



City of Ketchum

November 18, 2019

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

**Recommendation to Amend the Existing Onyx at Leadville FAR Exceedance Agreement (Contract #20171)
to Change the identified Mitigation Property from 121 Short Swing Lane to 102 Irene Street**

Recommendation and Summary

Staff is recommending the Council amend the FAR Exceedance Agreement Contract #20171 with J Peterman Development, LLC and adopt the following motion:

"I move to amend Paragraph 5 of Contract #20171 and the identified Mitigation Property from 121 Short Swing Lane to 102 Irene Street consistent with the provisions noted in the Blaine County Housing Authority letter of November 8, 2019"

Exact Legal Description to be Added:

102 Irene Street, Ketchum ID (Parcel # RPK4N170110420)
Legal: KETCHUM FR SWSE & SESE TL 4827 SEC 11 4N 17E

The reasons for the recommendation are as follows:

- Contract #20171, as adopted by the City in May of 2018, made an allowance that prior to issuance of a certificate of occupancy for the J Peterman Development Onyx at Leadville Project, the Developer may substitute the property identified above with other property of sufficient square footage, subject to Council and BCHA approval, which was not to be unreasonably withheld.
- According to county assessor records subject 102 Irene Street property is +/- 2,384 square feet (SF) in size, which exceeds the 2,013 SF of mitigation property required of the developer.
- On October 21, 2019 the Council heard testimony from the director of the Blaine County Housing Authority (BCHA), Nathan Harvill, expressing support for newly identified 102 Irene Street mitigation property. Further, in Nathan's letter of November 8, 2019 he notes that BCHA likes that the new property as it contains two housing units and is a serviceable option for households earning between 70% and 120% of the Blaine County Area Median Income.
- The Onyx at Leadville is nearing completion and a certificate of occupancy is envisioned this winter.

Introduction & History

On March 20, 2017, the Ketchum City Council adopted Resolution 17-006 providing options for development proposals to exceed the permitted Floor Area Ratio (FAR) in exchange for mitigation of increased impacts of such development, particularly as focused on affordable community and workforce housing.

Analysis

J Peterman Development, LLC owns property located at 341 S. Leadville Avenue (Trail Creek Condominiums Amended: Block 1A) and is nearing completion of a multi-family residential building that exceeds the permitted 0.5 FAR for the Tourist (T) Zoning District. The amended exceedance agreement allows the project to proceed toward certificate of occupancy.

NOTE. The Applicant has also recommended that the following new paragraph be added to the revised FAR Exceedance Agreement Contract with the City:

In the event the Developer provides as mitigation measures square footage of community housing in excess of that required in Exhibit B ("Excess Square Footage"), Developer shall be entitled to sell or assign such Excess Square Footage to other developers and/or developments for use in satisfying FAR Exceedance Mitigation Requirements of other projects. Developer's right to sell or assign the Excess Square Footage shall be permitted until fully utilized, even if after the conveyance of the community housing square footage to the City or its designee.

Staff is hesitant to recommend the addition of this language to the Contract primarily for the following two reasons: (1) such allowances are not included in the Council's current exceedance agreement policy; and (2) the approximately 371 SF of Excess Square Footage @ 102 Irene Street does not readily result in an additional workforce unit as historically has been prioritized by the Council, for instance, with its use of the in Lieu Housing Fund.

Financial Impact

None Identified.

Attachments

- A. Signed 2018 Exceedance Agreement (Contract #20171)
- B. BCHA Letter Dated April 27, 2018 and 2018 Anticipated Maximum Sales Price of \$332,671 for the Previous 121 Short Swing Lane Property
- C. November 8, 2019 Letter from BCHA

Attachment A

**FAR EXCEEDANCE AGREEMENT
CONTRACT #20171**

Parties:

City of Ketchum	"City"	Mailing: P.O. Box 2315, 480 East Ave. N., Ketchum, Idaho 83340
J Peterman Development, LLC	"Developer"	Mailing: 2809 Curry Parkway #10, Madison, WI 53713 Ketchum Physical Address: 341 S Leadville Ave. (Trail Creek Condominiums Amended: Block 1A)

This FAR Exceedance Agreement ("Agreement") is made between the City of Ketchum, a municipal corporation of the state of Idaho, and J Peterman Development LLC, a property owner in the City of Ketchum.

RECITALS

- A. Pursuant to the City's authority under the Idaho Local Land Use Planning Act, the Ketchum Municipal Code ("K.M.C.") Chapter 17.124 provides for certain development standards, including maximum floor area ratio (FAR) standards under K.M.C. 17.124.040 - Floor Area Ratios and Community Housing. These standards are intended to protect the public interest, health, general welfare, and provision of public services. The City has provided options for development proposals to potentially exceed the allowable FAR in exchange for mitigation of the impacts of such larger development, particularly as focused on affordable community and workforce housing. K.M.C. 17.124.040(B).
- B. The City has adopted Resolution 17-006 which provides for the Parties to proceed with the FAR standards and options under K.M.C. 17.124.040, so long as the Parties voluntarily opt into an FAR Exceedance Agreement, making clear they are voluntarily opting by contract into use of such FAR standards and mitigation measures and are waiving any claims or demands related to any legal challenge to K.M.C. 17.124.040.

THEREFORE, in consideration of the mutual agreement herein contained and subject to the terms and conditions stated, it is hereby understood and agreed by the Parties as follows:

- 1. **Attestation of Developer.** Developer, by this Agreement, attests that Developer desires to voluntarily proceed on the development proposal, including proposal of exceedance of FAR standards and accompanying mitigation measures, using the approach and standards as set forth in K.M.C. 17.124.
- 2. **Waiver and Release of Claims.** Developer, by this Agreement, waives and releases any claims, demands, challenges, claims for reimbursement or refund, and/or damages now or in the future deriving from or relying on the outcome of future litigation substantially

challenging the validity of K.M.C. 17.124 and its standards. It is Developer's intent to accept and proceed with such standards as outlined in K.M.C. 17.124 for Developer's development plan for purposes of allowable FAR and Developer voluntarily and knowingly accepts the mitigation measures as proposed.

3. **FAR Exceedance Consideration.** In consideration for Developer's attestation and waiver, the City agrees to consider their exceedance proposal and will currently consider and evaluate Developer's proposed FAR exceedance and accompanying mitigation measures within the framework and standards of K.M.C. 17.124.040, attached hereto as Exhibit A and made a part of this Agreement.
4. **Maximum FAR and Mitigation.** The Parties hereby agree to an allowable maximum floor area ratio and accompanying mitigation measures as set forth in Exhibit B, attached hereto and made a part of this Agreement.
5. **Identification of Mitigation Property.** Developer, in good faith, identifies the following real property, which it intends to use to satisfy its mitigation requirement:

121 SHORT SWING LN A, Ketchum
Legal: ADPS TOWNHOMES SUBLLOT 2
Parcel #: RPK02710000020W

The mitigation property shall be targeted for Blaine County Housing Authority Income Category 4 or above and shall be listed for sale through the Blaine County Housing Authority concurrent with the issuance of certificate of occupancy by the City for Developer's Project. Notwithstanding the foregoing, prior to issuance of a certificate of occupancy for the project, Developer may substitute the property identified above with other property of sufficient square footage, subject to approval, not to be unreasonably withheld, by the City and the Blaine County Housing Authority or may satisfy the mitigation requirement through in-lieu of fees, or a combination of substituted property and in lieu fees, so long as the mitigation measures set forth in Exhibit B are met. Any substitution or alternative mitigation shall occur through an amendment consistent with the amendment provision of this Agreement.

6. **Withdrawal.** Developer may withdraw from this Agreement upon thirty days notice to City provided that Developer has not commenced building and has received no benefit from a maximum FAR exceedance. Withdrawal shall cause an immediate reversion to the permitted gross FAR as set forth in Exhibit A: K.M.C. 17.124.040(A) at the time of this Agreement.
7. **Amendments.** This Agreement may not be amended, modified, altered or changed in any respect whatsoever, except by further agreement in writing duly executed by the parties.
8. **No Assignment.** Developer shall not sell, assign, or transfer all or any portion of its interest in this Agreement at any time without consent of the City.

9. **Binding Effect.** This Agreement shall be binding upon the heirs, estates, personal representatives, successors, and assigns of the parties.
10. **Attorney Fees and Costs.** In the event any action is brought to enforce this Agreement, the prevailing party is entitled to an award of reasonable attorney fees and costs.
11. **Notices.** Any notice under this Agreement shall be in writing and shall be treated as duly delivered if the same is personally delivered or deposited in the United States mail, certified, return receipt requested, postage prepaid, and properly addressed to the contacts as specified at the beginning of this Agreement.
12. **Partial Invalidity.** Whenever possible, each provision of this Agreement shall be interpreted in such a way as to be effective and valid under applicable law. If a provision of this Agreement is prohibited by or invalid under applicable law, it shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
13. **Waiver:** The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referenced in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.
14. **Execution and Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which shall be considered one instrument.

DATED THIS 21ST DAY OF MAY, 2018.

Developer
J Peterman Development LLC


Adam DiPiazza, Member

City of Ketchum, Idaho


Neil Bradshaw, Mayor

Attest:


Robin Crotty, City Clerk

Exhibit A**17.124.040: FLOOR AREA RATIOS AND COMMUNITY HOUSING:**

A. General Requirements: All new buildings and alterations to existing buildings in the GR-H, T, T-3000, T-4000 and CC zoning districts, unless otherwise specified in this title, shall be subject to the maximum floor area ratio (FAR) described below. Hotels that meet the definition of "hotel" found in chapter 17.08 of this title may exceed the floor area listed in the table below subject to section 17.124.050 of this chapter.

Districts	Permitted Gross FAR	Inclusionary Housing Incentive
GR-H	0.5	1.4
T	0.5	1.6
T-3000	0.5	1.6
T-4000	0.5	1.6
CC	1.0	2.25

B. Inclusionary Housing Incentive:

1. The purpose of this section is to encourage new development to include a reasonable supply of affordable and resident occupied workforce housing for sale or rent, to help meet the demand and needs for housing of the community's employees. Land within the zoning districts specified in the table above may be built to the listed permitted FAR. As an incentive to build community housing units, floor area may be increased up to the maximum FAR listed in said table with inclusionary housing incentive.
2. An increased FAR may be permitted subject to design review approval, and provided, that all of the following conditions are met:
 - a. A minimum of twenty percent (20%) of the total increase in gross floor area above the greater of the permitted FAR is deed restricted in perpetuity as community housing unit(s). Of this gross square footage, a fifteen percent (15%) reduction will be allowed as a standard discount from gross square footage to net livable square footage for community housing units.
 - b. After calculating net livable square footage, an allowance can be made for projects with demonstrated groundwater issues as documented by a registered engineer. Upon determination by the city that groundwater on the subject property precludes underground parking, a credit of three hundred fifty (350) square feet per required parking space shall be subtracted from the net livable square footage prior to the

calculation for the twenty percent (20%) deed restricted community housing. Parking space credit shall be rounded to the nearest whole number, and shall not be calculated as fractions.

- c. Community housing requirements may be paid via a fee in lieu of housing. The community housing units times the fee equals the amount due to the city. The fee in lieu shall be recommended by the governing housing authority on an annual basis and adopted by the city council. For fractions of units, the developer has the option of providing a full housing unit rather than paying the fee in lieu or working with the city or other nonprofit entity to construct the balance of the community housing unit with additional funds.
- d. All community housing units, either for sale or rent, shall be administered by the governing housing authority, unless otherwise determined by the city council. The governing housing authority shall recommend the types and locations of all proposed community housing units for approval by the city.
- e. The community housing units shall be targeted for Blaine County housing authority income category 4 (100 percent or less of area median income). The applicant may seek the recommendation of the governing housing authority in the determination of an alternative category with corresponding adjustment in the amount of community housing required. Said recommendation, if mutually agreed upon by the applicant and the commission, may be used in place of category 4. This allowance shall be based on need for the category type. The definition of who may qualify to purchase affordable housing shall be maintained in the guidelines of the governing housing authority as adopted by the city council.
- f. The city's primary goal is to see the development of and encourage the construction of community housing units, but realizes that other options will also move the city closer to its goal of housing the workforce. With this in mind, the following options for fulfillment of the community housing incentive are available to the applicant outright. These include, but are not limited to:
- (1) Housing constructed by the applicant on or off site, within the city of Ketchum;
 - (2) Payment of an in lieu fee; or
 - (3) Acquisition of existing housing stock that meets with the governing housing authority's requirements and approval.
- g. In addition to those outright options noted in this section, the city council may consider alternative proposals by the applicant to fulfill the community housing incentive. The city council has full discretionary power to determine said request. Options for fulfillment of the community housing incentive include, but are not limited to:
- (1) Land conveyance to the city;
 - (2) Existing housing unit buy down or mortgage buy down; or

(3) Other proposals and options as approved by the city council.

3. In the CC district, the maximum floor area incentive applies to buildings up to three (3) stories in height. Buildings above three (3) stories may exceed the 2.25 FAR maximum only in accordance with the pertinent code provisions allowing for a fourth floor (for example, hotels, PUDs and 100 percent community housing project, etc.). For hotel uses, community housing calculations apply to all those portions of the hotel development except the hotel units, which are addressed pursuant to employee housing of this chapter. (Ord. 1135, 2015)

Exhibit B

EXCEEDANCE AGREEMENT COMPLIANCE

PROJECT: The Onyx at Leadville Residential Project

FILE NUMBER: 18-005

DEVELOPER: J Peterman Development, LLC

REPRESENTATIVE: Hollis Rumpeltes Architects, AIA

REQUEST: Design Review approval for eight (8) new multi-family residential units and associated site improvements.

LOCATION: 341 S. Leadville Avenue
(Trail Creek Condominiums Amended: Block 1A)

ZONING: Tourist (T)

BACKGROUND:

1. The applicant is proposing to construct a three-story, multi-family residential building containing eight (8) residential units and eighteen (18) underground parking spaces with associated site improvements.
2. The subject property is located in the Tourist (T) Zoning District and is located at 341 S. Leadville Avenue (Trail Creek Condominiums Amended: Block 1A).
3. The applicant is proposing to construct a multi-family residential building, which will have a total square footage of 19,888 gross square feet, and a Floor Area Ratio (FAR) of 1.2 (19,888 sq ft/16,092 sq ft).
4. As a condition of Design Review approval, the project shall comply with the requirements of Ketchum City Code §17.124.040 as adopted on the date a building permit is submitted for the project.
5. The Planning and Zoning Commission approved the Design Review application for the Onyx at Leadville residential project on February 12th, 2018. Building Permit plans must conform to the approved Design Review plans unless otherwise approved in writing by the Planning and Zoning Commission or Administrator.

Table 1. EXCEEDANCE ANALYSIS

Yes	No	N/A	Regulation											
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.124.040	<p align="center">Floor Area Ratios and Community Housing</p> <p>The project shall comply with the requirements of Ketchum City Code §17.124.040 as adopted on the date a building permit is submitted for the project.</p> <p>Permitted in Tourist (T) Zoning District <i>Permitted Gross FAR: 0.5</i> <i>Inclusionary Housing Incentive: 1.6</i></p> <p>Proposed FAR: 1.2 (19,888 sq ft/16,092 sq ft)</p> <p>Gross Floor Area (sq ft)</p> <table border="1"> <tr> <td>Basement</td> <td>N/A</td> </tr> <tr> <td>First-Floor</td> <td>7,173</td> </tr> <tr> <td>Second-Floor</td> <td>6,729</td> </tr> <tr> <td>Third-Floor</td> <td>5,986</td> </tr> <tr> <td>Total</td> <td>19,888</td> </tr> </table> <p>Community Housing CH incentive: The applicant shall provide 2,013 square feet of community housing either on-site or elsewhere within the City of Ketchum or pay a fee in-lieu.</p> <ol style="list-style-type: none"> Increase in sq ft above FAR = 11,842 sq ft (19,888 sq ft– 8,046 sq ft) 20% of CH incentive to be deed restricted or pay fee in lieu: 2,368 sq ft: (11,842 sq ft · .20 = 2,368 sq ft) Reduced by 15% to account for circulation, mechanical, etc.: 2,013 sq ft: (2,368 sq ft · .85 = 2,013 sq ft) <p><i>The applicant shall provide 2,013 sq ft community housing unit or pay a fee in-lieu of \$479,094. The applicant has identified an acquired property to satisfy the mitigation requirement:</i></p> <p align="center">121 SHORT SWING LN A Legal: ADI'S TOWNHOMES SUBLOT 2 Parcel #: RPK0271000020</p> <p><i>The mitigation property shall be targeted for Blaine County Housing Authority Income Category 4 or greater and shall be listed for sale through the Blaine County Housing Authority concurrent with the issuance of certificate of occupancy by the City for Developer's Project.</i></p>	Basement	N/A	First-Floor	7,173	Second-Floor	6,729	Third-Floor	5,986	Total	19,888
Basement	N/A													
First-Floor	7,173													
Second-Floor	6,729													
Third-Floor	5,986													
Total	19,888													

Attachment B

P.O. Box 4045
200 West River Street, Suite 103
Ketchum, ID 83340

Phone 208.788.6102
Fax 208.788.6136
Web www.bcoha.org



April 27, 2018

Abby Rivin, AICP
City of Ketchum, Associate Planner
P.O. Box 2315, 480 East Ave. N., Ketchum, ID 83340

RE: FAR Exceedance Agreement Contract #20171 - J Peterman Development, LLC

Dear Abby,

With regard to the referenced Exceedance Agreement Contract, the Blaine County Housing Authority has entered into negotiations to formally agree and accept the identified mitigation property listed so that the developer can fulfill the community housing contribution required by the City of Ketchum.

Terms of the proposed agreement with J Peterman Development, LLC shall include, at a minimum, the following criteria:

- Property Address: 121 Short Swing Lane, #A, Ketchum, ID.
- Target Income Category: 5 - based on our current community homeowner requests for larger properties in the North Valley and applicant database criteria, this unit being a 4-bedroom, 3.5 bath with a one car garage is highly valued and desired. Because of the property's size and location BCHA has deemed that the affordability should target households at 100% to 120% of the AMI. BCHA will, at the time of occupancy, qualify the buyer and set a maximum sales price based on limits in effect at the time. Currently, a maximum sale price calculation for an Income Category 5, would price the property at no more than \$332,671. (see attached Community Housing Price Calculator). The maximum sale price shall be formally set between BCHA and J Peterman, LLC in a pricing agreement with BCHA prior to the issuance of a building permit.
- An amount of no more than \$10,000 set aside for a maximum of 3 years, to be used by the new owner household should a major system default, *such as heat system, plumbing or electrical, structural, exterior, or roof.*
- BCHA requires a professional inspection of the property (paid for by developer) be performed prior to marketing the property for sale to help identify any material defects, and developer agrees to repair items identified in the inspection report, if any.

The Blaine County Housing Authority's mission is to advocate, promote, plan and preserve the long-term supply of desirable and affordable housing choices in all areas of Blaine County in order to maintain an economically diverse and vibrant community.

- BCHA will collect a 3% administration fee from the developer upon sale of property to a qualified income household and will act as seller's agent for the transaction.
- Upon recording of sale, and prior to the issuance of a certificate of occupancy to developer, the BCHA Community Housing Covenant Running with the Land shall be simultaneously recorded, establishing the property's Income Category set as 5, and stipulating the property's and community homeowner's adherence the BCHA guidelines.

Please let me know if you require any additional information or if you have any questions.

Sincerely,



Bobi Bellows, MA GPC
BCHA, Program Director

Attachment(s): 1

cc. Suzanne Frick, City of Ketchum City Administrator
J Peterman, LLC via Shannon Flavin, Windermere Real Estate
James R. Laski, Lawson Laski Clark & Pogue, PLLC
Nathan Harvill, BCHA Executive Director

2018 BCHA Income Limits and Maximum Housing Costs

COMMUNITY HOUSING PRICE CALCULATOR - 2018

MAXIMUM COMMUNITY HOUSING UNIT SALE PRICES BY CATEGORY

Assumptions:

Interest Rate: 5.00%

Homeowner Dues or other fees (monthly):

Unit Size	Household Size (imputed)	Category 1 Up to 50% of Median	Category 2 50% to 60% of Median	Category 3 60% to 80% of Median	Category 4 80% to 100% of Median	Category 5 100% to 120% of Median	Category 6 120% to 140% of Median	Category 7 140% to 160% of Median	Category 8 160% to 180% of Median	Category 9 180% to 200% of Median	Category 10 200% to 220% of Median
Studio	1 person	\$64,761	\$107,829	\$129,522	\$172,590	\$215,817	\$258,727	\$301,795	\$345,021	\$388,090	\$431,316
1 Bedroom	1.5 persons	\$69,353	\$95,637	\$138,705	\$184,940	\$231,017	\$277,252	\$323,487	\$369,564	\$415,799	\$462,034
2 Bedroom	2.5 persons	\$78,695	\$91,203	\$157,231	\$209,483	\$261,893	\$314,145	\$366,556	\$418,966	\$471,218	\$523,628
3 Bedroom	3.5 persons	\$90,412	\$106,721	\$175,598	\$234,184	\$292,611	\$351,197	\$409,624	\$468,210	\$526,637	\$585,222
4 Bedroom	5.0 persons	\$114,004	\$166,415	\$199,666	\$266,168	\$332,671	\$399,174	\$465,676	\$532,495	\$598,998	\$665,184

The Sale Prices calculated above are gross prices. The seller will be responsible for payment of all sales and closing fees (including the 3% BCHA administrative fee).

Calculation of Maximum Sale Prices for specific units:

1. Locate the maximum monthly housing cost by Category and Unit Size. (For instance, this four bedroom, category 5 unit would have a maximum monthly housing cost of: **\$2,316**)
2. Deduct a 15% Tax, Insurance, and Utility allowance from the specified figure. In the example:
15% of **\$2,316** equals: **\$222** resulting in: **\$2,094**
3. Deduct any Homeowner's Dues or other required payments from the figure arrived at in step 2.
In the example, if the unit has associated homeowner dues of \$/month **\$2,094** minus dues of **\$0** /month equals: **\$2,094**
This is the amount available for payment of principal and interest.
4. Obtain the interest rate assumption from the BCHA. (Note: the interest rate assumption will consider how interest rates affect affordability in the future and may not reflect current rates).
5. Utilizing the payment arrived at in step 3, the interest rate assumption from step 4, and a 30-year amortization period, calculate a total maximum allowable sale price for the subject unit.
In the example, a payment of: **\$2,094** at an interest rate of: **5.00%** (be sure to obtain the latest rate from BCHA), with a thirty-year amortization yields a maximum allowable sale price of: **\$332,671**

Attachment C



208.788.6102 | INFO@BCOHA.ORG | WWW.BCOHA.ORG | 191 SUN VALLEY ROAD | PO BOX 4045 | KETCHUM, ID 83340

City of Ketchum
Planning Department
PO Box 2315
480 East Ave. N.
Ketchum, ID 83340

Attn: John Gaeddert, Director of Planning

November 8, 2019

Dear John,

Blaine County Housing Authority has been in contact with representatives of J Peterman Development, LLC to discuss a change of the Mitigation Property, identified in Paragraph 5 of Contract #20171 from 121 Short Swing Lane to 102 Irene Street. We are supportive of this change due in part to the fact that the new property contains two housing units, rather than one, and is better suited to needs of the households currently within the BCHA database.

During a site visit with BCHA staff, we determined informally that the replacement property would be a serviceable option for households earning between 70% and 120% of the Blaine County Area Median Income (Income Categories 3 to 5).

We believe that adding two additional housing units into the Community Housing pool will have a lasting benefit for the City of Ketchum, its workforce, and local population.

BCHA is in support of the amendment to FAR Exceedance Agreement Contract #20171 and recommends adoption by the Council. Should you have any questions, feel free to contact me.

Cordially,

Nathan S. Harvill
Executive Director
Blaine County Housing Authority

The Blaine County Housing Authority's mission is to advocate, promote, plan and preserve the long-term supply of desirable and affordable housing choices in all areas of Blaine County in order to maintain an economically diverse and vibrant community.