RESOLUTION NUMBER 06-004

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO REPEALING RESOLUTION 05-115 AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT TO PURCHASE LOT 6, PINERIDGE TOWNHOMES (UNIT G-1) FROM THUNDER SPRING III, LLC FOR $152,634.

WHEREAS, the Mayor and Council of the City of Ketchum executed Resolution No. 05-115 authorizing the mayor to execute a contract to purchase Lot 6, Pineridge Townhomes (unit g-1) from Thunder Spring III, LLC for $152,634; and

WHEREAS, Ketchum has not yet executed such contract for purchase; and

WHEREAS, Ketchum reconsidered its desire to purchase such unit and determined that the best interests of the residents and visitors of the City of Ketchum will be better served by not entering such contract for purchase thereby enabling the Blaine Ketchum Housing Authority to offer such unit for sale to a qualified individual already on its list of qualified purchasers.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the Ketchum City Council, that Resolution 05-115 authorizing the Mayor to execute a contract for the purchase of Lot 6, Pineridge Townhomes (Unit G-1) from Thunder Spring III, LLC for $152,634 is hereby repealed.

This Resolution will be in full force and effect upon its adoption this third (3rd) day of January 2006.

CITY OF KETCHUM,
an Idaho municipal corporation

Randall Hall, Mayor

ATTEST:

Sandra E. Cady, CMC
City Treasurer/Clerk

APPROVED AS TO FORM
AND CONTENT:

Benjamin W. Worst, City Attorney

SETTLEMENTAND RELEASE AGREEMENT
(City of Ketchum/Simplot Ketchum Properties, LLC)

THIS SETTLEMENT AND RELEASE AGREEMENT is made and entered into the 17th day of January, 2006, by and between SIMPLOT KETCHUM PROPERTIES, LLC, an Idaho limited liability company ("SKP"), and the CITY OF KETCHUM, an Idaho municipal corporation ("Ketchum"). SKP and Ketchum are sometimes referred to herein collectively as the "Parties" or individually as a "Party".

RECITALS

WHEREAS, SKP applied to Ketchum to create a PUD on Lots 1-8, Block 65 & Lots 1-8 Block 66, Ketchum Townsite; and

WHEREAS, in the course of evaluating such PUD application and associated applications, the Parties learned that they had competing claims due to two competing chains of title to portions of Lots 5, 6, 7 & 8, Block 66, Ketchum Townsite (the "Subject Property"); and

WHEREAS, it is uncertain which Party owns the Subject Property; and

WHEREAS, Ketchum has offered to release its claim to the Subject Property in exchange for certain consideration set forth herein below; and

WHEREAS, SKP has agreed to accept such offer; and

WHREAS, both parties desire to settle this good faith dispute without expending resources unnecessarily on litigation.

NOW, THEREFORE, in consideration of the recitals, agreements and covenants contained in this Agreement and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, SKP and Ketchum agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are hereby incorporated as an integral part of this Agreement.

2. Release of Claim to the Subject Property. Ketchum hereby releases any claim it may have in or to the Subject Property and shall, immediately upon execution of this Agreement, deliver a quit claim deed to SKP conveying all right, title and interest it may have, if any, in and to the Subject Property. The Subject Property shall be subject to all easements and rights of way set forth on the final plat of the Simplot Subdivision. Upon execution of this Agreement, SKP shall deliver a temporary easement to Ketchum which shall allow the continued use of the bike-path easement across the Subject Property until the bike path is physically re-established as depicted on the final plat of Simplot Subdivision.

3. Changes to PUD. In exchange for the above-referenced release and quit claim deed, SKP and Ketchum Agree that the PUD and Development Agreement shall be amended as follows:

   a. The mandatory square footage of net livable community housing space within the PUD shall be increased from 10,000 (TEN THOUSAND SQUARE FEET) to 15,000 (FIFTEEN THOUSAND SQUARE FEET) distributed as 1,000 (ONE THOUSAND) additional square feet on each of Lots 1, 2, and 3 and 2,000 (TWO THOUSAND) additional square feet on Lot 4.

   b. The first floor footprint of any building constructed on Lot 1, Lot 2 or Lot 3 may be increased by 10% (TEN PERCENT).

   c. Uses, other than public uses, semi-public uses or residential uses, shall be confined to a maximum of 13,200 (THIRTEEN THOUSAND TWO HUNDRED) square feet on Lot 1; 12,100 (TWELVE THOUSAND ONE HUNDRED) square feet on Lot 2; and 12,100 (TWELVE THOUSAND ONE HUNDRED) square feet on Lot 3.

   d. Ketchum shall consider in good faith requests to adjust building envelope locations and sizes.

   e. Lot 4 may hereafter be re-subdivided exclusively for residential purposes, not exceeding thirty-two (32) residential units totaling not more than 90,000 square feet of gross floor area.

   In the event of any conflict between the terms or conditions of this Agreement and the terms or conditions of the Development Agreement, then the terms and conditions of the Development Agreement shall control.

4. Release. SKP and Ketchum hereby completely release and forever discharge each other from any and all claims of every kind, name and nature, known and unknown, foreseen and unforeseen, including without limitation, all past, present or future claims, demands, obligations, actions, causes of action, personal injuries, damages, property damages, rights damages, costs, expenses, compensation and benefits of any nature whatsoever, whether based on a tort, contract, constitutional, statutory or any other theory of recovery, and whether for compensatory or punitive damages, which SKP or Ketchum now has, may have or which may hereafter accrue or otherwise be acquired, on account of or in any manner related to or arising from the competing chains of title or the competing claims to the Subject Property.

5. Intent of Agreement. The Parties hereby acknowledge and expressly agree that this Agreement is not to be construed as an admission of liability on the part of Ketchum or SKP. Rather, the Parties merely intend to settle the competing claims

to the Subject Property without incurring the expense or uncertainty of litigation and buy their peace.

6. Miscellaneous.

a) Partial Invalidity. In the event any portion of this Agreement shall be determined to be invalid, void or otherwise unenforceable, the remaining provisions hereunder, or part thereof shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby, it being understood that such remaining provisions shall be construed in a manner most closely approximating the intention of the parties with respect to the invalid, void or unenforceable provision or part thereof.

b) Binding effect. This Agreement and all of the terms and conditions contained herein shall be binding upon all heirs, personal representatives, successors, bankruptcy trustees and any other individuals or entities attempting to make any claim or assert any rights on behalf of or through the Parties hereto.

c) Attorney Fees. If either Party is required to retain an attorney to enforce its rights hereunder, the defaulting Party shall pay to the non-defaulting Party all reasonable costs and attorney fees, whether or not litigation is commenced and including reasonable costs and attorney fees on appeal.

d) No Presumptions. There shall be no presumptions for or against any party to this Agreement as a result of its preparation.

e) Waiver. Failure of either Party to exercise its rights under this Agreement upon any default of the other shall not be construed as the waiver of the right to insist upon full performance of such right, all other terms and conditions of this Agreement, or exercising any other rights contained in this Agreement.

f) Paragraph Headings. The paragraph headings of this Agreement are for clarity in reading and not intended to limit or expand the contents of the respective paragraphs.

g) Choice of Law. This Agreement will be interpreted in accordance with the laws and decisions of the State of Idaho.

h) Entire Agreement. This Agreement contains the entire agreement between the Parties hereto with respect to the subject matter hereof, and supersedes or revokes all prior agreements and understandings. No representations, promises or oral inducements have been made by any of the Parties other than expressly set forth herein.

i) Amendment. This Agreement may not be amended except in writing executed by both parties.

j) Time of the Essence. Time is hereby made expressly of the essence in the execution of every term and condition of this Agreement.

k) Counterparts/Fax Copies. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original hereof. Fax copies of this Agreement and the original and faxed signatures thereon shall have the same force and effect as originals.

IN WITNESS WHEREOF, the Parties entered this Agreement as of the date first-above written.

SIMPLOT KETCHUM PROPERTIES LLC

By: GCS Properties L.P., Member

By: _____
Gay C. Simplot, General Partner

AND

By: SRS Properties, L.P., Member

By: _____
Scott Robert Simplot, General Partner

SIMPLOT KETCHUM PROPERTIES, LLC,
an Idaho limited liability company

By: _____
Its: _____

CITY OF KETCHUM,
an Idaho municipal corporation

By: _____
Randall Hall, Mayor

APPROVED AS TO FORM
AND CONTENT:

_____
BENJAMIN W. WORST
City Attorney