

RESOLUTION NUMBER 05-090

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO AUTHORIZING THE MAYOR TO EXECUTE A MASTER DEED RESTRICTION, OCCUPANCY, AND RESALE AGREEMENT FOR 1ST AND 1ST BUILDING CONDOMINIUMS WITH 100 1ST STREET DEVELOPMENT, LLC, AN IDAHO LIMITED LIABILITY COMPANY.

WHEREAS, pursuant to Idaho Code §50-301, the City of Ketchum is empowered to enter into contracts as may be deemed necessary to promote the public health, safety, and welfare of Ketchum and its residents and visitors; and

WHEREAS, in exchange for an increase in the allowable Floor Area Ratio (FAR) of 1st and 1st Building Condominiums, pursuant to Ketchum Municipal Code § 17.64.010 H. 2. a., the City of Ketchum has required 100 1st Street Development, LLC to enter into a master deed restriction, occupancy, and resale agreement with the City of Ketchum restricting Unit D, to income category 3 housing; and

WHEREAS, 100 1st Street Development, LLC desires to enter into such agreement with the City of Ketchum.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the City Council of the City of Ketchum, Idaho that the City Council hereby authorizes the Mayor to execute a master deed restriction, occupancy, and resale agreement for 1st and 1st Building Condominiums with 100 1st Street Development, LLC, an Idaho limited liability company.

PASSED by the City Council and APPROVED by the Mayor this 3rd day of October, 2005.

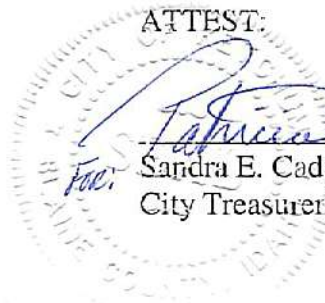
CITY OF KETCHUM, IDAHO



~~Edward Simon, Mayor~~

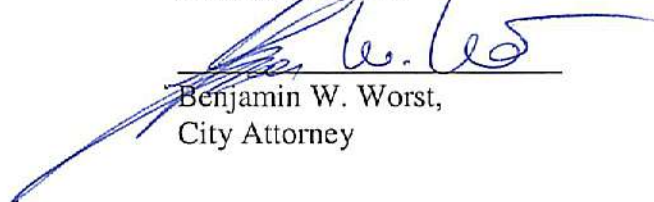
RANDY HALL COUNCIL PRESIDENT

ATTEST:



Sandra E. Cady
Sandra E. Cady, CMC
City Treasurer/Clerk

APPROVED AS TO FORM
AND CONTENT:



Benjamin W. Worst,
City Attorney

DECLARATION OF ADOPTION

I, the undersigned, do hereby certify that the following is a true and correct copy of the resolution of the Board of Directors of the City of Blythe, California, adopted on the 25th day of April, 1952.

That the Board of Directors of the City of Blythe, California, has adopted the following resolution:

Resolved, that the Board of Directors of the City of Blythe, California, do hereby adopt the following resolution:

That the Board of Directors of the City of Blythe, California, do hereby adopt the following resolution:

That the Board of Directors of the City of Blythe, California, do hereby adopt the following resolution:

That the Board of Directors of the City of Blythe, California, do hereby adopt the following resolution:

[Handwritten signature]
City Clerk

[Faint handwritten notes and scribbles]



COPY

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Edward Simon
P.O. Box 540
Ketchum, ID 83340
208-726-2200

(Space above for recorder's stamp)

**MASTER DEED RESTRICTION, OCCUPANCY AND RESALE DEED
RESTRICTION, AGREEMENT FOR 1st & 1st CONDOMINIUMS**

THIS MASTER DEED RESTRICTION, OCCUPANCY AND RESALE AGREEMENT (the "Agreement") is made and entered into this 21 day of September, 2005, by 100 1st Street Development, LLC, an Idaho limited liability company (hereinafter referred to as "Declarant"), for the benefit of the parties and enforceable by the BLAINE KETCHUM HOUSING AUTHORITY (hereinafter referred to as "BKHA"), a duly constituted multi-jurisdictional Housing Authority established pursuant to County Resolution 96-38, the requisite Intergovernmental Agreement between the City of Ketchum, Idaho, and Blaine County, and Chapter 42 of the Idaho State Code, and the CITY OF KETCHUM, an Idaho municipal corporation ("City").

WITNESSETH

WHEREAS, Declarant owns the real property described in Exhibit "A" attached hereto and incorporated herein. For purposes of this Agreement, the real property and all dwellings, appurtenances, improvements and fixtures associated therewith shall hereinafter be referred to as the "Property"; and

WHEREAS, as a condition of the approval granted by the City of Ketchum, Idaho, for an increase in the allowable Floor Area Ratio (FAR) for the Property, the Declarant is required to enter into this Agreement; and

WHEREAS, Declarant agrees to restrict one (1) designated residential units described in Exhibit "B" attached hereto on the Property as "Community Housing Units" and that said unit may be sold by Declarant pursuant to the aforementioned guidelines and nothing herein shall prohibit the sale to the Homeowners' Association; and

WHEREAS, Declarant agrees to restrict one (1) of the Community Housing Units as rental units for Income Category 3, as defined and directed in the Community Housing Guidelines of the BKHA (the "Community Housing Guidelines"; references herein to the Community Housing Guidelines shall mean such guidelines as amended from time to time and as in effect at the time); and

WHEREAS, "Qualified Long-Term Renters" are natural persons or legal resident aliens who are employed full time within the City of Ketchum and who reside in the Community Housing Units on a long-term basis, which is defined as 6 months or longer; and

WHEREAS, a "Tenant" is a person who is a Qualified Long-Term Renter who enters into a long-term lease for a Community Housing Unit in compliance with the terms and provisions of this Agreement; it being understood that such person or persons shall be deemed a Tenant hereunder only during the period of his, her, or their leasing of the Property and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period; and

WHEREAS, a "Unit" is the unit described in Exhibit "B."

RESTRICTIONS

NOW, THEREFORE, for value received, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby represents, covenants and agrees as follows:

1. The leasing of the Community Housing Units shall henceforth be limited exclusively to housing for natural persons or legal resident aliens who meet the definition of Qualified Long-Term Renter and their families. In addition, all subsequent leasing of the Community Housing Units shall be made in accordance with the terms of this Agreement and the Community Housing Guidelines through the BKHA.

2. A Tenant, in connection with the lease of this Property or Unit, must: a) occupy the Community Housing Unit within this Property as his or her sole/primary place of residence during the time that such unit is leased; b) not engage in any business activity on or in such Unit, other than permitted in that zone district or by applicable ordinance; and c) not permit any use or occupancy of such unit except in compliance with this Agreement and the Community Housing Guidelines.

TENANT RESIDENCE

3. The Unit shall be and is to be utilized only as the sole and exclusive place of residence of a Tenant.

4. In the event the Tenant changes domicile or ceases to utilize the Unit as his sole and exclusive place of residence, the Unit shall be offered for lease pursuant to the provisions of this Agreement. Tenant shall be deemed to have changed Tenant's domicile by becoming a resident elsewhere or by accepting permanent employment outside of Ketchum, or by residing in the Unit for less than 75% of the lease term.

5. **NOTHING HEREIN SHALL BE CONSTRUED TO REQUIRE THE BKHA TO PROTECT OR INDEMNIFY THE DECLARANT AGAINST ANY LOSSES ATTRIBUTABLE TO THE RENTAL, INCLUDING (NOT BY WAY OF LIMITATION) NON-PAYMENT OF RENT OR DAMAGE TO THE PREMISES; NOR TO REQUIRE**

THE BKHA TO OBTAIN A QUALIFIED TENANT FOR THE DECLARANT IN THE EVENT THAT NONE IS FOUND BY THE DECLARANT.

TENANT APPROVAL PROCEDURE

6. Declarant shall select Tenants who meet the requirements to qualify for residence in a Community Housing Unit as outlined in the Community Housing Guidelines for the applicable income categories. Declarant shall submit to the BKHA sufficient information (as reasonably determined by BKHA) to verify that Tenants meet such requirements and shall obtain BKHA's written approval of same prior to execution of a rental or lease agreement with said Tenant.

7. The rental unit designated may, at Declarant's election, be leased by Declarant to any eligible tenant under the aforementioned guidelines.

BREACH

8. In the event that BKHA has reasonable cause to believe that Declarant is violating the provisions of this Agreement, the BKHA, by its authorized representative, may inspect the Unit between the hours of 8:00 AM and 5:00 PM, Monday through Friday, after providing Declarant and/or the Tenant with no less than 24 hours' written notice.

9. The BKHA, in the event a violation of this Agreement is discovered, shall send a notice of violation to Declarant detailing the nature of the violation and allowing Declarant fifteen (15) days to cure. Said notice shall state that Declarant may request a hearing before the BKHA Board of Commissioners within fifteen (15) days to determine the merits of the allegations. If no hearing is requested and the violation is not cured within the fifteen (15) day period, Declarant shall be considered in violation of this Agreement. If a hearing is held before the BKHA, the decision of the BKHA based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

REMEDIES

10. There is hereby reserved to the parties hereto any and all remedies provided by law for breach of this Agreement or any of its terms. In the event the parties resort to litigation with respect to any or all provisions of this Agreement, the prevailing party shall be entitled to recover damages and costs, including reasonable attorneys' fees.

11. In the event that Declarant fails to cure any Breach, the BKHA may resort to any and all available legal action, including, but not limited to, specific performance of this Agreement or a mandatory injunction requiring lease of the Property by Declarant. The costs of such action shall be taxed against the proceeds of the lease with the balance being paid to Declarant.

COVENANTS RUN WITH THE LAND

12. This Agreement shall constitute covenants running with the Real Property, described in Exhibit "A," as a burden thereon, for the benefit of, and shall be specifically enforceable by, the BKHA or the City, as applicable, by any appropriate legal action including but not limited to specific performance, injunction, reversion, or eviction of non-complying Tenants and/or occupants.

GRIEVANCE PROCEDURES

13. All disputes between Declarant and the administrative staff of the BKHA shall be heard in accordance with the grievance procedures set forth in the Community Housing Guidelines.

GENERAL PROVISIONS

14. Notices. Any notice, consent or approval which is required to be given hereunder shall be given by a reputable overnight courier (e.g., Fed Ex) properly addressed to any address provided herein or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Agreement. The notice shall be deemed effective upon delivery.

Said notices, consents and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant: 100 1st Street Development, LLC 928 Carpenteria St., Suite 8
Santa Barbara, CA 93103

To BKHA: Director
Blaine Ketchum Housing Authority
P.O. Box 2315
Ketchum, ID 83340

To City: City Attorney
City of Ketchum
480 East Avenue North
P.O. Box 2315
Ketchum, ID 83340

15. Exhibits. All exhibits attached hereto (Exhibits "A" & "B") are incorporated herein and by this reference made a part hereof.

16. Severability. Whenever possible, each provision of this Agreement 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 such document.

17. Choice of Law. This Agreement and each and every related document is to be governed and construed in accordance with the laws of the State of Idaho.

18. Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties.

19. Section Headings and Interpretation. Paragraph or section headings within this Agreement 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. No presumption shall exist in favor of or against any party to this agreement as a result of the drafting and preparation of the document.

20. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Agreement shall be valid against any party hereto except on the basis of a written instrument executed by the parties to this Agreement. However, the party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition.

21. Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice visa.

22. Further Actions. The parties to this Agreement 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 Agreement or any agreement or document relating hereto or entered into in connection herewith.

23. Modifications. The parties to this Agreement agree that any modification of this Agreement shall be effective only when made by writings signed by both parties and recorded with the Clerk and Recorder of Blaine County, Idaho. Notwithstanding the foregoing the BKHA reserves the right to amend this Agreement unilaterally where deemed necessary to effectuate the purpose and intent of this Agreement, and where such unilateral action does not materially impair the Tenant's rights under this Agreement. Such Amendment shall require sixty (60) days written notice to Tenants.

24. No Third Party Beneficiaries. Nothing herein shall be deemed or construed to create any third party beneficiary rights.

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

DECLARANT: 100 1st Street Development,
LLC

[Handwritten Signature]
Title: *Managing Member*

STATE OF *California*
County of *Santa Barbara* ss.

On this _____ day of _____, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known to me to be the _____ of 100 1st Street Development, LLC, an Idaho limited liability company, and known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(seal)

see attachment
NOTARY PUBLIC for *Santa Barbara*
Residing at *33 E. Carrillo St Santa Barbara CA*
Commission Expires *6/9/2007*



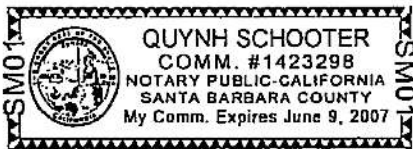
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Barbara

On 9/27/2005 before me, Quynh Schooter, Notary Public, personally appeared JAMES J DOUB,

proven to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Signature of Notary

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- Individual
Corporate Officer

DESCRIPTION OF ATTACHED DOCUMENT

MASTER DEED RESTRICTION, OCCUPANCY AND RESALE DEED RESTRICTION, AGREEMENT FOR 1ST & 1ST CONDOMINIUMS

- Partner(s) Limited General
Attorney-in-Fact
Trustee(s)
Guardian/Conservator
Other: MANAGING MEMBER

Title or Type of Document

10

Number of Pages

9/27/2005

Date of Document

NONE

Absent Signer (Principal) is Representing:

Signer(s) Other Than Name(s) Above

NONE

ACCEPTANCE BY THE BLAINE COUNTY HOUSING AUTHORITY

The foregoing Master Deed Restriction Agreement for the Occupancy, Rental and Resale of the 1st and 1st Condominiums of the Blaine County Housing Authority and its terms are hereby adopted and declared by the Blaine County Housing Authority.

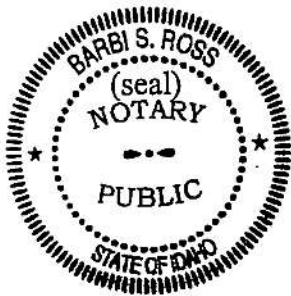
THE BLAINE COUNTY
HOUSING AUTHORITY

By: *Michael David*
Title: EXECUTIVE DIRECTOR

STATE OF IDAHO)
) ss.
County of Blaine)

On this 4th day of October, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Michael David, known to me to be the Executive Director of Blaine Ketchum Housing Authority, and known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Barbi S. Ross
NOTARY PUBLIC for Idaho
Residing at Ketchum, Idaho
Commission Expires May 21, 2007

ACCEPTANCE BY THE CITY OF KETCHUM

The foregoing Master Deed Restriction Agreement for the Occupancy, Rental and Resale of the 1st and 1st Condominiums of the Blaine County Housing Authority and its terms are hereby adopted and declared by the City of Ketchum.

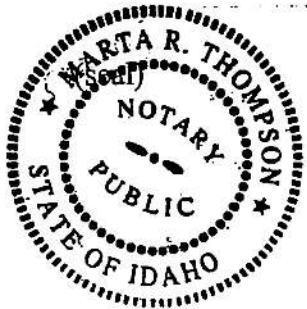
CITY OF KETCHUM

By: [Signature]
Title: COUNCIL PRESIDENT

STATE OF IDAHO)
) ss.
County of Blaine)

On this 4th day of October, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Edward Simon, known to me to be the Mayor of the City of Ketchum, an Idaho municipal corporation, and known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Marta R. Thompson
NOTARY PUBLIC for Idaho
Residing at Ketchum
Commission Expires 5/21/09

EXHIBIT "A"
LEGAL DESCRIPTION

Lot 8A, Block 39 Ketchum Townsite, records of Blaine County, Idaho.

Street Address: 100 1st St. Ketchum, Idaho

EXHIBIT "B"
COMMUNITY HOUSING UNIT DESCRIPTION

Community Housing Units of this development shall be: Condominium Unit D, as shown on the condominium map for the 1st & 1st Condominiums, a condominium subdivision of Lot 8A, Block 39 Ketchum Townsite, recorded in the official records of Blaine County, Idaho and as defined and described in the Condominium Declaration, also appearing in the official records of Blaine County, Idaho.