

RESOLUTION NUMBER 04-062

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 FRENCHMAN'S PLACE, LLC TO REZONE LOTS 5, 6, 7 AND 8, BLOCK 9, KETCHUM TOWNSITE AND LOT 4, BLOCK 29, KETCHUM TOWNSITE AND PORTIONS OF VACATED LEADVILLE AVENUE AND NINTH STREET EAST (360 AND 380 NINTH STREET EAST) FROM LIGHT INDUSTRIAL DISTRICT NUMBER ONE (LI-1) TO COMMUNITY CORE (CC) ZONING DISTRICT WITH RESTRICTIONS.

WHEREAS, owner is proposing to construct a mixed use building totaling 47,642 square feet in gross floor area and is requesting a development agreement to rezone Lots 5, 6, 7 and 8, Block 9 and Lot 4, Block 29, all Ketchum Townsite and portions of vacated Leadville Avenue and Ninth Street East (360 and 380 Ninth Street East), Ketchum, Idaho, from Light Industrial Number One (LI-1) District to Community Core (CC) Zone, to allow for selling individual residential units; and

WHEREAS, all notices were mailed, published and posted and a public hearing was conducted on June 14, 2004, and the Ketchum City Council approved the owner's application for a Development Agreement Rezone on July 7, 2004, subject to certain conditions as set forth in the Findings of Fact, Conclusions of Law and Decision; and

WHEREAS, the owner proposes that the property be developed pursuant to and in accordance with the City's Comprehensive Plan and Ketchum Municipal Code, and in accordance with the terms and conditions of the Development Agreement and any amendments thereto; 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 Development Agreement between the City of Ketchum and Frenchman's Place, LLC to rezone Lots 5, 6, 7 and 8, Block 9, Ketchum Townsite and Lot 4, Block 29, Ketchum Townsite and portions of vacated Leadville Avenue and ninth Street East (360 and 380 Ninth Street East) from Light Industrial District Number One (LI-1) to Community Core (CC) Zoning District with restrictions.

PASSED BY THE CITY COUNCIL and approved by the Mayor this 2nd day of August, 2004.


CITY OF KETCHUM, IDAHO


EDWARD SIMON, Mayor

ATTEST:


Sandra E. Cady, CMC
City Treasurer/Clerk

APPROVED AS TO FORM
AND CONTENT:


Benjamin W. Worst, City Attorney



**DEVELOPMENT AGREEMENT
FRENCHMAN'S PLACE MIXED-USE**



This Development Agreement ("Agreement") is made and entered into as of the _____ day of _____, 2004 by and between the City of Ketchum (the "City") and Frenchman's Place, LLC, an Idaho Limited Liability Company ("Owner").

RECITALS

WHEREAS, Owner is the owner of record of that certain real estate legally described in Exhibit A, attached hereto and made a part hereof (the "Property");

WHEREAS, Owner has applied to City for an amendment to the official zoning map for said Property described herein to rezone the Property from Light Industrial District Number 1 (LI-1) to Community Core District (CC) with certain restrictions on the uses allowed;

WHEREAS, Owner proposes that the Property be developed pursuant to and in accordance with the City's Comprehensive Plan, Zoning Code, and Development Agreement Ordinance in effect at the time of application for the rezone, an in accordance with the terms and conditions of this Agreement and any amendments hereto;

WHEREAS, Owner seeks to address stated desire of the City of Ketchum to maintain light industrial uses within the Project and has therefore incorporated certain provisions in this document related to the use and enjoyment of the Real Property, the amendment and revocation of this Declaration, and specific requirements regarding the consent and approval of Owners of Light Industrial Units with respect to voting and the revocation and/or amendment of this Declaration to ensure that the light industrial uses permitted and set forth herein, together with whatever other use of the Project the City of Ketchum may permit from time to time are maintained and permitted;

WHEREAS, the requested zoning satisfies the requirements set forth in the Development Agreement Ordinance and the Zoning Code for rezone findings, conclusions and approval, and the use of a development agreement will assure compliance with the conditions of approval;

WHEREAS, the City, pursuant to §17.154 Ketchum City Code, and §67-6511A, Idaho Code, has the authority to conditionally zone the Property and to enter into a development agreement for the purpose of allowing, by agreement, a specific development to proceed in a specific area and for specific purposes and/or uses which are appropriate in the area;

WHEREAS, the City's Planning and Zoning Commission and City Council have held public hearings as prescribed by law with respect to the rezoning of the Property and this Agreement;

WHEREAS, 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;

WHEREAS, it is the intent and desire of the parties hereto that development and uses of the Property proceed as provided herein subject to the terms and conditions of this Agreement; and,

WHEREAS, the parties do enter into this Agreement with mutual consideration as reflected in the covenants, duties and obligations herein set forth.

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. Description and Location of Property, Size of Property, Present Zoning. The total Property is herein incorporated and specifically described in Exhibit A, attached hereto.
2. Zoning. The zoning for the Property shall be rezoned from a Light Industrial Number 1 (LI-1) zoning district, as defined by §17.68 of the Ketchum City Code, to a Community Core (CC) zoning district, as defined by §17.64 of the Ketchum City Code subject to the restrictions contained in Paragraph 3 of this Agreement.
3. Uses Permitted by this Agreement. The uses allowed pursuant to this conditional zoning as reflected in this Agreement are those allowed in the Community Core District (CC) Zone under the City's Zoning Code in effect as of the date of this Agreement, attached hereto as Exhibit B and made a part hereof, except the use to be allowed on the ground floor of the development will be the uses allowed in the Light Industrial District Number 1 (LI-1) Zone, attached hereto as Exhibit C and made a part hereof. Owner agrees that this Agreement specifically allows only the uses described in attached Exhibit B, except those uses on the ground floor as described in attached Exhibit C. All development shall conform to zoning code requirements and regulations in accordance with the Community Core District (CC) Zone. No change in the uses specified in this Agreement shall be allowed without modification of this Agreement pursuant to the requirements of the Ketchum City Code. In the event that Owner changes or expands the uses 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.
4. Development in a Conditional Zone. The Property shall be developed as approved by the 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, as determined by the Planning and Zoning Administrator, without administrative or formal modification of the approved Design Review consistent with Ketchum City Code and/or amendment of this Agreement, shall result in a default of this Agreement by Owner in connection with that specific portion of the Property.
5. Affordable Housing Units. The Property shall provide five (5) housing units as community housing units. Provision of the community housing units shall be in accordance with the most current Blaine County Housing Guidelines and shall be developed in conjunction with the development of the Property.

6. Condominium Declaration and Covenants, Conditions, and Restrictions. The Property shall be accompanied by Condominium and Covenants, Conditions and Restrictions (the "CC&Rs") that shall be enforced by a Condominium Association (the "Association"). The Association will consist of both residential and light industrial members with the light industrial members having a super majority vote to change the CC&Rs, as more particularly described in attached Exhibit D to this Agreement. The CC&Rs shall be recorded with the Property at the Blaine County Recorders Office, in Blaine County, Idaho.
7. Conditions. Owner and the City are mutually bound by and shall comply with all of the conditions contained in the final decision and the findings of fact of the City Council, the final decision and findings of fact of the Planning and Zoning Commission and this Agreement.
8. Remedies. This Agreement shall be enforceable in any Court of competent jurisdiction by either the 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 obligations contained herein.
9. Right to Cure. In the event of a material breach of this Agreement, the parties agree that the 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's seeking of any remedy provided for herein, provided, however, that in 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 the 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.
10. Force Majeure. In the event the performance of any covenant to be performed hereunder by either Owner or the City is delayed for causes which are beyond reasonable control of the party responsible for such performance, which shall include without limitation, acts of civil disobedience, strikes or similar causes, the time for such performance shall be extended by the amount of time of such delay.
11. Consent to Rezone. In the event there is a default in connection with the terms and conditions of this Agreement in connection with a specific portion of the Property, after compliance with the requirements of Ketchum City Code and after notice and an opportunity to cure pursuant to Paragraph 8 of this Agreement, Owner and his heirs, successors, assigns and personal representatives, do hereby agree and consent that this Agreement shall serve as consent to a rezone of the Property to the Community Core (CC) 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 Community Core (CC) zoning district shall cease. In the event the zoning of the Property reverts to a Light Industrial Number 1 (LI-1) zoning district, nothing herein shall prevent Owner from applying for any nature of a use permit consistent with Light Industrial Number 1 (LI-1) zoning district for that portion of the Property or for applying for a rezone of the Property.

12. Default. In the event Owner, its heirs, successors, assigns or subsequent owners of the Property or any other person acquiring an interest in the Property, fail to faithfully comply with all of the terms and conditions included in this Agreement in connection with a portion of the Property, this Agreement may be modified or terminated by the Ketchum City Council upon compliance with the requirements of Ketchum City Code. In the event the City Council, after compliance with the requirements of Ketchum City Code, determines that this Agreement shall be modified as a result of the default in connection with a portion of the Property, the terms of this Agreement shall be amended and Owner shall comply with the amended terms. Failure to comply with the amended terms shall result in default.
13. Waiver. A waiver by the 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 of applying to any subsequent breach of any such or other covenants and conditions.
14. 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 pre-paid, or upon the sending of a facsimile, followed by a copy sent by U.S. Mail as provided herein, addressed as follows:

If to the City: City of Ketchum
 c/o Planning & Zoning Administrator
 Box 2315
 Ketchum, Idaho 83340
 (208) 726-7801 Phone
 (208) 726-7812 Fax

If to Owner: Frenchman's Place, LLC
 c/o Cameron Gunter
 195 East 600 South
 American Fork, Utah 84003
 (801) 756-0404 Phone
 (801) 756-0411 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.

14. Attorney's Fees. Should any litigation arise 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.
15. 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.

16. Binding upon Successors. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, successors, assigns and personal representatives, including the City's corporate authorities and their successors in office. This Agreement shall be binding upon 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 benefited and bound by the conditions and restrictions herein expressed.
17. 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 Code.
18. Requirement for Recordation. Owner shall record this document, including all of the Exhibits, and submit proof of such recording to the City prior to the 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.
19. Final Agreement. This Agreement sets forth all promises, inducements, agreements, conditions and understandings between Owner and the City relative to the subject matter hereof, and there are no promises, conditions or understandings, either oral or written, express or implied, between Owner and the 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 assigns, and pursuant, with respect to the City, to a duly adopted ordinance or resolution of the City.
20. Invalid Provisions. If any provision of this Agreement is held not valid, such provision shall be deemed to be excised there from 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 hereunder 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.

Dated this ____ day of _____, 2004

Approved as to Form: _____

By: _____

Title: _____

CITY OF KETCHUM,
an Idaho Municipal Corporation

OWNER
FRENCHMAN'S PLACE, LLC
an Idaho Limited Liability Company

By: _____

Its: _____

By: _____

Its: _____

ACKNOWLEDGEMENT FOR CITY

STATE OF IDAHO)
) ss.
COUNTY OF BLAINE)

On this _____ day of _____, 2004, before me, the undersigned Notary Public in and for said State, personally appeared _____, known or identified by me to be the person who executed the foregoing instrument and acknowledged to me that _____ 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 written above.

Notary Public for the State of _____
Residing at _____
My Commission Expires _____

ACKNOWLEDGEMENT FOR OWNER

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2004, before me, the undersigned Notary Public in and for said State, personally appeared _____, known or identified by me to be the person who executed the foregoing instrument and acknowledged to me that _____ 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 written above.

Notary Public for the State of _____
Residing at _____
My Commission Expires _____