



## City of Ketchum

April 19, 2021

Mayor Bradshaw and City Councilors  
City of Ketchum  
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

### **Recommendation to Review and Approve the Walnut and 4<sup>th</sup> Mixed-Use Building Floor Area Ratio (FAR) Exceedance Agreement (Contract #20595)**

#### Recommendation and Summary

Staff recommends that the Ketchum City Council move to approve and authorize the Mayor to sign the Walnut and 4th Mixed-Use Building Floor Area Ratio (FAR) Exceedance Agreement:

Recommended Motion: "I move to approve and authorize the Mayor to sign the Walnut and 4<sup>th</sup> Mixed-Use Building FAR Exceedance Agreement Contract #20595."

The reasons for the recommendation are as follows:

- Ketchum Municipal Code §17.124.040 encourages new development to include a reasonable supply of affordable and resident occupied housing for sale or rent to help meet the demand and needs for housing of the community's workforce.
- Development within the Community Core may be built to a permitted FAR of 1.0 and may be increased up to a maximum 2.25 FAR with an associated mitigation of impacts related to workforce housing.
- The City of Ketchum has instituted the adoption of Exceedance Agreements to memorialize increases above the permitted FAR and associated community housing contributions.
- The applicant agrees with these goals and proposes to provide a 1,488-square-foot community housing unit within the basement of the new mixed-use building as specified in Exhibit B of Contract #20595.

#### Introduction and History

The project received Design Review approval (Application No. P20-046) from the Planning & Zoning Commission on September 15<sup>th</sup>, 2020. The applicant has submitted a building permit application and the project plans are currently under review by City departments. The proposal (Exhibit B) specifies that the applicant agrees to list the community housing unit for rent through the Blaine County Housing Authority (BCHA) concurrent with the issuance of a Certificate of Occupancy for the project.

#### Financial Impact

None

#### Attachments

- Walnut and 4th Mixed-Use Building FAR Exceedance Agreement (Contract #20595)

**FAR EXCEEDANCE  
AGREEMENT  
CONTRACT  
#20595**

**Parties:**

City of Ketchum	"City"	P.O. Box 2315, 480 East Ave. N., Ketchum, Idaho 83340
Walnut & Fourth LLC	"Developer"	Mailing: C/O Gregory C Carr, 313 N Water Avenue, Idaho Falls, ID 83402  Physical Address: 371 & 391 N Walnut Avenue (Ketchum Townsite: Block 44: 7 & 8)

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

RECITALS

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

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

- 1. **Attestation of Developer.** Developer, by this Agreement, attests that Developer desires to voluntarily proceed on the development proposal, including proposal of exceedance of FAR standards and accompanying mitigation measures, using the approach and standards as set forth in K.M.C. 17.124.

2. **Waiver and Release of Claims.** Developer, by this Agreement, waives and releases any claims, demands, challenges, claims for reimbursement or refund, and/or damages now or in the future deriving from or relying on the outcome of future litigation substantially challenging the validity of K.M.C. 17.124 and its standards. It is Developer's intent to accept and proceed with such standards as outlined in K.M.C. 17.124 for Developer's development plan for purposes of allowable FAR and Developer voluntarily and knowingly accepts the mitigation measures as proposed.
3. **FAR Exceedance Consideration.** In consideration for Developer's attestation and waiver, the City agrees to consider their exceedance proposal and will currently consider and evaluate Developer's proposed FAR exceedance and accompanying mitigation measures within the framework and standards of K.M.C. 17.124.040, attached hereto as Exhibit A and made a part of this Agreement.
4. **Maximum FAR and Mitigation.** The Parties hereby agree to an allowable maximum floor area ratio and accompanying mitigation measures as set forth in Exhibit B, attached hereto and made a part of this Agreement.
5. **Withdrawal.** Developer may withdraw from this Agreement upon thirty-day notice to City provided that Developer has not commenced building and has received no benefit from a maximum FAR exceedance. Withdrawal shall cause an immediate reversion to the permitted gross FAR as set forth in Exhibit A: K.M.C. 17.124.040(A) at the time of this Agreement. Furthermore, the City acknowledges that the Building Owner, in its sole discretion, may choose not to build the residential units. In such an event, this FAR Exceedance Agreement will be modified.
6. **Amendments.** This Agreement may not be amended, modified, altered or changed in any respect whatsoever, except by further agreement in writing duly executed by the parties.
7. **No Assignment.** Developer shall not sell, assign, or transfer all or any portion of its interest in this Agreement at any time without consent of the City.
8. **Binding Effect.** This Agreement shall be binding upon the heirs, estates, personal representatives, successors, and assigns of the parties.
9. **Attorney Fees and Costs.** In the event any action is brought to enforce this Agreement, the prevailing party is entitled to an award of reasonable attorney fees and costs.
10. **Notices.** Any notice under this Agreement shall be in writing and shall be treated as duly delivered if the same is personally delivered or deposited in the United States mail, certified, return receipt requested, postage prepaid, and properly addressed to the contacts as specified at the beginning of this Agreement.

11. **Partial Invalidity.** Whenever possible, each provision of this Agreement shall be

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Contract #20595

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 19<sup>th</sup> DAY OF APRIL 2021.

Developer

City of Ketchum, Idaho

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Gregory C Carr  
Walnut & Fourth LLC

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Neil Bradshaw, Mayor

Attest:

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Lisa Enourato, Interim 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

### FAR EXCEEDANCE AGREEMENT COMPLIANCE

**PROJECT:** Walnut and 4<sup>th</sup> Mixed-Use Building

**APPLICATION FILE NUMBERS:** Design Review P20-046, Lot Line Shift P21-015, and Building Permit B21-009

**DEVELOPER & PROPERTY OWNER:** Walnut & Fourth LLC

**LOCATION:** 371 & 391 N Walnut Avenue (Ketchum Townsite: Block 44: Lot 7A)

**ZONING:** Mixed-Use Subdistrict of the Community Core (CC-2)

#### BACKGROUND:

1. The developer has proposed the development of a new 24,311 net square-foot, two-story building located at the southwest corner of 4th Street and Walnut Avenue. The mixed-use building will include a food service establishment, retail, offices, three residential units, and one community housing unit.
2. The project site is located at 371 and 391 N Walnut Avenue (Ketchum Townsite: Block 44: Lot 7A) within the Retail Core Subdistrict of the Community Core (CC-1). The total area of the two combined lots is 16,513 square feet, which conforms to the minimum area required for lots in the CC-2 Zone.
3. The mixed-use building has a proposed Floor Area Ratio (FAR) of 1.26 (20,737 gross square feet/16,513 square feet lot area).
4. The Planning and Zoning Commission approved the Design Review application (P20-046) for the Walnut and 4<sup>th</sup> Mixed-Use Building project on September 15<sup>th</sup>, 2020.
5. As a condition of the Design Review approval, prior to issuance of a Building Permit for the project, a FAR Exceedance Agreement addressing the square footage above the permitted 1.0 Floor Area Ratio and memorializing the associated community housing contribution is required (Ketchum Municipal Code §17.124.040).

## EXCEEDANCE ANALYSIS

*Floor Area Ratios and Community Housing (Ketchum Municipal Code §17.124.040)*

**Permitted Gross FAR in Community Core Subdistrict 1(CC-1) : 1.0**

**Permitted Gross FAR with Inclusionary Housing Incentive: 2.25**

**Walnut and Fourth Mixed-Use Building Proposed Gross Floor Area: 20,737 gross square feet**

**Lot Area: 16,513 square feet lot area**

**FAR Proposed: 1.26 (20,737 gross square feet/16,513 square feet lot area)**

**Increase Above Permitted FAR: 4,224 square feet**

**20% of Increase: 845 square feet**

**Net Livable (15% Reduction): 718 square feet**

*Community Housing Contribution Proposal*

The applicant proposes to:

1. Provide a 1,488-square-foot community housing unit within the basement of the mixed-use building.
2. Target subject community housing unit for Blaine County Housing Authority (BCHA) Income Category 4 or lower. The tenant chosen to occupy the unit shall be selected from the BCHA database of qualified households.
3. The community housing unit shall be listed for rent through BCHA concurrent with the issuance of a Certificate of Occupancy by the City for the project.



