RESOLUTION NUMBER 05-093

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO, AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND MARK AND REBECCA REITINGER, OWNERS OF LOT 4, MORTGAGE ROW SUBDIVISION, COMMONLY KNOWN AS 106 NEIL'S WAY.

WHEREAS, Owner is requesting a development agreement to rezone Lot 4, Mortgage Row Subdivision, from Limited Residential District – One Acre (LR-1) to Limited Residential District (LR); and

WHEREAS, Ordinance 966 requires the Owners to enter into a development agreement with the City pursuant to Ketchum Municipal Code Chapter 17.154 and Idaho Code 67-6511A; and

WHEREAS, the owner proposes that the property be rezoned pursuant to and in accordance with the City's Comprehensive Plan, Zoning Code, and Development Agreement Ordinance, and in accordance with the terms and conditions of the Development Agreement and any amendments thereto; and

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 the rezone and the Development Agreement have been held and/or taken.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Ketchum, Idaho, that the City Council hereby authorizes the Mayor to execute a Development Agreement between the City and Mark & Rebecca Reitinger, owners of Lot 4, Mortgage Row Subdivision, commonly known as 106 Neil's Way.

PASSED BY THE CITY COUNCIL and approved by the Mayor this 17th day of October, 2005.

CITY OF KETCHUM,
An Idaho Municipal Corporation

EDWARD SIMON, Mayor

ATTEST:

Sandra E. Cady, CMC
Treasurer/Clerk

APPROVED AS TO FORM
AND CONTENT:

Benjamin W. Worst,
City Attorney

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Mark L. Reitinger and Rebecca S. Reitinger
625 B. Street
Ashland, OR 97520

Instrument # 529261
HAILEY, BLAINE, IDAHO
2005-11-22 03:43:00 No. of Pages: 8
Recorded for : CITY OF KETCHUM
MARSHA RIEMANN Fee: 24.00
Ex-Officio Recorder Deputy mp
Index to: AGREEMENT/CORRECTION

(Space above for recorder's stamp)

DEVELOPMENT AGREEMENT
(City of Ketchum/Mark L. Reitinger and Rebecca S. Reitinger)

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of the 24 day of October, 2005, by and between the CITY OF KETCHUM, IDAHO, an Idaho municipal corporation (the "City"), and MARK L. REITINGER AND REBECCA S. REITINGER, A MARRIED COUPLE ("Owner").

RECITALS

WHEREAS, Owner is the Owner of record of certain real property legally described in Exhibit A, attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, pursuant to Ketchum City Code §17.154 and Idaho Code §67-6511A, the City 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; and

WHEREAS, Owner requested that Property be rezoned from Limited Residential – One Acre (LR-1) to Limited Residential (LR); and

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; and

WHEREAS, the City's Planning and Zoning Commission and City Council have held properly noticed public hearings pursuant to applicable code with respect to the rezoning of the Property and this Agreement; and

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. Incorporation of Recitals. The Recitals set forth herein above are hereby incorporated into and made an integral part of this Agreement.

2. Description, Location and Square Footage of Property. All Property legally described on Exhibit A, attached hereto, shall be subject to the terms and conditions of this Agreement.

3. Zoning. The Property shall be rezoned from a Limited Residential District – One Acre (LR-1) zoning district as defined by Ketchum City Code §17.20 to a Limited Residential District (LR) zoning district as defined by Ketchum City Code §17.16 subject to the restrictions contained this Agreement.

4. Uses Permitted by this Agreement. The uses allowed pursuant to this conditional zoning as reflected in this Agreement are those allowed in the Limited Residential District (LR) Zone as defined by §17.16 of the Ketchum City Code, as such Section is in effect as of the date of this Agreement and as the same may be amended from time to time. Owner agrees that this Agreement specifically allows only the uses set forth in the above-referenced Ketchum City Code Section subject to the amendment of such Section from time to time. All development shall conform to zoning code requirements and regulations in accordance with the Limited Residential District (LR) 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 use 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.

5. 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.

6. 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. Without limiting the foregoing:

   6.1. The Property shall not be subdivided.

6.2. Design review plans and building permit plans shall conform to the approved development agreement plans based on information presented to and approved by the Planning and Zoning Commission and City Council.

6.3. Owner shall submit engineering drawings showing a drainage plan for the driveway and ditch line for drainage of the public street to the City for review and approval prior to issuance of a building permit.

6.4. Owner shall obtain a right-of–way encroachment permit for any improvements within the public right-of-way.

6.5. Owner, at Owner's sole expense, shall place all utilities, power, and communications servicing the Property underground.

6.6. Owner shall obtain pre-approval from the City Council for any temporary stockpile areas located in residential neighborhoods.

7. 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.

8. 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.

9. 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.

10. Consent to Rezone. In the event Owner defaults in the performance of any of the terms or conditions of this Agreement, 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 its heirs, successors, assigns, and personal representatives, do hereby agree and consent that this Agreement shall serve as consent to rezone the Property to the Limited Residential District–One Acre Zoning District (LR-1) zoning district as provided in Idaho

Code § 67-6511A. Following termination or rescission of this Agreement, all uses of the Property which are inconsistent with the Limited Residential District – One Acre (LR- 1) zoning shall cease. In the event the zoning of the Property reverts to a Limited Residential District – One Acre Zoning District (LR-1), nothing herein shall prevent Owner from applying for any nature of a use permit consistent with Limited Residential District – One Acre Zoning Distict (LR-1) for that portion of the Property or for applying for a rezone of the Property.

11. Default. In the event Owner, its heirs, successors, assigns, or subsequent Owner 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.

12. 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.

13. 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:

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

Mark L. Reitinger and Rebecca S. Reitinger
625 B. Street
Ashland, OR 97520
(208) 726-2066 Phone
(541) 482-2821 Alternate Phone
(541) 482-3326 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 Fees. In the event the City is required to retain the services of an attorney to enforce its rights hereunder, the Owner shall pay to the City, in addition to any other relief as may be granted, reasonable costs and attorney fees whether or not litigation is commenced and including reasonable costs and attorney fees on appeal. 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 hereby made expressly 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 Owner, 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 Owner shall be both benefited and bound by the conditions and restrictions herein expressed.

17. Effective Date of Agreement. This Agreement shall be effective as of the date first written above.

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. No Presumptions. There shall be no presumptions for or against either party hereto as a result of the preparation of this Agreement.

21. 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.

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.

CITY OF KETCHUM, IDAHO,
an Idaho municipal corporation

By: _____
Ed Simon, Mayor

By: _____
Mark L. Reitinger,
A Married Man

By: _____
Rebecca S. Reitinger,
A Married Woman

ATTEST:

Sandra E. Cady, CMC
City Clerk/Treasurer

APPROVED AS TO FORM AND CONTENT EXCLUSIVELY FOR THE CITY OF KETCHUM:

Benjamin W. Worst, City Attorney

ACKNOWLEDGEMENT FOR CITY

STATE OF IDAHO)
) ss.
COUNTY OF BLAINE)

On this 24 day of October, 2005, before me, the undersigned Notary Public in and for said State, personally appeared ED SIMON, known or identified by me to be the Mayor of the City of Ketchum, Idaho, and the person who executed the foregoing instrument and acknowledged to me that he executed the same on behalf of such city.

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

SANDRA E. CADY
NOTARY
PUBLIC
STATE OF IDAHO

Sandra E. Cady
Notary Public for the State of Idaho
Residing at Hailey
My Commission Expires 11-20-07

ACKNOWLEDGEMENT FOR OWNER

STATE OF Oregon)
) ss.
COUNTY OF Jackson)

On this 15th day of November, 2005. before me, a Notary Public in and for said State, personally appeared MARK L. REITINGER and REBECCA S. REITINGER known to me to be the persons whose names are subscribed to the within instrument. and acknowledged to me that he and she 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.

OFFICIAL SEAL
DIANE M. BENNETT
NOTARY PUBLIC-OREGON
COMMISSION NO. 360505
MY COMMISSION EXPIRES OCT. 8, 2006

Notary Public for the State of Oregon
Residing at Ashland OR
My Commission Expires Oct. 8, 2006

Order No. 52442

Instrument # 483733
HAILEY, BLAINE, IDAHO
2003-05-12 03:27:00 No. of Pages: 1
Recorded for : AMERITITLE
MARSHA RIEMANN Fee: 3.00
Ex-Officio Recorder Deputy
Index to: WTY/QCI/CORP DEED

WARRANTY DEED

FOR VALUE RECEIVED and and as relinquished property in an I.R.C. 1031 tax deferred exchange.

EDWARD N. VAN EVERY, a married man, as his sole and separate property

GRANTOR(s), do(es) hereby GRANT, BARGAIN, SELL and CONVEY unto

MARK L. REITINGER AND REBECCA S. REITINGER, HUSBAND AND WIFE

GRANTEE(s) whose address is: 625 B. Street, Ashland, OR 97520

the following described real property in Blaine County, Idaho, to wit:

Lot 4 of MORTGAGE ROW SUBDIVISION, according to the official plat thereof, recorded as Instrument No. 145956, records of Blaine County, Idaho.

Subject To: Taxes, easements established or of record, restrictions and encumbrances of record, rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit.

TO HAVE AND TO HOLD said premises, with their appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that they are free from all encumbrances except as described above and that Grantor will warrant and defend the same from all lawful claims whatsoever.

Dated: May 1, 2003

Edward N. Van Every
EDWARD N. VAN EVERY

State of IDAHO

County of Blaine

On this 2nd day of MAY in the year 2003, before me, the undersigned, personally appeared EDWARD N. VAN EVERY known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that she/he/they executed the same.

WITNESS my hand and official seal

Notary Public
Commission Expires: 5-26-07

CHRISTINE M. MALONBY
NOTARY PUBLIC
STATE OF IDAHO