

FIRST AMENDMENT

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO: Community and Economic Development Director City of Ketchum P.O. Box 2315 Ketchum, Idaho 83340	
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(Space Above Line For Recorder's Use)

FIRST AMENDMENT TO THE BALD MOUNTAIN LODGE DEVELOPMENT
AGREEMENT

This First Amendment ("First Amendment") is made as of Nov. 7, 2011 by and between the City of Ketchum, Idaho ("Ketchum"), a municipal corporation, and Bald Mountain Lodge, LLC, a Delaware limited liability company ("Owner", and together with Ketchum, the "Parties").

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

1.1 Ketchum and Owner are parties to a Bald Mountain Lodge Development Agreement ("Agreement"), dated September 17, 2010, and recorded on September 30, 2010 in the records of Blaine County, Idaho as Instrument No. 581098, under and by virtue of which the Parties established certain rights and obligations with regard to the development of the real property commonly known as the Bald Mountain Lodge, 151 South Main Street, Ketchum and more particularly described in Exhibit "A" of the Agreement.

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

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

2.1 Section 8 (Workforce Housing) is deleted and the following is substituted therefore:

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

8.1 **Timeline A.** The Project shall receive the following waivers if a building permit is applied for by December 31, 2012 and construction commences by June 30, 2012. If a building permit is not applied for by December 31, 2012, construction does not commence in June 30, 2012 and the certificate of occupancy for the hotel portion of the Project is not approved by January 30, 2016, these waivers shall not apply.

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

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

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

8.2 **Timeline B.** The Project shall receive the following waivers if a building permit is applied for by December 31, 2013 and construction commences by June 30, 2014. If a building permit is not applied for by December 31, 2013, construction does not commence by June 30, 2014 and the certificate of occupancy for the hotel portion of the Project is not approved by January 2017, these waivers shall not apply.

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

8.2.2 **Employee/Workforce Housing.**

- (a) Ketchum will waive fifty percent (50%) of the total employee housing requirement. The remaining fifty percent (50%) of the employee housing fee (\$1.38 million) shall be paid via one of the following options:
- (i) Construction of employee housing units within the city limits or the Area of City Impact (as defined in the Ketchum Municipal Code), which construction can include concepts of partnership with Ketchum or other entities;
 - (ii) Payment via a real estate transfer fee, with the transfer fees accruing to the Ketchum Housing In Lieu Fund at the time of closing of each unit; or
 - (iii) By another method determined by Owner and approved by Ketchum.
- (b) If the remaining employee housing requirement is to be paid through real estate transfer fees, a minimum of thirty percent (30%) of the total required in-lieu fee shall be paid within one (1) year of issuance of the certificate of occupancy for the hotel portion of the Project. The remaining fee shall be paid at the closing of each residential unit, at the rate of four percent (4%) of the remaining fee per unit closed until paid in full. In the event the foregoing schedule does not result in one hundred percent (100%) of the fees being paid within ten (10) years of the issuance of the certificate of occupancy for the hotel portion of the Project, any remaining balance will be due and payable at the end of such ten (10) year period.

8.2.3 Infrastructure Partnering. Owner will construct and pay for all Project infrastructure requirements including undergrounding of power lines and installation of street improvements. The URA is an agency of Ketchum whose purpose is to encourage and provide financial support to the redevelopment and revitalization of the City. Ketchum agrees to recommend to the URA that the URA reimburse Owner for costs of qualified public infrastructure improvements. Qualified public infrastructure improvements may include: power line undergrounding and design, curb gutter and sidewalks, street improvements, water and sewer utility improvements, and design, storm water improvements and design and other improvements so designated as general public improvements. Said reimbursed costs may equal up to fifty percent (50%) of the annual URA tax increment revenue generated from the Project up to a total of \$1.5 million over the life of the URA, whichever is less. If approved, said reimbursement will be paid annually via URA tax increment revenues generated by the Project. A repayment plan may be developed at such time as substantial URA tax increment revenues are generated from the Project, at which time total URA tax increment revenues associated with this Project shall be recalculated. Ketchum agrees to cooperate with Owner in coordinating the appropriate formal URA applications and use its best efforts to propose reimbursements for the above defined improvements. URA financing and projects are also subject to applicable Idaho and federal law. Owner hereby

acknowledges and agrees that there is no guarantee that URA funding will be available for this Project.

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

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

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

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

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

- (a) The Employee Housing Plan shall contain the following elements:
 - (i) Salary/hourly wages (current dollars) for the various income categories of employees;
 - (ii) The expected number of each level of employee that is intended to be served by the employee housing units;

- (iii) Which employee category will be served by which type/size of units;
 - (iv) Information on anticipated rental rates (in current dollars) or subsidized and/or free rent to employees, including whether utilities and homeowner's dues (if any) will be included in the proposed rates;
 - (v) Establishment of maximum occupancy per unit type (i.e. one person per one bedroom unit; two persons per two bedroom units);
 - (vi) Location of units to be within Ketchum city limits;
 - (vii) A matrix on the breakdowns of the different types of units (1 BD; square footage; total number of units; anticipated rent, etc.);
 - (viii) The priority system for occupancy of these units (i.e. first availability to full-time employees, second to seasonal employees, and third to persons that are verified to be working in the City of Ketchum);
 - (ix) What units will be available and how the pool of units available will be determined;
 - (x) What minimum standards will be used to determine employee eligibility to live in the employee housing (i.e. whether full-time status is required and what constitutes full-time status);
 - (xi) How the overflow of demand of units by employees will be handled (i.e. priority system); and
 - (xii) Information on housing families with children and/or married couples.
- (b) The proposed Employee Housing Plan shall meet minimum size thresholds and income categories established by BCHA and/or Ketchum.
- (c) Owner shall submit the following information to Ketchum in connection with the Employee Housing Plan:

- (i) Wage/salary range and a breakdown of the number of employees within each classification (full-time, part-time, seasonal, etc.);
 - (ii) Information on the type of housing provided per employee classification;
 - (iii) Costs incurred in rent (and utilities) and transportation/parking by employees;
 - (iv) Details on anticipated lease terms/rental agreements for employees housed on-site; and
 - (v) Anticipated transportation and parking scenarios for both on-site and commuting employees.
- (d) The Employee Housing Plan shall be submitted and approved by Council as an amendment to this Agreement and shall be recorded prior to issuance of a building permit.
 - (c) All of the required employee housing shall be available prior to the issuance of any certificates of occupancy for the hotel, or any other uses in the hotel.

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

2.2 Section 3.9, Property Maintenance is hereby amended by adding the underlined language as follows:

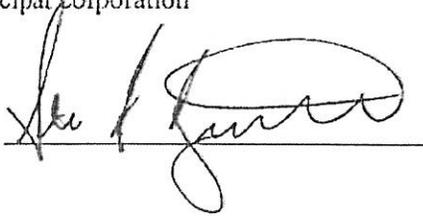
3.9 Property Maintenance. Owner shall take reasonable steps to maintain the Property as may be required pursuant to Ketchum City Code until construction commences, including, but not limited to, landscape maintenance, irrigation and noxious weed control.

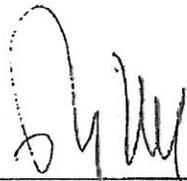
3. Construction. This First Amendment and the Agreement constitute one agreement between the Parties. In the event of any inconsistency between this First Amendment and the Agreement, the terms of this First Amendment shall govern. All capitalized terms in the Agreement shall have the meaning in the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

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

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

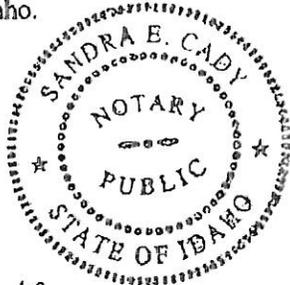
BALD MOUNTAIN LODGE, LLC, a Washington By: CITY OF KETCHUM
limited liability Company
City of Ketchum, Idaho,
a municipal corporation

By: 

By: 
_____ Randy Hall, Mayor

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

On this 7th day of November, 2011, before me, a Notary Public in and for said State, personally appeared Randy Hall, Mayor of the City of Ketchum, Idaho, known or identified to me to the person whose name is subscribed to the within instrument as the Mayor of the City of Ketchum, Idaho, and acknowledged to me that he executed the same as Mayor of the City of Ketchum, Idaho.



Sandra E. Cady
Notary Public for Idaho
Residing at Hailey, Idaho
Commission expires 11-20-2013

State of WA)
) ss.
County of King)

On this 7th day of November, 2011, before me, a Notary Public in and for said State, personally appeared Steve Buttrick known or identified to me to be the Manager of Bald Mountain Lodge, LLC, a limited liability company and the managing member of Bald Mountain Lodge, LLC, a limited liability company, the member or one of the members who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that such limited liability company executed the same in the name of Bald Mountain Lodge, LLC.



Mary Jane D. Slye
Notary Public for King Co, WA
Residing at Bellevue
My Commission expires 7/15/11
Mary Jane D. Slye