



## City of Ketchum

April 15, 2021

Mayor Bradshaw and City Councilors  
City of Ketchum  
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

**Review and Determine that Adequate Proof of Financing Exists for Fourth & First Mixed-used Project  
located at 391 North 1<sup>st</sup> Avenue.**

Recommendation

Staff have completed due diligence review of financing related documents and has concluded proper proof of financing has been demonstrated. Attached is memo from the City Attorney regarding the due diligence review.

Introduction and History

Development Agreement #20427 requires the Owner to demonstrate proof of financing to the City Council for approval. In addition, the agreement outlines the following additional performance measures:

- Prior to issuance of building permit, property agrees to provide irrevocable letter of credit for the completion of improvements to both 4<sup>th</sup> Street and Block 57 alleyway. The amount of security shall be 150% of engineering estimates.
- Owner shall submit to the City, prior to the issuance of building permits, a Site Restoration Plan and security instrument naming City as beneficiary sufficient to fund restoration plan. The plan shall be accompanied by a licensed engineer estimate of 150% of the estimated reclamation costs. Such estimate is to be reviewed and approved by the City.
- Restoration plan shall be accompanied by letter of credit or performance bond naming City as beneficiary.
- Submit evidence of Construction Loan Recordation Issuance within 60 days of building permit issued.

Attachments:

- A. City Attorney Recommendation on Proof of Financing
- B. Development Agreement #20427
- C. First Amendment to Development Agreement #20427
- D. Financing Information

# WHITE PETERSON

## ATTORNEYS AT LAW

MARC J. BYBEE  
WM. F. GIGRAY, III  
DAVID A. HEIDA  
MATTHEW A. JOHNSON  
JAY J. KIIHA \*\*  
WILLIAM F. NICHOLS \*  
BRIAN T. O'BANNON \*

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TERRENCE R. WHITE  
OF COUNSEL  
WILLIAM F. "BUD" YOST  
OF COUNSEL

\* Also admitted in OR  
\*\* Also admitted in WA

April 15, 2021

To: Mayor and Council

From: Matthew Johnson, City Attorney

### **Recommendation to Find Proof of Financing, Development Agreement #20427.**

#### Background and Recommendation:

The development project at 391 N. 1<sup>st</sup> Avenue is subject to Development Agreement #20427. Provision 14 of that Development Agreement provides as follows:

**Financing.** Prior to the issuance of a building permit for the Project, Owner shall provide evidence to the reasonable satisfaction of the City Council of Owner's receipt of one or more funding commitments for the cost of construction of the Project. Within sixty days after the issuance of a building permit for the Project, Owner shall provide evidence to the City of closure of the construction financing, such as a deed of trust to secure a construction loan, for completion of the Project. Owner shall not commence additional excavation or construction work on the Property except as may be required to maintain existing permits until receipt of City approval of such financing commitment

Owner has provided staff certain information on a financing party and arrangement for the Project. The Mayor and staff have conducted due diligence to verify the financing party is experienced and qualified for this type of project.

Upon request of staff, Owner's legal counsel also provided certain financing commitment documents to the City Attorney for confidential review. Owner has presented that these documents are proprietary and contain privileged trade secrets, so they have been reviewed as confidential, exempt from disclosure, and not for further distribution.

As City Attorney, I have reviewed the presented loan commitment and financing documents, and find such to be in order and in line with the general course of conduct and business for such development arrangements. I recommend that the financing arrangements are in appropriate order such that the Council may reasonably find the requisite funding commitments as called for under Provision 14.

Owner will need to provide evidence to the City of closure of the construction financing in the form of a recorded deed of trust within sixty days after the issuance of the building permit.

Recommended Motion: I move to accept the recommendation of Staff and the City Attorney, and find that Owner has reasonably satisfied the evidence of funding commitments required at this time under Provision 14 of Development Agreement #20427.

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RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:	
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(SPACE ABOVE LINE FOR RECORDER'S USE)

**DEVELOPMENT AGREEMENT #20427**

THIS DEVELOPMENT AGREEMENT ("Agreement") is dated for reference purposes this 16 h day of Decembe , 2019, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum" or "City") and JACK E. BARITEAU, JR. as Trustee of the JACK E. BARITEAU, JR. SEPARATE PROPERTY TRUST, under agreement dated October 2, 1996 and MAIN DRIVE PROPERTIES, LLC, a Tennessee limited liability company (collectively "Owner", and together with the City, the "Parties").

**BACKGROUND AND CONTEXT**

A. Ketchum is a municipal corporation possessing all powers granted to municipalities under the applicable provisions of the Idaho Code, including the power to vacate rights-of-way, to grant variances to building height restrictions, to remove lot lines, grant rights to exceed building floor area ratio limitations, to grant licenses to encroach into the public right-of-way and the power to contract. A development agreement between the Parties is a collaboration that will provide mutual benefit for the Parties, businesses in the Commercial Core District and residents of the City.

B. Owner owns the real property situated in the State of Idaho, County of Blaine, commonly known as 391 N. 1<sup>st</sup> Avenue, Ketchum, Idaho and more particularly described as Lots 1 and 2 of Re-Division of Lots 1 and 2, Block 57, Original Ketchum Townsite, according to the plat thereof, recorded as Instrument No. 191607, records of Blaine County, Idaho ("Property").

C. Owner has petitioned City to amend the current Property description to (a) vacate the common internal lot line between Lots 1 and 2 of the Property and (b) include the vacated fifteen-foot by one hundred and ten-foot (15' x 110') portion of alleyway adjacent the Property in Block 57, as more particularly described in paragraphs 5 and 6 above.

D. Owner has applied for design review approval for construction of improvements on the Property ("Project") consisting of an approximately 34,729 gross square foot mixed use residential and commercial building to be constructed on and over a 15,225 square foot underground garage parking which will provide substantial public benefits, including a master lease of apartment units to Trail Creek Fund, LLC, successor Harriman Hotel, LLC, or other successor ("Hotel Developer") to fulfill its obligation for hotel employee housing as set forth in the June 4, 2018 First Amendment to the Amended and Restated Development Agreement between the City and Trail Creek Fund, LLC. City acknowledges the square footages recited are

approximate and the actual square footages will not be known until construction documents are prepared and submitted to the City for a building permit following which submittal the actual square footages shall apply to the Project.

E. The Parties agree that the Property shall be developed in accordance with this Agreement; all applicable City ordinances; and any additional conditions and requirements imposed upon the Property by the Ketchum Planning and Zoning Commission ("**Commission**") and/or City Council ("**Council**") during the design review, vacation, development agreement, plat amendment, and 4<sup>th</sup> Street / 1<sup>st</sup> Avenue encroachment approval processes.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants, promises, agreements, terms and conditions set forth herein, the Parties agree as hereinafter provided.

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

**2. Incorporation of Related Findings, Agreements, Approvals, Permits and Plans.** The following findings of fact, approvals, permits, plans, and documents are hereby incorporated into and made an integral part of this Agreement by reference as if restated herein in full:

- a. Findings of Act, Conclusion of Law, and Order regarding the request for vacation;
- b. FAR Exceedance Agreement;
- c. Preliminary and final plat documents and approvals;
- d. Decision and orders related to the 1<sup>st</sup> & 4<sup>th</sup> Mixed Use Building Design Review;
- e. Decision and orders related to Owner's application for encroachment;
- f. Design review drawings;
- g. Alley, 1<sup>st</sup> Avenue, and 4<sup>th</sup> Street sidewalk and landscaping plans;

Any material failure to comply with the terms and conditions of any of the above-referenced documents shall constitute a breach of this Agreement.

In the event of any inconsistency between the terms and conditions of this Agreement and the findings of fact, approvals, permits and plans listed above, the more restrictive terms and conditions shall govern. Development of the Project shall be vested and governed by policies, procedures, guidelines, ordinances, codes and regulations of the City governing land use in effect as of the date this Agreement is recorded and continue consistent with §17.96.090 of the Ketchum Municipal Code.

Owner may request to be bound by future amendments to the Ketchum Municipal Code ("**KMC**"), or other regulations, policies or guidelines affecting development, and such request

may be approved administratively, by the Commission, and/or by the Ketchum City Council consistent with the KMC.

**3. Right to Develop.** Subject to the requirements of this Agreement and KMC, the Owner and all future owners of some or all of the Property shall have the right to demolish all or any portion of the existing structures and redevelop, construct, improve and use the Property as a mixed use residential and commercial building as depicted and described in the approved plans incorporated into the Agreement as fully set forth in the recitals, including the Planning and Zoning Commission approved Pivot North Architecture plans approved on June 10, 2019 ("Plans"). The improvements on the Property shall be built exclusively as permitted under §17.96 of the KMC relating to design review approval. Any development of any portion of the Property substantially inconsistent with this Agreement or the design review approval for the Project shall constitute a breach of this Agreement by Owner.

Pursuant to KMC §17.96.090, the design review approval on this Project shall be valid for twelve (12) months from the date of final decision on the associated Findings of Fact, Conclusions of Law, and Decision. Application for a building permit must be done within this time as specified in KMC §17.96.090(A)(2). Any extension shall only be as allowed and specified in KMC §17.96.090.

Any application for a building permit submitted by Owner shall substantially comply with the requirements of applicable codes, agreements, approvals, plans, permits and other documents as such requirements exist on the day the building permit application is submitted. A building permit must be obtained within fourteen (14) months from the date of the final decision on the associated Findings of Fact, Conclusions of Law and Decision, and a certificate of occupancy must be obtained for the Project no later than 18 months after the building permit is issued unless the time for completion of the Project is extended by the City Council.

A building permit application that does not substantially comply with the requirements contained in applicable codes, agreements, approvals, plans, permits and other project documents may be rejected by the City within a reasonable time after completing review of the application by providing written notice to Owner describing the non-compliance in detail unless the non-compliance is cured by Owner within thirty (30) days. If a building permit application contains material changes to the above-referenced applicable codes, agreements, approvals, plans, permits and other documents an amendment to this Agreement must be applied for by Owner and considered by the City Council. If such amendment is approved by City Council, all inconsistent terms and conditions of the approvals referenced in Section 2 shall be deemed to have been amended to conform the amendment to this Agreement.

**4. FAR Exceedance Agreement.** The Parties agree Owner may exceed the gross floor area ratio limitations under KMC §17.124.040 and construct improvements on the Property having a floor area ratio up to and including 2.25, pursuant to that separate FAR Exceedance Agreement, and all conditions thereon, entered into by the Parties, and hereby incorporated by reference.

**5. Vacation of Alley.** Owner has made application to the City for vacation of the alley right-of-way pursuant to KMC §16.04.050. If approved via separate City vacation process,

such order or decision on vacation, including any and all conditions thereon, is hereby incorporated by reference and made a part of this Agreement. Owner shall assume and be responsible for maintenance of the entirety of the alley, including appropriate snow and snowmelt maintenance, to be further specified by a separate alley maintenance agreement. Any such alley vacation shall be deemed null and void in the event the Project is not commenced and completed within the time limits set forth in this Agreement.

**6. Removal of Lot Lines and Inclusion of Vacated Alley.** Owner has made application to the City for removal of the lot lines bisecting the Property, pursuant to Part L of KMC §16.04.030. As set forth in the April 2019 Preliminary Plat by Benchmark Associates, subject plat amendment will remove the lot line bisecting the Property and include the vacated portion of alley described in paragraph 5 above into a new Lot 1B, Block 57, Original Ketchum Townsite ("**Amended Property**"). Notwithstanding the City approval of the final plat map, the final plat map reflecting such changes shall not be recorded and become effective until after issuance of the Certificate of Occupancy for the Project.

**7. Sidewalk Improvements.** Owner has proposed and hereby commits for the Project to include ten-foot wide sidewalks along both 1<sup>st</sup> Avenue and 4<sup>th</sup> Street. All of the proposed sidewalk improvements along 4<sup>th</sup> Street are in the public Right of Way ("**ROW**"), while half of the sidewalk improvements (+/- 5' wide) along 1<sup>st</sup> Avenue are in the public ROW. Subject sidewalk improvements include snowmelt, raised landscape planters, street trees with decorative tree grates, public art, bike racks, pedestrian walkway lighting, and street lighting. Final approval of subject improvements will be subject to review and approval through a separate encroachment agreement and to assure compliance with federal ADA and city standards. Such encroachment agreement shall be obtained prior to issuance of a building permit for the Project.

**8. Encroachment on Right of Way.** Owner has made application to the City for license for encroachments along the public Right of Way ("**ROW**") for proposed sidewalk improvements along 4<sup>th</sup> Street, pursuant to KMC 12.08.040. If approved via separate City encroachment process, such order or decision on encroachment, including any and all conditions thereon, is hereby incorporated by reference and made a part of this Agreement.

**9. On-Site Employee Housing Units.** Owner commits to construction and provision of on-site employee housing units as specified in the Planning and Zoning approved design review documents, dated May 31, 2019. Three of such depicted units shall be deed-restricted community housing units, with such covenant to be managed by Blaine County Housing Authority. Twelve such depicted units shall be dedicated to on-site employee housing. In the event Owner determines not to use such for on-site employee housing, then such units shall be committed as deed-restricted community housing units, with such covenant to be managed by Blaine County Housing Authority.

**10. Master Lease of Employee Housing Units.** The Parties agree Owner may enter into a master lease with the Hotel Developer for apartment units containing at least eighteen (18) beds and thereby satisfy those certain related obligations of Trail Creek Fund, LLC under the Amended and Restated Development Agreement dated October 15, 2015 as amended by the Corrected Amendment to Amended and Restated Development Agreement dated June 21, 2016

and the First Amendment to Amended and Restated Development Agreement dated June 4, 2018 (“Hotel Development Agreement”). All apartment units leased to the Hotel Developer may be subleased, assigned or otherwise made available to employees of the Hotel Developer on terms and conditions determined by it in the exercise of its discretion. If the Hotel Development Agreement is terminated for any reason the apartment units shall cease to be governed by the master lease and all use restrictions of the Hotel Development Agreement. Any such units committed to Hotel Developer as satisfaction of Hotel Developer’s obligations may not also be counted as satisfaction of any required units necessary under the FAR Exceedance Agreement for the Project. Units satisfying the requirements of the FAR Exceedance Agreement may be included in the master lease with the Hotel Developer.

**11. Conditions to Owner’s Obligations.** Owner’s obligations hereunder are conditioned upon (1) receiving all the referenced approvals from the City and (2) securing financing for the Project. If either of those conditions (or part of one) is not satisfied, then this Agreement shall no longer be valid.

**12. Required Improvements by Owner.** Prior to issuance of a building permit, Owner agrees to provide the City an irrevocable letter of credit for completion of the improvements to both 4<sup>th</sup> Street and the vacated Block 57 alleyway consistent with the referenced approvals, plans and other documents. Subject security shall be approved as to both form and amount by the Ketchum City Council after receiving input from the City Attorney and City Engineer. The amount of security shall be at 150% of engineering estimates for the improvements.

**13. Term.** The term of this Agreement shall be two years and eight months (2 years 8 months) from the date of the final decision on the associated Findings of Fact, Conclusions of Law and Decision except such term will not be considered to supersede or amend the standard validity periods as specified in KMC, which may be shorter as to specific approvals and necessary steps (e.g. KMC §17.96.090 specifying that design review approval is only valid for twelve months without additional steps for extension).

**14. Financing.** Prior to the issuance of a building permit for the Project, Owner shall provide evidence to the reasonable satisfaction of the City Council of Owner’s receipt of one or more funding commitments for the cost of construction of the Project. Within sixty days after the issuance of a building permit for the Project, Owner shall provide evidence to the City of closure of the construction financing, such as a deed of trust to secure a construction loan, for completion of the Project. Owner shall not commence additional excavation or construction work on the Property except as may be required to maintain existing permits until receipt of City approval of such financing commitment

**15. Site Restoration.** Owner shall submit to City, prior to issuance of building permit, a Site Restoration Plan and a security instrument naming City as beneficiary sufficient to fund such restoration. The Restoration Plan shall:

- a. Identify a clear restoration plan sufficient to restore site to finished elevations compatible with neighboring streets and residences, including landscaping and other details, and subject to City review and approval;

- b. Be accompanied by a licensed engineer's estimate of one hundred and fifty percent (150%) of the estimated reclamation costs, with such estimate subject to verification and approval by the City not to be unreasonably withheld, delayed or conditioned;
- c. Be accompanied by a letter of credit or performance bond naming City as beneficiary, with the proposed method and form of such security subject to City review and approval not to be unreasonably withheld, delayed or conditioned, in the amount of the 150% reclamation cost estimate and provide for the City to immediately pursue reclamation and restoration on the site in the event of a material failure of condition, other material breach of the Development Agreement, or abandonment of the Project.

In the event Owner materially fails a condition or otherwise breaches this Amendment and/or the Agreement then City shall be entitled to immediately commence reclamation and restoration pursuant to such Restoration Plan and security instrument.

#### **16. Miscellaneous Provisions.**

a) Police Powers. Except as otherwise expressly provided herein, nothing contained herein is intended to limit the police powers of Ketchum or its discretion in review of subsequent applications regarding development of the Property. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation not expressly provided for herein, including, without limitation, applicable building codes, fire codes, Ketchum's Zoning Ordinance, Ketchum's Subdivision Ordinance, and Planned Unit Development requirements for the Property.

b) Amendment. This Agreement may be revised, amended, or canceled in whole or in part, only by means of a written instrument executed by both Parties and as evidenced by amended plats and development plans.

c) Specific Performance. In the event of a breach of this Agreement, in addition to all other remedies at law or in equity, this Agreement shall be enforceable by specific performance by either party hereto. All remedies shall be cumulative.

d) Attorney's Fees. In the event either party hereto is required to retain counsel to enforce a provision of this Agreement, or to recover damages resulting from a breach hereof, the prevailing party shall be entitled to recover from the other party all reasonable attorney's fees incurred, whether or not litigation is actually instituted or concluded.

e) Notices. All notices required or provided for under this Agreement shall be in writing and deemed delivered upon delivery in person or upon mailing by certified mail, return receipt requested, postage prepaid. However, the time period in which a response to such notice must be given shall commence to run from the date of receipt on the return receipt of the notice. Rejection or refusal to accept, or the inability to deliver because of a change of address of which no notice was given shall be deemed to be receipt of the notice.

Notices to City shall be addressed as follows:



City of Ketchum  
Post Office Box 2315  
Ketchum, ID 83340  
Attn: John Gaeddert, Planning Director  
Telephone: 208.726-7801  
Email: [JGaeddert@ketchumidaho.org](mailto:JGaeddert@ketchumidaho.org)

Notices given to Owner shall be addressed as follows:

Jack E. Bariteau, Jr.  
Post Office Box 84  
Sun Valley, ID 83353  
Telephone: 650.906-5636  
Email: [jack@waypointsunvalley.com](mailto:jack@waypointsunvalley.com)

with a copy to:

Lawson Laski Clark & Pogue, PLLC  
675 Sun Valley Road, Suite A  
Post Office Box 3310  
Ketchum, Idaho 83340  
Attn.: Edward A. Lawson  
Telephone: 208.725-0055  
Email: [eal@lawsonlaski.com](mailto:eal@lawsonlaski.com)

A party may change the address to which further notices are to be sent by notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

f) Reliance by the Parties. This Agreement is intended by Owner to be considered by Ketchum as part of Owner's application for design review approval for the Project and the ancillary applications referenced. Owner acknowledges and intends the City to consider and rely upon this Agreement in its review and consideration of said applications.

g) Relationship of Parties. It is understood that the contractual relationship between City and Owner is such that neither party is the agent, partner, or joint venturer of the other party.

h) Successors and Assigns; Covenant Running With the Land. This Agreement shall inure to the benefit of City and Owner and their respective heirs, successors and assigns. This Agreement, including all covenants, terms, and conditions set forth herein, shall be and is hereby declared a covenant running with the land with regard to the Property or any portion thereof, and is binding on both parties to this Agreement as well as their respective heirs, successors and assigns. City acknowledges and agrees Owner may assign its rights hereunder to a new entity formed for the purpose of developing the Property or to a lender providing a construction or permanent loan, or both.

i) Recordation and Release. This Agreement shall be recorded with the Blaine County Recorder. The Parties agree to execute all appropriate documentation to cause the encumbrance of this Agreement to be terminated in the event of termination.

j) No Waiver. In the event that City or Owner, or its successors and assigns, do not strictly comply with any of the obligations and duties set forth herein, thereby causing a default under this Agreement, any forbearance of any kind that may be granted or allowed by Owner, City, or their successors and assigns, to the other party under this Agreement shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Agreement with regard to any subsequent default or breach.

k) Partial Invalidity. In the event any portion of this Agreement, or part hereof, shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions of this Agreement, or parts hereof, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, it being understood that such remaining provisions shall be construed in a manner most closely approximating the intention of the parties with respect to the invalid, void, or unenforceable provision or part hereof.

l) Entire Agreement. This Agreement constitutes the full and complete agreement and understanding between the parties hereto. Excluding formal conditions placed upon the design review approval, subsequent plat approvals or other matters related to the public process, no representations or warranties made by either party shall be binding unless contained in this Agreement or subsequent written amendments hereto.

m) Exhibits. All exhibits referred to herein are incorporated in this Agreement by reference, whether or not actually attached.

n) Authority. Each of the persons executing this Agreement represents and warrants that he or she has the lawful authority and authorization to execute this Agreement, as well as all deeds, easements, liens and other documents required hereunder, for and on behalf of the entity executing this Agreement.

o) Recitals. The Recitals are incorporated herein and made a part of this Agreement by this reference.

p) Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Idaho, which shall be the sole jurisdiction and venue for any action which may be brought by either party with respect to this Agreement or the subject matter hereof. Venue shall be in Blaine County, Idaho.

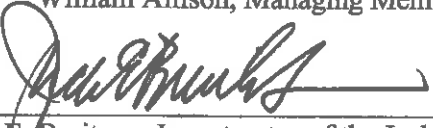
q) Force Majeure. If either party hereto is delayed in the performance of any of its obligations hereunder because of abnormal and unforeseeable inclement weather, material shortages, labor shortages, dispute or strike, civil strife, acts beyond the reasonable control of the delayed party including acts of God, and actions by the United States of America, the State of Idaho, the City or any of their agencies, the time of performance hereunder, shall be reasonably extended for the same time as lost by the cause hereinabove set forth. Any claim of a force majeure event must be submitted to the other party within thirty days of such event.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

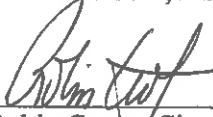
Main Drive Properties, LLC, a Tennessee limited liability company

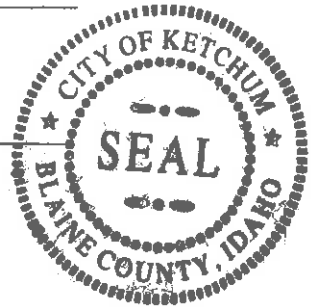
City of Ketchum, Idaho, a municipal corporation

By: \_\_\_\_\_  
William Allison, Managing Member

  
\_\_\_\_\_  
Jack E. Bariteau, Jr. as trustee of the Jack E. Bariteau, Jr. Separate Property Trust  
u/a/d October 2, 1996

By:   
\_\_\_\_\_  
Neil Bradshaw, Mayor

Attest:   
\_\_\_\_\_  
Robin Crotty, City Clerk

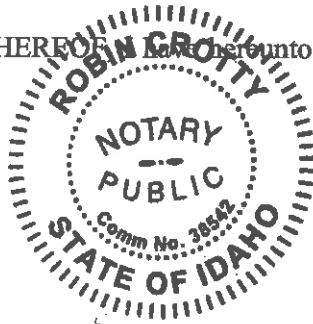


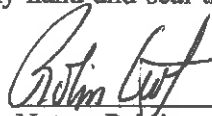
#### ACKNOWLEDGMENTS

STATE OF IDAHO )  
                              )ss.  
County of Blaine )

Subscribed and sworn before me on this 20<sup>th</sup> day of December, 2019, before me a Notary Public in and for said State, personally appeared NEAL BRADSHAW, known to me to be the Mayor of the CITY OF KETCHUM, IDAHO and the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of the City Of Ketchum, Idaho.

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



  
\_\_\_\_\_  
Notary Public  
Residing at Ketchum City Hall  
My Commission Expires 12/22/2020

STATE OF )  
                              )ss.  
County of )

Subscribed and sworn before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me a Notary Public in and for said State, personally appeared WILLIAM ALLISON known or identified to me to be the Managing Member of MAIN DRIVE PROPERTIES, LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

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

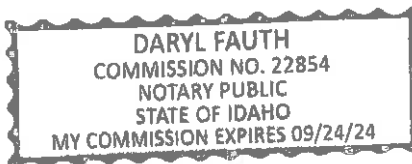
\_\_\_\_\_  
Notary Public

Residing at \_\_\_\_\_

My Commission Expires \_\_\_\_\_

State of IDAHO       )  
                                  )ss.  
County of               )

On this 17th day of December, 2019, before me, a Notary Public in and for said State, personally appeared JACK E. BARITEAU, JR., known or identified to me to be the Trustee, or one of the Trustees of THE JACK E. BARITEAU, JR. SEPARATE PROPERTY TRUST under trust agreement dated October 2, 19967, and acknowledged to me that by said Trustee's signature on the foregoing instrument, the foregoing named Trust executed the same.



[Signature]  
My Commission Expires 9/24/24  
Notary Public for Idaho  
Residing At Idaho

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Main Drive Properties, LLC, a Tennessee  
limited liability company

City of Ketchum, Idaho, a municipal  
corporation

By: William Allison  
William Allison, Managing Member

By: \_\_\_\_\_  
Neil Bradshaw, Mayor

\_\_\_\_\_  
Jack E. Bariteau, Jr. as trustee of the Jack E.  
Bariteau, Jr. Separate Property Trust  
u/a/d October 2, 1996

Attest: \_\_\_\_\_  
Robin Crotty, City Clerk

#### ACKNOWLEDGMENTS

STATE OF IDAHO )  
                                  )ss.  
County of Blaine )

Subscribed and sworn before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me a Notary Public in and for said State, personally appeared NEAL BRADSHAW, known to me to be the Mayor of the CITY OF KETCHUM, IDAHO and the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of the City Of Ketchum, Idaho.

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

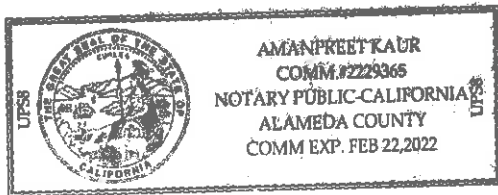
\_\_\_\_\_  
Notary Public  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

STATE OF )  
                                  )ss.  
County of )

A Notary Public or other officer ( ) stating  
this certificate verifies only the identity of the  
individual who signed the document to which  
this certificate is attached, and not the  
truthfulness, accuracy, or validity of that document.

Subscribed and sworn before me on this 17 day of Dec, 2019, before me a  
Notary Public in and for said State, personally appeared WILLIAM ALLISON known or  
identified to me to be the Managing Member of MAIN DRIVE PROPERTIES, LLC, the limited  
liability company that executed the instrument or the person who executed the instrument on  
behalf of said limited liability company, and acknowledged to me that such limited liability  
company executed the same.

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



Amanpreet Kaur  
Notary Public  
Residing at Emeryville, CA  
My Commission Expires Feb 22, 2022

State of IDAHO       )  
                                  )ss.  
County of               )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, a Notary Public in and for said  
State, personally appeared JACK E. BARITEAU, JR., known or identified to me to be the  
Trustee, or one of the Trustees of THE JACK E. BARITEAU, JR. SEPARATE PROPERTY  
TRUST under trust agreement dated October 2, 19967, and acknowledged to me that by said  
Trustee's signature on the foregoing instrument, the foregoing named Trust executed the same.

My Commission Expires \_\_\_\_\_  
Notary Public for Idaho  
Residing At \_\_\_\_\_

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

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

**Instrument # 679218**

HAILEY, BLAINE, IDAHO  
2-11-2021 01:44:06 PM No. of Pages: 5  
Recorded for : CITY OF KETCHUM  
JOLYNN DRAGE Fee: 0.00  
Ex-Officio Recorder Deputy  
Index to: AGREEMENT/CORRECTION

*JB*

(Space Above Line For Recorder's Use)

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT #20427**

This Amendment ("Amendment") is made as of January 19, 2021 by and between the City of Ketchum, Idaho ("Ketchum"), a municipal corporation, and Main Drive Properties, LLC, a Tennessee limited liability company and Jack E. Bariteau, Jr. as trustee of the Jack E. Bariteau Jr. Separate Property Trust, dated October 2, 1996 (collectively "Owner", and together with Ketchum, the "Parties").

1. Recitals. This Amendment is made in contemplation of the following facts and purposes:

1.1 Ketchum and Owner are parties to Development Agreement #20427 ("Agreement"), dated December 16, 2019, and recorded on December 20, 2019 in the records of Blaine County, Idaho as Instrument No. 665841, under and by virtue of which the Parties established certain rights and obligations with regard to the development of the real property commonly known as 391 N. 1<sup>st</sup> Avenue, Ketchum, Idaho ("Property").

1.2 The parties desire to amend and supplement the Agreement as hereinafter provided pursuant to section 16. b) thereof.

1.3 With the exception of the amendments in this Agreement, all terms of Agreement 20427 shall remain in effect.

2. Amendments. In view of the foregoing, the Parties agree to amend and supplement the Agreement including the extension of the design review approval to June 10, 2021, as follows:

2.1 The Parties have adopted the following schedule for the performance of the obligations of Owner under the Agreement and all related permits, approvals, and consents:

Performance Obligation

Subject to Section 3, submit for Building Permit

Completion Deadline

Building Permit submitted 9/26/20

Subject to Section 3, Obtain a Building Permit	Within 90 days of approval of this Development Agreement Amendment
Subject to Section 8, Submit Right-Of-Way Encroachment Agreement	Signed 10/19/20; Recorded 10/29/20
Subject to Section 15, Submit Site Restoration Plan and Bond	Prior to issuance of building permit
Subject to Section 14, Submit Evidence of Construction Loan Commitment	Prior to issuance of building permit
Subject to Section 14, Submit Evidence of Construction Loan Recordation issuance.	Within 60 days of building permit No excavation may occur on the site until the construction loan is recorded and evidence is provided to the City.
Subject to Section 12, Submit Letter of Credit for Off Site Improvements	Prior to issuance of building permit
Subject to Section 3, Receipt of Certificate of Occupancy	Within 18 months after issuance of building permit

2.2 Section 13 is amended to provide that the term of the Agreement shall be 2 years from issuance of the building permit.

2.3 After the Building Permit is issued, Owner shall be responsible for the maintenance and snow removal in the alley between 4<sup>th</sup> Street and Sun Valley Road. The method and hours for snow removal in the alley shall be consistent with city snow removal hours and methods.

2.4 Owner shall vacate the Ketchum Springs Line and install required service connections prior to July 1, 2021.

3. Construction. This Amendment and the Agreement constitute one agreement between the Parties. In the event of any inconsistency between this Amendment and the Agreement the terms of this Amendment shall govern. All capitalized terms in the Agreement shall have the meaning in the Agreement when used in this Amendment, unless otherwise defined herein.

4. Ratification. The Agreement, as amended and supplemented by this Amendment, is hereby ratified and affirmed.

5. Counterparts. This Agreement may be executed in any number of counterparts.





This Amendment is executed by the Parties as of the date first above written.

Main Drive Properties, LLC, a Tennessee limited  
liability company

By:   
William Allison, Managing Member

City of Ketchum, Idaho, a municipal  
corporation

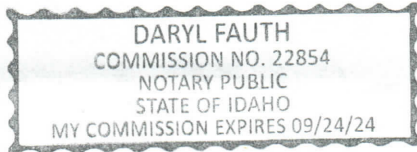
By:   
Neil Bradshaw, Mayor

By:   
Jack E. Bariteau, Jr. as Trustee of the Jack E. Bariteau,  
Jr. Separate Property Trust u/a/d October 2, 1996



STATE OF IDAHO )  
 )ss.  
County of Blaine )

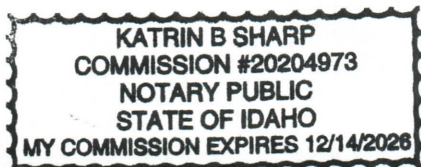
On this 3rd day of February, 2021, before me, a Notary Public in and for said State, personally appeared JACK E. BARITEAU, JR., known or identified to me to be the Trustee, or one of the Trustees of the Jack E Bariteau, Jr. Separate Property Trust under trust agreement dated October 2, 1996, and acknowledged to me that by said Trustee's signature on the foregoing instrument, the foregoing named Trust executed the same.



[Signature]  
My Commission Expires \_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_

STATE OF IDAHO )  
 ) ss.  
County of Blaine )

On this 10 day of February, 2021, before me, a Notary Public in and for said State, personally appeared NEIL BRADSHAW, Mayor of the City of Ketchum, Idaho, known or identified to me to the person whose name is subscribed to the within instrument as the Mayor of the City of Ketchum, Idaho, and acknowledged to me that he executed the same as Mayor of the City of Ketchum, Idaho.



[Signature]  
Notary Public for Idaho  
Residing at 110 Wood River Dr. Ketchum, ID  
Commission expires 12/14/2026

State of \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, a Notary Public in and for said State, personally appeared WILLIAM ALLISON, known or identified to me to be the Manager of Main Drive Properties, LLC, a limited liability company and the member or one of the members who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that he executed the same in the name of said limited liability company.

See Attached Acknowledgment  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
My Commission expires \_\_\_\_\_



# All-purpose Acknowledgment California only

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of MARIN

On 02/08/2021 before me, JIMMY CHANGEUX, Notary Public (here insert name and title of the officer),

personally appeared William Arthur Allison

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

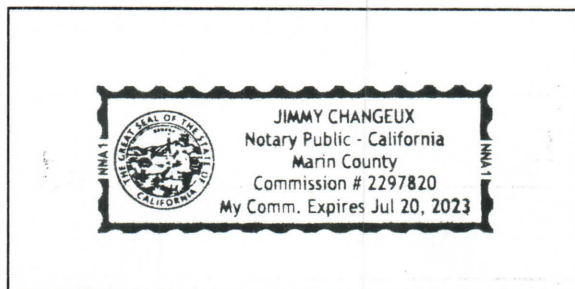
WITNESS my hand  
and official seal.

Signature Jimmy Changeux

Description of Attached Document

Type or Title of Document First Amendment to development Agreement #20427  
Dated December 16<sup>th</sup>, 2019 and Recorded December 20<sup>th</sup>, 2019 in the Record of Blaine County  
Document Date February 08<sup>th</sup>, 2021 Number of Pages (04 Pages) (four)  
Instrument # 665441  
Property known as:  
391 N. 1<sup>st</sup> Avenue, Ketchum  
Idaho

Signer(s) Other Than Named Above \_\_\_\_\_



Notary Seal





March 31, 2021

Via Email Only ([mjohnson@whitepeterson.com](mailto:mjohnson@whitepeterson.com))

Mathew A. Johnson  
White Peterson  
5700 Franklin Road, Suite 200  
Nampa, ID 83687-7901

Re: Waypoint Pearl, LLC Proof of Funds  
Our File No. 70357-026

Dear Matt:

This will serve as a follow up to our telephone conversation earlier today during which we discussed your March 30, 2021 letter to Waypoint Pearl, LLC and your request for information as part of an alleged investigation of Dudley Family Investments, LLC, the Project lender ("Lender").

Initially it must be observed that the Development Agreement ("Agreement") between my client and the City simply requires delivery of a loan commitment as a condition to issuance of the building permit. This condition was fulfilled by delivery of the March 18, 2021 loan commitment from the Lender. The Agreement does not give the City the right or authority to accept or reject the loan commitment or to require other "proof of financing" for the Project. Accordingly, the investigation of the Lender is of no consequence and my client is now unconditionally entitled to the building permit. Further, by your own admission, both the investigation and information requested are not typical of any other development in the City and includes financial information and tax returns no lender would be expected to provide. Based on the foregoing and the City's history of breaching other agreements it made with affiliates of Mr. Bariteau we believe the information may have been requested in a bad faith attempt to create reasons for withholding the building permit for the Project.

Notwithstanding the foregoing, in an effort to avoid further conflict with the City, I am delivering herewith a copy of a letter from Jordan Park an investment firm attesting to the financial capability of Dudley Family Investments, LLC to fund the construction loan. In addition, I have enclosed a biography for William Dudley evidencing his construction experience and capability. In addition, I am prepared to meet with you and go over the loan terms and conditions which are typical of commercial loans as long as issuance of the building permit is not delayed.

Hopefully, the City will be satisfied with the foregoing. As previously explained, it is essential that my client obtain the building permit and close the loan by April 19. In anticipation of being issued the building permit following delivery of the commitment letter, my client has already entered into a contract with its general contractor, has

Mathew A. Johnson  
March 31, 2021  
Page 2

purchased approximately \$250,000 of construction materials, and entered into agreements with third parties for the sale or lease of condominium units. If the building permit is not issued in time to meet the deadline for closing the loan Waypoint Pearl, LLC will sustain substantial damages, including lost profits.

Please guide your client accordingly.

Sincerely,

LAWSON LASKI CLARK, PLLC



Edward A. Lawson

cc: Client



March 30, 2021

To whom it may concern,

Please be advised the Dudley Family Investments LLC owns and invests in agricultural farmland as well as residential, office, and industrial real estate.

The net worth of Dudley Family Investments LLC is in excess of \$100,000,000.

Please do not hesitate to reach out to me if you have any questions.

Thanks,

*Brian Hartman*

Brian Hartman  
Vice President, Client Advisory  
757-589-4432



INFRASTRUCTURE

MINING & METALS

NUCLEAR, SECURITY & ENVIRONMENTAL

OIL, GAS & CHEMICALS

## Bill Dudley

### BIOGRAPHY

Bill Dudley is a director and former chief executive officer of Bechtel Group, Inc.

Following graduation from Beech Grove High School in 1970, Bill attended Purdue University and obtained a Bachelor's degree in Civil Engineering. While attending Purdue, Bill married another Beech Grove graduate, Marty Ferguson.

Upon graduation from Purdue, Bill started his career in Los Angeles, California working for Fluor Corporation in the international engineering and construction business. Following assignments in South Africa and Chicago, Bill changed employers and joined the Bechtel Corporation where he served for over 35 years.



At Bechtel, Bill served in a variety of engineering, project management, and executive management positions around the world with postings in Houston, Bangkok, Singapore, London and Washington D.C.

In 2008, he became president and chief operating officer of Bechtel Group, Inc., overseeing all of the company's business units. He was elected chief executive officer of Bechtel Group, Inc. in 2014, operating in this role until September, 2016.

Prior to these assignments, Bill served as president of the Oil, Gas & Chemicals business unit, president of the Europe, Africa, and Middle East region, country manager for Thailand and manager of the Pipeline business for Southeast Asia.

Bill holds a bachelor's degree in civil engineering from Purdue University and a master's degree in business administration from the University of Houston. He is currently serving as a director of Brand Industrial Services, Inc. and the Inova Healthcare System. Bill also serves on the Engineering Advisory Council at Purdue, where he was awarded an honorary Doctorate degree in 2015. He previously served on the US Business Roundtable and as a director of the US-China Business Council.

Bill and Marty currently reside in McLean, Virginia and have 2 daughters and 4 grandchildren.



Bechtel is one of the most respected global engineering, construction, and project management companies. Together with our customers, we deliver landmark projects that foster long-term progress and economic growth. Since 1898, we've completed more than 25,000 extraordinary projects across 160 countries on all seven continents. We operate through four global businesses: Infrastructure; Nuclear, Security & Environmental; Oil, Gas & Chemicals; and Mining & Metals. Our company and our culture are built on more than a century of leadership and a relentless adherence to our values, the core of which are safety, quality, ethics, and integrity. These values are what we believe, what we expect, what we deliver, and what we live.