

**Income Category Deed Covenant**  
**(No Capital Reserve Provisions)**

SAMPLE

Recording Requested By and  
When Recorded Return to:

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

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SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

## COMMUNITY HOUSING COVENANT RUNNING WITH THE LAND

This Agreement for Community Housing Covenant Running with the Land is made and is effective as of the first day of recording of this Covenant ("**Effective Date**"), by and between \_\_\_\_\_, a(n) \_\_\_\_\_ ("**Declarant**") and the BLAINE COUNTY HOUSING AUTHORITY, an Idaho independent public body corporate and politic ("**BCHA**").

### Section 1: Background.

To satisfy a condition of approval, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant and BCHA are entering into Covenant.

Pursuant to the terms and conditions of Covenant, Declarant hereby grants to BCHA an interest in the Property. This interest shall allow the BCHA to administer the terms and conditions of this Covenant and of the Guidelines, but shall not 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 BCHA's interest in the Property, the Declarant is the sole owner of a fee simple estate in the Property.

Declarant and BCHA hereby agree the Property shall be exclusively and permanently dedicated for use and occupancy by an Owner as outlined in the Guidelines and in this Covenant.

Capitalized terms not otherwise defined in this Covenant shall have the meaning ascribed to such terms in Section 2.

### Section 2: Definitions.

"BCHA" is the Blaine County Housing Authority, an Idaho independent public body corporate and politic, and its successors and assigns.

2.2 The "Guidelines" are the Community Housing Guidelines adopted by BCHA and in effect as of the applicable date for reference to such Guidelines, as such Guidelines may be amended from time to time. The most current Guidelines recorded in the official records of Blaine County, Idaho are recorded as Instrument No. 572710. Amendments to these most current recorded Guidelines will not affect the rights of the holder of a mortgage or deed of trust on the Property recorded prior to the date of recordation of the amendments.

2.3 An "Owner" is either Declarant during Declarant's initial ownership of the Property, a Qualified Buyer who acquires fee simple absolute title to the Property or a Qualified Occupant who rents all or any portion of the Property.

2.4 "Permitted Capital Improvements" are those certain capital improvements described in the Guidelines made to the Property for which written approval of BCHA had been obtained prior to installation of such improvements on the Property. Permitted Capital Improvements do not include the initial construction costs incurred by Declarant. Permitted Capital Improvements shall not include any changes or additions to the Property made after a casualty pursuant to Section 7.2. Permitted Capital Improvements do not include improvements made to the Property without BCHA approval prior to their installation on the Property.

2.5 The "Property" is that certain real property described in Exhibit "A" attached hereto and incorporated herein. For purposes of this Covenant, the Property shall include, without limitation, all estates, rights, title and interest in and to the Property, at law and in equity, and all buildings, structures, appurtenances, improvements and fixtures associated therewith or attached thereto from time to time.

2.6 A "Qualified Buyer" is a person or group of people meeting and in full compliance with the qualifications and conditions set forth in the Guidelines in effect at the date a contract between an Owner and a Qualified Buyer is entered into for the Sale of the Property, including, without limitation, the income requirements applicable to the Property, and who has a complete and current application on file with BCHA at the time a contract for the Sale of the Property is entered into between an Owner and the Qualified Buyer.

2.7 A "Qualified Occupant" is a person or group of people who at the time a lease or rental agreement is entered into between the Owner and Qualified Occupant meet and is in full compliance with the qualifications and conditions set forth in the Guidelines and who has a complete and current application on file with BCHA.

2.8 The terms "Sale," "Sale of" or "to Sell" the Property shall include, without limitation, any transfer, purchase, sale, conveyance, grant, gift, bequest or devise, by merger, consolidation, dissolution, operation of law or otherwise, of the Property or any interest therein, in whole or in part. The terms Sale, Sale of or to Sell the Property shall not include any grant of easement or partial conveyance for utility or public right-of-way purposes. The terms Sale, Sale of or to Sell the Property shall not include any grant of a security interest in the Property either by mortgage, deed of trust or otherwise, but shall include a Sale due to foreclosure or acceptance of a deed in-lieu of foreclosure.

### Section 3: Transfer

3.1 Except as expressly set forth in this Covenant, Owner may only Sell the Property to a Qualified Buyer. Any Sale of the Property must comply with this Covenant. Any Sale of the Property not in compliance with this Covenant is void.

3.2 At such time as an Owner seeks to sell the Property, Owner shall complete, execute and deliver to BCHA a Notice of Intent to Sell as set forth in the Guidelines. Upon receipt of the Notice of Intent to Sell and Owner's compliance with the terms of the Notice of Intent to Sell, BCHA shall notify Owner of the Maximum Sales Price, as determined in accordance with Sections 5, 9.1, 12.3 and 12.4, and provide Owner with Qualified Buyers in accordance with the Guidelines. Owner shall then, in accordance with the Guidelines, offer the Property for Sale for not more than the Maximum Sales Price to the Qualified Buyers provided by BCHA, until an agreement is reached with a Qualified Buyer for the Sale of the Property. Such agreement must comply with the Guidelines. The selling Owner shall not accept or otherwise receive any consideration in excess of the Maximum Sales Price except as otherwise permitted in this Covenant or in the Guidelines.

3.3 In the event Owner, in good faith compliance with the procedures set forth in the Guidelines, exhausts the pool of Qualified Buyers provided by BCHA without entering into an agreement for the Sale of the Property, Owner shall notify BCHA of such occurrence. BCHA may then provide Owner with a supplemental pool of Qualified Buyers and Owner shall proceed with the supplemental pool of Qualified Buyers according to Section 3.2. In the event Owner exhausts the pool of Qualified Buyers, as supplemented, without entering into an agreement for the Sale of the Property, within sixty (60) days after receipt of written notice from Owner of such occurrence, BCHA may purchase the Property for the Previous Sales Price (as defined in Section 5.1) plus any increase for Permitted Capital Improvements, according to the terms and conditions set forth in the Guidelines, or continue to provide Owner with lists of Qualified Buyers until an agreement for the Sale of the Property is reached. Owner's inability to reach an agreement with a Qualified Buyer shall not be grounds to terminate or modify this Covenant. Rather, Owner will need to further compromise in order to reach an agreement with a Qualified Buyer.

3.4 In the event BCHA determines the Property has reached its functional obsolescence or other just reasons exist, at such time as an Owner seeks to Sell the Property, BCHA may, to the exclusion of a Qualified Buyer, purchase the Property for the Maximum Sales Price plus any increase for Permitted Capital Improvements, in accordance with the Guidelines.

3.5 In the event BCHA becomes the fee owner of the Property, such conveyance of the fee interest to BCHA shall not work a merger of the interests of BCHA as to the Property and this Covenant shall continue to be in full force and effect unless an express written agreement to the contrary signed and acknowledged by BCHA is recorded in the official records of Blaine County, Idaho.

3.6 At such time as an Owner seeks to rent all or any portion of the Property, Owner shall complete, execute and deliver to BCHA a Notice of Intent to Rent as set forth in the Guidelines. Upon receipt of the Notice of Intent to Rent and Owner's compliance with the terms of the

Notice of Intent to Rent, BCHA shall notify Owner of the Maximum Rental Amount, as determined in accordance with Section 5.6. Owner shall then, in accordance with the Guidelines, offer the Property for rent for not more than the Maximum Rental Amount to any Qualified Occupant. Such agreement must comply with the Guidelines. Owner shall not accept or otherwise receive any consideration in excess of the Maximum Rental Amount, except as otherwise permitted in the Guidelines. If the Property is financed through the Idaho Housing and Finance Association, further and more restrictive requirements with respect to rental of the Property to non-owner Occupants may be required.

3.7 In the event Owner, in good faith compliance with the procedures set forth in the Guidelines, is unable to find a Qualified Occupant with whom to enter into an agreement for the rental of the Property, Owner shall notify BCHA of such occurrence. BCHA may then provide Owner with a list of Qualified Occupants from which Owner might seek to enter into a rental agreement with in accordance with Section 3.6. In the event Owner exhausts the list of Qualified Occupants, as supplemented, without entering into an agreement for the rental of the Property, BCHA may, at the request of the Owner, continue to provide Owner with lists of Qualified Occupants (if available) until an agreement for the rental of the Property is reached. If the pool of Qualified Occupants is exhausted, Owner's inability to reach an agreement with a Qualified Occupant shall not be grounds to terminate or modify this Covenant. Rather, Owner will need to further compromise in order to reach an agreement with a Qualified Occupant. By providing a list of Qualified Occupants, BCHA does not warrant, represent or guarantee the Qualified Occupant's ability to perform its duties or obligations under the rental agreement. The selection of any Qualified Occupant is at the sole risk of the Owner.

3.8 Owner is advised to seek professional assistance from a lawyer, accountant, licensed real estate salesperson or broker and/or other professionals with regard to the Sale or rental of the Property. BCHA does not represent and is not acting on behalf of Owner, the Qualified Buyer or the Qualified Occupant in the Sale or rental of the Property. BCHA is acting on its own account as to its interest in the Property pursuant to this Covenant and any assistance, forms or directions provided by BCHA or as set forth in the Guidelines are to further BCHA's interest in the Property.

#### Section 4: Use, Occupancy, Maintenance and Repair Requirements.

4.1 Owner shall use the Property as the Owner's primary place of residence. For purposes of the preceding sentence, the Property shall be deemed the Owner's primary place of residence if the Owner (a) occupies more than thirty percent (30%) of the interior floor space (85% if the Property is financed by the Idaho Housing and Finance Association), (b) is physically present on and residing in the Property for not less than nine (9) months in every twelve (12) month period, (c) has not accepted employment outside of Blaine County (distinct and isolated projects outside of Blaine County not exceeding ninety (90) days in duration shall not constitute a violation of this section), and (d) does not own other residential property in Blaine, Butte, Camas, Custer, Gooding, Jerome, Lincoln, Minidoka, or Twin Falls Counties (an Owner whose business is the construction and sale of residential properties or the purchase and resale of residential properties shall not be in violation of this section provided such Owner does not reside in the properties for any length of time). For purposes of the preceding sentence, an

Owner is deemed to own other residential property if the Owner controls, directs or appoints or has the ability to control, direct or appoint the occupancy of the residential property or owns, either directly or indirectly, more than a thirty percent (30%) interest in the residential property. In the event an Owner rents all of the Property to a Qualified Occupant, BCHA may, but shall not be obligated to, waive this section provided Owner requests such waiver when delivering the Notice of Intent to Rent.

4.2 Owner shall not use or allow the Property to be used for any business or commercial operation without first obtaining a home occupation permit or otherwise complying with all laws, rules, regulations and permits pertaining to such activities. Owner shall not seek consent to change the zoning designation of the Property without the prior written consent of BCHA, which consent may be granted, conditioned or withheld in BCHA's sole and absolute discretion. Furthermore, no business or commercial operation shall be conducted on the Property which materially interferes with or precludes the Property's use and occupancy as a residence. The property shall not be used as a "recreational" or "second home".

4.3 Owner shall at all times, and at its own cost and expense, maintain, repair and/or replace in good, clean and habitable condition the Property and every part thereof, including, without limitation, any home, building or improvement on the Property, the roof, foundation, walls, siding, trim, floors, doors and windows, all electrical, plumbing, sewer, septic and HVAC components, lines and fixtures, all appliances, equipment and systems on the Property, all paved surfaces, all landscaped areas, and any sprinkler systems and water lines, reasonable wear and tear excepted. Such work must be performed in a good and workmanlike manner. Owner shall maintain the landscaped areas of the Property in a neat, clean and healthy condition. Owner shall replace all dead, dying or diseased plants, shrubs and trees. Owner shall provide adequate watering for the landscaped areas, shall mow, trim and prune the landscaped areas as needed for a neat and presentable appearance and shall otherwise keep the Property free of harmful pests, insects and noxious weeds and plants. If Owner refuses or neglects to maintain, repair or replace the Property, or any part thereof, in accordance with this Section, according to the provisions of Sections 11 and 12, BCHA shall have the right, but not the obligation, to perform such maintenance, repair or replacement obligations on behalf of and for the account of Owner. In such event, any costs incurred by BCHA shall be immediately due and payable upon receipt of an invoice therefore according to the terms of Section 12.5.

4.4 Owner shall make or cause to be made all repairs to the Property and perform or cause to be performed all work thereon so as not to permit any waste or deterioration of the Property. Upon the Sale of the Property, Owner shall remove all of Owner's belongings not sold to the Qualified Buyer and leave the Property in a good and clean condition, reasonable wear and tear excepted.

4.5 Owner shall comply with all laws, rules, regulations, and ordinances pertaining to the Property or the use or occupancy of the Property. Owner shall comply with any covenants, restrictions, rules or regulations encumbering the Property, including, without limitation, any covenants, conditions or restrictions imposed by any homeowner's association of which the Property is a part.

Section 5: Maximum Sales Price & Maximum Rental Amount.

5.1 Except in the case of the Declarant, the "Previous Sales Price" is the amount paid, including any debt assumed, by the Owner towards the purchase price for the Property at the time the Owner purchased the Property. The Previous Sales Price shall not include any fees, interest, points, origination costs, or premiums associated with or arising from any loan on the Property; title insurance premiums, recording fees, or escrow fees; taxes or assessments; utilities; courier, delivery or wire transfer fees; brokerage or real estate sales person commissions; appraisal fees; inspection fees; legal or accounting costs or fees; document preparation fees; or moving costs. For purposes of Declarant, the Previous Sales Price is the amount agreed to between BCHA and Declarant that Declarant may sell the Property for upon completion and issuance of a certificate of occupancy for the Property. The price agreed to by Declarant and BCHA shall not be subject to increase according to Sections 5.2 or 5.3.

5.2 Except as otherwise set forth in Sections 6.1, 8.4 and 8.5, in no event shall the Property be sold for an amount ("Maximum Sales Price") in excess of the LESSER of:

The Previous Sales Price plus four percent (4%) interest per annum from the date the selling Owner purchased the Property to the date the selling Owner delivers the Notice of Intent to Sell to BCHA (prorated at the rate of 0.33 percent for each whole calendar month in any partial year); or

The Previous Sales Price plus an amount equal to any increase in the cost of living during Owner's ownership of the Property 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 Previous Sales Price shall be increased by the CPI Increase. The Maximum Sales Price shall be determined according to the following formula:

$I_1$  = Index for the month in which the Owner purchased the Property

$I_2$  = Index published in or prior to the month such Owner delivers the Notice of Intent to sell to BCHA

C = Number of whole calendar months between the date the Owner purchased the Property and the date the Owner delivers the Notice of Intent to sell to BCHA

Maximum Sales Price = Previous Sales Price + (Previous Sales Price  $\div$  ( $I_1 / I_2$ ) - Previous Sales Price)  $\times$  ( $\frac{C + 1}{C}$ )

In no event shall the Maximum Sales Price ever decrease below the Previous 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 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.

Any debt or other obligation of the Owner assumed by the Qualified Buyer shall be credited against the Maximum Sales Price.

5.3 Notwithstanding Section 5.2 to the contrary, the Maximum Sales Price may be increased by the selling Owner's out-of-pocket cost of Permitted Capital Improvements made during the selling Owner's ownership of the Property, provided that such increase shall not exceed ten percent (10%) of the Previous Sales Price. The selling Owner's out-of-pocket cost of Permitted Capital Improvements is a fixed amount and the selling Owner shall not receive a percentage increase on such amount pursuant to Section 5.2. Upon Sale of the Property, the out-of-pocket cost of Permitted Capital Improvements shall be incorporated into the Maximum Sales Price for purposes of determining the next Owner's Previous Sales Price.

5.4 In calculating the costs incurred for Permitted Capital Improvements, 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.

5.5 To substantiate the cost of qualifying Permitted Capital Improvements, the Owner must furnish to BCHA along with the Notice of Intent to Sell, original or duplicate receipts, invoices or statements verifying the out-of-pocket costs and expenses, true and correct copies of any building permit or certificate of occupancy, if required, to be issued by the appropriate building department or governmental agency having jurisdiction over the Property with respect to the Permitted Capital Improvements and the written approval of BCHA obtained prior to the installation of the Permitted Capital Improvements.

5.6 In no event shall all or any portion of the Property be rented for a monthly rental amount ("Maximum Rental Amount") in excess of the sum of the Owner's monthly mortgage payment (including principal, interest and insurance), ad valorem taxes (prorated on a monthly basis), insurance premiums in accordance with section 7.1 (prorated on a monthly basis), homeowner or condominium association dues or fees (prorated on a monthly basis), and the administration rental fee set forth in the Guidelines. In the event only a portion of the Property will be rented, the Maximum Rental Amount will be multiplied by the percentage derived from the number of bedrooms rented by the Qualified Occupant divided by the number of bedrooms on the Property and the result shall be the Maximum Rental Amount payable by the Qualified Occupant. The terms and conditions of the rental, lease or occupancy agreement must comply with the Guidelines. If the Property is financed through the Idaho Housing and Finance

Association, further and more restrictive requirements with respect to rental of the Property to non-owner Occupants may be required.

5.7 In order to conform to HUD requirements, the limitation on resale price shall not be construed to limit the Owner to accept a sale price at which reasonable costs of sale and improvements, together with the original purchase price, are not recovered.

**5.8 THERE CAN BE NO REFINANCING OF THE PURCHASE MONEY LOAN NOR THE USE OF ANY SECONDARY OR HOME EQUITY FINANCING WITHOUT THE PRIOR WRITTEN APPROVAL OF THE BCHA, WHICH APPROVAL WILL NOT BE UNREASONABLY WITHHELD, PROVIDED THAT ANY SUCH REFINANCING OR THE TOTAL OF ANY PRIMARY FINANCING PLUS ANY SECONDARY FINANCING IS BASED ON A LOAN-TO-VALUE RATIO WHERE THE VALUE DOES NOT EXCEED THE MAXIMUM PRICE FOR WHICH THE PROPERTY MAY BE SOLD PURSUANT TO SECTION 5 OF THIS COVENANT.**

## Section 6: Closing

6.1 Except in the event of a foreclosure sale, at the closing of any Sale of the Property, 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. In the event the Owner agrees to pay the closing costs to be paid by the Qualified Buyer pursuant to this Section 6.1 or any other closing costs to be incurred by the Qualified Buyer as permitted by the Guidelines, the price at which the property 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.

6.2 The selling Owner shall, at closing, pay an administrative fee to BCHA in an amount equal to three percent (3%) of the actual sales price. Any debt assumed by the Qualified Buyer and the cash value of any services performed or goods delivered shall be included in determining the administrative fee payable to BCHA. The administrative fee is earned by BCHA during the term of Owner's ownership of the Property and helps to support BCHA's activities in monitoring, development, and oversight of the Community Housing program in Blaine County. This fee is independent of any fees required to be paid to licensed real estate brokers or attorneys who may be engaged by Owner or the Qualified Buyer in the Sale of the Property. BCHA may instruct the escrow company to pay the administrative fee directly to BCHA from the selling Owner's proceeds. If FNMA or FHA financing is used, there may be an additional fee charged by BCHA based on the amount financed. The amount of the administrative fee to be paid by the subsequent Owner shall be as set forth in the then current Guidelines and will be distributed to BCHA for its operating account.

6.3 At Closing, the Qualified Buyer shall execute and deliver to BCHA an Acknowledgment of Covenant in accordance with the Guidelines indicating Owner has read and

is aware of the terms of this Covenant and the Guidelines and agrees to be bound thereby. A Qualified Buyer's failure to execute or deliver to BCHA an Acknowledgment of Covenant shall not compromise, minimize or in any way affect the terms, covenants or conditions of this Covenant or BCHA's interest herein and the Qualified Buyer shall nonetheless be bound by and subject to this Covenant.

## Section 7: Insurance & Casualty

7.1 Owner shall at all times during Owner's ownership of the Property cause the Property to be insured with Causes of Loss – Special Form (formerly known as "All Risk") property insurance in an amount not less than the full replacement cost of all improvements on the Property at the time of loss with like kind and quality (such amount may exceed the Previous Sales Price or Maximum Sales Price of the Property). Such insurance shall be provided by a carrier admitted to engage in the business of insurance in the state of Idaho. No policy will contain a deductible or self-insured retention in excess of three percent (3%) of the Previous Sales Price unless otherwise approved by BCHA. If requested by BCHA, Owner shall cause BCHA to be named as an additional insured as its interests may appear by endorsement acceptable to BCHA and shall promptly deliver to BCHA a copy of Owner's insurance policy in conformance with this section. If the forms of policies required by this section are superseded or no longer available, BCHA will have the right to require other equivalent or better forms.

7.2 If the Property is damaged or destroyed, Owner shall promptly notify BCHA in writing. Owner shall thereafter promptly make a claim on any insurance policy covering such damage or destruction. The mortgagee shall have first claim on such proceeds to the extent necessary to pay mortgage principal and any accrued interest. Owner shall thereafter have the option to either a) utilize the remaining proceeds of any insurance settlement, together with a new mortgage not to exceed the balance (except with written approval of the BCHA) of any mortgages paid from said settlement to repair or restore the Property to its condition prior to such damage or destruction, unless Owner obtains BCHA's prior written approval to repair or restore the Property to some other condition or state, or b) to take such proceeds from the insurance settlement as would have been generated from a Sale per the terms of Section 5 of this Covenant (net of mortgages or other obligations paid from the proceeds from the proceeds of the insurance settlement), and assign the balance of the insurance proceeds, together with title to the Property, to the BCHA.

## Section 8: Encumbrances

8.1 Owner shall promptly pay when due all monetary liens, taxes, assessments, and encumbrances on the Property and otherwise comply with the terms and provisions of any deed of trust, mortgage or other loan documents pertaining to the Property. Owner shall instruct all lenders and their assigns to copy BCHA on all communications relating to any loan on the Property and within five (5) days after Owner's receipt, Owner shall provide BCHA with copies of any written communications from any lender not delivered to BCHA. In the event that BCHA initiates any enforcement or default action against the Owner, the BCHA shall, within five (5) days after commencement of such action, notify the mortgage holder of such action.

8.2 After any default, late payment, or missed payment on any loan or encumbrance on the Property, or if a nonconsensual lien is filed upon the Property, Owner shall, upon the request of BCHA, participate in loan counseling, budgeting, financing or distressed loan services, classes or programs.

8.3 Any breach of this Covenant shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but, except as otherwise provided in Sections 8.4 and 8.5, this Covenant shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

8.4 In the event of any foreclosure of a purchase money mortgage or deed of trust in a first priority position on the Property (but subject to this Covenant), such foreclosing party ("Foreclosing Party") may sell the Property through a duly called and noticed foreclosure sale to any person or entity for more than the Maximum Sales Price provided that the foreclosing party strictly adheres to the provisions of this Section 8.4 and Section 8.5.

- (a) The Foreclosing Party shall notify BCHA in writing of any pending foreclosure concurrent with the date the trustee or beneficiary files for record the notice of default as required by Idaho Code Section 45-1505 (2005) or the mortgagee serves upon the mortgagor an action for foreclosure and thereafter the Foreclosing Party shall send a copy of all notices sent to the Owner to BCHA; and
- (b) At any time prior to the foreclosure sale and upon request of BCHA, the Foreclosing Party shall agree to sell, transfer and convey to BCHA the entire debt obligation owed to the Foreclosing Party and take full assignment of the debt obligation, promissory note, and other loan documentation, including foreclosure rights, for the lesser of the Foreclosing Party's gross investment or the estimated net recovery value of the security property. Notwithstanding the aforesaid, and in order to safeguard the Community Housing program, the Owner, and the BCHA from predatory lending practices, no obligation of mortgage principal which exceeded 103% of the Maximum Sales Price of the property at the date said principal obligation was incurred shall be recoverable by any foreclosing party.<sup>1</sup> The BCHA may, but shall not be obligated to, purchase the debt obligation for less than the amount calculated if BCHA and the Foreclosing Party so agree.

8.5 In the event BCHA does not elect to purchase the debt obligation pursuant to Section 8.4(b) and the Foreclosing Party has strictly adhered to Section 8.4, or in the event BCHA has taken assignment of the debt obligation and is the Foreclosing Party, the Foreclosing Party may proceed with the foreclosure action and the Property may be sold for more than the Maximum

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<sup>1</sup> In the event that the Buyer purchased or refinanced the property using certified United States Department of Agriculture—Rural Development (hereinafter cited as USDA RD) funds, subsidies, vouchers or other mortgage assistance products created by USDA RD, that constitute an addition to the principal amount of the original loan, then the foreclosing party may recover up to 100% of the original loan and also the additions of principal created by said USDA-RD products.

Sales Price to a person other than a Qualified Buyer. Proceeds, if any, from the foreclosure sale shall be distributed in accordance with this paragraph. Costs of foreclosure, including trustee services, sheriff's fees, and similar costs, and all amounts due the Foreclosing Party shall have first priority to the sale proceeds. Next, Owner shall be entitled to any amount in excess of the amounts paid in the preceding sentence up to the Maximum Sales Price less the administrative fee due BCHA pursuant to Section 6.2. Any amount remaining from sale proceeds, after payment of the items identified in the previous two sentences, shall be paid to BCHA. Provided that the Foreclosing Party has strictly adhered to the requirements of Sections 8.4 and 8.5 and all rights of redemption or challenges to the validity or enforceability of the foreclosure sale have expired, this Covenant, and the rights of the BCHA hereunder, shall terminate.

8.6 Any deed in lieu of foreclosure shall be subject to the requirements of paragraphs 8.4 and 8.5 with respect to notice to the BCHA, option and rights of the BCHA to purchase or take assignment of the debt obligation, and limitation of the recoverable mortgage principal amount. Provided that party acquiring title through a deed in lieu of foreclosure has strictly adhered to the requirements of Sections 8.4 and 8.5 and all rights of redemption or challenges to the validity or enforceability of said action have expired, this Covenant, and the rights of the BCHA hereunder, shall terminate.

8.7 If the Property is financed under the Mortgage Revenue Bond program administered by the Idaho Housing and Finance Association, the parties to this Covenant understand that various requirements of that program may be more stringent than those set forth in this Covenant and, in such case; the parties agree that those more stringent requirements shall prevail.

8.8 Any encumbrance other than a First Mortgage must have the prior written approval of BCHA.

## Section 9: Condemnation

9.1 Within ten (10) days after Owner receives any notice that all or any portion of the Property is sought by condemnation, Owner shall notify BCHA. If all or any portion of the Property is taken by eminent domain or conveyed by Owner under threat of condemnation, the Maximum Sales Price, determined as of the date all or any portion of the Property is conveyed to the condemning authority or the valuation date for purposes of the condemnation proceeding, whichever is earlier ("Valuation Date"), shall be decreased by the assessment of damages paid to Owner for the value of or damages to the Property. Thereafter, the adjusted Maximum Sales Price, for purposes of Section 5.2, shall accrue appreciation from the Valuation Date.

9.2 Any assessment of damages paid by the condemning authority for the value of or damages to the Property shall be first utilized to pay the full amount of any existing mortgages, together with any accrued interest thereon. The balance of damage payment proceeds shall be shared between Owner (and secured mortgagees) and BCHA. The amount of the assessment payable to Owner shall be that percentage of the assessment of damages determined by dividing the Maximum Sales Price as of the Valuation Date by the fair market value of the Property as of the Valuation Date less the product of that same percentage and three percent (3%) of the

Maximum Sales Price as of the Valuation Date.<sup>2</sup> The remainder of the assessment shall be payable to BCHA. In the event BCHA and Owner are unable to agree on the fair market value of the Property, within thirty (30) days after receipt of a request by either BCHA or Owner, BCHA and Owner shall each appoint an appraiser who shall be a member of the Appraisal Institute (or substitute organization which certifies and trains appraisers) with at least three (3) years experience in appraising residential real property in the county in which the Property is located. The appointed appraisers shall diligently proceed to appraise the fair market value of the Property, without regard to this Covenant, as of the Valuation Date. If the higher of the two appraisals is more than five percent (5%) of the lower appraisal and the parties cannot agree upon the fair market value of Property, the two appraisers shall together appoint a similarly qualified third appraiser within twenty (20) days after receipt of written demand made by either party. Such third appraiser shall select one of the prior two appraisals which most closely approximates the third appraiser's opinion of the Property's fair market value and the selected appraisal shall conclusively establish the fair market value of the Property as of the Valuation Date. In the event the difference between the first two appraisals is less than five percent (5%), the amount obtained by averaging the respective appraisals shall constitute the fair market value. Each party agrees to pay its respective appraiser's fee plus one-half of the third appraiser's fee. For purposes of this Section, "fair market value" shall mean the amount at which the Property would change hands between a willing buyer and a willing seller, neither being under a compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Furthermore, the existence of any encumbrances on Property (other than this Covenant ) and the benefit of putting the Property to its highest and best use considering all factors, shall be taken into consideration when determining the fair market value of the Property.

Section 10: Indemnity, Waiver and Release.

10.1 Owner acknowledges and agrees that bcha, its agents, employees and contractors, are not making, have not made and expressly disclaim any representations or warranties, express or implied, with respect to any qualified buyer or qualified occupant and/or with respect to any aspect, feature or condition of the property including, without limitation, the existence of hazardous waste, the suitability of the property for owner's intended use, owner's ability to sell the property for the maximum sales price or in a timely fashion or to rent the property to a qualified occupant at the maximum rental amount, for any length of time or in a timely fashion. Owner, qualified buyer and qualified occupant shall independently verify all information and reports regarding any aspect or feature of the property, an owner, a qualified buyer or a qualified occupant provided by bcha. Bcha does not guaranty the accuracy of any information or reports provided by bcha, it agents, employees or contractors. To the fullest extent permitted by law, owner and qualified buyer release bcha from any and all liability relating to any aspect or condition of the property, known or unknown, foreseeable or unforeseeable, actual or contingent,

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<sup>2</sup> Amount payable to Owner = Assessment x  $\frac{MSP - (.03 \times MSP)}{FMV}$  minus balance(s) payable to mortgagee(s).

arising by statute, common law or otherwise. As used herein “hazardous waste” shall mean any hazardous waste or pollutants, contaminants or hazardous waste as defined by the federal water pollution control act, the comprehensive environmental response, compensation and liability act of 1990 and any amendments thereto, the resource conservation and recovery act and any amendments thereto or any similar state, local or federal law, rule or regulation, including, without limitation, asbestos or asbestos containing materials, pcbs, petroleum and petroleum products and urea-formaldehyde.

10.2 Owner hereby releases and shall indemnify, defend and hold harmless bcha, its Commission, and employees from and against any and all claims, damages, liability, causes of action, judgments, expenses (including attorney fees and attorney fees on any appeal) (collectively “claims”) arising from owner’s use or occupancy of the property, and shall further indemnify, defend and hold bcha, its Commission and employees harmless from and against any and all claims arising from any breach or default in the performance of any obligation on owner’s part to be performed under the terms of this covenant , or arising from any act, omission or negligence of owner, or any of its agents, contractors, tenants, occupants or invitees, and from and against all claims or any action or proceeding brought thereon; and in case any action or proceeding be brought against bcha by reason of any such claim, owner, upon notice from bcha, shall defend the same at owner’s expense by counsel reasonably satisfactory to bcha. Owner, as a material part of the consideration to bcha, hereby assumes all risk of damage to property or injury to persons in, upon or about the property from any cause and owner hereby waives all claims in respect thereof against bcha, its Commission and employees except those claims solely caused by bcha’s negligence or wilful misconduct.

10.3 Bcha shall not be liable for injury or damage which may be sustained by the person, goods, wares, merchandise or property of owner, or any occupants or invitees to the property, or any other person in or about the property caused by or resulting from fire, steam, electricity, gas, water or rain, freezing, or leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air condition, lighting fixtures or other aspect or features of the property.

## Section 11: Default.

11.1 Upon the expiration of thirty (30) days’ (ten [10] days’ for the failure to pay money) written notice from any party bound or benefited by this Covenant stating the other party has failed to perform its obligations hereunder, such party shall be deemed to be in default unless such failure to perform is cured within the thirty (30) days (ten [10] days’ for the failure to pay money) period, in which case no default shall be deemed to have occurred. Notwithstanding the foregoing sentence, if such default (other than the failure to pay money) cannot be cured within the thirty (30) day period and the defaulting party is diligently working to remedy the default, the cure period shall be extended for such time as is reasonably necessary to cure the default.

11.2 In order to ensure compliance with the provisions of this Covenant, BCHA, by its authorized representative, may inspect the Property between the hours of 8:00 AM and 5:00 PM, Monday through Friday, or at such other time as may be agreed to by Owner and BCHA, after providing the Owner with not less than twenty-four (24) hours' prior written notice.

11.3 Upon receipt of a notice of default and prior to the expiration of the applicable cure period, an Owner may request in writing a hearing before the BCHA Board of Commissioners to determine the merits of the allegations. Upon BCHA's receipt of a hearing request, the remainder of the applicable cure period shall be tolled pending the outcome of the hearing, and a hearing shall be held at the next regularly scheduled meeting of the BCHA Board of Commissioners. If no hearing is requested in writing during such time period and the violation is not cured within the applicable period, the Owner shall be in default of this Covenant. If a hearing is held before the BCHA Board of Commissioners, the decision of the BCHA Board of Commissioners shall be final for purposes of determining if a violation has occurred.

11.4 It is expressly agreed that no breach of this Covenant shall entitle any Owner, Qualified Buyer, Qualified Occupant, BCHA or any other party affected by this Covenant to terminate this Covenant, but such limitation shall not affect in any manner any other rights or remedies which such persons or entities may have hereunder by reason of any breach of this Covenant.

## Section 12: Remedies.

12.1 In the event of a default or breach of any term, covenant, warranty or provision of this Covenant, the non-defaulting party may at any time thereafter without limiting the exercise of any right or remedy at law or in equity which the non-defaulting party may have by reason of such default or breach;

Seek specific performance of this Covenant;

Perform any work, pay any amounts due, or complete any duties or obligations of Owner and otherwise exercise any self-help remedies;

Enjoin any Sale of or proposed Sale of the Property; and

Require the immediate Sale of the Property to a Qualified Buyer in accordance with Section 3.2.

12.2 Without limiting any other remedy available to BCHA, in the event an Owner shall accept or otherwise receive consideration in excess of the Maximum Sales Price or Maximum Rental Amount in violation of this Covenant or the Guidelines, such Owner shall immediately pay such amount or the cash equivalent of such amount to BCHA. Such amount shall accrue interest from the date such consideration was received by the Owner to the date paid to BCHA at the rate of eighteen percent (18%) per annum, compounded on an annual basis. Furthermore, Section 14.2 shall apply to any recovery or enforcement action commenced pursuant to this Section.

12.3 In the event of a default by Owner, the Maximum Sales Price shall, upon the date such default first occurred, automatically cease to increase as set out in Section 5.1, and shall remain fixed until the date Owner cures the default.

12.4 In the event that significant damage or reduction in the utility of the Property has occurred during the term of Owner's ownership (other than ordinary wear and tear and functional obsolescence due only to the passage of time), BCHA may reduce the Maximum Sale Price by an amount sufficient to repair the damage or restore the Property's utility as a residence as determined necessary by BCHA in its sole and absolute discretion.

12.5 In the event BCHA pays any amount payable by Owner or incurs any expense due to the default of Owner, such amount shall be immediately due and payable by Owner upon receipt of an invoice from BCHA. Interest shall accrue from the date the invoice is received by Owner to and including the date BCHA receives payment in full at a rate equal to the lesser of (i) the highest rate allowed by law, and (ii) twelve percent (12%) per annum. Furthermore, in the event the Owner does not pay the invoice in full within ten (10) days after receipt, BCHA may file a lien on the Property for the amount of said expenses plus accrued interest as set forth above and such lien shall be effective upon recording in the county in which the Property is located. Upon any Sale of the Property, if the Owner has not previously paid all amounts due BCHA, BCHA shall be paid the amounts it is due from the sale proceeds and any escrow company or closing agent handling the transaction shall be bound to pay such amounts due as though specifically instructed by Owner and Owner agrees to and acknowledges the same. Notwithstanding the foregoing sentence, BCHA's right to the sale proceeds shall not have priority over any lien on the Property recorded prior to any lien filed by BCHA. In the event BCHA does not file a lien for the amounts it is due, BCHA's claim shall be subordinate to any recorded lien on the Property.

Section 13: Notices.

All notices given pursuant to this Covenant shall be in writing and shall be given by personal service, by United States certified mail or by United States express mail or other established express delivery service (such as Federal Express) with signature confirmation required, postage or delivery charge prepaid, addressed to the appropriate party at the address set forth below. If a notice is delivered to Owner by personal service or by United States express mail or other established express delivery service (such as Federal Express), such notice may be delivered to the Property. If a notice must be given to a person other than one designated below or otherwise sent to Owner, such notice shall be sent to the person and address shown on the then current real property tax rolls of the county in which the Property is located. All notices given to the appropriate party shall be sent to the address set forth below:

To Declarant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To BCHA: Director  
BLAINE COUNTY HOUSING AUTHORITY  
P.O. Box 4045  
Ketchum, ID 83340

The person and address to which notices are to be given may be changed at any time by such party upon written notice to the other party. All notices given pursuant to this Covenant shall be deemed given upon receipt.

For the purpose of this Covenant, the term “receipt” shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to Section 13.1 as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to 13.1, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (a) the date of the attempted delivery or refusal to accept delivery, (b) the date of the postmark on the return receipt, or (c) the date of receipt of notice of refusal or notice of non-delivery by the sending party.

## Section 14: General Provisions

14.1 Runs with the Land; Termination. The covenants, conditions and restrictions of this Covenant shall run with and bind the Property and shall inure to the benefit of and shall be enforceable by the *BCHA*, its legal representatives, successors and assigns until January 1, 2099 after which time, these covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing (Notice of Termination of Covenant), signed by then Owners of the Property and the jurisdiction in which the Property is located [City of Ketchum] has been recorded certifying that there is no successor in interest to *BCHA* or any successor in interest. The termination shall be effective upon recordation of the Notice of Termination of Covenant.

14.2 In the event any party bound or affected by this Covenant initiates or defends any legal action or proceeding in any way connected with this Covenant, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action its reasonable costs and attorneys’ fees (including, without limitation, its reasonable costs and attorneys’ fees on any appeal). All such costs and attorneys’ fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

14.3 Whenever possible, each provision of this Covenant and any other related document shall be interpreted in such a manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of this Covenant or related document.

14.4 The laws of Idaho, without giving effect to its choice of law principles, govern all matters with respect to this Covenant, including all tort claims.

14.5 This Covenant shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, successors and assigns, and upon any person or entity acquiring the Property, or any portion thereof, or any interest therein, whether by merger, consolidation, dissolution, operation of law or otherwise; provided, however, that if any Owner Sells all or any

portion of the Property in accordance with this Covenant, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the Property arising under this Covenant after the Sale but shall remain liable for all obligations arising under this Covenant prior to the Sale. The new Owner of the Property or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Covenant with respect to the Property or portion thereof after the date of Sale.

14.6 This Covenant may only be amended by a written agreement signed by Owner and BCHA that identifies itself as an amendment to this Covenant.

14.7 Paragraph or section headings within this Covenant are inserted solely for convenience of reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

14.8 The parties to this Covenant, and Owners, agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Covenant or any agreement or document relating hereto or entered into in connection herewith.

14.9 BCHA may amend the Guidelines at any time in its sole and exclusive discretion.

14.10 The failure of BCHA to insist upon strict performance of any terms, covenants or conditions of this Covenant shall not be deemed a waiver of any rights or remedies BCHA may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any terms, covenants or conditions of this Covenant by the same or any other person or entity. A party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition.

14.11 This Deed Covenant shall restate and supersede in every respect any and all prior Deed Covenants by and between BCHA and its predecessors in interest, and Owner and its predecessors in interest, including the Community Housing Covenants Running With The Land, recorded on September 4, 2008, as Instrument No. 561094, records of Blaine County, regardless of whether such prior Deed Covenants have been terminated or released in writing.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year above first written.

THE BLAINE COUNTY HOUSING  
AUTHORITY

DECLARANT:

By: \_\_\_\_\_  
Title: Executive Director

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

STATE OF \_\_\_\_\_ )  
 ) ss  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a notary public in and for the State of Idaho, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a(n) \_\_\_\_\_, known to me, or proven to me by oath and identification, to be the person whose name is subscribed to this instrument, and acknowledged to me under oath that he/she executed the same on behalf of said company.

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

Name: \_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_, before me, the undersigned Notary Public, personally appeared Kathy Grotto, known or identified to me to be the Executive Director of the Blaine County Housing Authority, an Idaho independent public body, corporate and politic, that executed the within instrument or the person(s) who executed the instrument on behalf of said body, and acknowledged to me that such body executed the same.

Witness by hand and official seal

Name: \_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

# Exhibit “A”

## Legal Description of Property

SAMPLE