



## City of Ketchum

November 7, 2022

Mayor Bradshaw and City Councilors  
City of Ketchum  
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

### **Recommendation to Approve the 1<sup>st</sup> & Sun Valley Office Building FAR Exceedance Agreement 22808.**

#### Recommendation and Summary

Staff recommends the Ketchum City Council approve the attached 1<sup>st</sup> & Sun Valley Office Building FAR Exceedance Agreement 22808 and adopt the following motion:

- “I move to authorize the Mayor to sign FAR Exceedance Agreement 22808 with 131 E Sun Valley Road LLC.”

#### The reasons for the recommendation are as follows:

- The Planning and Zoning Commission approved Design Review Permit P21-100 for the 1<sup>st</sup> & Sun Valley Office Building on May 24<sup>th</sup>, 2022. The commercial office building is 10,932 gross square feet and the proposed FAR is 1.99.
- Pursuant to Condition of Approval No. 2 of Design Review Permit P21-100, a FAR Exceedance Agreement between the applicant and the City to memorialize the community housing contribution in exchange for the FAR increase is required for the project.
- Pursuant to Ketchum Municipal Code §17.124.040.B2c, community housing contributions may be paid via a fee in-lieu of housing. The applicant has proposed to satisfy the community housing contribution by paying the in-lieu fee.

#### Introduction and History

Planning staff will be modifying the sequence of council review and approval of project exceedance agreements. For future projects, the council will review and approved exceedance agreements before the Planning and Zoning Commission reviews the design review permit. This will not delay the design review process and will allow council input early in the process before a project is approved by the Commission. For this project, the design review application was approved by the commission in May.

The 1st & Sun Valley Office Building project proposes to develop a new three-story commercial office building at the northeast corner of 1<sup>st</sup> Avenue and Sun Valley Road within the Mixed-Use Subdistrict of the Community Core (CC-2 Zone). The office building is proposed to be subdivided into 5 condominium units for business tenants. 7 parking spaces—6 in the tandem configuration and 1 ADA space—are provided on site within a semi-enclosed surface parking area accessed from the Block 37 alley.

### Analysis

Pursuant to Ketchum Municipal Code §17.124.040, development within the Community Core may be built to a permitted FAR of 1.0 and may be increased up to a maximum of 2.25 FAR with an associated community housing contribution. The City of Ketchum has instituted the adoption of exceedance agreements to memorialize community housing contributions provided in exchange for increases above the permitted FAR. The Ketchum City Council has the authority to review and approve community housing contributions in exchange for increases above the 1.0 permitted FAR. At their discretion, the Ketchum City Council may amend the community housing contribution and the method for compliance required for the project. Pursuant to Ketchum Municipal Code §17.124.040.B2c, community housing contributions may be paid via a fee in-lieu of housing.

The commercial office building is 10,932 gross square feet and the proposed FAR is 1.99. Pursuant to Condition of Approval No. 2 of Design Review Permit P21-100, a FAR Exceedance Agreement between the applicant and the City to memorialize the community housing contribution in exchange for the FAR increase is required for the project. The applicant has proposed paying the in-lieu fee to satisfy the community housing contribution in exchange for the FAR increase. The community housing in-lieu fee payment for the proposed FAR increase is \$219,674.00.

An FAR Exceedance Agreement between the applicant and the City to memorialize the community housing contribution is required prior to issuance of a building permit. This requirement was missed by Staff during plan check for the 1<sup>st</sup> & Sun Valley Office Building (Building Permit B22-069). In an effort to keep the project schedule, the City issued a conditional approval of Building Permit B22-069 on October 25<sup>th</sup>, 2022. The building permit was approved subject to City Council's review and approval of the FAR Exceedance Agreement on November 7<sup>th</sup>, 2022. In the event that the community housing in-lieu fee has not been paid by the developer by November 14<sup>th</sup>, 2022, then the City shall issue a stop work order on the project suspending all construction activity for the project until the community housing contribution has been satisfied.

### Sustainability

The project does not limit the ability of the city to reach the goals of the Ketchum Sustainability Action Plan – 2020.

### Financial Impact

There is no financial requirement from the city for this action at this time.

### Attachments

- A. FAR Exceedance Agreement 22808

**FAR EXCEEDANCE  
AGREEMENT #22808**

**Parties:**

City of Ketchum	"City"	Mailing: PO Box 2315, Ketchum, ID 83340  Physical Address: 191 5 <sup>th</sup> Street W, Ketchum, Idaho 83340
131 E Sun Valley Road LLC	"Owner"	Mailing: PO Box 5023, Ketchum, Idaho 83340  Physical Address: 131 E Sun Valley Road, Ketchum, Idaho 83340

This FAR Exceedance Agreement ("Agreement") is made between the City of Ketchum ("City"), a municipal corporation of the state of Idaho, and Reid Sanborn, representing 131 E Sun Valley Road LLC ("Owner"), the owner of the development project.

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 NOVEMBER 2022.

Owner

City of Ketchum, Idaho

\_\_\_\_\_  
131 E Sun Valley Road LLC  
Reid Sanborn  
Its: Manager

\_\_\_\_\_  
Neil Bradshaw, Mayor

Attest:

\_\_\_\_\_  
Trent Donat, City Clerk

STATE OF IDAHO,                    )  
  ) ss.  
County of Blaine.                    )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned Notary Public in and for said State, personally appeared Reid Sanborn, known or identified to me to be the Manager of 131 E Sun Valley Road LLC and 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 \_\_\_\_\_, 2022, 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 \_\_\_\_\_

## 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

<b>PROJECT:</b>	1 <sup>st</sup> & Sun Valley Office Building
<b>APPLICATIONS &amp; AGREEMENTS:</b>	Design Review P21-100, Condominium Subdivision Preliminary Plat P22-019, ROW Encroachment Agreement 22806, Building Permit B22-069
<b>OWNER:</b>	131 E Sun Valley Road LLC
<b>REPRESENTATIVE:</b>	Reid Sanborn, Developer
<b>REQUEST:</b>	The 1st & Sun Valley Office Building project proposes to develop a new three-story commercial office building at the northeast corner of 1 <sup>st</sup> Avenue and Sun Valley Road.
<b>LOCATION:</b>	131 E Sun Valley Road (Ketchum Townsite: Block 37: Lot 8)
<b>ZONING:</b>	Mixed-Use Subdistrict of the Community Core (CC-2)
<b>BACKGROUND:</b>	

1. The applicant is proposing to develop a new 10,932-gross-square-foot, three-story commercial office building at the northeast corner of 1<sup>st</sup> Avenue and Sun Valley Road. The office building will be subdivided into 5 condominium units for business tenants. 7 parking spaces—6 in a tandem configuration and 1 ADA space—are provided on site within a semi-enclosed surface parking area accessed from the Block 37 alleyway.
2. The site is located at 131 E Sun Valley Road (Ketchum Townsite: Block 37: Lot 8) within the Mixed-Use Subdistrict of the Community Core (CC-2 Zone). Business offices are permitted in the CC-2 Zone pursuant to Ketchum Municipal Code §17.12.020. Unlike the Retail Core (CC-1) Zone where business offices located on the ground floor with street frontage require a Conditional Use Permit, business offices are permitted on the ground floor with street frontage in the CC-2 Zone.
3. The total area of the subject property is 5,500 square feet.
4. The proposed floor area of the project will have a total area of 10,932 gross square feet.
5. The mixed-use building has a proposed Floor Area Ratio (FAR) of 1.99 (10,932 gross square feet/5,500-square-foot lot).

6. 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.
7. The Planning and Zoning Commission approved the Design Review Application File No. P21-100 for the 1<sup>st</sup> & Sun Valley Office Building on May 24<sup>th</sup>, 2022. Building Permit plans must conform to the approved Design Review plans unless otherwise approved in writing by the Planning and Zoning Commission or Administrator.

### **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: 10,932 gross square feet**

**Lot Area: 5,500 square feet**

**FAR Proposed: 1.99 (10,932 gross square feet/5,500-square-foot-lot)**

**Increase Above Permitted FAR: 5,432 square feet**

**20% of Increase: 1,086 square feet**

**Net Livable (15% Reduction): 923 square feet community housing contribution required.**

**Community Housing In-Lieu Fee: \$219,674.00 (923 square feet x \$238\*)**

The Ketchum City Council adopted Resolution Number 22-013 amending the fee schedule on December 20<sup>th</sup>, 2021. The fee resolution updated the community housing in-lieu fee rate from \$238 per square foot to \$450 per square foot. All applications submitted prior to January 1<sup>st</sup>, 2022 are subject to the prior rate of \$238 per square foot. Design Review Application File No. P21-100 was submitted on December 1<sup>st</sup>, 2021. The 1<sup>st</sup> & Sun Valley Office Building project is subject to the community housing in-lieu fee rate of \$238 per square foot.

#### **1<sup>ST</sup> & SUN VALLEY OFFICE BUILDING COMMUNITY HOUSING CONTRIBUTION**

The payment in-lieu for 923 square feet of community housing will be \$219,674.00. The applicant must submit the total community housing in-lieu fee payment within 5 business days of City Council's review and approval of FAR Exceedance Agreement 22808.