

**RESOLUTION NUMBER 04-054**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF KETCHUM AND RIVER LODGES, LLC TO REZONE TAX LOTS 5596, 6714 AND 6715 (101, 105, 109 AND 113 REMBER STREET) FROM GENERAL RESIDENTIAL-LOW DENSITY (GR-L) TO GENERAL RESIDENTIAL – HIGH DENSITY (GR-H) ZONING DISTRICT.

WHEREAS, owner applied to City for an amendment to the Official Zoning Map to rezone the property more particularly described as Tax Lots 5596, 6714 and 6715 located at 101, 105, 109 and 113 Rember Street, in the City of Ketchum, Blaine County, State of Idaho; and,

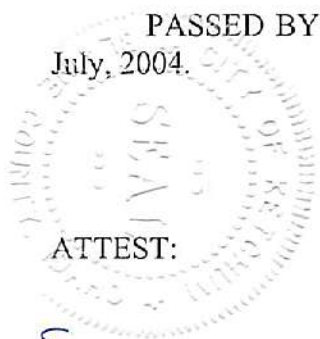
WHEREAS, the Ketchum City Council approved the owners application for a Development Agreement Rezone on April 19, 2004 and the Findings of Fact were adopted on May 3, 2004; and,

WHEREAS, owner proposes that the property be developed pursuant to and in accordance with City's Comprehensive Plan and Ketchum Municipal Code, and in accordance with the terms and conditions of this Agreement and any amendments hereto; and,

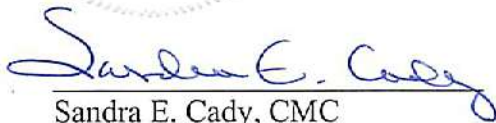
WHEREAS, the requested zoning satisfies the requirements set forth in the Ketchum Municipal Code for rezone findings, conclusions and approval, and the use of a development agreement will assure compliance with the conditions of approval.

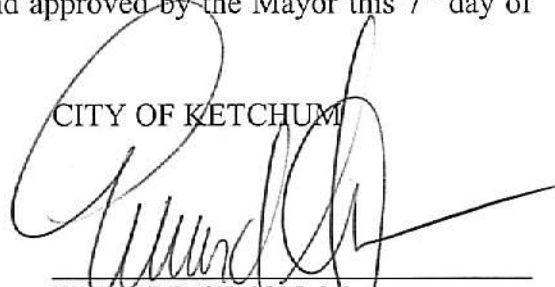
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Ketchum, Idaho that the City Council hereby authorizes and instructs the Mayor to execute the attached Development Agreement between the City and River Lodges, LLC.

PASSED BY THE CITY COUNCIL and approved by the Mayor this 7<sup>th</sup> day of July, 2004.




ATTEST:

  
Sandra E. Cady, CMC  
City Treasurer/Clerk

CITY OF KETCHUM  
  
EDWARD SIMON, Mayor

APPROVED AS TO FORM  
AND CONTENT:

  
Benjamin W. Worst, City Attorney

STATE OF KENTUCKY

IN SENATE,  
January 10, 1912.

REPORT OF THE  
COMMISSIONERS OF THE  
LAND OFFICE.

FOR THE YEAR  
ENDING DECEMBER 31, 1911.

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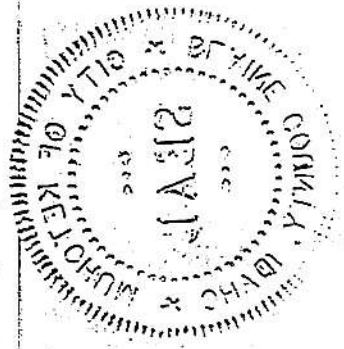
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**DEVELOPMENT AGREEMENT**  
(Tax Lots 5596, 6714 and 6715-  
101 and 109 Rember Street, and  
201 Williams Street, Ketchum, Idaho 83340)

This Development Agreement (this "Agreement") is entered into effective this 7<sup>th</sup> day of July, 2004 by and between the **City of Ketchum ("City")** and **River Lodges, LLC, an Idaho limited liability company ("Owner")**.

**RECITALS**

- A. Owner is the owner of record of that certain real estate more particularly described as Tax Lots 5596, 6714 and 6715, records of the County Recorder, Blaine County, State of Idaho (the "Property").
- B. Owner has applied to City for an amendment to the official zoning map to rezone the Property from the General Residential - Low Density (GR-L) zoning district to General Residential - High Density (GR-H), with certain restrictions on the density allowed.
- C. Owner proposes that the Property be developed pursuant to and in accordance with City's Comprehensive Plan and Ketchum City Code, and in accordance with the terms and conditions of this Agreement and any amendments hereto.
- D. The requested zoning satisfies the requirements set forth in the Ketchum City Code for rezone findings, conclusions and approval, and the use of a development agreement will assure compliance with the conditions of approval.
- E. Pursuant to § 17.154 Ketchum City Code, and § 67-6511A, Idaho Code, the City has the authority to conditionally zone the Property and to enter into this Agreement.
- F. The City's Planning & Zoning Commission and City Council have held public hearings as prescribed by law with respect to the rezoning of the Property and this Agreement.
- G. All public hearings pursuant to notice as required by law or other action required to be held or taken prior to the adoption and execution of this Agreement have been held and/or taken.
- H. It is the intent and desire of the parties hereto that development and density of the Property proceed as provided herein, subject to the terms and conditions of this Agreement.
- I. The parties do enter into this Agreement with mutual consideration as reflected in the covenants, duties and obligations herein set forth.

<p>1</p>	<p>1</p>	<p>1</p>
<p>2</p>	<p>2</p>	<p>2</p>
<p>3</p>	<p>3</p>	<p>3</p>
<p>4</p>	<p>4</p>	<p>4</p>
<p>5</p>	<p>5</p>	<p>5</p>
<p>6</p>	<p>6</p>	<p>6</p>
<p>7</p>	<p>7</p>	<p>7</p>
<p>8</p>	<p>8</p>	<p>8</p>
<p>9</p>	<p>9</p>	<p>9</p>
<p>10</p>	<p>10</p>	<p>10</p>

## AGREEMENT

**NOW THEREFORE**, in consideration of the above recitals which are incorporated below, and the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Zoning. The zoning classification for the Property shall be rezoned from a General Residential - Low Density (GR-L) zoning district, as defined by §17.28 of the Ketchum City Code, to General Residential - High Density, as defined by §17.32 of the Ketchum City Code, subject to the restrictions contained in paragraph 2 of this Agreement.
2. Use Permitted by this Agreement. The uses allowed pursuant to this conditional zoning as reflected in this Agreement are those uses allowed in the General Residential - High Density (GR-H) zoning provided, however, the density of the Property shall not exceed twelve (12) townhouse/condominium units. Owner agrees that this Agreement specifically allows only the uses permitted in General Residential - High Density (GR-H) zoning with the density as specifically limited herein. In the event Owner changes the density permitted by this Agreement without formal modification of the Plan and this Agreement, as allowed by the Ketchum City Code and this Agreement, Owner shall be in default of this Agreement.
3. Development in Conditional Zone. The Property shall be developed as required and approved by the Ketchum Planning and Zoning Commission under Design Review regulations in effect at the time of application for Design Review. Development of any portion of the Property substantially inconsistent with this Agreement, without administrative or formal modification of the approved Design Review consistent with Ketchum City Code and/or without amendment of this Agreement, shall constitute a breach of this Agreement by Owner and may result in a termination of this Agreement in connection with that specific portion of the Property.
4. Affordable Housing Units. Prior to final plat approval, the Owner or its heirs, successors or assigns shall pay to the City an in lieu fee equal to one (1.0) community housing unit, in the amount called for in the Blaine County Housing Authority Guidelines in effect at such time, or \$80,000 (Eighty thousand dollars), whichever amount is less.
5. Conditions. Owner and City are mutually bound by, and shall comply with all of the conditions contained in the final decision and findings of fact of the City and this Agreement
6. Remedies. In the event Owner, its heirs, successors and assigns, subsequent owners of the Property or any other person acquiring an interest in the Property, fails to faithfully comply with all of the terms and conditions included in this Agreement in connection with the Property, this Agreement may be enforced or terminated in accordance with this paragraph 6 of this Agreement. This Agreement shall be enforceable in any court of competent jurisdiction by either City or Owner, or by any successor or successors in title or interest or by the assigns of the parties hereto. Enforcement may be sought by an appropriate action at law or in equity to secure the performance of the covenants, agreements, conditions and obligation contained herein, and may include an action for specific performance, breach of contract, reformation and/or rescission.

7. Right to Cure. In the event of a material breach of this Agreement, the parties agree that City and Owner, shall have thirty (30) days after delivery of notice of said breach to correct the same prior to the non-breaching party seeking any remedy provided for herein; provided, however, that in the case of any such default which cannot with diligence be cured within such thirty (30) day period, if the defaulting party shall commence to cure the same within such thirty (30) day period and thereafter shall prosecute the curing of same with diligence and continuity, then the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity.

8. Force Majeure. In the event the performance of any covenant to be performed hereunder by either Owner or City is delayed for causes which are beyond the reasonable control of the party responsible for such performance, which shall include, without limitation, acts of civil disobedience, strikes, war or similar causes, the time for such performance shall be extended by the amount of time of such delay.

9. Consent to Rezone. In the event this Agreement is terminated or rescinded as a result of a default in connection with a specific portion of the Property, the zoning of that portion of the Property shall revert to the General Residential - Low Density (GR-L) zoning district. In the event there shall be a default in the terms and conditions of this Agreement in connection with the Property, after compliance with the requirements of Ketchum City Code and after notice and an opportunity to cure is provided under paragraph 7 of this Agreement, and in the event there is a termination or rescission of this Agreement, Owner and its successors and assigns, do hereby agree and consent that this Agreement shall serve as consent to a rezone of the Property to the General Residential - Low Density (GR-L) zoning district, as provided in § 67-6511A, Idaho Code. Following termination or rescission of this Agreement, all uses of the Property which are inconsistent with the General Residential - Low Density (GR-L) zoning district shall cease. In the event the zoning of the Property reverts to a General Residential - Low Density (GR-L) zoning district, nothing herein shall prevent Owner from applying for any nature of a use permit consistent with the General Residential - Low Density (GR-L) zoning district for the Property, or from applying for a rezoning of the Property.

10. Miscellaneous.

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

B. Notices. Any and all notices, demands requests, and other communications required to be given hereunder by either of the parties hereto shall be in writing and be deemed properly served or delivered, if delivered by hand to the party to whose attention it is directed, or when sent, two (2) days after deposit in the U.S. mail, postage prepaid, or upon the sending of a facsimile, followed by a copy sent by U.S. mail as provided herein, addressed as follows:

To City: City of Ketchum

c/o Administrator, Planning & Zoning Department  
P.O. Box 2315  
Ketchum, Idaho 83340  
(208) 726-7801  
(208) 726-7812(fax)

To Owner: River Lodges, LLC  
402 Second Street  
Alexandria, VA 22314  
(703) 683-0099  
(410) 820-4445 (fax)

or at such other address, or facsimile number, or to such other party which any party entitled to receive notice hereunder designates to the other in writing as provided above.

C. Attorney Fees. Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorney's fees as determined by a Court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.

D. Time is of the Essence. The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of and a default under this Agreement by the party so failing to perform.

E. Binding upon Successors. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors and assigns, including City's corporate authorities and their successors in office. This Agreement shall be binding on the owner of the Property, each subsequent owner and each other person acquiring an interest in the Property. Nothing herein shall in any way prevent sale or alienation of the property, or portions thereof, except that any sale or alienation shall be subject to the provisions hereof and any successor owner or owners shall be both benefitted and bound by the conditions and restrictions herein expressed.

F. Effective Date of Agreement. This Agreement shall be effective on the date the Ketchum City Council shall adopt the amendment to the Ketchum City Zoning Ordinance.


G. Requirement for Recordation. Owner shall record this document, including all of the Exhibits, and submit proof of such recording to City, prior to the third reading of the zoning ordinance and formal adoption of the Rezone by the City Council. Failure to comply with this section shall be deemed a default of this Agreement by Owner. If for any reason after such recordation City's Council fails to adopt the Ordinance authorizing the Rezone, City shall execute and record an appropriate instrument of release of this Agreement.

H. Final Agreement: This Agreement sets forth all promises, inducements, agreements, conditions and understandings between Owner and City relative to the subject matter hereof, and there are no promises, agreements, conditions or understanding, either oral or written, express or implied, between Owner and City, other than as stated herein. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by them or their successors in interest or their assign, and pursuant, with respect to City, to a duly adopted ordinance or resolution of the City.

I. Invalid Provisions. If any provision of this Agreement is held not valid, such provision shall be deemed to be excised therefrom and the invalidity thereof shall not affect any of the other provisions contained herein, except that if any provision of this Agreement is held not valid which Owner deems essential to its development of the Property, Owner may, at its sole discretion, declare this entire Agreement null and void of no force and effect and thereby relieve all parties from any obligations hereunder.

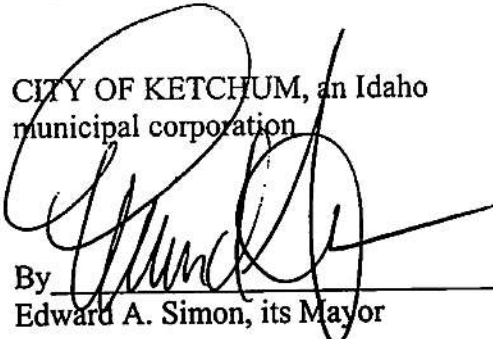
IN WITNESS WHEREOF, the parties, having been duly authorized, have hereunto caused this Agreement to be executed, on the day and year first above written, the same being done after public hearing, notice and statutory requirements having been fulfilled.

ATTEST:

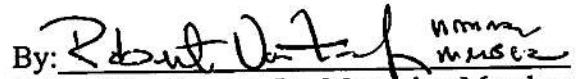
  
Sandra Cady, CMC  
City Treasurer/Clerk

APPROVED AS TO FORM  
AND CONTENT:

CITY OF KETCHUM, an Idaho  
municipal corporation

  
By \_\_\_\_\_  
Edward A. Simon, its Mayor

OWNER:  
RIVER LODGES, LLC

By:   
Robert Van Fossan, Its, Managing Member



STATE OF IDAHO )  
                              ) ss.  
County of Blaine )

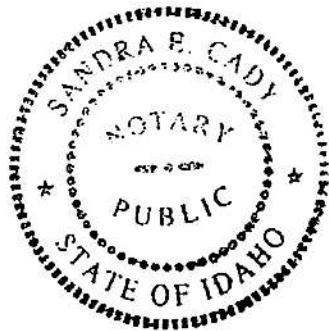
On this 7<sup>th</sup> day of July, 2004, before me, a Notary Public in and for said State, personally appeared EDWARD A. SIMON, known or identified to me to be the Mayor of the City of Ketchum that executed the said instrument, and acknowledged to me that such City of Ketchum executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

*Sandra E. Cady*

Notary Public for Idaho

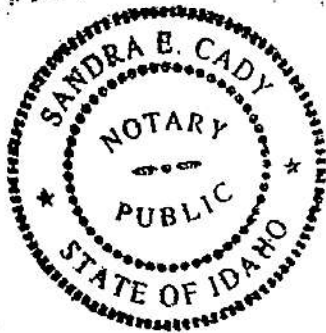
My commission expires: 11-20-07



STATE OF IDAHO )  
  ) ss.  
County of Blaine     )

On this 14<sup>th</sup> day of July, 2004, before me, a Notary public in and for said State, personally appeared ROBERT VAN FOSSAN known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Sandra E. Cady  
Notary Public for Idaho  
My commission expires: 11-20-07