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# **DEED COVENANT**

## **DECLARATION OF AFFORDABLE OWNERSHIP COVENANT**

**Pineridge Unit #27**  
1908 Warm Springs Road Ketchum, ID 83340

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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 City of Ketchum, a municipal corporation of the State of Idaho, including successors and assigns (the “City”). 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 Pineridge #27, 1908 Warm Springs Road, Ketchum, ID 83340.

**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 City are entering into this Covenant and Declaration.
2. The City 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 the Planned Unit Development under which it was developed. 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 City an interest in the Home, as more specifically set forth herein. This interest must allow the City 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 City'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 1 bedroom and, pursuant to the terms of this covenant, is restricted for Income Category 3 (60 – 80% AMI).

## 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 City. The City, including through any Program Administrator the City may appoint from time to time, will have the right to enforce this Declaration.

**Section 1.02** Consideration; Value Exchanged. 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. The Base Price of the Home is \$ [REDACTED].

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

- (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 City 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 City. If, for any other reason, Excess Proceeds are paid to Owner, Owner hereby agrees to promptly pay such amount to City.
- (b) In addition to the lien of the Program Mortgage, the City 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 City of Excess Proceeds in Section 1.03(a), and the City’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 City’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 City 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 City, 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 City will calculate the Maximum Sale Price as described in Article VIII;
  - C. The City will calculate Excess Proceeds by subtracting the Maximum Sale Price from the Market Value of the Home, as determined by the Appraisal; and
- (c) 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 City will promptly record a release of this Declaration; or
- (d) 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 City within 90 days after receiving the City’s calculation, and the City 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 City 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** Local Laws Applicable and Program Policies Apply. In addition to the Declaration, the Home is subject to the Ketchum Code and the Program Policies, as administered by the City and Blaine County Housing Authority, including any amendments thereto.

**Section 1.07** Defined Terms. Owner and City 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.
- (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 City.
- (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 City, nor provided to the Owner by the City 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 City, nor provided to the Owner by the City as a Qualified Buyer.
- (j) **“Intent-to-Sell Notice”**: Owner’s notification to the City 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 City 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 City’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 BCHAs application or the Declarant’s application process, and has not cured being out of compliance, per the City’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 City to administer and manage compliance with this deed restriction. Program Administrator has the same enforcement rights as the City.
- (r) **“Program Mortgage”**: The mortgage or deed of trust executed by the Owner in favor of the City, 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, City’s option to purchase the Home at the Mortgage obligation, which is triggered by (i) City’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 Blaine County Housing Authority and/or the City and such Guidelines as may be amended and recorded in the City’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 May 8, 2024. 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 City or BCHAs, and that they agree to comply with these Policies and any amendments thereto.
- (u) **“Resale Fee”**: The fee that the Owner pays to the City upon resale of the Home to compensate the City 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 3 and Net Worth Limitations. The Owner and the City hereby agree the Home shall be exclusively and permanently dedicated for use and occupancy by a Category 3 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 City

**Section 3.01** City Has a Right to Conduct Annual Meetings with the Owner. The City may conduct annual meetings with the Owner in the offices of the City 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 City in scheduling and attending these meetings and will provide City with the requested information. The City 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 City with the requested information using the alternative method.

**Section 3.02** City Has a Right to Inspect the Home. The City 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 City has received an Intent-to-Sell Notice (as described in Article VIII below), then the City or its agent has the right to inspect the interior and exterior of the Home to determine its condition prior to the sale. City 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 City's efforts to schedule and conduct the inspection, and if negative property conditions are identified, the City or its agent has the right to re-inspect until they are resolved.

**Section 3.03** The City 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 City may elect to escrow such amounts and the Owner shall cooperate with the City in setting up such an escrow.

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

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

**Section 3.06** City's Administrator, Successors, and Assigns. The City 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 City for Negligence, Loss, or Damage. The Owner understands and agrees that the relationship between Owner and City is solely that of an Owner and a program administrator. The City 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 City for any loss, damage, or other matter arising out of or resulting from any condition of the Home and will hold the City harmless from any liability, loss, or damage for these things.

**Section 3.08** Disclaimer of Liability by City for Tax Implications. The Owner understands and agrees that the relationship between Owner and City is solely that of an Owner and a program administrator. Throughout the process of City fulfilling its obligations under this Declaration and facilitating the transaction, taxation of the transaction may be discussed. The City makes no representations as to the potential impact of this transaction on Owner's income taxes, property taxes, or otherwise. Further, the City 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 City, 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 City 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 City. For the avoidance of doubt, Owner's obligation to pay City 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 City 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, City may Pay Taxes. If the Owner or its Permitted Mortgagee fails to pay the taxes or assessments described in Section 4.02 above, the City 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 City. Owner shall reimburse the City for any amounts paid by the City to cover such taxes or assessments promptly upon demand by the City. In no event shall the City'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 City has not received any amounts due under this Declaration on or before the required date (the “Due Date”), the City 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 City, 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 City upon demand.

**Section 4.05** City 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 City 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 City 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 City 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 City 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 City’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 City, which consent may be withheld in the City’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 City 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 City. For any proposed Capital Improvements, the Owner shall submit a written request to the City including the following information:

- (a) a written statement of the reasons for undertaking the construction;

- (b) upon request by the City, 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 City to consider permitting such a credit.

Prior to granting or withholding consent, the City may request additional information from the Owner within three weeks of receipt of the Owner's request. The City 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 City consents to a requested Capital Improvements Credit, the City 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 City with copies of all necessary building permits, if not previously provided. The City 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 City shall be for the benefit of the City 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 City of such failure. The City 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 City to discharge such liens shall be reimbursed by the Owner upon demand of the City.

**Section 5.05** Indemnification. Owner agrees to indemnify and shall indemnify, defend, protect and hold the City 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 City 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 City 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 City, 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 City with Excess Proceeds as applicable.

- (a) Liability. The City 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 City, the City'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 City.
- (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 City'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 City. 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 City 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 City.
- (c) The City 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, City Gives Permission for Original Mortgage. By signing this Declaration, the City 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 “Mortgage”) 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 City’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 City 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 City 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 City 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 City with any information requested by City 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 City 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 City Has an Option to Purchase the Home.

- (a) At least 60 days prior to any potential Foreclosure Action, the Owner must notify the City 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) City'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 City 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 City 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 City 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.
- (c) If the City elects to purchase the Home, the City 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 City 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.
- (d) The purchase (by City or City's assignee) will be completed within 90 days after the City'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 City 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 City. 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 City. Owner is subject to Program Policies for Qualified Renters. Owner agrees that City shall have the right to withhold such consent in order to further the purposes of this Declaration. If City approves rental of the Home, any renter must be certified to be a Qualified Renter, and Owner must follow Program Policies.

- (a) City 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 City 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 City'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 City 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 City 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 City 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.
- (b) 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 City (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.

- (c) 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 City. 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.

- (d) Any debt or other obligation of the Owner assumed by the Qualified Buyer shall be credited against the Maximum Sale Price.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) City or Program Administrator to Facilitate Transfer. The City or the Program Administrator will assist in facilitating the sale and transfer, per the Program Policies.
- (i) Resale Fee to be Paid at Transfer. The Owner shall pay a Resale Fee to compensate City 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** City 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 City 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 City's costs of sale and any other sums owed the City 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 City may require and/or approve. Before proceeding with a sale, the Owner must give the City at least 30 days prior written notice and must promptly provide the City with related documentation requested by the City.

**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 City 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 City 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 City, 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 City 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 City 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 City, 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 City'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 City.

**Section 8.12** No Promises Made as to Future Sales. Nothing in this Declaration constitutes a promise, commitment or guarantee by the City 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 City 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 City 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 City 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 City 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 City 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 City 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 the City is notified that the Owner may be leasing to an Ineligible Renter, the City will notify the Owner and request documentation and clarification. If the City confirms occupation by an Ineligible Renter, monetary damages must be paid to the City 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 City for the duration of the violation or (ii), if (i) is unavailable, then Market Rent, as determined by the City (Median Advertised Rent per bedroom size and location), for the number of months in violation. Upon that determination, the Owner must work with the City 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** **City-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 City determines that the current lease is with an Out of Compliance Renter.

**Section 9.07** **Default (Uncured Violation) Gives City the Right to Exercise Rights and Remedies.**

Upon the occurrence of an event of default that continues beyond any applicable cure period, the City will have, in addition to all other rights and remedies provided at law or in equity, the right, at the City'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 City.
- (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 City, 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;
- (e) money damages for Excess Proceeds and Unpaid Amounts, if applicable;
- (f) 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;
- (g) 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
- (h) 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.
- (i) In addition to the foregoing, the Owner hereby agrees and will be obligated to pay all fees and expenses (including legal fees) of the City in the event successful enforcement action is taken against the Owner or Owner's successors or assigns.
- (j) The Owner for themselves and their successors and assigns, hereby grants to the City the right to take all actions with respect to the Home which the City 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.

- (k) All rights and remedies set forth in this Section 9.04 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 City:

City of Ketchum  
P.O. Box 2315  
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.

**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 City 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.

The waiver by City at any time of any requirement or restriction in this Declaration, or the failure of City 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. City may grant waivers in the terms of this Declaration, but such waivers must be in writing and signed by City before being effective. Notwithstanding the foregoing, the City may not waive the provisions of Sections 1.03(b), 4.03, 7.01, 7.03, 8.11 and 9.04(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 City 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 City'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 City 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 City 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 City 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 City 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.

CITY OF KETCHUM

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 City of Ketchum.

\_\_\_\_\_

Notary Public

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



Article XII.      **Exhibit A. Legal Description**  
of the Home with unit #

[INSERT ANY STATEMENTS REQUIRED FOR RECORDING]