

## **RESOLUTION NO. 17-006**

A RESOLUTION OF THE CITY OF KETCHUM, IDAHO, FINDING A NEED FOR UPDATING THE PROCESS FOR HANDLING REQUESTS FOR EXCEEDANCE OF MAXIMUM FLOOR AREA RATIO STANDARDS; AUTHORIZING CITY STAFF TO ADMINISTER AND DOCUMENT SUCH EXCEEDANCES PURSUANT TO A "FAR EXCEEDANCE AGREEMENT"; APPROVING A TEMPLATE FAR EXCEEDANCE AGREEMENT AS A FORM OF THE CITY; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; AND SETTING AN EFFECTIVE DATE.

WHEREAS, Asset Enhancement, LLC had sued the City of Ketchum and filed a Complaint for Declaratory Relief challenging the legality of certain standards under Ketchum City Code 17.124 et seq, but has recently voluntarily dismissed such lawsuit;

WHEREAS, such lawsuit sought to enjoin the City as to use and enforcement of Ketchum City Code 17.124 et seq and therefore placed the City in a difficult and uncertain position as to allowing development applications to proceed under such ordinances pending the City's defense of the lawsuit and a final outcome or resolution;

WHEREAS, the City finds that this litigation placed the City, community, and development community at risk, particularly as to pending development projects, and created an imminent peril to the public health, safety, and welfare as the threat of the lawsuit forced the City to consider a moratorium on pending and future development projects that might wish to opt for mitigation to exceed floor area ratio standards;

WHEREAS, the City desires to maintain its maximum floor area ratio standards in order to protect the priorities and nature of the Ketchum community, as previously found in approving these standards and as set forth in Ketchum City Code 17.124 et seq, including priorities related to density, affordability, compatibility, quality, "fit," size, housing, health, safety, and welfare;

WHEREAS, the City desires to avoid a moratorium and instead maintain an optional process available for community development projects interested in considering exceeding maximum floor area ratio standards by off-setting adverse impacts of such via mitigation measures meant to protect community priorities;

WHEREAS, the City desires to maintain such a process that makes clear a developer has opted in to such process and provides additional protection to the City from uncertainty by ratification of such choice by contract between the City and developer;

WHEREAS, the City desires to direct staff as to internal policy for the handling and administration of FAR exceedance requests and documentation of such by agreement;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Ketchum, Idaho:

**SECTION 1:** That FAR exceedance requests and determinations pursuant to the standards under Ketchum City Code 17.124.040 be addressed and documented via the use of a "FAR Exceedance Agreement." Any development project wishing to opt to propose mitigation measures in exchange for allowance for increased FAR will submit such proposal to the City. Allowance for such will be documented by the FAR Exceedance Agreement or similarly titled agreement to be attested as voluntarily and knowingly entered into by both the project developer and the City. Such proposed agreement will be prepared by City staff in cooperation with the proposer, and then be presented to the City Council for review and consideration of approval.

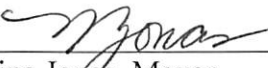
**SECTION 2:** The form "FAR Exceedance Agreement," attached to this Resolution as Exhibit A, is hereby approved as a policy form and for use as a template for agreements brought forth under this policy.

**SECTION 3: SAVINGS AND SEVERABILITY.** It is hereby declared to be the legislative intent that the provisions and parts of this policy shall be severable. If any paragraph, part, section, subsection, sentence, clause or phrase is for any reason held to be invalid for any reason by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this policy.

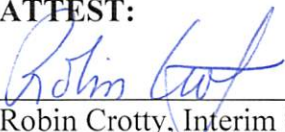
**SECTION 4: EFFECTIVE DATE.** This resolution and policy shall be in full force and effect immediately after its passage and approval.

PASSED BY the City Council of the City of Ketchum, Idaho, this 20th day of March 2017.

APPROVED BY the Mayor of the City of Ketchum, Idaho, this 20th day of March 2017.

  
\_\_\_\_\_  
Nina Jonas, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Robin Crotty, Interim City Clerk

## FAR EXCEEDANCE AGREEMENT

**Parties:**

City of Ketchum	"City"	P.O. Box 2315, 480 East Ave. N., Ketchum, Idaho 83340
	"Developer"	

This FAR Exceedance Agreement ("Agreement") is made by and between the City of Ketchum, a municipal corporation of the state of Idaho, and (Developer), an *(individual/corporation/LLC)*.

### RECITALS

- A. Pursuant to the City's authority under the Idaho Local Land Use Planning Act, the Ketchum Municipal Code ("K.M.C.") Chapter 17.124 provides for certain development standards, including maximum floor area ratio (FAR) standards under K.M.C. 17.124.040 - Floor Area Ratios and Community Housing. These standards are intended to protect the public interest, health, general welfare, and provision of public services. The City has provided options for development proposals to potentially exceed the allowable FAR in exchange for mitigation of the impacts of such larger development, particularly as focused on affordable community and workforce housing. K.M.C. 17.124.040(B).
- B. Litigation was brought challenging the constitutionality and legality of the City's FAR standards in relation to the inclusionary housing incentive under K.M.C. 17.124.040 that was recently voluntarily dismissed.
- C. The City adopted Resolution 17-006 to provide an opportunity for pending and future development to move forward. This resolution provides for the Parties to proceed with the FAR standards and options under K.M.C. 17.124.040, so long as the Parties voluntarily opt into an FAR Exceedance Agreement, making clear they are voluntarily opting by contract into use of such FAR standards and mitigation measures regardless of potential litigation, and are waiving any claims or demands related to any legal challenge to K.M.C. 17.124.040.

THEREFORE, in consideration of the mutual agreement herein contained and subject to the terms and conditions stated, it is hereby understood and agreed by the Parties as follows:

- 1. **Attestation of Developer.** Developer, by this Agreement, attests that the City has disclosed potential litigation challenging K.M.C. 17.124. Developer desires to voluntarily proceed on the development proposal, including proposal of exceedance of FAR standards and accompanying mitigation measures, using the approach and standards as set forth in K.M.C. 17.124.
- 2. **Waiver and Release of Claims.** Developer, by this Agreement, waives and releases any claims, demands, challenges, claims for reimbursement or refund, and/or damages now or

in the future deriving from or relying on the outcome of future litigation substantially challenging the validity of K.M.C. 17.124 and its standards. It is Developer's intent to accept and proceed with such standards as outlined in K.M.C. 17.124 for Developer's development plan for purposes of allowable FAR and Developer voluntarily and knowingly accepts the mitigation measures as proposed.

3. **FAR Exceedance Consideration.** In consideration for Developer's attestation and waiver, the City agrees to consider their exceedance proposal and will currently consider and evaluate Developer's proposed FAR exceedance and accompanying mitigation measures within the framework and standards of K.M.C. 17.124.040, attached hereto as Exhibit A and made a part of this Agreement.
4. **Maximum FAR and Mitigation.** The Parties hereby agree to an allowable maximum floor area ratio and accompanying mitigation measures as set forth in Exhibit B, attached hereto and made a part of this Agreement.
5. **Withdrawal.** Developer may withdraw from this Agreement upon thirty days notice to City provided that Developer has not commenced building and has received no benefit from a maximum FAR exceedance. Withdrawal shall cause an immediate reversion to the permitted gross FAR as set forth in Exhibit A: K.M.C. 17.124.040(A) at the time of this Agreement.
6. **Amendments.** This Agreement may not be amended, modified, altered or changed in any respect whatsoever, except by further agreement in writing duly executed by the parties.
7. **No Assignment.** Developer shall not sell, assign, or transfer all or any portion of its interest in this Agreement at any time without consent of the City.
8. **Binding Effect.** This Agreement shall be binding upon the heirs, estates, personal representatives, successors, and assigns of the parties.
9. **Attorney Fees and Costs.** In the event any action is brought to enforce this Agreement, the prevailing party is entitled to an aware of reasonable attorney fees and costs.
10. **Notices.** Any notice under this Agreement shall be in writing and shall be treated as duly delivered if the same is personally delivered or deposited in the United States mail, certified, return receipt requested, postage prepaid, and properly addressed to the contacts as specified at the beginning of this Agreement.
11. **Partial Invalidity.** Whenever possible, each provision of this Agreement shall be interpreted in such a way as to be effective and valid under applicable law. If a provision of this Agreement is prohibited by or invalid under applicable law, it shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

12. **Waiver:** The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referenced in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.
13. **Execution and Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which shall be considered one instrument.

DATED THIS \_\_\_ DAY OF \_\_\_\_\_, 2017.

Developer

City of Ketchum, Idaho

\_\_\_\_\_  
*Authorized Signed, Title*

\_\_\_\_\_  
Suzanne Frick, City Administrator

Attest:

\_\_\_\_\_  
Robin Crotty, City Clerk

**17.124.040: FLOOR AREA RATIOS AND COMMUNITY HOUSING:**

- A. General Requirements: All new buildings and alterations to existing buildings in the GR-H, T, T-3000, T-4000 and CC zoning districts, unless otherwise specified in this title, shall be subject to the maximum floor area ratio (FAR) described below. Hotels that meet the definition of "hotel" found in chapter 17.08 of this title may exceed the floor area listed in the table below subject to section 17.124.050 of this chapter.

Districts	Permitted Gross FAR	Inclusionary Housing Incentive
GR-H	0.5	1.4
T	0.5	1.6
T-3000	0.5	1.6
T-4000	0.5	1.6
CC	1.0	2.25

**B. Inclusionary Housing Incentive:**

1. The purpose of this section is to encourage new development to include a reasonable supply of affordable and resident occupied workforce housing for sale or rent, to help meet the demand and needs for housing of the community's employees. Land within the zoning districts specified in the table above may be built to the listed permitted FAR. As an incentive to build community housing units, floor area may be increased up to the maximum FAR listed in said table with inclusionary housing incentive.
2. An increased FAR may be permitted subject to design review approval, and provided, that all of the following conditions are met:
  - a. A minimum of twenty percent (20%) of the total increase in gross floor area above the greater of the permitted FAR is deed restricted in perpetuity as community housing unit(s). Of this gross square footage, a fifteen percent (15%) reduction will be allowed as a standard discount from gross square footage to net livable square footage for community housing units.
  - b. After calculating net livable square footage, an allowance can be made for projects with demonstrated groundwater issues as documented by a registered engineer. Upon determination by the city that groundwater on the subject property precludes underground parking, a credit of three hundred fifty (350) square feet per required parking space shall be subtracted from the net livable square footage prior to the

calculation for the twenty percent (20%) deed restricted community housing. Parking space credit shall be rounded to the nearest whole number, and shall not be calculated as fractions.

- c. Community housing requirements may be paid via a fee in lieu of housing. The community housing units times the fee equals the amount due to the city. The fee in lieu shall be recommended by the governing housing authority on an annual basis and adopted by the city council. For fractions of units, the developer has the option of providing a full housing unit rather than paying the fee in lieu or working with the city or other nonprofit entity to construct the balance of the community housing unit with additional funds.
- d. All community housing units, either for sale or rent, shall be administered by the governing housing authority, unless otherwise determined by the city council. The governing housing authority shall recommend the types and locations of all proposed community housing units for approval by the city.
- e. The community housing units shall be targeted for Blaine County housing authority income category 4 (100 percent or less of area median income). The applicant may seek the recommendation of the governing housing authority in the determination of an alternative category with corresponding adjustment in the amount of community housing required. Said recommendation, if mutually agreed upon by the applicant and the commission, may be used in place of category 4. This allowance shall be based on need for the category type. The definition of who may qualify to purchase affordable housing shall be maintained in the guidelines of the governing housing authority as adopted by the city council.
- f. The city's primary goal is to see the development of and encourage the construction of community housing units, but realizes that other options will also move the city closer to its goal of housing the workforce. With this in mind, the following options for fulfillment of the community housing incentive are available to the applicant outright. These include, but are not limited to:
  - (1) Housing constructed by the applicant on or off site, within the city of Ketchum;
  - (2) Payment of an in lieu fee; or
  - (3) Acquisition of existing housing stock that meets with the governing housing authority's requirements and approval.
- g. In addition to those outright options noted in this section, the city council may consider alternative proposals by the applicant to fulfill the community housing incentive. The city council has full discretionary power to determine said request. Options for fulfillment of the community housing incentive include, but are not limited to:
  - (1) Land conveyance to the city;
  - (2) Existing housing unit buy down or mortgage buy down; or

(3) Other proposals and options as approved by the city council.

3. In the CC district, the maximum floor area incentive applies to buildings up to three (3) stories in height. Buildings above three (3) stories may exceed the 2.25 FAR maximum only in accordance with the pertinent code provisions allowing for a fourth floor (for example, hotels, PUDs and 100 percent community housing project, etc.). For hotel uses, community housing calculations apply to all those portions of the hotel development except the hotel units, which are addressed pursuant to employee housing of this chapter. (Ord. 1135, 2015)