exceedance of development standards or other incentives (the “Program”).
3. The purpose of this Declaration is to [continue to] include the Home in the Program, as per [DESCRIBE MECHANISM: development agreement, design approval by Ketchum City Council or plat Exceedance Agreement] dated [MONTH DATE], [YEAR]. Consistent with the Program, this Declaration includes terms that affect the use of the Home and are designed to ensure that the Home continues to be prioritized for households who live full-time and/or work in Blaine County over an extended period and through a succession of owners.
4. Pursuant to the terms and conditions of this Deed Covenant, Owner hereby grants to the BCHA an interest in the Home, as more specifically set forth herein. This interest must allow the BCHA to administer the terms and conditions of this Deed Covenant and of the Program

Policies, defined below, but is not to be construed to impair the ability of a mortgagee to remedy a default or foreclose under the terms of a mortgage and/or deed of trust. Notwithstanding the BCHA's interest in the Home set forth herein, the Owner is the sole owner of a fee simple estate in the Home.

5. The Home has [REDACTED] bedrooms and, pursuant to the terms of this covenant, is restricted for Income Category 4.

## Article I. Submission of Real Estate, Defined Terms

**Section 1.01** Submission of Real Estate. By signing this Declaration, the Owner submits the Home to the covenants, conditions, and restrictions of this Declaration for the benefit of the BCHA. The BCHA, including through any Program Administrator the BCHA may appoint from time to time, will have the right to enforce this Declaration.

**Section 1.02** Consideration; Value Exchanged. [DESCRIBE VALUE EXCHANGE: The Owner recognizes that the Home would otherwise be market rate but the developer voluntarily built in exceedance of existing code requirements or received other detailed incentive in exchange for the inclusion of deed-restricted units in the development].

**Section 1.03** Any Excess Proceeds of Transfer Go to BCHA.

- a) The Owner recognizes that it would be contrary to the purposes of this Declaration if the Owner could receive more than the as-is restricted and encumbered value of the property ("Maximum Resale Price") as the result of an eminent domain proceeding or foreclosure. It would also be contrary to the purposes of this Declaration if the Owner could receive financial benefit by violating Section 2.02. Therefore, the Owner hereby irrevocably assigns to BCHA any net proceeds of eminent domain proceeding or foreclosure, that would otherwise have been payable to the Owner after satisfaction of all Mortgages, if applicable, and that exceed the amount of proceeds that the Owner would have received if the property had been sold only for the Maximum Resale Price or used only in accordance with Section 2.02 "Excess Proceeds"). The payment of any Excess Proceeds shall be secured by the Program Mortgage. For the avoidance of doubt, the Owner authorizes and instructs any party conducting any eminent domain proceeding or foreclosure to pay such Excess Proceeds directly to BCHA. If, for any other reason, Excess Proceeds are paid to Owner, Owner hereby agrees to promptly pay such amount to BCHA.
- b) In addition to the lien of the Program Mortgage, the BCHA must have, and the Owner hereby grants and consents to, a lien upon the Home for any Excess Proceeds. Such lien will be prior to all other liens and encumbrances on the Home except (i) liens and encumbrances recorded before the recording of this Declaration and (ii) liens for real property taxes and other governmental assessments or charges against the Home. For

the avoidance of doubt, Owner's assignment to BCHA of Excess Proceeds in Section 1.03(a), and the BCHA's right to enforce collection of Excess Proceeds through foreclosure of its lien under the Program Mortgage and this Section 1.03(b), shall be subordinate in all respects to the lien of any Permitted Mortgagee under a Permitted Mortgage.

**Section 1.04** Term of Declaration is 70 years.

- a) This Declaration will remain in effect for seventy (70) years after the Effective Date (the "Term"), unless terminated earlier by recordation of a new Declaration upon transfer of the Home to a new Owner in accordance with Article VIII; or (ii) foreclosure of a Permitted Mortgage and expiration of the BCHA's Purchase Option under Article VII.
- b) Upon expiration of the full Term, the Owner will have the option either to (i) record an amendment to this Declaration encumbering the Home for an additional term; or (ii) pay to the BCHA the Excess Proceeds that would be received by the Owner if the Owner, upon expiration of the Term, were to sell the Home unencumbered by this Declaration to a third party in a bona fide arm's length transaction. If the Owner does not elect option (i) by recording an amendment before expiration of the Term, the Owner will be deemed to have elected option (ii). Excess Proceeds will be calculated and paid under option (ii) as follows:
  - A. The BCHA, at its sole cost and expense, will obtain an Appraisal of the Home to include the market, unencumbered value and the as-is restricted value;
  - B. The BCHA will calculate the Maximum Resale Price as described in Article VIII;
  - C. The BCHA will calculate Excess Proceeds by subtracting the Maximum Resale Price from the Market Value of the Home, as determined by the Appraisal; and
    - (i) If the calculation in this subparagraph (iii) results in a negative number (in other words, if the Maximum Resale Price is higher than the Market Value), the Owner will not owe any Excess Proceeds, and the BCHA will promptly record a release of this Declaration; or
    - (ii) If the calculation in this subparagraph (iii) results in a positive number (in other words, if the Maximum Resale Price is lower than the Market Value), the Owner must pay the Excess Proceeds to the BCHA within 90 days after receiving the BCHA's calculation, and the BCHA will then promptly record a release of this Declaration.

**Section 1.05** Covenants to Run with the Land. The Owner intends, declares, and covenants (a) that this Declaration, including all restrictions, rights and covenants contained herein, are covenants running with the land, encumbering the Home for the Term, and are binding upon the Owner and the Owner's successors in title and assigns, (b) are not merely personal covenants of the Owner, and (c) inure to the benefit of and to be enforceable by the BCHA and its Program Administrator, successors and assigns, for the Term. Because the Declaration runs

with the land, it encumbers the Home for the Term and is binding upon the Owner's successors in title and assigns regardless of whether such successors in title and assigns agree in writing to be bound by the Declaration or execute a new Declaration at the time of resale, as provided in Article VIII.

**Section 1.06** Program Policies Apply. In addition to this Declaration, including all restrictions, rights and covenants contained herein, the Home is subject to the Program Policies, as administered by the BCHA, including any amendments thereto if the amendments do not have a materially adverse effect on the interests of the Owner.

**Section 1.07** Defined Terms. Owner and BCHA agree on the following definitions of key terms used in this Declaration.

- a) **"Appraisal"**: Fair market valuations of the Home performed by a duly licensed appraiser, conducted by analysis and comparison of comparable properties, (a) disregarding all of the restrictions of this Declaration and (b) the as-is, restricted value based on restrictions in this Declaration.
- b) **"Base Price"**: The total price paid for the Home by the Owner, except as modified pursuant to Section 8.04.
- c) **"BCHA"**: Blaine County Housing Authority, its successors and assigns, is an Idaho independent public body corporate and politic.
- d) **"Qualified Buyer"**: A person or group of persons who at the time of transfer is in full compliance with the qualifications and conditions set forth in the Program Policies in effect, who has a complete and current application on file with the BCHA, and is prioritized on BCHA's waitlist or purchasing with BCHA's approval. This also applies to transfer via inheritance. Owner reserves the exclusive right to conduct its own interviews and other relevant authentication into each Qualified Buyer. Owner must also follow Program Policies process requirements with regards to rejecting Qualified Buyers.
- e) **"Maximum Housing Cost"**: The Maximum Housing Cost is determined annually by BCHA and corresponds with the Income Category of the Home and accounts for rent plus the estimated cost of essential utilities (electricity, gas, water, sewer, trash, and any other fees including HOA fees).
- f) **"Qualified Renter"**: A person or group of persons who at the time of signing a lease agreement is in full compliance with the qualifications and conditions set forth in the Program Policies in effect and who has a complete and current application on file with the BCHA, and is prioritized on BCHA's waitlist or renting with BCHA's approval, which has been delivered in written or electronic mail form to Owner by BCHA. Owner reserves the exclusive right to conduct its own interviews and other relevant authentication into each Qualified Renter. Owner must also follow Program Policies process requirements with regards to rejecting Qualified Renters.
- g) **"Event of Default"**: Any violation of the terms of this Declaration unless the violation

has been corrected (“**cured**”) by the Owner in the period of time specified in a written Notice of Default has been given by the BCHA.

- h) “**Ineligible Renter**”: A person or group of persons, or a person and their spouse, not meeting the requirements to be eligible as a Qualified Renter, not approved by the BCHA, nor provided to the Owner by the BCHA as a Qualified Renter.
- i) “**Ineligible Buyer**”: A person or group of persons, or a person and their spouse, not meeting the requirements to be eligible as a Qualified Buyer, not approved by the BCHA, nor provided to the Owner by the BCHA as a Qualified Buyer.
- j) “**Intent-to-Sell Notice**”: Owner’s notification to the BCHA that the Owner wishes to sell the Home. Notice will include Owner’s current phone and email information.
- k) “**Market Value**”: The market value of the Home, assuming no affordability or resale restrictions.
- l) “**Maximum Resale Price**”: The maximum price for which the Owner can sell the Home, as calculated under Article VIII of this Declaration.
- m) “**Permitted Mortgage**”: A loan secured by a lien or security interest in the Home, for which the Owner has obtained the written permission of the BCHA pursuant to Section 7.01, together with any modifications, which may be made from time to time, by agreement between the Owner and the Permitted Mortgagee.
- n) “**Permitted Mortgagee**”: The lender shown on the security instrument securing a Permitted Mortgage, its assignees and the owner of such Permitted Mortgage.
- o) “**Out of Compliance Owner**” An owner who does not adhere to the Program Guidelines and has not cured being out of compliance, per the BCHA’s requirements and Program Policies.
- p) “**Out of Compliance Renter**” A Qualified Renter who does not adhere to the Program Guidelines, or who is found to have made a material misrepresentation in BCHA’s application or the Declarant’s application process, and has not cured being out of compliance, per the BCHA’s requirements and Program Policies or Declarant’s reasonable standards of approval in accord with Program Policies.
- q) “**Program Administrator**”: The entity designated by the BCHA to administer and manage compliance with this deed restriction. Program Administrator has the same enforcement rights as the BCHA.
- r) “**Program Mortgage**”: The mortgage or deed of trust executed by the Owner in favor of the BCHA, dated and recorded the same date as this Declaration, for purposes of securing the Owner’s monetary and non-monetary obligations under this Declaration, including without limitation Excess Proceeds.
- s) “**Purchase Option**”: As described more fully in Article VII, BCHA’s option to purchase the Home at the Mortgage obligation, which is triggered by (i) BCHA’s receipt of notice of a Foreclosure Action under Article VII, (ii) any sale or transfer resulting from a Foreclosure Action under Article VII, and/or (iii) an Event of Default under Article IX (any

of the foregoing, an “**Option Trigger Event**”).

- t) “**Program Policies**” are the Community Housing Guidelines or future Policies adopted by BCHA and such Guidelines as may be amended and recorded in BCHA’s discretion from time to time. In the event of any conflict between guidelines and this deed covenant, the deed covenant will prevail. Without limiting the foregoing, the most current Guidelines or Policies were adopted by the Blaine County Housing Authority on [REDACTED]. By signing this Declaration, Owner acknowledges and agrees that they have notice of the existence of the current Program Policies, as well as the possibility of adoption of future Policies by the BCHA, and that they agree to comply with these Policies and any amendments thereto.
- u) “**Resale Fee**”: The fee that the Owner pays to the BCHA upon resale of the Home to compensate the BCHA for performing certain of its obligations under Article VIII (Transfer of the Home) below.

## Article II. Use of Home

**Section 2.01** Owner Must Use Home as Primary Residence and May Not Own Other Developed Residential Real Estate. The Owner must use the Home as Owner’s principal place of residence and must occupy the Home for at least nine [9] months of any twelve [12] consecutive months (unless more months in residence are required per Program Policies). The Owner may use the Home, and allow others to use the Home, only for residential purposes and any activities related to residential use that are permitted by local zoning law. The Owner shall not own or acquire any other developed residential real estate or a mobile home. Exceptions for shared inheritance may be allowed, in accordance with the Program Policies.

**Section 2.02** Home May Not be Leased, Short-term Rented, Encumbered, Sold, or Transferred Except as Provided in Articles VII and VIII. No interest in the Home, including without limitation a fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entirety, life estate, limited estate, leasehold estate, tenancy, easement, mortgage, deed, lien, security interest, or other encumbrance, whether voluntary or involuntary, may be granted, sold, assigned, conveyed, or transferred except in accordance with the Program Policies and/or Articles VII (“Financing and Foreclosure”) and VIII (“Transfer and Turnover of Home”) of this Declaration.

**Section 2.03** Owner Must Maintain the Home Responsibly and in Compliance with the Law and Other Recorded Documents. The Owner must maintain all parts of the Home in good working order, in a safe, sound and habitable condition, and in full compliance with all laws and regulations. Owner must comply, and cause the Home and all occupants to comply, with all declarations, easements, and other documentation recorded against the Home in the local real estate records. If the requirements of any recorded documents are inconsistent with the requirements of this Declaration, the Owner must comply and must cause the Home and all occupants to comply, with the stricter requirement. Qualified Buyers have the right to inspect

the home before executing a lease.

**Section 2.04** Income Category **X** and Net Worth Limitations. The Owner and the BCHA hereby agree the Home shall be exclusively and permanently dedicated for use and occupancy by a Category **X** household, as determined by their income and net worth at the time of purchase. The household shall meet the Basic Qualifications for Purchase of a Community Home, as described in the Program Policies. At the time of future sale or transfer of the Home, maximum income and net worth limitations for the income category will apply in review of Qualified Buyers, as defined in the Program Policies and updated by the Program Administrator.

### Article III. Role of BCHA

**Section 3.01** BCHA Has a Right to Conduct Annual Meetings with the Owner. The BCHA may conduct annual meetings with the Owner in the offices of the BCHA or in the Home or some other mutually convenient location (or via mutually convenient electronic means) for purposes of obtaining occupancy certifications and addressing any other Program requirements. The Owner will cooperate with the BCHA in scheduling and attending these meetings and will provide BCHA with the requested information. The BCHA may opt to request such information from the Owner by phone, mail, email, or some other method instead of conducting an in-person (or electronically facilitated) meeting, and the Owner will then promptly provide the BCHA with the requested information using the alternative method.

**Section 3.02** BCHA Has a Right to Inspect the Home. The BCHA or its agent may inspect any exterior part of the Home on an annual basis at any reasonable time, after notifying the Owner at least three (3) days before the planned inspection. In addition, if the BCHA has received an Intent-to-Sell Notice (as described in Article VIII below), then the BCHA or its agent has the right to inspect the interior and exterior of the Home to determine its condition prior to the sale. BCHA must notify the Owner at least three (3) days before carrying out such inspection. In either case (an annual inspection or an inspection after an Intent-to-Sell Notice), the Owner will cooperate with the BCHA's efforts to schedule and conduct the inspection, and if negative property conditions are identified, the BCHA or its agent has the right to re-inspect until they are resolved.

**Section 3.03** The BCHA may Escrow for Taxes, Assessments, and/or Insurance. Whenever a Permitted Mortgagee declines to escrow funds from the Owner for the payment of taxes and assessments under Article IV and for the payment of insurance under Article VI, the BCHA may elect to escrow such amounts and the Owner shall cooperate with the BCHA in setting up such an escrow.

**Section 3.04** BCHA will review proposed capital improvements at annual compliance review at the latest. If the Owner wishes to make Capital Improvements to the Home, the BCHA will work with the Owner as provided in Article V.

**Section 3.05** BCHA will facilitate transfers and, if allowed by Program Policies, rentals. If the Owner wishes to finance or otherwise transfer the Home, the BCHA will work with the Owner as provided in Article VII or VIII, as applicable and the Program Policies.

**Section 3.06** BCHA’s Administrator, Successors, and Assigns. The BCHA may designate a Program Administrator, a successor or assign to its rights and obligations under this Declaration, provided that such Program Administrator, successor, or assign is a governmental body, governmental agency, or entity (non-profit or for-profit) with a purpose consistent with the Program.

**Section 3.07** Nonliability of BCHA for Negligence, Loss, or Damage. The Owner understands and agrees that the relationship between Owner and BCHA is solely that of an Owner and a program administrator. The BCHA does not owe a duty of care to protect the Owner against negligent, faulty, inadequate, or defective building or construction or any condition of the Home. Owner agrees that neither Owner nor Owner’s heirs, successors or assigns must ever claim, have, or assert any right or action against the BCHA for any loss, damage, or other matter arising out of or resulting from any condition of the Home and will hold the BCHA harmless from any liability, loss, or damage for these things.

**Section 3.08** Disclaimer of Liability by BCHA for Tax Implications. The Owner understands and agrees that the relationship between Owner and BCHA is solely that of an Owner and a program administrator. Throughout the process of BCHA fulfilling its obligations under this Declaration and facilitating the transaction, taxation of the transaction may be discussed. The BCHA makes no representations as to the potential impact of this transaction on Owner’s income taxes, property taxes, or otherwise. Further, the BCHA cannot and does not owe the Owner any obligation to provide, file for, or otherwise advise Owner of the necessary tax documents, if any, required for reporting to the IRS under this Declaration. In no circumstance where taxation is addressed does the BCHA, by way of offering any commentary on such, offer any tax advice or make any warranties or representations as to the impact of this transaction on Owner’s taxes. The BCHA is not liable for any perceived negative impact, or other impact, of this transaction on Owner’s taxes, and urges the Owner to seek independent tax advice from a tax attorney, certified public accountant, or other trusted advisor who is well-versed in such matters. This section shall apply in regards to local, state, federal, and all other forms of taxation as they may be applicable.

**Article IV. Fees, Taxes, and Assessments**

**Section 4.01** Fees owed to BCHA. For the avoidance of doubt, Owner’s obligation to pay BCHA any amounts under this Declaration, including the Fees provided in this Article IV, shall be subordinate in all respects to any Permitted Mortgagee’s right to receive payment of all amounts secured by a Permitted Mortgage. The Owner and the BCHA agree that they will execute such other and further documents as are useful for a Permitted Mortgagee to prioritize payment of the amounts owed to it and they will not execute any document that contradicts

such priority.

**Section 4.02** Owner Is Responsible for Paying all Fees, Taxes and Assessments. Owner must pay directly, when due, all fees, taxes, governmental and Owner association assessments that relate to the Home, unless such taxes and assessments are to be escrowed and paid by a Permitted Mortgagee, in which case payment must be made as directed by that Permitted Mortgagee.

**Section 4.03** If Owner Fails to Pay Taxes, BCHA may Pay Taxes. If the Owner or its Permitted Mortgagee fails to pay the taxes or assessments described in Section 4.02 above, the BCHA shall have the right to pay such taxes or assessments on the Owner's behalf from time to time at the sole and absolute discretion of the BCHA. Owner shall reimburse the BCHA for any amounts paid by the BCHA to cover such taxes or assessments promptly upon demand by the BCHA. In no event shall the BCHA's actions under this section waive the disclaimer as stated in Section 3.08 of this Declaration.

**Section 4.04** If Payment Is Late, Interest Can Be Charged. If the BCHA has not received any amounts due under this Declaration on or before the required date (the "Due Date"), the BCHA can require the Owner to pay interest on the unpaid amount from the Due Date through and including the date such payment or installment is received by the BCHA, at a rate not to exceed 5% per annum or the maximum amount permitted by law, whichever is less. Such interest shall be deemed additional Program Fee and shall be paid by the Owner to the BCHA upon demand.

**Section 4.05** BCHA Can Collect Unpaid Amounts When Home Is Sold. In the event that any amounts due under this Declaration remain unpaid when the Home is sold, including without limitation amounts due to BCHA under this Article IV and any enforcement fees under Section 9.03(e), the outstanding amount, including any interest (the "Unpaid Amounts"), must be paid to the BCHA out of any proceeds from the sale that would otherwise be due to the Owner. Any amounts paid pursuant to this Section may be paid to the BCHA only after amounts owed under the Permitted Mortgage have been disbursed to the Permitted Mortgagee. In addition to the lien of the Program Mortgage, the BCHA shall have, and the Owner hereby grants and consents to, a lien upon the Home for such Unpaid Amounts. Such lien shall be prior to all other liens and encumbrances on the Home except (a) liens and encumbrances recorded before the recording of this Declaration, (b) Permitted Mortgages; (c) liens for real property taxes and other governmental assessments or charges against the Home; and (d) the lien for Excess Proceeds under Section 1.03. For the avoidance of doubt, the BCHA's right to enforce collection of Unpaid Amounts through foreclosure of its lien under the Program Mortgage and this Section 4.05 shall be subordinate in all respects to the lien of any Permitted Mortgagee under a Permitted Mortgage.

## Article V. Improvements to the Home

**Section 5.01** Owner's Ability to Improve the Home is Limited. The Owner shall not make any

Capital Improvements to the Home without the prior written consent of the BCHA, which consent may be withheld in the BCHA's sole and absolute discretion. The term "Capital Improvements" means any improvements that change the number of bedrooms or the footprint, square-footage, or height of the Home, or increase or decrease the number of structures on the Property, or the installation of an in-ground pool, or any other permanent improvement consistent with the Program Policies. The Owner may make other improvements to the Home without the consent of the BCHA as long as such improvements are constructed in a professional manner and comply with Section 5.04 below and all applicable laws and regulations. This Section 5.01 does not apply in the event the Home is damaged or destroyed following a fire or other casualty, as described in Section 6.02.

**Section 5.02** Requests for Consent from BCHA. For any proposed Capital Improvements, the Owner shall submit a written request to the BCHA including the following information:

- a) a written statement of the reasons for undertaking the construction;
- b) upon request by the BCHA, a set of drawings (floor plan and elevations) showing the dimensions of the proposed construction;
- c) a list of the necessary materials, with quantities needed;
- d) a statement of who will do the work; and
- e) if the Owner would like to receive a monetary credit for the Value Added by Capital Improvements, (a "Capital Improvements Credit"), a statement requesting the BCHA to consider permitting such a credit.

Prior to granting or withholding consent, the BCHA may request additional information from the Owner within three weeks of receipt of the Owner's request. The BCHA shall inform the Owner of its decision to grant or withhold consent to construction of the proposed Capital Improvements, as well as its decision to grant or withhold consent to any requested Capital Improvements Credit, within 45 days after receipt of all information from the Owner. If the BCHA consents to a requested Capital Improvements Credit, the BCHA shall also inform the Owner of the value to be ascribed to the Capital Improvements or the method to be employed to determine such value at resale, including application of depreciation rates, which may result in a Capital Improvements Credit less than the actual cost of the Capital Improvements.

In calculating the Capital Improvements Credit, only the Owner's actual out-of-pocket costs and expenses for materials and labor applied to the Property shall be eligible for inclusion. Such amount shall not include costs attributable to the Owner's or occupant's personal labor, loan fees, interest, closing costs, fines, penalties, alternative or temporary housing costs or rent, tools, depreciation, consumables, utilities, and other similar costs and expenses.

**Section 5.03** Building Permits; Right to Inspect. Prior to the commencement of construction of any Capital Improvements, the Owner shall provide the BCHA with copies of all necessary

building permits, if not previously provided. The BCHA shall have the right to inspect the Capital Improvements while under construction and after completion to confirm consistency with the information presented in Section 5.02 and with this Article V, and may adjust the Capital Improvements Credit to account for any identified inconsistency. Any inspection and identification of inconsistencies by the BCHA shall be for the benefit of the BCHA only; the Owner will conduct his or her own inspections to confirm all work performed is satisfactory to the Owner.

**Section 5.04** Owner May Not Allow Statutory Liens to Remain Against Home. The Owner shall not permit any statutory or similar lien to be filed against the Home which remains more than 30 days after it has been filed. The Owner shall take action to discharge such lien, whether by means of payment, deposit, bond, court order, or other means permitted by law. If the Owner fails to discharge such lien within the 30-day period, then the Owner shall immediately notify the BCHA of such failure. The BCHA shall have the right to discharge the lien by paying the amount in question. The Owner may, at Owner's expense, contest the validity of any such asserted lien, provided the Owner has furnished a bond or other acceptable surety in an amount sufficient to release the Home from such lien. Any amounts paid by the BCHA to discharge such liens shall be reimbursed by the Owner upon demand of the BCHA.

**Section 5.05** Indemnification. Owner agrees to indemnify and shall indemnify, defend, protect and hold the BCHA harmless from and against any and all expenses, liabilities, claims, and lawsuits (including reasonable attorney's fees) for bodily injuries (including death resulting therefrom) or property damage which may arise from Owner's acts or omissions related to the improvements made under this Article V, whether approved by the BCHA in accordance with this Article or not, regardless of whether such acts or omissions are negligent, reckless, or intentional acts or omissions of Owner, Owner's agents, or employees. Owner hereby assumes all risk of damage to property or injury to person in, upon or about the premises from any cause arising from any negligent, reckless, or intentional acts of Owner, or any of Owner's agents, contractors or employees.

## **Article VI. Insurance, Damage or Destruction, Taking for Public Use**

**Section 6.01** Owner Must Insure the Home Against Loss. The Owner must, at the Owner's expense, keep the Home continuously insured against accidental direct physical loss with a coverage limit equal to the estimated full replacement cost of the Home, that is, the amount necessary to rebuild the Home as opposed to the Home's Market Value. The insurance policy must satisfy all requirements of Program Mortgage and any other Mortgage of record and any Homeowner's Association Regulations, and certificates of insurance must be delivered to BCHA upon request.

**Section 6.02** What Happens if Home Is Damaged or Destroyed. In the event of fire or other damage to the Home, the Owner must take all steps necessary to assure the repair of such damage and the restoration of the Home to its condition immediately prior to the damage. All such repairs and restoration must be completed as promptly as possible. Owner must also

promptly take all steps necessary to assure that the damaged Home does not constitute a danger to persons or property. For clarity, the obligations of the Owner to repair and restore the Home are the same in a case of insufficient insurance proceeds as in a case of excess insurance proceeds; in either case the Owner must still repair and restore the Home, obtaining additional funds (in the case of insufficient insurance proceeds) or, if permitted by the terms of the policy and the terms of any Mortgage, retaining excess funds (in the case of excess insurance proceeds). In a case where repair and restoration are not feasible (for example, in the case of sinkhole or other condition that materially adversely impacts and precludes restoration of the structure of the Home), the Owner must provide reasonably acceptable documentation of such circumstance to BCHA, and in such case will be excused from repairing and restoring the Home, provided that the Owner uses available insurance proceeds to pay off any lien on the Home and the Owner provides the BCHA with Excess Proceeds as applicable.

- a) Liability. The BCHA is not liable, by way of being a Party to this Declaration, for any damage to the Home that is not the result of any negligent, reckless, or intentional act or omission of the BCHA, the BCHA's agents, or employees.

**Section 6.03** What Happens if Some or All of the Home Is Taken for Public Use.

- a) If all of the Home is taken by eminent domain or otherwise for public purposes, or if so much of the Home is taken that the Home is lost or damaged beyond repair, this Declaration will terminate as of the date when Owner is required to give up possession of the Home, provided, however, that any Excess Proceeds (defined in Article I) arising from eminent domain or other public use proceedings will be paid to BCHA.
- b) In the event of a taking of a portion of the Home that results in damage to the Home that can reasonably be restored to a residential use consistent with this Declaration, then this Declaration will remain in full force and effect and the damage must be treated as damage is treated in Section 6.02 above.

## Article VII. Financing and Foreclosure

**Section 7.01** Owner Cannot Mortgage the Home Without BCHA's Permission.

- a) The Owner may only grant a lien or security interest, including a mortgage or deed of trust (either at the time of purchase of the Home or subsequent to the purchase of the Home to refinance an existing Permitted Mortgage or to finance home repairs or to facilitate a Home Equity Line of Credit ("HELOC") or for any other purpose), on the Home or encumber the Home in any other way after first obtaining the written permission of the BCHA. Any Permitted Mortgage or other lien, security interest, or other encumbrance shall be subject to the terms of this Declaration, including without limitation this Article VII and Section 7.04 below.
- b) The BCHA will not permit such a loan if the loan increases the Owner's total mortgage debt to an amount greater than 90% of the then current Maximum Resale Price, calculated in accordance with Article VIII below, or if any Permitted Mortgagee has not

provided written consent to the loan, or if the terms of the transaction otherwise adversely affect the interests of either the Owner, Permitted Mortgagee, or BCHA.

- c) The BCHA may require the Owner to submit, in writing, certain information about the proposed terms and conditions of such loan at least 30 days prior to the expected closing of the loan.

**Section 7.02** By Signing Declaration, BCHA Gives Permission for Original Mortgage. By signing this Declaration, the BCHA gives written permission for the first and second priority mortgage or deed of trust signed by the Owner and financing the Owner's purchase of the Home. The Program Manager also hereby gives written permission for any assignee of a Permitted Mortgage to be a Permitted Mortgagee at any time it purchases a Permitted Mortgage.

**Section 7.03** Property Assessed Clean Energy. Property Assessed Clean Energy ("PACE") financing in connection with the Home is prohibited.

**Section 7.04** Survival of Declaration Upon Exercise of Remedies by Mortgagees.

- a) If the holder of any mortgage, deed of trust, or other encumbrance on the Home (each, a "Mortgagee") conducts a foreclosure sale, accepts a deed in lieu of foreclosure, or exercises any other right or remedy that results in the Owner no longer having title to the Home (any such right or remedy, a "Foreclosure Action"), this Declaration must run with the land pursuant to Section 1.05 above and will continue to encumber the Home as follows:

- (i) With respect to any Mortgagee who is also a Permitted Mortgagee, this Declaration shall survive until expiration of the BCHA's Purchase Option under Section 7.05 below, specifically 60 days to exercise the Purchase Option and 90 days to complete the purchase. If the BCHA exercises the Purchase Option, completes purchase of the Home, and satisfies the amounts owed under the Permitted Mortgage, this Declaration shall continue in full force and effect. If the BCHA fails to exercise the Purchase Option, or exercises the Purchase Option but fails to complete the purchase within the 90-day period allowed by Section 7.05, or fails to satisfy the amounts owed under the Permitted Mortgage, then this Declaration shall terminate and be of no further force and effect, and the BCHA shall cooperate with the Permitted Mortgagee or transferee at the Foreclosure Action to record a termination and release.

- (ii) With respect to any Mortgagee who is not a Permitted Mortgagee, Article VIII and all other provisions of this Declaration shall apply to the transfer of the Home resulting from the Foreclosure Action, and Article VIII and all other provisions of this Declaration shall continue to encumber the Home and shall be binding on the grantee receiving an interest in the Home by virtue of the Foreclosure Action and on all subsequent owners of any interest in the Home.

- b) The Owner expressly authorizes any Mortgagee to provide BCHA with any information

requested by BCHA with respect to the obligations secured by a mortgage, deed of trust, or other security instrument encumbering the Home, including without limitation, the original or maximum principal amount of the loan, the interest rate and other terms governing repayment, payment history, including any history of delinquent payments, current payments of principal, interest, and late fees due or delinquent, and the amount of total obligations currently secured by the Mortgage.

- c) The Owner understands and agrees that nothing in this Declaration (i) in any way constitutes a promise or guarantee by the BCHA that the Mortgagee will actually receive the Mortgage Satisfaction Amount, the Maximum Resale Price or any other price for the Home, or (ii) impairs the rights and remedies of the Mortgagee in the event of a deficiency.

**Section 7.05** If Potential Foreclosure, the BCHA Has an Option to Purchase the Home.

- a) At least 60 days prior to any potential Foreclosure Action, the Owner must notify the BCHA of (i) the name of the lender on the note triggering the potential foreclosure activity; (ii) the original amount and date of the note, the existing balance, and the annual debt cost; (iii) the position of the note relative to other liabilities on the property; (iv) a detailed description of the circumstances that have prevented timely payment of interest on the note; (v) a detailed description of efforts between the owner and the holder of the note to reach an agreement to modify the terms of the note to prevent foreclosure; and (vi) any relationship between the holder of the note and the owner of the property by familial relationships, common principals, owners or employees.
- (i) Upon (i) BCHA's receipt of notice of a Foreclosure Action under Article VII; (ii) any sale or transfer resulting from a Foreclosure Action under Article VII; and/or (iii) an Event of Default under Article IX (any of the foregoing, an "Option Trigger Event"), the BCHA will have the option to purchase the Home at the amount of such total obligations under the Permitted Mortgage (the "Purchase Option"). For purposes of subparagraph (iii), (A) the amount of total obligations owed to the Permitted Mortgagee must be calculated as of the date the sale to the BCHA closes, and (B) no Option Trigger Event occurring after a sale or transfer resulting from a Foreclosure Action must trigger an additional Purchase Option (rather, the BCHA must be limited to the single Purchase Option initially triggered by the sale or transfer resulting from the Foreclosure Action). The Purchase Option is designed to further the purpose of preserving the affordability of the Home for succeeding Qualified Buyers while taking fair account of the investment by the Owner.
- (ii) If the BCHA elects to purchase the Home, the BCHA will exercise the Purchase Option by notifying the current Owner and any Permitted Mortgagee in writing of such election (the "Notice of Exercise of Option") within 180 days after the Option Trigger Event, or the Option may expire. Having given such notice, the BCHA may (i) proceed to purchase the Home directly or (ii) assign the Purchase

Option to another entity that would maintain a similar deed restriction program.

- (iii) The purchase (by BCHA or BCHA's assignee) will be completed within 90 days after the BCHA's Notice of Exercise of Option, or the Purchase Option will be of no further force and effect with respect to such Option Trigger Event. Except in the case of a Foreclosure Action, the Purchase Option will remain in effect with respect to Option Trigger Events occurring after the subject Option Trigger Event. The time permitted for the completion of the purchase may be extended by mutual agreement of the BCHA or its assignee and the Owner and, if applicable, the Mortgagee undertaking the Foreclosure Action.

## Article VIII. Transfer and Turnover of the Home

**Section 8.01** Owner May Transfer Home Only in Strict Compliance with Article VIII; Other Transfers Null and Void. Owner may transfer the Home only as explicitly permitted by the provisions of this Article VIII (and, in the event of a Foreclosure Action, Article VII). Any purported transfer that does not strictly follow the procedures set forth below (or, in the event of a Foreclosure Action, the procedures of Article VII), shall be null and void.

**Section 8.02** Home May Only be Leased if Permitted in Writing by BCHA. Owner shall not lease or rent any portion of the Home, except as allowed under the terms of any Permitted Mortgage and with the written permission of BCHA. Owner is subject to Program Policies for Qualified Renters. Owner agrees that BCHA shall have the right to withhold such consent in order to further the purposes of this Declaration. If BCHA approves rental of the Home, any renter must be certified to be a Qualified Renter, and Owner must follow Program Policies.

- a) BCHA may require correction for an Out of Compliance Renter. Owner may be required to lease to a new tenant or require Owner to occupy the Home, if the BCHA determines that the current lease is with an Out of Compliance Renter.

**Section 8.03** Home May be Transferred to Certain Relatives and Heirs of Owner. Transfer of the Home is only permitted to individuals or households that would qualify as Qualified Buyers, as per Program Policies.

- a) Any heirs, legatees or devisees of the Homeowner must demonstrate to BCHA's satisfaction that they are an Qualified Buyer. If they cannot demonstrate that they are an Qualified Buyer, they shall not be entitled to possession of the Home but must transfer the Home in accordance with the provisions of this Article VIII.
- b) Any transferee permitted under this Section 8.03 shall take title subject to all the terms and conditions of this Declaration, and shall execute and record such documents as the BCHA may require and/or approve.

**Section 8.04** Home May be Transferred to Qualified Buyers. In the event that the Owner wishes to sell the Home, the Owner shall notify the BCHA in writing of such wish (the "Intent-

to-Sell Notice”) at least 45 days before the Owner would like to begin to market the Home in accordance with the Program Policies, and the BCHA and the Owner shall proceed as follows:

- a) Calculation of Maximum Resale Price. Except as specifically permitted in a Foreclosure Action under Article VII so long as this Declaration remains in effect, in no event may the Home be sold for a price that exceeds the Maximum Resale Price.
  - (i) The Maximum Resale Price is the lesser of:
    - The Base Price plus three percent (3%) interest per annum from the date the selling Owner purchased the Home to the date the selling Owner delivers the Notice of Intent to Sell to the BCHA (prorated at the rate of 0.25 percent for each whole calendar month in any partial year); or
    - The Base Price plus an amount equal to any increase in the cost of living during Owner’s ownership of the Home as determined by the Consumer Price Index, Wage Earners and Clerical Workers, United States City Average, All Items (1982-84 = 100) published by the Bureau of Labor Statistics, United States Department of Labor (“Index”). The Base Price shall be increased by the CPI Increase.
  - (ii) In no event shall the Maximum Resale Price ever decrease below the Base Sales Price due to this calculation. In the event the Bureau of Labor Statistics shall cease to publish the Index, then there shall be substituted for the Index another index published by a nationally recognized financial authority which most accurately approximates the Index as determined in the sole discretion of the BCHA. In the event the Index shall be converted to a different standard reference base or otherwise revised, the determination of the Percentage Increase shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics or, if the Bureau shall not publish the same, then with the use of a conversion factor, formula or table as may be published by any other governmental agency of the United States or nationally recognized publisher of comparable statistical information.
  - (iii) Any debt or other obligation of the Owner assumed by the Qualified Buyer shall be credited against the Maximum Resale Price.
  - (iv) Notwithstanding anything in this covenant to the contrary, the Maximum Resale Price may be increased by the selling Owner’s approved Capital Improvements Credits, less applicable depreciation.
- b) Closing Costs. Except in the event of a foreclosure sale, at the closing of any sale of the Home, the Owner and the Qualified Buyer shall each pay one-half of all escrow fees. Ad valorem taxes and assessments, homeowner association assessments and fees, rents, and utilities shall be prorated as of the date of closing. Owner shall pay the cost to release any monetary liens or encumbrances granted or caused by Owner and all premiums for a standard owner’s policy of title insurance in the amount of the purchase

price.

- (i) In the event the Owner agrees to pay the closing costs to be paid by the Qualified Buyer pursuant to this Section or any other closing costs to be incurred by the Qualified Buyer as permitted by the Program Policies, the price at which the Home sale occurs may be increased to cover the actual expenses paid by the Owner on behalf of the Qualified Buyer provided that such amount shall not exceed three percent (3%) of the Maximum Sales Price. In no event shall an increase in the sales price resulting from this allowance be included in the Base Price for calculation of the future Maximum Resale Price of the Home. Rather, the Qualified Buyer's Base Price for the Home shall be the agreed upon sales price, less the increase allowed to cover actual expenses paid by the Owner on behalf of the Qualified Buyer.
- c) BCHA or Program Administrator to Facilitate Transfer. The BCHA or the Program Administrator will assist in facilitating the sale and transfer, per the Program Policies.
- d) Resale Fee to be Paid at Transfer. The Owner shall pay a Resale Fee to compensate BCHA for carrying out its responsibilities with regard to the transaction. The amount of the resale fee shall be three percent (3%) of the sale price.

**Section 8.05** BCHA Shall Have Power of Attorney to Sell Home as Attorney in Fact for Owner in Certain Circumstances. If the Owner (a) is not then residing in the Home and (b) has made diligent efforts to sell the Home for at least twelve months and the Home still has not been sold, the Owner does hereby appoint BCHA as its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the purposes of this Declaration, sell the Home, use the proceeds of sale first to satisfy Permitted Mortgages in order of priority, second to pay the BCHA's costs of sale and any other sums owed the BCHA by the Owner, and third to pay Owner the remaining proceeds of sale, minus amounts owed to any other secured lien holders.

**Section 8.06** At transfer or sale of the Home, new Owner is subject to the same terms. Any new Owner must be an Qualified Buyer and will take title subject to all the terms and conditions of this Declaration, including the Term, and must execute and record such documents as the BCHA may require and/or approve. Before proceeding with a sale, the Owner must give the BCHA at least 30 days prior written notice and must promptly provide the BCHA with related documentation requested by the BCHA.

**Section 8.07** Restrictions on Transfers to Business Entities. Transfer of the Home to any business entity is only permitted when the members, incorporators, directors, or other owners and/or managers of the entity (whether a limited liability company or corporation) reflect all of the individuals listed on the title to the Home prior to transfer, and no other individuals. In the event that such transfer occurs, the business entity and its members, incorporators, directors, or other owners and/or managers shall be bound by and comply with this Declaration. Any governing documents for the business entity must acknowledge this Declaration and state that it must be complied with, and must include a clause mandating the Home be occupied by the members, incorporators, directors, or other owners and/or managers of the entity (owner-

occupied). Alternatively, the members, incorporators, directors, or other owners and/or managers of the entity may enter into a separate agreement with the BCHA acknowledging this Declaration and agreeing to comply with its terms and limit the Home's use to owner-occupation by the members, incorporators, directors, or other owners and/or managers of the entity.

**Section 8.08** Restrictions on Transfers to Trusts. Transfer of the Home to a trust is only permitted when the grantors and trustees of the trust reflect all of the individuals listed on the title to the Home prior to transfer, and no other individuals. The Home may not be transferred to any irrevocable trust. In the event that such transfer occurs, the trust and its grantors and trustees shall be bound by and comply with this Declaration. Any trust documents must acknowledge this Declaration and state that it must be complied with, and must include a clause mandating the Home be occupied by the grantors of the trust (owner-occupied). Alternatively, the grantors may enter into a separate agreement with the BCHA acknowledging this Declaration and agreeing to comply with its terms and limit the Home's use to owner-occupation by the grantors.

- a) Any attempt to transfer interest in the Home to a beneficiary through a trust permitted under this section may be restricted by the terms of this Declaration.

**Section 8.09** Repairs and Turnover Procedures. The Owner is required to allow an inspection and make necessary repairs before turnover of the Home, as per Program Policies.

- a) The Owner shall repair specific reported defects or conditions necessary, in the reasonable discretion of the BCHA, to bring the Home into full compliance with Sections 2.03 and 3.02 prior to transferring the Home.

**Section 8.10** Deed, Declaration, and Program Mortgage to be Prepared. The Home shall be conveyed by the Owner by a good and sufficient deed commonly used in the jurisdiction for residences conveying a good and clear record and marketable title to the Home free from all encumbrances except (i) such taxes for the then current year as are not due and payable on the date of delivery of the deed, (ii) provisions of local building and zoning laws, (iii) all easements, restrictions, covenants and agreements of record; (iv) a Declaration in the form then in use by BCHA to administer the Program which the Owner hereby agrees to secure execution by the transferee, and to record immediately after the deed, and (v) a new Program Mortgage in the form then in use by BCHA to administer the Program which the Owner hereby agrees to secure execution by the transferee, and to record immediately after the Declaration or, in the event of any Permitted Mortgage approved in writing by BCHA, immediately after the Permitted Mortgage. Said deed shall clearly state that it is made subject to the Declaration which is made part of the deed. Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Owner to the transferee or the enforceability of the Declaration.

**Section 8.11** Distribution of Sales Proceeds. The proceeds of any sale conducted in accordance with this Article VIII shall be distributed as follows: First to satisfy Permitted Mortgages in order of priority, second to pay the BCHA's Unpaid Amounts, third to pay taxes, Owner association assessments, and any statutory or municipal fees currently due and payable,

fourth to pay amounts owed to any other secured lien holders, and fifth to the Owner, who may retain the remaining proceeds of sale. Notwithstanding the foregoing, any Excess Proceeds shall be paid to BCHA.

**Section 8.12** No Promises Made as to Future Sales. Nothing in this Declaration constitutes a promise, commitment or guarantee by the BCHA to sell or purchase the Home or that upon resale the Owner shall actually receive the Maximum Resale Price for the Home or any other price for the Home.

## Article IX. Enforcement

**Section 9.01** What Happens if Owner Fails to Make Payments to BCHA that are Required by the Declaration. It shall be an event of default if the Owner fails to pay any amounts when due under this Declaration or the Program Mortgage and such failure is not cured by the Owner or a Permitted Mortgagee within 30 days after notice of such failure is given by BCHA to Owner and Permitted Mortgagee.

**Section 9.02** What Happens if Owner Violates Other (Nonmonetary) Terms of the Declaration. It will be an event of default if the Owner fails to abide by any other requirement or restriction stated in this Declaration, the Program Mortgage, and/or any other document of record encumbering the Home, and such failure is not cured by the Owner or a Permitted Mortgagee within 60 days after notice of such failure is given by the BCHA to the Owner and any Permitted Mortgagee. However, if the Owner or a Permitted Mortgagee has begun to cure such default within the 60-day cure period and is continuing such cure with due diligence but cannot complete the cure within the 60-day cure period, the cure period shall be extended for as much additional time as may be reasonably required to complete the cure but not exceeding a total cure period of 120 days. Notwithstanding the foregoing, the Owner will not be entitled to a cure period for any violation of the construction or statutory lien provisions in Article VI, the financing provisions in Article VII, the transfer provisions in Article VIII and/or Section 2.02, or the provisions of Section 9.03 below, and the BCHA will be entitled to exercise the rights and remedies under Section 9.04 for any such violation immediately upon notice of such violation being given by the BCHA to the Owner and any Permitted Mortgagee.

**Section 9.03** What Happens if Owner Defaults as a Result of Judicial Process. It is an event of default if the Home is taken on execution or by other process of law, or if any assignment is made of the Home for the benefit of creditors, or if a receiver, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of any substantial part of the Home by a court of competent jurisdiction, or if a petition is filed for the reorganization of Owner under any provisions of the Bankruptcy Act now or hereafter enacted, or if Owner files a petition for such reorganization, or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for payment of debts.

**Section 9.04** Owner Must Pay a Fee for Unoccupied Home. Any Owner in violation Article II

must pay monetary damages to the BCHA that equal the Maximum Housing Cost for the duration of the known violation. Property vacant for more than three months or ninety (90) days constitutes default.

**Section 9.05** If BCHA is notified that the Owner may be leasing to an Ineligible Renter, the BCHA will notify the Owner and request documentation and clarification. If the BCHA confirms occupation by an Ineligible Renter, monetary damages must be paid to the BCHA that equal the difference between the Maximum Housing Cost and (i) the monthly rent charged, confirmed by bank statements, a signed lease, a signed tenant statement, or other documentation accepted by the BCHA for the duration of the violation or (ii), if (i) is unavailable, then Market Rent, as determined by BCHA (Median Advertised Rent per bedroom size and location), for the number of months in violation. Upon that determination, the Owner must work with the BCHA to transition out the current Ineligible Renter. In addition,

- a) Owner must provide Ineligible Renter at least a ninety (90) day eviction notice, during which the Ineligible Renter will continue to pay rent to the Owner;
- b) Owner must pay Ineligible Renter relocation expenses in an amount equal to six (6) times the tenant's monthly rent paid by the Owner.

**Section 9.06** BCHA-approved Correction of Out of Compliance Renter. Owner may be required to lease to a new tenant, either through a thirty (30) day notice or lease non-renewal, if the BCHA determines that the current lease is with an Out of Compliance Renter.

**Section 9.07** Default (Uncured Violation) Gives BCHA the Right to Exercise Rights and Remedies. Upon the occurrence of an event of default that continues beyond any applicable cure period, the BCHA will have, in addition to all other rights and remedies provided at law or in equity, the right, at the BCHA's option, without further notice or demand of any kind, to take any one or more of the following actions:

- a) The right to enforce this Declaration independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief on account of any violations including without limitation relief requiring restoration of the Home to the condition or occupancy which existed prior to the violation impacting such condition or occupancy (it being agreed that there must be no adequate remedy at law for such violation), and will be in addition to, and not in limitation of, any other rights and remedies available to the BCHA.
- b) The right to exercise the Purchase Option under Section 7.05 above;
- c) In the case of a default under Section 9.02 or 9.03, including without limitation the institution of foreclosure by judicial proceeding or private sale;
- d) Without limitation of any other rights or remedies of the BCHA, or its successors and assigns, in the event of any rent, conveyance, financing, refinancing, or other transfer or occupancy of the Home in violation of the provisions of this Declaration, the following rights and remedies, which will be cumulative and not mutually exclusive:

- (i) specific performance of the provisions of this Declaration;
  - (ii) money damages for Excess Proceeds and Unpaid Amounts, if applicable;
  - (iii) if the violation is a sale or other conveyance of the Home to an Ineligible Buyer except as permitted herein, the option to locate an Qualified Buyer to purchase or itself purchase the Home from the Ineligible Buyer on the terms and conditions provided herein; the purchase price shall be a price which complies with the provisions of this Declaration; specific performance of the requirement that an Ineligible Buyer shall sell, as herein provided, may be judicially ordered;
  - (iv) the right to void any contract for lease, conveyance or other transfer of the Home in violation of the provisions of this Declaration, by an action in equity to enforce this Declaration; and
  - (v) money damages for the cost of acquiring a comparable dwelling unit for an Qualified Buyer, as determined by the unrestricted value in an Appraisal paid for by the Owner.
- e) In addition to the foregoing, the Owner hereby agrees and will be obligated to pay all fees and expenses (including legal fees) of the BCHA in the event successful enforcement action is taken against the Owner or Owner's successors or assigns.
- f) The Owner for themselves and their successors and assigns, hereby grants to the BCHA the right to take all actions with respect to the Home which the BCHA may determine to be necessary or appropriate pursuant to applicable law, court order, or the consent of the Owner to prevent, remedy or abate any violation of this Declaration.
- g) All rights and remedies set forth in this Section 9.078 are subordinate to the rights of Permitted Mortgagees as set forth in Article I and Article IV of this Declaration.

## Article X. Mediation

**Section 10.01** Mediation. Nothing in this Declaration will be construed as preventing the parties from utilizing any process of mediation in which the parties agree to engage for the purpose of resolving a dispute. Any mediation must be conducted by a mediator agreed upon by the parties in either Blaine County, Idaho, or Canyon County, Idaho.

## Article XI. Notices and Other Provisions

**Section 11.01** Notices. Whenever this Declaration requires either party to give notice to the other, the notice must be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by like written notice:

If to BCHA:

Blaine County Housing Authority  
P.O. Box 4045  
Ketchum, ID 83340

If to Owner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

All notices, demands and requests will be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

**Section 11.02** Severability. If any part of this Declaration is unenforceable or invalid, such material will be read out of this Declaration and will not affect the validity of any other part of this Declaration or give rise to any cause of action of Owner or BCHA against the other, and the remainder of this Declaration will be valid and enforced to the fullest extent permitted by law.

**Section 11.03** Waiver.

- a) The waiver by BCHA at any time of any requirement or restriction in this Declaration, or the failure of BCHA to take action with respect to any breach of any such requirement or restriction, will not be deemed to be a waiver of such requirement or restriction with regard to any subsequent breach of such requirement or restriction, or of any other requirement or restriction in the Declaration. BCHA may grant waivers in the terms of this Declaration, but such waivers must be in writing and signed by BCHA before being effective. Notwithstanding the foregoing, the BCHA may not waive the provisions of Sections 1.03(b), 4.03, 7.01, 7.03, 8.11 and 9.07(g) of this Declaration. This provision does not waive any other agreements, land use entitlements, or exceedance agreements for the property. The subsequent acceptance by BCHA of any late payments will not be deemed to be a waiver of any preceding breach by Owner of any requirement or restriction in this Declaration, other than the failure of the Owner to make the particular payment so accepted, regardless of BCHA's knowledge of such preceding breach at the time of acceptance of such payment.

**Section 11.04** Headings and Table of Contents. The headings, subheadings and table of contents appearing in this Declaration are for convenience only and do not in any way limit or amplify the terms or conditions of this Declaration.

**Section 11.05** Parties Bound. This Declaration sets forth the entire agreement between BCHA and Owner with respect to the subject matter of this Declaration. This Declaration is binding upon and inures to the benefit of these parties and, in accordance with the provisions of this Declaration and subject to Section 11.07 of this Declaration, their respective successors in interest. This Declaration may be altered or amended only by written notice executed by BCHA

and Owner or their legal representatives or, in accordance with the provisions of this Declaration, their successors in interest.

**Section 11.06** Governing Law. This Declaration will be interpreted in accordance with and governed by the laws of the State of Idaho. The language in all parts of this Declaration will be, in all cases, construed according to its fair meaning and not strictly for or against BCHA or Owner.

**Section 11.07** [IF THERE IS A CO-BORROWER/CO-SIGNER:]Additional Title and Financing Requirements. In addition to all other terms stated herein, any individual who 1) is listed on the title to the Home under this Declaration, whether as a co-signer for obtaining financing or for any other reason, or 2) has an interest in the Home, for any reason and by any means, such that they have any ownership right(s) in the Home, shall be required to sign this Declaration and any accompanying documents. Such individuals shall abide by the terms of this Declaration in its entirety and shall not occupy the Home without approval of the City and until they comply with the requirements of this Declaration and the Program Policies.

**Section 11.08** Revocation of Prior Declarations. In addition to the terms stated in Section 11.05, the Parties agree that the execution of this Declaration shall also evidence an agreement by the Parties to revoke, terminate, and/or replace any and all prior Declarations and Deed Covenants by and between the BCHA or the Program Administrator and their predecessors in interest, and Owner and its predecessors in interest, including the \_\_\_\_\_ recorded \_\_\_\_\_ as Instrument No. \_\_\_\_\_, in the records of Blaine County, regardless of whether such prior Declarations and Deed Covenants have separately been terminated or released in writing or otherwise, and that this Declaration restates and supersedes in every respect any such prior Declarations and Deed Covenants, as applicable.

IN WITNESS WHEREOF, the parties have caused this Declaration to be executed as of the Effective Date.

BLAINE COUNTY HOUSING AUTHORITY

By:

\_\_\_\_\_

Title:

OWNER

By:

\_\_\_\_\_

State of Idaho

County of Blaine

This record was acknowledged before me on the \_\_\_\_\_, day of \_\_\_\_\_ 202\_\_\_\_,  
by \_\_\_\_\_, Owner.

\_\_\_\_\_

Notary Public

Commission Expires: \_\_\_\_\_

State of Idaho

County of Blaine

This record was acknowledged before me on the \_\_\_\_\_, day of \_\_\_\_\_ 202\_\_\_\_,  
by \_\_\_\_\_, as \_\_\_\_\_ of  
the Blaine County Housing Authority.

\_\_\_\_\_

Notary Public

Commission Expires: \_\_\_\_\_

Article XII. **Exhibit A. Legal Description**

**Green** = Must fill in information and/or choose one of the options provided. Language can be edited.

**Red** = Must include exact language to satisfy Government Sponsored Enterprise requirements; do not edit. Note that red language sometimes appears within yellow language; if the yellow optional language is used, the red language must be included (if the yellow language is deleted, the red language can be deleted along with it).

**Yellow** = Must be included for homes derived from design approval by Ketchum City Council or plat Exceedance Agreement

**Gray** = include for Ownership and Preservation Program or Charitable Sale  
Recording Requested By and When Recorded Return to:

Blaine County Housing Authority  
In-person pickup preferred (208-788-6102)  
P.O. Box 4045  
Ketchum, ID 83340

## **DEED COVENANT DECLARATION OF LOCAL OWNERSHIP COVENANT**

**[DEVELOPMENT TITLE]  
[ADDRESS]**

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*Based on Grounded Solutions Network 2021 Model Declaration*

This Deed Covenant is entered into between [FULL NAMES OF OWNERS], [each] an [individual, business, LLC] ([together, and] with permitted heirs, successors, and assigns the “Owner”) having a mailing address of [ADDRESS OF OWNER], and the Blaine County Housing Authority, an Idaho independent public body corporate and politic, including successors and assigns (the “BCHA”). The Parties make this Declaration of Affordability Covenant (this “Declaration”) as of [Month Date], 20[Year] (the “Effective Date”), for the purpose of encumbering the improved real estate described on attached Exhibit A (the “Home”), having an address [Street Address, City, State, Zip Code].

**RECITALS**

1. To satisfy a condition of approval, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and the BCHA are entering into this Covenant and Declaration.
2. The BCHA operates a program to preserve local housing opportunities through the stewardship of homes whose owners, at the time of permitting, have agreed to accept certain covenants, conditions, and restrictions in exchange for an exceedance of development standards or other incentives (the “Program”).
3. The purpose of this Declaration is to [continue to] include the Home in the Program, as per [DESCRIBE MECHANISM: development agreement, design approval by Ketchum City Council or plat Exceedance Agreement] dated [MONTH DATE], [YEAR]. Consistent with the Program, this Declaration includes terms that affect the use of the Home and are designed to ensure that the Home continues to be prioritized for households who live full-time and/or work in Blaine County over an extended period and through a succession of owners.
4. Pursuant to the terms and conditions of this Deed Covenant, Owner hereby grants to the BCHA an interest in the Home, as more specifically set forth herein. This interest must allow the BCHA to administer the terms and conditions of this Deed Covenant and of the Program Policies, defined below, but is not to be construed to impair the ability of a mortgagee to remedy a default or foreclose under the terms of a mortgage and/or deed of trust.

Notwithstanding the BCHA's interest in the Home set forth herein, the Owner is the sole owner of a fee simple estate in the Home.

5. The Home has [REDACTED] bedrooms and, pursuant to the terms of this covenant, is restricted for Income Category Local.

## Article I. Submission of Real Estate, Defined Terms

**Section 1.01** Submission of Real Estate. By signing this Declaration, the Owner submits the Home to the covenants, conditions, and restrictions of this Declaration for the benefit of the BCHA. The BCHA, including through any Program Administrator the BCHA may appoint from time to time, will have the right to enforce this Declaration.

**Section 1.02** Consideration; Value Exchanged. [DESCRIBE VALUE EXCHANGE: The Owner recognizes that the Home would otherwise be market rate but the developer voluntarily built in exceedance of existing code requirements or received other detailed incentive in exchange for the inclusion of deed-restricted units in the development[DESCRIBE BASE PRICE].][OWNERSHIP AND PRESERVATION PROGRAM: The Owner recognizes that the current Market Value of the Home is \$ \_\_\_\_\_, and the Owner will receive 30% of the current Market Value totaling \$ \_\_\_\_\_, only if the Owner submits the Home to this Declaration, and the Owner wishes to submit the Home to the Declaration, and agree to its terms, in exchange for this benefit. Upon submitting the Home to this Declaration, the Base Price shall be the current Market Value less the amount provided by the City: \$ \_\_\_\_\_. ] CHARITABLE SALE: The Owner recognizes that the current Market Value of the Home is \$ \_\_\_\_\_, and the Owner is purchasing the Home for a reduced price of \$420,000 (the "Base Price"), by submitting the Home to this Declaration, and the Owner wishes to submit the Home to the Declaration, and agree to its terms, in exchange for this benefit.]

**Section 1.03** Any Excess Proceeds of Transfer Go to BCHA.

- a) The Owner recognizes that it would be contrary to the purposes of this Declaration if the Owner could receive more than the as-is restricted and encumbered value of the property ("Maximum Sale Price") as the result of an eminent domain proceeding or foreclosure. It would also be contrary to the purposes of this Declaration if the Owner could receive financial benefit by violating Section 2.02. Therefore, the Owner hereby irrevocably assigns to BCHA any net proceeds of eminent domain proceeding or foreclosure, that would otherwise have been payable to the Owner after satisfaction of all Mortgages, if applicable, and that exceed the amount of proceeds that the Owner would have received if the property had been sold only for the Maximum Sale Price or used only in accordance with Section 2.02 "Excess Proceeds"). The payment of any Excess Proceeds shall be secured by the Program Mortgage. For the avoidance of doubt, the Owner authorizes and instructs any party conducting any eminent domain proceeding or foreclosure to pay such Excess Proceeds directly to BCHA. If, for any other

reason, Excess Proceeds are paid to Owner, Owner hereby agrees to promptly pay such amount to BCHA.

- b) In addition to the lien of the Program Mortgage, the BCHA must have, and the Owner hereby grants and consents to, a lien upon the Home for any Excess Proceeds. Such lien will be prior to all other liens and encumbrances on the Home except (i) liens and encumbrances recorded before the recording of this Declaration and (ii) liens for real property taxes and other governmental assessments or charges against the Home. For the avoidance of doubt, Owner's assignment to BCHA of Excess Proceeds in Section 1.03(a), and the BCHA's right to enforce collection of Excess Proceeds through foreclosure of its lien under the Program Mortgage and this Section 1.03(b), shall be subordinate in all respects to the lien of any Permitted Mortgagee under a Permitted Mortgage.

**Section 1.04** Term of Declaration is 70 years.

- a) This Declaration will remain in effect for seventy (70) years after the Effective Date (the "Term"), unless terminated earlier by recordation of a new Declaration upon transfer of the Home to a new Owner in accordance with Article VIII; or (ii) foreclosure of a Permitted Mortgage and expiration of the BCHA's Purchase Option under Article VII.
- b) Upon expiration of the full Term, the Owner will have the option either to (i) record an amendment to this Declaration encumbering the Home for an additional term; or (ii) pay to the BCHA the Excess Proceeds that would be received by the Owner if the Owner, upon expiration of the Term, were to sell the Home unencumbered by this Declaration to a third party in a bona fide arm's length transaction. If the Owner does not elect option (i) by recording an amendment before expiration of the Term, the Owner will be deemed to have elected option (ii). Excess Proceeds will be calculated and paid under option (ii) as follows:
- A. The BCHA, at its sole cost and expense, will obtain an Appraisal of the Home to include the market, unencumbered value and the as-is restricted value;
  - B. The BCHA will calculate the Maximum Sale Price as described in Article VIII;
  - C. The BCHA will calculate Excess Proceeds by subtracting the Maximum Sale Price from the Market Value of the Home, as determined by the Appraisal; and
    - (i) If the calculation in this subparagraph (iii) results in a negative number (in other words, if the Maximum Sale Price is higher than the Market Value), the Owner will not owe any Excess Proceeds, and the BCHA will promptly record a release of this Declaration; or
    - (ii) If the calculation in this subparagraph (iii) results in a positive number (in other words, if the Maximum Sale Price is lower than the Market Value), the Owner must pay the Excess Proceeds to the BCHA within 90 days after receiving the BCHA's calculation, and the BCHA will then promptly record a release of this

Declaration.

**Section 1.05** Covenants to Run with the Land. The Owner intends, declares, and covenants (a) that this Declaration, including all restrictions, rights and covenants contained herein, are covenants running with the land, encumbering the Home for the Term, and are binding upon the Owner and the Owner's successors in title and assigns, (b) are not merely personal covenants of the Owner, and (c) inure to the benefit of and to be enforceable by the BCHA and its Program Administrator, successors and assigns, for the Term. Because the Declaration runs with the land, it encumbers the Home for the Term and is binding upon the Owner's successors in title and assigns regardless of whether such successors in title and assigns agree in writing to be bound by the Declaration or execute a new Declaration at the time of resale, as provided in Article VIII.

**Section 1.06** Program Policies Apply. In addition to this Declaration, including all restrictions, rights and covenants contained herein, the Home is subject to the Program Policies, as administered by the BCHA, including any amendments thereto if the amendments do not have a materially adverse effect on the interests of the Owner.

**Section 1.07** Defined Terms. Owner and BCHA agree on the following definitions of key terms used in this Declaration.

- a) **"Appraisal"**: Fair market valuations of the Home performed by a duly licensed appraiser, conducted by analysis and comparison of comparable properties, (a) disregarding all of the restrictions of this Declaration and (b) the as-is, restricted value based on restrictions in this Declaration.
- b) **"Base Price"**: The total price paid for the Home by the Owner, except as modified pursuant to Section 8.04, and as described in Section 1.02. The value of the Home at the time of recordation of this Declaration, as set forth in Section 1.02.
- c) **"BCHA"**: Blaine County Housing Authority, its successors and assigns, is an Idaho independent public body corporate and politic.
- d) **"Qualified Buyer"**: A person or group of persons who at the time of transfer is in full compliance with the qualifications and conditions set forth in the Program Policies in effect, who has a complete and current application on file with the BCHA, and is prioritized on BCHA's waitlist or purchasing with BCHA's approval. This also applies to transfer via inheritance. Owner reserves the exclusive right to conduct its own interviews and other relevant authentication into each Qualified Buyer. Owner must also follow Program Policies process requirements with regards to rejecting Qualified Buyers.
- e) **"Maximum Housing Cost"**: The Maximum Housing Cost is determined annually by BCHA and corresponds with the Income Category of the Home and accounts for rent plus the estimated cost of essential utilities (electricity, gas, water, sewer, trash, and any other fees including HOA fees).
- f) **"Qualified Renter"**: A person or group of persons who at the time of signing a lease

agreement is in full compliance with the qualifications and conditions set forth in the Program Policies in effect and who has a complete and current application on file with the BCHA, and is prioritized on BCHA's waitlist or renting with BCHA's approval, which has been delivered in written or electronic mail form to Owner by BCHA. Owner reserves the exclusive right to conduct its own interviews and other relevant authentication into each Qualified Renter. Owner must also follow Program Policies process requirements with regards to rejecting Qualified Renters.

- g) **"Event of Default"**: Any violation of the terms of this Declaration unless the violation has been corrected ("**cured**") by the Owner in the period of time specified in a written Notice of Default has been given by the BCHA.
- h) **"Ineligible Renter"**: A person or group of persons, or a person and their spouse, not meeting the requirements to be eligible as a Qualified Renter, not approved by the BCHA, nor provided to the Owner by the BCHA as a Qualified Renter.
- i) **"Ineligible Buyer"**: A person or group of persons, or a person and their spouse, not meeting the requirements to be eligible as a Qualified Buyer, not approved by the BCHA, nor provided to the Owner by the BCHA as a Qualified Buyer.
- j) **"Intent-to-Sell Notice"**: Owner's notification to the BCHA that the Owner wishes to sell the Home. Notice will include Owner's current phone and email information.
- k) **"Market Value"**: The market value of the Home, assuming no affordability or resale restrictions.
- l) **"Maximum Sale Price"**: The maximum price for which the Owner can sell the Home, as calculated under Article VIII of this Declaration.
- m) **"Permitted Mortgage"**: A loan secured by a lien or security interest in the Home, for which the Owner has obtained the written permission of the BCHA pursuant to Section 7.01, together with any modifications, which may be made from time to time, by agreement between the Owner and the Permitted Mortgagee.
- n) **"Permitted Mortgagee"**: The lender shown on the security instrument securing a Permitted Mortgage, its assignees and the owner of such Permitted Mortgage.
- o) **"Out of Compliance Owner"** An owner who does not adhere to the Program Guidelines and has not cured being out of compliance, per the BCHA's requirements and Program Policies.
- p) **"Out of Compliance Renter"** A Qualified Renter who does not adhere to the Program Guidelines, or who is found to have made a material misrepresentation in BCHA's application or the Declarant's application process, and has not cured being out of compliance, per the BCHA's requirements and Program Policies or Declarant's reasonable standards of approval in accord with Program Policies.
- q) **"Program Administrator"**: The entity designated by the BCHA to administer and manage compliance with this deed restriction. Program Administrator has the same enforcement rights as the BCHA.

- r) **“Program Mortgage”**: The mortgage or deed of trust executed by the Owner in favor of the BCHA, dated and recorded the same date as this Declaration, for purposes of securing the Owner’s monetary and non-monetary obligations under this Declaration, including without limitation Excess Proceeds.
- s) **“Purchase Option”**: As described more fully in Article VII, BCHA’s option to purchase the Home at the Mortgage obligation, which is triggered by (i) BCHA’s receipt of notice of a Foreclosure Action under Article VII, (ii) any sale or transfer resulting from a Foreclosure Action under Article VII, and/or (iii) an Event of Default under Article IX (any of the foregoing, an **“Option Trigger Event”**).
- t) **“Program Policies”** are the Community Housing Guidelines or future Policies adopted by BCHA and such Guidelines as may be amended and recorded in BCHA’s discretion from time to time. In the event of any conflict between guidelines and this deed covenant, the deed covenant will prevail. Without limiting the foregoing, the most current Guidelines or Policies were adopted by the Blaine County Housing Authority on [REDACTED]. By signing this Declaration, Owner acknowledges and agrees that they have notice of the existence of the current Program Policies, as well as the possibility of adoption of future Policies by the BCHA, and that they agree to comply with these Policies and any amendments thereto.
- u) **“Resale Fee”**: The fee that the Owner pays to the BCHA upon resale of the Home to compensate the BCHA for performing certain of its obligations under Article VIII (Transfer of the Home) below.

## Article II. Use of Home

**Section 2.01** Owner Must Use Home as Primary Residence and May Not Own Other Developed Residential Real Estate. The Owner must use the Home as Owner’s principal place of residence and must occupy the Home for at least nine [9] months of any twelve [12] consecutive months (unless more months in residence are required per Program Policies). The Owner may use the Home, and allow others to use the Home, only for residential purposes and any activities related to residential use that are permitted by local zoning law. The Owner shall not own or acquire any other developed residential real estate or a mobile home. Exceptions for shared inheritance may be allowed, in accordance with the Program Policies.

**Section 2.02** Home May Not be Leased, Short-term Rented, Encumbered, Sold, or Transferred Except as Provided in Articles VII and VIII. No interest in the Home, including without limitation a fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entirety, life estate, limited estate, leasehold estate, tenancy, easement, mortgage, deed, lien, security interest, or other encumbrance, whether voluntary or involuntary, may be granted, sold, assigned, conveyed, or transferred except in accordance with the Program Policies and/or Articles VII (“Financing and Foreclosure”) and VIII (“Transfer and Turnover of Home”) of this Declaration.

**Section 2.03** Owner Must Maintain the Home Responsibly and in Compliance with the Law and Other Recorded Documents. The Owner must maintain all parts of the Home in good working order, in a safe, sound and habitable condition, and in full compliance with all laws and regulations. Owner must comply, and cause the Home and all occupants to comply, with all declarations, easements, and other documentation recorded against the Home in the local real estate records. If the requirements of any recorded documents are inconsistent with the requirements of this Declaration, the Owner must comply and must cause the Home and all occupants to comply, with the stricter requirement. Qualified Buyers have the right to inspect the home before executing a lease.

**Section 2.04** Income Category Local and Net Worth Limitations. The Owner and the BCHA hereby agree the Home shall be exclusively and permanently dedicated for use and occupancy by a Category Local household, as determined by their income and net worth at the time of purchase. The household shall meet the Basic Qualifications for Purchase of a Community Home, as described in the Program Policies. At the time of future sale or transfer of the Home, maximum income and net worth limitations for the income category will apply in review of Qualified Buyers, as defined in the Program Policies and updated by the Program Administrator.

### **Article III. Role of BCHA**

**Section 3.01** BCHA Has a Right to Conduct Annual Meetings with the Owner. The BCHA may conduct annual meetings with the Owner in the offices of the BCHA or in the Home or some other mutually convenient location (or via mutually convenient electronic means) for purposes of obtaining occupancy certifications and addressing any other Program requirements. The Owner will cooperate with the BCHA in scheduling and attending these meetings and will provide BCHA with the requested information. The BCHA may opt to request such information from the Owner by phone, mail, email, or some other method instead of conducting an in-person (or electronically facilitated) meeting, and the Owner will then promptly provide the BCHA with the requested information using the alternative method.

**Section 3.02** BCHA Has a Right to Inspect the Home. The BCHA or its agent may inspect any exterior part of the Home on an annual basis at any reasonable time, after notifying the Owner at least three (3) days before the planned inspection. In addition, if the BCHA has received an Intent-to-Sell Notice (as described in Article VIII below), then the BCHA or its agent has the right to inspect the interior and exterior of the Home to determine its condition prior to the sale. BCHA must notify the Owner at least three (3) days before carrying out such inspection. In either case (an annual inspection or an inspection after an Intent-to-Sell Notice), the Owner will cooperate with the BCHA's efforts to schedule and conduct the inspection, and if negative property conditions are identified, the BCHA or its agent has the right to re-inspect until they are resolved.

**Section 3.03** The BCHA may Escrow for Taxes, Assessments, and/or Insurance. Whenever a Permitted Mortgagee declines to escrow funds from the Owner for the payment of taxes and

assessments under Article IV and for the payment of insurance under Article VI, the BCHA may elect to escrow such amounts and the Owner shall cooperate with the BCHA in setting up such an escrow.

**Section 3.04** BCHA will review proposed capital improvements at annual compliance review at the latest. If the Owner wishes to make Capital Improvements to the Home, the BCHA will work with the Owner as provided in Article V.

**Section 3.05** BCHA will facilitate transfers and, if allowed by Program Policies, rentals. If the Owner wishes to finance or otherwise transfer the Home, the BCHA will work with the Owner as provided in Article VII or VIII, as applicable and the Program Policies.

**Section 3.06** BCHA's Administrator, Successors, and Assigns. The BCHA may designate a Program Administrator, a successor or assign to its rights and obligations under this Declaration, provided that such Program Administrator, successor, or assign is a governmental body, governmental agency, or entity (non-profit or for-profit) with a purpose consistent with the Program.

**Section 3.07** Nonliability of BCHA for Negligence, Loss, or Damage. The Owner understands and agrees that the relationship between Owner and BCHA is solely that of an Owner and a program administrator. The BCHA does not owe a duty of care to protect the Owner against negligent, faulty, inadequate, or defective building or construction or any condition of the Home. Owner agrees that neither Owner nor Owner's heirs, successors or assigns must ever claim, have, or assert any right or action against the BCHA for any loss, damage, or other matter arising out of or resulting from any condition of the Home and will hold the BCHA harmless from any liability, loss, or damage for these things.

**Section 3.08** Disclaimer of Liability by BCHA for Tax Implications. The Owner understands and agrees that the relationship between Owner and BCHA is solely that of an Owner and a program administrator. Throughout the process of BCHA fulfilling its obligations under this Declaration and facilitating the transaction, taxation of the transaction may be discussed. The BCHA makes no representations as to the potential impact of this transaction on Owner's income taxes, property taxes, or otherwise. Further, the BCHA cannot and does not owe the Owner any obligation to provide, file for, or otherwise advise Owner of the necessary tax documents, if any, required for reporting to the IRS under this Declaration. In no circumstance where taxation is addressed does the BCHA, by way of offering any commentary on such, offer any tax advice or make any warranties or representations as to the impact of this transaction on Owner's taxes. The BCHA is not liable for any perceived negative impact, or other impact, of this transaction on Owner's taxes, and urges the Owner to seek independent tax advice from a tax attorney, certified public accountant, or other trusted advisor who is well-versed in such matters. This section shall apply in regards to local, state, federal, and all other forms of taxation as they may be applicable.

## Article IV. Fees, Taxes, and Assessments

**Section 4.01** Fees owed to BCHA. For the avoidance of doubt, Owner's obligation to pay BCHA any amounts under this Declaration, including the Fees provided in this Article IV, shall be subordinate in all respects to any Permitted Mortgagee's right to receive payment of all amounts secured by a Permitted Mortgage. The Owner and the BCHA agree that they will execute such other and further documents as are useful for a Permitted Mortgagee to prioritize payment of the amounts owed to it and they will not execute any document that contradicts such priority.

**Section 4.02** Owner Is Responsible for Paying all Fees, Taxes and Assessments. Owner must pay directly, when due, all fees, taxes, governmental and Owner association assessments that relate to the Home, unless such taxes and assessments are to be escrowed and paid by a Permitted Mortgagee, in which case payment must be made as directed by that Permitted Mortgagee.

**Section 4.03** If Owner Fails to Pay Taxes, BCHA may Pay Taxes. If the Owner or its Permitted Mortgagee fails to pay the taxes or assessments described in Section 4.02 above, the BCHA shall have the right to pay such taxes or assessments on the Owner's behalf from time to time at the sole and absolute discretion of the BCHA. Owner shall reimburse the BCHA for any amounts paid by the BCHA to cover such taxes or assessments promptly upon demand by the BCHA. In no event shall the BCHA's actions under this section waive the disclaimer as stated in Section 3.08 of this Declaration.

**Section 4.04** If Payment Is Late, Interest Can Be Charged. If the BCHA has not received any amounts due under this Declaration on or before the required date (the "Due Date"), the BCHA can require the Owner to pay interest on the unpaid amount from the Due Date through and including the date such payment or installment is received by the BCHA, at a rate not to exceed 5% per annum or the maximum amount permitted by law, whichever is less. Such interest shall be deemed additional Program Fee and shall be paid by the Owner to the BCHA upon demand.

**Section 4.05** BCHA Can Collect Unpaid Amounts When Home Is Sold. In the event that any amounts due under this Declaration remain unpaid when the Home is sold, including without limitation amounts due to BCHA under this Article IV and any enforcement fees under Section 9.03(e), the outstanding amount, including any interest (the "Unpaid Amounts"), must be paid to the BCHA out of any proceeds from the sale that would otherwise be due to the Owner. Any amounts paid pursuant to this Section may be paid to the BCHA only after amounts owed under the Permitted Mortgage have been disbursed to the Permitted Mortgagee. In addition to the lien of the Program Mortgage, the BCHA shall have, and the Owner hereby grants and consents to, a lien upon the Home for such Unpaid Amounts. Such lien shall be prior to all other liens and encumbrances on the Home except (a) liens and encumbrances recorded before the recording of this Declaration, (b) Permitted Mortgages; (c) liens for real property taxes and other governmental assessments or charges against the Home; and (d) the lien for Excess Proceeds under Section 1.03. For the avoidance of doubt, the BCHA's right to enforce collection of Unpaid Amounts through foreclosure of its lien under the Program Mortgage and this Section

4.05 shall be subordinate in all respects to the lien of any Permitted Mortgagee under a Permitted Mortgage.

## Article V. **Improvements to the Home**

**Section 5.01** Owner's Ability to Improve the Home is Limited. The Owner shall not make any Capital Improvements to the Home without the prior written consent of the BCHA, which consent may be withheld in the BCHA's sole and absolute discretion. The term "Capital Improvements" means any improvements that change the number of bedrooms or the footprint, square-footage, or height of the Home, or increase or decrease the number of structures on the Property, or the installation of an in-ground pool, or any other permanent improvement consistent with the Program Policies. The Owner may make other improvements to the Home without the consent of the BCHA as long as such improvements are constructed in a professional manner and comply with Section 5.04 below and all applicable laws and regulations. This Section 5.01 does not apply in the event the Home is damaged or destroyed following a fire or other casualty, as described in Section 6.02.

**Section 5.02** Requests for Consent from BCHA. For any proposed Capital Improvements, the Owner shall submit a written request to the BCHA including the following information:

- a) a written statement of the reasons for undertaking the construction;
- b) upon request by the BCHA, a set of drawings (floor plan and elevations) showing the dimensions of the proposed construction;
- c) a list of the necessary materials, with quantities needed;
- d) a statement of who will do the work; and
- e) if the Owner would like to receive a monetary credit for the Value Added by Capital Improvements, (a "Capital Improvements Credit"), a statement requesting the BCHA to consider permitting such a credit.

Prior to granting or withholding consent, the BCHA may request additional information from the Owner within three weeks of receipt of the Owner's request. The BCHA shall inform the Owner of its decision to grant or withhold consent to construction of the proposed Capital Improvements, as well as its decision to grant or withhold consent to any requested Capital Improvements Credit, within 45 days after receipt of all information from the Owner. If the BCHA consents to a requested Capital Improvements Credit, the BCHA shall also inform the Owner of the value to be ascribed to the Capital Improvements or the method to be employed to determine such value at resale, including application of depreciation rates, which may result in a Capital Improvements Credit less than the actual cost of the Capital Improvements.

In calculating the Capital Improvements Credit, only the Owner's actual out-of-pocket costs and expenses for materials and labor applied to the Property shall be eligible for inclusion.

Such amount shall not include costs attributable to the Owner's or occupant's personal labor, loan fees, interest, closing costs, fines, penalties, alternative or temporary housing costs or rent, tools, depreciation, consumables, utilities, and other similar costs and expenses.

**Section 5.03** Building Permits; Right to Inspect. Prior to the commencement of construction of any Capital Improvements, the Owner shall provide the BCHA with copies of all necessary building permits, if not previously provided. The BCHA shall have the right to inspect the Capital Improvements while under construction and after completion to confirm consistency with the information presented in Section 5.02 and with this Article V, and may adjust the Capital Improvements Credit to account for any identified inconsistency. Any inspection and identification of inconsistencies by the BCHA shall be for the benefit of the BCHA only; the Owner will conduct his or her own inspections to confirm all work performed is satisfactory to the Owner.

**Section 5.04** Owner May Not Allow Statutory Liens to Remain Against Home. The Owner shall not permit any statutory or similar lien to be filed against the Home which remains more than 30 days after it has been filed. The Owner shall take action to discharge such lien, whether by means of payment, deposit, bond, court order, or other means permitted by law. If the Owner fails to discharge such lien within the 30-day period, then the Owner shall immediately notify the BCHA of such failure. The BCHA shall have the right to discharge the lien by paying the amount in question. The Owner may, at Owner's expense, contest the validity of any such asserted lien, provided the Owner has furnished a bond or other acceptable surety in an amount sufficient to release the Home from such lien. Any amounts paid by the BCHA to discharge such liens shall be reimbursed by the Owner upon demand of the BCHA.

**Section 5.05** Indemnification. Owner agrees to indemnify and shall indemnify, defend, protect and hold the BCHA harmless from and against any and all expenses, liabilities, claims, and lawsuits (including reasonable attorney's fees) for bodily injuries (including death resulting therefrom) or property damage which may arise from Owner's acts or omissions related to the improvements made under this Article V, whether approved by the BCHA in accordance with this Article or not, regardless of whether such acts or omissions are negligent, reckless, or intentional acts or omissions of Owner, Owner's agents, or employees. Owner hereby assumes all risk of damage to property or injury to person in, upon or about the premises from any cause arising from any negligent, reckless, or intentional acts of Owner, or any of Owner's agents, contractors or employees.

## **Article VI. Insurance, Damage or Destruction, Taking for Public Use**

**Section 6.01** Owner Must Insure the Home Against Loss. The Owner must, at the Owner's expense, keep the Home continuously insured against accidental direct physical loss with a coverage limit equal to the estimated full replacement cost of the Home, that is, the amount necessary to rebuild the Home as opposed to the Home's Market Value. The insurance policy

must satisfy all requirements of Program Mortgage and any other Mortgage of record and any Homeowner's Association Regulations, and certificates of insurance must be delivered to BCHA upon request.

**Section 6.02** What Happens if Home Is Damaged or Destroyed. In the event of fire or other damage to the Home, the Owner must take all steps necessary to assure the repair of such damage and the restoration of the Home to its condition immediately prior to the damage. All such repairs and restoration must be completed as promptly as possible. Owner must also promptly take all steps necessary to assure that the damaged Home does not constitute a danger to persons or property. For clarity, the obligations of the Owner to repair and restore the Home are the same in a case of insufficient insurance proceeds as in a case of excess insurance proceeds; in either case the Owner must still repair and restore the Home, obtaining additional funds (in the case of insufficient insurance proceeds) or, if permitted by the terms of the policy and the terms of any Mortgage, retaining excess funds (in the case of excess insurance proceeds). In a case where repair and restoration are not feasible (for example, in the case of sinkhole or other condition that materially adversely impacts and precludes restoration of the structure of the Home), the Owner must provide reasonably acceptable documentation of such circumstance to BCHA, and in such case will be excused from repairing and restoring the Home, provided that the Owner uses available insurance proceeds to pay off any lien on the Home and the Owner provides the BCHA with Excess Proceeds as applicable.

- a) Liability. The BCHA is not liable, by way of being a Party to this Declaration, for any damage to the Home that is not the result of any negligent, reckless, or intentional act or omission of the BCHA, the BCHA's agents, or employees.

**Section 6.03** What Happens if Some or All of the Home Is Taken for Public Use.

- a) If all of the Home is taken by eminent domain or otherwise for public purposes, or if so much of the Home is taken that the Home is lost or damaged beyond repair, this Declaration will terminate as of the date when Owner is required to give up possession of the Home, provided, however, that any Excess Proceeds (defined in Article I) arising from eminent domain or other public use proceedings will be paid to BCHA.
- b) In the event of a taking of a portion of the Home that results in damage to the Home that can reasonably be restored to a residential use consistent with this Declaration, then this Declaration will remain in full force and effect and the damage must be treated as damage is treated in Section 6.02 above.

## Article VII. Financing and Foreclosure

**Section 7.01** Owner Cannot Mortgage the Home Without BCHA's Permission.

- a) The Owner may only grant a lien or security interest, including a mortgage or deed of trust (either at the time of purchase of the Home or subsequent to the purchase of the Home to refinance an existing Permitted Mortgage or to finance home repairs or to

facilitate a Home Equity Line of Credit (“HELOC”) or for any other purpose), on the Home or encumber the Home in any other way after first obtaining the written permission of the BCHA. Any Permitted Mortgage or other lien, security interest, or other encumbrance shall be subject to the terms of this Declaration, including without limitation this Article VII and Section 7.04 below.

- b) The BCHA will not permit such a loan if the loan increases the Owner’s total mortgage debt to an amount greater than 90% of the then current Maximum Sale Price, calculated in accordance with Article VIII below, or if any Permitted Mortgagee has not provided written consent to the loan, or if the terms of the transaction otherwise adversely affect the interests of either the Owner, Permitted Mortgagee, or BCHA.
- c) The BCHA may require the Owner to submit, in writing, certain information about the proposed terms and conditions of such loan at least 30 days prior to the expected closing of the loan.

**Section 7.02** By Signing Declaration, BCHA Gives Permission for Original Mortgage. By signing this Declaration, the BCHA gives written permission for the first and second priority mortgage or deed of trust signed by the Owner and financing the Owner’s purchase of the Home. The Program Manager also hereby gives written permission for any assignee of a Permitted Mortgage to be a Permitted Mortgagee at any time it purchases a Permitted Mortgage.

**Section 7.03** Property Assessed Clean Energy. Property Assessed Clean Energy (“PACE”) financing in connection with the Home is prohibited.

**Section 7.04** Survival of Declaration Upon Exercise of Remedies by Mortgagees.

- a) If the holder of any mortgage, deed of trust, or other encumbrance on the Home (each, a “Mortgagee”) conducts a foreclosure sale, accepts a deed in lieu of foreclosure, or exercises any other right or remedy that results in the Owner no longer having title to the Home (any such right or remedy, a “Foreclosure Action”), this Declaration must run with the land pursuant to Section 1.05 above and will continue to encumber the Home as follows:
  - (i) With respect to any Mortgagee who is also a Permitted Mortgagee, this Declaration shall survive until expiration of the BCHA’s Purchase Option under Section 7.05 below, specifically 60 days to exercise the Purchase Option and 90 days to complete the purchase. If the BCHA exercises the Purchase Option, completes purchase of the Home, and satisfies the amounts owed under the Permitted Mortgage, this Declaration shall continue in full force and effect. If the BCHA fails to exercise the Purchase Option, or exercises the Purchase Option but fails to complete the purchase within the 90-day period allowed by Section 7.05, or fails to satisfy the amounts owed under the Permitted Mortgage, then this Declaration shall terminate and be of no further force and effect, and the BCHA shall cooperate with the Permitted Mortgagee or transferee at the Foreclosure Action to record a termination and release.

- (ii) With respect to any Mortgagee who is not a Permitted Mortgagee, Article VIII and all other provisions of this Declaration shall apply to the transfer of the Home resulting from the Foreclosure Action, and Article VIII and all other provisions of this Declaration shall continue to encumber the Home and shall be binding on the grantee receiving an interest in the Home by virtue of the Foreclosure Action and on all subsequent owners of any interest in the Home.
- b) The Owner expressly authorizes any Mortgagee to provide BCHA with any information requested by BCHA with respect to the obligations secured by a mortgage, deed of trust, or other security instrument encumbering the Home, including without limitation, the original or maximum principal amount of the loan, the interest rate and other terms governing repayment, payment history, including any history of delinquent payments, current payments of principal, interest, and late fees due or delinquent, and the amount of total obligations currently secured by the Mortgage.
- c) The Owner understands and agrees that nothing in this Declaration (i) in any way constitutes a promise or guarantee by the BCHA that the Mortgagee will actually receive the Mortgage Satisfaction Amount, the Maximum Sale Price or any other price for the Home, or (ii) impairs the rights and remedies of the Mortgagee in the event of a deficiency.

**Section 7.05** If Potential Foreclosure, the BCHA Has an Option to Purchase the Home.

- a) At least 60 days prior to any potential Foreclosure Action, the Owner must notify the BCHA of (i) the name of the lender on the note triggering the potential foreclosure activity; (ii) the original amount and date of the note, the existing balance, and the annual debt cost; (iii) the position of the note relative to other liabilities on the property; (iv) a detailed description of the circumstances that have prevented timely payment of interest on the note; (v) a detailed description of efforts between the owner and the holder of the note to reach an agreement to modify the terms of the note to prevent foreclosure; and (vi) any relationship between the holder of the note and the owner of the property by familial relationships, common principals, owners or employees.
  - (i) Upon (i) BCHA's receipt of notice of a Foreclosure Action under Article VII; (ii) any sale or transfer resulting from a Foreclosure Action under Article VII; and/or (iii) an Event of Default under Article IX (any of the foregoing, an "Option Trigger Event"), the BCHA will have the option to purchase the Home at the amount of such total obligations under the Permitted Mortgage (the "Purchase Option"). For purposes of subparagraph (iii), (A) the amount of total obligations owed to the Permitted Mortgagee must be calculated as of the date the sale to the BCHA closes, and (B) no Option Trigger Event occurring after a sale or transfer resulting from a Foreclosure Action must trigger an additional Purchase Option (rather, the BCHA must be limited to the single Purchase Option initially triggered by the sale or transfer resulting from the Foreclosure

Action). The Purchase Option is designed to further the purpose of preserving the affordability of the Home for succeeding Qualified Buyers while taking fair account of the investment by the Owner.

- (ii) If the BCHA elects to purchase the Home, the BCHA will exercise the Purchase Option by notifying the current Owner and any Permitted Mortgagee in writing of such election (the "Notice of Exercise of Option") within 180 days after the Option Trigger Event, or the Option may expire. Having given such notice, the BCHA may (i) proceed to purchase the Home directly or (ii) assign the Purchase Option to another entity that would maintain a similar deed restriction program.
- (iii) The purchase (by BCHA or BCHA's assignee) will be completed within 90 days after the BCHA's Notice of Exercise of Option, or the Purchase Option will be of no further force and effect with respect to such Option Trigger Event. Except in the case of a Foreclosure Action, the Purchase Option will remain in effect with respect to Option Trigger Events occurring after the subject Option Trigger Event. The time permitted for the completion of the purchase may be extended by mutual agreement of the BCHA or its assignee and the Owner and, if applicable, the Mortgagee undertaking the Foreclosure Action.

## Article VIII. **Transfer and Turnover of the Home**

**Section 8.01** Owner May Transfer Home Only in Strict Compliance with Article VIII; Other Transfers Null and Void. Owner may transfer the Home only as explicitly permitted by the provisions of this Article VIII (and, in the event of a Foreclosure Action, Article VII). Any purported transfer that does not strictly follow the procedures set forth below (or, in the event of a Foreclosure Action, the procedures of Article VII), shall be null and void.

**Section 8.02** Home May Only be Leased if Permitted in Writing by BCHA. Owner shall not lease or rent any portion of the Home, except **as allowed under the terms of any Permitted Mortgage and with the written permission of BCHA**. Owner is subject to Program Policies for Qualified Renters. Owner agrees that BCHA shall have the right to withhold such consent in order to further the purposes of this Declaration. If BCHA approves rental of the Home, any renter must be certified to be a Qualified Renter, and Owner must follow Program Policies.

- a) Owner may occupy the Home and lease a portion of it to one or more roommates in accordance with the following conditions:
  - (i) Any renter must have an active application on file with the City or its Program Administrator for rental of a community home and must, at a minimum, meet the basic qualifications for rental of a Category Local home.
  - (ii) The minimum lease term is 5 months and lease must be submitted to the City for review and approval. No lease term may exceed 1 year.
  - (iii) Owner may set the rent rate and select the tenant(s).

- b) BCHA may require correction for an Out of Compliance Renter. Owner may be required to lease to a new tenant or require Owner to occupy the Home, if the BCHA determines that the current lease is with an Out of Compliance Renter.

**Section 8.03** Home May be Transferred to Certain Relatives and Heirs of Owner. Transfer of the Home is only permitted to individuals or households that would qualify as Qualified Buyers, as per Program Policies.

- a) Any heirs, legatees or devisees of the Homeowner must demonstrate to BCHA's satisfaction that they are an Qualified Buyer. If they cannot demonstrate that they are an Qualified Buyer, they shall not be entitled to possession of the Home but must transfer the Home in accordance with the provisions of this Article VIII.
- b) Any transferee permitted under this Section 8.03 shall take title subject to all the terms and conditions of this Declaration, and shall execute and record such documents as the BCHA may require and/or approve.

**Section 8.04** Home May be Transferred to Qualified Buyers. In the event that the Owner wishes to sell the Home, the Owner shall notify the BCHA in writing of such wish (the "Intent-to-Sell Notice") at least 45 days before the Owner would like to begin to market the Home in accordance with the Program Policies, and the BCHA and the Owner shall proceed as follows:

- a) Calculation of Maximum Sale Price. Except as specifically permitted in a Foreclosure Action under Article VII so long as this Declaration remains in effect, in no event may the Home be sold for a price that exceeds the Maximum Sale Price.
  - (i) The Maximum Sale Price is the lesser of:
    - The Base Price plus three percent (3%) interest per annum from the date the selling Owner purchased the Home to the date the selling Owner delivers the Notice of Intent to Sell to the BCHA (prorated at the rate of 0.25 percent for each whole calendar month in any partial year); or
    - The Base Price plus an amount equal to any increase in the cost of living during Owner's ownership of the Home as determined by the Consumer Price Index, Wage Earners and Clerical Workers, United States City Average, All Items (1982-84 = 100) published by the Bureau of Labor Statistics, United States Department of Labor ("Index"). The Base Price shall be increased by the CPI Increase.
  - (ii) In no event shall the Maximum Sale Price ever decrease below the Base Sales Price due to this calculation. In the event the Bureau of Labor Statistics shall cease to publish the Index, then there shall be substituted for the Index another index published by a nationally recognized financial authority which most accurately approximates the Index as determined in the sole discretion of the BCHA. In the event the Index shall be converted to a different standard reference base or otherwise revised, the determination of the Percentage Increase shall be made with the use of such conversion factor, formula or table

for converting the Index as may be published by the Bureau of labor Statistics or, if the Bureau shall not publish the same, then with the use of a conversion factor, formula or table as may be published by any other governmental agency of the United States or nationally recognized publisher of comparable statistical information.

- (iii) Any debt or other obligation of the Owner assumed by the Qualified Buyer shall be credited against the Maximum Sale Price.
  - (iv) Notwithstanding anything in this covenant to the contrary, the Maximum Sale Price may be increased by the selling Owner's approved Capital Improvements Credits, less applicable depreciation.
- b) Closing Costs. Except in the event of a foreclosure sale, at the closing of any sale of the Home, the Owner and the Qualified Buyer shall each pay one-half of all escrow fees. Ad valorem taxes and assessments, homeowner association assessments and fees, rents, and utilities shall be prorated as of the date of closing. Owner shall pay the cost to release any monetary liens or encumbrances granted or caused by Owner and all premiums for a standard owner's policy of title insurance in the amount of the purchase price.
- (i) In the event the Owner agrees to pay the closing costs to be paid by the Qualified Buyer pursuant to this Section or any other closing costs to be incurred by the Qualified Buyer as permitted by the Program Policies, the price at which the Home sale occurs may be increased to cover the actual expenses paid by the Owner on behalf of the Qualified Buyer provided that such amount shall not exceed three percent (3%) of the Maximum Sales Price. In no event shall an increase in the sales price resulting from this allowance be included in the Base Price for calculation of the future Maximum Sale Price of the Home. Rather, the Qualified Buyer's Base Price for the Home shall be the agreed upon sales price, less the increase allowed to cover actual expenses paid by the Owner on behalf of the Qualified Buyer.
- c) BCHA or Program Administrator to Facilitate Transfer. The BCHA or the Program Administrator will assist in facilitating the sale and transfer, per the Program Policies.
- d) Resale Fee to be Paid at Transfer. The Owner shall pay a Resale Fee to compensate BCHA for carrying out its responsibilities with regard to the transaction. The amount of the resale fee shall be three percent (3%) of the sale price.

**Section 8.05** BCHA Shall Have Power of Attorney to Sell Home as Attorney in Fact for Owner in Certain Circumstances. If the Owner (a) is not then residing in the Home and (b) has made diligent efforts to sell the Home for at least twelve months and the Home still has not been sold, the Owner does hereby appoint BCHA as its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the purposes of this Declaration, sell the Home, use the proceeds of sale first to satisfy Permitted Mortgages in order of priority, second to pay the BCHA's costs of sale and any other sums owed the BCHA by the Owner, and third to pay Owner the remaining proceeds of sale, minus amounts owed to any other secured lien holders.

**Section 8.06** At transfer or sale of the Home, new Owner is subject to the same terms. Any new Owner must be an Qualified Buyer and will take title subject to all the terms and conditions of this Declaration, including the Term, and must execute and record such documents as the BCHA may require and/or approve. Before proceeding with a sale, the Owner must give the BCHA at least 30 days prior written notice and must promptly provide the BCHA with related documentation requested by the BCHA.

**Section 8.07** Restrictions on Transfers to Business Entities. Transfer of the Home to any business entity is only permitted when the members, incorporators, directors, or other owners and/or managers of the entity (whether a limited liability company or corporation) reflect all of the individuals listed on the title to the Home prior to transfer, and no other individuals. In the event that such transfer occurs, the business entity and its members, incorporators, directors, or other owners and/or managers shall be bound by and comply with this Declaration. Any governing documents for the business entity must acknowledge this Declaration and state that it must be complied with, and must include a clause mandating the Home be occupied by the members, incorporators, directors, or other owners and/or managers of the entity (owner-occupied). Alternatively, the members, incorporators, directors, or other owners and/or managers of the entity may enter into a separate agreement with the BCHA acknowledging this Declaration and agreeing to comply with its terms and limit the Home's use to owner-occupation by the members, incorporators, directors, or other owners and/or managers of the entity.

**Section 8.08** Restrictions on Transfers to Trusts. Transfer of the Home to a trust is only permitted when the grantors and trustees of the trust reflect all of the individuals listed on the title to the Home prior to transfer, and no other individuals. The Home may not be transferred to any irrevocable trust. In the event that such transfer occurs, the trust and its grantors and trustees shall be bound by and comply with this Declaration. Any trust documents must acknowledge this Declaration and state that it must be complied with, and must include a clause mandating the Home be occupied by the grantors of the trust (owner-occupied). Alternatively, the grantors may enter into a separate agreement with the BCHA acknowledging this Declaration and agreeing to comply with its terms and limit the Home's use to owner-occupation by the grantors.

- a) Any attempt to transfer interest in the Home to a beneficiary through a trust permitted under this section may be restricted by the terms of this Declaration.

**Section 8.09** Repairs and Turnover Procedures. The Owner is required to allow an inspection and make necessary repairs before turnover of the Home, as per Program Policies.

- a) The Owner shall repair specific reported defects or conditions necessary, in the reasonable discretion of the BCHA, to bring the Home into full compliance with Sections 2.03 and 3.02 prior to transferring the Home.

**Section 8.10** Deed, Declaration, and Program Mortgage to be Prepared. The Home shall be conveyed by the Owner by a good and sufficient deed commonly used in the jurisdiction for residences conveying a good and clear record and marketable title to the Home free from all

encumbrances except (i) such taxes for the then current year as are not due and payable on the date of delivery of the deed, (ii) provisions of local building and zoning laws, (iii) all easements, restrictions, covenants and agreements of record; (iv) a Declaration in the form then in use by BCHA to administer the Program which the Owner hereby agrees to secure execution by the transferee, and to record immediately after the deed, and (v) a new Program Mortgage in the form then in use by BCHA to administer the Program which the Owner hereby agrees to secure execution by the transferee, and to record immediately after the Declaration or, in the event of any Permitted Mortgage approved in writing by BCHA, immediately after the Permitted Mortgage. Said deed shall clearly state that it is made subject to the Declaration which is made part of the deed. Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Owner to the transferee or the enforceability of the Declaration.

**Section 8.11** Distribution of Sales Proceeds. The proceeds of any sale conducted in accordance with this Article VIII shall be distributed as follows: First to satisfy Permitted Mortgages in order of priority, second to pay the BCHA's Unpaid Amounts, third to pay taxes, Owner association assessments, and any statutory or municipal fees currently due and payable, fourth to pay amounts owed to any other secured lien holders, and fifth to the Owner, who may retain the remaining proceeds of sale. Notwithstanding the foregoing, any Excess Proceeds shall be paid to BCHA.

**Section 8.12** No Promises Made as to Future Sales. Nothing in this Declaration constitutes a promise, commitment or guarantee by the BCHA to sell or purchase the Home or that upon resale the Owner shall actually receive the Maximum Sale Price for the Home or any other price for the Home.

## Article IX. Enforcement

**Section 9.01** What Happens if Owner Fails to Make Payments to BCHA that are Required by the Declaration. It shall be an event of default if the Owner fails to pay any amounts when due under this Declaration or the Program Mortgage and such failure is not cured by the Owner or a Permitted Mortgagee within 30 days after notice of such failure is given by BCHA to Owner and Permitted Mortgagee.

**Section 9.02** What Happens if Owner Violates Other (Nonmonetary) Terms of the Declaration. It will be an event of default if the Owner fails to abide by any other requirement or restriction stated in this Declaration, the Program Mortgage, and/or any other document of record encumbering the Home, and such failure is not cured by the Owner or a Permitted Mortgagee within 60 days after notice of such failure is given by the BCHA to the Owner and any Permitted Mortgagee. However, if the Owner or a Permitted Mortgagee has begun to cure such default within the 60-day cure period and is continuing such cure with due diligence but cannot complete the cure within the 60-day cure period, the cure period shall be extended for as much additional time as may be reasonably required to complete the cure but not exceeding a total cure period of 120 days. Notwithstanding the foregoing, the Owner will not be entitled to a cure period for any violation of the construction or statutory lien provisions in Article VI, the

financing provisions in Article VII, the transfer provisions in Article VIII and/or Section 2.02, or the provisions of Section 9.03 below, and the BCHA will be entitled to exercise the rights and remedies under Section 9.04 for any such violation immediately upon notice of such violation being given by the BCHA to the Owner and any Permitted Mortgagee.

**Section 9.03** What Happens if Owner Defaults as a Result of Judicial Process. It is an event of default if the Home is taken on execution or by other process of law, or if any assignment is made of the Home for the benefit of creditors, or if a receiver, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of any substantial part of the Home by a court of competent jurisdiction, or if a petition is filed for the reorganization of Owner under any provisions of the Bankruptcy Act now or hereafter enacted, or if Owner files a petition for such reorganization, or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for payment of debts.

**Section 9.04** Owner Must Pay a Fee for Unoccupied Home. Any Owner in violation Article II must pay monetary damages to the BCHA that equal the Category 6 Maximum Housing Cost for the duration of the known violation. Property vacant for more than three months or ninety (90) days constitutes default.

**Section 9.05** If BCHA is notified that the Owner may be leasing to an Ineligible Renter, the BCHA will notify the Owner and request documentation and clarification. If the BCHA confirms occupation by an Ineligible Renter, monetary damages must be paid to the BCHA that equal the difference between the Category 6 Maximum Housing Cost and (i) the monthly rent charged, confirmed by bank statements, a signed lease, a signed tenant statement, or other documentation accepted by the BCHA for the duration of the violation or (ii), if (i) is unavailable, then Market Rent, as determined by BCHA (Median Advertised Rent per bedroom size and location), for the number of months in violation. Upon that determination, the Owner must work with the BCHA to transition out the current Ineligible Renter. In addition,

- a) Owner must provide Ineligible Renter at least a ninety (90) day eviction notice, during which the Ineligible Renter will continue to pay rent to the Owner;
- b) Owner must pay Ineligible Renter relocation expenses in an amount equal to six (6) times the tenant's monthly rent paid by the Owner.

**Section 9.06** BCHA-approved Correction of Out of Compliance Renter. Owner may be required to lease to a new tenant, either through a thirty (30) day notice or lease non-renewal, if the BCHA determines that the current lease is with an Out of Compliance Renter.

**Section 9.07** Default (Uncured Violation) Gives BCHA the Right to Exercise Rights and Remedies. Upon the occurrence of an event of default that continues beyond any applicable cure period, the BCHA will have, in addition to all other rights and remedies provided at law or in equity, the right, at the BCHA's option, without further notice or demand of any kind, to take any one or more of the following actions:

- a) The right to enforce this Declaration independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief on account of any violations including without limitation relief requiring restoration of the Home to the condition or occupancy which existed prior to the violation impacting such condition or occupancy (it being agreed that there must be no adequate remedy at law for such violation), and will be in addition to, and not in limitation of, any other rights and remedies available to the BCHA.
- b) The right to exercise the Purchase Option under Section 7.05 above;
- c) In the case of a default under Section 9.02 or 9.03, including without limitation the institution of foreclosure by judicial proceeding or private sale;
- d) Without limitation of any other rights or remedies of the BCHA, or its successors and assigns, in the event of any rent, conveyance, financing, refinancing, or other transfer or occupancy of the Home in violation of the provisions of this Declaration, the following rights and remedies, which will be cumulative and not mutually exclusive:
  - (i) specific performance of the provisions of this Declaration;
  - (ii) money damages for Excess Proceeds and Unpaid Amounts, if applicable;
  - (iii) if the violation is a sale or other conveyance of the Home to an Ineligible Buyer except as permitted herein, the option to locate an Qualified Buyer to purchase or itself purchase the Home from the Ineligible Buyer on the terms and conditions provided herein; the purchase price shall be a price which complies with the provisions of this Declaration; specific performance of the requirement that an Ineligible Buyer shall sell, as herein provided, may be judicially ordered;
  - (iv) the right to void any contract for lease, conveyance or other transfer of the Home in violation of the provisions of this Declaration, by an action in equity to enforce this Declaration; and
  - (v) money damages for the cost of acquiring a comparable dwelling unit for an Qualified Buyer, as determined by the unrestricted value in an Appraisal paid for by the Owner.
- e) In addition to the foregoing, the Owner hereby agrees and will be obligated to pay all fees and expenses (including legal fees) of the BCHA in the event successful enforcement action is taken against the Owner or Owner's successors or assigns.
- f) The Owner for themselves and their successors and assigns, hereby grants to the BCHA the right to take all actions with respect to the Home which the BCHA may determine to be necessary or appropriate pursuant to applicable law, court order, or the consent of the Owner to prevent, remedy or abate any violation of this Declaration.
- g) All rights and remedies set forth in this Section 9.07 are subordinate to the rights of Permitted Mortgagees as set forth in Article I and Article IV of this Declaration.

## Article X. Mediation

**Section 10.01** Mediation. Nothing in this Declaration will be construed as preventing the parties from utilizing any process of mediation in which the parties agree to engage for the purpose of resolving a dispute. Any mediation must be conducted by a mediator agreed upon by the parties in either Blaine County, Idaho, or Canyon County, Idaho.

## Article XI. Notices and Other Provisions

**Section 11.01** Notices. Whenever this Declaration requires either party to give notice to the other, the notice must be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by like written notice:

If to BCHA:

Blaine County Housing Authority  
P.O. Box 4045  
Ketchum, ID 83340

If to Owner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

All notices, demands and requests will be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

**Section 11.02** Severability. If any part of this Declaration is unenforceable or invalid, such material will be read out of this Declaration and will not affect the validity of any other part of this Declaration or give rise to any cause of action of Owner or BCHA against the other, and the remainder of this Declaration will be valid and enforced to the fullest extent permitted by law.

**Section 11.03** Waiver.

- a) The waiver by BCHA at any time of any requirement or restriction in this Declaration, or the failure of BCHA to take action with respect to any breach of any such requirement or restriction, will not be deemed to be a waiver of such requirement or restriction with regard to any subsequent breach of such requirement or restriction, or of any other requirement or restriction in the Declaration. BCHA may grant waivers in the terms of this Declaration, but such waivers must be in writing and signed by BCHA before being effective. Notwithstanding the foregoing, the BCHA may not waive the provisions of Sections 1.03(b), 4.03, 7.01, 7.03, 8.11 and 9.07(g) of this Declaration. This provision

does not waive any other agreements, land use entitlements, or exceedance agreements for the property. The subsequent acceptance by BCHA of any late payments will not be deemed to be a waiver of any preceding breach by Owner of any requirement or restriction in this Declaration, other than the failure of the Owner to make the particular payment so accepted, regardless of BCHA's knowledge of such preceding breach at the time of acceptance of such payment.

**Section 11.04** Headings and Table of Contents. The headings, subheadings and table of contents appearing in this Declaration are for convenience only and do not in any way limit or amplify the terms or conditions of this Declaration.

**Section 11.05** Parties Bound. This Declaration sets forth the entire agreement between BCHA and Owner with respect to the subject matter of this Declaration. This Declaration is binding upon and inures to the benefit of these parties and, in accordance with the provisions of this Declaration and subject to Section 11.07 of this Declaration, their respective successors in interest. This Declaration may be altered or amended only by written notice executed by BCHA and Owner or their legal representatives or, in accordance with the provisions of this Declaration, their successors in interest.

**Section 11.06** Governing Law. This Declaration will be interpreted in accordance with and governed by the laws of the State of Idaho. The language in all parts of this Declaration will be, in all cases, construed according to its fair meaning and not strictly for or against BCHA or Owner.

**Section 11.07** [IF THERE IS A CO-SIGNER/CO-BORROWER:] Additional Title and Financing Requirements. In addition to all other terms stated herein, any individual who 1) is listed on the title to the Home under this Declaration, whether as a co-signer for obtaining financing or for any other reason, or 2) has an interest in the Home, for any reason and by any means, such that they have any ownership right(s) in the Home, shall be required to sign this Declaration and any accompanying documents. Such individuals shall abide by the terms of this Declaration in its entirety and shall not occupy the Home without approval of the City and until they comply with the requirements of this Declaration and the Program Policies.

**Section 11.08** Revocation of Prior Declarations. In addition to the terms stated in Section 11.05, the Parties agree that the execution of this Declaration shall also evidence an agreement by the Parties to revoke, terminate, and/or replace any and all prior Declarations and Deed Covenants by and between the BCHA or the Program Administrator and their predecessors in interest, and Owner and its predecessors in interest, including the \_\_\_\_\_ recorded \_\_\_\_\_ as Instrument No. \_\_\_\_\_, in the records of Blaine County, regardless of whether such prior Declarations and Deed Covenants have separately been terminated or released in writing or otherwise, and that this Declaration restates and supersedes in every respect any such prior Declarations and Deed Covenants, as applicable.

IN WITNESS WHEREOF, the parties have caused this Declaration to be executed as of the Effective Date.

BLAINE COUNTY HOUSING AUTHORITY

By:

\_\_\_\_\_
Title:

OWNER

By:

\_\_\_\_\_

State of Idaho

County of Blaine

This record was acknowledged before me on the \_\_\_\_\_, day of \_\_\_\_\_ 202\_\_\_\_,
by \_\_\_\_\_, Owner.

\_\_\_\_\_
Notary Public
Commission Expires: \_\_\_\_\_

State of Idaho

County of Blaine

This record was acknowledged before me on the \_\_\_\_\_, day of \_\_\_\_\_ 202\_\_\_\_,
by \_\_\_\_\_, as \_\_\_\_\_ of
the Blaine County Housing Authority.

\_\_\_\_\_
Notary Public
Commission Expires: \_\_\_\_\_

Article XII. **Exhibit A. Legal Description**

Recording Requested By and When Recorded Return to:

Blaine County Housing Authority  
In-person pickup preferred (208-788-6102)  
P.O. Box 4045  
Ketchum, ID 83340

## SUBORDINATE PROGRAM MORTGAGE

Based on Grounded Solutions Network 2021 Model Subordinate Program Mortgage

This Subordinate Program Mortgage (as amended and/or restated from time to time, this "**Security Instrument**"), is executed by [FULL NAMES OF HOMEBUYERS], [each] an individual ([together,] the "**Mortgagor**"), residing at [Home Address] (the "**Property Address**"), in favor of the Blaine County Housing Authority, an Idaho independent public body corporate and politic, its successors and assigns (the "**Mortgagee**"), with an address of [Office Address], as of [Month Date], 20[Year], for the purpose of encumbering the improved real estate described on attached Exhibit A (as defined in greater detail below, the "**Property**").

### DEFINITIONS

Words used in multiple sections of this document are defined below. Certain rules regarding the usage of words used in this document are also provided in Section 12.

**"Applicable Law"**: All controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

**"Declaration"**: The Declaration of Local Ownership Covenant signed by the Mortgagor, dated and recorded the same date as this Security Instrument, and encumbering the Property.

**"Default"**: (i) The failure to pay any Payment on the date it is due, (ii) a breach of any other representation, warranty, covenant, requirement, restriction, obligation or agreement in the Declaration, (iii) the failure to pay any other amount secured by this Security Instrument on the date it is due, (iv) a breach of any representation, warranty, covenant, requirement, restriction, obligation or agreement in this Security Instrument, (v) a breach of any representation, warranty, covenant, requirement, restriction, obligation or agreement in the first lien security instrument that is secured by the Property, or (iv) the commencement of any action or proceeding described in Section 7(d).

**"Obligations"**: Payment of all monetary obligations evidenced by the Declaration, including Program Fees, Excess Proceeds, and Unpaid Amounts (as defined in the Declaration) plus any interest, prepayment charges, costs, expenses and late charges due under the Declaration, and all sums due under this Security Instrument, plus any interest, together with performance of all non-monetary obligations evidenced by the Declaration.

**"Payment"**: (i) The regularly scheduled amounts due under the Declaration, and (ii) any other amounts due from time to time under the Declaration, including, without limitation, Program Fees, Excess Proceeds, and Unpaid Amounts and all other amounts payable by Mortgagor under the terms of the Declaration.

**"Property"**: The property described below under the heading "TRANSFER OF RIGHTS IN THE PROPERTY."

**"Successor in Interest of Mortgagor"**: Any party that has taken title to the Property, whether or not that party has assumed Mortgagor's obligations under the Declaration and/or this Security Instrument.

### **TRANSFER OF RIGHTS IN THE PROPERTY**

This Security Instrument secures to Mortgagee: (i) the payment of the Obligations; and (ii) the performance of Mortgagor's covenants and agreements under this Security Instrument and the Declaration. For this purpose, Mortgagor mortgages, grants and conveys to Mortgagee the Property, which is located in Blaine County, Idaho and has an address of the Property Address.

TOGETHER WITH all the improvements now or subsequently erected on the Property, including replacements and additions to the improvements on such Property, all property rights, including, without limitation, all easements, appurtenances, royalties, mineral rights, oil or gas rights or profits, water rights, and fixtures now or subsequently a part of the property. All of the foregoing is referred to in this Security Instrument as the **"Property"**.

MORTGAGOR REPRESENTS, WARRANTS, COVENANTS AND AGREES that: (i) Mortgagor lawfully owns and possesses the Property in fee simple or lawfully has the right to use and occupy the Property under a leasehold estate; (ii) Mortgagor has the right to mortgage, grant and convey the Property; and (iii) the Property is unencumbered, and not subject to any other ownership interest in the Property, except for encumbrances and ownership interests of record. Mortgagor warrants generally the title to the Property and covenants and agrees to defend the title to the Property against all claims and demands, subject to any Permitted Mortgages (as defined in the Declaration).

### **COVENANTS**

Mortgagor and Mortgagee covenant and agree as follows:

**1. Payment of Program Fees, Excess Proceeds, Unpaid Amounts, Interest, and Other Amounts.** Mortgagor will make each Payment when due. All Payments must be made in U.S. currency.

Payments are deemed received by Mortgagee when received at the location designated in the Declaration, or at such other location as may be designated by Mortgagee in accordance with the notice provisions in Section 11.

Any offset or claim that Mortgagor may have now or in the future against Mortgagee will not relieve Mortgagor from making the full amount of all payments due under the Declaration and this Security Instrument or performing the covenants and agreements set forth in the Declaration and this Security Instrument and secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted by Mortgagee will be applied in the following order of priority: (a) interest due under the Declaration or Security Instrument (if any); and (b) amounts due under the Declaration or this Security Instrument, as applicable. Such payments will be applied to each Payment in the order in which it became due. Any remaining amounts will be applied first to late charges, second to any other amounts due under the Declaration, and third to any other amounts due under this Security Instrument.

**3. Prior Security Instruments; Charges; Liens.** Mortgagor will perform all of Mortgagor's obligations under any security instrument with a lien which has priority over the lien of this Security Instrument, including Mortgagor's covenants to make payments when due. Mortgagee and Mortgagor each recognize that provisions in the Declaration and in this Security Instrument give Mortgagee certain rights with respect to the Property and to the receipt of certain funds, including the right to receive payment of insurance proceeds, condemnation and other Miscellaneous Proceeds and the use and application of the proceeds, including the right to hold and disburse the proceeds, and that these rights are subject to the terms of any Permitted Mortgage.

**4. Property Insurance.** Mortgagor must keep the improvements now existing or subsequently erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes, winds and floods. Mortgagor must maintain the types of insurance Mortgagee requires, all in accordance with the terms of any Permitted Mortgage. This insurance must be maintained in the amounts (including deductible levels) and for the periods that Mortgagee requires. What Mortgagee requires pursuant to the preceding sentences can change during the term of the Declaration, and may exceed any minimum coverage required by Applicable Law. Mortgagor may choose the insurance carrier providing the insurance, subject to Mortgagee's right to disapprove Mortgagor's choice, which right will not be exercised unreasonably.

If Mortgagee has a reasonable basis to believe that Mortgagor has failed to maintain any of the required insurance coverages described above, Mortgagee may obtain insurance coverage, at Mortgagee's option and at Mortgagor's expense. Mortgagee is under no obligation to purchase any particular type or amount of coverage. Any such coverage will insure Mortgagee, but might not protect Mortgagor, Mortgagor's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect.

All insurance policies required by Mortgagee and renewals of such policies: (i) will be subject to Mortgagee's right to disapprove such policies; (ii) must include a standard mortgage clause; and (iii) must name Mortgagee as mortgagee and/or as an additional loss payee in the order of the priority of its lien.

**5. Preservation, Maintenance and Protection of the Property.** Mortgagor will not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Mortgagor must maintain the Property in accordance with the Declaration and in order to prevent the Property from deteriorating or decreasing in value due to its condition.

**6. Protection of Mortgagee's Interest in the Property and Rights Under this Security Instrument.**

**(a) Protection of Mortgagee's Interest.** If: (i) Mortgagor fails to perform the covenants and agreements contained in the Declaration and/or this Security Instrument; (ii) there is a legal proceeding or government order that might significantly affect Mortgagee's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien that has priority or may attain priority over this Security Instrument or to enforce laws or regulations); or (iii) Mortgagee reasonably believes that Mortgagor has abandoned the Property, then Mortgagee may do and pay for whatever is reasonable or appropriate to protect Mortgagee's interest in the Property and/or rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property, and may enter the Property for purposes of performing same.

Mortgagee's actions may include, but are not limited to: (I) paying any sums secured by a lien that has priority or may attain priority over this Security Instrument; (II) appearing in court; and (III) paying (A) reasonable attorneys' fees and costs, (B) property inspection and valuation fees, and (C) other fees incurred for the purpose of protecting Mortgagee's interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, inspections of the Property, entering the Property to make repairs, changing locks, replacing or boarding up doors and windows, draining water from pipes, eliminating building or other code violations or dangerous conditions, and having utilities turned on or off. Although Mortgagee may take action under this Section 6, Mortgagee is not required to do so and is not under any duty or obligation to do so. Mortgagee will not be liable for not taking any or all actions authorized under this Section 6.

**(b) Additional Amounts Secured.** Any amounts disbursed by Mortgagee under this Section 6 will become additional Obligations of Mortgagor secured by this Security Instrument. If not paid by Mortgagee to Mortgagor within 30 days after issuance of an invoice reflecting amounts disbursed by Mortgagee, these amounts shall bear interest at the rate specified in the Declaration for late payments under Article IV of the Declaration.

(c) **Declaration Terms.** Mortgagor will comply with all the provisions of the Declaration.

(d) **Leasehold Terms.** If this Security Instrument is on a leasehold, Mortgagor will comply with all the provisions of the lease. If Mortgagor acquires fee title to the Property, the leasehold and the fee title will not merge unless Mortgagee agrees to the merger in writing.

**7. Assignment of Miscellaneous Proceeds; Forfeiture.**

(a) **Assignment of Miscellaneous Proceeds.** Mortgagor unconditionally assigns the right to receive all insurance, condemnation, and other proceeds arising from a casualty or condemnation impacting the Home ("**Miscellaneous Proceeds**") to Mortgagee and agrees that, subject to the requirements of any Permitted Mortgagee, such amount will be paid to Mortgagee.

(b) **Application of Miscellaneous Proceeds upon Damage to Property.** If the Property is damaged, any Miscellaneous Proceeds will be applied to restoration or repair of the Property, if Mortgagee deems the restoration or repair to be economically feasible and Mortgagee's security will not be lessened by such restoration or repair. During such repair and restoration period, Mortgagee will have the right to hold such Miscellaneous Proceeds until Mortgagee has had an opportunity to inspect the Property to ensure the work has been completed to Mortgagee's satisfaction, provided that such inspection must be undertaken promptly. Mortgagee may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Mortgagee may make such disbursements directly to Mortgagor, to the person repairing or restoring the Property, or payable jointly to both. Unless Mortgagee and Mortgagor agree in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Mortgagee will not be required to pay Mortgagor any interest or earnings on such Miscellaneous Proceeds. If Mortgagee deems the restoration or repair not to be economically feasible or Mortgagee's security would be lessened by such restoration or repair, the Miscellaneous Proceeds will be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Mortgagor.

(c) **Application of Miscellaneous Proceeds upon Total Taking of Property.** In the event of a total taking, destruction, or loss in value of the Property, all of the Miscellaneous Proceeds will be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Mortgagor. Notwithstanding the foregoing, any Excess Proceeds shall be paid to Mortgagee in accordance with Section 1.03 of the Declaration.

(d) **Proceeding Affecting Mortgagee's Interest in the Property.** Mortgagor will be in Default if any action or proceeding begins, whether civil or criminal, that, in Mortgagee's judgment, could result in forfeiture of the Property or other material impairment of Mortgagee's interest in the Property or rights under this Security Instrument. Mortgagor can cure such a Default by causing the action or proceeding to be dismissed within sixty (60) days after commencement with a ruling that, in Mortgagee's judgment, precludes forfeiture of the Property or other material impairment of Mortgagee's interest in the Property or rights under this Security Instrument. Mortgagor unconditionally assigns to Mortgagee the proceeds of any award or claim

for damages that are attributable to the impairment of Mortgagee's interest in the Property, which proceeds will be paid to Mortgagee.

**8. Mortgage Not Released; Forbearance by Mortgagee Not a Waiver.** Mortgagor or any Successor in Interest of Mortgagor will not be released from liability under this Security Instrument if Mortgagee extends the time for payment or modifies the amortization of the sums secured by this Security Instrument. Mortgagee will not be required to commence proceedings against any Successor in Interest of Mortgagor, or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Mortgagor or any Successors in Interest of Mortgagor. Any forbearance by Mortgagee in exercising any right or remedy including, without limitation, Mortgagee's acceptance of payments from third persons, entities or Successors in Interest of Mortgagor or in amounts less than the amount then due, will not be a waiver of, or preclude the exercise of, any right or remedy by Mortgagee.

**9. Joint and Several Liability; Signatories.** Mortgagor's obligations and liability under this Security Instrument will be joint and several. However, any Mortgagor who signs this Security Instrument but does not sign the Declaration: (a) signs this Security Instrument to mortgage, grant and convey such Mortgagor's interest in the Property under the terms of this Security Instrument; (b) signs this Security Instrument to waive any applicable inchoate rights such as dower and curtesy and any available homestead exemptions; (c) signs this Security Instrument to assign any Miscellaneous Proceeds, Rents or other earnings from the Property to Mortgagee; (d) is not personally obligated to pay the sums due under the Declaration or this Security Instrument; and (e) agrees that Mortgagee and any other Mortgagor can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument without such Mortgagor's consent and without affecting such Mortgagor's obligations under this Security Instrument.

Subject to the provisions of Section 14, any Successor in Interest of Mortgagor who assumes Mortgagor's obligations under this Security Instrument in writing, and is approved by Mortgagee, will obtain all of Mortgagor's rights, obligations and benefits under this Security Instrument. Mortgagor will not be released from Mortgagor's obligations and liability under this Security Instrument unless Mortgagee agrees to such release in writing.

**10. Charges.** If permitted under Applicable Law, Mortgagee may charge Mortgagor fees for services performed in connection with Mortgagor's Default to protect Mortgagee's interest in the Property and rights under this Security Instrument, including, (i) reasonable attorneys' fees and costs, (ii) property inspection, valuation, mediation and loss mitigation fees, and (iii) other related fees.

If Applicable Law sets maximum interest rates or other charges, and that law is finally interpreted so that the interest or other charges collected or to be collected in connection with the Obligations exceed the permitted limits, then: (i) any such charge will be reduced by the

amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from Mortgagor which exceeded permitted limits will be refunded to Mortgagor. Mortgagee may choose to make this refund by reducing the obligations owed under the Declaration or by making a direct payment to Mortgagor. To the extent permitted by Applicable Law, Mortgagor's acceptance of any refund made by direct payment to Mortgagor will constitute a waiver of any right of action Mortgagor might have arising out of such overcharge.

**11. Notices.** All notices given by Mortgagor or Mortgagee in connection with this Security Instrument must be in writing. Any written notice to Mortgagor in connection with this Security Instrument will be deemed to have been given to Mortgagor when (i) mailed by certified or registered mail, return receipt requested, or (ii) actually delivered to Mortgagor's notice address if sent by other means. Notice to any one Mortgagor will constitute notice to all Mortgagors unless Applicable Law expressly requires otherwise. The notice address for Mortgagor will be the Property Address.

Any notice to Mortgagee will be given by delivering it or by mailing it by certified or registered mail, return receipt requested, to Mortgagee's address stated in this Security Instrument unless Mortgagee has designated another address by notice to Mortgagor. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**12. Governing Law; Severability; Rules of Construction.** This Security Instrument is governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence should not be construed as a prohibition against agreement by contract. If any provision of this Security Instrument or the Declaration conflicts with Applicable Law, such conflict will not affect other provisions of this Security Instrument or the Declaration that can be given effect without the conflicting provision. If any provision of this Security Instrument conflicts with the Declaration, the provisions of the Declaration shall govern and control. Any action required under this Security Instrument to be made in accordance with Applicable Law is to be made in accordance with the Applicable Law in effect at the time the action is undertaken.

As used in this Security Instrument: (a) words in the singular will mean and include the plural and vice versa, and (b) the word "may" gives sole discretion without any obligation to take any action.

**13. Mortgagor's Copy.** One Mortgagor will be given one copy of the Declaration and this Security Instrument.

**14. Mortgagee's Successors and Assigns.** Mortgagee is also the Program Manager under the Declaration. The Declaration permits the Program Manager from time to time to designate a successor or assign its rights and obligations under the Declaration, provided that

such successor or assign is a governmental body, governmental agency, or non-profit entity with a charitable purpose consistent with the Program (as defined in the Declaration). Upon such a designation under the Declaration of a successor or assign by the Program Manager, all of Mortgagee's rights and obligations under this Security Instrument will likewise convey to such successor or assign.

**15. Acceleration; Remedies.**

**(a) Notice of Default.** Mortgagee will give a notice of Default to Mortgagor prior to exercising remedies under this Security Instrument following Mortgagor's Default. The notice will specify: (i) the Default; (ii) the action required to cure the Default; (iii) a date, not less than 30 days from the date the notice is given to Mortgagor (or such longer period set forth in Article IX of the Declaration), by which the Default must be cured; (iv) that failure to cure the Default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property; (v) Mortgagor's right to reinstate after acceleration; and (vi) the right to deny in the foreclosure proceeding the existence of a Default or to assert any other defense of Mortgagor to acceleration and foreclosure. In the case of Defaults under subparagraphs (i) or (ii) of the Definition for "**Default**" set forth above, the notice and cure periods under this Section 19(a) shall run concurrently with any applicable notice and cure periods under Article IX of the Declaration.

**(b) Acceleration; Foreclosure; Expenses.** If the Default is not cured on or before the date specified in the notice, Mortgagee may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Mortgagee will be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 19, including, but not limited to: (i) reasonable attorneys' fees and costs; (ii) property inspection and valuation fees; and (iii) other fees incurred to protect Mortgagee's interest in the Property and/or rights under this Security Instrument.

**16. Release.** Upon payment and performance of all Obligations secured by this Security Instrument, Mortgagee shall release this Security Instrument. Mortgagor shall pay any recordation costs. Mortgagee may charge Mortgagor a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

**17. Attorneys' Fees.** As used in this Security Instrument and the Declaration, attorneys' fees shall include those awarded by an appellate court and any attorneys' fees incurred in a bankruptcy proceeding.

**18. Jury Trial Waiver.** The Mortgagor hereby waives any right to a trial by jury in any action, proceeding, claim, or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Security Instrument or the Declaration.

**MORTGAGEE REQUESTS NOTICE OF ANY ADVERSE ACTION THAT A PRIORITY LIEN HOLDER  
TAKES WITH REGARD TO THE PROPERTY, INCLUDING DEFAULT AND FORECLOSURE**

**[Signatures appear on the following pages]**

IN WITNESS WHEREOF, the parties have caused this Security Instrument to be executed as of the date first set forth above.

**BLAINE COUNTY HOUSING AUTHORITY (MORTGAGEE)**

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

**MORTGAGOR**

\_\_\_\_\_  
Mortgagor

Date: \_\_\_\_\_

State of Idaho  
County of Blaine

This record was acknowledged before me on the \_\_\_\_\_, day of \_\_\_\_\_ 202\_\_, by \_\_\_\_\_, of the Blaine County Housing Authority, Mortgagee.

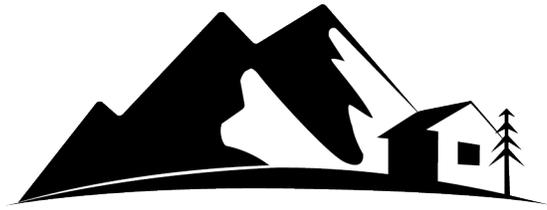
\_\_\_\_\_  
Notary Public  
Commission Expires: \_\_\_\_\_

State of Idaho  
County of Blaine

This record was acknowledged before me on the \_\_\_\_\_, day of \_\_\_\_\_ 202\_\_, by \_\_\_\_\_, as \_\_\_\_\_ Mortgagor.

\_\_\_\_\_  
Notary Public  
Commission Expires: \_\_\_\_\_

**EXHIBIT A**



## BLAINE COUNTY HOUSING AUTHORITY

### BOARD MEETING AGENDA MEMO

Meeting Date:  Staff Member:

Agenda Item:

#### Recommended Action:

None. Staff request feedback and direction on key topics related to amendments to the deed restrictions. Staff will bring the deed covenants for approval at a future meeting.

#### Policy Analysis and Background (non-consent items only):

##### **GOAL OBJECTIVE ACTION**

For the past year and a half, staff has been engaged in updating the deed restrictions and receiving feedback on templates that will be recorded on ownership and rental units in the BCHA portfolio. Deed restrictions are covenants that encumber a property and establish specific terms and allowed uses. They “run with the land” and bind current and future owners of the property to abide by the terms. Deed restrictions may also establish an administrative entity responsible for administering and enforcing the terms, as well as specific enforcement powers.

Since the creation of Ketchum’s Housing Department two years ago and identification of subsequent compliance challenges with owners and property managers of deed restricted units, staff determined that the BCHA deed restriction in use in the portfolio was lacking in adequate enforcement powers and would benefit from review and update.

It is not uncommon for housing organizations to amend deed restriction templates from time to time. Each time a property transacts, a new restriction is required to be recorded, superseding all previous deed restrictions between the parties. Recording a new deed restriction at this time resets the clock on the “term” of the restriction, ensuring long-term preservation of the unit, and offers an opportunity to apply new lessons learned and policy updates.

##### **Grounded Solutions Deed Restriction and Subordinate Mortgage Templates**

Staff turned to [Grounded Solutions Network](#), a national nonprofit membership organization focused on affordable housing solutions. In 2021, Grounded Solutions Network established [a model deed covenant \(restriction\) template](#) with explanatory commentary specifically designed for shared equity homeownership programs and for use by member organizations. The deed restriction template was developed in

partnership with Fannie Mae and Freddie Mac (Government Sponsored Enterprises or GSEs) to increase mortgage financing opportunities for participating homebuyers.

In addition to the deed restriction template, Grounded Solutions Network recommends the use of a "Subordinate Program Mortgage" to be recorded in conjunction with the deed restriction. The Subordinate Program Mortgage is a subordinate mortgage securing the obligations of the homeowner under the deed restriction in favor of the BCHA. Grounded Solutions Network recommends this approach as a backup to the deed restriction, as a mortgage is more recognizable to title companies and lenders and may be more easily enforced than the deed restriction. The Subordinate Program Mortgage was also vetted with the GSEs and takes position on title subordinate to any allowed mortgages and liens.

Staff have adapted the Grounded Solutions Network template to be used for BCHA's ownership and rental properties, incorporating existing policies and procedures and references to the Community Housing Guidelines, while maintaining the key language identified through the GSE review process to ensure viable financing.

The following addresses the key changes from the current BCHA deed restriction templates proposed in the updated deed restriction template. Versions of the proposed, new templates will be provided to the Board for review at a subsequent meeting. For now, the goal of this meeting is to familiarize the Board with the key concepts and receive any feedback or questions on the proposed changes.

**Deed Restriction Term:** Through discussions with Grounded Solutions Network and the City of Ketchum's legal counsel, as well as research on nationwide best practices, Staff learned that property restrictions in perpetuity face risk of legal challenges, particularly in some states including Idaho. To that end, legal counsel recommended a 70-year term for deed restrictions on properties in Idaho. Some historic restrictions in BCHA's portfolio do not explicitly state a term or the term is longer than recommended.

Best practice is to record a new restriction at time of resale or other transfer of ownership, effectively restarting the clock. Staff plan to apply this new 70-year term to all newly recorded restrictions.

**Responsible Parties:** Depending on the mechanism or policy for adding the deed restriction to the unit, Staff have added additional responsible parties. For example, if the deed restriction was created through Ketchum's FAR Exceedance (Density Bonus) Program, the City of Ketchum would be added. This allows for the City of Ketchum to also have enforcement powers on those units resulting from the Density Bonus program or other Planning and Zoning Commission negotiation, in the event BCHA is unable to enforce.

#### **Clarified and Expanded Enforcement Mechanisms**

Staff identified several limitations with the enforcement powers of the current BCHA deed template. The proposed template includes varied responses to non-compliance, ranging from fees to forced sale, to better align with the degree and severity of the non-compliance infraction.

- Fees for Ineligible Renters: This is applied in the event that an owner (either community homeowner or landlord of community rental) rents to someone who is not approved by BCHA. Landlord must give ineligible tenant three months' notice and provide relocation expenses in the amount of three times the tenant's monthly rent.
- Fee for unoccupied home: This fee would apply to the Owner listed on the deed restriction for homeowner units and rental units. If BCHA provides eligible tenants and the Owner does not rent

within 30 days of the exiting tenant vacating the unit, then Owner must pay BCHA the amount of Maximum Housing Cost on that unit for the duration of the violation.

- The right to void any sale, lease, conveyance or other transfer of the home
- Exercise a Purchase Option: In addition to forcing the sale of the unit, BCHA has the option to purchase the unit
- Require payment of money damages for the cost of acquiring a comparable dwelling unit for an Eligible Buyer

**Updated to reflect BCHA's most recent Community Housing Guidelines:** Policy change that the Owner cannot own other developed residential real estate, unless updated Community Housing Guidelines say otherwise.

#### **Clarified role of the City / Program Administrator**

This section outlines certain responsibilities of any City whose policies, programs, or negotiations created the unit and BCHA, as the Program Administrator, such as inspections, reviewing capital improvements, and annual compliance. The City of Ketchum would like to be named on deed restrictions so that they also have enforcement power. Other Cities might want the same.

#### **Maximum Appreciation for Ownership Units**

Appreciation under current BCHA deed restrictions is limited to the lesser of 4% annually (not compounded) or the change in Consumer Price Index (CPI), Wage Earners and Clerical Workers, United States City Average published by the Bureau of Labor Statistics. This approach to appreciation is intended to both afford the homeowner appreciation in their home that generally keeps pace with inflation while preventing against the rapid price acceleration of inflationary spikes to keep homes affordable to future buyers within the corresponding income category. This approach should function as long as local incomes keep pace with inflation – i.e. real incomes remain constant or grow.

Staff has found, however, that over the past 23 years Blaine County incomes, as measured by HUD's annual Area Median Income (AMI), have not kept pace with the Consumer Price Index. From 2000 to 2023, AMI grew 34% (compound annual growth rate of 1.3%) while CPI grew 77% (compound annual growth rate of 2.5%). Additionally, between 2000 and 2022, incomes only grew 19% -- a significant increase from 2022 to 2023 is responsible for nearly half of the growth in incomes in the last 23 years.

As a result of this disconnect, homes in the portfolio have been appreciating faster than incomes, essentially becoming more and more expensive for future buyers in real dollars.

Staff are considering proposing to limit the overall maximum appreciation to 3% annually from 4%. This will not entirely solve the problem of slow income growth. However, it will further limit the impacts of high inflation years (like the current era) on maximum home resale prices. Annual average CPI growth only exceeded 4% three times from 2000 to 2023. In the same period, the change in annual average CPI exceeded 3% seven times.

Staff will present examples and further analysis at the Board meeting for consideration.

**Tenant Rights for Rental Units:** Staff developed a lease addendum that landlords would need to add to their leases. These protections include the following:

- Limitations on rent increases in a single year
- Reiteration of maximum rent

- Clarification on 'just cause' for evictions
- In the event of rehabilitation, certain remedies for the tenant so that they aren't displaced or experience property damage during the process

**Next Steps**

Staff will prepare final draft templates of the updated Ownership and Rental templates and provide them for review and approval at a subsequent BCHA Board Meeting.