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**Planning & Zoning Administrator
City of Ketchum
P.O. Box 2315
Ketchum, Idaho 83340**

Instrument # 581098

HAILEY, BLAINE, IDAHO
9-30-2010 11:00:30 No. of Pages: 222
Recorded for : HIGHMARK INVESTMENTS, LLC
JOLYNN DRAGE Fee: 673.00
Ex-Officio Recorder Deputy
Index to: AGREEMENT/CORRECTION



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**BALD MOUNTAIN LODGE
DEVELOPMENT AGREEMENT**

By and Between

CITY OF KETCHUM

And

BALD MOUNTAIN, LLC

**BALD MOUNTAIN LODGE
DEVELOPMENT AGREEMENT**

THIS BALD MOUNTAIN LODGE DEVELOPMENT AGREEMENT (“**Agreement**”), is entered into this 17th day of SEPTEMBER, 2010 (“**Effective Date**”), by and between the CITY OF KETCHUM, IDAHO, a municipal corporation, (“**Ketchum**”) and BALD MOUNTAIN, LLC, a Washington limited liability company authorized to do business in the state of Idaho (“**Owner**”), and together with Ketchum the “**Parties**”.

RECITALS

WHEREAS, Owner owns a parcel of land located at 151 South Main Street, Ketchum, Idaho, and more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (“the **Property**”), currently zoned Community Core (CC);

WHEREAS, on September 23, 2009, Owner filed the following applications (collectively referred to as the “**Original Applications**”) with Ketchum for development of the Property: (1) an application for a Planned Unit Development (“**PUD**”) for the Bald Mountain Lodge Hotel to be developed on the Property; (2) an application for a conditional use permit (“**CUP**”) for the PUD; and (3) an application for Community Core Design Review. This enables Ketchum to review all of the applications affecting the use and development of the Property in an integrated manner consistent with its comprehensive plan, as adopted and in effect on the Application Date, and other applicable ordinances and regulations of Ketchum;

WHEREAS, Owner supplemented the Original Applications on September 30, 2009 with a letter, revised hotel application certification of completeness, additional design drawings, and other addenda, again on October 27, 2009 with an updated height analysis, and again on April 8, 2010 with additional design drawings (referred to as the “**Supplemental Applications**,” and together with the Original Applications, the “**Land Use Applications**”);

WHEREAS, Owner, as the owner of the Property, agrees to submit the Property to a development agreement pursuant to Idaho Code § 67-6511A and Ketchum City Code Section 17.154;

WHEREAS, Ketchum is a municipal corporation having all of the powers and authority granted municipalities under the laws of the state of Idaho, including, without limitation, the authority to contract (Idaho Code § 50-301), to approve planned unit developments (Idaho Code § 67-6515), to approve special use permits (Idaho Code § 67-6512), and to enter into development agreements (Idaho Code § 67-6511A);

WHEREAS, Ketchum, having held all required public hearings and public meetings for consideration of said PUD and this Agreement; approving said PUD and this Agreement;

WHEREAS, Owner has agreed to the use restrictions and other limitations set forth herein and in the PUD Findings, Design Review Findings, and the Findings, defined in Section 1 below for the use and development of the Property;

WHEREAS, Ketchum and Owner enter this Agreement for the purpose of establishing certain rights and obligations of the Parties with regard to the development of the Property, including limitations as to the use, development, design, phasing, construction of necessary improvements (on-site and off-site) and mitigating the impacts directly attributable to the Project.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, Ketchum and Owner hereby mutually covenant and agree as follows:

1. **DEFINITIONS**. Throughout this Agreement, the following terms will be defined as follows:

1.1 “**Application Date**” means September 23, 2009.

1.2 “**Commission**” shall mean the City of Ketchum’s Planning and Zoning Commission.

1.3 “**Council**” shall mean the City Council of the City of Ketchum.

1.4 “**Design Review**” shall mean and include the procedures, criteria and standards established by Ketchum City Code 17.96, as adopted and in effect on the Application Date.

1.5 “**Design Review Findings**” shall mean the findings of fact, conclusions of law and decision approving the Design Review application, adopted by the Commission on the 22nd day of March, 2010. The Design Review Findings are attached hereto as **Exhibit B** and incorporated by reference herein.

1.6 “**Effective Date**” means the date this Agreement is fully executed by the Parties or the date on which the approvals described in the Findings are final, whichever occurs later.

1.7 “**Gross Square Footage**” means gross floor area as defined in the Ketchum Zoning Ordinance.

1.8 “**Ketchum PUD Ordinance**” shall mean Title 16, Chapter 16.08 of the Ketchum City Code, as adopted and in effect on the Application Date.

1.9 “**Ketchum Subdivision Ordinance**” shall mean Title 16, Chapter 16.04 of the Ketchum City Code, as adopted and in effect on the Application Date.

1.10 “**Ketchum Zoning Ordinance**” shall mean Title 17 of the Ketchum City Code, as adopted and in effect on the Application Date.

1.11 “**Ketchum Comprehensive Plan**” shall mean the Comprehensive Plan adopted on March 1, 2001 by Ketchum by Resolution No. 756.

1.12 “**Ketchum**” shall mean the City of Ketchum, Idaho, a municipal corporation, acting

by and through its duly elected City Council, Mayor, and all of its agencies and departments.

1.13 “Land Use Applications” shall mean collectively the PUD Application, the CUP application and the Design Review Application, dated October 8, 2009; and any subsequent applications or amendments in effect as of the date of this Agreement.

1.14 “Owner” shall mean Bald Mountain, LLC, a Washington limited liability company, authorized to business in the State of Idaho, and its successors and assigns.

1.15 “Project” shall mean the development of the Property contemplated by this Agreement and described in the Site Plan.

1.16 “PUD Findings” shall mean the findings of fact, conclusions of law and decision approving the PUD application, adopted by the Council and signed by the Mayor on the 7th day of June, 2010. The PUD Findings are attached hereto as **Exhibit C** and incorporated by reference herein.

1.17 “Site Plan” shall mean the master plan for the Bald Mountain Lodge as depicted on the plans submitted to Ketchum dated April 8, 2010, on file with the Ketchum Community and Economic Development Department.

2. LEGAL AUTHORITY. This Agreement is made pursuant to and in accordance with the provisions of Idaho Code §§ 50-301, 67-6511A, 67-6512, and Ketchum City Code Chapters 16.08, 17.64 010 (I) (6), and 17.154.

3. CONDITIONS ON DEVELOPMENT. The Project shall be completed substantially as presented in the Site Plan and consistent with this Agreement.

3.1 Hotel. The hotel shall operate at industry-acknowledged four-star standards or higher. The hotel shall contain the following components: 82 guest suites, 9 lock-off units, reception and lobby area, full service restaurant and bar, day spa, hotel-related retail space, conference/ballroom facilities, outdoor terrace and swimming pool, activities center and underground parking garage. The conference capacity shall be approximately 250-275 guests, or as allowed by the City of Ketchum Municipal Code. The conference center, day spa, restaurant and bar will be open to the general public as well as hotel guests. The fourth and fifth floors of the hotel will house twenty-six (26) residential condominium units, including the nine (9) lock-off units on the fourth floor.

3.1.1 Compliance with Hotel Definition. In order to meet the hotel definition as outlined in Chapters 17.64 010 (I) (6), and 17.08 of the Ketchum Zoning Code, nine (9) lock-off hotel units shall be provided on the fourth floor or such lesser amount that meets the hotel definition, provided that such lesser amount shall be agreed to by Owner and the Design Review Subcommittee referenced in Section 3.3.7 below. Based on the currently proposed hotel square footage calculations, the lock-off units shall total a 3,538 gross square feet. The PUD Findings made by the City Council with regards to the definition of Hotel are particular to this Project, based on specific facts as outlined in the PUD Findings.

3.1.2 Residential Units. Only residential units may be condominiumized and sold separately. The hotel portion of the Project including the hotel guest rooms shall not be condominiumized.

3.2 Parking. On-site parking will consist of a two-level underground parking garage, which shall have a minimum of 116 stalls, and nine (9) on-street parking spaces. The parking garage will also be available to the general public while using the conference center, day spa, restaurant and bar, subject to availability.

3.3 Design. The Project shall be completed substantially as presented in the plans dated April 8, 2010, and as altered by the PUD Findings, Design Review Findings and this Agreement. Building permit plans must conform to the approved Design Review plans unless otherwise approved in writing by the Commission or the Planning and Zoning Administrator. Any development of any portion of the Property substantially inconsistent with this Agreement or the Design Review Findings that is not approved by the Commission or the Zoning Administrator or without modification of the Design Review Findings, shall constitute a breach of this Agreement by the Owner. All Design Review elements as depicted in the Design Review plans dated September 22, 2009, as amended by the revised plans dated April 8, 2010, and required through the PUD Findings shall be completed prior to final inspection/occupancy. The Design Review Findings shall be valid for a period of four (4) years from the date of recordation of this Agreement pursuant to Chapter 17.154.040 (G), unless extended by Council upon written request by Owner prior to the expiration. A written request for extension of the Design Review Findings must be received by Ketchum within sixty (60) days of the expiration.

3.3.1 Building Type and Bulk. The ceiling heights and marquees along all facades of the building shall be approved by the Design Review Subcommittee as defined in Section 3.3.7 below and meet the standards of a Building Type 6, hotel, except as otherwise approved through the approved waivers outlined in the PUD Findings. Compliance shall be reviewed and approved as set forth in the Design Review Findings. Any signs erected in connection with marquees shall be subject to separate sign permit approval. To reduce the appearance of building bulk, the upper floor steel diagonal columns shall be made vertical, in accordance with the Findings with any non-substantial modifications subject to Design Review Subcommittee approval.

3.3.2 Terrace Walls. Terrace walls along Washington Avenue and River Street shall be constructed as approved by the Design Review Findings.

3.3.3 Rooftop and Marquee Plans. Prior to building permit approval, Owner shall submit a detailed plan illustrating how rooftop mechanical equipment will be screened and how rooftop and marquee snow retention and drainage will be achieved. The snow retention and drainage plan shall be reviewed and approved as set forth in the Design Review Findings by the Design Review Subcommittee.

3.3.4 Marquees. All marquees may extend into the public right of way as described in the Waiver Requests set forth in Table 5 of the Findings as supplemented through Design Review.

3.3.5 Setbacks. The proposed 4th and 5th floor setbacks shall be as described in the Waiver Requests set forth in Item 7, Table 5 of the Findings as supplemented through Design Review.

3.3.6 Zoning Waiver Requests. Ketchum acknowledges the zoning and subdivision waivers set forth in Item 7 Table 5 of the PUD Findings, which are hereby incorporated by reference as though fully set forth in this Agreement.

3.3.7 Design Review Subcommittee. For purposes of Design Review and this Section 3.3.7, a Design Review Subcommittee 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 that are not contrary to or inconsistent with the Findings, and (ii) any Owner-requested non-material changes to the Design Review approval(s), or the construction elements required of this Agreement. The Design Review Subcommittee shall consist of three (3) persons, one of whom shall be the current director of the Community and Economic Development Department, one of whom shall be a current or former member of the Commission that approved 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 Design Review Subcommittee 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 Design Review Subcommittee 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 Design Review Subcommittee shall constitute action of the Design Review Subcommittee. The Design Review Subcommittee shall periodically report in writing all actions taken by it to the Commission. Any action by the Design Review Subcommittee adverse to the Owner is appealable by the Owner pursuant Chapter 17.144 of the City of Ketchum Zoning Code, entitled "Appeals".

3.4 Deliveries. Delivery vehicles associated with the Project, including the residential portion of the building, shall not interfere with the regular flow of traffic surrounding the building. Delivery vehicles shall not block the regular flow of traffic on First Street and shall not block the sidewalk along First Street.

3.5 Emergency Services. All fire code requirements of the Ketchum Fire Department shall be satisfied as outlined in the PUD Findings and/or Design Review Findings prior to the issuance of a building permit.

3.6 Bike Racks. The final number of bicycle racks required shall be determined by the Design Review Subcommittee and shall meet all requirements of the Ketchum Zoning Code, Chapter 17.64, prior to issuance of a certificate of occupancy. A significant number of such racks shall be installed along Washington Avenue. A detailed bicycle rack plan shall be reviewed and approved by the Design Review Subcommittee prior to building permit approval.

3.7 Utilities. All water, sewer and other utility main lines, service lines, manholes and fire hydrants shall be as depicted in the preliminary civil drawings for the Project, prepared

by Galana Engineering, dated September 30, 2009, and maintained or improved as required by the Ketchum Water and Sewer Department.

3.8 CC&Rs. Owner agrees to record a declaration of covenants, conditions and restrictions (“**CC&Rs**”) and a separate Condominium Declaration (“**Declaration**”) against the Property. Owner shall form a condominium association (“**Association**”) to address allocation of responsibility for maintenance of common areas associated with the condominiums. The Declaration shall include the following provisions:

(a) The Association shall be required to maintain at its expense all of the common area associated with the condominiums.

(b) No person or entity acquiring any portion of the 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 Site Plan.

3.9 Property Maintenance. Owner shall take reasonable steps to maintain the Property as may be required pursuant to Ketchum City Code until construction commences.

4. STREETS, PARKING AND CIRCULATION. Right-of-way encroachments, right turn lane and curb line alignment, slope and drainage, and sidewalk widths shall be in accordance with this Section 4, to be reviewed and approved by the City Engineer, Street Department and Fire Department prior to issuance of a building permit. Prior to issuance of a building permit Owner shall apply for and obtain a right-of-way encroachment permit from Ketchum for all right-of-way encroachments associated with the Project.

4.1 Sidewalks. Snowmelt shall extend to the curb line at entrances and exits of the Project. All sidewalks adjacent to the Project shall be designed according to the approved sidewalk scheme, as follows:

4.1.1 River Street Frontage.

- (a) The bulb-out at River and Main Streets shall be eighteen feet (18’) wide including curb/gutter.
- (b) The sidewalk width shall be ten feet (10’), not including curb/gutter, with angled parking along the length of River Street.
- (c) A bulb-out with exit/entrance at the intersection adjacent to Washington Avenue shall be eighteen feet (18’) wide including curb/gutter.

4.1.2 Main Street Frontage (Based on two, twelve feet wide southbound travel lanes).

- (a) At First Street, the bulb-out shall be sixteen feet (16’) wide

including curb/gutter.

- (b) The bus pull-out shall be eight feet (8') wide including curb/gutter, leaving an eight feet (8') wide sidewalk (subject to Mountain Rides requirements).
- (c) The bulb-out at mid-block shall be sixteen feet (16') wide including curb/gutter.
- (d) The sidewalk/bulb-out from the porte-cochere exit to River Street shall be sixteen feet (16') wide.

4.1.3 First Street Frontage.

- (a) Sidewalks shall be a minimum of ten feet (10') wide.
- (b) No bulb-outs are permitted.
- (c) Parking spaces are required from the loading dock to Washington Avenue (a total of two spaces).

4.1.4 Washington Avenue Frontage. Owner shall present a final design scheme for Washington Avenue to City Council prior to building permit submittal.

4.2 Lighting. All lighting shall comply with the Ketchum Dark Sky Standards, Chapter 17, Ketchum City Code. The use of Ketchum Streetscape Lighting Standards is required. Minimum lighting mitigation measures shall include: recessed, shielded and downward facing light fixtures.

4.3 Streets and Bridges Assurances. Owner shall enter into a Road Security Agreement with Ketchum establishing when 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 caused by construction traffic during the Project build-out. The Road Security Agreement shall reflect the City Engineer's methodology for determining the material damage to Ketchum's roads including reasonable evidence that would be used to determine the damage caused by construction traffic and the estimated cost of repair. Owner's engineer shall meet and confer with Ketchum's engineer to determine the required mitigation and associated cost based on the methodology. In the event that the engineers are unable to agree, they shall select a third engineer who shall determine the final cost, which shall be binding on the Parties. Prior to commencement of construction, Owner may choose to document current road conditions. Such documentation will be provided to the City Engineer and shall be utilized along with any other relevant documentation from Ketchum to determine if damage was caused by construction traffic as opposed to normal non-construction traffic.

4.4 Parking. Owner shall provide parking as set forth in Section 3.2 herein.

4.5 Washington Avenue. Owner shall make improvements to Washington Avenue between First Street and River Street pursuant to the final design scheme referenced in Section 4.1.4 herein. This section of Washington Avenue shall be designed to serve events and functions taking place at both Bald Mountain Lodge and the Forest Service Park.

4.6 Traffic Impact Analysis and Mitigation. The recommendations of the City Engineer and of Ryan Hales of Hales Engineering with regard to traffic circulation in and out of the porte-cochere shall be followed. These recommendations are outlined in the memo from Hales Engineering entitled “Ketchum-Bald Mountain Lodge TIA/1st Street Review” dated April 14, 2010, attached hereto as **Exhibit D** and incorporated herein by this reference.

4.7 Ketchum Gateway (Main Street/River Street Intersection). Owner shall plant street trees along Main Street consistent with the approved landscape drawings submitted during the Land Use Application Process. Owner agrees to participate financially and to work with Ketchum’s Community and Economic Development staff and other entities to design the intersection of Main Street and River Street, including public/pedestrian amenities. Owner shall be responsible for the construction costs of one (1) of the four (4) corners of said intersection.

5. INFRASTRUCTURE IMPROVEMENTS. Owner shall engineer, construct, and otherwise provide, at its sole expense, improvements, facilities and services (public and private) as provided in the PUD Findings and this Agreement.

5.1 Water and Sewer Service. Owner requests water and sewer service from Ketchum to the Property and Ketchum hereby agrees to provide such water and sewer service at the same fees as charged to equivalent users of Ketchum.

5.2 Utilities and Warranty. All utilities, including water, sewer, gas, cable, phone and electric shall be installed underground within the street rights-of-way. This includes on site and off site utilities: no new above-ground utility lines are permitted. 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” are substantially correct and Owner shall, for a period of one (1) year from Ketchum’s receipt of said drawings, be liable and hold Ketchum harmless for any damage which may result from material errors in said drawings 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.

5.3 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.

6. GREEN BUILDING PRACTICES. The Project shall, at a minimum, meet the

requirements of and receive LEED “Certified” Certification as outlined by the United States Green Building Council’s Leadership in Energy and Environmental Design (“LEED”) Program. In addition, the Project shall meet or exceed the minimum requirements set forth in the currently adopted version of the International Energy Conservation Code (“IECC”).

7. **LOCAL OPTION TAXES.** The Project shall be subject to the provisions of Ketchum Municipal Code Chapter 3.12, relating to local option taxes (“LOT”), as follows:

7.1 **Housing Unit Rentals.** As of the Effective Date, Ketchum Municipal Code Section 3.12.030(B) imposes an additional one percent (1%) hotel-motel room occupancy sales tax on receipts from all short term (30 days or less) rental charges for hotel rooms, motel rooms, condominium units, tourist homes and the like. So long as the Ordinance is in effect, the owner of the hotel resort, as to completed hotel units only, and each condominium unit owner, as to his or her condominium unit(s) only, shall comply with the subject tax. Nothing herein shall be deemed or construed to require the owner of a housing unit within the Project to pay any local option tax to occupy their own unit. Further, the obligation to pay local option tax shall not apply to the rental of workforce housing units. Nothing herein creates an independent tax obligation to the Owner unless the Owner is also the owner of the hotel resort, or the owner of one or more of the condominium units at the resort at the time the tax accrues.

7.2 **Building Materials.** As of the Effective Date, Ketchum Municipal Code Section 3.12.030(A) imposes a one percent (1%) sales tax upon each sale at retail within the City of Ketchum. So long as the Ordinance is in effect, Owner shall comply with the subject tax.

7.3 **Amendments to LOT Ordinance.** Any amendments to or repeal of Ketchum’s Local Option Tax Ordinance and/or Idaho law relating to such local option taxes shall also apply to and modify this Section 7 to the extent of such amendment(s) and/or repeal.

8. **CONSTRUCTION TIMELINE AND INCENTIVES.** Owner acknowledges Ketchum’s desire for a construction commencement date at the earliest possible time. Ketchum, having exercised its discretion in approving this Agreement, the PUD Findings and Design Review Findings, shall act reasonably and in good faith when processing the approval or issuance of such applications, permits, plans, specifications, plats, and/or entitlements for the Project as may be necessary or prudent in order to implement the Project, and consistent with the Ketchum City Code and applicable State and/or federal laws, so that Owner will have the benefit of the incentives provided Section 8.1, 8.2 and 8.3 below. In regards to the obligations in this Section 8, time is of the essence. In consideration of Owner’s option to commence construction as early as 2011, Ketchum agrees to the following construction incentives:

8.1 **Timeline A.** The Project shall receive the following waivers if a building permit is applied for by December 31, 2011 and construction commences by June 30, 2012. If a building permit is not applied for by December 31, 2011, construction does not commence in June 30, 2012 and the certificate of occupancy for the hotel portion of the Project is not approved by January 30 2015, these waivers shall not apply.

8.1.1 **Community Housing.** The community housing requirement of 7,444

square feet or approximately \$2.36 million in-lieu payment is waived in its entirety (based on extension of the Hotel Community Housing Waiver in the Community Core Zoning District).

8.1.2 Employee/Workforce Housing. The employee housing requirement is waived in its entirety.

8.1.3 Infrastructure Partnering. Owner will construct and pay for all Project infrastructure requirements including undergrounding of power lines and installation of street improvements. The Urban Renewal Agency (“URA”) is an agency of Ketchum whose purpose is to encourage and provide financial support to the redevelopment and revitalization of Ketchum. Ketchum agrees to recommend to that URA that the URA reimburse Owner for costs of qualified public infrastructure improvements. Qualified public infrastructure improvements may include: power line undergrounding and design, curb gutter and sidewalks, street improvements, water and sewer utility improvements, and design, storm water improvements and design and other improvements so designated as general public improvements. Said reimbursed costs may equal up to fifty percent (50%) of the annual URA tax increment revenue generated from the Project up to a total of \$1.5 million over the life of the URA, whichever is less. If approved, said reimbursement will be paid annually via URA tax increment revenues generated by the Project. A repayment plan may be developed at such time as substantial URA tax increment revenues are generated from the Project, at which time total URA tax increment revenues associated with this Project shall be recalculated. Ketchum agrees to cooperate with Owner in coordinating the appropriate formal URA applications and use its best efforts to propose reimbursements for the above defined improvements. URA financing and projects are also subject to applicable Idaho and federal law. Owner hereby acknowledges and agrees that there is no guarantee that URA funding will be available for this Project.

8.2 Timeline B. The Project shall receive the following waivers if a building permit is applied for by December 31, 2012 and construction commences by December 31, 2013. If a building permit is not applied for by December 31, 2012, construction does not commence by December 31, 2013 and the certificate of occupancy for the hotel portion of the Project is not approved by January 2016, these waivers shall not apply.

8.2.1 Community Housing. The community housing requirement of 7,444 square feet or approximately \$2.36 million in-lieu payment is waived in its entirety (based on extension of the Hotel Community Housing Waiver in the Community Core Zoning District).

8.2.2 Employee/Workforce Housing.

- (a) Ketchum will waive fifty percent (50%) of the total employee housing requirement. The remaining fifty percent (50%) of the employee housing fee (\$1.38 million) shall be paid via one of the following options:
 - (i) Construction of employee housing units within the city limits or the Area of City Impact (as defined in the Ketchum Municipal Code), which construction can include concepts of

partnership with Ketchum or other entities;

- (ii) Payment via a real estate transfer fee, with the transfer fees accruing to the Ketchum Housing In Lieu Fund at the time of closing of each unit; or
 - (iii) By another method determined by Owner and approved by Ketchum.
- (b) If the remaining employee housing requirement is to be paid through real estate transfer fees, a minimum of thirty percent (30%) of the total required in-lieu fee shall be paid within one (1) year of issuance of the certificate of occupancy for the hotel portion of the Project. The remaining fee shall be paid at the closing of each residential unit, at the rate of four percent (4%) of the remaining fee per unit closed until paid in full. In the event the foregoing schedule does not result in one hundred percent (100%) of the fees being paid within ten (10) years of the issuance of the certificate of occupancy for the hotel portion of the Project, any remaining balance will be due and payable at the end of such ten (10) year period.

8.2.3 Infrastructure Partnering. Owner will construct and pay for all Project infrastructure requirements including undergrounding of power lines and installation of street improvements. The URA is an agency of Ketchum whose purpose is to encourage and provide financial support to the redevelopment and revitalization of the City. Ketchum agrees to recommend to the URA that the URA reimburse Owner for costs of qualified public infrastructure improvements. Qualified public infrastructure improvements may include: power line undergrounding and design, curb gutter and sidewalks, street improvements, water and sewer utility improvements, and design, storm water improvements and design and other improvements so designated as general public improvements. Said reimbursed costs may equal up to fifty percent (50%) of the annual URA tax increment revenue generated from the Project up to a total of \$1.5 million over the life of the URA, whichever is less. If approved, said reimbursement will be paid annually via URA tax increment revenues generated by the Project. A repayment plan may be developed at such time as substantial URA tax increment revenues are generated from the Project, at which time total URA tax increment revenues associated with this Project shall be recalculated. Ketchum agrees to cooperate with Owner in coordinating the appropriate formal URA applications and use its best efforts to propose reimbursements for the above defined improvements. URA financing and projects are also subject to applicable Idaho and federal law. Owner hereby acknowledges and agrees that there is no guarantee that URA funding will be available for this Project.

8.3 Timeline C. In the event a building permit is not applied for and construction does not commence as outlined in Timelines A or B, the PUD CUP shall be valid for a period of four (4) years. An application for building permit shall be submitted within four (4) years, unless extended by Council upon written request by Owner prior to the CUP expiration. A written request for extension of the CUP must be received by Ketchum within sixty (60) days of the expiration of the

CUP. Waivers to the community housing and employee housing requirements shall not apply under this timeline.

8.3.1 Community Housing. Owner shall fulfill the workforce housing requirement prior to building permit approval for the hotel. Fulfillment of the requirement shall include development of a workforce housing plan to be approved by the City Council prior to building permit approval. The following is a list of several options that may be pursued in developing the workforce housing plan:

- (a) Provide housing via new construction within the City of Ketchum;
- (b) Fulfill the requirement via master leasing of existing units within the City of Ketchum;
- (c) Agree to a real estate transfer fee wherein all fees would be dedicated to the development, construction or maintenance of workforce housing in the City of Ketchum;
- (d) Agree to a revenue-based fee based on the profits derived from the hotel; or
- (e) Develop a workforce housing plan that incorporates several of these options.

In the event that Ketchum does not extend the construction incentives for the Project beyond December 31, 2013, or otherwise waive or modify the requirements Community Housing,

8.3.2 Employee/Workforce Housing. Owner shall be required to provide a detailed Employee Housing Plan, which provides for housing for twenty-three (23) employees on a site acceptable to Council and within Ketchum city limits.

- (a) The Employee Housing Plan shall contain the following elements:
 - (i) Salary/hourly wages (current dollars) for the various income categories of employees;
 - (ii) The expected number of each level of employee that is intended to be served by the employee housing units;
 - (iii) Which employee category will be served by which type/size of units;
 - (iv) Information on anticipated rental rates (in current dollars) or subsidized and/or free rent to employees, including whether utilities and homeowner's dues (if any) will be included in the proposed rates;

- (v) Establishment of maximum occupancy per unit type (i.e. one person per one bedroom unit; two persons per two bedroom units);
 - (vi) Location of units to be within Ketchum city limits;
 - (vii) A matrix on the breakdowns of the different types of units (1 BD; square footage; total number of units; anticipated rent, etc.);
 - (viii) The priority system for occupancy of these units (i.e. first availability to full-time employees, second to seasonal employees, and third to persons that are verified to be working in the City of Ketchum);
 - (ix) What units will be available and how the pool of units available will be determined;
 - (x) What minimum standards will be used to determine employee eligibility to live in the employee housing (i.e. whether full-time status is required and what constitutes full-time status);
 - (xi) How the overflow of demand of units by employees will be handled (i.e. priority system); and
 - (xii) Information on housing families with children and/or married couples.
- (b) The proposed Employee Housing Plan shall meet minimum size thresholds and income categories established by BCHA and/or Ketchum.
- (c) Owner shall submit the following information to Ketchum in connection with the Employee Housing Plan:
- (i) Wage/salary range and a breakdown of the number of employees within each classification (full-time, part-time, seasonal, etc.);
 - (ii) Information on the type of housing provided per employee classification;
 - (iii) Costs incurred in rent (and utilities) and transportation/parking by employees;

- (iv) Details on anticipated lease terms/rental agreements for employees housed on-site; and
 - (v) Anticipated transportation and parking scenarios for both on-site and commuting employees.
- (d) The Employee Housing Plan shall be submitted and approved by Council as an amendment to this Agreement and shall be recorded prior to issuance of a building permit.
- (e) All of the required employee housing shall be available prior to the issuance of any certificates of occupancy for the hotel, or any other uses in the hotel.

8.3.2 Infrastructure Partnering. Owner shall contribute a proportionate share to the underground relocation of overhead utility lines as more particularly set forth in Section 10 herein.

9. CONSTRUCTION STAGING AND MITIGATION. A detailed Construction Staging and Mitigation plan, including at a minimum provisions for off-site employee parking, off-site storage of bulk materials, and required right-of-way encroachments during construction, shall be submitted and approved by the Ketchum Building Department prior to building permit approval. Owner is encouraged to use local contractors wherever possible.

10. ELECTRIC POWER. Owner acknowledges the Franchise Agreement between Ketchum and Idaho Power Company prohibits above ground installation of new electric transmission lines. Owner shall pay its proportionate share for underground relocation of overhead utility lines based on the frontage of the subject property along River Street. Said contribution shall be utilized by Ketchum solely for the relocation of power lines from overhead to underground for the Project. Ketchum and Owner agree that other businesses and property owners, as well as the general public will benefit from the above. In regards to such underground relocation, Ketchum and Owner shall, in good faith, attempt to 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 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; and (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, the Agreement referred to in this Section shall be made in accordance with local and State law. In the event Ketchum and Idaho Power do not complete undergrounding of electric power lines as a city project, Owner may relocate the power lines directly adjacent to the Project as an off-site improvement.

11. FINANCIAL ASSURANCE AND ASSISTANCE.

11.1 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.

11.2 Performance, Payment and Reclamation Bonds. Upon issuance of the building permit for the Project, Owner shall provide financial assurances to Ketchum, in the form of letter(s) of credit, bonds or other similar instrument to demonstrate to Ketchum Owner's ability to complete the permitted construction.

11.3 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.

11.4 Lender Letter of Assurance. Owner agrees to provide a "comfort letter" from its proposed Project Lender(s) prior to execution of this Agreement. Such letter should memorialize any existing relationship between Owner and Lender(s), and the Lender(s)' interest in financing the Project subject to market conditions and Lender(s)' internal credit underwriting policies.

11.5 Right of Entry. Owner hereby grants Ketchum a license to enter upon the Property, during business hours and upon reasonable advance written 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 exercise of the license granted herein, including injuries to Ketchum employees, or Ketchum's agents or representatives while on the Property.

12. AGREEMENT TO COOPERATE; JOINT DEFENSE AND CONFLICT WAIVER. The Parties agree at all times to cooperate and exercise good faith to achieve the purposes of this Agreement. In the event any legal or equitable action or other proceeding is instituted by a third-party or other governmental entity or official challenging the validity of any provision of Ketchum's approval and/or implementation of the PUD Findings, the Design Review Findings or this Agreement, the Parties hereby agree to cooperate in defending such action or proceeding. Ketchum and Owner may agree to select mutually agreeable legal counsel to defend such action or proceeding with the parties sharing equally in the cost of such joint counsel, or each party may select its own legal counsel at each party's expense. All other costs of such defense(s) shall be shared equally by the parties. Each party shall retain the right to pursue its own independent legal defense.

13. SALE OR TRANSFER OF THE PROPERTY.

13.1 This Agreement shall run with the land comprising the Property, and shall be binding upon and benefit Owner, its assigns, and any successor in interest to any portion of the Property, as provided in this Agreement. All duties, rights, covenants and obligations of Owner

under this Agreement, are freely assignable in whole or part, at Owner's discretion to a third party or parties, who either invest in all or part of the Project by purchase of a majority or minority interest in the Owner's company or by joint venture or other type of arrangements, or by purchase the Property in fee title. In the event that Owner or a successor in interest to Owner, sells or transfers the Property, or any portion thereof, written notice of said transaction shall be given to Ketchum no less than thirty (30) days prior to closing.

13.2 The purchasers of condominium units therein for which final occupancy permits have been issued by Ketchum shall be subject to those portions of this Development Agreement regarding the CCRs, transfer fees, adherence with building standards and Ketchum City Code requirements regarding their use of their property. Owner agrees for itself, its successors and assigns that the CC&Rs recorded for the Project shall contain the covenants set forth in Section 3.8 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 Property to abide by the requirements of Ketchum approvals therefore cannot be amended absent Council's prior written approval. Upon conveyance of a condominium unit to a third party, except as otherwise provided in this Agreement, the lien and encumbrance of this Agreement shall be automatically released from said unit.

14. AMENDMENT OF AGREEMENT AND CHANGES TO DEVELOPMENT PLAN.

This Agreement shall be amended or terminated, 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. Ketchum agrees that Owner has the right to undertake and complete the development of the Property in the manner and to the extent set forth and pursuant to this Agreement, the PUD Findings, the Design Review Findings, and all approvals by Ketchum as referenced in this Agreement, including, without limitation, the Site Plan, the Conditional Use Permit, and the approved Land Use Applications (collectively, the "**Approvals**").

15. 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 resulting in a material violation of this Agreement or the PUD Conditional Use Permit, the PUD Findings, the Design Review Findings, or any material violation of any condition thereof, and following the cure period provided in Section 15.4 below, the same shall constitute an "Event of Default" entitling the non-defaulting party to all legal and equitable remedies available, as described in Section 15.3 below.

15.1 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 (a "**Bankruptcy Filing**") shall also constitute an Event of Default of this Agreement and shall entitle Ketchum to seek all available legal and equitable remedies as described in Section 15.3 below. Notwithstanding the foregoing, however, or any contrary provision herein, Ketchum shall not have the right to place a moratorium as described in Section 15.3 below on the basis of a Bankruptcy Filing alone without the existence of an Event of Default as described in the first paragraph of this Section 16 above.

15.2 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.

15.3 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 PUD Findings or Design Review 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 place a moratorium on further approvals under the PUD Conditional Use Permit issued pursuant to this Agreement and the PUD Findings in the event of and during the continuance of an Event of Default 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.

15.4 Right to Cure. In the event of a material breach of this Agreement or a material breach of the Findings, 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.

16. NO PRECEDENT. The issuance of this PUD, Development Agreement 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.

17. 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 Property. 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.

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

19. RELATIONSHIP OF PARTIES. It is understood the contractual relationship between Ketchum and Owner is such that Owner is not the agent, partner, or joint venturer of Ketchum.

20. 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, , 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.

21. **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.

22. **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:

Bald Mountain, LLC
c/o Michael Kerby, CEO
HighMark Investments, LLC
3450 S. 344th Way, Suite 115
Federal Way, WA 98001
c/o James D. Garrison
11980 N.E. 24th St., Suite 200
Bellevue, WA 98005

With a copy to:

James D. Garrison, Consultant
11980 N.E. 24th St., Suite 200
Bellevue, WA 98005

Carney Badley Spellman, P.S.
Attention: David W. Bever, Esq.
701 Fifth Avenue
Seattle Washington, 98104-7010

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.

23. **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.

24. **RECORDATION.** This Agreement, including subsequent amendments thereto, shall be recorded in the Office of the Blaine County Recorder, Hailey, Idaho.

25. **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.

26. **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.

27. **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.

28. **NO THIRD PARTY BENEFICIARIES.** Nothing contained herein shall be deemed or construed to create any third party beneficiaries or third party rights.

29. **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 PUD Findings or Design Review Findings and this Agreement, including any amendments thereto, the terms of this Agreement shall control, followed by the PUD Findings, the Design Review Findings, and any subsequently adopted findings.

30. **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.

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

- A – Legal Description
- B – Design Review Findings
- C – PUD Findings
- D – Traffic Impact Analysis

33. **RECITALS INCORPORATED.** The recitals set forth in this Agreement are hereby incorporated herein by reference.

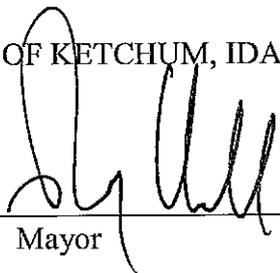
34. **AUTHORITY TO EXECUTE.** Each of the persons executing this Agreement represent and warrant that he has the lawful authority and authorization from their respective entities to execute this Agreement, as well as all applications, plats and other documents required hereunder for and on behalf of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

35. **RELIANCE BY KETCHUM.** This Agreement is intended by Owner to be considered by Ketchum as part of the Land Use Applications. Owner acknowledges and intends for Ketchum to consider and rely upon this Agreement in Ketchum's review and consideration of said Land Use Applications.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in accordance with the laws of the state of Idaho, the date and year first written above.

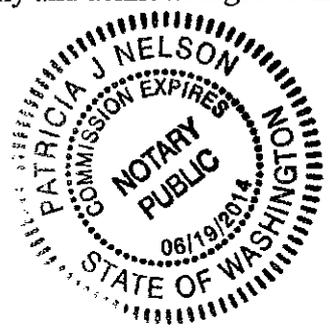
BALD MOUNTAIN, LLC, a Washington limited liability company

By: 
Name: MICHAEL KERBY
Title: MEMBER

CITY OF KETCHUM, IDAHO
By: 
Mayor

STATE OF WASHINGTON,)
County of KING) ss.
)

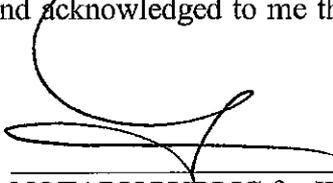
On this 17th day of SEPTEMBER, 2010, before me, a Notary Public in and for said State, personally appeared MICHAEL W. KERBY, known or identified to me to be a Managing Member of BALD MOUNTAIN LLC, the limited liability company that executed the within instrument or the person who executed the instrument on behalf of said limited liability company and acknowledged to me that such limited liability company executed the same.



Patricia J. Nelson
NOTARY PUBLIC for IDAHO WA
Residing at Puyallup, WA
Commission expires 6/19/2014

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

On this 10th day of September, 2010, 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 be 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 Harley, Id
Commission expires 4/19/12

