

LAWSON LASKI CLARK & POGUE, PLLC
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September 14, 2011

By Hand

Ms. Rebecca Bundy
City Of Ketchum
POB 2315
Ketchum, Idaho 83340

Re: Warm Springs Ranch Resort
Our File No. 10612-001

Dear Rebecca:

Enclosed with this letter are seven copies of a proposed Third Amendment to the Warm Springs Ranch Resort Development Agreement redlined to show the changes made to the prior draft addressing the Commissions' request for additional information regarding the golf and tennis facilities. In addition, we are enclosing seven full size and seven reductions of Allen + Philp's drawings depicting the proposed changes to the master-development plan.

As you are aware Helios has been working closely with Dave Pelz to develop the golf practice facility. The effort has generated a concept for a "Dave Pelz Final 40" school which will focus on the challenges facing a golfer from 40 yards in to the hole. The facility will include 10-12 greens with related bunkers and rough areas from which to instruct and practice the shots a golfer must know to successfully meet the shot challenges from 40 yards in. A concept drawing showing the current thinking behind the school is included with this letter.

Hopefully, the Commission will find the enclosed responsive to its request and enable it to make a recommendation to the Council at the conclusion of its next meeting. In the meantime, if you have any questions or concerns please feel free to contact either Mike Barnard or me.

Sincerely,

Ms. Rebecca Bundy
September 14, 2011
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LAWSON LASKI CLARK & POGUE, PLLC

A handwritten signature in black ink, appearing to read "E. Lawson", with a horizontal line extending to the right.

Edward A. Lawson

Cc: M. Barnard
M. Philp, AIA
S. Buxton, Esq.

DRAFT

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| RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO: Edward A. Lawson Lawson Laski Clark & Pogue, PLLC Post Office Box 3310 Ketchum, Idaho 83340 | |
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THIRD AMENDMENT TO WARM SPRINGS RANCH RESORT ANNEXATION AND DEVELOPMENT AGREEMENT

This Third Amendment ("Third Amendment") is made as of _____, 2011 by and between the City of Ketchum, Idaho ("Ketchum"), a municipal corporation, and Helios Development, LLC, a Delaware limited liability company ("Owner"), and together with Ketchum, the "Parties").

1. Recitals. This Amendment is made in contemplation of the following facts and purposes:

1.1 Ketchum and Owner are parties to a Warm Springs Ranch Resort Annexation and Development Agreement ("Agreement"), dated August 11, 2009, and recorded on August 13, 2009 in the records of Blaine County, Idaho as Instrument No. 570190, and first amended by instrument dated May 10, 2010 and recorded on June 2, 2010 as Instrument No. 577973, records of Blaine County, Idaho and next amended by instrument entitled Second Amendment, dated January 18, 2011, and recorded on March 7, 2011, as Instrument No 585686, records of Blaine County, Idaho, under and by virtue of which the Parties established certain rights and obligations with regard to the annexation of the real property commonly known as the Warm Springs Ranch Resort and more particularly described in Exhibit "A" of the Agreement.

1.2 The parties desire to amend and supplement the Agreement as hereinafter provided.

2. Amendments. In view of the foregoing, the Parties agree to amend and supplement the Agreement, as follows:

2.1 Section 13 (Workforce Housing) is deleted and the following is substituted therefore:

"If Owner applies for a building permit on or before June 1, 2014 to construct improvements as part of the Project, the Workforce Housing requirement under the City Code, is hereby unconditionally waived and Owner shall have no obligation to provide said Workforce Housing or any portion of it. If Owner does not apply for a building permit by the stated deadline then 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 until \$250,000 was paid to the Fund. "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 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.

The Fund would be maintained by Owner in a segregated account ("Workforce Housing Account") and would be used solely to subsidize housing costs of eligible hotel employees (as defined below). "Eligible Employee" means _____. Upon presentation to Owner of a written application for housing assistance from an Eligible Employee Owner shall disburse from the Workforce Housing Account to the landlord, mortgagee or third party providing housing to the Eligible Employee up to \$, or % of said Eligible Employee's housing costs."

2.2 The second sentence of Section 16 (Active Recreation) and all of Section 16.1 (Local Golf Program) are deleted and the following is substituted therefore:

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

(i) the golf course 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; 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".

16.1.1 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.

16.1.2 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.

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 5:30 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.

16.1.4 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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2.3 Section 16.2 (Recreation Contribution) is deleted in its entirety and the following substituted therefore:

"Owner shall construct two tennis courts in the first phase of the Project and one additional tennis court in each of the subsequent two phases of the Project. The tennis courts shall be constructed in the locations depicted on the plan attached hereto as Exhibit " __ ". The tennis courts and related facilities ("Tennis Facilities") constructed on the PUD Property shall be open to the public, with a "Locals Tennis Program" provided as follows:

(i) use shall be allowed up to two hours twice per week, with advanced booking

required for all use exclusively through the Ketchum Recreation Department; and (ii) the Tennis Facilities shall have locals pricing of no less than 20% off the regular resort rate.

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 and not formed for the purpose of attaining status as a "Local".

3. **Construction.** This Third Amendment and the Agreement constitute one agreement between the Parties. In the event of any inconsistency between this Third Amendment and the Agreement the terms of this Third Amendment shall govern. All capitalized terms in the Agreement shall have the meaning in the Agreement when used in this Third Amendment, unless otherwise defined herein.

4. **Ratification.** The Agreement, as amended and supplemented by this Third Amendment, is hereby ratified and affirmed.

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

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

City of Ketchum, Idaho, a municipal corporation

By: _____
Anton P. Vonk, Manager

By: _____
Randy Hall, Mayor

STATE OF IDAHO,)
) ss.
County of Blaine)

On this ____ day of _____, 2011, before me, a Notary Public in and for said State, personally appeared Randy Hall, Mayor of the City of Ketchum, Idaho, known or identified to me to the person whose name is subscribed to the within instrument as the Mayor of the City of Ketchum, Idaho, and acknowledged to me that he executed the same as Mayor of the City of Ketchum, Idaho.

Notary Public for Idaho
Residing at _____
Commission expires _____

State of _____)
) ss.
County of _____)

On this ____ day of _____, 2011, before me, a Notary Public in and for said State, personally appeared Anton P. Vonk, known or identified to me to be the Manager of Zon Development, LLC, a limited liability company and the managing member of Helios Development, LLC, a limited liability company, the member or one of the members who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that such limited liability company executed the same in the name of Helios Development, LLC.

Notary Public for _____
Residing at _____
My Commission expires _____

EXHIBIT "A"