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**RIVER RUN  
ANNEXATION AND DEVELOPMENT AGREEMENT**

**By and Between**

**CITY OF KETCHUM**

**And**

**SUN VALLEY COMPANY**

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**RIVER RUN  
ANNEXATION AND DEVELOPMENT AGREEMENT**

THIS RIVER RUN ANNEXATION AND DEVELOPMENT AGREEMENT (“**Agreement**”), is entered into this 16 day of SEPTEMBER, 2010 (“**Effective Date**”), by and between the CITY OF KETCHUM, IDAHO, a municipal corporation, (“**Ketchum**”) and SUN VALLEY COMPANY, a Wyoming corporation authorized to do business in the state of Idaho (“**Owner**”), and together with Ketchum (collectively defined herein as the “**Parties**”).

**RECITALS**

**WHEREAS**, Owner owns parcels of land adjacent to and contiguous with the municipal boundary of Ketchum, more particularly described in **Exhibit A** attached hereto and incorporated by reference herein, currently zoned Recreation Development District (RD), Rural Residential District/Urban Influence Boundary (R-10/UIB), Low Density Residential (R-1), and Floodplain Management and Riparian Setback District (FP) under the Blaine County Zoning Ordinance. The lands collectively described in **Exhibit A** are referred to in this Agreement as the “**Property**”;

**WHEREAS**, Owner has requested that the Property be annexed into the Ketchum City boundary; and that 21.76 acres within the annexed property be developed as a Planned Unit Development (“**PUD**”), in accordance with the current PUD Ordinance and other applicable ordinances and regulations of Ketchum;

**WHEREAS**, Ketchum desires Owner to annex and develop the Property under its ordinances and regulations to provide for the orderly extension of its boundaries and obtain certain public benefits;

**WHEREAS**, Owner, as the owner of the Property, agrees to submit the Property to an annexation and 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 annex (Idaho Code § 50-222), to zone parcels of real property (Idaho Code § 67-6511), to approve planned unit developments (Idaho Code § 67-6515), to approve special use permits (Idaho Code § 67-6512), to enter into development agreements (Idaho Code § 67-6511A), and to approve subdivisions (Idaho Code § 67-6513);

**WHEREAS**, on August 11, 2009, Owner filed the following applications with Ketchum for development of the Property: (1) a Request for Annexation of the Property and Zoning upon Annexation; (2) an application for a PUD-Conditional Use Permit; and (3) a Large Block Subdivision Plat Application (“**Large Block Plat**”) (collectively referred to as the “**Original Applications**”), in order for Ketchum to contemporaneously review all of the applications affecting the use and development of the Property against Ketchum’s current Comprehensive Plan and land use ordinances;

**WHEREAS**, Ketchum has the capacity to provide essential services to the Property including water, sewer and emergency services, based in part on the improvements, mitigation and terms as specified herein and as subject to future agreements between the Parties;

**WHEREAS**, Ketchum has held all required public hearings and public meetings for consideration of said annexation and zoning request and each of the Land Use Applications, as defined herein, and this Agreement; and approved said annexation and zoning request, and each of the Land Use Applications, and this Agreement;

**WHEREAS**, Ketchum has determined in the Findings, as defined herein, that annexation of the Property constitutes an orderly extension of its municipal boundaries and property within the Ketchum area of city impact and that such annexation and the Revised Conceptual Site Plan dated July 9, 2010 are: (1) consistent with the Ketchum Comprehensive Plan; (2) appropriately zoned Recreational Use (RU), Tourist (T) with a PUD overlay and Agricultural and Forestry (AF), as set forth in the Zoning Map; (3) in compliance with the requirements of all state statutes and Ketchum city ordinances; and (4) in the best interests of Ketchum to enter into this Agreement in order to provide for orderly annexation and development of the Property;

**WHEREAS**, Ketchum has considered the 1994 Area of City Impact Agreement between Blaine County and Ketchum and has determined that the Recreational Use (RU), Tourist (T) with a PUD overlay, and Agricultural and Forestry (AF) zone designations are appropriate for the Property as delineated in the 2001 Ketchum Comprehensive Plan;

**WHEREAS**, Owner has agreed to the zoning designations, use restrictions and other limitations set forth herein and in the Findings placed on the Property; Ketchum and Owner enter this Agreement for the purpose of establishing certain rights and obligations of the Parties with regard to annexation of the Property, and the development of the Property, including limitations as to the use, development, design, 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 are defined as follows:

1.1 “**Annexation Findings**” shall mean the findings of fact, conclusions of law and decision approving Owner’s Request for Annexation of the Property and Zoning upon Annexation, adopted by the Council on the 16th day of September, 2010. A copy of the Annexation Findings is attached hereto as **Exhibit R** and incorporated herein by reference.

1.2 “**BCRD**” shall mean the Blaine County Recreation District.

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

1.4 “**Community Connector**” includes a gondola, buses or other mode of

transportation which connects the Project to other areas of the City of Ketchum.

**1.5** “**Council**” or “**City Council**” shall mean the City Council of the City of Ketchum.

**1.6** “**Date of Application**” means August 11, 2009.

**1.7** “**Design Review**” shall mean the procedures, criteria and standards established by Ketchum City Code 17.96, as adopted and in effect on the Date of Application, and as supplemented by the Design Guidelines in the PUD Conditions of Approval.

**1.8** “**Effective Date**” means the date this Agreement is fully executed by the Parties.

**1.9** “**Findings**” collectively refers to the City Council’s Findings of Fact, Conclusions of Law and Decision rendered upon the Land Use Applications.

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

**1.11** “**Health and Wellness Uses**” shall mean and include: medical offices, diagnostics offices, health and wellness centers, rehabilitation clinics and sports training facilities. Health and Wellness Uses do not include inpatient or outpatient surgical facilities with the exception of medical day spas. Health and Wellness Uses permitted without approval of a conditional use permit are limited to a total of 50,000 square feet as set forth in Section 3.1 and Table 1 herein.

**1.12** “**Irrigation Water System**” is a separate irrigation water system or systems to provide irrigation, ponds for recreational and aesthetic uses, and water for fire protection as allowed by IDEQ and IDWR.

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

**1.14** “**Ketchum Subdivision Ordinance**” shall mean Title 16, Chapter 16.04 of the Ketchum City Code, as adopted and in effect on the Date of Application, including the waivers set forth on the Subdivision Waivers Matrix, attached hereto as **Exhibit N** and incorporated herein by this reference, as approved by Ketchum with regards to this Project. Specific waivers of the Ketchum Subdivision Ordinance must be approved as provided in Ketchum City Code.

**1.15** “**Ketchum**” shall mean the City of Ketchum, Idaho, a municipal corporation, acting by and through its duly elected City Council.

**1.16** “**Land Use Applications**” shall mean collectively the Original Applications and any supplemental application submittals, including but not limited to the following: Application for Annexation, dated August 11, 2009; PUD-Conditional Use Permit Application, dated August 11, 2009; and the Large Block Subdivision Plat Application, dated August 11, 2009; Addendums 1- 16, outlined in the PUD Findings dated August 2, 2010; Addendum 17, dated August 26, 2010; and any subsequent applications or amendments.

1.17 “**Large Block**” shall refer to a block of the Large Block Plat, a copy of which is attached hereto as **Exhibit J** and incorporated herein by this reference as if set forth in full.

1.18 “**Mean High Water Mark**, or “**MHW**,” shall mean and refer to the mean high water mark of the Big Wood River adjacent to the Property as determined by McMillan Engineers in 2009 and provided in the Land Use Applications.

1.19 “**Owner**” shall mean Sun Valley Company, and all successors, assigns and transferees..

1.20 “**Project**” shall mean the development of the Property contemplated in the Revised Conceptual Site Plan, PUD Development Plan, and the Land Use Applications.

1.21 “**PUD Development Plan**” shall mean and consist of the development plan for the 21.76-acre parcel described in the Land Use Applications including the PUD-Conditional Use Permit for the PUD, which upon issuance by Ketchum and acceptance by Owner shall be, and is hereby incorporated into this Agreement by reference. A copy of the PUD Development Plan is attached hereto as **Exhibit E**.

1.22 “**PUD Findings**” shall mean the findings of fact, conclusions of law and decision approving the PUD-Conditional Use Permit application, adopted by the Council on the 2<sup>nd</sup> day of August, 2010. The PUD Findings are attached hereto as **Exhibit S** and incorporated by reference herein.

1.23 “**PUD Property**” shall mean the 21.76-acre property developed as a PUD pursuant to the Ketchum PUD Ordinance. The PUD Property is more particularly described in **Exhibit D** attached hereto and incorporated herein by this reference.

1.24 “**Revised Conceptual Site Plan**” shall mean the master plan for the River Run Neighborhood as described on pages 48-50 of the Original Land Use Application, and as depicted on Figure 10 of the Original Land Use Application, and as revised on July 9, 2010. A copy of the Revised Conceptual Site Plan is attached hereto as **Exhibit B** and incorporated herein by reference.

1.25 “**Resort Operations Uses**” shall mean any offices related to developing, selling or operating the River Run Project or related to Owner’s general resort operations, including but not limited to the following: ski mountain administration and operations offices; hotel administration and support offices; property management offices; real estate development and sales offices; and ski patrol related facilities.

1.26 “**100 Year Floodplain**” shall mean the area subject to the one percent (1%) annual chance of flood.

1.27 “**Wastewater Treatment System**” is a wastewater collection, storage, treatment and disposal system constructed to treat and dispose of wastewater which includes, without limitation, treatment facilities, major sewer lines and wastewater pumping stations.

**1.28 “Water System”** is a water production, storage, treatment, and delivery system to serve all uses on the Property and that includes, without limitation, wells, reservoirs, pumps, diversion structures, water transmission and distribution pipes and related plumbing, pump houses, well houses, water treatment facilities, water storage tanks, and pressurized irrigation systems, together with all water rights and permits pursuant to which water, both potable and non-potable, will be diverted and used by means of the Water System. The Water System also shall include those portions of the Wastewater System used for the storage and delivery of treated sewage effluent for beneficial uses on the Property, and any additional water rights or permits that may be associated with such uses.

**2. LEGAL AUTHORITY.** This Agreement is made pursuant to and in accordance with the provisions of Idaho Code §§ 50-222, 50-301, 67-6511A, 67-6512, and Ketchum City Code Chapter 17.54.

**3. ANNEXATION ORDINANCE, ZONING ORDINANCE AMENDMENT, AND ZONING DESIGNATIONS.** Ketchum shall promptly adopt an ordinance annexing the portion of the property described in **Exhibit A** and zone the entire Property Tourist (T) with PUD overlay, Agricultural and Forestry (AF) and Recreational Use (RU), as more particularly set forth in Section 3.1 herein, subject to the provisions of this Agreement, with the ordinance becoming effective following its passage, approval and publication. In addition, Ketchum shall amend the Comprehensive Plan Land Use Map to show Residential Occupancy and Recreation/Open Space on the areas to be annexed, with the designations subject to the boundaries of the Zoning Map. A copy of the Zoning Map is attached hereto as **Exhibit K** and incorporated herein by reference.

**3.1 Zone Districts and Use Limitations.** The zone districts and use limitations applicable to the Property shall be as set forth in Table 1 below. The maximum amount of Health and Wellness Uses permitted in Table 1 is a cumulative total for the Property. Health and Wellness Uses proposed in excess of the cumulative 50,000 square foot limit may be approved by Ketchum through its conditional use permit process set forth in Ketchum City Code.<sup>1</sup>

**Table 1: RR Annexation Area: Approved Zoning; Prohibited Uses; Permitted Uses Formerly Conditional; and Conditional Uses\***  
(See Addendum #12, Figure 43, Sheet 7.1 Amended Proposed Zoning and Figure 44, Sheet 15.1 Amended Large Block Plat/Zoning)

Large Blocks	Zoning & Overlay Districts Recommended	Approximate Acreage	Uses within Zoning District: Prohibited Uses, Permitted Uses Formerly Conditional, and Conditional Uses
Block 1: Village Core/Hotel Core	Tourist (T) Recreational Use (RU)	21.76	(T) Prohibited: <ul style="list-style-type: none"> <li>• Dental clinics, nursing homes or sanitariums</li> <li>• Banks, savings and loan, and financial institutions, except automatic teller machines (ATMs) are allowed</li> </ul>

<sup>1</sup> In the event Owner and St. Luke’s Wood River Medical Center, or their respective successors in interest, come to a written agreement regarding Health and Wellness uses that exceed the definition set forth in paragraph 1.11, the City Council may waive all or part of the Health and Wellness Uses limitations on the Property with an amendment to this Agreement.

			<ul style="list-style-type: none"> <li>• Non-resort operations offices; except as specifically allowed by Condition #9 of the Annexation Findings and this Agreement.</li> </ul> <p><u>(T) Permitted uses formerly conditional:</u></p> <ul style="list-style-type: none"> <li>• On-site parking</li> <li>• Recreation</li> </ul> <p><u>(T) Conditional uses:</u></p> <ul style="list-style-type: none"> <li>• Health and Wellness uses over 50,000 square feet</li> </ul>
Block 2: Residential Area A	Tourist (T) & Recreation Use (RU) along Trail Creek	21.75, includes 1.8 Open Space	<p><u>(T) Prohibited:</u></p> <ul style="list-style-type: none"> <li>• Dental clinics, nursing homes or sanitariums, except spa or ski patrol related medical uses are allowed</li> <li>• Banks, savings and loan, and financial institutions, except automatic teller machines (ATMs) are allowed</li> </ul> <p><u>(T) Permitted uses formerly conditional:</u></p> <ul style="list-style-type: none"> <li>• On-site parking</li> <li>• Recreation</li> </ul> <p><u>(T) Conditional uses:</u></p> <ul style="list-style-type: none"> <li>• Health and Wellness uses over 50,000 square feet</li> </ul>
Block 3: Ecological Park and South Hillside	Recreation Use (RU) on all except Agriculture/Forestry (AF) on the hillside south of the Big Wood River	30.31	<p><u>(RU) &amp; (AF) No change:</u></p> <ul style="list-style-type: none"> <li>• Uses are regulated per the Ketchum Zoning Code</li> </ul>
Block 4: Residential Area B and Entry @ Serenade/SH75	Tourist (T) on all except Recreation Use (RU) on the portion of the block at SH75 elevation providing OS at entry roundabout consistent with south side of Serenade Lane & along Trail Creek	8.82, includes parcel for Community Housing described in Council Condition 44; includes 6.15 Open Space	<p><u>(T) Prohibited:</u></p> <ul style="list-style-type: none"> <li>• Dental clinics, nursing homes or sanitariums, except spa or ski patrol related medical uses are allowed</li> <li>• Banks, savings and loan, and financial institutions, except automatic teller machines (ATMs) are allowed</li> </ul> <p><u>(T) Permitted uses formerly conditional:</u></p> <ul style="list-style-type: none"> <li>• On-site parking</li> <li>• Recreation</li> </ul> <p><u>(RU) No Change</u></p> <ul style="list-style-type: none"> <li>• Uses are regulated per the Ketchum Zoning Code</li> </ul>
Block 5: Residential Areas C and D	Tourist (T) & Recreation Use (RU) along Trail Creek, including 100-foot setback along Trail Creek and Big Wood River shown in Addendum #15, Figure 46, Size of Development Parcel D and wetlands	22.96, includes 7.75 Open Space	<p><u>(T) Prohibited:</u></p> <ul style="list-style-type: none"> <li>• Dental clinics, nursing homes or sanitariums, except spa or ski patrol related medical uses are allowed</li> <li>• Banks, savings and loan, and financial institutions, except automatic teller machines (ATMs)</li> </ul>

			are allowed  <u>(T) Permitted uses formerly conditional:</u> <ul style="list-style-type: none"> <li>On-site parking</li> <li>Recreation</li> </ul> <u>(RU) No Change</u> <ul style="list-style-type: none"> <li>Uses are regulated per the Ketchum Zoning Code</li> </ul>
Block 6: Recreation	Agriculture/Forestry (AF) & Recreation Use (RU) along the Big Wood River	16.55	<u>(RU) &amp; (AF) No change:</u> Uses are regulated per the Ketchum Zoning Code
Block 7: Mixed Use and River Run existing Base Lodge	Tourist (T) & Recreation Use (RU) along the Big Wood River	14.28	<u>(T) Prohibited:</u> <ul style="list-style-type: none"> <li>Dental clinics, nursing homes or sanitariums, except spa or ski patrol related medical uses are allowed</li> <li>Banks, savings and loan, and financial institutions, except automatic teller machines (ATMs) are allowed</li> <li>Health and Wellness uses, except as specifically allowed in Condition #9 and this Agreement</li> </ul> <u>(T) Permitted uses formerly conditional:</u> <ul style="list-style-type: none"> <li>On-site parking</li> <li>Recreation</li> </ul> <u>(RU) No Change</u> <ul style="list-style-type: none"> <li>Uses are regulated per the Ketchum Zoning Code</li> </ul>

\*The uses in Table 1 modify the uses permitted in the Ketchum Zoning Ordinance.

**3.2 Overlay Districts.** Portions of the Property are constrained by floodplain, avalanche and hillside hazards. Therefore, the Floodplain Overlay, Avalanche Overlay and Mountain Overlay Districts, as shown on the Large Block Plat (Addendum 17), respectively, shall be applied to these areas in addition to the underlying zoning designation for each Large Block and will apply to subsequent replats/subdivisions of each Large Block.

**3.2.1 Floodplain Overlay District (FP).** The Floodplain Overlay District shall be applied as shown on the Large Block Plat, Addendum 17. All other riparian and floodplain regulations shall be per the Ketchum Zoning Code, unless specifically modified herein. Modified boundaries of the 100 year floodplain will be applied upon the Federal Emergency Management Agency’s (“FEMA”) formal acceptance (letter of final determination) of the Digital Flood Insurance Rate Maps (“DFIRMS”) of May 26, 2010, attached hereto as **Exhibit L** and incorporated by reference herein. The Large Block Plat shall delineate said applicable 100 year floodplain and all riparian setbacks. Development, trails and park improvements are allowed within the floodplain subject to standards set forth in the Floodplain Overlay District, Section 17.88 of the Ketchum Zoning Code. Trails and park improvements are allowed within the Riparian Setbacks. Future modifications to the 100 year floodplain may be allowed upon

acceptance by FEMA of a Conditional Letter of Map Revision. The FEMA data referred to in this Agreement is applicable only for flood insurance procurement purposes and is not meant to delineate the probable or possible areas of the Property that may be subject to flooding now or in the future.

**3.2.2 Avalanche Overlay District (A).** The Avalanche Overlay District shall be applied to areas in the Large Blocks containing avalanche terrain. The high hazard areas (red avalanche zones) and low hazard areas (blue avalanche zones) shall be delineated on the Large Block Plat. All buildings within the avalanche overlay district shall comply with the requirements of Chapter 17.92, Ketchum City Code. No further subdivision of portions of the Property within the avalanche overlay district, which include building sites located in said overlay district, is permitted.

#### **4. CONDITIONS ON DEVELOPMENT.**

**4.1 Effective Date of Regulations.** As described herein the Ketchum land use ordinances, rules and regulations governing the development of the Property shall be those in force as of the Effective Date of this Agreement.

#### **4.2**

**(a) Additional Applications.** While Owner has conducted pre-application Design Review for the concepts for certain structures shown on the PUD Development Plan, Owner will also submit such applications regarding Design Reviews, final plat reviews, conditional use permits, if applicable, and any other applications as may be required by the Ketchum City Code in effect on the Effective Date. Such other applications may include additional pre-application Design Review submittals. Ketchum, having exercised its discretion in approving this Agreement and the PUD Development Plan, shall act reasonably 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, the terms of this Agreement and applicable State and/or federal laws. Except as otherwise provided herein or in the PUD Development Plan, the Project shall comply with the Ketchum City Code in effect on the Effective Date. Notwithstanding any contrary provision in this Agreement, Owner may elect to comply with the Ketchum City Code in effect on the date on which Owner makes application for any permits, approvals and/or entitlements for the Project and Ketchum agrees to accept such compliance as it relates to such permit, approval and/or entitlement. Unless otherwise expressly provided at the time of approval or issuance of any application, permit, plan, specification, plat and/or other entitlement required for the Project, all requirements of this Agreement, the PUD Development Plan and the Ketchum City Code applicable to such application, permit, plan, specification, plat or other entitlement shall be deemed waived by Ketchum, or fulfilled by Owner, upon approval or issuance of any such application, permit, plan, specification, plat and/or other entitlement for the Project.

**(b).** Ketchum and Owner specifically acknowledge the Subdivision Waivers Matrix approved by Council, attached hereto as **Exhibit N** and incorporated herein by reference, which waivers are necessary for construction of the Project.

**4.3 Design Flexibility.** All development of the Property shall be consistent with the Revised Conceptual Site Plan, the PUD Development Plan and this Agreement; provided, however, that Ketchum shall allow design flexibility and not restrict authority to grant Design Review approval of any building or improvement consistent with this Agreement and the Findings.

**4.4 Conditions of Approval.** Any conditions imposed by Ketchum to the approval of any additional applications shall not modify elements of the Project that have been specifically agreed to and approved as part of the Annexation and Zoning, PUD and/or this Agreement including, but not limited to: densities, heights, setbacks, buffers, employee housing, community housing, recreation, phasing requirements and off-site improvements.

**4.5 Residential Development.** Owner may develop the Property with a mix of housing types, including but not limited to the following: condominiums, townhomes, duplexes, single-family cabins or other uses allowed in Table 1; provided, however, residential development shall not exceed 610,000 square feet within the PUD Property and 800,000 square feet within the remainder of the Project. If subsequent PUD or Design Review applications exceed these totals, this Agreement shall be amended. These residential square footage limitations exclude all parking structures and garages.

**4.5.1 Acreages and Floor Area.**

**Table 2: Allowable PUD and Tourist Zone (Outside the PUD Area) Building Square Feet**

<b>PUD Allowable Building Square Feet</b>	
<b>PUD Building(s)</b>	<b>Square Feet</b>
Retail/Restaurant**	35,000* sq ft
Residential and other permitted uses per Table 1 of the River Run Annexation Findings of Fact	610,000* sq ft
<b>Subtotal</b>	<b>645,000* sq ft</b>
Hotel	300,000* sq ft
<b>Total</b>	<b>945,000* sq ft</b>

<b>Tourist T Zone Outside the PUD Area Allowable Building Square Feet</b>	
<b>Residential</b>	<b>800,000* sq ft</b>

\*excluding above and below-grade parking

\*\* excluding sports equipment storage areas or back of house food and beverage areas, which are both allowed uses, but are not to be counted towards this 35,000 sq. ft. maximum

**4.5.2 Setbacks.** Setbacks are described in Section 14.1, Setbacks from Creeks; Setback and Open Space Diagram, attached hereto as **Exhibit C** and incorporated herein by reference; and the PUD Findings (**Exhibit S**).

#### **4.6 Commercial/Hotel Core Development.**

**4.6.1 Core Hotel.** The hotel core portion of the Property shall consist of approximately 21.76 acres as shown on the PUD Development Plan. The hotel shall be subject to Ketchum's definition of "hotel", but other buildings within the PUD Property shall not be, in accordance with the waiver granted in Section 14 of the PUD Findings and as addressed in the Annexation Findings. The hotel shall be a full-service destination hotel comprised of a minimum of 150 rooms and constructed to accommodate a minimum "4-star" building program. Amenities may include but are not limited to the following: a spa and fitness facility, destination restaurant, meeting space, grand lobby and outdoor pool and hot tubs. The hotel may contain for-sale residences. The hotel may be built in phases and in multiple buildings within the PUD Property and may be comprised of more than one hotel.

**4.6.2 Maximum Retail/Restaurant Square Footage.** Retail/Restaurant uses on the PUD Property shall be limited to a maximum of 35,000 gross square feet, not including sports equipment storage areas or back of house food and beverage areas (permitted uses). Retail uses should be related to resort guests.

**4.6.3 Maximum Health and Wellness Use Square Footage.** A maximum of 50,000 gross square feet of space is permitted. The maximum square footage is a cumulative total for the Property (Annexation Area). Health and Wellness uses outside of the defined uses in definition 1.10 above and/or additional Health and Wellness Use space in excess of 50,000 gross square feet shall be processed by Ketchum as Conditional Uses.

**4.6.4 Hotel Commercial Uses.** The commercial portion of the hotel shall be developed ancillary to or within the hotel and shall be limited to commercial uses of or related to a resort. Commercial uses may include, but are not limited to: restaurants, bars, gift shop, ski equipment sales and rental stores, and spa/fitness center. No portion of the hotel spa and fitness center shall be counted towards either the 35,000 square foot retail/restaurant maximum in Section 4.6.2 or towards the 50,000 square foot Health and Wellness Use maximum in Section 4.6.3 regardless of location or whether public access is permitted thereto.

#### **4.6.5 Design Guidelines for Bulk and Mass.**

**(a) Tent Diagram.** The Project shall comply with the design guidelines set forth below, and derived from the following Tent Diagrams, attached hereto as **Exhibit F** and incorporated herein by reference: Figure 31--Tent Diagram Plan; Figure 32--Tent Diagram; and Figure 37--Setback Diagram. Issuance of any building permit for the Project is conditioned on future Design Review approval.

**(1) Height and Bulk.** All height and bulk limitations outside of the PUD Property shall comply with the Tourist District. The figures in **Exhibit F** define

those specific areas where buildings may exceed height and bulk limitations within the PUD Property, subject to the limitations set forth in Condition #8 of the PUD Findings, which shall be implemented by the Commission applying the standards of Ketchum City Code Section 17.96, during the Design Review process:

(2) **Building Bulk Limitation on Tent Diagram.** The Design guidelines describing building bulk are as set forth in Condition #8 of the PUD Findings.

(b) **Design Review.** Analysis of the specific architectural design, materials, landscaping, building and parking layout beyond the conceptual diagrams in **Exhibit F** shall occur during Design Review. Owner shall incorporate and rely on the design guidelines approved in the Findings as the basis for their Design Review application(s). Owner may propose further modifications to the design guidelines, and the Commission may in its sole discretion adopt Owner’s proposed modifications. Adoption of the Findings shall not be deemed or construed as any assurance of a future Design Review approval by the Commission. However, general building massing will be approved so long as proposed building designs comply with the massing restrictions contained in the PUD Building Massing Diagrams, Figures 32, 33, 34 and 40, attached hereto as **Exhibit G** and incorporated herein by reference, and the PUD Findings (**Exhibit S**).

**4.7 Open Space.** The open space areas depicted in the Revised Conceptual Site Plan (**Exhibit B**) and PUD Development Plan (**Exhibit E**) meet the open space requirements for the Project. Open space areas for the 140-acre Property, shall include the riparian setbacks along the Big Wood River and Trail Creek, the Big Wood River Ecological Park, the Park on the River Concept Plan Area, Addendum 7, attached hereto as **Exhibit H** and incorporated herein by reference, subject to any third party approvals, the wooded area south of the Big Wood River and the Bald Mountain ski base area. All open space areas shall be developed as set forth in the Findings and as shown on the Revised Conceptual Site Plan (**Exhibit B**), 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. Open Space areas are further described in Table 3 below.

**Table 3: River Run Annexation Area: Open Space Proposed**

<b>Large Blocks</b>	<b>Zoning District(s)</b>	<b>Approximate Acreage by Area/Use</b>	<b>Percentage of Open Space Specifically Identified</b>
Block 1: Village Core/Hotel Core	Tourist and Recreation Use	21.76 <b>2.75 Open Space</b>	Approximately 13 % open space
Block 2: Residential Area A	Tourist and Recreation Use	16.17 acres Residential <b>5.58 acres Open Space</b> 21.75 acres Total	Approximately 26% open space

Block 3: OS & BWR Ecological Park	Recreation Use and Agriculture/Forestry	<b>30.31 acres Open Space</b>	100 % open space not including amenity related improvements in the Eco-Park
Block 4: Residential Area B & Commercial	Tourist and Recreation Use	2.67 acres Residential <b>6.06 acres Open Space</b> 8.73 acres Total	Approximately 69% open space
Block 5: Residential Areas C & D	Tourist and Recreation Use	16.51 acres Residential <b>6.45 acres Open Space</b> 22.96 acres Total	Approximately 28% open space
Block 6: Recreation	Agriculture/Forestry Recreational Use	<b>16.55 acres Open Space (ski run)</b>	100% open space with ski lift facilities
Block 7: Mixed Use, & River Run Base Lodge existing	Tourist and Recreation Use	10.26 acres Mixed-use <b>4.02 acres Open Space</b> 14.28 acres Total	Approximately 28% open space
Totals	Multiple Use	<b>71.72 acres Open Space</b> 138.2 acres Total	Approximately 52% open space

**4.8 CC&RS.** Owner shall create an appropriate entity or entities including, without limitation, a non-profit Owners Association, and record Conditions, Covenants and Restrictions (“**CC&Rs**”) on the Property consistent with this Agreement and the Findings which bind all present and future property owners within the Project to provide for the perpetual support and maintenance of the Project’s governance, entities, processes, transfer fees, common areas, landscaping and irrigation. The CC&Rs shall also establish quality control throughout the Property both during development and during the operation of the Project after build-out. The CC&Rs shall address at least the following items;

**4.8.1 Maintenance.** An allocation of perpetual responsibility for maintenance of all community and privately owned landscaping and amenities;

**4.8.2 Irrigation.** An allocation of perpetual responsibility for the operations and maintenance of the pressurized irrigation system for the Property;

**4.8.3 Architectural Review.** Architectural review rights in any CCRs;

**4.8.4 Transfer Fee.** Establish the transfer fee in the CCR’s as set for in Section 7.2 of this Agreement.

**4.8.5 Compliance.** 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, the Revised Conceptual Site Plan (**Exhibit B**) and the PUD Development Plan (**Exhibit E**). Owner agrees to obtain written approval from Ketchum prior to amending or abdicating any of the CCRs which could affect requirements of Section 4.8 of this Agreement.

**4.9 Emergency Services.** Compliance with codes for fire protection, including water supply and access for fire and emergency services apparatus, will be required at the time of either Subdivision approval or Design Review. Requests for modifications or waivers from such codes will be reviewed in connection with replatting of each phase or Design Review.

**4.9.1 Fire Apparatus Turnaround.** Owner shall provide a fire apparatus turnaround with an approved turning radius on the west side of the Big Wood River, which may be comprised of a loop utilizing the proposed new service bridge and the existing bridge.

**4.9.2 Fire Apparatus.** 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. The formula to be used to calculate Owner's proportionate share is set forth in **Exhibit T**, attached hereto and incorporated herein by reference. 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 a latecomer reimbursement paid to Owner by the developer of any new buildings, 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. The latecomer agreement fees shall not be paid by Ketchum from any Ketchum funds. The latecomer fee shall include an administrative fee paid to Ketchum to offset costs incurred by Ketchum for establishing and administering the latecomer program. In lieu of a latecomer program, Owner may seek a credit against any related impact fees for fire services established by Ketchum.

**4.10 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. The landscape plan for each phase shall describe and depict the intended buffering of the Property from adjoining property. Buffers and setbacks to existing properties adjacent to the Property shall comply with the buffers and setbacks defined in Section 4.5.2 above. 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.

**4.11 Livestock Driveway Easement.** The existing 100' wide stock drive easement on the western edge of the Property may be relocated with the approval of the easement holder, but shall remain in the same general area as its location existing on the Effective Date. Residential access roads and/or driveways shall not be placed within the easement without prior approval of Ketchum in connection with future development applications. The existing easement includes a bike path, which easement may continue to exist, including emergency egress. In no case would an approval of a land use by Ketchum in the livestock driveway easement subject Ketchum to liability if said approval was requested by Owner. Owner has the sole liability to meet the legal requirements of a servient estate holder to the holder of the livestock driveway easement holder. Owner releases and holds Ketchum harmless to any claims from the livestock driveway easement holder asserted or alleged to have resulted from any actions taken by or on behalf of the Owner, its agents, employees or contractors.

**5. STREETS, PARKING AND CIRCULATION.** Evaluation of impacts to Ketchum roads, parking, circulation, and non-motorized improvements as a result of review and approval of the Land Use Applications has been completed by Ketchum. Review of Additional Applications, as described in Section 4.4 herein, may include: (i) amendments to the Revised Sequencing Table Addendum 4, Figure 27 attached hereto as **Exhibit O** and incorporated herein by reference; and/or (ii) site specific mitigation, which may include determination of entrance locations to subdivision areas or adequate site distances. Approval of additional applications by Ketchum may include site specific conditions related to traffic mitigation, including items such as access points, drive aisles and site distances, as described in this Section 5.

**5.1 Private Roads, Private Pathways and Private Access Ways.** Owner shall install, at its sole expense, all private access ways within the Project. Owner and/or a duly constituted homeowners' association shall be responsible for the year-around maintenance of all private roadways, private driveways, private pedestrian pathways, private trails and similar private access ways, including, without limitation, snow removal to maintain access and parking, as well as emergency vehicle turnaround, within the Property.

**5.2 Street, Roadway and Pathway Standards.** All internal streets, roadways and walkways shall be designed and constructed as generally depicted on the Revised Conceptual Site Plan and Large Block Plat. Major Roads (specified as Second Avenue; Third Avenue to the point of its intersection with Serenade Lane; and Serenade Lane) shall be compliant 60-foot ROWs, with 26' paved, curb, gutter and sidewalk. Consideration of waivers for Minor Roads (specified as all roads except the Major Roads) shall be evaluated and may be accepted upon future review of subdivision and/or Design Review applications required for each area or phase proposed. Upon acceptance of roads and associated rights of way Ketchum shall accept responsibility for the maintenance and operations of improvements within the ROWs as described in the ROW Maintenance Responsibility Matrix attached hereto as **Exhibit M**. Such operations and maintenance shall be performed in a manner consistent with Ketchum's standards for operations and maintenance in the downtown core ROWs. The ROW Maintenance Responsibility Matrix may be amended by mutual consent of Ketchum and Owner. Upon request, Ketchum shall grant Owner, homeowner associations, special financing districts or the Urban Renewal Agency the ability to augment the ROWs with added improvements and/or enhanced maintenance via encroachment agreement, easement or similar instrument. Any such

improvements must be approved via Design Review and, unless specifically accepted by Ketchum, the responsibility for operations and maintenance of such improvements will be borne by the applying party. Any added improvements or enhanced maintenance performed by Owner or others shall not relieve Ketchum from its duty to continue to operate and maintain the ROWs as described herein.

**5.2.1 Street Hierarchy.** As streets are designed and engineered, Owner shall work with Ketchum to develop a street hierarchy with respect to traffic and design for Third Avenue, Second Avenue and Serenade Lane/Highway 75. The hierarchy shall be established based on desired traffic routes or the location of higher traffic flows with respect to the above-mentioned streets.

**5.2.2 Dedication.** Dedication and acceptance of roads shall take place upon recordation of a final plat for each phase of the Property. Ketchum shall not maintain said roads until such acceptance has been formalized. Final acceptance of roads is subject to approval by Ketchum of grades, cross sections and other engineering and design details. Ketchum shall accept all roads that are in compliance with City standards, but reserves the right not to accept any roads that do not comply with specified City standards. Consideration of waivers for roads shall be evaluated and may be approved and accepted upon future review of specific PUD, subdivision and/or design review applications required for each area or phase of development.

**5.2.3 Maintenance.** Owner shall maintain all roads, including all snow removal, until the time of dedication to and acceptance of the specific roadway by Ketchum. Ketchum shall continue to maintain those portions of Serenade Lane, Second Avenue and Third Avenue as it has at the time of annexation until such time as said roads are constructed in new, approved alignments and to Ketchum standards.

**5.2.4 Sidewalks.** Ketchum intends to develop sidewalks and a bike lane along the developed portions of Second and Third Avenues to encourage pedestrian access to and from downtown Ketchum to the Project. Owner shall pay twenty-two percent (22%) of these sidewalk and bike lane improvements based on 2009 PM peak hour traffic counts and the project build-out traffic volume using this roadway. In the future when this project mitigation is required, the Developer can at his own expense submit for review and approval by Ketchum City a traffic study showing their proportionate share cost of the improvement based on the future conditions. Ketchum shall notify Owner at least six (6) months prior to Ketchum's construction of these improvements of Owner's need to advance funds to Ketchum for these improvements. Owner's payment to Ketchum shall not be due until the construction of the realigned 3<sup>rd</sup> Avenue through the Property is completed and until Ketchum is ready to commence construction on this off-site improvement, as described in the Revised Sequencing Table, attached hereto as **Exhibit O**. The funding advance shall be made based upon the City Engineer's estimate of costs and a true up to actual cost shall be completed upon project completion. Improvements shall be as designed in the cost estimate provided by the City Engineer dated December 7, 2009.

**5.2.5 Second Avenue and Serenade Lane.** The decision as to whether Second Avenue or Serenade Lane should be the through street shall be made at the time of final roadway design, and subject to a review of anticipated traffic volumes.

**5.2.6 Public Access.** All roads shall have public access, whether dedicated to the public or private. No private gated roads are permitted within the Project, with the possible exception of the portion of Third Avenue leading to the proposed new service bridge crossing the Big Wood River for public safety/traffic control. Any gated portion of Third Avenue and the proposed new service bridge shall allow for public pedestrian and bicycle access but vehicular access may be limited to emergency vehicles, service vehicles, property owners' vehicles and other vehicles as determined by Ketchum and Owner via a separate use agreement or final plat note.

**5.3 Lighting.** Owner shall, at its sole expense, install lighting within each phase of the Project, as required by Ketchum's ordinances and/or street standards during Design Review for each phase, prior to the issuance of any Certificates of Occupancy within each phase. All lighting shall comply with the Ketchum Dark Sky Standards, Chapter 17, Ketchum City Code. The use of Ketchum Streetscape Lighting Standards is required, unless alternative lighting specifications are approved during the Design Review proceedings. 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.

**5.4 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, to mitigate all material damage 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 would be used to determine the damage caused by construction traffic and the estimated cost of repair. Every year, 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 normal non-construction traffic.

**5.5 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. The signage plan shall include signage directing traffic to the River Run Base Area via the roundabout/T intersection at Serenade Lane and SH 75, whichever is chosen. Ketchum shall be responsible for the cost and installation of the City of Ketchum entry sign at the intersection of Serenade Lane and SH 75. Ketchum will coordinate in good faith with Owner in the design of such sign.

**5.6 Snow Storage.** Owner shall develop and submit for approval during Design Review of each project phase a plan for adequate per-storm snow removal and storage for the

project phase being reviewed. Such plans may include storage within the street rights of way.

**5.7 Parking.** Residential and hotel parking calculations are based on the parking ratio table within Addendum 3 of the Land Use Applications, **Exhibit P** attached hereto and incorporated herein by reference. The actual number of parking spaces required shall be calculated based on this table at the time of Design Review and/or Subdivision.

**5.7.1 Public Skier Parking.** Public skier parking shall continue to be available on the Property until existing surface parking lots are developed. Upon development of the surface parking area, public skier parking shall be provided by Owner in a parking structure constructed on the Property. The phasing of the exchange of surface parking for a parking structure is contained in the Revised Sequencing Table (**Exhibit O**).

**5.8 Transit.** Owner shall preserve a portion of the Property east of the Hotel Core area for a future community connector, although construction of the community connector shall not be required.

**5.9 Bus Stops.** Bus stops and/or a transit facility, as shown on the PUD Development Plan (**Exhibit E**), shall be constructed by Owner and approved by Ketchum. Construction of the bus stops and/or transit facility shall occur at the time the parking structures become shared with Ketchum or at the time a Community Connector is constructed, whichever occurs first. The transit facility improvements shall include bus staging with sufficient drop off area to allow for several buses to be stacked, fully enclosed heated shelter(s) of a minimum size of 300 square feet and a maximum of 350 square feet, access to public restrooms, transit kiosk or display and skier drop off. Transit facility location shall be shown on the Revised Conceptual Site Plan (**Exhibit B**). Location of bus stops shall be mutually agreed upon by Owner, Ketchum and transit provider (currently Mountain Rides). Lighting for said bus stops and/or transit facility shall be approved through Design Review. Upon completion of each of such transit facility improvements, and acceptance thereof by Ketchum, Owner shall assume all responsibility therefore, including but not limited to: operation, maintenance, financing, public safety, repair and liability. Owner releases and holds Ketchum harmless for any and all claims arising out of the transit facility and bus stops except as described in this section. 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 grossly negligent acts and/or omissions of Ketchum's agents or employees as to the bus stop and transit facilities described herein.

#### **5.10 Traffic Mitigation.**

**5.10.1 State Highway 75 & Serenade Lane.** The Parties shall seek Idaho Transportation Department ("ITD") approval to either: (i) signalize this intersection with protected/permitted phasing for northbound left-turns and provide an acceleration lane for eastbound right-turns; or (ii) construct a dual lane roundabout ("roundabout"). The following standards/terms shall apply to the improvements to State Highway 75 and Serenade Lane:

(a) **Acquisition of Right-of-Way and Construction Costs.** 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 with ITD and the affected landowners. The State of Idaho is expected to initiate acquisition of the additional right-of-way to serve the Phase of the Project that contains all or part of the Hotel. Owner shall give Ketchum at least 180 days written notice of the date on which it will be submitting a building permit for the Hotel to provide ITD with a timeframe for having the improvements completed. Owner acknowledges and agrees the roundabout is the preferred alternative for this road intersection that the right-of-way acquisition costs, shall be borne solely by the Owner less any funds provided by ITD to obtain such additional right-of-way for the roundabout/intersection. Owner reserves the right to construct the signal instead of the roundabout if Owner determines the roundabout right-of-way acquisition costs exceed the fair market value based on the zoning in place as of the date this Agreement is executed. If Owner determines it desires to construct the signal instead of the roundabout, Owner and Ketchum agree to meet to determine whether additional funds or other measures may be available to acquire the right-of-way for the roundabout in order to construct it instead of the signal. Owner shall also be responsible for all design and construction costs associated with the improvements to the intersection, State Highway 75 and Serenade Lane except Owner is not expected to reimburse funds from either governmental or other sources available to construct the improvements or acquire the right-of-way.

(b) **Compliance with ITD Standards for Roundabout.** The Parties acknowledge that ITD standards govern the construction of the improvements to Highway 75 and Serenade Lane and agree to comply with said standards. The Parties further agree to cooperate in good faith to obtain financing for the acquisition of right-of-way and construction of the improvements, including but not limited to: grants from ITD and other state or federal agencies.

**5.10.2 State Highway 75 & Second Street.** The Parties shall seek ITD approval and Owner shall pay for its proportionate share of the cost of providing a separate left and through/right lane on the eastbound approach. These improvements will be undertaken by Ketchum and the Owner's proportionate share of the costs shall be three percent (3%) based on 2009 PM peak hour traffic counts and the project build-out traffic volume using this intersection. In the future when this project mitigation is required, the Developer can at his own expense submit for review and approval by Ketchum City a traffic study showing their proportionate share cost of the improvement based on the future conditions. Any such subsequent traffic studies must be conducted prior to the time that Ketchum requests funds for these improvements including necessary right-of-way acquisition, design and construction costs from the Owner. Ketchum shall notify Owner at least six (6) months prior to Ketchum's construction of these improvements of Owner's need to advance funds to Ketchum for these improvements. Owner's payment to Ketchum shall not be due until the construction of the realigned 3<sup>rd</sup> Avenue through the Property is completed and until Ketchum is ready to commence construction on this off-site improvement, as described in the Revised Sequencing Table, attached hereto as **Exhibit O**. The funding advance shall be made based upon the City Engineer's estimate of costs a determination of the actual cost shall be completed upon project completion and submitted by Ketchum to Owner for any further reimbursement within sixty (60) days from Ketchum's payment requests.

**5.10.3 Third Avenue (north) & Serenade Lane.** Owner shall convert the intersection to an all-way stop-control and provide an exclusive eastbound left-turn lane. At Owner's sole expense, such conversion shall include Owner to pay for the engineering, design

and construction of the required improvements. The City Engineer shall approve the design and conduct periodic inspections and final approval of the construction completion.

**5.10.4 State Highway 75 & Sun Valley Road.** Owner shall pay for its proportionate share of the necessary ITD approval and engineering, design and construction costs to convert the north/south approaches from left/thru lanes to exclusive left-turn lanes. These improvements are intended to eliminate split phasing and to provide protected/permitted phasing for the east/west approaches. Owner's proportionate share of these costs shall be eight percent (8%) based on 2009 PM peak hour traffic counts and the project build-out traffic volume using this intersection. In the future when this project mitigation is required, the Developer can at his own expense submit for review and approval by Ketchum City a traffic study showing their proportionate share cost of the improvement based on the future conditions.. Ketchum shall notify Owner at least six (6) months prior to Ketchum's construction of these improvements of Owner's need to advance funds to Ketchum for these improvements. Owner's payment to Ketchum shall not be due until the construction of the realigned 3<sup>rd</sup> Avenue through the Property is completed and until Ketchum is ready to commence construction on this off-site improvement, as described in the Revised Sequencing Table, attached hereto as **Exhibit O**. The funding advance shall be made based upon the City Engineer's estimate of costs and a true up to actual cost shall be completed upon project completion.

**5.11 Bridges.** Owner shall, at its sole expense and the City Engineer's design approval, provide safe pedestrian routes on or adjacent to the bridge on Serenade Lane over Trail Creek to accommodate safe vehicle and pedestrian traffic, and pedestrian crossing across Trail Creek adjacent to Parcel N2.

**6. INFRASTRUCTURE IMPROVEMENTS AND UTILITIES.** Prior to issuance of any building permits, Owner, through its Project Engineer, shall provide proof to the City Engineer so Ketchum can certify that adequate waste water and domestic water and irrigation water facilities have been constructed and are operable to the proposed building site(s). Owner agrees the Property is in the Ketchum water and wastewater service areas and that the Property shall be connected to Ketchum domestic water and wastewater facilities.

**6.1 Conditional Will Serve .** Subject to the terms, conditions and limitations of this Agreement, including, but not limited to, Ketchum's acquisition or development of sufficient water rights to supply the water requirements of the Project in the manner set forth in Section 16.1 herein below, and Owner's development of the new municipal well to the capacity and specifications set forth in Section 16 herein, Ketchum agrees to provide irrigation and potable water, and wastewater services, to the Project.

**6.2 Utilities; Warranty.** 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 Sheet 12 of the Land Use Applications. 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 for a period of one (1) year 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.

**6.3 Off-Site Utilities.** All required off-site utility improvements, including but not limited to electric, natural gas, telephone, cable television, internet and fiber optic, must be completed as specified in the PUD Findings or in this Agreement. New off-site utility lines shall comply with Ketchum's Power Franchise Agreement.

**6.4 Storm Water Plan.** Owner shall prepare and implement a storm water plan that satisfies IDEQ groundwater separation requirements in connection with submission of the first preliminary plat or building permit, whichever occurs first.

**6.5 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.

## **7. EMPLOYEE AND COMMUNITY HOUSING.**

**7.1 Employee Housing.** Owner shall construct or acquire workforce housing to house its employees based on the employee housing formula for hotels in Ketchum City Code Title 17 at the Effective Date. Such employee housing may be located either in Ketchum or in the City of Sun Valley. Construction or acquisition of employee housing shall occur prior to the Certificate of Occupancy for the building(s) that are triggering the requirement for the employee housing. The construction or acquisition of employee housing may be completed in phases that coincide with a phased project build-out.

**7.2 Transfer Fees.** To mitigate impacts to community housing and active parks, and in consideration of Ketchum's waiver of the annexation fee, Owner hereby grants to Ketchum, to the extent permitted by law, a license to charge at the time of conveyance three-quarters of one

percent (0.75%) of the Gross Selling Price of a Lot or Unit within the Project (the “**Transfer Fee**”) commencing with the initial sale of Lots or Units to a bona fide third party purchaser and on each subsequent resale of a Lot or Unit for a period of twenty (20) years from the date of the first initial sale. Said license runs with the land and is irrevocable for the term set forth in this Section 7.2, 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 dedicated either to the development of community housing in Ketchum, and held in a segregated interest bearing account (the “**Ketchum Community Housing Fund**”), and/or to the development of active parks, held in a segregated interest bearing account (the “**Parks Fund**”). The Transfer Fee shall be reduced to one-half of one percent (0.50%) upon compliance with the terms set forth in Section 10.1 herein.

**7.2.1 Levy and Setoff.** 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.

**7.2.2 Time of Payment.** 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 until 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.

**7.2.3 Bulk Sales.** Ketchum acknowledges and agrees no Transfer Fee shall be due upon a bulk sale of land 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.

**7.3 Community Housing Parcel.** The westerly portion of the parcel at the northwest corner of Serenade Lane and State Highway 75 shall be dedicated to Ketchum for community housing, with dedication to occur after adjacent roadways are fully designed. Owner shall have reasonable input into the design review submittal for any structures constructed on said parcel. If Ketchum and Owner cannot reach agreement on the design of any building on the community housing parcel after more than three (3) rounds of revisions to the drawings prepared by Ketchum

then Ketchum may appoint a third-party architect to mediate the discussion. If the Parties remain deadlocked on any design review issues for a period longer than sixty (60) days after the mediation period begins then Ketchum may request that the third-party architect make a determination which shall be binding on the Parties. The cost of the third-party architect's services, which shall be limited exclusively to design review services, shall be shared equally between Owner and Ketchum. Nothing in this section shall be deemed to waive Ketchum's Design Review process for such community housing parcel.

See also Section 10.1 regarding Parcel N2, which may be used by Ketchum for development and operation of either community housing or park lands.

**8. LOCAL OPTION TAXES.** The Project shall be subject to the provisions of Ketchum City Code Chapter 3.12, relating to local option taxes ("LOT").

**8.1 Housing Unit Rentals.** Except as otherwise provided herein, Owner agrees that all rentals of housing units in the Project for periods of time less than thirty (30) days shall be subject to the LOT, regardless of who makes the reservation, including independent third party travel agencies or other independent parties. Nothing herein shall be deemed or construed to require the owner of a housing unit within the Project to pay any LOT to occupy their own unit. Further, the obligation to pay LOT shall not apply to the rental of workforce housing units.

**8.2 River Run Lodge Revenue.** Owner agrees to make a good faith effort to retain proportional sales at the existing River Run Day Lodge, including lift ticket and season pass sales, restaurant sales, ski shop sales or other eligible LOT sales. Proportional sales are described in the Fiscal Impact Analysis prepared by Owner for this Application. See addendum \_\_\_\_.

**8.3 Building Materials.** Ketchum City Code §3.12.030(A) imposed a 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.

**8.4. 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 8 to the extent of such amendment(s) and/or repeal.

**9. INFRASTRUCTURE FINANCING.** Owner has prepared two fiscal impact analysis scenarios for the Project, Exhibits 9 and 14 of the Owner Application. Based upon Owner's fiscal impact analysis, Ketchum agrees to support public funding for certain infrastructure improvements through one or more of the following funding mechanisms: (i) Local Improvement District ("LID"); (ii) Community Infrastructure District ("CID"); or (iii) URA Revenue. Owner acknowledges that such funding mechanisms will require additional approvals, which approvals are not guaranteed. Ketchum agrees to act in good faith in considering and securing such funding mechanisms.

**9.1 LID or CID.** Ketchum agrees to reasonably cooperate with Owner in establishing either a LID pursuant to Idaho Code §50-1701 through §50-1772, a CID pursuant to Idaho Code §50-3101 through §50-3121, or any other similar special financing district that Idaho law may allow for in the future, provided such district does not create financial liability for Ketchum.

**9.2 URA Revenue.** Ketchum agrees to annex all or part of the Property into the Ketchum Urban Renewal District (“URD”) upon annexation. Ketchum further agrees to recommend to the URA that it dedicate fifty percent (50%) of the revenues generated from the Property be included in the URD and dedicated toward eligible public infrastructure improvements associated with the Project, including but not limited to: skier parking structures; on-site utilities extensions; and roads. [The City Council will recommend the URD incorporate the Project’s public improvements to be included in the URD’s Capital Improvements Plan.] Owner and Ketchum acknowledge and agree that any project utilizing URD funds is subject to the sole discretion and decision of the URA. The URA is not bound by this Agreement. URD financing and projects are also subject to applicable Idaho and Federal laws.

**10. RECREATION.** Owner, at its sole expense, shall construct trails and pedestrian paths as set forth in this Agreement and in the Revised Conceptual Site Plan (**Exhibit B**).

**10.1 Dedication of Active Recreation Area.** Ketchum agrees to accept Owner’s donation of parcel N2 and the adjacent open space on the Property as active park lands, community housing mitigation, at the discretion of Ketchum. Parcel N2 shall be dedicated through an amended Large Block Plat. Ketchum is responsible for any and all improvements on Parcel N2. Accordingly, Owner agrees it is not eligible for an impact fee credit for donation of Parcel N2 to Ketchum. To the extent Owner seeks a tax credit or other appropriate tax benefit for the donation of Parcel N2 to Ketchum, Ketchum agrees to reasonably cooperate with Owner for such purpose. Ketchum makes no declaration or opinion as to the validity of such tax benefit for the donation. Owner acknowledges and accepts its sole responsibility and obligation for all tax filings including donation of Parcel N2 to Ketchum.

Concurrently, Owner shall continue to work collaboratively with Ketchum on the development of an acceptable alternative park of three (3) acres or greater in the greater Ketchum area. If an acceptable alternative is reached within thirty-six (36) months of the Effective Date, the 0.75% Real Estate Transfer Fee outlined in Section 7.2 herein shall be lowered to 0.50%. Owner shall have reasonable input into the design review submittal for any structures constructed on N2. If Ketchum and Owner cannot reach agreement on the design of any building on N2 after more than three (3) rounds of revisions to the drawings prepared by Ketchum then, Ketchum may appoint a third-party architect to mediate the discussion. If the Parties remain deadlocked on any design review issues for a period longer than sixty (60) days after the mediation period begins then Ketchum may request that the third-party architect make a determination which shall be binding on the Parties. The cost of the third-party architect’s services, which shall be limited exclusively to design review services, shall be shared equally between Owner and Ketchum. Nothing in this Section shall be deemed to waive Ketchum’s Design Review process for parcel N2.

**10.2 Warm Springs Base Trail Access Easement.** Owner shall dedicate an easement and construct that portion of the River Run to Warm Springs base facilities trail on the Property and

across Owner's adjacent 28.17-acre parcel (Parcel # RPK4N170131210 FRSWSE TL 3384, Blaine County Recorder's Office). Owner and Ketchum agree to cooperate with other entities, including the Warm Springs Ranch Resort, the U.S. Forest Service, Bigwood Backcountry Trails and other stakeholders in the design of said trail. Owner shall construct the portion of the pathway on the Property and its adjacent 28.17-acre parcel at its sole cost and expense. Construction of said trail shall occur as provided in the Revised Sequencing Table (**Exhibit O**), but shall not occur prior to the time that other segments of this trail are designed, scheduled and funded for construction.

**10.3 Paragliding.** Paraglider landing may continue until the Property is developed. If landing at Reinheimer Ranch is allowed, Owner agrees to provide access to the boundary of the Reinheimer Ranch through Owner's property.

**10.4 Trails and Pedestrian Facilities.** Owner shall provide additional detail regarding pedestrian facilities within the Project, particularly the Third Avenue and neighborhood areas, at the time of either large block plat approval or Design Review approval.

**10.4.1 Trails Access.** Owner shall provide access to the following trails from the Project: existing Bald Mountain Trail System; existing multi-use path primary Wood River Trail; existing spur of the Wood River Trail; multiple accessible points for fishing and nature viewing along Trail Creek and the Big Wood River in the Eco-Park, stream corridors and Hotel Core; and an internal path network.

**10.4.2 Wood River Trail.** Owner shall modify, at its sole cost and expense, the main Wood River Trail, which modifications shall minimize road crossings to allow winter grooming of the Nordic trail. Design of such modifications shall be subject to review and approval of the BCRD, including public input if desired by BCRD.

**10.4.3 River Run Base Area Access.** Owner shall dedicate an extension of the public non-motorized trail from the Bird Drive ROW in West Ketchum into the Property in order to access the River Run Base Area.

**10.4.4 Trail Creek Path.** Owner shall develop a path within the agreed upon riparian setback along Trail Creek, within the Ecological Park and along the Big Wood River, utilizing pesticide-free methods in accordance with Ketchum City Code as related to the floodplain and riparian areas.

## **11. PHASING.**

**11.1 Certificate of Occupancy Requirements.** No Certificates of Occupancy shall be issued for buildings in any particular phase until all roadways and pathways serving the phase are constructed or bonded for in a manner acceptable to Ketchum. No Certificates of Occupancy for a hotel or a phase of hotel shall be issued until all employee housing units required for that hotel or phase of hotel have been substantially completed and issued Certificates of Occupancy. Owner shall release and hold Ketchum harmless for from and against any claims, suits, or damages

arising from Owner's failure to have a Certificate of Occupancy issued by Ketchum under this Section or as otherwise regulated by relevant building codes in effect at the time such Certificate of Occupancy is sought.

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

**11.3 General Phasing Requirements.** Each phase shall contain all the necessary elements and improvements to exist independently from proposed future phases. Infrastructure improvements shall follow the outline established in Figure 27, Revised Sequencing Table (**Exhibit O**), unless the parties agree that modifications are needed to this Revised Sequencing Table to ensure orderly development and to mitigate impacts of the proposed phase.

**11.4 Design Review.** Except as otherwise provided in Section 14.1, no building permits or any other grading/excavation permits shall be issued until the Commission has completed Design Review of that phase. Owner acknowledges that nothing in this Agreement shall be deemed or construed as any assurance of Design Review approval.

**11.5 Construction Staging and Mitigation.** A detailed Construction Staging and Mitigation plan shall be approved by the Commission as part of the Design Review process on a phase by phase basis, 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 each phase of the Project.

**12. SNOW STORAGE.** Owner's property utilized by Ketchum for snow storage prior to and on the Effective Date shall be available for a minimum of five (5) years from the Effective Date. Owner shall provide at least two (2) years' advance notice of development of that portion of the Property currently used for municipal snow storage. Owner and Ketchum shall enter into a lease agreement of not less than ten (10) years, of at least two (2) acres of Owner's real property at the base of Cold Springs or another location agreeable to both Ketchum and Owner for municipal snow storage. Such lease agreement shall be contingent on approval of permits by Blaine County and/or other governmental entities, acquisition of which shall be the responsibility of Ketchum. If such permits cannot be obtained, Owner's obligation under this Section shall be waived.

**12.1 Environmental Assessment on Existing Snow Storage Site.** Ketchum agrees to obtain a Level I environmental assessment on the lease property at the expiration/termination of the existing use of the site for municipal snow storage. In the event such Level I environmental assessment suggests additional assessment and/or remediation is necessary, Ketchum agrees to undertake such additional assessment and/or remediation, but only to the extent any environmental/hazardous conditions were caused by Ketchum.. To the extent any remediation is required on the current snow storage site Ketchum shall complete such remediation within two (2) years from the date notice of development is provided by the Owner.

**12.2 Environmental Assessment on Future Snow Storage Site.** Owner agrees to obtain a Level I environmental assessment on the future snow storage site at the commencement of such

future lease. The parties agree that Ketchum is not responsible for any remediation identified at the commencement of the lease. At the completion of the lease, Ketchum agrees to obtain an updated Level 1 environmental assessment for the site. In the event that this second Level I environmental assessment suggests additional assessment and/or remediation is necessary, beyond that noted in the initial Level 1 assessment, Ketchum agrees to undertake such additional assessment and/or remediation, but only to the extent any environmental/hazardous conditions were caused by Ketchum.

**13. GREEN BUILDING PRACTICES.** Owner intends to incorporate the principles of the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) program for Neighborhood Design (LEED ND) where appropriate. Principles of the LEED ND program that are intended to be integrated into the Project design include: steep slope protection, site design for wetlands conservation and restoration, connectivity with the neighboring community and transportation demand management. In addition, Owner shall construct all buildings within the Project in conformance with standards required to achieve LEED certification under the U.S. Green Building Council's LEED Program 2.2. The decision to actually submit for LEED certification will be made on a building-by-building basis at the sole discretion of the Owner. Owner further agrees to abide by any valid building code amendments made by the City or the State of Idaho as set forth in §39-4116, Idaho Code.

**14. RIPARIAN RESTORATION AND FLOODPLAIN MITIGATION.**

**14.1 Compliance with Federal, State and City Permitting Requirements.** All required 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

**14.2 Setbacks from Creeks.** No unauthorized construction activity shall occur within the riparian setbacks. All setbacks referred to in this Section are minimums and are measured from the MHW from the Big Wood River and Trail Creek. Setbacks refer to building setbacks from Trail Creek. Paths, trails and sportsman's access may occur within the setback as approved through the Waterways Design Review process.

**14.2.1 Parcel D (aka R-2) within Block 5.** The riparian setback for Parcel D shall be 100 feet from the MHW along Trail Creek and the Big Wood River. The area within said 100' riparian setback shall be dedicated to Ketchum via a conservation easement pursuant to the provisions of Idaho Code §55-2101 *et seq.* for the purpose of preserving open space and protecting natural areas and wetlands. Density of Parcel D within Block 5 shall not exceed an average of two (2) units per acre, the area of which is calculated excluding area within the riparian setbacks and wetlands. The maximum average house footprint shall be 2,500 square feet including garage and decks over thirty inches (30") above natural grade. An environmental consultant selected by Ketchum shall work with the Owner on the location of the home sites, respecting native vegetation. The various environmental studies submitted in connection with the application should be reviewed and updated if site conditions change. At Design Review

and/or subdivision of this portion of Block 5, the following elements of the Project should be addressed: lighting; preservation and/or introduction of native vegetation; area of ground disturbance; CC&R regulations addressing at-large domestic animals; public access along the waterways; construction fencing; and minimizing road design and surface parking impacts. The lots may be clustered and may be smaller in size than allowed in the zone when necessary to protect sensitive areas.

**14.2.2 Big Wood River Setbacks.** These areas shall not be placed in a conservation easement.

- PUD Area (North) - Setbacks on the east side of the river from the existing bridge north to the property boundary shall be 25 feet, with additional building step back restrictions detailed in the PUD Findings. Exceptions for public improvements within the setback shall be made for a River Park in the PUD Property (**Exhibit H**), generally defined as the area north of the existing bridge from the 25 foot setback to the Big Wood River, including the back channel to the Big Wood River and the island formed by the back channel. A Vegetation Management Agreement will be executed for vegetation within the Big Wood River setbacks from the location of the future proposed service bridge to the northern boundary of the property on both sides of the river. A copy of the Vegetation Management Agreement is attached hereto as **Exhibit I** and incorporated herein by reference.
- PUD Area (South) – Setbacks on the east side of the river from the existing bridge south to the northern boundary of the Ecological Park shall be 75 feet.

**14.2.3 Trail Creek Setbacks.** Riparian setbacks for all other areas outside the hotel core PUD boundary shall be as follows: a minimum of fifty feet (50') from the MHW on the remainder of Trail Creek, with the limited exception of the area that has already been disturbed as shown on **Exhibit U** attached hereto and incorporated herein by reference; a minimum of fifty feet (50') from the MHW of both the Big Wood River and Trail Creek within the EcoPark; and ten feet (10') from the MHW along both banks of the Big Wood River and Trail Creek, which area shall be dedicated as a sportsman access easement, as more fully described in Section 15.1. The setback for Area D shall be 100' from the MHW. Setbacks on new side channels in the area of C2 and C3 shall be addressed through the Waterways Design Review process.

**14.2.4 PUD Setbacks.** Riparian setbacks within the PUD Property shall be governed by the PUD Findings.

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

15. **ENVIRONMENTAL PLAN.** Owner shall prepare and develop as part of Design Review a River Run Environmental Plan (“**Environmental Plan**”), which shall include a riparian restoration plan, and a Tree Preservation Plan (“**Tree Preservation Plan**”) for the 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 conform to the setbacks and buffers defined in Section 14 herein and shall include lighting restrictions to minimize the impact on wildlife passage after development of said property.

**15.1 Sportsman Access.** A ten foot (10’) wide sportsman access and nature study easement shall exist, as measured from the MHW on the Big Wood River and Trail Creek, and shall be open to the public at all times in accordance with Idaho Department of Fish and Game regulations, 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 Property may be prohibited by Owner.

**15.2 Landscaping and Irrigation.** Landscaping features shall incorporate sustainable design that preserves and enhances the native landscape of the Property and preserves existing substantial trees as much as practicable. 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.

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

**15.4 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 the Big Wood River and Trail Creek, as may be required by applicable state and federal laws and regulations.

**15.5 Eco-Park.** Owner shall develop an approximately 15-acre site consisting of wetlands and habitat bordering the Big Wood River, to be known as the Wood River Ecological Park (“**Eco-Park**”). Ketchum shall provide input on the location of sportsman’s access points. The accesses and learning centers/trails shall be developed as outlined in the Revised Sequencing Table, Figure 27 to the Application (**Exhibit O**).

16. **PROJECT WATER REQUIREMENTS.** Ketchum and Owner acknowledge, and concur with the findings and recommendations of, the River Run Project Review of Water Demand and Water Supply Issues completed by Brockway Engineering dated July 29, 2010 (“**Brockway Report**”), which sets forth estimates of the maximum day demands, peak hourly flows, pumping capacities, storage analyses and water right requirements for the Project. A copy of the Brockway Report is attached hereto and incorporated by reference herein as Exhibit U. The Brockway Report determined pumping rates that, if met by Owner, should not require equalization storage, and, with

adequate standby power, emergency storage would not currently be required by IDEQ.) Compliance by the Owner with the water supply recommendations for the Project set forth in the Brockway Report, in the manner set forth hereinafter in Sections 16 through 16.8 of this Development Agreement shall constitute acceptable mitigation for impacts which the Project, as currently planned and approved, will have on Ketchum's municipal water system ("City Water System"). Any modifications to the Project that could reasonably affect its water requirements, including, but not necessarily limited to, increases in Project density or irrigated landscaping shall require the Owner and Ketchum, in good faith, to review the revised water project requirements and, if necessary, modify this Agreement pursuant to Section 25 and provide for additional City Water System impact mitigation.

**16.1 Municipal Well.** To provide adequate water pumping capacity to meet the water requirements for the Project established in the Brockway Report, Owner agrees to develop a new municipal well in the vicinity of the Project with a pumping capacity of not less than 750 gpm, together with a well site with dimensions not less than 100 feet by 100 feet, the location of which shall be agreed upon by Owner, Ketchum and IDEQ. Upon completion, the well, consistent with plans and specifications approved by Ketchum and IDEQ, and including the well site, well house, pumps, electronics and back-up power generators as required by IDEQ regulations (collectively "Municipal Well"), shall be conveyed to Ketchum as provided for in Section 16.3..

**16.1.1 Water Rights.** Ketchum and Owner agree that acquisition of water rights for the Municipal Well, sufficient to support its maximum designed pumping capacity of 750 gpm, shall be sought in the following manner and priority:

(1) Ketchum and Owner agree to cooperate in an effort to secure, by decree in the Snake River Basin Adjudication proceedings, Idaho Water Right 37-417, in the name of the City of Ketchum, which water right, if obtained, shall be used to the extent necessary to satisfy the pumping capacity of the Municipal Well. If the decree for Idaho Water Right 37-417 exceeds the pumping capacity of the Municipal Well, the excess water shall be the property of Ketchum for use in its municipal system at Ketchum's sole discretion. Owner waives any claim to Idaho Water Right 37-417 and Owner agrees to provide Ketchum assistance to obtain the decree.

(2) To the extent that Water Right 37-417 is not decreed to Ketchum, or is decreed with a diversion rate insufficient to provide for the maximum pumping capacity of the Municipal Well, Ketchum shall apply for a new municipal water right in the amount of the deficiency.

(3) If Water Right 37-417 and/or a new municipal right prove unobtainable, or are approved with diversion rates insufficient to provide water for the maximum pumping capacity of the new Municipal Well, Ketchum shall, to the extent available, add the new Municipal Well as a point of diversion from one or more of its existing, but not fully developed, municipal water rights, to the extent necessary to permit the Municipal Well to be pumped at capacity. Any such existing municipal water rights may, at Ketchum's discretion, be licensed rights or permitted rights.

With the exception of legal fees, all costs incurred in pursuit of alternative 1 above shall be split equally between the Owner and Ketchum. Each party shall be responsible for any legal fees it may incur in pursuit of alternative 1.

For alternatives 2 and 3, the Owner shall promptly reimburse Ketchum for all costs incurred obtaining a new municipal right or for the transfer process to add the new Municipal Well as a point of diversion for existing Ketchum municipal water rights.

If water rights obtained from alternatives 1, 2 or 3 outlined above, either singly or in combination, are not sufficient to meet the Project water requirements of 750 gpm from the Municipal Well, the Owner and Ketchum agree, in good faith, to evaluate other options, including, but not limited to, having Owner obtain and convey to Ketchum, water rights in the amount of said deficiency. Further, Owner acknowledges that Ketchum's water rights are currently being adjudicated in the Snake River Basin Adjudication ("SRBA") (Case No. 39576), and are pending the issuance of decrees. Consequently, Ketchum cannot, and does not, represent or warrant the status of its water rights.

**16.1.2 Irrigation Water Systems.** During the development of each phase of the Project, the Owner, at its sole cost, shall construct an irrigation system capable of providing adequate water for all irrigated common areas, landscaped areas and irrigated areas situated therein ("Irrigation Water System"). Each such Irrigation Water System shall be subject to the following terms and conditions:

(a) **Design Approval.** As part of the preliminary plat approval process and prior to construction, plans and specifications for the Irrigation Water System in each phase shall be approved by the City of Ketchum and, if required, by other local or state agencies. The design shall isolate the Irrigation Water System from the City Water System as required by the Ketchum Public Works Department and applicable state agencies.

(b) **Re-Use and Untreated Irrigation Water.** Owner shall accept re-use or untreated water for any of its Irrigation Water Systems if such water is made available by Ketchum, subject to applicable ordinances, laws, and restrictions imposed by IDEQ. To the extent re-use or untreated water is provided and used, the Owner shall pay Ketchum the established rate. Such fees may also include operation, maintenance and capital improvement components as may be established by Ketchum through resolution or ordinance.

(c) **Owner Water Sources.** For the purpose of augmenting or enhancing the reliability of available water for any Irrigation Water System constructed within the Project, the Owner may, at its option, supply the system with surface or groundwater diverted from water rights owned or leased by the Owner, provided that the use of said water meets all applicable ordinances, laws and governmental regulations, and that such water is properly segregated from the City Water System and water sources. The use of such water shall be subject to prior notice and approval of Ketchum, which approval shall not be unreasonably withheld.

(d) **Operation and Maintenance of Irrigation Water Systems.** For each Irrigation Water System within the Project, the Owner or developer thereof shall provide for

the perpetual maintenance and operation thereof, either through CC&Rs imposing such obligations on a property owners association or otherwise, to the reasonable approval of Ketchum. The CC&Rs shall further provide that the delivery of irrigation or domestic water to the Property from the Municipal Well and City Water System is subject to any water curtailment that is outside of Ketchum's control.

**16.2 Water System Improvements.** In addition to the Municipal Well, Owner shall design, engineer, construct, install and permit, at its sole expense, any and all City Water System extensions or improvements throughout the Property, including those improvements, facilities and services set forth in Sheet 11 of the Land Use Applications and this Agreement ("Water System Improvements"). The Water System Improvements shall include municipal water rights necessary to serve the Project as set forth in this Agreement at paragraph 16.1. All such improvements shall be designed and constructed in accordance with the standards of, and consistent with construction drawings and specifications approved by the State of Idaho, IDEQ, and Ketchum. The phasing and design of the Project's development shall dictate the necessity, location and construction of the Water System Improvements.

**16.3 Conveyance of Municipal Well and Water System Improvements.** The Municipal Well and all Water System Improvements described in Section 16.2, which are constructed or installed by the Owner shall, upon completion, be conveyed by the Owner to Ketchum, subject to the following terms and conditions:

(a) **General.** The conveyance shall include the Municipal Well referenced in Section 16.1 hereinabove, and the Water System Improvements described in Section 16.2 hereinabove, together with all easements necessary for access and operation well site; appurtenant fixtures and equipment; as-built drawings; equipment warranties (to the extent transferable); operation and maintenance manuals; operations records; Owner's water rights, if any, which are to be diverted from the Municipal Well; and all other pertinent information relating to the Municipal Well and Water System Improvements. Owner shall include a complete list of the real and personal property being conveyed to Ketchum.

(b) **Means of Conveyance.** Owner shall convey real property by warranty deed and personal property by bill of sale to Ketchum. Easements, well site, pump station sites, and the like shall also be placed on each final plat with a note dedicating same to Ketchum. Such dedication language shall be approved by the City Engineer and/or City Attorney prior to the City Clerk signing each final plat.

(c) **Conditions of Conveyance.** Ketchum's obligation to accept conveyance of the Water System and water rights shall be conditioned upon:

(i) The City Engineer's inspection and acceptance of the Water System then being conveyed, along with associated records, and determination that the system meets applicable IDWR and IDEQ requirements.

(ii) Ketchum's receipt of a preliminary title commitment showing that title to the real property or water rights to be transferred, if any, are free and clear of any liens and encumbrances that: (1) would materially limit Ketchum's ability to operate the Water

System; or (2) would place any undisclosed or unforeseen financial liability on Ketchum with regard to its future operation of the Water System. Such undisclosed or unforeseen financial liability would, by example, be a mitigation requirement imposed on the municipal water rights by IDWR or other regulatory entity which increases the operation and maintenance fees charged by Ketchum.

(iii) Issuance of a standard title insurance policy, at Owner's expense, based on a preliminary title commitment meeting the criteria set forth in the preceding paragraph.

(d) **One Year Warranty/As Is Conveyance.** Owner shall convey the Municipal Well and Water System Improvements consistent with the provisions of Section 6.2 herein.

(e) **Risk of Loss.** The risk of loss of any portion of the Water System shall be on Owner prior to final conveyance and transfer to Ketchum.

(f) **Connection Fees.** In consideration of Owner's performance of the obligations set forth in this Section 16, Ketchum agrees to waive its water development impact fee or similar fees for all connections to the City Water System occurring within the Project. Owner agrees that connections to the City Water System shall continue to be subject to established Ketchum standard connection fees consisting of costs for connection, inspection and metering, and, where applicable, Ketchum fire line inspection fee.

(g) **Latecomer Agreement.** Owner and Ketchum may enter into a Latecomer Agreement for facilities provided by Owner that benefit other properties outside the Property. The Latecomer Agreement should commence after the facilities are constructed for a term of ten (10) years. Owner shall provide City all information needed to calculate the latecomer fee within six (6) months of the completion of the water facility(ies) for which it seeks a latecomer agreement. The parties may agree, in writing, to extend the six-month period. In the event that Ketchum and Owner are unable to agree on the terms of the Latecomer Agreement, Owner shall have no obligation to provide water facilities to properties outside the Property and Ketchum will have no obligation to establish a latecomer fee for Owner. The Latecomer Agreement shall provide for reimbursement to Owner from the service connection charges collected from providing water facilities to such other properties outside the Project that have not paid or contributed their proportionate share toward development of the water system and which receive water service through the Project's water system. Latecomer fees shall not be paid to Owner from any Ketchum funds except through latecomer fees/service connection charges collected at the time hook-up fees for water service to such properties are paid pursuant to a Latecomer Agreement. The latecomer fee shall include an administrative fee to be retained by Ketchum to offset the cost to administer a Latecomer Agreement. A latecomer fee shall be calculated to address at least the following items:

- Allocable share of the cost of purchasing and permitting excess water rights conveyed by Owner to Ketchum beyond those required for the Property and only to the extent Owner

conveys such excess water rights to Ketchum;<sup>2</sup>

- Allocable share of the design, permit and construction costs of the water system above and beyond those required to serve the Property;
- The cost of construction of those oversized or extended portions of the Water System required to provide additional capacity as may be requested by Ketchum;
- The cost of acquisition of rights-of-way and easements from third parties for the water system;
- Interest on those amounts in (i) through (iv) at the ten (10) applicable municipal bond rate; and
- A reasonable administration fee to be retained by Ketchum for handling the accounting, auditing, and payment of the reimbursement fee made to Owner.

**16.4 Completion of Improvements.** Ketchum shall not issue any building permits for any phase prior to completion of Water System Improvements 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 required Water System Improvements (Section 16.2) and the Irrigation Water System (Section 16.1.2) 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 conveyance of the Water System Improvements and Municipal Well, and acceptance thereof by Ketchum, those improvements shall become a part of the City Water System, and Ketchum shall assume all responsibility therefore subject to Section 6.2 herein.

**16.5 Water Service.** Upon development and conveyance of the water system to Ketchum, Ketchum shall provide water service to the Project as and when required in connection with the development of the Property on the same priority basis as Ketchum provides water to other residents and businesses in Ketchum, subject to any water disruption or degradation of water quality or quantity that is outside the control of Ketchum, and further subject to Ketchum's reasonably enacted and imposed standard terms and conditions of delivery. All water service using the Water System, including the use of treated effluent from the Wastewater Treatment System ("**Re-Use Irrigation Water**"), shall be metered and subject to payment of water rates duly established by Ketchum consistent with the provisions of Section 16.1.2(b). Owner agrees to pay the applicable water rates.

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<sup>2</sup> Owner agrees that neither Owner nor its successor in interest are eligible for a latecomer fee for any water decreed to Ketchum for water right No. 34-417 even if such decree is for an amount that exceeds the water needs for the Project.

**16.5.1 Supply in Case of Non-Availability of Supplied Water.** Ketchum and Owner acknowledge that circumstances beyond the control of Ketchum could result in Ketchum being unable to supply water to the Project. In such event, the Owner shall have the right to make available additional water rights to be used at Ketchum wells to supply additional water to the Project. In such event the use of these water rights, shall be used solely for the Project. The Owner, or its successor, shall be provided the additional water at such rates as normally charged by Ketchum.

**16.6 Additional Water Supply and Storage.** In consideration of Owner's agreement to develop a new well and based in the Brockway Report, Ketchum agrees to waive any water storage requirement for the Project unless the Project density increases beyond what the Municipal Well compensates for storage needs, provided, however, that in the event IDEQ imposes additional water storage requirements on Ketchum in the future, it is understood and agreed that the owners of property within the Project may be required, consistent with all other owners of real property in Ketchum, to participate in paying for costs incurred for such storage through property tax assessments and/or water rate increase.

**16.7 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 may be constructed on a phase by phase basis provided the drainage system serving each phase is fully functional.

**16.8 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.

**17. SEWER.** Owner shall engineer, construct and extend, at its sole expense, the municipal sewer system, including those improvements and facilities set forth in Sheet 11 of the Land Use Applications and this Agreement, throughout the Project and relocate the municipal sewer main currently running through the Property as set forth in the Land Use Applications. The exact routing of the sewer system shall be determined by the Owner and Ketchum as part of the subdivision and/or Design Review process. All such improvements shall be designed and constructed in accordance with the standards of and construction drawings and specifications approved by IDEQ 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 Revised Conceptual Site Plan (**Exhibit B**) and 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 Ketchum shall assume all responsibility therefore subject to Owner's warranty set forth in Section 6.2 herein.

**18. 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 at the roundabout proposed at SH 75 and the entrance to the Project. Ketchum acknowledges that upgrading and undergrounding the electric power lines is beneficial to the general public and properties other than the 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 benefiting properties other than the Property shall be paid by the following, in order of preference: (1) the franchise agreement fund; (2) 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.

19. **SCHOOLS.** Pursuant to the Findings, the Parties have reviewed the possibility of utilizing URA funds to mitigate impacts to the Blaine County School District (“BCSD”) and have determined that mitigation of impacts to the BCSD is not a qualified project for the URA. The Owner should therefore address the need described in the BCSD letter dated January 11, 2010 by separate written agreement.

20. **ANNEXATION FEE.** The annexation fee is waived in its entirety by Ketchum based on the other considerations provided to Ketchum by Owner herein.

21. **RECORDATION OF LARGE BLOCK SUBDIVISION.** Owner shall record the Large Block Plat with the Office of the Blaine County Recorder within one (1) year of the date of its final approval and approval of the PUD-Conditional Use Permit by Ketchum, each with conditions acceptable to Ketchum. The PUD Conditional Use Permit shall be referenced on the Large Block Plat.

22. **FINANCIAL ASSURANCE AND ASSISTANCE.**

22.1 **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, provided that Ketchum shall be responsible for construction and/or maintenance costs associated with N2 and the community housing parcel described in Section 7.3 herein..

22.2 **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.

**22.3 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.

**22.4 Right of Entry.** Owner hereby grants Ketchum a license to enter upon the 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.

**23. AGREEMENT TO COOPERATE; JOINT DEFENSE AND CONFLICT WAIVER.** Each of the Parties agrees 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 Annexation, Zoning, 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.

**24. 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 38 herein, 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. The purchasers of lots, villas, condominium or townhouse units 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 4.6 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 lot, villa, condominium unit or townhouse 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 lot, villa, and unit. 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, provided such notice is not required

for conveyance of individual lots, villas, condominiums or townhouse units.

25. **AMENDMENT AND TERMINATION OF AGREEMENT**. 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 City Council. This Agreement shall terminate in the event a court of competent jurisdiction enters a final judgment, and after the Parties have exhausted all appeals from such final judgment, which results in an order nullifying the annexation of the Property.

26. **CHANGES TO DEVELOPMENT PLAN**. 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 Findings and all approvals by Ketchum as referenced in this Agreement, including, without limitation, the zoning designations set forth in Section 3, the PUD Development Plan, the PUD Conditional Use Permit, the Revised Conceptual Site Plan and the approved Land Use Applications (collectively, the “**Approvals**”).

27. **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. Such reimbursements shall not exceed Ketchum’s standard practices for future applications associated with the project such as Design Review, Subdivision, Large Block Plat, Environmental Plan, Tree Preservation Plan and others for which the Owner shall pay Ketchum’s standard application and processing fees.

28. **SUPERSEDING PRIOR AGREEMENTS**. This Agreement supersedes and extinguishes all prior agreements between the parties with regard to the Property or any portion thereof.

29. **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 Findings, or any material violation of any condition thereof, or the Findings, and following the cure period provided in Section 29.4 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 29.3 below.

**29.1 Bankruptcy 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 a “Bankruptcy Default,” and shall entitle Ketchum to seek all available legal and equitable remedies, as described in Section 29.3 below. Notwithstanding the foregoing, however, or any contrary provision herein, Ketchum shall not have the right to place a moratorium as described

in Section 29.3 below on the basis of a Bankruptcy Default alone without the existence of an Event of Default as described in the first paragraph of this Section 29 above.

**29.2 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.

**29.3 Remedies and Specific Performance.** In the event of an Event of Default, 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 work or 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.

**29.4 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.

**30. NO PRECEDENT.** The issuance of the 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.

**31. 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.

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

**33. 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.

**34. 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, 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.

35. **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.

36. **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:

Sun Valley Company  
1 Sun Valley Road  
Sun Valley, ID 83353

With a copy to:

Evan Robertson  
Robertson & Slette PLLC  
P.O. Box 1906  
Twin Falls, Idaho 83303

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.

37. **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 as described in Section 29 herein, 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.

38. **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 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.

39. **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.

40. **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.

41. **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.

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

43. **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.

44. **CHOICE OF LAWS.** This Agreement shall be construed in accordance with the laws of the state of Idaho in effect on the Effective Date.

45. **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 – Revised Conceptual Site Plan
- C - Setback and Open Space Diagram
- D - Legal Description of PUD Property
- E – PUD Development Plan
- F - Tent Diagrams (Figures 31, 32, 37)
- G – PUD Building Massing (Figures 32, 33, 34, 40)
- H - Park on the River Concept Plan
- I - Vegetation Management Agreement
- J – Large Block Plat
- K - Zoning Map
- L - Letter of Acceptance DFIRM
- M - ROW Maintenance Responsibility Matrix
- N - Subdivision Waiver Matrix
- O - Revised Sequencing Table
- P – River Run Parking Requirements

- Q – Revised Water Audit
- R- Annexation Findings
- S - PUD Findings (not available until after 8/2)
- T – Formula for High Rise Development Payments for Aerial Fire Truck
- U. - the River Run Project Review of Water Demand and Water Supply – Brockway Report dated July 29, 2010

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

47. **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.

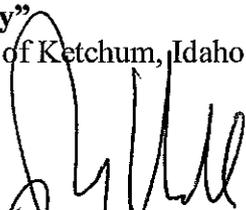
48. **AGREEMENT SUBJECT TO ANNEXATION AND ZONING.** This Agreement is subject to and shall become effective upon the Effective Date, subject to annexation of the real property described in **Exhibit A** with the zoning designations set forth on the Large Block Plat. An affidavit of the Owner, as owner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

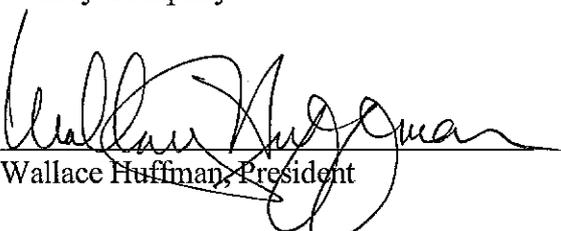
49. **RELIANCE BY KETCHUM.** This Agreement is intended by Owner to be considered by Ketchum as part of Owner’s Request for Annexation and Land Use Applications. Owner acknowledges and intends for Ketchum to consider and rely upon this Agreement in Ketchum’s review and consideration of said annexation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

**IN WITNESS WHEREOF**, the Parties hereto, having been duly authorized, have executed this Agreement to be effective on the Effective Date.

“City”  
City of Ketchum, Idaho

“Owner”  
Sun Valley Company

By:   
Randy Hall, Mayor

By:   
Wallace Huffman, President

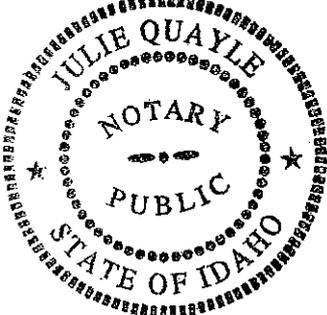


ATTEST:

For:   
Sandra Cady, City Clerk

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

On this 29<sup>th</sup> day of September, 2010, before me, a Notary Public in and for said State, personally appeared Wallace Huffman, known or identified to me to be the president of SUN VALLY COMPANY, the corporation 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.



Julie Quayle  
NOTARY PUBLIC for IDAHO  
Residing at Blaine County, Idaho  
Commission expires: 11-1-2011

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

On this 29<sup>th</sup> 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 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.



Marta R. Thompson  
NOTARY PUBLIC for IDAHO  
Residing at Ketchum, Id.  
Commission expires: 5/21/15