

5) **Maximum Roof Lengths.** With the exception to the 93' tall area considered to be the recognizable mass of the core hotel building, no uninterrupted roof ridge shall run longer than 180'. An interruption in roof ridge is created through the use of a visible change in ridge elevation.

6) **Building Height.** Building height and height location shall be restricted by the dimensions of the Tent Diagram, except architectural features such as towers, spires, chimneys, and similar architectural elements that do not include habitable space and covering not more than 5% of the adjacent roof area may exceed the allowed maximum building height by a height of 18'. Elevators and other mechanical structures must be fully concealed within the roof form.

7) **Building Height Area Restrictions.** The building mass shall be restricted within the illustrated building envelope boundaries shown on the Tent Diagram at different elevations by the following standard:

i) The gross floor area of a building will be limited to 15% of the gross building footprint when located above 80' above site elevation, which is an average of 5' above the mean high water mark of Warm Springs Creek across the length of any individual mass. For example, if the building footprint is 100,000 gross square feet, then no more than 15,000 gross square feet may be above 80' in height.

ii) The gross floor area of a building will be limited to 25% of the building footprint when located above 70' above site elevation, an elevation which is an average of 5' above the mean high water mark of Warm Springs Creek across the length of any individual mass. For example, if the building footprint is 100,000 gross square feet, then no more than 25,000 gross square feet may be above 70' in height.

iii) Building mass permitted by subsections 7(i) and 7(ii) above shall not be fully located at the perimeter of the building.

B. Measurement of Building Height. Building height shall be measured from the elevation 5,820'.

C. Floor Area of Upper Floors. The exact amount of floor area permitted at upper floors will be based on the Tent Diagram parameters. This would allow a maximum of 33,000 gross square feet above 70 feet, and 19,800 gross square feet above 80 feet.

forth in the Findings. **D. Setbacks.** Setbacks as required by the Ketchum Zoning Code are set

4.3.3 Open Space.

4.3.3.1 **Design Standards and Calculations.** Open space areas for the 77 acre PUD Property, which shall include the golf course, event lawn, and Warm Springs Creek, shall be developed as set forth in the Findings and subject to Design Review. Landscaping around buildings and areas used solely for circulation shall not be considered in the open space calculations, as these areas are provided as a function of all projects and are standard requirements of the Zoning Code.

4.3.3.2 **BLM Parcel.** The BLM parcel shall be included in the open space area of the PUD Property and shall be preserved as open space except as otherwise provided in the PUD Development Plan.

4.3.3.3 **Golf Course Minimum Requirements.** The golf course shall be designed with the following minimum requirements:

- Tees, greens and fairways shall have a seventy-five feet (75') setback from wetlands and a fifty feet (50')- setback from Warm Springs Creek, and shall be oriented to drain away from the creek for water quality protection.
- Two ponds may be included in the golf course design to provide storage for irrigation water to the golf course and residential areas. The ponds shall be a natural design element with a twenty-five feet (25') vegetated buffer/setback for water quality protection and habitat.
- Floodplain mitigation shall be employed on the appropriate portions of the golf course.
- The golf course shall be operated substantially in conformance with the guidelines outlined in Section 16 herein.

4.4 **CC&RS.** The conditions, covenants and restrictions recorded against all portions of the PUD Property shall contain at least the following provisions:

- An -allocation of responsibility for maintenance of all community and privately owned landscaping and amenities;
- An allocation of responsibility for the operations and maintenance of the pressurized irrigation system for the PUD Property; and
- No person or entity acquiring any portion of the PUD Property shall be permitted to develop, construct, erect, or install any building, utility, improvement or landscaping which does not conform in all respects to this Agreement and the PUD Development Plan. Owner agrees to obtain written approval from Ketchum prior to amending this provision of the duly recorded CC&Rs.

4.5 Fire. All fire code requirements of the Ketchum Fire Department shall be met, as outlined in the PUD Findings and/or Annexation Findings, or imposed as part of Design Review approval. Due to the classification of the core-hotel building as a high-rise building under the 2006 International Building Code (which Code has been duly adopted by Ketchum), Owner shall share proportionally in the estimated \$400,000 increase in fire apparatus costs of Ketchum over amounts within Ketchum's -Capital Improvements Plan on the Effective Date, which increase is attributable to the need for a new ladder truck to access the upper floors of the core hotel building. Owner and Ketchum agree to negotiate in good faith the amount of said funds and the due date for payment which shall be coincident with the date the fire apparatus is required for Owner to be eligible for a building permit for the portions of the core-hotel building classified as a high-rise building. Any funds expended by Owner for this purpose shall be subject to reimbursement from any new high-rise building, as defined in the 2006 International Building Code, in Ketchum approved after the Effective Date, for a period up to twenty (20) years. Ketchum shall account to Owner upon request for any moneys expended or received in connection with said apparatus or this Agreement.¹

4.6 Landscaping. A detailed landscape plan for each phase shall be submitted as part of the Design Review process and approved by the Commission. The landscape plan shall include the following, which is not exhaustive: species sizes, quantities and location; significant stepping and retaining walls between the PUD Property and existing development, particularly condominiums and townhomes to the east and southeast boundary of the PUD Property. The landscape plan for each phase shall describe and depict the intended buffering of the PUD Property from adjoining property. The landscape plan for each phase shall identify all existing trees to be preserved and the means and methods to be used to preserve such trees.

4.7 Avalanche Overlay District Regulations.

4.7.1 Roads. Roads may be located in the avalanche zones subject to the requirements of Section 4.7.5 herein.

4.7.2 Building Permits. No building permits for residential, commercial or year-round recreational uses will be issued within an avalanche zone, as shown on the Large Block Plat.

4.7.3 Notice. Any lot that is located within an avalanche zone, regardless of the building location, shall meet the notice requirements of Section 17.92.01OE, Ketchum City Code.

4.7.4 Utility Meter Location. All utility meters near avalanche run-out paths shall be located in such a manner as to be protected from avalanche debris flow or settlement of debris piles in the event of an avalanche.

¹ Reference to the 2006 International Code in this Section does not limit the application of the 2006 International Code, or its future amendments, to building permits or other construction requirements for the PUD Property.

4.7.5 Avalanche Mitigation. Owner agrees to undertake additional avalanche mitigation measures, as determined by agreement with Ketchum, in the event conditions on north-facing slopes change in the future resulting in a material increase in the avalanche risk as a result of wildfire, insect infestation or other catastrophic event causing loss of vegetation, which mitigation measures may include, but are not limited to: site specific avalanche studies; forecasting, evacuation and the use of explosives to trigger small avalanches before large amounts of snow can accumulate and be released; construction of walls or ramps designed to deflect or redirect avalanches away from areas in need of protection; construction of supporting structures consisting of flexible nets, rigid fences or terracing designed to anchor snow to the ground in avalanche starting zones; closure of gates at roads within the Project; and erosion control. All private roads within the Project are subject to closure, in Owner's sole discretion, during times of high avalanche danger. Owner shall work with Ketchum Emergency Services personnel to establish standard protocols to be followed during times of elevated avalanche danger. Owner and Ketchum acknowledge that the intent of such protocols is to reduce the risk to both the public and emergency responders during periods of increased avalanche danger, and such protocols will therefore include procedures for limiting or restricting access in avalanche zones to reduce these risks. At a minimum, during the period from December 15 through April 15, Owner shall post signs at all access roads within the Project worded as follows:

AVALANCHE AREA ACCESS
MAY BE RESTRICTED
DURING PERIODS OF
INCREASED AVALANCHE
DANGER

5. LARGE BLOCK GENERAL RESTRICTIONS.

The eight (8) Large Blocks of the Large Block Plat are each further defined and certain restrictions placed thereon as follows:

5.1 Large Block 1. Large Block Number 1 shall be limited to hotel, lodging, convention, workforce housing, and restaurant facilities together with related services and improvements, a golf club house, the Warm Springs Ranch restaurant, condominium units, fractional interests, townhouse units, and- workforce housing units together with the parking garage and related improvements, subject to the square footage limitations contained in Section 4.3 herein, and as shown on the PUD Development Plan. All uses in Block 1, except workforce housing, shall be industry standard hospitality-related.

5.2 Large Block 2. ~~Large Block Number 2 shall contain an executive nine-hole golf course and other open space which may be used for passive recreational activities as depicted on the PUD Development Plan.~~ Large Block Number 2 shall contain the golf practice facility described in Section 16."

No further subdivision of said Large Block shall be permitted and shall be so restricted on the Large Block Plat. No structures shall be constructed thereon except for those related to golf course operations or passive recreation uses.

5.3 Large Blocks 3 and 8. Large Block Numbers 3 and 8 shall each contain no more than one residential lot, with a single building envelope in which one single family dwelling unit and no more than two accessory dwelling units may be constructed together with such other related improvements and accessory structures as permitted by the zoning regulations of the Ketchum City Code.

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~~5.4 Large Blocks 4, 5 and 6. Large Block Numbers 4, 5 and 6 shall contain a maximum of twenty-five (25) Villas on all three Large Blocks, events house and related improvements. Large Blocks 4, 5 and 6 may contain any number of Villas having no more than 120,000 square feet total on all three Large Blocks, an events house and related improvements. Owner acknowledges that it will be necessary to amend the Large Block Plat to conform it to the provisions in this Agreement and Owner and Ketchum agree to undertake such an amendment prior to the commencement of construction.~~

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5.5 Large Block 7. Large Block Number 7 shall be for pedestrian access and public uses such as hiking, jogging, Nordic skiing, snowshoeing, picnicking and similar passive recreational activities. Owner shall designate, construct and maintain the public trails and easements as shown on the PUD Development Plan.

5.6 Total Permitted Density. The total permitted density of the entire PUD Property shall be no greater than as allowed in the PUD Findings.

6. PHASING OF DEVELOPMENT.

Owner shall develop the PUD Property pursuant to the schedule set forth herein. A concept of how phasing may progress, as presented by the Owner during the public hearing before the Ketchum City Council held March 30, 2009, is attached hereto and incorporated by reference herein as **Exhibit J**. ~~Since the said hearing the parties have agreed upon the definitive Phasing Plan described in Section 6.7, below.~~

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6.1 Building Permit Requirements. No building permits for any activity on the site shall be issued until: (i) the Owner submits a complete Riparian Restoration Management Plan as described further in Section 7 herein; (ii) Design Review for the then current phase has been completed by the Commission; and (iii) a Construction Staging and Mitigation Plan has been reviewed and approved by the Commission.

6.2 Certificate of Occupancy- Requirements. No Certificates of Occupancy except for workforce housing units and the Warm Springs Restaurant shall be issued for buildings in a particular phase until the following items are complete as to the phase: (i) all roadways and pathways serving the phase are constructed; (ii) improvements required by Ketchum to Warm Springs Road and Bald Mountain Road and conveyance by Owner to Ketchum of all required rights-of-way are completed; (iii) perimeter landscaping on all Large Blocks in the particular phase is complete; (iv) the Parties have entered into the Road Security Agreement described in Section 10.8

herein; (v) funds for mitigation of Ketchum tennis and other recreational programs in the amount of \$500,000 are paid as set forth in Section 16.2 herein; and (vi) all workforce housing units included in the particular phase have been substantially completed and issued Certificates of Occupancy.

6.3 Landscaping— Requirements. Owner shall install all landscaping and related improvements for each phase of the Project in accordance with Design Review requirements.

6.4 General Phasing Requirements. Each phase shall contain all the necessary elements and improvements to exist independently from proposed future phases. The elements of the PUD Project in each phase shall be included in a Phasing Plan described in Section 6.7.1. The commencement and duration of each phase shall be determined through the Design Review process, unless otherwise provided herein. The Large Block Plat shall be filed with the Blaine County Recorder, Hailey, Idaho, within one (1) year after approval by the Council. Failure to file such final plat within that time may cause all approvals of such final plat to be null and void. No building permit shall be issued with regard to any parcel of land within the PUD Property until the Large Block Plat has been recorded. Owner may request from Ketchum an extension of this development phasing schedule, including the deadline(s) for recording final plat(s), which request shall not be unreasonably denied, conditioned or delayed by Ketchum. Ketchum agrees a reasonable request includes a request for an extension of the development phasing schedule based on factors beyond Owner's control, including but not limited to availability of credit facilities and market conditions.

6.5 Design Review. Except as otherwise provided in Section 7.1, no building permits or any other grading/excavation permits shall be issued until the Commission has completed Design Review of the phase in which the permitted work is to be performed. Owner acknowledges that nothing in this Agreement shall be deemed or construed as any assurance of Design Review approval. The following items shall be addressed at the Design Review stage:

- Design of cut/fill areas and retaining walls.
- Design of all accessory fences, structures and walls.
- Design for adequate bicycle loading and unloading outside of the parking structure.
- All project signage, particularly signage for the general public related to public amenities within the site.
- Exterior lighting plan, including Mountain Rides bus stop.
- Garbage access, location and design for the particular phase.
- Design of utility transformers on-site; resolution of power upgrades off-site.
- Parking dimensional requirements for the particular phase.
- Complete landscape plan for the applicable phase that details species size, location and quantities.
- Plan of all existing trees which are to be retained.
- Renderings of the buildings in the exterior elevation of applicable phase viewed from Warm Springs Road and Bald Mountain Roads.

6.6 Construction Staging and Mitigation. A detailed Construction Staging and Mitigation plan shall be approved by the Commission as part of the Design Review process, which plan shall

include a requirement that Owner deposit funds, a letter of credit, a set-aside letter, or other financial assurance acceptable to Ketchum in a reasonable amount to be established to mitigate all impacts to Ketchum resulting from actual damage to water, sewer and/or other city-owned systems during construction of the Project.

6.7 Phasing and Performance Schedule.

6.7.1 Phasing Plan and Performance Schedule. Owner shall complete the entire Project in two phases ("Phasing Plan"). The first phase shall construct the include the core hotel building (120 hot beds/keys minimum), parking garage all required workforce housing units, the golf course improvements described in Section 16, a new Warm Springs Ranch Restaurant building, and complete the restoration of Warm Springs Creek within ten (10) years of the Effective Date. The second phase shall be the remainder of the Project, including creek side residences, ranch homes, main pedestrian pathway and summer path connections. Owner shall apply for and obtain all required permits, including building permits, for at least the Initial Phase of these required improvements on or before August 31, 2016 within forty-eight (48) months of the Effective Date. In addition to the Phasing Plan, the City and Owner have agreed on the following performance schedule for other undertakings provided for in this Agreement: On or before the date Owner submits its first application for Design Review, Owner shall develop and submit to the Council for its approval a Phasing Plan ("Phasing Plan"), which shall be an amendment to this Agreement and processed pursuant to Section 23 herein. The Phasing Plan may be submitted for approval by Council either following or concurrent with the Design Review process and shall explain the development program for each phase of the project. The overriding objective of the Phasing Plan is to provide a complete hotel amenity and operations base at the completion of each phase with enough critical mass to function as a four/five star quality hotel. The Council's approval of the Phasing Plan is an express condition precedent to the rights and obligations of both parties under this Agreement. The Phasing Plan will provide the following specific information at the schematic design level for each Phase (the explanation for the Structured Parking Program Category under Phase 1 is only an example):

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| Program Category | Phase 1 | Phase 2 | Phase 3 | Phase 4 |
|--------------------|--|---------|---------|---------|
| Structured Parking | <i>Examples- Portion of Underground Structure (173 Spaces/69,000 SF)</i> | | | |
| Surface Parking | | | | |
| Back-of-House | | | | |

| | | | | |
|---|--|--|--|--|
| | | | | |
| Arrival Court | | | | |
| Lobby and Related Rooms | | | | |
| Restaurant/Bars (Including Warm Springs Restaurant) | | | | |
| Spa | | | | |
| Meeting Space | | | | |
| Other Public Areas | | | | |

| Program Category | Phase | | | |
|--|---------|---------|---------|---------|
| | Phase-1 | Phase-2 | Phase-3 | Phase-4 |
| Hotel Rooms & Suites | | | | |
| Residential Units | | | | |
| Workforce Housing | | | | |
| Offsite Infrastructure, Entrance or Roundabout | | | | |
| Onsite Infrastructure & Roads | | | | |
| Onsite Landscaping & Linkages | | | | |
| Golf Course | | | | |
| Stream Restoration | | | | |

Also included in the Phasing Plan will be a narrative that will explain how the various elements in the hotel work together and how the pedestrian and vehicular circulation will function at the end of each phase. One of the main objectives of the design process will be to insure that amenities and support facilities do not have to move at the end of each phase.

PERFORMANCE SCHEDULE

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| <u>Action Item</u> | <u>Date</u> ² | <u>Responsible Person</u> | <u>Action/ Reference</u> ³ | <u>Status</u> |
|--------------------|--------------------------|----------------------------|--|---------------|
| <u>1</u> | <u>8/11/09</u> | <u>Owner & Ketchum</u> | <u>Annexation And Development Agreement Effective Date (\$1.7)</u> | <u>Done</u> |
| <u>2</u> | <u>8/26/09</u> | <u>Ketchum</u> | <u>Adoption of Annexation Ordinance (§3)</u> | <u>Done</u> |
| <u>3</u> | <u>9/26/09</u> | <u>Owner</u> | <u>Pay Annexation Fee (§3)</u> | <u>Done</u> |

² All dates are subject to force majeure provision at §31 of Annexation and Development Agreement

³ All references are to sections of this Agreement

| | | | | |
|----|--|----------------------------|---|-------------|
| 4 | TBD | <u>Owner & Ketchum</u> | <u>Negotiate amount and due date of fire apparatus fee (\$4.5)</u> | |
| 5 | 4/6/10 | <u>Owner</u> | <u>Record Large Block Plat (\$6.4)</u> | <u>Done</u> |
| 6 | <u>Before application for Design Review Approval</u> | <u>Owner</u> | <u>Obtain KCC approval of phasing Plan (\$6.7.1)</u> | <u>Done</u> |
| 7 | 12/31/09 | <u>Owner</u> | <u>Apply for Design Review Approval (\$6.7.2)</u> | <u>Done</u> |
| 8 | TBD | <u>Owner</u> | <u>Create historic narrative and brochure (\$8.2)</u> | |
| 9 | TBD | <u>Owner</u> | <u>Create SWPPP (\$8.6)</u> | |
| 10 | TBD | <u>Owner</u> | <u>Contribution for Trails (\$8.7.1)</u> | |
| | | | | |
| 11 | TBD | <u>Owner & Ketchum</u> | <u>Negotiate protocol for maintenance, repair and snow removal from Bald Mtn Road (\$ 10.2)</u> | |
| 12 | TBD | <u>Owner</u> | <u>Provide easement for Townhouse Lane (\$10.5)</u> | |
| 13 | TBD | <u>Owner & Ketchum</u> | <u>Enter into Road Security Agreement (\$10.8)</u> | |
| 14 | <u>60 days after written notice from Ketchum</u> | <u>Owner</u> | <u>Pay proportionate amount of Lewis St and Warm Springs Road Intersection improvements (\$10.10)</u> | |
| 15 | 1/15/10 | <u>Owner</u> | <u>Pay \$40K to city for VFD (\$11.5)</u> | <u>Done</u> |
| 16 | TBD | <u>Owner & Ketchum</u> | <u>Negotiate irrigation water rights agreement (\$11.8)</u> | |

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|-----------|----------------|--------------|--|-------------|
| <u>17</u> | <u>1/15/10</u> | <u>Owner</u> | <u>Pav up to \$15K for flow analysis (§12.2)</u> | <u>Done</u> |
| <u>18</u> | <u>1/15/12</u> | <u>Owner</u> | <u>Update phasing plan</u> | <u>Done</u> |
| <u>19</u> | <u>TBD</u> | <u>Owner</u> | <u>Contribute \$150k recreation fee (§16.2)</u> | |
| <u>20</u> | <u>8/2/16</u> | <u>Owner</u> | <u>Initiate initial phase (§1.10 and §6.7.1)</u> | |
| <u>21</u> | <u>1/15/21</u> | <u>Owner</u> | <u>Complete project (§6.7.1)</u> | |

6.7.2 Additional Pre-Application Design Review. Owner shall engage in up to two (2) pre-application Design Review meetings with Ketchum in Fiscal Year 2009. Ketchum agrees the total of all fees associated with the pre-application Design Review process shall not exceed \$37,000, provided that in the event more than two (2) pre-application Design Review meetings are held due solely to changes by Owner, Owner will be subject to standard Ketchum review fees in effect as of the date of such meeting(s). Owner shall commence Design Review on all buildings and amenities identified in Section 6.7.1 herein in calendar year 2009.

6.7.3 Design Review- Deliverables. Pursuant to Ketchum City Code ("KCC") § 17.96.080, Ketchum and Owner agree Owner is required to deliver to Ketchum at the time of its Design Review application, only those documents listed in Exhibit "K" ("Design Review Deliverables") attached hereto and incorporated by reference herein. Ketchum acknowledges and agrees that the Design Review Deliverables, together with a completed application form and application fees, constitute a completed application pursuant to this Agreement and KCC §17.96.080.

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Pursuant to KCC §17.96.080(D) certain Design Review submittals are waived as specified in this § 6.7.3. The unique characteristics of the Project design includes buildings which are not standard 4-sided structures as are more commonly provided to Ketchum in Design Review; alternative methods to depict the maximum height and footprint of the tent diagram (also see Exhibit H) have been provided by Owner such that any additional height demonstrations on the site are hereby waived for Design Review. Since the staking of the townhouses and villas have not changed from the submittals acted upon by Ketchum in the Annexation, Rezone and PUD applications, additional staking for those specific buildings are waived unless their design is changed resulting in material differences in the staking. Staking of the Core Hotel, Restaurant and other buildings on Lot 1 are hereby waived unless buildings in Lot 1 exceed the bounds of the tent diagram.

As the Design Review Deliverables are deemed complete, Ketchum acknowledges and agrees the

Design Review submission requirements of this Agreement and KCC are adequate for Ketchum's review and consideration of, and decision upon, each of the standards of evaluation contained in KCC §17.96.090B. In addition to the Design Review Deliverables, except as otherwise provided in this Section 6.7.3, Ketchum may request such additional materials, drawings or information that are necessary to make a determination regarding a particular evaluation standard contained in KCC §17.96.090B. Ketchum may impose, and Owner may elect to accept, conditions upon Design Review approval that address the submission of such additional materials, drawings or information at a later time to mitigate the additional cost of said items. In all cases, unless waived by Ketchum, all such additional materials, drawings or information shall be submitted prior to issuance of a building permit which relates to work described in said additional materials, drawings or information.

~~For purposes of Design Review and this Section 6.7.3, a Review Committee, consisting of Ketchum's planning director and two (2) Planning and Zoning Commissioners, is hereby established to review and approve the submission of additional materials, drawings and information required as a condition of the Design Review approval(s). The Review Committee is also designated, authorized and empowered to review and approve any Owner requested non-material changes to the Design Review approval(s) or the construction elements required in this Agreement. For purposes of Design Review and this Section 6.7.3, a design review sub-committee ("Committee") of the Commission is hereby established and shall have the power and authority to approve, disapprove or conditionally approve the following: (i) those matters delegated to it by the Commission including but not limited to such materials, drawings and information required to fulfill a condition of the Design Review approval(s), and (ii) any Owner requested non-material changes to the Design Review approval(s), or the construction elements required of this Agreement. The Committee shall consist of three persons one of whom shall be the current director of the Community and Economic Development Department and one of whom shall be a current or former member of the Commission that participated in the original Design Review approval(s) and one of whom is a current member of the Commission as may be appointed by the Mayor and confirmed by the Council in the normal course. The members of the Committee appointed by the Mayor and approved by the Council shall serve until they are replaced or the Project is completed. In the event that a member of the Committee is unable or unwilling to serve the Mayor shall appoint and the Council shall approve a replacement. The vote or written assent of any two members of the Committee shall constitute action of the Committee. The Committee shall periodically report in writing all actions taken by it to the Commission. Material changes to the additional materials, drawings, information, the Design Review approval(s), or this Agreement, as reasonably determined by the Review Committee, must be submitted by Owner to Design Review as required by KCC. If the aforementioned Review Committee rejects Owner's submittals, or deems requested changes as material requiring Owner to undergo Design Review proceedings, such decisions may be appealed in writing by Owner to the Ketchum Planning and Zoning Commission within twenty (20) calendar days from the delivery to Owner of the Review Committee's written decision. If Owner disagrees with the Planning and Zoning Commission's determination that a change is material, that the submittals of additional materials, drawings, information are insufficient, or compliance with Design Review approval(s) or compliance with this Agreement has not been met, said determinations are appealable by Owner in writing to the Ketchum City Council within twenty (20) calendar days from the delivery to Owner of the final Planning and Zoning Commission written determination.~~

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7. WARM SPRINGS CREEK AND RIPARIAN RESTORATION; FLOODPLAIN

MITIGATION.

Owner shall restore and enhance Warm Springs Creek as set forth in the PUD Development Plan and the Phasing Plan

7.1 Compliance with Federal, State and City Permitting Requirements. All in-stream and riparian work shall comply with all applicable federal, state and city permitting requirements and shall be carried out substantially in accordance with approved mitigation measures. A complete submittal of all state and federal permit applications, submittals and approvals shall be provided to Ketchum. No work within jurisdictional areas shall commence until said permits have been issued and copies submitted to Ketchum and adjacent property owners are given notice of the commencement of such work.

7.2 Riparian –Setbacks. No unauthorized construction activity shall occur within the riparian setbacks. Riparian setbacks shall be as follows: South side of Warm Springs Creek: fifty (50) feet from the MHW; North side of Warm Springs Creek: twenty-five (25) feet from the MHW.

7.3 Fisherman/Sportsman Access and Nature Study Center. A ten foot (10') fisherman/sportsman access and nature study easement shall exist from the mean high water mark on Warm Springs Creek and as shown on the PUD Development Plan, and shall be open to the public at all times in accordance with Idaho Department of Fish and Game regulation, with the exception of periodic closures for riparian construction work as detailed in the Riparian Restoration Master Plan, or for security reasons. Public fishing within irrigation ponds and other artificial waterways on the PUD Property may be prohibited by Owner.

7.4 Cottonwood –Riparian Vegetation. The existing cottonwood riparian vegetation along Warm Springs Creek on the southern portion of the PUD Property shall be undisturbed to the greatest extent possible.

7.5 Compliance with Floodplain Regulations. All proposed buildings, roads and bridges shall be designed to meet or exceed applicable floodplain regulations to enhance public safety.

7.6 Habitat and Flood Management. To achieve habitat and flood management benefits, portions of the PUD Property shall be designed to accommodate flooding with minimal depths and velocities over the golf course.

7.7 Riparian –Restoration Master Plan. A complete riparian restoration master plan (“Riparian Restoration Master Plan”), which shall include a detailed stream, riparian corridor, wetlands, and floodplain design and plan, shall be submitted to Ketchum as required by Section 6.1 herein, which details the stream and riparian restoration process and procedures, including but not limited to: construction schedule for all in-stream activities; schedule for and analysis of all proposed herbicide use; delineation of vegetation to be preserved; erosion and sedimentation control plan; planting plan and schedule; and schedule for work impacting properties adjacent to the stream with adequate notice to said property owners. The Riparian Restoration Master Plan shall be developed and submitted as part of the Waterways Design Review application. Waterways Design Review shall be

completed by Ketchum prior to any work commencing in the riparian corridors.

8. ENVIRONMENTAL PLAN.

Owner shall prepare and develop as part of Design Review a Warm Springs Ranch Resort Environmental Plan ("Environmental Plan") and a Tree Preservation Plan ("Tree Preservation Plan") for the PUD Property that incorporates the related concepts of wildlife habitat preservation/conservation, and flora/fauna preservation/conservation. The elements of the Environmental Plan and Tree Preservation Plan shall be incorporated in each phase of the Project. The Environmental Plan shall include landscape buffering and lighting restrictions to minimize the impact on wildlife- passage through Large Block 8 after development of said property.

8.1 Fishing Access. Owner, at its sole expense, will provide at least one (1) access that complies with Americans with Disabilities Act requirements for fishing of Warm Springs Creek, and Owner will, subject to reasonable rules and regulations, allow pedestrian access for fishing along the entire reach of the PUD Property as described in Section 7.3 herein and shown on the Large Block Plat.

8.2 Cultural Heritage Preservation. To preserve the cultural heritage of the PUD Property, Owner agrees to the following:

- Compiling a written historic context narrative of the Warm Springs Ranch property, including copies of related historic photographs. A copy of the narrative will be provided to the Ketchum Community Library.
- Creating an interpretive brochure with map and historic photographs of the Warm Springs Ranch which will be made available to WSRR guests. The restaurant, or other public location, will also exhibit larger copies of historic photographs of Warm Springs Ranch on its interior walls.

8.3 Conservation Values. Important environmental design elements and considerations for development of the Project shall include, to the extent reasonably practical: renewable energy heating and cooling systems, alternative energy vehicles, passive solar design, water conservation measures, and the use of sustainable building materials in construction.

8.4 Landscaping and Irrigation. Landscaping- features- shall incorporate sustainable design that preserves and enhances the native landscape of the PUD Property and preserves existing substantial trees as much as practicable. Landscape areas shall include: the golf course/event zone, native (riparian, alpine forest, upland- and transitional) zone, and private enhanced zone. The irrigation systems for all landscape zones shall be, to the greatest extent possible, water efficient, in-ground, and use rotor and- drip irrigation technology. Monitoring- technology- shall be used to regulate irrigation rates to conserve water use.

8.5 Weed Management. As part of the overall Project, a noxious weed control program shall be implemented during both the pre-and post-development phases.

8.6 SWPPP and Best Management Practices ("BMPs"). Prior to site construction, a Storm Water Management Pollution Prevention Plan ("SWPPP") shall be developed using BMPs required by local, state and federal laws and regulations. The SWPPP and associated permits shall be implemented as required by applicable federal law. A water quality monitoring plan shall also be developed to monitor pre-construction, construction, and post-construction water quality in Warm Springs Creek, as may be required by applicable state and federal laws and regulations.

8.7 Trails Construction and Access. Subject to Owner's reasonable rules and regulations, the public shall have access to the following trails from designated areas within the Project: the existing Bald Mountain trail system; the existing multi-use path along Warm Springs Road (which provides a link to the Heidelberg- Trail connecting to Adams Gulch); and multiple accessible points for fishing that are adjacent to the Warm Springs Stream. Owner shall further provide either a pathway or sidewalk along Townhouse Lane and "Private Road #3" to the bridge crossing to provide a means for the Townhouse residents to access the Project's trail system and safely access the existing multi-use path adjacent to Warm Springs Road. The existing multi-use trail adjacent to the north side of Warm Springs Road shall be realigned to a safe location for crossing the north leg of the proposed roundabout or intersection at Warm Springs Road and Flowers Drive.

8.7.1 Cash Contribution for Trails. Owner agrees to a contribution of up to \$115,000 to Ketchum for environmental review, design and construction of the Bald Mountain Connector Trail. The contribution shall be made sixty (60) days after a written request from Ketchum following Ketchum's development and approval of a master plan for the Bald Mountain Connector Trail including a decision on the location of the trail, a budget and schedule of completion of any work of improvement. Development of the Bald Mountain Connector Trail shall be in collaboration with Owner, Ketchum Parks and Recreation and Bigwood Backcountry Trails.

9. INFRASTRUCTURE IMPROVEMENTS.

Owner requests water and sewer service from Ketchum- for the Project and Ketchum hereby agrees to provide such water and sewer service at the same fees as charged to equivalent users of Ketchum. Owner- shall also comply with the additional requirements related to water and sewer service set forth in Sections 11 and 12 herein. Owner shall engineer, construct, and otherwise provide, at its sole expense, the improvements, facilities and services (public and private) set forth in the PUD Development Plan and this Agreement.

9.1 Utilities. All utilities, including water, sewer, gas, cable, phone and electric shall be installed underground within the street rights-of-way prior to completion of the construction of the roads or as otherwise shown on the PUD Development Plan. Detailed- engineered

construction drawings and specifications for construction of such improvements shall be prepared by Owner and approved by Ketchum prior to construction. Prior to acceptance of any such improvements to be dedicated to Ketchum, Ketchum shall inspect and approve same and Owner shall provide Ketchum with "as built" drawings thereof. Owner hereby warrants that to the best of its knowledge the "as built drawings" will be substantially correct and Owner shall be liable and hold Ketchum harmless from any damage which may result from material errors in said drawings for a period of one (1) year after acceptance by Ketchum of said utilities unless such damage is caused directly or indirectly by the acts or omissions of Ketchum, or its agents or contractors. Owner hereby warrants construction of the public streets, water system and sewer system improvements will be free from faulty materials and faulty workmanship. Ketchum shall give Owner written notification of any defect or nonconforming work. On receipt of notice from Ketchum, Owner agrees to remedy, by repair or replacement, without cost to Ketchum, all defects and non-conforming work appearing within a period of one (1) year after the work is completed. Except as expressly set forth in this Agreement, it is understood and agreed that Owner has not made and is not making, and Owner expressly disclaims, any warranties or representations, express or implied, with respect to the improvements described herein and that Ketchum shall accept said improvements, "AS-IS, WHERE IS, WITH ALL FAULTS", except to the extent expressly provided elsewhere in this Agreement.

9.2 Off-Site Utilities. All required off-site utility improvements, including but not limited to the water pump upgrade, well, and sewer upgrade, must be completed as specified in the PUD Findings or in this Agreement.

9.3 Transfer of Warranties. Owner agrees to assign any warranties accruing to it and arising out of construction of the improvements described in this Section remaining in effect at the time such improvements are transferred and/or dedicated to Ketchum, subject to all applicable state and federal laws.

10. STREETS, BRIDGES AND TRANSIT.

Owner shall install, at its sole expense, all private access ways and bridges across Warm Springs Creek within the Project as shown on the PUD Development Plan. Owner shall be responsible for the year-around maintenance of all private roadways, driveways, pedestrian pathways, trails and similar access ways, including, without limitation, snow removal to maintain access and parking, as well as emergency vehicle turnaround, within the PUD Property.

10.1 Warm Springs Road Improvements. Owner shall, at its sole expense, construct a ~~roundabout or standard intersection~~ at Warm Springs Road and Flower Drive prior to final plat approval of the subdivision of Large Block 1 of the Large Block Plat, and/or prior to the issuance of any Certificates of Occupancy for the Project. ~~Owner acknowledges and agrees the roundabout is the preferred alternative for this road intersection and that the reasonable acquisition costs, including right of way, shall be borne solely by the Owner and any costs reasonably incurred by Ketchum to obtain such additional right of way for the roundabout/intersection shall be paid by Owner. Ketchum~~

~~agrees to obtain Owner's prior written approval of an estimated budget for acquisition costs of said right of way.~~

~~Ketchum acknowledges that additional right of way may have to be obtained for a roundabout on the northeast corner of the intersection and agrees to facilitate the right of way acquisition by, among other measures, the use of its power of eminent domain proceedings for such additional right of way. Ketchum shall initiate acquisition of the additional right of way promptly after the Effective Date and complete the acquisition in time to avoid any delay of the Project. Owner shall give Ketchum at least 180 days written notice of the date on which it will require the right of way in order to avoid a delay in the Project. If Ketchum fails to complete the acquisition during the 180 days after the notice from Owner, Owner may proceed with installation of a standard intersection instead of a roundabout.~~

Upon completion of each of such improvements, and acceptance thereof by Ketchum, Ketchum shall assume all responsibility therefore subject to Owner's warranty set forth above.

Owner will provide snow storage for snow removed from the roundabout as part of the snow storage plan.

10.2 Bald Mountain Road Improvements. Bald Mountain Road shall be reconstructed as part of Private Road #1 as shown on the PUD Development Plan. Ketchum acknowledges that a vacation of a portion of Bald Mountain Road may be required. Any required vacation of Bald Mountain Road shall be made pursuant to applicable city and state laws and regulations in order to permit reversion of the ownership of the right-of-way to Owner. Ketchum agrees to expeditiously process any application for vacation in order to avoid a delay in the Project. The forty foot (40') right-of-way shall be constructed to applicable city standards. Upon completion of each of such improvements and acceptance thereof by Ketchum, Ketchum shall assume all responsibility therefore subject to Owner's warranty set forth above. Ketchum shall maintain the right-of-way to its usual and customary standards. Owner shall have the right, but not the obligation, to enter upon the new right-of-way in order to maintain and repair the new right-of-way to a standard higher than Ketchum's standard. Owner and Ketchum acknowledge that the width of the right-of-way is narrower than usual and as such, may pose a risk of damage to adjacent properties from maintenance, repair and/or snow removal. Owner and Ketchum therefore agree to negotiate in good faith protocols for maintenance, repair and snow removal that address such risks ("Protocol Plan"). The Protocol Plan is subject to approval by Council on the same timeline and in the same manner as the Phasing Plan set forth in Section 6.7.1 herein.

10.3 Lighting. Owner shall, at its sole expense, install lighting throughout the PUD in accordance with the PUD Development Plan approved by Ketchum prior to the issuance of any Certificates of Occupancy. All lighting shall comply with the Ketchum Dark Sky Standards, Chapter 17,- Ketchum -City -Code. The use of Ketchum Streetscape Lighting Standards is required. The lighting shall be installed in each Large Block of the Large Block Plat as the same is developed. Minimum lighting mitigation measures shall include: recessed, shielded and downward facing light fixtures. In addition, lighting in riparian areas, wetlands, wildlife corridors, and remote areas shall be eliminated or minimized. Specific lighting and mitigation measures for wildlife protection in sensitive areas will be addressed at Design Review.

10.4 Street, Roadway- and Pathway Standards. All internal streets, roadways and walkways shall be designed and constructed as shown on the PUD Development Plan and Large Block Plat. All roadways shall be constructed within a 40-foot wide easement, using two (2) types of paved roadways, as follows:

- 26-foot:
 - All roadways surrounding the core hotel area
 - Include curb and gutter

- 20-foot:
 - All other roadways throughout the development
 - Rural with gravel shoulders and drainage ditches

No on-street parking will be permitted. Designated parking lots and areas outside of the required clear width will be provided.

10.5 Townhouse Lane Easement. Without conferring any third-party beneficiary status on any person or entity not a party to this Agreement, and without waiving any claims, causes of action or other rights it may have against the Warm Springs Ranch Townhome Condominium Association ("WSRTCA") relating to access or other easements the WSRTCA may claim on or after the Effective Date, Owner agrees to provide an easement to WSRTCA for ingress and egress to and from Townhouse Lane.

10.6 Bridge Approval. The new bridge crossings adjacent to the hotel facility to be constructed across Warm Springs Creek, one (1) vehicular and one (1) or two (2) pedestrian, shall be constructed so that the bridge abutments will be outside the ordinary high water mark, and designed to convey the 100 year flood in accordance with applicable federal, state and city standards. Prior to bridge construction, Owner shall apply for and obtain a Section 404 permit from the Army Corps of Engineers, Stream Alteration Permit from Idaho Department of Water Resources, Section 401 Water Quality Certification from the Idaho Department of Environmental Quality, and City of Ketchum Waterways Design Review.

10.7 Transit. Owner agrees to work in conjunction with Mountain Rides to establish and provide transit service to the PUD Property, which may include a three-level approach to the transit needs of the Project patrons, employees and guests providing: (i) shuttle service to/from the airport (exclusive from the resort to the airport and back); (ii) demand based shuttle service (on-call/demand based shuttle service that would move people from the resort to a desired destination. This service would be phoned in and the guest picked up or dropped off to various points of the city as requested); and (iii) current bus service. Ketchum acknowledges discussions are on-going between Owner and Mountain Rides in regard to all levels of service and may be implemented when feasible. Nothing herein shall be construed to restrict Owner from providing additional transportation service to the PUD Property independent of Mountain Rides.

10.7.1 Bus Stop. A bus stop as shown on the PUD Development Plan shall be constructed by Owner and approved by Ketchum. Lighting for said bus stop shall be approved through Design Review. Upon completion of each of such improvements, and acceptance thereof by Ketchum, Ketchum shall assume all responsibility therefore subject to Owner's warranty set forth above. Ketchum agrees to indemnify, defend, and hold harmless Owner, and its officers, agents and employees, from and against any and all claims, losses, actions, or judgments for damages or injury to persons or property arising out of or in connection with the acts and/or any performances or activities of Ketchum, its agents, employees, or representatives as relates to the bus stop described in Sections 10.7 and 10.7.1 herein.

10.8 Streets and Bridges Assurances. Owner shall enter into a Road Security Agreement with Ketchum pursuant to which Owner will be required to deposit funds, a letter of credit, bond, a set-aside letter, or other form of financial assurance acceptable to Ketchum, in an amount to be established to mitigate all material impacts to roads in Ketchum, including those to the street and roadway network caused by construction traffic during the Project build-out. The Road Security Agreement shall provide that Ketchum's engineer shall deliver to Owner a written request for mitigation describing in detail the material impacts to Ketchum's roads and the estimated cost of repair. Owner's engineer shall meet and confer with Ketchum's engineer in an attempt to agree on the required mitigation and associated cost. In the event that the engineers are unable to agree they shall select a third engineer who shall be required to select either the position of Ketchum's engineer or Owner's engineer. In either event, the decision of the third engineer shall be binding on the Parties.

10.9 Signage Plan. A signage plan for all roadways, pedestrian, public access and other signs in a particular phase shall be submitted prior to the issuance of any Certificates of Occupancy for buildings constructed in the phase. Said plan shall be approved by Staff, or by the Commission if so determined by Staff.

10.10 Lewis Street/Warm Springs Road Intersection. Owner shall pay to Ketchum a proportionate amount of the cost of installation of a traffic light/signal at the intersection of Lewis Street and Warm Springs Road, and the associated redesign of said intersection. Owner's proportionate amount of the cost shall be calculated by multiplying the cost by a fraction the numerator of which is the additional vehicular trips resulting from the Project and the denominator of which is the sum of existing vehicular trips plus the additional vehicular trips resulting from the Project. The existing and additional vehicular trips shall be determined by Hales Engineering. Owner's payment shall be made within sixty (60) days after receipt of a written notice from Ketchum that it has immediately available funds to pay its allocate portion of the work and has engaged one or more contractors to perform the work during the ensuing 180 days.

10.11 Snow Storage. Owner shall develop and submit for approval during Design Review a plan for the removal from, or storage of snow within, the Project.

11. WATER.

11.1 Water System Improvements. Owner shall engineer, construct and extend, at its sole expense, the municipal water system improvements throughout the PUD and relocate the municipal water

main currently running through the PUD Property as set forth in the PUD Development Plan. All such improvements shall be designed and constructed in accordance with the standards of, and construction drawings and specifications approved by, the State of Idaho, Department of Health and Welfare, Division of Environmental Quality, and Ketchum. Owner and Ketchum shall cooperate to the greatest extent practicable to ensure that all necessary water rights are secured by Owner for the water system, and that the water system can be permitted and operated in conjunction with the existing and planned water facilities of Ketchum. Wherever feasible, Owner and Ketchum agree to cooperate as appropriate on development and operation of facilities such as storage reservoirs, emergency back-up power-generators, and similar facilities. The phasing of the Project's development shall dictate the location and construction of the water system components.

11.2 Completion of Improvements. Ketchum shall not issue any building permits for any phase prior to completion of the components of the water system sufficient to provide potable water and fire flow protection for that phase of the Project. Ketchum shall not issue any Certificates of Occupancy for any phase prior to completion of the water system and irrigation facilities for service of that phase. The final construction drawings and specifications shall control over the location and design of water system improvements shown on the Large Block Plat. Upon completion of each of such improvements and acceptance thereof by Ketchum, those improvements, necessary water rights, and the offsite improvements to the water system shall be transferred to and become a part of Ketchum's water system and Ketchum shall assume all responsibility therefor subject to Owner's warranty set forth in Section 9.1 herein.

11.3 Water Service. A complete detailed potable water system design shall be developed and submitted for review and approval by the City Utilities Department and the City Engineer. The water system shall include all of Owner's ground water rights appurtenant to the PUD Property. As provided further herein, Ketchum, at its sole expense, shall be responsible for the operation and maintenance of the water system and periodically set water rates to cover said expenses as required by applicable laws and regulations. Owner agrees to pay the applicable water rates. Ketchum shall provide water service to the PUD Property from the water system on the same priority basis as Ketchum provides water to other residents and businesses in Ketchum under ordinances in place on the Effective Date.

11.4 Installation of Water Main. Owner shall, at its sole expense, install a twelve-inch (12") water main to connect the twelve-inch (12") water main on Warm Springs Road to the lower twelve-inch (12") water main along Warm Springs Creek.

11.5 Variable Frequency Drive ("VFD") Reimbursement. The parties acknowledge that in the original review of the redevelopment of the PUD Property proposed by Owner's predecessor, in 2005, it was recommended that a VFD be installed on the 150 hp booster pump at the Warm Springs Booster Station in order to help mitigate the fluctuations of pressures in the Warm Springs area until such time as a future water storage tank could be installed at the upper end of Warm Springs. Under that previous review it was determined that the addition of this development would decrease the pressures by up to 8 psi in the Warm Springs area under high demands when the upper end of the Warm Springs area is currently operating near minimum required pressure. As such, in 2006 Ketchum installed, at a cost of \$40,000.00, the vfd at the Warm Springs Booster Station. Ketchum agrees to provide Owner with a detailed accounting of the cost of the vfd. Owner hereby agrees to

reimburse Ketchum \$40,000.00 for the cost of installation of the vfd, which shall be paid in full within sixty (60) days after Ketchum's approval of the Phasing Plan.

11.6 Additional Water Supply and Storage. Subject to the provisions of Section 11.7 herein, Owner shall, at its own expense, obtain necessary water rights, develop a well (or wells, as necessary) and water storage facilities designed to meet all municipal -well and water storage requirements to serve the entire PUD Property in accordance with the Ketchum water facility plan/policies and all applicable laws and regulations and transfer said water system improvements to Ketchum. The municipal wells and their construction shall be subject to the approval of the Owner and the City Engineer.

11.7 Reimbursement. If Owner, at its cost and expense, obtains water rights, develops a well or water storage facilities, such as production wells, water storage tanks or reservoirs (but excluding local service and distribution lines) to serve the entire Project as required by paragraph 11.6, and excess municipal water rights or capacity exist and have been determined to benefit properties other than the PUD Property, or if Ketchum requires Owner to develop a portion of the domestic water system in excess of that necessary to serve the Project so as to allow Ketchum to serve other properties, and Owner agrees to do so, Ketchum and Owner shall, in good faith, negotiate an agreement to the effect that the portion of the costs in connection with such development of the water system for properties other than the PUD Property shall be reimbursed to Owner from the service connection charges collected from such other benefited property owners who otherwise have not paid or contributed their proportionate share toward development of the water system ("Water Reimbursement Agreement"). Such Water Reimbursement Agreement shall extend for a sufficient period of time following completion of the portion of the water system for which reimbursement is sought, with such time to be mutually agreed between Owner and Ketchum but in no event less than five (5) years nor more than twenty (20) years. Such Water Reimbursement Agreement shall provide, in part, that: (i) interest be paid to Owner at the then applicable municipal bond rate; (ii) Ketchum may charge benefited property owners other than Owner a reasonable administrative fee for handling the accounting, auditing, and payment of the reimbursement payments made to Owner; (iii) the Water Reimbursement Agreement shall be binding on Owner and Ketchum and their respective successors and assigns; and (iv) the Water Reimbursement Agreement may be recorded as an encumbrance against the benefited property(ies). In the event that the Parties are unable to agree on the terms of the Water Reimbursement Agreement, Owner shall have no obligation under Section 11.7 herein.

11.8 Municipal Irrigation Water System. Ketchum and Owner acknowledge that the irrigation, aesthetic, and fish propagation water rights appurtenant to the Project (the "Water Rights") may require transfer to Ketchum to provide maximum benefit to the Parties. Ketchum and Owner agree to negotiate in good faith a separate agreement addressing any such transfer (the "Water Rights Agreement"), which agreement should address, at a minimum, the following: (1) whether Owner's attorneys or Ketchum's attorneys will pursue the Water Rights decrees with the IDWR and/or in the Snake River Basin Adjudication; (2) if Ketchum's attorneys pursue the Water Rights, a reimbursement schedule for Ketchum's costs and fees incurred; (3) consideration for such transfer, which may

include an agreement by Ketchum to provide irrigation and/or non-potable water adequate to meet the Project's irrigation and aesthetic needs; and (4) construction and maintenance of the irrigation system. ~~The Water Rights Agreement shall be subject to approval by Council on the same timeline and in the same manner as the Phasing Plan set forth in Section 6.7.1 herein.~~ The Water Rights Agreement shall be subject to approval by the Council and in the same manner as the Phasing Plan set forth in Section 6.7.1 herein.

11.9 Drainage. Drainage system plans shall be submitted to the City Engineer for review and approval prior to the City Engineer signing the first final plat. The plans shall show how swales, or drain piping, will be developed in the drainage easements. The approved drainage system shall be constructed in the first phase of construction.

11.10 Geothermal Water Use. Owner and Ketchum agree that if geothermal water becomes available to either party, a use agreement, if practicable, may be negotiated between them for use of said water consistent with applicable local and state laws and regulations.

12. MUNICIPAL SEWER SYSTEM.

12.1 Sewer System Improvements. Owner shall engineer, construct and extend, at its sole expense, the municipal sewer system throughout the PUD and relocate the municipal sewer main currently running through the PUD Property as set forth in the PUD Development Plan. All such improvements shall be designed and constructed in accordance with the standards of and construction drawings and specifications approved by the Idaho Department of Environmental Quality and Ketchum. The final construction drawings and specifications approved by Ketchum shall control over the location and design of sewerage system improvements shown on the Large Block Plat. Upon completion of each of such improvements and acceptance thereof by Ketchum, these improvements shall become a part of the city sewer system and the city shall assume all responsibility therefor subject to Owner's warranty set forth in Section 9.1 herein.

12.2 Flow Analysis Contribution. Owner shall contribute to the reasonable cost of performing a flow analysis of the existing sewer trunk lines up to \$15,000. The contribution shall be made within sixty (60) days after approval of the Phasing Plan.

13. WORKFORCE HOUSING.

~~Owner, at its sole expense, shall construct on-site workforce housing units to house a minimum of 93 employees in at least 35,290 net square feet. The units shall be constructed in a combination of one-bedroom, two-bedroom, and four-bedroom ("co-housing") units, with an occupancy limit of two (2) persons per bedroom. Owner agrees to operate the workforce housing units under the following guidelines:~~

~~**13.1 Standards.** Prior to obtaining any Certificates of Occupancy for the Project, Owner shall provide to Ketchum the following: the minimum standards to be used to determine eligibility of employees for on-site housing; if full-time status is required for on-site housing, a definition of what~~

~~constitutes full time status; standards identifying how overflow of demand for on-site housing by employees will be handled; information about rental rates and whether subsidized and/or free rent to employees will be offered; and information on housing families with children and married couples.~~

~~13.2 Priority.—The units shall be available solely for employees of the Resort unless otherwise agreed by Owner.~~

~~13.3 Establishment of Rental Rates.—In computing the rental for the purpose of selecting tenants, there shall be included in the rental the average annual cost, as determined by Owner, to occupants of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental.~~

~~13.4 Design Criteria.—Design of the interior space of the workforce housing units shall follow and substantially conform to the design criteria established in Section 6.92 of the Blaine County Housing Authority guidelines in effect on the Effective Date.~~

~~13.5 Monitoring.—Owner agrees to provide to Ketchum an accounting of its actual workforce sufficient to enable Ketchum to determine if Owner is in compliance with this Agreement. Ketchum acknowledges and agrees that it shall not require Owner to divulge either trade secret or proprietary information and that all information provided shall be kept confidential and not disclosed by Ketchum to any third person unless such person is engaged to assist Ketchum in determining Owner's compliance and agrees in writing to maintain the confidentiality of the information. This accounting shall be provided on a yearly basis until final build-out of the Project to ensure Owner compliance with the on-site housing requirements provided for in this Agreement and with Ketchum's twenty-five percent (25%) workforce housing requirement. If at any time prior to build-out there is not enough dedicated on-site housing capable of housing at least twenty-five percent (25%) of Owner's full-time employees, Owner shall use commercially reasonable efforts to provide off-site temporary housing for that number of employees necessary to fulfill the twenty-five percent (25%) workforce housing requirement contained in the Ketchum City Code.~~

~~13.6 Release and Waiver.—By voluntarily entering into this Agreement, Owner, and its successors in interest, acknowledge and agree that they are hereby waiving any and all claims they may have against Ketchum relating to or arising from the imposition of the requirement for workforce housing units, except for claims associated with Ketchum's obligations under this Agreement or under applicable state and/or federal law.~~

In lieu of the Workforce Housing requirement under the City Code, Owner shall establish a dedicated Workforce Housing fund ("Fund") with revenue derived from Owner's Gross Sales (as defined below). The amount of revenue would be one-half of one percent (0.50%) of Gross Sales such that the Fund maintained a minimum balance of \$250,000. Owner agrees to make an initial contribution of \$60,000 to the Fund within two months after the date of the certificate of occupancy for the hotel referenced in Section 4.3.2. In the event that a \$250,000 balance in the Fund is not required to meet the foreseeable needs of Eligible Hotel Employees, as reasonably determined by the City, the minimum balance shall be reduced or suspended accordingly.

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The Fund shall be administered by the Blaine County Housing Authority ("Authority"), or other nonprofit housing organization designated by the City and approved by Owner. The Owner, City and the Authority shall mutually agree upon the administrative costs, policies and procedures for the Fund, and all amendments thereto, after the issuance of a building permit for the hotel structure and prior to the issuance of a certificate of occupancy for said hotel. The policies and procedures shall be consistent with the requirements of this Agreement. The Authority shall maintain the Fund in a segregated account ("Workforce Housing Account") used solely for the benefit of Eligible Hotel Employees (as defined below) and structured to provide Eligible Hotel Employees residing in the City assistance at a ratio 5% greater than assistance for rent outside the City. Assistance payments shall not be made to Eligible Hotel Employees but rather to landlords, lenders or other third parties providing the housing to the Eligible Hotel Employee.

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"Eligible Hotel Employee" means those hotel employees who meet the guidelines for eligibility, income, monthly rent and assistance level established by the United States Department of Housing and Urban Development for Blaine County, Idaho.

"Gross Sales" means the gross selling price of all merchandise or services sold, or delivered, in the ordinary course of business at the hotel (not including any other place of business), whether for cash or on credit, except for the following: (i) the selling price of all merchandise returned by customers and accepted for full credit, or the amount of discounts, refunds, and allowances made on such merchandise, (ii) merchandise returned or transferred to another store owned by or affiliated with Owner, (iii) gift certificates, or similar vouchers, until such time as they shall have been converted into a sale by redemption, (iv) sales and use taxes, and other similar taxes now or in the future imposed on the sale of merchandise or services, and (v) sales of real property, fixtures, equipment, or personal property that are not merchandise sold in the ordinary course of business at the hotel.

Owner shall furnish to the City a statement of Gross Sales within fifteen (15) days after the end of each calendar quarter, and an annual statement of Gross Sales within twenty (20) days after the end of each calendar year. Each statement shall be signed by Owner or its authorized representative. Owner shall keep full and accurate books of account, records, cash receipts, and other pertinent data showing its Gross Sales. City shall be entitled within one (1) year after expiration or termination of a statement period to inspect and audit all of Owner's books of account, records, cash receipts, and other pertinent data relating to Gross Sales, so City can ascertain Owner's Gross Sales. Owner shall cooperate fully with City in making the inspection. If the audit shows that there is a deficiency in the payment of any moneys to the Fund, the deficiency shall become immediately due and payable. The costs of the audit shall be paid by City unless the audit shows that Owner understated Gross Sales by more than five percent (5%), in which case Owner shall pay all costs of the audit. City shall keep any information gained from such statements, inspection, or audit confidential and shall not disclose it other than to carry out the purposes of this Agreement.

14. COMMUNITY HOUSING FUND; REAL ESTATE TRANSFER FEES.

The Community Housing requirement, per the definition of "hotel" in Ketchum City Code, is

hereby waived in lieu of the following: Ketchum and Owner mutually agree to establish a dedicated Community Housing fund with revenue derived from: (1) urban renewal agency ("URA") tax increment revenue derived from the Project; and (2) a voluntary real estate transfer fee to mitigate Community Housing impacts from the Project. In the event the URA does not agree to participate in creating the Community Housing Fund, Ketchum and Owner shall establish said fund absent URA's participation.

14.1 Transfer Fees. In order to fund the Community Housing fund, Owner hereby grants to Ketchum a license to charge at the time of conveyance one-half of one percent (0.50%) of the Gross Selling Price of a Lot or Unit within the Project (the "Transfer Fee") commencing with the sale of the first Lot or Unit to a bona fide third party purchaser and on each subsequent sale or resale of a Lot or Unit. Said license runs with the land and is irrevocable absent Ketchum's prior written approval upon a duly noticed public meeting and public hearing to so amend this portion of this Agreement. "Unit" as used herein shall include condominium suites and fractional interest properties. The Transfer Fee shall be determined based upon the "Gross Selling Price" of the Lot or Unit. The Gross Selling Price shall include the total cost to the purchaser of the Lot and of the improvements thereon, or the Unit; including, without limitation, all residential or commercial buildings, but excluding personal property, commissions, title insurance premiums, escrow fees, assessments, dues, taxes and title transfer fees. The Transfer Fee shall be collected and paid to Ketchum by the escrow agent engaged to close the purchase and sale transaction. If there is no escrow established, each Person buying a Lot or Unit shall provide Ketchum with a copy of the purchase and sale agreement for the Lot and/or Improvements thereon, or Unit or similar materials requested by Ketchum, as necessary to allow Ketchum to calculate the Gross Selling Price. Monies obtained from such Transfer Fee shall be placed in a segregated interest bearing account (the "Ketchum Community Housing Fund") and may be used by Ketchum, in its sole discretion, to assist valley residents with a purchase of a home in Ketchum, including but not limited to: (1) mortgage down payment assistance; (2) permanent affordability of existing community housing units in Ketchum; and (3) other tools to increase the community housing base in accordance with standards acceptable to Owner.

The foregoing Transfer Fee shall be levied notwithstanding the fact that the Ketchum Community Housing Fund may have then accumulated a balance. In no event will any Purchaser have a right of set-off against any such Purchaser's responsibility to pay assessments or other fees as set forth in the CC&Rs.

All Transfer Fees shall be paid at the closing of the transfer and if not paid shall be a continuing lien upon each Lot or Unit total paid. For the purposes of this subsection, the sale or transfer of a Lot or Unit shall mean the transfer of fee title to a Lot, or a leasehold interest or other possessory right in a Unit exceeding sixty (60) months cumulative, in duration.

Ketchum acknowledges and agrees no Transfer Fee shall be due upon a bulk sale of Lots by Owner to a merchant builder, or upon the transfer of a Lot or Unit to a related party which shall include (i) an entity owned at least 51% by the transferor, (ii) the holders of at least 51% of the ownership interest of a transferor which is an entity, and (iii) a family trust, partnership, or other entity comprised of persons related to the transferor. Nothing herein shall be deemed or construed to relieve the merchant builder or other exempt transferee from the obligation to pay the Transfer Fee upon a subsequent sale of the subject

Lot or Unit.

Owner acknowledges and agrees that the Transfer Fee provisions of this Agreement are enforceable by specific performance even in the event said fee may be deemed unlawful or unenforceable by a court of competent jurisdiction.

14.2 URA Revenue. Ketchum shall pay to the Ketchum Community Housing Fund an amount equal to the Transfer Fees deposited by Owner in the Ketchum Community Housing Fund with URA revenues from the Project as long as Ketchum receives URA revenue from the Project. If the URA does not agree to participate in creating the Ketchum Community Housing Fund, Ketchum may, in its annual appropriations, contribute to said fund. If Ketchum or URA decides not to appropriate funds for the Ketchum Community Housing Fund in any fiscal year, no penalty or obligation to do so is levied upon Ketchum. In the event Ketchum or the URA decide not to appropriate funds for the Ketchum Community Housing Fund in two (2) consecutive fiscal years, then in that event, notwithstanding any contrary provision of Section 14.1, Owner shall have the right, but not the obligation, to redirect future transfer fees to another housing related non-profit Ketchum community organization, provided, however, that the Ketchum City Council shall have the right to approve such alternate community housing organization. Ketchum's right of approval granted in this Section shall not be unreasonably withheld, delayed or conditioned. Owner shall be entitled to an accounting of the Ketchum Community Housing Fund annually and at other times upon reasonable request.

15. COMMUNITY EDUCATION.

In keeping with Ketchum's desire to promote and encourage local, "hands-on" opportunities for persons enrolled in higher education programs related to the hospitality and tourism industries, Owner agrees to investigate opportunities for establishing such educational programs or services, which may include on-site college courses or internships on the PUD Property.

16. ACTIVE RECREATION.

Owner, at its sole expense, shall construct trails and pedestrian paths as set forth in this Agreement and in the PUD Development Plan. ~~In addition, Owner shall construct a nine-hole golf course as shown on the PUD Development Plan and donate funds to mitigate impacts to tennis and other recreation programs in Ketchum, as more specifically provided in Section 16.2 herein. Owner and Ketchum agree to consider refurbishing the existing decommissioned tennis courts on the PUD Property, with costs to be split equally between the Parties, up to a maximum of \$80,000 (or \$40,000 each), and agree to enter into a separate agreement for interim use of the existing tennis courts on the PUD Property.~~

16.1 Local Golf Program. ~~The golf course constructed on the PUD Property shall be open to the public, with a "Locals Golf Program" provided as follows: (i) tee times will be every ten (10) minutes, or six (6) per hour, with advanced booking required for all tee times (advanced booking means one week from the desired date of play); (ii) the golf course will have "locals" pricing of no~~

less than 20% off the regular resort rate; (iii) the peak hours for the golf course will be 8:00-10:00 a.m. and 4:00-6:00 p.m., and the peak golf season will be from June 20 to Labor Day (shoulder season will be from opening day to June 20 and Labor Day to closing day); (iv) one tee time is considered a group of no more than four (4) golfers, and the pro shop will reserve the right to pair local golfers to create more efficient tee times; (v) local tee times will be published seasonally in the local newspaper and made available on line; (vi) walkers will be permitted; and (vii) all adjustments in locals pricing will be tied to the CPI. The Locals Golf Program may include one or more of the following special events or programs: junior golf play days; ladies golf play days;

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Wann Springs Championship tournament; 9, Wine and Dine; and charity tournaments. As used in this Agreement, "Locals" means: (i) full time Ketchum residents; (ii) persons employed full time in Ketchum; or (iii) persons owning a business in Ketchum.

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16.1.1 Weekday Rules for Peak Season. Locals will be allowed to have access to the golf course every day during the week. Local access will be limited to two (2) tee times back to back per hour during the peak hours of every day of the week. For the remainder of the day, locals will be allowed up to three (3) tee times per hour. Locals may call the day before, after 5:30p.m., and if tee times are open, they will be allowed to occupy up to three (3) tee times during peak hours and up to four (4) tee times during non-peak hours.

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16.1.2 Weekend Rules for Peak Season. Locals will be allowed to have access to the golf course both days of the weekend. Local access will be limited to two (2) tee times per hour during the peak hours of Saturday and Sunday. During non-peak hours, locals will be allowed up to three (3) tee times per hour. Locals may call the day before, after 5:30 p.m., and if tee times are open, they will be allowed to occupy up to three (3) tee times during peak hours and four (4) tee times during non-peak hours.

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16.1.3 Weekday and Weekend Rules for Shoulder Seasons. Locals will be allowed three (3) tee times per hour during peak hours. During non-peak hours, locals will be allowed up to five (5) tee times per hour. Locals may call the day before, after 5:30p.m., and if tee times are open, they will be allowed to occupy up to four (4) tee times during peak hours and five (5) tee times during non-peak hours.

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16.1.4 Twilight Rounds. Twilight rounds will be from 6 PM the last tee time each day, will require a tee time, and will be subject to tee time rules as stated in Sections 16.1.1, 16.1.2, and 16.1.3 herein. Locals will receive special pricing of no less than 40% off the resort rate for Twilight Rounds.

Owner shall construct a golf practice facility ("Facility") as depicted on the plan attached hereto as Exhibit "K". The Facility shall be open to the public and shall include a "Locals Golf Program" consisting of the following:

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(a) (i) the Facility will have "locals" pricing of no less than 20% off the regular resort rate; (ii) the peak hours for the golf course will be 8:00-10:00 a.m. and 4:00-6:00 p.m., and the peak golf season will be from June 20 to Labor Day (shoulder season will be from opening day to June 20 and Labor Day to closing day); (iii) one tee time is considered a group of no more than four (4) golfers, and the pro shop will reserve the right to pair local golfers to create more efficient tee times; (iv) tee times for Locals will be published seasonally in the local newspaper and made available on-line; and (v) walkers will be permitted. The Locals Golf Program may include one or more of the following special events or programs: junior golf play days; ladies golf play days; Warm Springs Championship tournament; 9, Wine and Dine; and charity tournaments. As used in this Agreement, "Locals" means: (i) full-time Ketchum residents; (ii) persons employed full time in Ketchum; or (iii) persons owning a business operated in Ketchum not created for the purpose of obtaining status as a "Local".

(b) Weekday Rules for Peak Season. Locals will be allowed to have access to the golf practice facility, or portions thereof, every day during the week. Local access will be limited to two (2) tee times back to back per hour during the peak hours of every day of the week. For the remainder of the day, locals will be allowed up to three (3) tee times per hour. Locals may call the day before, after 5:30 p.m., and if tee times are open, they will be allowed to occupy up to three (3) tee times during peak hours and up to four (4) tee times during non-peak hours.

(c) Weekend Rules for Peak Season. Locals will be allowed to have access to the golf practice facility both days of the weekend. Local access will be limited to two (2) tee times per hour during the peak hours of Saturday and Sunday. During non-peak hours, locals will be allowed up to three (3) tee times per hour. Locals may call the day before, after 5:30 p.m., and if tee times are open, they will be allowed to occupy up to three (3) tee times during peak hours and four (4) tee times during non-peak hours.

(d) Weekday and Weekend Rules for Shoulder Seasons. Locals will be allowed three (3) tee times per hour during peak hours. During non-peak hours, locals will be allowed up to five (5) tee times per hour. Locals may call the day before, after 5:30 p.m., and if tee times are open, they will be allowed to occupy up to four (4) tee times during peak hours and five (5) tee times during non-peak hours."

(e) Access Restrictions. Owner may reasonably restrict access to the golf practice facility to conduct golf school(s) or other formal instruction.

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~~16.2 Recreation Contribution. Owner agrees to a financial donation of five hundred thousand dollars (\$500,000.00) to Ketchum that may be used either for the replacement of the decommissioned tennis courts on the PUD Property, a children's splash park or skate park, or other recreational facilities and needs Ketchum deems appropriate. Such donation shall be made in installments the first of which shall be in the amount of two hundred thousand dollars (\$200,000.00) and paid within one (1) year after Ketchum's approval of the Phasing Plan which is submitted by Owner with its first application for Design Review. The balance of three hundred thousand dollars (\$300,000.00) shall be paid in three (3) annual installments of one hundred thousand dollars (\$100,000.00) each on the anniversary date of the payment of the first two hundred thousand dollars (\$200,000.00).~~

Owner agrees to pay \$300,000 into a recreation mitigation fund to be established by the City to mitigate impacts from the Project to active recreation, as reasonably determined by the City. The payment shall be made in two installments of \$150,000 each. The first installment payment shall be made at the time that the certificate of occupancy is issued for the hotel described in Section 4.3.2, and the second installment payment shall be made within one year thereafter. Owner shall furnish the City with a bond, letter of credit, set-aside letter or other security for the payment obligation. Owner may impose a guest fee to recover all or some of the recreation contribution set forth herein.

17. ELECTRIC POWER.

All electric power on-site serving the Project shall be underground, with the exception of pad-mounted transformers and other facilities necessary to underground power facilities. Owner acknowledges the Franchise Agreement between Ketchum and Idaho Power Company prohibits above ground installation of new electric transmission lines. Owner agrees to pay a proportionate share of the cost of undergrounding electric power lines off-site along Warm Springs Road to accommodate construction of the Project, including the roundabout at Warm Springs Road and Flowers Drive. Ketchum acknowledges that upgrading and undergrounding the electric power lines is beneficial to the general public and properties other than the PUD Property. Ketchum and Owner shall, in good faith, negotiate an agreement to the effect that the portion of the costs in connection with such development of the electric power lines benefitting properties other than the PUD Property shall be paid by the following, in order of preference: (1) the franchise agreement fund; (2) a local improvement district ("LID") formed by Ketchum for that purpose; (3) by URA funds; (4) Ketchum general funds; or (5) reimbursement to Owner from the service connection charges collected from such other benefited property owners who otherwise have not paid or contributed their proportionate share toward upgrading and undergrounding the electric power lines. In all instances, these preferences are subject to Council or URA Board approval and appropriation which shall be made in accordance with State law.

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18. GREEN DEVELOPMENT PRACTICES.

Owner intends to employ the following "green" building concepts, alone or in combination, in some or all of the Project, which will be more fully described in Design Review: (i) passive solar design, (ii) natural and non-toxic materials, (iii) indoor water features, electro-magnetic and radon mitigation, (iv) regional and renewable building materials, including Douglas Fir timber from fuel reduction onsite, (v) energy efficient radiant heating and cooling systems, including geothermal water, if available to Owner, and ground source heat pump systems; (vi) appropriate amounts of living plants; (vii) water use reduction of laundry activity; (viii) minimizing fertilizer and pesticide usage on the golf course; (ix) and providing organic bedding and bath products in the guest rooms.

Owner's employment of the aforesaid "green" building concepts and those in Sections 15.1 and 15.2 of the Second Update to the Application Submittal dated November 3, 2008 will be evaluated during the Design Review process.

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19. RECORDATION OF LARGE BLOCK SUBDIVISION.

Owner shall record the Large Block Plat, and any amendment with the Office of the Blaine County Recorder within one year of the date of its final approval and approval of the POD-Conditional Use Permit by Ketchum, each with conditions acceptable to Ketchum. The PUD Development Plan Conditional Use Permit shall be referenced on the Large Block Plat.

20. FINANCIAL ASSURANCE AND ASSISTANCE.

20.1 Hold Harmless. Owner is responsible for all costs associated with the construction and maintenance of the Project as approved in the Findings and described herein, and hereby holds Ketchum harmless for any financial obligations related thereto.

20.2 Performance, Payment and Reclamation Bonds. Owner shall purchase performance, payment and/or reclamation bonds in amounts equal to 125% of the costs, as reasonably estimated by the City Engineer, of relocating, rehabilitating, reclaiming and/or reconstructing any existing on-site or off-site infrastructure improvements which are part of the Project that are left unfinished, abandoned or defectively constructed. In lieu of bonds or cash escrow deposits for these improvements, Owner may furnish to Ketchum an irrevocable letter of credit or set-aside letter in a form approved by Ketchum certifying that adequate funds are and will remain available at a reputable financial institution authorized to do business in the state of Idaho. The irrevocable letter of credit or set-aside letter shall be in effect for the length of time required to complete said improvements, and in a form to allow Ketchum to procure the funds irrevocably committed to complete the required improvements if construction of those improvements are unfinished or defective. Ketchum may lien the PUD Property for any costs it incurs for abating nuisances as set forth in §§50-331 through 50-335, Idaho Code.

20.3 Public Funding Opportunities. Ketchum agrees to reasonably cooperate with Owner in exploring public funding opportunities for financial assistance with any of Owner's obligations under this Agreement.

20.4 Right of Entry. Owner hereby grants Ketchum a license to enter upon the PUD Property, during business hours and upon reasonable advance notice, with Owner or Owner's representatives having the right to be present during such times, to (a) inspect the same; (b) determine if Owner is complying with this Agreement, and (c) to undertake the cure of any default of Owner; provided, however, all such cures shall be performed as promptly as possible and so as to cause the least interference to guests, invitees and other occupants of property in the Project. Ketchum agrees to indemnify, defend and hold harmless Owner from any and all liability, claims, damages, expenses, judgments, proceedings and causes of action of any kind whatsoever, arising out of Ketchum's negligent exercise of the license granted herein.

21. SUBSEQUENT FILINGS AND APPROVALS.

Owner shall submit and Ketchum shall consider all subsequent applications for development of

the Project in accordance with the approved PUD Development Plan, PUD-Conditional Use Permit, the approved Land Use Applications and this Agreement. Nothing contained herein is intended to limit the police powers of Ketchum in reviewing any subsequent applications, but in the exercise of its discretion, Ketchum shall act in a manner which is not inconsistent with the approved PUD-Conditional Use Permit, PUD Development Plan, the approved Land Use Applications and this Agreement.

22. SALE OR TRANSFER OF THE PROPERTY.

This Agreement, and any Memorandum of Agreement recorded in the Office of the Blaine County Recorder pursuant to Section 35 herein, shall run with the land comprising the PUD Property, and shall be binding upon and benefit Owner, its assigns, and any successor in interest to any portion of the PUD Property, as provided in this Agreement, with the exception of the purchasers of lots, villas, condominium or townhouse units therein for which final occupancy permits have been issued by Ketchum. Owner agrees for itself, its successors and assigns that the CC&Rs recorded for the Project shall contain the covenants set forth in Section 4.4 herein, to be observed by Owner, its successors and assigns. The CC&Rs relating to the continuing obligation of all subsequent purchasers of any interest in the PUD Property to abide by the requirements of Ketchum approvals therefore cannot be amended absent Council's prior written approval. Upon conveyance of a lot, villa, condominium unit or townhouse unit to a third party, except as otherwise provided in Section 14.1, and this Section, the lien and encumbrance of this Agreement shall be automatically released from said lot, villa, and unit and a prospective purchaser and all title insurers are entitled to rely upon said release. In the event that Owner or a successor in interest to Owner, sells or transfers the PUD Property, or any portion thereof, written notice of said transaction shall be given to Ketchum no less than sixty (60) days prior to closing. This requirement shall not apply to the sale and/or transfer of individual lots, villas, condominium units or townhouse units. Individual lot, townhouse, or condominium owners are not intended to have any ownership interest, third-party beneficiary, easement or other interest in any of the terms, conditions or obligations of this Agreement.

23. AMENDMENT OF AGREEMENT AND CHANGES TO DEVELOPMENT PLAN.

This Agreement shall be amended or cancelled, in whole or in part, only by the mutual consent of the Parties, executed in writing after proper notice and public hearing before the Council. The Parties acknowledge that the site plans, building locations, floor plans, elevations and design of the buildings as shown on the PUD Development Plan are conceptual and will be refined prior to submission for Design Review approval and/or of final construction drawings for building permits and other permits.

24. REIMBURSEMENT.

The Parties acknowledge that the size, location and development potential of the Property, together with the public interest in the Project, may require analysis and review of subsequent development applications and/or requested amendments (the "Supplemental Applications") to this Agreement that may place an atypical burden upon Ketchum and its resources. In order to facilitate and expedite such analysis, Owner agrees to reimburse Ketchum for the services of

appropriate land use planners, legal counsel, engineers and other consultants ("Consultants" or "Consultant") retained by Ketchum, with Owner's prior approval, to process the Supplemental Applications.

25. SUPERSEDING PRIOR AGREEMENTS.

This Agreement supersedes and extinguishes all prior agreements between the parties with regard to the PUD Property or any portion thereof.

26. DEFAULT AND ENFORCEMENT.

In the event either party, their respective heirs, successors, assigns or any other person acquiring an interest in the property, fails to faithfully comply with all of the terms and conditions included herein, the same shall constitute a default entitling the non-defaulting party to all legal and equitable remedies available.

26.1 Events of Default. A petition filed by Owner under any bankruptcy, reorganization, arrangement, insolvency, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, that is not dismissed within ninety (90) days after such filing shall constitute an event of default of this Agreement and shall entitle Ketchum to seek all available legal and equitable remedies.

26.2 Waiver. A waiver by a party of any default by the other party of any one or more of the covenants or conditions hereof shall apply solely to the breach or breaches so waived and shall not bar any other rights or remedies or apply to any subsequent breach of any such or other covenants and conditions.

26.3 Remedies and Specific Performance. In the event of a material violation of this Agreement or the PUD Conditional Use Permit, or any material violation of any condition thereof, or the Findings, the Parties shall have the right, without prejudice, to specific performance, or any other rights or remedies available under the Ketchum City Code or Idaho law, including but not limited to the right to demand the non-defaulting party to cure such default or enjoin violation and otherwise enforce the requirements contained in this Agreement. Ketchum shall also have the right to revoke the PUD Conditional Use Permit issued pursuant to this Agreement and the PUD Findings in the event of a material violation of this Agreement or the PUD Conditional Use Permit which is not cured, by motion of the Council after notice and an opportunity to cure, followed by a due process hearing upon at least sixty (60) days written notice to Owner.

26.4 Right to Cure. In the event of a material breach of this Agreement or a material breach of the PUD Development Plan, the Parties agree that Ketchum and Owner shall have sixty (60) days after delivery of notice of said breach to cure and correct the same prior to the non-breaching party seeking any remedy provided for herein; provided, however, in the event that the default or breach cannot with diligence be cured within such 60-day period, if the defaulting party shall commence to cure the same within such 60-day period, and thereafter prosecute the cure of same with diligence, then the time within

which such breach may be cured shall be extended for such period as necessary to complete the cure.

27. NO PRECEDENT.

The issuance of this PUD and Conditional Use Permit shall not be considered a binding precedent for the issuance of other conditional use permits. This permit is not transferable from one parcel of land to another.

28. POLICE POWERS.

Nothing contained herein is intended to limit the police powers of Ketchum or its discretion in reviewing subsequent applications regarding development and construction of the PUD Property or the workforce housing. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation, including without limitation, applicable building codes, fire codes, zoning ordinances, subdivision ordinances, or comprehensive plan provisions, unless expressly provided herein.

29. TIMELINES.

Time and timely performance are of the essence of this Agreement.

30. RELATIONSHIP OF PARTIES.

It is understood the contractual relationship between Ketchum and Owner is such that Owner is not the agent, partner, or joint venture of Ketchum.

31. FORCE MAJEURE.

If either party hereto is delayed in the performance of any of its obligations hereunder because of inclement weather; material shortages; labor shortages; unavailability of gas, electric or other utilities through no fault of Owner; dispute or strike; civil strife; acts beyond the control of the delayed party including, market conditions, lack of credit facilities, acts of God; and actions by the United States of America or the State of Idaho, or Ketchum or any of their agencies, the time of performance for completion of such amenity or improvement shall be extended for the same time as lost by the cause hereinabove set forth.

32. ATTORNEY FEES AND COSTS.

If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorney fees and costs incurred with regard to such action including, without limitation, any appeals.

33. NOTICES.

All notices required or provided for under this Agreement shall be in writing and delivered in

person or sent by certified-mail, postage prepaid. Notices- required to be given to Ketchum shall be addressed as follows:

City of Ketchum
P.O. Box_2315
Ketchum, Idaho 83340

Notices required to be given to Owner shall be addressed as follows:

Helios Development LLC
~~e/o DDRM-Greatplace LLC~~
~~333 South Main Street, Suite 325~~
~~P.O. Box 4154~~
~~Park City, Utah 84060~~
Attention: Mike Barnard
Post Office Box 5151
Santa Barbara, CA 93150-5151

With a copy to:

Lawson, Laski, Clark & Pogue, PLLC
Attention: Edward A. Lawson
675 Sun Valley Road, Suite A
P.O. Box 3310
Ketchum, Idaho 83340

A party may change the address by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

34. NO WAIVER.

In the event Ketchum or Owner do not strictly comply with any of their obligations or duties herein, thereby causing a default of this Agreement, or any forbearance of any kind that may be granted or allowed by Ketchum or Owner to the other under this Agreement shall not in any manner nor in any way be deemed or construed or considered as waiving or surrendering any of the conditions or covenants of this Agreement or any subsequent default.

35. RECORDATION.

This Agreement, including subsequent amendments thereto, shall not be recorded in the Office of the Blaine County Recorder, Hailey, Idaho. However, a memorandum of this Agreement in the form attached hereto as Exhibit "L"~~a form approved by Ketchum and Owner~~ shall be recorded at the office of the Blaine County Recorder, Hailey, Idaho, and a complete copy to be kept as a public record at the Ketchum City Hall.

36. PARTIAL INVALIDITY.

In the event any portion of this Agreement or part thereof shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions hereunder, or parts thereof, shall remain in full force and effect.

37. ENTIRE AGREEMENT.

This Agreement constitutes the full and complete Agreement of and between the parties hereto. No representations or warranties made by the Parties, or their officers, employees or agents shall be binding unless contained in this Agreement or subsequent written amendments thereto.

38. NO PRESUMPTION.

No presumption shall exist in favor or against any party to this Agreement as a Result of the drafting and preparation of this Agreement.

39. NO THIRD PARTY BENEFICIARIES.

Nothing contained herein shall be deemed or construed to create any third party beneficiaries or third party rights.

40. RULES OF CONSTRUCTION.

The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive. The captions to paragraphs of this Agreement are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs. Where there is a conflict between the terms of the Findings and this Agreement, including any amendments thereto, the terms of this Agreement shall control.

41. CHOICE OF LAWS.

This Agreement shall be construed in accordance with the laws of the state of Idaho in effect at the time of the execution of this Agreement. Any action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Blaine County, Idaho.

42. EXHIBITS.

Attached to this Agreement and made a part of this Agreement by reference are the following Exhibits:

A -Legal Description of Annexation Property

- B -Legal Description of the PUD Property
- C -Annexation Findings
- D-Map of Bench Areas
- E – PUD Large Block Preliminary Subdivision Plat
- F- Large Block Plat Findings
- G – PUD Findings, and amendments
- H- Tent Diagram, Drawing A.6
- I- Four-Star and Five-Star Standards Chart
- ~~J- March 30, 2009 Power Point Presentation~~
- ~~JK- Design Review Deliverables~~
- ~~K- Golf Facility Plan~~
- L – Memorandum Of Agreement

Comment [EL1]: name

43. RECITALS INCORPORATED.

The recitals set forth ~~in~~ this Agreement are hereby incorporated herein by reference.

44. AUTHORITY TO EXECUTE.

Each of the persons executing this Agreement represent and warrant that he has the lawful authority and authorization from their respective entities to execute this Agreement, as well as all applications, plats and other documents required hereunder for and on behalf of the entity executing *this* Agreement.

45. AGREEMENT SUBJECT TO ANNEXATION AND ZONING.

This Agreement is subject to and shall become effective upon the Effective Date, subject to annexation of the real property described in Exhibit- A with the zoning designations set forth on the Large Block Plat. An affidavit of the Owner, as owner of the PUD Property, agreeing to submit said real property to *this* Agreement and to the provisions of Idaho Code Section 67-6511A and the applicable provisions of the Ketchum Municipal Code shall be provided by Owner and incorporated herein by reference.

46. RELIANCE BY KETCHUM.

This Agreement is intended by Owner to be considered by Ketchum as part of Owner's Request for Annexation and Land Use Applications. Owner acknowledges and intends for Ketchum to consider and rely upon this Agreement in Ketchum's review and consideration of said annexation request and the Land Use Applications.

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This Agreement is executed by the Parties as of the date first above written.

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Helios Development, LLC, a Delaware limited City of Ketchum, Idaho, a municipal

liability company corporation

By: Zon Development, LLC, a Delaware
limited liability company, its managing member

By: Diane Boss, Authorized Agent By: Randy Hall, Mayor

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