



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: August 21, 2023 Staff Member/Dept: Paige Nied, Associate Planner
Planning and Building Department

Agenda Item: Recommendation to Approve Right-of-Way Encroachment Agreement #22877 and FAR Exceedance Agreement #22878 between the City of Ketchum and Acquire Realty LLC.

Recommended Motion:

I move to authorize the Mayor to sign Right-of-Way Encroachment Agreement #22877 and FAR Exceedance Agreement #22878 with Acquire Realty LLC.

Reasons for Recommendation:

- The applicant is proposing a 6,039 square foot two-story commercial development known as Leadville Trading, located at 211 N Leadville Avenue within the Community Core – Subdistrict 2 – Mixed Use (CC-2) zone. The Leadville Trading Design Review application (File No. P22-066) and Conditional Use Permit application (File No. P22-066A) were approved by the Planning and Zoning Commission on April 11, 2023.
- The improvements will not impact the use or operation of Leadville Avenue or Second Street.
- The improvements will not impact drainage or snow removal within the public right-of-way.
- The project complies with all standards for Right-of-Way Encroachment Permit issuance specified in Ketchum Municipal Code §12.12.060.
- Pursuant to Ketchum Municipal Code §17.124.040.B.f., community housing contributions may be paid via a fee in-lieu of housing. The applicant proposes to satisfy the community housing contribution by paying the in-lieu fee totaling \$48,150.

Policy Analysis and Background (non-consent items only):

Sustainability Impact:

The subject Right-of-Way Encroachment Agreement is for a sidewalk snowmelt system for a commercial development within the Community Core zone. The City Council made the determination that snowmelt systems installed for downtown development projects in the Community Core zone district are in the public interest as they keep sidewalks clear of snow and ice during the winter and provide a safe pathway for pedestrians.

Financial Impact:

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| None OR Adequate funds exist in account. | The in-lieu fee is deposited into the city's housing in-lieu fund which provides funding for the city's housing programs and initiatives to create workforce housing within the city of Ketchum. Payment of this in-lieu fee will provide needed funding for current and future programs and initiatives. |
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Attachments:

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| 1. ROW Encroachment Agreement #22877 with exhibits |
| 2. FAR Exceedance Agreement #22878 with exhibits |

WHEN RECORDED, PLEASE RETURN TO:

**OFFICE OF THE CITY CLERK
CITY OF KETCHUM
POST OFFICE BOX 2315
KETCHUM, IDAHO 83340**

RIGHT-OF-WAY ENCROACHMENT AGREEMENT 22877

THIS AGREEMENT, made and entered into this ____ day of ____ 2023, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose mailing address is Post Office Box 2315, Ketchum, Idaho and Acquire Realty LLC, ("Owner"), whose mailing address is 401 E City Avenue SPC 220, Bala Cynwyd, Pennsylvania and who owns real property located at 211 N Leadville Avenue ("Subject Property").

RECITALS

WHEREAS, Owner is the owner of real property described as 211 N Leadville Avenue ("Subject Property"), located within the City of Ketchum, State of Idaho; and

WHEREAS, Owner wishes to permit placement of a hydronic snowmelt system for new heated concrete sidewalks and pavers along Leadville Avenue and Second Street. These improvements are shown in Exhibit "A" attached hereto and incorporated herein (collectively referred to as the "Improvements"); and,

WHEREAS, Ketchum finds that said Improvements will not impede the use of said public right-of-way at this time subject to the terms and provisions of this Agreement;

WHEREAS, the Owner will restore the sidewalk, street, curb and gutter and any landscaping back to the original condition acceptable to the Streets and Facilities Director;

NOW, THEREFORE, in contemplation of the above stated facts and objectives, it is hereby agreed as follows:

TERMS AND CONDITIONS

1. Ketchum shall permit Owner to install a hydronic snowmelt system for new heated concrete sidewalks identified in Exhibit "A" within the public right-of-way on Leadville Avenue and Second Street, until notified by Ketchum to remove the infrastructure at which time Owner shall remove infrastructure at Owner's expense.

2. Owner shall be responsible for the maintenance of said Improvements and shall repair said improvements within 48 hours upon notice from Ketchum that repairs are needed. Any modification to the improvements identified in Exhibit "A" shall be approved by the City of Ketchum prior to any modifications taking place.

3. Snowmelt systems installed in the public right-of-way shall be installed and operate at all times during the winter according to the following:

- The system shall meet the requirements of the International Energy Conservation Code (2018 IECC, 403.12.2)
- The system shall have an electronic main control board to operate the system that is programmable and optimizes the way the system functions.
- Installation of in-ground control sensors linked to the main control board that detect snow and ice on the surface, monitor the sidewalk or driveway temperature, and automatically activates the system to be turned on or off based on the snow condition and air temperature.

4. Owner shall be responsible for restoring the sidewalk, curb and gutter and landscaping that is altered due to the construction and installation of the Improvements, to the satisfaction of the Director of Streets and Facilities.

5. In consideration of Ketchum allowing Owner to maintain the Improvements in the public right-of-way, Owner agrees to indemnify and hold harmless Ketchum from and against any and all claims of liability for any injury or damage to any person or property arising from the Improvements constructed, installed and maintained in the public right-of-way. Owner shall further indemnify and hold Ketchum harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Owner's part to be performed under this Agreement, or arising from any negligence of Owner or Owner's agents, contractors or employees and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such action or proceeding brought thereon. In the event any action or proceeding is brought against Ketchum by reason of such claim, Owner, upon notice from Ketchum, shall defend Ketchum at Owner's expense by counsel satisfactory to Ketchum. Owner, as a material part of the consideration to Ketchum, hereby assumes all risk of damages to property or injury to persons in, upon or about the Improvements constructed, installed and maintained in the public right-of-way arising from the construction, installation and maintenance of said Improvements and Owner hereby waives all claims in respect thereof against Ketchum.

6. Ketchum shall not be liable for injury to Owner's business or loss of income therefrom or for damage which may be sustained by the person, goods, wares, merchandise or property of Owner, its tenants, employees, invitees, customers, agents or contractors or any other person in or about the Subject Property caused by or resulting from the Improvements constructed, installed, removed or maintained in the public right-of-way.

7. Owner understands and agrees that by maintaining the Improvements in the public right-of-way pursuant to this Agreement, Owner obtains no claim or interest in said public right-of-way which is adverse to that of Ketchum and that Owner obtains no exclusive right to said public right-of-way nor any other right to use the public right-of-way not specifically described herein.

8. In the event either party hereto retains an attorney to enforce any of the rights, duties and obligations arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney's fees at the trial and appellate levels and, whether or not litigation is actually instituted.

9. This Agreement shall be governed by, construed, and enforced in accordance with the laws and decisions of the State of Idaho. Venue shall be in the District Court of the fifth Judicial District of the State of Idaho.

10. This Agreement sets forth the entire understanding of the parties hereto and shall not be changed or terminated orally. It is understood and agreed by the parties hereto that there are no verbal promises or implied promises, agreements, stipulations or other representations of any kind or character pertaining to the Improvements maintained in the public right-of-way other than as set forth in this Agreement.

11. No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of this document.

12. This Agreement shall be recorded with the Blaine County Recorder by Ketchum.

13. The parties fully understand all of the provisions of this Agreement, and believe them to be fair, just, adequate, and reasonable, and accordingly accept the provisions of this Agreement freely and voluntarily.

OWNER:

CITY OF KETCHUM:

By: _____

By: _____

Mark Dooley, Managing Member for
Acquire Realty LLC

Neil Bradshaw, Mayor

STATE OF _____,)
) ss.
County of _____.

On this ____ day of _____, 2023, before me, the undersigned Notary Public in and for said State, personally appeared MARK DOOLEY, known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed the same.

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

Notary Public for _____
Residing at _____
Commission expires _____

STATE OF IDAHO)
) ss.
County of Blaine)

On this ___ day of _____, 2023, before me, the undersigned Notary Public in and for said State, personally appeared NEIL BRADSHAW, known or identified to me to be the Mayor of the CITY OF KETCHUM, IDAHO, and the person who executed the foregoing instrument on behalf of said municipal corporation and acknowledged to me that said municipal corporation executed the same.

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

Notary Public for _____
Residing at _____
Commission expires _____

EXHIBIT "A"

LEADVILLE TRADING

211 LEADVILLE AVE. N.

ARCHITECT

DETAIL SHEET

C2.00

DETAIL SHEET LEADVILLE TRADING

LOCATED WITHIN SECTION 18, T 4 N, R. 9 E, E 1/4, C.M. CITY OF KETCHUM, BLAINE COUNTY, IDAHO

PERMITTED FOR THE ABOVE DESCRIBED PROJECTS BY THE IDAHO DEPARTMENT OF TRANSPORTATION

GALENA
ENGINEERING & LAND SURVEYS
117 N. 3RD STREET
KETCHUM, IDAHO 83701
(208) 738-1755
info@galena-engineering.com

NO. DATE BY REVISIONS

ENGINEER

4 **24" WIDE CONCRETE VALLEY GUTTER** N.T.S.

NOTES:
1. REBAR SHALL BE INSTALLED TO THE FLUSH WITH SURFACE.
2. ALL REBAR SHALL BE IN ACCORDANCE WITH THE MOST CURRENT A.S.T.M. SPECIFICATION.
3. ALL REBAR SHALL BE IN ACCORDANCE WITH THE MOST CURRENT A.S.T.M. SPECIFICATION.
4. SHORLAGE SHALL BE APPROVED BY THE CITY OF KETCHUM.
5. CITY TO PROVIDE BASE.

5 **36" CONCRETE VALLEY GUTTER** N.T.S.

NOTES:
1. REBAR SHALL BE INSTALLED TO THE FLUSH WITH SURFACE.
2. ALL REBAR SHALL BE IN ACCORDANCE WITH THE MOST CURRENT A.S.T.M. SPECIFICATION.
3. ALL REBAR SHALL BE IN ACCORDANCE WITH THE MOST CURRENT A.S.T.M. SPECIFICATION.
4. SHORLAGE SHALL BE APPROVED BY THE CITY OF KETCHUM.
5. CITY TO PROVIDE BASE.

1 **TYPICAL ASPHALT SECTION** N.T.S.

NOTES:
1. ASPHALT SHALL BE 1.5" THICK, CONSISTENT WITH CURRENT IDOT SPECIFICATIONS.
2. SUBGRADE SHALL BE 4" THICK, CONSISTENT WITH CURRENT IDOT SPECIFICATIONS.
3. BASE SHALL BE 4" THICK, CONSISTENT WITH CURRENT IDOT SPECIFICATIONS.
4. ALL MATERIALS SHALL BE IN ACCORDANCE WITH THE MOST CURRENT A.S.T.M. SPECIFICATION.
5. ALL MATERIALS SHALL BE IN ACCORDANCE WITH THE MOST CURRENT A.S.T.M. SPECIFICATION.

2 **6" CONCRETE ROLLED CURB & GUTTER** N.T.S.

NOTES:
1. REBAR SHALL BE INSTALLED TO THE FLUSH WITH SURFACE.
2. ALL REBAR SHALL BE IN ACCORDANCE WITH THE MOST CURRENT A.S.T.M. SPECIFICATION.
3. ALL REBAR SHALL BE IN ACCORDANCE WITH THE MOST CURRENT A.S.T.M. SPECIFICATION.
4. SHORLAGE SHALL BE APPROVED BY THE CITY OF KETCHUM.
5. CITY TO PROVIDE BASE.

3 **ALUMINUM ROLLED CURB & GUTTER** N.T.S.

NOTES:
1. REBAR SHALL BE INSTALLED TO THE FLUSH WITH SURFACE.
2. ALL REBAR SHALL BE IN ACCORDANCE WITH THE MOST CURRENT A.S.T.M. SPECIFICATION.
3. ALL REBAR SHALL BE IN ACCORDANCE WITH THE MOST CURRENT A.S.T.M. SPECIFICATION.
4. SHORLAGE SHALL BE APPROVED BY THE CITY OF KETCHUM.
5. CITY TO PROVIDE BASE.

7 **HEATED PAVEMENT** N.T.S.

NOTES:
1. REBAR SHALL BE INSTALLED TO THE FLUSH WITH SURFACE.
2. ALL REBAR SHALL BE IN ACCORDANCE WITH THE MOST CURRENT A.S.T.M. SPECIFICATION.
3. ALL REBAR SHALL BE IN ACCORDANCE WITH THE MOST CURRENT A.S.T.M. SPECIFICATION.
4. SHORLAGE SHALL BE APPROVED BY THE CITY OF KETCHUM.
5. CITY TO PROVIDE BASE.

8 **TYPICAL SIGN BASE** N.T.S.

NOTES:
1. BASE SHALL BE INSTALLED TO THE FLUSH WITH SURFACE.
2. ALL REBAR SHALL BE IN ACCORDANCE WITH THE MOST CURRENT A.S.T.M. SPECIFICATION.
3. ALL REBAR SHALL BE IN ACCORDANCE WITH THE MOST CURRENT A.S.T.M. SPECIFICATION.
4. SHORLAGE SHALL BE APPROVED BY THE CITY OF KETCHUM.
5. CITY TO PROVIDE BASE.

9 **DETECTABLE WARNING PLATE** N.T.S.

NOTES:
1. DETECTABLE WARNING PLATE SHALL BE 24" X 24".
2. HOLE SHALL BE 1/2" DIA.
3. COURTESY PERMITTED PERMITS.

10 **TYPICAL CONCRETE SIDEWALK SECTION** N.T.S.

NOTES:
1. REBAR SHALL BE INSTALLED TO THE FLUSH WITH SURFACE.
2. ALL REBAR SHALL BE IN ACCORDANCE WITH THE MOST CURRENT A.S.T.M. SPECIFICATION.
3. ALL REBAR SHALL BE IN ACCORDANCE WITH THE MOST CURRENT A.S.T.M. SPECIFICATION.
4. SHORLAGE SHALL BE APPROVED BY THE CITY OF KETCHUM.
5. CITY TO PROVIDE BASE.

PRINT DATE: Monday, June 26, 2023

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PROJECT INFORMATION: 211 LEADVILLE AVE. N. KETCHUM, IDAHO 83701

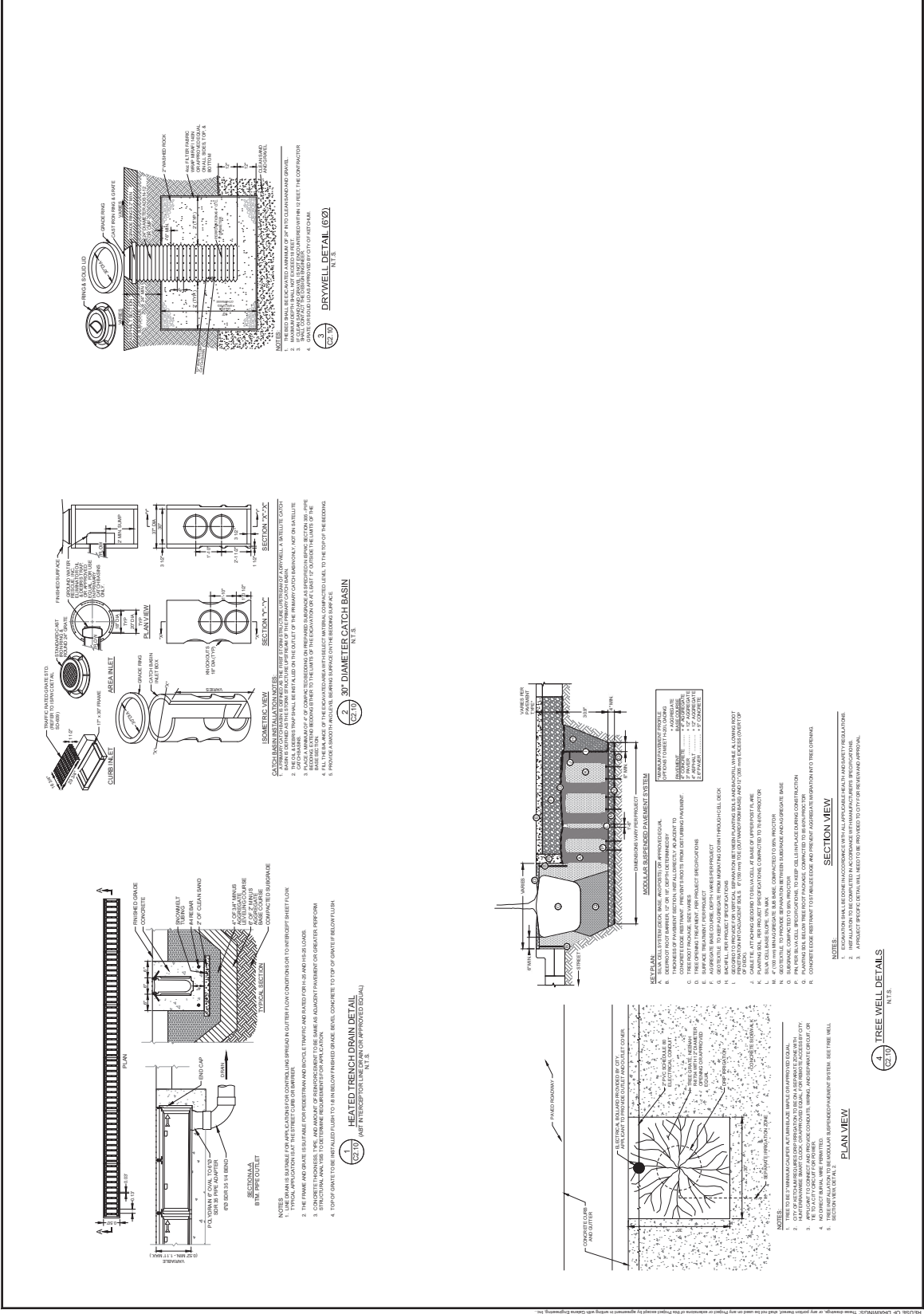
LOCATED WITHIN SECTION 18, T.4 N., R. 12 E., E. 1/4, M. CITY OF KETCHUM, BLAINE COUNTY, IDAHO

PERMITTED FOR THE ABOVE DEVELOPMENT PROJECT

GALENA ENGINEERING, INC.
Civil Engineers & Land Surveyors
127 N. 2nd Street
Ketchum, Idaho 83701
(208) 788-1755
email: info@galena-engineering.com

NO. DATE BY
DATE PERMIT SET
FILE
REVISIONS
NO. DATE DESCRIPTION

C2.10



NOTES:

1. TREE TO BE SET IN 18" DIA. HOLE WITH 18" DIA. CURB AND 18" DIA. GROUND COVER.
2. 18" DIA. HOLE TO BE SET IN 18" DIA. HOLE WITH 18" DIA. CURB AND 18" DIA. GROUND COVER.
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4. TREE TO BE SET IN 18" DIA. HOLE WITH 18" DIA. CURB AND 18" DIA. GROUND COVER.

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LEADVILLE TRADING

211 LEADVILLE AVE. N.

ARCHITECT

ENGINEER

DETAIL SHEET
LEADVILLE TRADING

LOCATED WITHIN SECTION 18, T 4 N, R 9 E, E 1/4, M 31, CITY OF KETCHUM, BLAINLY COUNTY, IDAHO

PROJECT INFORMATION: 211 LEADVILLE AVE. N., KETCHUM, IDAHO 83701

GALENA
ENGINEERING, INC.
Civil Engineers & Land Surveyors
127 N. 2nd Street
PO Box 61333
Boise, Idaho 83721
(208) 384-1755
galena@galectra-engineering.com

NO. DATE BY REVISIONS

DATE PERMIT SET

FILE

REVISIONS

NO. DATE DESCRIPTION

1. TYPICAL TRENCH SECTION
N.T.S.

1.1 TYPICAL TRENCH SECTION
N.T.S.

1.2 POTABLE AND NON-POTABLE WATER LINE (NPWL) SEPARATION
N.T.S.

2. TYPICAL STREET LIGHT
N.T.S.

3. THRUST BLOCK AND ANCHOR DETAILS
N.T.S.

4. TYPICAL STREET LIGHT
N.T.S.

VERTICAL SEPARATION REQUIREMENTS

THE TERM "ZONE" APPLIES TO BOTH MAINLINES AND SERVICE LINES

ZONE 1: WATER MAIN AND SERVICE LINES

ZONE 2: POTABLE AND NON-POTABLE WATER LINES

ZONE 3: GAS LINES

ZONE 4: SANITARY SEWER LINES

NOTE: ALL ZONES MUST BE SEPARATED BY AT LEAST 18" OF CONCRETE OR EQUIVALENT MATERIAL.

TABLE 1: MINIMUM SPACING OF VERTICAL SEPARATION

| PIPE SIZE | PIPE TYPE | MINIMUM SPACING (IN) |
|-----------|--------------------------------------|----------------------|
| 12" | ASBESTOS CEMENT | 18" |
| 12" | CONCRETE | 18" |
| 12" | DUCTILE IRON | 18" |
| 12" | STEEL | 18" |
| 12" | PLASTIC | 18" |
| 12" | GLASS FIBER REINFORCED PLASTIC (FRP) | 18" |
| 12" | ALUMINUM | 18" |
| 12" | COPPER | 18" |
| 12" | BRASS | 18" |
| 12" | LEAD | 18" |
| 12" | OTHER | 18" |

REINFORCEMENT REQUIREMENTS

ALL CONCRETE SHALL BE 4000 PSI STRENGTH WITH 4% MINIMUM REINFORCEMENT.

REINFORCEMENT SHALL BE #4 BARS AT 18" ON CENTER.

MINIMUM COVER SHALL BE 2" FOR ALL REINFORCEMENT.

VERTICAL BEND DETAIL

11" UT BEND DETAIL

REINFORCER DETAIL

TYPICAL BEND DETAIL

VALVE ANCHOR DETAIL

TEE AND PLUG DETAIL

VERTICAL SEPARATION REQUIREMENTS

ZONE 1: WATER MAIN AND SERVICE LINES

ZONE 2: POTABLE AND NON-POTABLE WATER LINES

ZONE 3: GAS LINES

ZONE 4: SANITARY SEWER LINES

NOTE: ALL ZONES MUST BE SEPARATED BY AT LEAST 18" OF CONCRETE OR EQUIVALENT MATERIAL.

1. TYPICAL TRENCH SECTION
N.T.S.

1.1 TYPICAL TRENCH SECTION
N.T.S.

1.2 POTABLE AND NON-POTABLE WATER LINE (NPWL) SEPARATION
N.T.S.

2. TYPICAL STREET LIGHT
N.T.S.

3. THRUST BLOCK AND ANCHOR DETAILS
N.T.S.

4. TYPICAL STREET LIGHT
N.T.S.

KETCHUM PUBLIC CONSTRUCTION SLURRY REQUIREMENT

ALL CONCRETE SHALL BE 4000 PSI STRENGTH WITH 4% MINIMUM REINFORCEMENT.

REINFORCEMENT SHALL BE #4 BARS AT 18" ON CENTER.

MINIMUM COVER SHALL BE 2" FOR ALL REINFORCEMENT.

**FAR EXCEEDANCE
AGREEMENT #22878**

Parties:

| | | |
|--------------------|-------------|--|
| City of Ketchum | "City" | P.O. Box 2315, 191 5 th Street W, Ketchum, Idaho 83340 |
| Acquire Realty LLC | "Developer" | Mailing: 401 E City Avenue SPC 220, Bala Cynwyd, Pennsylvania 19004 Subject Property: 211 N Leadville Avenue (Ketchum Townsite: Block 3: Lot 5) |

This FAR Exceedance Agreement ("Agreement") is made between the City of Ketchum, a municipal corporation of the state of Idaho ("City"), and Acquire Realty LLC, a limited liability corporation, owner of the subject property and developer of the project ("Developer").

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. Litigation was brought challenging the constitutionality and legality of the City's FAR standards in relation to the inclusionary housing incentive under K.M.C. 17.124.040 that was voluntarily dismissed.
- C. 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 the City has disclosed potential litigation challenging K.M.C. 17.124. 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 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.
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 ____ DAY OF _____, 2023.

Developer

City of Ketchum, Idaho

Print Name

Neil Bradshaw, Mayor

Mark Dooley, Managing Member for
Acquire Realty, LLC

Attest:

Trent Donat, City Clerk

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: | Leadville Trading |
| APPLICATION FILE NUMBERS: | Design Review (P22-066) Conditional Use Permit (P22-066A) |
| OWNER: | Acquire Realty LLC |
| REPRESENTATIVE: | Lucas Winter Janet Jarvis, Jarvis Group Architects |
| REQUEST: | Development of a new 6,133 square foot two story commercial development with three on-site parking spaces. |
| LOCATION: | 211 N Leadville Avenue (Ketchum Townsite: Block 3: Lot 5) |
| ZONING: | Community Core – Subdistrict 2 – Mixed Use (CC-2) |

BACKGROUND:

1. The applicant is proposing to develop a new 6,133 square foot two story commercial development with three on-site parking spaces.
2. The site is located at 211 N Leadville Avenue (Ketchum Townsite: Block 3: Lot 5) within the Mixed-Use Subdistrict of the Community Core (CC-2).
3. The subject property has an area of 5,504 square feet.
4. The proposed development will have a total gross floor area of 6,133 square feet.
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 (File No. P22-066) and Conditional Use Permit application (File No. P22-066A) on April 11, 2023.

EXCEEDANCE ANALYSIS

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 Subdistrict 2 (CC-2)

Permitted Gross FAR: 1.0

Permitted Gross FAR with Inclusionary Housing Incentive: 2.25

Proposed Gross Floor Area: 6,133 gross square feet

Ketchum Townsite Lot Area: 5,504 square feet

FAR Proposed: 1.11 (6,133 gross sq ft/5,504 sq ft lot area)

Increase Above Permitted FAR: 629 square feet

20% of Increase: 126 square feet

Net Livable (15% Reduction): 107 square feet of community housing required

Total Proposed On-site Community Housing Contribution: 0 square feet

Proposed Community Housing In-Lieu Fee: \$48,150 (107 sq ft x \$450/sq ft)

COMMUNITY HOUSING CONTRIBUTION CONDITIONS

The following conditions apply to the community housing contribution for the development at 211 N Leadville Avenue:

1. The development shall provide a community housing in-lieu fee payment in the amount of \$283,050. Fee payment is due at the time of building permit issuance.
2. If a Certificate of Occupancy is not issued following payment of the in-lieu fee, a refund of the fee may be issued within a reasonable period of time.