



City of Ketchum

**CITY COUNCIL MEETING AGENDA MEMO**

Meeting Date: June 3, 2024 Staff Member/Dept: Paige Nied, Associate Planner  
Planning and Building Department

Agenda Item: Recommendation to Approve Amended FAR Exceedance Agreement #22878A between the City of Ketchum and Acquire Realty LLC.

Recommended Motion:

I move to authorize the Mayor to sign Amended FAR Exceedance Agreement #22878A with Acquire Realty LLC.

Reasons for Recommendation:

- The FAR Exceedance Agreement #22878 for Leadville Trading was reviewed and approved by City Council on August 21, 2023.
- A building permit (File No. B23-074/23-KET-00024) was issued for the Leadville Trading project on August 22, 2023. The applicant submitted a building permit modification on April 22, 2024, requesting an addition of 43 square feet to enclose a bulb-in area on the southwestern wall of the first floor and to add a cold entryway for the front entrance.
- The modifications to the approved project plans received administrative design review approval on May 9, 2024. The floor area above 1.0 FAR increased from 629 square feet (1.11 FAR) to 672 square feet (1.12 FAR). The addition in floor area requires an amendment to the FAR Exceedance Agreement for additional community housing in-lieu fees.
- 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 additional in-lieu fee of \$3,150 for a total in-lieu fee payment of \$51,300. The applicant paid the previous in-lieu fee of \$48,150 prior to building permit issuance.

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

Sustainability Impact:

None.

Financial Impact:

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:

1. Amended FAR Exceedance Agreement #22878A with exhibits

**FAR EXCEEDANCE  
AGREEMENT #22878A**

**Parties:**

City of Ketchum	"City"	P.O. Box 2315, 191 5 <sup>th</sup> 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 amended 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 \_\_\_\_\_, 2024.

Developer

City of Ketchum, Idaho

\_\_\_\_\_

\_\_\_\_\_

*Print Name*

Neil Bradshaw, Mayor

Mark Dooley, Managing Member for  
Acquire Realty, LLC

Attest:

\_\_\_\_\_

Trent Donat, City Clerk

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, 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 \_\_\_\_\_

## Exhibit B

### EXCEEDANCE AGREEMENT COMPLIANCE

<b>PROJECT:</b>	Leadville Trading
<b>APPLICATION FILE NUMBERS:</b>	Design Review (P22-066) Conditional Use Permit (P22-066A) Building Permit (B23-074/23-KET-00024)
<b>OWNER:</b>	Acquire Realty LLC
<b>REPRESENTATIVE:</b>	Lucas Winter, Jarvis Group Architects Janet Jarvis, Jarvis Group Architects
<b>REQUEST:</b>	Amend the Leadville Trading FAR Exceedance Agreement #22878A for the addition of 43 square feet of floor area.
<b>LOCATION:</b>	211 N Leadville Avenue (Ketchum Townsite: Block 3: Lot 5)
<b>ZONING:</b>	Community Core – Subdistrict 2 – Mixed Use (CC-2)
<b>BACKGROUND:</b>	

1. The FAR Exceedance Agreement #22878 for the Leadville Trading project was approved by City Council on August 22, 2023. A building permit was issued for the project on August 22, 2023, for the development of a new 6,133 square foot two story commercial development. Since building permit issuance, the applicant has submitted a building permit modification request which includes the addition of 43 square feet, for a new gross floor area of 6,176 square feet. The floor area above 1.0 FAR has increased from 629 square feet (1.11 FAR) to 672 square feet (1.12 FAR). The increase in floor area requires an amendment to the approved FAR Exceed Agreement for additional community housing in-lieu fees.
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 has a new total gross floor area of 6,176 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. The Administrative Design Review application (File No. B23-074) was approved on May 9, 2024.

## 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:** 6,176 gross square feet

**Ketchum Townsite Lot Area:** 5,504 square feet

**FAR Proposed:** 1.12 (6,176 gross sq ft/5,504 sq ft lot area)

**Increase Above Permitted FAR:** 672 square feet

**20% of Increase:** 134 square feet

**Net Livable (15% Reduction):** 114 square feet of community housing required

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

**Proposed Community Housing In-Lieu Fee:** \$51,300 (114 sq ft x \$450/sq ft)

**Additional Community Housing In-Lieu Fee Required:** \$3,150 (\$51,300 new fee - \$48,150 previously paid)

### **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 \$3,150 for a total in-lieu payment of \$51,300. Fee payment is due after City Council approval of the amended FAR Exceedance Agreement and within 30 days of invoice.
2. If the total gross square footage of the project changes through the course of construction, a revised fee in-lieu may be calculated using the methodology outlined above and approved by the Administrator. Substantial increases or decreases in square footage may require an amendment to this agreement at the discretion of the Administrator.
3. 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.