

RESOLUTION NUMBER 06-028

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO
AUTHORIZING THE MAYOR TO EXECUTE A SECURITY AGREEMENT
BETWEEN THUNDER SPRINGS III, LLC AND THE CITY OF KETCHUM
GUARANTEEING THE FAITHFUL PERFORMANCE OF OBLIGATIONS
RELATIVE TO THE FIRE LANE.

WHEREAS, pursuant to Idaho Code §50-301, 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

WHEREAS, as a condition of approval of the project known as Pine Ridge Townhomes, Thunder Springs III, LLC is obligated to keep access on and over the fire lane which forms the perimeter of Phases II and III unobstructed during construction; and

WHEREAS, the City of Ketchum requested financial assurance of performance of obligations relative to the fire lane; and

WHEREAS, Thunder Spring III, LLC has presented the City of Ketchum with a check in the amount of \$50,000 to be held as security for performance of its obligation to the City of Ketchum.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the Ketchum City Council that the Mayor is authorized to execute a security agreement between Thunder Springs III, LLC and the City of Ketchum, guaranteeing the faithful performance of obligations relative to the fire lane.

PASSED by the City Council and APPROVED by the Mayor this 21st day of February, 2006.

CITY OF KETCHUM, IDAHO



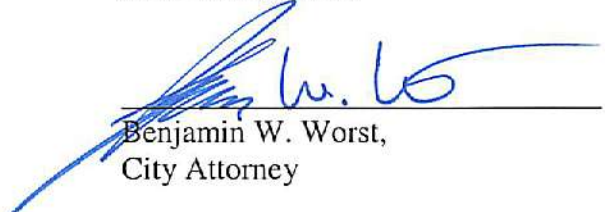
RANDY HALL, Mayor

ATTEST:



Sandra E. Cady, CMC
City Treasurer/Clerk

APPROVED AS TO FORM
AND CONTENT:



Benjamin W. Worst,
City Attorney

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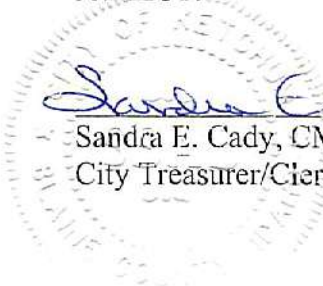

CITY OF KETCHUM, IDAHO


RANDY HALL, Mayor
BAIRD GOURLAY PRES.

APPROVED AS TO FORM
AND CONTENT:


Benjamin W. Worst,
City Attorney

ATTEST:



Sandra E. Cady, CMC
City Treasurer/Clerk

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AGREEMENT

THIS AGREEMENT (this "Agreement") is made by Thunder Spring III LLC, an Idaho limited liability company, referred to herein as "**Owner**" for the benefit and protection of the City Of Ketchum, an Idaho municipal corporation, herein called "**City**."

RECITALS

Owner is the owner of the real estate development project located at 1908 Warm Springs Road, Ketchum, Idaho known as the Pineridge Townhomes. Owner is obligated as a condition of approval of the project to keep access on and over the fire lane which forms the perimeter of Phases II & III unobstructed during construction. City has requested certain financial assurance of Owner's performance of its obligations relative to the fire lane.

TERMS AND CONDITIONS

1. Owner agrees City may enter upon the Pineridge Townhomes to inspect for vehicles, snow or other obstructions of the fire lane. Obstructions shall include without limitation, dumpsters, parked automobiles, parked trucks or other vehicles, trailers, snow, building materials, scaffolding and equipment. Automobiles, trucks and construction vehicles shall not be considered obstructions if an individual is available to move the same immediately. In the event that City determines that any obstruction is in the fire lane, City may impose upon Owner a penalty for each breach of Owner's obligation to keep the fire lane unobstructed in the amount of two thousand five hundred dollars (\$2,500.00) for the first breach and five thousand dollars (\$5,000.00) for each subsequent breach. Each twenty-four (24) hour period that any such obstruction continues shall constitute a separate fineable breach. As security for performance of its obligation to City, Owner shall deposit the sum of fifty thousand dollars (\$50,000.00) with City which shall be held by it in a segregated interest bearing account for the benefit of Owner until a certificate of occupancy is issued by City for the last of the townhomes in the Pineridge PUD. Owner shall not allow such security deposit to become depleted below seven thousand five hundred (\$7,500) dollars. At any time that such security deposit is depleted to seven thousand dollars five hundred dollars, Owner shall deliver an additional twenty thousand dollars (\$20,000) to City for deposit into the above-referenced account. Once the City has issued the last certificate of occupancy and all debits and any contests thereof referred to in Paragraph 2. herein below, it shall return to Owner the balance of the deposit together with all accrued interest thereon.

2. In the event that City intends to debit the deposit account for reimbursement of its costs or for a penalty amount, it shall first send Owner written notice which shall contain a detailed description of the breach, the amount of the payment City claims is due and include invoices for any expenses actually incurred. If Owner does not object in writing within five (5) days after receipt of the written notice Owner shall be deemed to have waived any objection to the payment. If Owner does so object in writing, such objection shall be heard by City's Planning and Zoning Commission. The decision of the Planning and Zoning Commission shall be final

and shall not be appealable. Notwithstanding any of the terms or conditions of this Agreement, this Agreement shall not constitute a waiver of any of the applicable laws, rules or codes or terms or conditions of any approvals or permits. There shall be no presumption for or against either party hereto as a result of the preparation of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement this 14 day of February, 2006.

City of Ketchum, Idaho

By: Randy Hall
Randy Hall, Mayor
BAIRD GOURLAY PRES.

Thunder Spring III, LLC

By: Gary Van Acker
Name: Gary Van Acker
Title: Member