

# **Workforce Market Deed Covenant**

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

## WORKFORCE MARKET DEED COVENANT

This Workforce Market Deed Covenant ("**Deed Covenant**") is made and is effective as of the first day of recording of this Deed Covenant ("**Effective Date**"), by and between \_\_\_\_\_ ("**Declarant**") and the BLAINE COUNTY HOUSING AUTHORITY, an Idaho independent public body corporate and politic, and its successors and assigns (collectively, "**BCHA**").

### RECITALS

A. Declarant is the owner of the certain real property commonly known as \_\_\_\_\_ subdivision (the "**Subdivision**"). Declarant intends to develop the Subdivision as a single-family residential development. To satisfy a condition of approval for the Subdivision, Declarant is required develop a portion of the Subdivision more particularly described on **Exhibit A**, attached hereto and made a part hereof (the "**Property**") for the workforce market community housing and enter into this Deed Covenant with BCHA.

B. Pursuant to the terms and conditions of this Deed Covenant, Declarant hereby grants to BCHA an interest in the Property, as more specifically set forth herein. This interest shall allow BCHA to administer the terms and conditions of this Deed Covenant and of the Guidelines, defined below, 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. Declarant and BCHA hereby agree that the Property shall be exclusively and permanently dedicated for use and occupancy by a "Qualified Buyer," defined below, as outlined in the Guidelines and in this Deed Covenant.

### AGREEMENT

NOW, THEREFORE, for value received, the receipt and sufficiency of which are hereby acknowledged, and for the recitals above that are incorporated herein, and the covenants set forth herein, Owner and BCHA hereby represent, covenant and agree as follows:

## Section 1: Definitions.

1.1 “**Actual Sales Price**” is the selling price of the Property without any deductions for the costs of sale, including, but not limited to, escrow and closing costs (including taxes and assessments), real estate sales commissions, and the repayment of debt.

1.2 “**Appreciation**” means the difference between the Actual Sale Price upon re-sale and the initial Actual Sale Price of the Property.

1.3 “**Appreciation Share**” means the Appreciation, minus the lesser of (a) four percent (4%) per annum of the initial Actual Sales Price or (b) a percentage of the initial Actual Sales Price determined by the Consumer Price Index (“CPI”), multiplied by the applicable percentage set forth in the table below. The percentage of the initial Actual Sale Price determined by the CPI shall be determined by subtracting the index for the month of the purchase by the Owner from the index for the month the Owner delivers the Notice of Intent to sell to BCHA, and then dividing that number by the index for the month of the purchase by the Owner.

Year after Purchase	Percentage of Appreciation
1	75%
2	60%
3	45%
4	30%
5	15%

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

1.5 “**Consumer Price Index**” (“CPI”) is the index of inflation and prices for Urban Wage Earners and Clerical Workers for All Cities, published by the United States Department of Labor, Bureau of Labor Statistics.

1.6 “**Full-time working resident**” shall mean a person who:

- (a) is currently employed full-time, meaning as a self-employed person or, through a single or multiple employers, working at least one thousand five hundred (1500) hours per year, except that full time teachers shall be deemed “full-time” if so certified by his/her employer;
- (b) shall have resided in Blaine County, Idaho, for not less than twelve (12) consecutive months prior to the date of qualification and/or shall have been employed full-time in Blaine County for not less than twenty-four (24) months prior to the date of qualification;
- (c) shall not have a net worth (as such term is defined in Generally Accepted Accounting Principles) in excess of two times the Actual Sales Price of the Property ; and
- (d) does not own any other developed residential real property or dwelling units in Blaine County, Idaho, or anywhere else in the United States of America;

1.7 The “**Guidelines**” are those certain Community Housing Guidelines, or its identified substitute, adopted by BCHA, or its successor, and in effect as of the applicable date for reference to

such Guidelines. The BCHA may amend the Guidelines at any time in its sole and exclusive discretion, provided, however, (1) any such amendments must either be neutral or for the benefit of the Owner or be approved in writing by the Owner and become an amendment to this Deed Covenant; and (2) no amendments to the Guidelines shall 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 amendment unless such mortgagee or beneficiary agrees in writing to be bound by such amendment.

Without limiting the foregoing, the most current Guidelines were recorded in the official records of Blaine County, Idaho on \_\_\_\_\_ as Instrument No. \_\_\_\_\_.

1.8 An "**Owner**" is either: (a) Declarant, during Declarant's initial ownership of the Property; or (b) a Qualified Buyer, who acquires and owns fee simple absolute title to the Property, including an Owner who rents all or any portion of the Property, all in compliance with the terms and provision of this Deed Covenant. Such person or persons shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period.

1.9 The "**Property**" is that certain real property described in Exhibit "A" attached hereto and incorporated herein. For purposes of this Deed 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.

1.10 A "**Qualified Buyer**" is a person or group of people (i) meeting and in full compliance with the qualifications set forth this Section 1.8 and (ii) to whom a "Certificate of Qualification" (the "Certificate") has been issued by BCHA and which Certificate is in full force and effect at the time a contract for the Sale of the Property is entered into between an Owner and the Qualified Buyer and through closing of the transaction contemplating transfer of title to the Property. Because the Property is intended to be owned and occupied by a current or former full-time working resident of Blaine County, Idaho, a proposed buyer shall be either a full-time working resident or retired person, both as defined in Sections 1.5 and 1.10 respectively, to be deemed a Qualified Buyer. For the purposes of Section 1.5 and 1.10, an Owner is deemed to own other real property if the Owner own alone or in conjunction with others (whether natural person, companies, partnerships, corporations, trusts, or other entities) directly or indirectly, or controls, directs or appoints or has the ability to control, direct or appoint the occupancy of the real property. Each person whose name appears on the deed transferring title to the Property, shall meet the definition of a Qualified Buyer, except in the case of a husband and wife where only one spouse must meet the employment and residency requirements; provided, however, the husband and wife must not have a collective net worth that exceeds the net worth requirements.

1.11 A "**retired person**" shall mean a person who:

- (a) has (i) resided in or (ii) was either self employed full-time or was a full-time employee in Blaine County, Idaho, for not less than ten (10) out of the twenty-five (25) years prior to the date of qualification as described in Section 1.9 above ;
- (b) shall not have a net worth (as such term is defined in Generally Accepted Accounting Principles) in excess of two times the Actual Sales Price of the Property; and
- (c) does not own any other developed residential real property or dwelling units in Blaine County, Idaho, or anywhere else in the United States of America.

1.12 The terms “Sell,” “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 2: Use and Occupancy Requirements.

2.1 Subject to the rental provisions set forth below, Owner shall use the Property as Owner’s sole place of residence. For purposes of the preceding sentence, the Property shall be deemed to be Owner’s sole place of residence if Owner (i) is physically present on and residing in the Property for not less than nine (9) months in every twelve (12) month period (except for teachers, as more particularly provided in the Guidelines) and (ii) does not own any other dwelling unit in Blaine County, Idaho, or anywhere else in the United States of America. For purposes of the preceding sentence, an Owner is deemed to own another dwelling unit if Owner owns alone or in conjunction with others, directly or indirectly or controls, directs or appoints or has the ability to control, direct or appoint the occupancy of the dwelling unit.

2.2 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; provided, however, in no event (even with a home occupation permit) shall the primary use of the Property cease to be residential pursuant to the terms below. Owner shall not seek or consent to a change in 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 that materially interferes with or precludes the use and occupancy of the Property as a residence. The Property shall not be used as a “recreational” or “second home”.

2.3 Subject to the right of hardship review contained in the Guidelines, an Owner shall have no right, except in extraordinary circumstances and only with the prior written approval of BCHA, which approval may be withheld in BCHA’s sole discretion, and subject to BCHA’s conditions of approval, to rent or lease all or any part of the Property for any period of time. BCHA shall not approve any rental if such rental is being made by Owner to utilize the Property as an income producing asset, except as provided below, and shall not approve a lease with a rental term in excess of twelve (12) months. A signed copy of the lease must be provided to BCHA prior to occupancy by each tenant. Any such lease approved by BCHA shall show the length of the lease term and the monthly rent. The monthly rent shall

not exceed Owner's costs of ownership, which shall include the monthly expenses for principal and interest payments, taxes, property insurance, condominium or homeowners association assessments, any utilities remaining in Owner's name, and a reasonable and refundable security deposit. The selection of any tenant is at the sole risk of Owner. 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 a non-owner may be applicable.

2.4 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.

2.5 Owner shall submit to the BCHA on not less than an annual basis, an affidavit confirming that the Owner, during the term of ownership, continues to meet the criteria of this Deed Covenant, and other information requested by the BCHA to certify compliance with this Deed Covenant.

### Section 3: Transfer.

3.1 Except as expressly set forth in this Deed Covenant, Owner may only Sell the Property to a Qualified Buyer. Any Sale of the Property must comply with this Deed Covenant and the Guidelines. Any Sale of the Property not in compliance with this Deed Covenant or the Guidelines shall be null and void and shall not transfer any title or rights.

3.2 In the event that 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. The advertising and sale of the Property shall be at the sole cost and expense and responsibility of Owner; provided, however, that BCHA will cooperate in the sales effort including, but limited to, notifying potential Qualified Buyers on BCHA's applicant list.

3.3 The sale of the Property shall be subject to such transaction fees and other fees and expenses as may be reasonably imposed by BCHA from time to time as set forth in this Deed Covenant. Prior to close of any sales escrow, the selling Owner shall provide BCHA with a true and correct copy of the final purchase and sale agreement, the Acknowledgement of Deed Covenant executed by the Qualified Buyer, and an estimated closing statement showing the administrative fee to be paid to BCHA as required under Sections 4.1 and 4.2 below.

3.4 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 or the Qualified Buyer 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 Deed 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.

3.5 Nothing herein shall be construed to require BCHA to protect or indemnify Owner against any losses attributable to the rental, including but not limited to, non-payment of rent or damage to the Property, nor to require BCHA to obtain a qualified tenant for Owner in the event that none is found by Owner.

**Section 4: Sale of the Property; Administration Fee.**

4.1 Upon the initial Sale of the Property by Declarant, Declarant shall pay an administrative fee to BCHA in the amount of three percent (3%) of the Actual Sales Price.

4.2 Upon any subsequent Sale closing on or before the fifth (5th) anniversary of the close of escrow of the selling Owner's purchase of the Property, the selling Owner shall, at closing, pay an administrative fee to BCHA in an amount equal to the greater of (a) three percent (3%) of the Actual Sales Price, or (b) the " Appreciation Share" in the year of Sale (see definition of Appreciation Share).

Below are two examples based on an Initial Actual Sale Price of \$100,000. Both assume that the CPI is 2.5%. (The right hand column shows the figures if CPI exceeds 4%, in which case 4% is utilized in calculating Appreciation Share.)

**EXAMPLE 1: Sale 1 year after purchase**

\$110,000	Actual Sale Price upon Resale	\$110,000
\$100,000	Initial Actual Sale Price	\$100,000
\$10,000	Appreciation	\$10,000
\$2,500	< 2.5% (CPI) of Initial Actual Sale Price (or 4%) >	\$4,000
\$7,500	Appreciation amount to be shared	\$6,000
\$5,625	Appreciation share to BCHA (75%)	\$4,500
\$3,300	3% of Actual Sale Price upon Resale	\$3,300

In example 1, the administrative fee would be \$5,625 because the appreciation share is greater than 3% of actual sale price. (If CPI exceeds 4%, then the administrative fee would be \$4,500 because the appreciation share is greater than 3% of actual sale price.)

**EXAMPLE 2: Sale 4 years after purchase**

\$120,000	Actual Sale Price upon Resale	\$120,000
\$100,000	Initial Actual Sale Price	\$100,000
\$20,000	Appreciation	\$20,000
\$10,000	< 2.5% (CPI) per year of Initial Actual Sale Price (or 4%) >	\$16,000
\$10,000	Appreciation amount to be shared	\$4,000
\$3,000	Appreciation share to BCHA (30%)	\$1,200
\$3,600	3% of Actual Sale Price upon Resale	\$3,600

In example 2, the administrative fee would be \$3,600 because 3% of actual sale price is greater than the appreciation share.

Without limiting the foregoing, the administrative fee in connection with a sale of the Property that closes more than five (5) years from the closing of the selling Owner's purchase of the Property shall be 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 Actual Sales Price.

- (a) 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 Deed Covenant. 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 Federal National Mortgage Association (FNMA) or Federal Housing Administration (FHA) financing is used, there may be an additional fee charged by BCHA based on the amount financed.
- (b) The requirements of this Section 4.2 shall apply to every transfer of title and each successive Sale of the Property.

4.3 At close of escrow, the Qualified Buyer shall execute and deliver to BCHA an "Acknowledgment of Deed Covenant" in accordance with the Guidelines indicating that the Qualified Buyer is aware of the terms of this Deed Covenant and the Guidelines and agrees to be bound thereby. A Qualified Buyer's failure to execute or deliver to BCHA a signed "Acknowledgment of Deed Covenant" shall not compromise, minimize or in any way affect the terms, covenants or conditions of this Deed Covenant or BCHA's interest herein, and the Qualified Buyer shall nonetheless be bound by and subject to this Deed Covenant, including all use and payment obligations set forth herein.

## Section 5: Insurance and Casualty.

5.1 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, or its equivalent, 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. 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 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. In the event there are any proceeds available for distribution following payment to Owner's lender of all outstanding encumbrances, Owner shall thereafter have the option to either (i) take the remaining proceeds of any insurance settlement and 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 (ii) convey title to the Property and the remaining proceeds from the insurance settlement to BCHA.

## Section 6: Encumbrances.

6.1 Owner shall promptly pay when due all monetary liens, taxes, assessments, and encumbrances on the Property and shall 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 his/her/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 otherwise delivered to BCHA. In the event that BCHA initiates any enforcement or default action against Owner, BCHA shall, within five (5) days after commencement of such action, notify the mortgage holder of such action.

6.2 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 written request of BCHA, participate in loan counseling, budgeting, financing or distressed loan services, classes or programs.

6.3 Any breach of this Deed 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 6.4 and 6.5, this Deed Covenant shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

6.4 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 Deed Covenant and applicable law), such foreclosing party ("Foreclosing Party") shall only sell the Property to a Qualified Buyer through a duly called and noticed foreclosure sale.

- (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 to BCHA a copy of all notices sent to Owner; and
- (b) At any time prior to the foreclosure sale and upon request of BCHA, the Foreclosing Party shall agree to grant, bargain, sell, transfer and convey to BCHA the entire debt obligation owed to the Foreclosing Party and BCHA shall take full assignment of the debt obligation, promissory note, and other loan documentation, including foreclosure rights, for an amount not to exceed the Foreclosing Party's actual principal and interest due together with foreclosure costs not exceeding those reasonable and customary in the lending industry. 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.

6.5 In the event BCHA does not elect to purchase the debt obligation pursuant to Section 6.4(b) and the Foreclosing Party has strictly adhered to Section 6.4, 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 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 less the administrative fee due BCHA pursuant to Section 4.2. Provided that the Foreclosing Party has strictly adhered to the requirements of

Sections 6.4 and 6.5 and all rights of redemption or challenges to the validity of enforceability of the foreclosure sale have expired, this Deed Covenant, and the rights of the BCHA hereunder, shall terminate.

6.6 Any deed in lieu of foreclosure shall be subject to the requirements of Sections 6.4 and 6.5 with respect to notice to BCHA, option and rights of BCHA to purchase or take assignment of the debt obligation, and limitation of the recoverable mortgage principal amount.

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

## Section 7: Indemnity, Waiver and Release.

7.1 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 and/or with respect to any aspect, feature or condition of the Property including, without limitation, the existence of hazardous waste, defined below, the suitability of the Property for Owner's intended use, Owner's ability to Sell the Property for the same or greater price paid by Owner or in a timely fashion. Owner and Qualified Buyer shall independently verify all information and reports regarding any aspect or feature of the Property, an Owner or a Qualified Buyer provided by BCHA. BCHA does not guaranty the accuracy of any information or reports provided by BCHA, its 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, arising by statute, common law or otherwise. As used herein, the term "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, and 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.

7.2 Owner hereby releases and shall indemnify, defend and hold harmless BCHA, its Commissioners and employees from and against any and all claims, damages, liability, causes of action, judgments, expenses (including attorneys' fees and attorneys' 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 Commissioners 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 Deed 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, its commission or employees 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 Commissioners or employees except those to the extent (if any) Claims are caused by BCHA's gross negligence or wilful misconduct.

7.3 BCHA, its Commissioners or employees shall not be liable for injury or damage which may be sustained by the person, goods, wares, merchandise or property of Owner, or any tenants, 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 8: Default.

8.1 Upon the expiration of thirty (30) days' (ten [10] days' for the failure to pay money) following written notice from any party (the "Nondefaulting Party") bound or benefited by this Deed Covenant stating the other party (the "Defaulting Party") has failed to perform its obligations hereunder, the Defaulting Party shall be deemed to be in default unless such failure to perform is cured within the thirty (30) day (ten [10] day 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 may be extended for such time as is reasonably necessary to cure the default.

8.2 In order to ensure compliance with the provisions of this Deed 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 Owner with not less than twenty-four (24) hours' prior written notice.

8.3 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 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 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, Owner shall be in default of this Deed Covenant. If a hearing is held before BCHA Board of Commissioners, the decision of BCHA Board of Commissioners shall be final for purposes of determining if a violation has occurred.

8.4 No breach of this Deed Covenant shall entitle any Owner, Qualified Buyer, BCHA or any other party affected by this Deed Covenant to terminate this Deed 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 Deed Covenant.

## Section 9: Remedies.

9.1 In the event of a default or breach of any term, covenant, warranty or provision of this Deed Covenant that remains uncured following written notice and expiration of the applicable grace period, the Nondefaulting Party may, but is not obligated to, at any time thereafter without limiting the exercise

of any right or remedy at law or in equity which the Nondefaulting Party may have by reason of such default or breach:

- (a) Seek specific performance of this Deed Covenant;
- (b) Perform any work, pay any amounts due, or complete any duties or obligations of Owner and otherwise exercise any self-help remedies;
- (c) Enjoin any Sale of or proposed Sale of the Property; and
- (d) Require the immediate Sale of the Property to a Qualified Buyer in accordance with Section 3.2, modified as follows: the initial listing period for the Property shall be thirty (30) days. At the time of listing the Property for sale, Owner shall deposit with BCHA an amount equal to one percent (1%) of the estimated sales price of the Property. If a sales contract has not been executed within the first thirty (30) days, Owner shall extend the listing period for an additional one hundred eighty (180) days or such shorter period that does not conflict with the statutory rights of any secured creditors. BCHA shall promptly advertise the Property for sale by competitive bid to Qualified Buyers. At the time of close of escrow, Owner shall pay to BCHA the fees provided in Sections 4.2 above and any additional fee as provided in the Guidelines. In the event of a listing of the Property pursuant to this Section 9.1, BCHA is entitled to require Owner to accept the highest of any qualified bids that is equal to or greater than the amount that at least satisfies Owner's financial or other obligations due under the promissory note secured by a first mortgage or first deed of trust and any deed of trust in favor of BCHA, as described herein, and to sell the Property to such qualified bidder. The listing and sale of the Property shall be subject to such listing, sales and other fees and expenses as may be imposed by BCHA from time to time as set forth in the Guidelines.

9.2 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 twelve percent (12%) per annum. Furthermore, in the event 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 official records of Blaine County, Idaho. Upon any Sale of the Property, if 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 so instruct the escrow agent 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. Nothing in this Section shall be construed as a waiver of BCHA's lien, even if BCHA does not file or record the lien.

9.3 Nothing herein shall be deemed to impair any right of a mortgagee of a Property from curing any default by an Owner of his or her financial obligations with respect to such Property.

Section 10: Notices.

10.1 All notices given pursuant to this Deed Covenant shall be in writing and shall be given by personal service, by United States certified mail (return receipt requested) or by United States express mail or other established commercial express delivery service 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 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 Blaine County, Idaho. All notices given to the appropriate party shall be sent to the address set forth below:

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

To BCHA: Executive 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 Deed Covenant shall be deemed given upon receipt.

10.2 For the purposes of this Section 10, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document if hand delivered to the address specified pursuant to Section 10.1 as shown on the delivery document, (ii) three (3) days following deposit with the United States mail, or (iii) one (1) day following deposit with an established commercial express delivery service (such as FedEx).

Section 11: General Provisions.

11.1 Runs with the Land; Termination. This Deed Covenant shall run with the land 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 \_\_\_\_\_ OR Blaine County] 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.

This Deed Covenant shall inure to the benefit of BCHA and be binding upon Owners, his/her/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 Deed Covenant, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the Property arising under this

Deed Covenant after the Sale but shall remain liable for all obligations arising under this Deed 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 Deed Covenant with respect to the Property or portion thereof after the date of Sale.

11.2 In the event any party bound or affected by this Deed Covenant initiates or defends any legal action or proceeding in any way connected with this Deed Covenant, the prevailing party in any such action or proceeding, including any appeal, (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.

11.3 Whenever possible, each provision of this Deed 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 Deed Covenant or related document.

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

11.5 This Deed Covenant may only be amended by a written agreement that identifies itself as an amendment to this Deed Covenant, is approved by and is signed by each Owner of the Property encumbered by this Deed Covenant and BCHA.

11.6 Paragraph or section headings within this Deed 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.

11.7 The parties to this Deed 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 Deed Covenant or any agreement or document relating hereto or entered into in connection herewith. Such further documents include, but are not limited to, affidavits and certifications required by BCHA to establish Owner's ongoing compliance with this Deed Covenant and the Guidelines.

11.8 The failure of BCHA to insist upon strict performance of any terms, covenants or conditions of this Deed 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 Deed 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.

11.9 In the event a contract for services or similar agreement between BCHA and the [City of \_\_\_\_\_ OR Blaine County] is terminated or if BCHA dissolves, BCHA shall convey and assign its interest in this Deed Restriction to the [City of \_\_\_\_\_ OR Blaine County] in a form duly executed and recorded in the records of the County Recorder of Blaine County, Idaho.

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: \_\_\_\_\_ Name: \_\_\_\_\_  
Executive Director Title: \_\_\_\_\_

SAMPLE

STATE OF IDAHO )  
 ) ss.  
County of Blaine )

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, a notary public in and for the State of Idaho, personally appeared \_\_\_\_\_, the Executive Director of the BLAINE COUNTY HOUSING AUTHORITY, an Idaho independent public body corporate and politic, 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 executed the same on behalf of said housing authority.

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 IDAHO )  
 ) ss.  
County of Blaine )

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, a notary public in and for the State of Idaho, personally appeared \_\_\_\_\_, 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.

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 \_\_\_\_\_

**[NOTE: IF OWNER IS A COMPANY OR CORPORATION, INSERT CORRECT FORM OF ACKNOWLEDGMENT.]**

# Exhibit “A”

## Legal Description of Property

\_\_\_\_\_, Blaine County, Idaho, according to the  
official plat thereof, recorded \_\_\_\_\_, \_\_\_\_\_, as Instrument No.  
\_\_\_\_\_, records of Blaine County, Idaho.

SAMPLE