



City of Ketchum

April 5, 2021

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation To Approve Assignment Agreements 20594 and Agreement 20615 Consenting Approval of Assignments of Floor Area Exceedance Agreements 20200 and Community Housing Fund Contribution Agreement 20202 for KETCH 1, and Floor Area Exceedance Agreement 20325 for KETCH 2

Recommendation and Summary

Staff is recommending the council approve Assignment Agreements 20594 and 20615 and adopt the following motion:

I move to approve the City's consent to the Assignment Agreement 20594 and 20615 as presented and authorize the Mayor to sign.

The reasons for the recommendation are as follows:

- The city has received a request for consent to assignment on the two Floor Area Exceedance Agreements for KETCH 1 and KETCH 2 and the Community Housing Fund Contribution Agreement to new property owners.
- All conditions and project parameters for both projects as identified in the Exceedance Agreements and Contribution Fund Agreement will remain in place and continue to apply to both projects.

Introduction and History

The city received a request from Ketch PDX, LLC to transfer ownership of both KETCH 1 and KETCH 2 (560 1st Street and 100 E. 6th Street) to a new owner, Highbrow LLC. and Lowbrow LLC.

All conditions and the parameters of the project approvals (FAR, number of rental units, their size and number of bedrooms, number and income levels for the community housing units and the market rate units offered as long-term rental apartments).

Analysis

Each agreement contains a provision requiring city consent in the event the owner sells, assigns, or transfers all or any portion of their interest in the Agreement. The current property owner Ketch PDX, LLC has requested the city consent to transferring their interest in the three agreements to a new owner.

Financial Impact

There is no financial impact to the city from this recommendation.

Attachments:

Proposed Assignment Agreement 20594 and 20615
Exceedance Agreement 20200 for KETCH 1 and Exceedance Agreement 20325 for KETCH 2
Community Housing Fund Contribution Agreement 20202

ASSIGNMENT AND ASSUMPTION AGREEMENT 20594

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT is made this ____ day of _____, 2021, by and among **KETCH PDX, LLC**, an Oregon limited liability company (“Assignor”), with offices located at 2334 NW 24TH Avenue, Portland, Oregon 97210, and **HIGHBROW LLC**, an Idaho limited liability company (“Assignee”), with offices located at 23425 N. Hwy 99W, Newberg, OR 97132, and the **CITY OF KETCHUM**, a municipal corporation of the State of Idaho (the “City”).

RECITALS

- a. Assignor is the owner of improved real property, KETCH 1, located at 100 E. 6th, Ketchum, Idaho and legally described in the attached Exhibit A (the “Property”);
- b. On or about October 15, 2018, Assignor and the City entered into the certain FAR Exceedance Agreement (the “FAR Agreement”), and the certain Community Housing Fund Contribution Agreement (the “CHFC Agreement”; the FAR Agreement and CHFC Agreement being, collectively, the “Agreements”) accurate and complete copies of which are attached as Exhibit B, related to the real property and improvements located at the Property;
- c. Assignor is selling the Property to Assignee and wishes to assign its right, title and interest in the Agreements to Assignee, subject to the terms below;
- d. The City’s consent is required for any assignment of rights in the Agreements; and
- e. The City wishes to approve and consent to Assignor’s assignment of rights in the Agreements to Assignee, effective upon the transfer of the title to the Property by Assignor to Assignee.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and based on the Recitals above, the complete terms of which are incorporated herein, the parties agree as follows:

AGREEMENT

- 1. Assignment.** Assignor does hereby unconditionally transfer, assign, grant, and convey to Assignee and Assignee’s successors and assigns, all of Assignor’s right, title, and interest in the Agreements, effective as of the date of the transfer of the title of the Property to Assignee (the “Effective Date”).
- 2. Assumption.** In consideration therefore, Assignee for itself, its successors and assigns, does hereby unconditionally assume all right, title, interest and obligations under the Agreements from the Effective Date forward and agrees to be bound by all of the terms, conditions, obligations, and restrictions relating to the Agreements.
- 3. Consent.** The City consents to Assignor’s assignment and Assignee’s assumption of the Assignor’s obligations under the Agreements relating to the Property, upon the transfer of the title to

the Property by Assignor to Assignee, without affecting in any manner and preserving in all regards, the restrictions and requirements of the Agreements with respect to any further or additional transfer.

- 4. No Reservation.** The assignment by Assignor and Assignee shall be absolute, final and irrevocable and the rights under Sections 1 and 2 will not be subject to any rights of reversion to Assignor.
- 5. Priority.** The parties intend that the priority position of the recorded Agreements shall not be affected or changed by the recording of this Assignment and Assumption Agreement and that all of the Agreements shall retain the priority in the order established by the initial order of recordings.
- 6. Existing Liens, Charges, and Encumbrances.** The Property shall remain in all respects subject to the liens, charges, or encumbrances created thereby and shall not be affected by this Assignment and Assumption Agreement in any respect.
- 7. Release.** It is understood that this Assignment and Assumption Agreement operates as the City's release of Assignor from the obligations under the Agreements from the Effective Date forward.
- 8. No Additional Assumption.** This Assignment and Assumption Agreement is not to be construed as an agreement to permit any further or future assumptions by any party.
- 9. Warranty Against Breach.** Assignor warrants that it is not in any breach of the Agreements as of the date of this Assignment and Assumption Agreement.
- 10. Other Documents.** The Assignor and the Assignee agree to enter into any other document in conjunction with this Assignment and Assumption Agreement as reasonably required by the City of Ketchum, on the terms and conditions required by the City of Ketchum.
- 11. Reporting.** The Assignee agrees to submit to the City of Ketchum or its designee all documents as reasonably requested by the City of Ketchum to monitor the Assignee's compliance with the terms of the Agreements.
- 12. Notice.** Any notice required or permitted under the Agreements and this Assignment and Assumption Agreement shall be given when actually delivered or two (2) days after being deposited in the United States Mail as certified mail addressed as follows:

To Assignor: Ketch PDX, LLC
 Mark R. Madden
 PO Box 96068
 Portland, OR 97296

To Assignee: Highbrow LLC
 23425 N Hwy 99W
 Newberg, OR 97132

To City of Ketchum: City of Ketchum
 P.O. Box 2315, 480 East Ave. N.
 Ketchum, ID 83340

or to such other address as may be specified from time to time by either of the parties in writing.

13. Miscellaneous.

a. **Counterparts.** This Assignment and Assumption Agreement may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by all the parties hereto shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.

b. **Survival.** All agreements, representations, and warranties shall survive the execution and delivery of this Assignment and Assumption Agreement.

c. **Successors and Assigns.** This Assignment and Assumption Agreement shall be binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns.

d. **Governing Law.** This Assignment and Assumption Agreement shall be governed by and construed under Idaho law.

e. **Assignment.** The Assignee may not assign this Assignment and Assumption Agreement without the prior written consent of the City and without the execution of a new Assignment and Assumption Agreement.

f. **Modification; Prior Agreements; Headings.** This Assignment and Assumption Agreement may not be modified or amended except by an instrument in writing signed by the Assignor, the Assignee, and the City. This Assignment and Assumption Agreement taken together with the Agreements reflect and set forth the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersede all prior agreements and understandings relating to such subject matter. The headings in this Assignment and Assumption Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms hereof.

g. **Validity; Severability.** If any provision of this Assignment and Assumption Agreement is held to be invalid, such event shall not affect, in any respect whatsoever, the validity of the remainder of this Assignment and Assumption Agreement, and the remainder shall be construed without the invalid provision so as to carry out the intent of the parties to the extent possible without the invalid provision.

h. **Time of Essence.** Time is of the essence of this Assignment and Assumption Agreement.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have caused this Assignment and Assumption Agreement to be signed by their respective, duly authorized representatives, as of the day and year first written above.

CONSENT OF CITY OF KETCHUM

The City of Ketchum, Idaho consents to the terms of the Agreement notwithstanding any contrary terms contained in any prior Development Agreement.

CITY OF KETCHUM:

CITY OF KETCHUM, a municipal corporation of the State of Idaho

By: _____
Neil Bradshaw, Mayor

STATE OF IDAHO)
) ss.
County of Blaine)

This instrument was acknowledged before me this ____ day of _____, 2021, by Neil Bradshaw, as the Mayor of the City of Ketchum.

Notary Public of Idaho
My Commission Expires: _____

ASSIGNOR:

KETCH PDX, LLC, an Oregon Limited Liability Company

By: MARK R. MADDEN REVOCABLE LIVING TRUST, an Oregon Revocable Living Trust, its Manager

By: _____
Mark R. Madden, Trustee

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me this ____ day of _____, 2021, by Mark R. Madden, as the Trustee of the Mark R. Madden Revocable Living Trust, an Oregon Revocable Living Trust, as the Manager of KETCH PDX, LLC and Oregon limited liability company.

Notary Public of Oregon
My Commission Expires: _____

ASSIGNEE:

HIGHBROW LLC, an Idaho limited liability company

By: _____
John B. Heatly, member

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me this ____ day of _____, 2021, by John B. Heatly, a member of Highbrow LLC an Idaho limited liability company.

Notary Public of Oregon
My Commission Expires: _____

**EXHIBIT A
LEGAL DESCRIPTION**

Lot 5, Block 35 of Ketchum Townsite, according to official plat thereof, filed in Official Records of Blaine County, Idaho.

ASSIGNMENT AND ASSUMPTION AGREEMENT 20615

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT is made this ____ day of _____, 2021, by and among **KETCH 2 PDX, LLC**, an Oregon limited liability company (“Assignor”), with offices located at 2334 NW 24TH Avenue, Portland, Oregon 97210, and **LOWBROW LLC**, an Idaho limited liability company (“Assignee”), with offices located at 23425 N. Hwy 99W, Newberg, OR 97132, and the **CITY OF KETCHUM**, a municipal corporation of the State of Idaho (the “City”).

RECITALS

- a. Assignor is the owner of improved real property KETCH II, located at 560 1st Avenue Ketchum, Idaho and legally described in the attached Exhibit A (the “Property”);
- b. On or about October 15, 2018, Assignor and the City entered into the certain FAR Exceedance Agreement (the “Agreement”), an accurate and complete copy of which is attached as Exhibit B, related to the real property and improvements located at the Property;
- c. Assignor is selling the Property to Assignee and wishes to assign its right, title and interest in the Agreement to Assignee, subject to the terms below;
- d. The City’s consent is required for any assignment of rights in the Agreement; and
- e. The City wishes to approve and consent to Assignor’s assignment of rights in the Agreement to Assignee, effective upon the transfer of the title to the Property by Assignor to Assignee.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and based on the Recitals above, the complete terms of which are incorporated herein, the parties agree as follows:

AGREEMENT

- 1. Assignment.** Assignor does hereby unconditionally transfer, assign, grant, and convey to Assignee and Assignee’s successors and assigns, all of Assignor’s right, title, and interest in the Agreement, effective as of the date of the transfer of the title of the Property to Assignee (the “Effective Date”).
- 2. Assumption.** In consideration therefore, Assignee for itself, its successors and assigns, does hereby unconditionally assume all right, title, interest and obligations under the Agreement from the Effective Date forward and agrees to be bound by all of the terms, conditions, obligations, and restrictions relating to the Agreement.
- 3. Consent.** The City consents to Assignor’s assignment and Assignee’s assumption of the Assignor’s obligations under the Agreement relating to the Property, upon the transfer of the title to the Property by Assignor to Assignee, without affecting in any manner and preserving in all regards, the restrictions and requirements of the Agreement with respect to any further or additional transfer.

- 4. No Reservation.** The assignment by Assignor and Assignee shall be absolute, final and irrevocable and the rights under Sections 1 and 2 will not be subject to any rights of reversion to Assignor.
- 5. Priority.** The parties intend that the priority position of the recorded Agreement shall not be affected or changed by the recording of this Assignment and Assumption Agreement and that all of the Agreements shall retain the priority in the order established by the initial order of recordings.
- 6. Existing Liens, Charges, and Encumbrances.** The Property shall remain in all respects subject to the liens, charges, or encumbrances created thereby and shall not be affected by this Assignment and Assumption Agreement in any respect.
- 7. Release.** It is understood that this Assignment and Assumption Agreement operates as the City's release of Assignor from the obligations under the Agreement from the Effective Date forward.
- 8. No Additional Assumption.** This Assignment and Assumption Agreement is not to be construed as an agreement to permit any further or future assumptions by any party.
- 9. Warranty Against Breach.** Assignor warrants that it is not in any breach of the Agreement as of the date of this Assignment and Assumption Agreement.
- 10. Other Documents.** The Assignor and the Assignee agree to enter into any other document in conjunction with this Assignment and Assumption Agreement as reasonably required by the City of Ketchum, on the terms and conditions required by the City of Ketchum.
- 11. Reporting.** The Assignee agrees to submit to the City of Ketchum or its designee all documents as reasonably requested by the City of Ketchum to monitor the Assignee's compliance with the terms of the Agreement.
- 12. Notice.** Any notice required or permitted under the Agreement and this Assignment and Assumption Agreement shall be given when actually delivered or two (2) days after being deposited in the United States Mail as certified mail addressed as follows:

To Assignor: Ketch 2 PDX, LLC
 Mark R. Madden
 PO Box 96068
 Portland, OR 97296

To Assignee: Lowbrow LLC
 23425 N Hwy 99W
 Newberg, OR 97132

To City of Ketchum: City of Ketchum
 P.O. Box 2315, 480 East Ave. N.
 Ketchum, ID 83340

or to such other address as may be specified from time to time by either of the parties in writing.

13. Miscellaneous.

a. **Counterparts.** This Assignment and Assumption Agreement may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by all the parties hereto shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.

b. **Survival.** All agreements, representations, and warranties shall survive the execution and delivery of this Assignment and Assumption Agreement.

c. **Successors and Assigns.** This Assignment and Assumption Agreement shall be binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns.

d. **Governing Law.** This Assignment and Assumption Agreement shall be governed by and construed under Idaho law.

e. **Assignment.** The Assignee may not assign this Assignment and Assumption Agreement without the prior written consent of the City and without the execution of a new Assignment and Assumption Agreement.

f. **Modification; Prior Agreements; Headings.** This Assignment and Assumption Agreement may not be modified or amended except by an instrument in writing signed by the Assignor, the Assignee, and the City. This Assignment and Assumption Agreement taken together with the Agreement reflect and set forth the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersede all prior agreements and understandings relating to such subject matter. The headings in this Assignment and Assumption Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms hereof.

g. **Validity; Severability.** If any provision of this Assignment and Assumption Agreement is held to be invalid, such event shall not affect, in any respect whatsoever, the validity of the remainder of this Assignment and Assumption Agreement, and the remainder shall be construed without the invalid provision so as to carry out the intent of the parties to the extent possible without the invalid provision.

h. **Time of Essence.** Time is of the essence of this Assignment and Assumption Agreement.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have caused this Assignment and Assumption Agreement to be signed by their respective, duly authorized representatives, as of the day and year first written above.

CONSENT OF CITY OF KETCHUM

The City of Ketchum, Idaho consents to the terms of the Agreement notwithstanding any contrary terms contained in any prior Development Agreement.

CITY OF KETCHUM:

CITY OF KETCHUM, a municipal corporation of the State of Idaho

By: _____
Neil Bradshaw, Mayor

STATE OF IDAHO)
) ss.
County of Blaine)

This instrument was acknowledged before me this ____ day of _____, 2021, by Neil Bradshaw, as the Mayor of the City of Ketchum.

Notary Public of Idaho
My Commission Expires: _____

ASSIGNOR:

KETCH 2 PDX, LLC, an Oregon Limited Liability Company

By: **MARK R. MADDEN REVOCABLE LIVING TRUST**, an Oregon Revocable Living Trust, its Manager

By: _____
Mark R. Madden, Trustee

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me this ____ day of _____, 2021, by Mark R. Madden, as the Trustee of the Mark R. Madden Revocable Living Trust, an Oregon Revocable Living Trust, as the Manager of KETCH 2 PDX, LLC and Oregon limited liability company.

Notary Public of Oregon
My Commission Expires: _____

ASSIGNEE:

LOWBROW LLC, an Idaho limited liability company

By: _____
John B. Heatly, member

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me this ____ day of _____, 2021, by John B. Heatly, a member of LOWBROW LLC an Idaho limited liability company.

Notary Public of Oregon
My Commission Expires: _____

EXHIBIT A
LEGAL DESCRIPTION

Lot 6, Block 35 of Ketchum Townsite, according to official plat thereof, filed in Official Records of Blaine County, Idaho.

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**FAR EXCEEDANCE
AGREEMENT**

Parties:

City of Ketchum	"City"	P.O. Box 2315, 480 East Ave. N., Ketchum, Idaho, 83340
Ketch PDX, LLC	"Owner"	Mailing: 2330 NW 31 st Ave. Portland, OR 97210 Physical Address: 560 1 st Ave (Ketchum Townsite: Block 35: Lot 5)

This FAR Exceedance Agreement ("Agreement") is made between the City of Ketchum, a municipal corporation of the state of Idaho, and Ketch PDX, 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 a 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. **Withdrawal.** Developer may withdraw from this Agreement upon thirty day 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. Furthermore, the City acknowledges that the Building Owner, in its sole discretion, may choose not to build the residential units. In such an event, this FAR Exceedance Agreement will be modified.
6. **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.
7. **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.
8. **Binding Effect.** This Agreement shall be binding upon the heirs, estates, personal representatives, successors, and assigns of the parties.
9. **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.
10. **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.
11. **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.

12. **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.

13. **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 15TH DAY OF OCTOBER, 2018.

Developer



Mark Madden, CEO
Ketch PDX LLC

10-16-18

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: WDC Ketch Housing Development Design Review

FILE NUMBER: #18-076

OWNERS: Ketchum PDX LLC

REPRESENTATIVE: Gene Bolante, Studio 3 Architecture

REQUEST: Design Review of a two-story residential building containing 18 apartment units.

LOCATION: 560 N. 1st Avenue (Lot 6, Block 35, Ketchum Townsite)

ZONING: Community Core (CC) & Sub-District C, Urban Residential

BACKGROUND:

1. The applicant is proposing to construct 18 apartments. The first floor will contain 12 alcove-studio units, the second floor will contain two 1-bedroom units and four 2-bedroom units. Alcoves range from 225 to 300 square feet, 1 bedrooms are proposed to be 290 square feet and 2 bedrooms are proposed to be 585 square feet. The applicant intends to designate three units for affordable housing.
2. The site is located at 560 N. 1st Avenue (Lot 6, Block 35, Ketchum Townsite). Subject Lot is 5,506 sq ft, which complies with the 5,500 sq ft minimum lot area required in the CC Zoning District.
3. The subject property is located in the Urban Residential Sub-district C of the Community Core (CC-C).
4. The proposed floor area of the project will have a total area of 7,750 gross square feet, with a Floor Area Ratio (FAR) of 1.376 (7,580 gross square feet / 5,506 square foot lot).
5. As a condition of Design Review approval, the project shall comply with the requirements of Ketchum City Code §17.124.040, *Floor Area Ratios and Community Housing*, as adopted on the date a Building Permit is submitted for the project.
6. The Planning and Zoning Commission approved the Design Review application (18-076) for Ketch PDX on June 25th, 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	City Standard
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<i>17.124.040</i>	<i>Floor Area Ratios and Community Housing</i>

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.

Permitted in Community Core Sub-district C (CC-C)

Permitted Gross FAR: 1.0

Permitted Gross FAR with Inclusionary Housing Incentive: 2.25

Proposed

FAR: 1.376 (7,580 gross square feet / 5,506 square foot lot

Total Gross Floor Area

FLOOR AREA, GROSS (Ketchum City Code §17.08.020): The sum of the horizontal area of the building measured along the outside walls of each floor of a building or portion of a building, including stair towers and elevators on the ground floor only, and fifty percent (50%) of atriums over eighteen feet (18') plate height, but not including basements, underground parking areas or open unenclosed decks. Parking areas covered by a roof or portion of the building and enclosed on three (3) or more sides by building walls are included. Four (4) parking stalls for developments on single Ketchum town site lots of five thousand six hundred (5,600) square feet in size or less are not included in the gross floor area calculation.

Note: Basements are not included in the calculation for gross floor area.

Proposed Building	
Main Level	3,790
Upper Level	3,790
Total	7,580

Total Gross Floor Area: 7,580 sq ft

Inclusionary Housing Incentive

Community Housing Contribution: The applicant shall provide **353 square feet** of community housing either on-site or elsewhere within the City of Ketchum or pay a **\$84,014** fee in-lieu.

- Increase in sq ft above FAR = 2,074 sq ft (7,850 sq ft– 5,506 sq ft)
- 20% of CH incentive to be deed restricted or pay fee in lieu:
415 sq ft: (2,074 sq ft x .20 = 415 sq ft)
- Reduced by 15% to account for circulation, mechanical, etc.:
353 sq ft: (415 sq ft x .85 = 353 sq ft)

KETCH PDX, LLC AFFORDABLE HOUSING APARTMENT PROPOSAL

The applicant proposes to:

1. Provide three affordable units totaling approximately 1,090 square feet as follows: two 1st floor studio units (average 320 square feet) and one 2nd floor one bedroom unit (average 450 square feet).
2. Target subject apartments for a Blaine County Housing Authority (BCHA) Income of Category 3
3. List subject apartments for rent through the BCHA concurrent with the issuance of certificate of occupancy by the City for Developer's Project.
4. Deed restrict the one 320 square foot studio residential rental apartment and two remaining residential rental apartments for not less than twenty-five (25) years.

**FAR EXCEEDANCE
AGREEMENT**

Parties:

City of Ketchum	"City"	P.O. Box 2315, 480 East Ave. N., Ketchum, Idaho, 83340
Ketchum 2 PDX, LLC	"Owner"	Mailing: 3621 NW Yeon Ave. Portland, OR 97210 Physical Address: 100 E. 6 th (Ketchum Townsite: Block 35: Lot 5)

This FAR Exceedance Agreement ("Agreement") is made between the City of Ketchum, a municipal corporation of the state of Idaho, and Ketchum 2 PDX, 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 a 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. **Withdrawal.** Developer may withdraw from this Agreement upon thirty day 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. Furthermore, the City acknowledges that the Building Owner, in its sole discretion, may choose not to build the residential units. In such an event, this FAR Exceedance Agreement will be modified.
6. **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.
7. **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.
8. **Binding Effect.** This Agreement shall be binding upon the heirs, estates, personal representatives, successors, and assigns of the parties.
9. **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.
10. **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.
11. **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.

12. **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.

13. **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 1ST DAY OF APRIL, 2019.

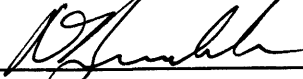
Developer

DocuSigned by:



Mark Madden, CEO
Ketchum 2 PDX LLC

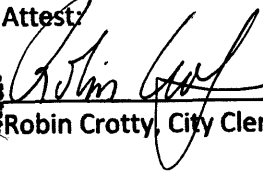
City of Ketchum, Idaho



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: Ketch 2

FILE NUMBER: #19-004

OWNERS: Ketchum 2 PDX, LLC

REPRESENTATIVE: Gene Bolante, Studio 3 Architecture

REQUEST: Design Review of a three-story building containing 17 apartments and one (1) commercial space

LOCATION: 100 E. 6th Street (Lot 5, Block 35, Ketchum Townsite)

ZONING: Community Core (CC) & Sub-District 2, Mixed Use

BACKGROUND:

1. The applicant is proposing to construct 17 apartments and one (1) commercial space. The building includes nine (9) two-bedroom apartments, five (5) one-bedroom apartments, three (3) studio apartments and one (1) commercial space. The apartments range in size from 422 sf to 650 sf. The owner intends to designate 2 apartments for community housing.
2. The site is located at 100 E. 6th Street (Lot 5, Block 35, Ketchum Townsite). The Subject Lot is 5,506 sq ft, which complies with the 5,500 sq ft minimum lot area required in the CC Zoning District.
3. The subject property is located in the Sub-district 2, Mixed Use, of the Community Core (CC-C).
4. The proposed floor area of the project will have a total area of 11,945.33 gross square feet, with a Floor Area Ratio (FAR) of 2.169 (11,945.33 gross square feet / 5,506 square foot lot).
5. As a condition of Design Review approval, the project shall comply with the requirements of Ketchum City Code §17.124.040, *Floor Area Ratios and Community Housing*, as adopted on the date a Building Permit is submitted for the project.
6. The Planning and Zoning Commission approved the Design Review application (19-004) for Ketch 2 on February 20th, 2019. 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	City Standard										
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.124.040	Floor Area Ratios and Community Housing										
				<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 Community Core Sub-district C (CC-C) Permitted Gross FAR: 1.0 Permitted Gross FAR with Inclusionary Housing Incentive: 2.25</p> <p>Proposed 2.169 (11,945.33 gross square feet / 5,506 square foot lot)</p> <p>Total Gross Floor Area FLOOR AREA, GROSS (Ketchum City Code §17.08.020): The sum of the horizontal area of the building measured along the outside walls of each floor of a building or portion of a building, including stair towers and elevators on the ground floor only, and fifty percent (50%) of atriums over eighteen feet (18') plate height, but not including basements, underground parking areas or open unenclosed decks. Parking areas covered by a roof or portion of the building and enclosed on three (3) or more sides by building walls are included. Four (4) parking stalls for developments on single Ketchum town site lots of five thousand six hundred (5,600) square feet in size or less are not included in the gross floor area calculation.</p> <p>Note: Basements are not included in the calculation for gross floor area.</p> <table border="1" data-bbox="630 1243 1096 1444"> <thead> <tr> <th colspan="2">Proposed Building</th> </tr> </thead> <tbody> <tr> <td>Main Level – first floor</td> <td>3,988.37</td> </tr> <tr> <td>Second floor</td> <td>3,978.48</td> </tr> <tr> <td>Third floor</td> <td>3,978.48</td> </tr> <tr> <td>Total</td> <td>11,945.33</td> </tr> </tbody> </table> <p>Total Gross Floor Area: 11,945.33 sq ft</p> <p>Inclusionary Housing Incentive Community Housing Contribution: The applicant shall provide 1,094.6 square feet of community housing either on-site or elsewhere within the City of Ketchum or pay a \$260,610 fee in-lieu.</p> <ul style="list-style-type: none"> • Increase in sq ft above FAR = 6,439.33 sq ft (11,945.33 sq ft– 5,506 sq ft) • 20% of CH incentive to be deed restricted or pay fee in lieu: 1,288 sq ft: (6,439 sq ft x .20 = ,1287.66 sq ft) 	Proposed Building		Main Level – first floor	3,988.37	Second floor	3,978.48	Third floor	3,978.48	Total	11,945.33
Proposed Building														
Main Level – first floor	3,988.37													
Second floor	3,978.48													
Third floor	3,978.48													
Total	11,945.33													

- Reduced by 15% to account for circulation, mechanical, etc.:
1,095 sq ft: (1,2876.6 sq ft x .85 = 1094.6 sq ft)

KETCH 2 AFFORDABLE HOUSING APARTMENT PROPOSAL

The applicant proposes to:

1. Provide two affordable units totaling approximately 1,098 square feet as follows: one 1st floor studio unit (average 573 square feet) and one 1st floor one bedroom unit (average 525 square feet).
2. Target subject apartments for a Blaine County Housing Authority (BCHA) Income of Category 3.
3. List subject apartments for rent through the BCHA concurrent with the issuance of certificate of occupancy by the City for Developer's Project.
4. Deed restrict subject 1,098 square feet of residential rental apartments for not less than twenty-five (25) years.

COMMUNITY HOUSING FUND CONTRIBUTION AGREEMENT

Parties:

City of Ketchum	"City"	Mailing: P.O. Box 2315, 480 East Ave. N., Ketchum, Idaho 83340
Ketch PDX, LLC	"Owner"	Mailing: 2330 NW 31st Ave. Portland, OR 97210

This Community Housing Fund Contribution Agreement ("Agreement") is made between the City of Ketchum, a municipal corporation of the state of Idaho, and Ketch PDX, LLC, owner of the Subject Property in the City of Ketchum.

RECITALS

- A. As part of its vision in the 2014 Comprehensive Plan, and in order to ensure the public health and welfare, the City has identified a priority on promoting community housing such that "the majority of people who work in Ketchum have an opportunity to reside here" and so as to promote local solutions for an increase in the diversity and supply of attainable housing.
- B. 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.
- C. 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). One option is to contribute an in-lieu fee, which is designated for and held in the City's Community Housing Fund. K.M.C. 17.124.040(B)(2)(c) and (f)(2). Additionally, the options include "alternative proposals by the applicant to fulfill the community housing incentive." K.M.C. 17.124.0404(B)(2)(g).
- D. The City Community Housing Fund is designated for development and promotion of the economic development and attainable housing goals of the Comprehensive Plan. The City Council has outlined priorities for the use of the Community Housing Fund so as to pursue cooperative development across a variety of affordable and workplace housing options. This includes use of the Community Housing Fund to work and contribute in partnership with development projects to achieve community housing goals.
- E. Owner is pursuing a development project known as the Ketch PDX multi-family residential rental development, which triggers certain FAR requirements. Owner and the City have discussed meeting such requirements through the provision of on-site workforce units. Additionally, Owner and City have discussed and desire to pursue development of additional workforce units beyond the requirements, pursuant to

contribution from the Community Housing Fund. Owner has submitted an application to the City for contribution from the Community Housing Fund, which is attached hereto as Exhibit A.

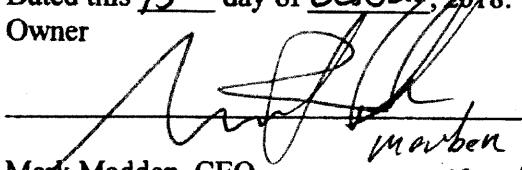
- F. The parties have entered into a FAR Exceedance Agreement documenting Owner's satisfaction of the FAR requirements; and the parties hereby wish to document their further agreement to pursue and provide additional workforce housing beyond requirements through a cooperative endeavor and contribution by the City from the Community Housing Fund.

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. **Owner Development.** Owner is required to develop 353 net livable square feet pursuant to the housing obligations of the FAR Exceedance Agreement between the Parties. Owner will exceed this requirement and develop 737 net livable square feet of residential units at the Subject Property, hereby identified as 560 N. 1st Avenue (Lot 6, Block 35, Ketchum Townsite), Ketchum. The residential units will be subject to the following restrictions:
 - a. Three apartments, totaling 1,090 square feet with adjusted median incomes of occupants of 3 will be constructed and rented for a period of not less than twenty-five (25) years.
 - b. The residential apartments will be occupied by the Blaine County Housing Authority (BCHA) during which no short-term rental of the Units is permissible.
 - c. BCHA will provide management oversight of three apartment units.
2. **City Contribution.** In consideration of provision of the additional community housing with restrictions, City will contribute one hundred and seventy-five thousand four hundred and six dollars (\$175,406) to Owner for the 737 square feet exceeding the 353 square feet required. This contribution will be made from the City's Community Housing Fund and subject to the priorities and policies associated with such Fund. Contribution will be made to Owner upon the date of receipt of the Certificate of Occupancy and City verification that the additional housing has been developed and provided with the appropriate restrictions.
3. **Withdrawal.** Owner may withdraw from this Agreement upon thirty days notice to City provided that Owner has received no contribution from the Community Housing Fund. Such withdrawal will terminate any obligation of City to contribute. Withdrawal from this Agreement will not waive, terminate, or otherwise alter Owner's other FAR exceedance requirements.

4. **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.
5. **No Assignment.** Owner shall not sell, assign, or transfer all or any portion of its interest in this Agreement at any time without consent of the City.
6. **Binding Effect.** This Agreement shall be binding upon the heirs, estates, personal representatives, successors, and assigns of the parties.
7. **Attorney Fees and Costs.** In the event any action is brought to enforce this Agreement, the prevailing party is entitled to an aware of reasonable attorney fees and costs.
8. **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.
9. **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.
10. **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.
11. **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 15th day of October, 2018.
Owner

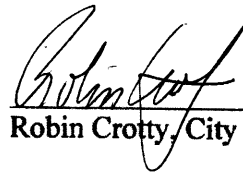

Mark Madden, CEO
Ketch PDX, LLC

mark madden
10-16-18

City of Ketchum, Idaho


Neil Bradshaw, Mayor

Attest:



Robin Crotty, City Clerk



City of Ketchum
City Hall

COMMUNITY HOUSING IN-LIEU FUNDING APPLICATION REQUEST FORM

Applicant and Project Information

Applicant Name:
Ketch PDX LLC / Mark Madden, Managing Member

Name of Project:
Ketch PDX

Project Description & Location: Construct 18 Small Long-Term Rental Apartments @ 560 N 1st Ave, Ketchum

Date Submitted: _____

Estimated Date of Completion: _____

Application Submittal Requirements

- Brief narrative describing the proposed public benefit of the project
- Map of project location
- Attached preliminary design review drawings, as applicable

Notes on Submittals

Projects Questions (§17.124.040.B.1):

1. Will in-lieu funds be used exclusively for resident occupied workforce housing?
2. How many workforce units will be created?
3. How many workforce units will be for sale? for rent?
4. What are the sizes of proposed units?
5. Who will administer the workforce units?
6. What is the targeted income category for occupants?
7. How long will lease and/or rent restrictions be enforced?
8. Funding amount requested:

Yes:

No:

#: 3

for sale: _____

for rent: 3

Unit Sizes in SF:

320, 320 and 450 SF

Administrator:

BCHA

Targeted AMI: 85%

AMI (Cat ⅔)

Minimum # Years: ≥ 25 Years

\$238 SF x 737 SF = \$175,406

Applicant's Signature _____

Property Owner's Signature (if different): _____

10-16-18

Date: _____

Date: _____