



DIMENSIONAL STANDARDS ANALYSIS

Per the Amended and Restated Development Agreement, the Appellation Hotel development is subject to the zoning requirements in effect at the time of the original PUD/CUP approval in 2008 (File No 08-007). Additionally, waivers for certain dimensional standards approved as part of the 2008 PUD/CUP approval are still in effect. Below is an overview of all dimensional limitations as approved in the Findings of Fact for the 2008 PUD/CUP (Attachment G) and the proposed dimensional standards for the proposed Appellation Hotel development.

Setbacks	Required	Waiver Granted	Proposed*	Conformance
<i>Front (River St)</i>	15 feet min	3 ft	3 ft to the columns with 7 ft to the façade wall	YES
<i>Rear</i>	1 ft for every 3 ft of building height, but no less than 10 ft	9ft	9 ft	YES
<i>Side (Leadville Ave)</i>	1 ft for every 3ft of building height, but no less than 5 ft	0 ft	5 ft	YES
<i>Side (Hwy 75/Main St)</i>	25 ft where the right-of-way for Hwy 75 is 80 ft	11 ft to columns 15 ft to walls 41 ft from edge of Hwy to building facade	11 ft to columns** 12 ft to walls 23 ft from edge of Hwy to building facade	YES
<i>Riparian (Trail Creek)</i>	25 ft	No waiver	25 ft	YES

*All Setbacks are shown on Sheet L1.1 of Attachment B.

** Setbacks are measured to the property line from the point of the building that is closest. The closest point of the building to the property line is the southwest corner at 11 feet which meets the variance granted of 11 feet along Hwy 75.

Building Height	Required	Waiver Granted	Proposed*	Conformance
<i>River Street – top of roof</i>	35 foot maximum	58 ft Elevator housing and other roof features extend above 58 ft as shown on Sheet A1-5 dated 5/1/2008	All roof projections are below the 58 ft roof-plane. The total building height on River Street is approximately 54 ft. Elevator housing and other mechanical features do not exceed the height of the observatory level as previously approved.	YES
<i>River Street – top of observatory</i>	35 foot maximum	75 ft	75 ft	YES
<i>Trail Creek</i>	35 foot maximum	58 ft	Approximately 52 feet from finished grade to top of roof.	YES

*Building Height Calculations are shown on Sheets A3.02 and A3.04 of Attachment B.

Floor Area Ratio (FAR)	Required	Waiver Granted	Proposed*	Conformance
	0.5 max	2.4 FAR	<p>Level P2/P3 (parking level 2) – 26,165 SF Level P1 (parking level 1)– 25,934 SF Level 0 (lower level) – 21,963 SF Level 1 (ground level) – 20,403 SF Level 2 (second level) – 20,093 SF Level 3 (third level) – 18,709 SF Level 4 (fourth level) – 13,677 SF Level 5 (fifth level) – 876 SF Total Gross Floor Area: 147,820 SF</p> <p>For purposes of calculating FAR, the two levels of underground parking (Levels 2/3 and 1) are not included. Total Floor Area for FAR calculation purposes is 95,721 which includes levels 0-5. Total Site Area: 40,631 SF Total FAR: 95,721/40,631 = 2.4</p>	YES

*Floor Area Calculations are shown on Sheet A.00 of Attachment B.

Open Site Area	Required	Waiver Granted	Proposed*	Conformance
	35% with 5% allowance for private decks and patios (Net 30%)	No waiver	39.4% including outdoor pool and spa 35.8% not including pool and spa but including the common patio area	YES

*Open Site Area as shown on Sheet A.01 in Attachment B.

Curb Cut	Required	Waiver Granted	Proposed*	Conformance
<i>River Street</i>	35% max	No waiver	29%	YES
<i>Leadville Ave</i>	35% max	No waiver	30%	YES

*As shown on Sheets C1.0 and C1.1 in Attachment B.

Parking Requirement Per Use	SF of Use*	# Spaces Required	Proposed*	Conformance
Hotel (.66 spaces per room)	73 rooms	48	105 Spaces proposed on Levels P1 and P2/3 and 4 on-street parking spaces Total: 109 5 – ADA 1 – compact 86 – stackers 17 - standard	YES
Condominiums (1 space per 1,500 net sq ft)	25,604 SF	17		
+Residential guest space (1 guest space for every 4 units)	12 condominiums	3		
Conference facility (1 space per 200 sq ft seating area)	3,715 SF	19		
Retail/spa/office (1 space per 600 sq ft net floor area)	4,874 SF (includes 1,000 SF of retail and no office)	8		
Restaurant (1 space per 200 sq ft seating area)	2,668 SF	13		
TOTAL REQ SPACES		108		

*Square footages of each use as shown on Sheets A2.0C-A2.05 in Attachment B.



City of Ketchum
Planning & Building

**APPELLATION HOTEL
ANALYSIS FOR CONFORMANCE WITH PUD/CUP (File No. CUP 08-007)**

The following review is an evaluation of the current application and whether the proposed project is in conformance with the reinstated PUD/CUP approval as documented in the City Council Findings of Fact, Conclusions of Law, and Decision dated October 6, 2008 (referred to as "Findings"). Please see Attachment G for the Findings. Based on said Findings, a project may be found in conformance with the PUD/CUP provided the following are demonstrated:

1. The proposed project meets the definition of "Hotel" in place at the time of the 2008 approval.
2. The proposed project provides, at a minimum, a total of 73 guestrooms or "hot beds" and six condominium units meeting the occupancy parameters of the hotel definition.
3. The total Gross Floor Area for the project does not exceed 149,325 SF.
4. Adequate parking for all proposed uses, per the ratios outlined in Table 4 of the Findings, can be provided on-site meeting all design and dimensional requirements in place at the time of the 2008 approval.
5. The proposed project must meet all dimensional standard waivers granted as outlined in Table 3 of the Findings.
6. The proposed project must demonstrate conformance with all 18 conditions of approval as outlined in the Findings.
7. The proposed project demonstrates that all special development objectives outlined in Table 10 of the Findings are still met.

Below is a review of each item listed above and how the proposed development meets the requirements of PUD/CUP approval (CUP 08-007)

Criteria #1: Definition of Hotel

The definition of "Hotel" at the time of the PUD/CUP approval is as follows:

"Hotel: A building designed and used for overnight occupancy by the general public on a short term basis for a fee. Hotels shall include adequate on site food and beverage service with kitchen facilities, common reservation and cleaning services, meeting room space, combined utilities, on site management and reception services, access to all sleeping rooms through an inside lobby supervised by a person in charge no less than 18 hours per day, and adequate on site recreational facilities. Unless otherwise approved by the City Council, occupancy periods of a hotel, or unit thereof, by any one person or entity with an ownership interest in the hotel, or unit thereof, shall not exceed 30 consecutive days or exceed 90 days within any calendar year, regardless of the form of ownership. A hotel room which includes cooking facilities shall not be considered a dwelling for the purposes of density, area and bulk regulations of this title and other land use regulations. For the purposes of granting height and density bonuses, a hotel building may contain other residential uses not used in connection with the hotel operation, so long as the total gross square footage of the hotel rooms, associated common areas, and other hotel uses outlined above comprises 75 percent or more of the entire

project's gross square footage. Parking which meets the definition of "gross floor area" shall not be counted toward the 75 percent calculation."

At the time of the 2008 approval, the City Council determined the condominium units were considered "cold beds" and could be counted as either hotel rooms or individual residential units. Section 3 of the Amended and Restated Development Agreement dated October 5, 2015, outlines that units 1 through 6 on the fourth floor, and any storage, parking, or limited common area associate with the units may be used as either private residential units or as a "hotel". It was discussed at the time that although these units were private residential units, they would be made available to the hotel as part of the hotel guestroom offerings. There were no requirements as to a minimum number of nights or total nights per year that the units had to be contributed to the hotel offerings but there was some presumption that many, if not all, of the units would be contributed to the hotel offerings at some point each year in a way that provided an economic benefit to the community.

As the condominium units could be used as either hotel rooms ("hot beds") or condos ("cold beds"), the square footage of the condominium units was included in the total hotel square footage for the project. In addition, the total square footage of residential condominium space could not exceed 25% of the total hotel square footage plus residential condominium square footage. Table 2 of the PUD/CUP Findings outlined the 2008 project's conformance with the Hotel definition based on square footage of uses at the time. The table below is an expanded version of Table 2 which includes a comparison of the 2008 PUD/CUP approval and the current application:

HOTEL CONFIGURATION	2008 PUD/CUP Approval	Current Application
Guest Rooms	73 rooms	73 rooms
SqFt	45,844 SF	32,148 SF
Dedicated Units / Condo Units	6 units	12 units (6 with lock-offs)
SqFt	11,770	25,604 SF
Hotel Key Count	79 keys	79 keys
Hotel Bed Count	82 beds	82 beds
BOH, Circ. Support and Interior Public Areas (SqFt)	25,626 SF	28,980 SF*
TTL HOTEL SqFt	83,240 SF	86,732 SF
RESIDENTIAL CONFIGURATION		
Residential Condominiums (Non-Hotel Residential/"cold beds")	14,260 SF	25,604 SF
Less 17% Circulation	(2,424) SF	n/a – number above is net SF
Net Residential SF	11,700 SF	25,604 SF
Permitted Non-Hotel Residential (Hotel Sq Ft./0.75 – Hotel Sq Ft)	27,747 SF	28,911 SF

Over/(Under)	(15,977) SF	(3,307 SF)
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**During staff review of the 2008 approvals, it was difficult to determine what was included in the “BOH, Circ. Support and Interior Public Areas (SqFt)”. Detailed square footage of each individual use was not included in the approved plan set nor was it outlined in the Findings of Fact for the PUD/CUP approval. Based on the definition of “Hotel” and proposed uses for the current application, staff made a determination of what square footage was considered “associated common areas and other hotels uses” as outlined in the definition of “Hotel”. In general, staff determined that all square footages allocated to restaurant/dining, lobby, kitchen, meeting space, spa/fitness, hotel offices, and back of house operations could be counted. Staff also determined that limited amount of circulation space generally accessible by all guests could be included. Square footage for parking, circulation, and mechanical spaces were generally not included. Table 2.1.R1 of the applicant memorandum from Hornberger-Worstell in Attachment A is a table outlining all square footages of the proposed project and what is counted towards the total hotel square footage as requested by staff.

Rental of Condominium Units

In the evaluation of the current application, staff wanted to ensure that the condominium units and ownership structure proposed today provide the same potential benefit to the city as the units proposed with the original approval. As mentioned above, there were no requirements as to a minimum number of nights or total nights per year that the units had to be contributed to the hotel offerings but there was some presumption that many, if not all, of the condominium units would be contributed to the hotel offerings at some point each year in a way that provided an economic benefit to the community. In properties like these, a program is created that residential condominium owners can voluntarily participate in. The program establishes an agreement between the hotel and the property owner to rent the condominium unit through the hotel’s reservation system. The hotel manages bookings, renter relations, cleaning and maintenance for a percent of the rental revenue and the property owner has a way to generate revenue when the unit is not being used. When the condominium unit is rented through the hotel program, it is taxed the same as a standard guestroom in a hotel. To calibrate whether this model of hotel/condo ownership still functions the same today, staff requested two additional pieces of information from the applicant:

- Case study of other similar hotel/condo ownership structures in operation today, and the participation rates of condominium owners (LW Hospitality Advisors memo in Attachment A)
- Overview of how the future hotel operator will encourage private owner participation in renting the condo unit as part of the hotel offerings (Appellation Hotel memo in Attachment A)

Based on the information provided, it appears the hotel/ownership structure proposed today is still a viable model and has the potential to contribute additional lodging tax revenue to the City of Ketchum above and beyond that of the lodging tax from the 73 guestrooms. As noted in the memo from LW Hospitality Advisors, of the eight properties reviewed, seven have a participation rate of more than 50%. The Appellation Hotel memo provides an overview of how the program for the Appellation hotel would be implemented. There is a similar model being implemented at the Limelight Hotel with approximately 50% participation. Staff believes the proposed hotel/condominium structure to be like the assumed structure in the 2008 approval and believes the current proposal meets the intent of the original approval.

The draft development agreement amendment included in Attachment P includes language that memorializes the assumptions made in regard to the condominium units and ensures that all future hotel operators comply with the proposed rental program unless otherwise approved by the city.

Criteria #2: Number of Rooms

As shown in the project plans in Attachment B and noted in supplemental application materials in Attachment A, the current application includes a total of 73 hotel guestrooms or “hot beds”. The current application also includes 12 residential condominiums, six of which have lock-offs. Therefore, the proposed project is providing the negotiated number of rooms and is exceeding the number of condominium units included in the original approval and is in conformance with this requirement.

Criteria #3: Gross Floor Area

Table 1 in the Findings outline that the 2008 approved project had a total gross floor area of 149,325 square feet. This number includes the two levels of underground parking proposed for the project. As shown on Sheet A.00 of Attachment B, the currently proposed development has a total gross floor area of 147,820 square feet. Therefore, the proposed project is not exceeding the approved gross floor area and is in conformance with this requirement.

Criteria #4: Parking

As outlined in the review of conformance with Zoning requirements in Attachment M, the proposed development would require 108 parking spaces to service the proposed uses and square footage of those uses. As shown on Sheets A2.0C and A2.0B in Attachment B, the development proposes a total of 105 on-site parking spaces. The remaining four parking spaces are provided along River Street as shown on Sheet C1.0. Therefore, the proposed project is providing the number of required parking spaces to meet parking requirements and is in conformance with this requirement.

Criteria #5: Conformance with Dimensional Standards

As outlined in the review of conformance with Zoning requirements in Attachment M, the proposed project meets all dimensional standards and corresponding waiver of standards as approved by the 2008 PUD. No additional waivers to setbacks, building height, or floor area ratio are being requested with the current application. Therefore, the proposed project is in conformance with this requirement.

Criteria #6: Conditions of Approval

The PUD Findings approved on October 6, 2008, outlined 18 conditions of approval that were to be met by the project. Below is an overview of each condition and how the current application meets the conditions of approval.

1. *Condition:* A construction staging and mitigation plan, including at a minimum provisions for off-site employee parking, off-site storage of bulk materials, and required right-of-way encroachments during construction, shall be submitted and approved by the City Council within 8 months from date of final PUD approval. This plan shall be an exhibit to an amendment to the PUD agreement and recorded prior to issuance of a building permit.
 - a. *Conformance:* A construction mitigation plan was approved by City Council for the previous project in 2016. For the current application, a construction staging and mitigation plan will be required for the proposed project. The draft Development Agreement in Attachment P requires the construction mitigation plan be submitted with the building permit application. The plan will be required to include all items

listed in the condition of approval and is subject to the approval by the city. This condition remains in effect and will be met per the terms of the Settlement Agreement and amended Development Agreement.

2. *Condition:* The applicant shall contribute a pro rata share based on total linear feet to the underground relocation of overhead utility lines in the vicinity of the project. The pro rata share shall be based on the frontage of the subject property along Main Street, Leadville Avenue, and River Street. The applicant agrees to collaborate with the city and with Idaho Power on the timing and the budget for undergrounding, and these items will be incorporated into the Development Agreement, with a specific payment solution brought back to the City Council prior to construction.
 - a. *Conformance:* The undergrounding of power lines was completed in 2019 at the expense of the applicant. Based on review of the Findings, meeting minutes, and staff reports for the original approval, the pro rata share was estimated at \$250,000. As shown in Attachment A, the applicant paid a total of \$800,000 to underground the powerlines for the project. This condition has been met.
3. *Condition:* The proposed encroachments into the public street rights-of-way shall be allowed up to but not exceeding the widths presented on Sheet C3 dated April 8, 2008.
 - a. *Conformance:* As noted in the staff report, some changes to right-of-way improvements are being proposed as shown in Attachment B, however the revisions do not exceed the widths approved in the original 2008 approval. Final review of all right-of-way improvements will be reviewed and approved by the City Engineer prior to building permit issuance and an amendment to the approved Encroachment Agreement. This condition remains in effect and is being met with the current application.
4. *Condition:* Sidewalks shall be a minimum width of: 6 feet on Main Street, as shown on Sheet C3 dated April 8, 2008, but not less than 5 feet on River Street, 5 feet on Leadville Avenue
 - a. *Conformance:* As shown on Sheet C1.0 in Attachment B, there is a 5-foot sidewalk on Leadville Ave, a 5-foot sidewalk on River St, and an 8-foot sidewalk on Main Street that tapers to 6 feet toward the southern end of the property. As proposed, the current application meets this condition.
5. *Condition:* Right-of-way encroachments including retaining walls and landscape beds, and curblines alignment, slope and drainage, and ADA design issues shall be resolved to the satisfaction of the City Engineer and ITD prior to the issuance of a building permit. Final designs shall be approved by the City Council upon recommendation by the P&Z Commission. Encroachment permits and/or licenses shall be obtained from the City as required.
 - a. *Conformance:* This condition remains in full effect and is being carried out through the Design Review amendment and Development Agreement amendment process. Attachment B includes landscape and civil plans showing the locations of all proposed right-of-way encroachments. Through the design review process, the Commission will provide feedback on revisions to approved right of way encroachments for consideration by the City Council. As required by the draft Development Agreement amendment, the ITD encroachment permit is required to be obtained prior to building permit issuance. All final right-of-way encroachments will be reviewed and approved by the City Engineer prior to issuance of a building permit as required.
6. *Condition:* The heated asphalt shall be extended to include the entire River Street/Leadville Avenue intersection and shall be extended to the south on Leadville Avenue as required to

accommodate drainage and vehicular traction. This and related drainage issues shall be resolved to the satisfaction of the City Engineer and City Street Superintendent.

- a. *Conformance:* Sheets C1.0 through C1.2 and L1.0 through L4.0 of Attachment B show the proposed right-of-way improvements for the current application. The City Engineer and Streets department are in review of the proposed grading, drainage, and snow melt improvements and will provide comments to the applicant outlining necessary revisions. All final right-of-way improvements will be reviewed and approved prior to issuance of a building permit per Section 8 of the Amended and Restated Development Agreement dated October 5, 2015.
7. *Condition:* All water, sewer and other utility main lines, service lines, manholes and fire hydrants shall be maintained or improved as required by the Ketchum Water and Sewer Department.
 - a. *Conformance:* This condition remains in full effect. Some utility work has been completed by the applicant as part of previous construction activities. Sheet C1.0 of Attachment B show existing and proposed locations of all utilities, water and sewer service and main lines, and hydrant locations for the project. Final review of all items will be conducted by the city engineer, water and sewer department, and fire department prior to building permit issuance.
8. *Condition:* The proposed development shall be completed as set forth in the design review and CUP approvals and the Planned Unit Development agreement. The PUD Development Agreement shall include, but not be limited to, provisions for the following: • Community/workforce housing-as required in condition #9, below. • Contribution to underground relocation of overhead utility lines. • Public pedestrian amenities to be included within adjacent street rights-of-way. • Development of a Construction Mitigation Plan • Minimum access for the public to the observatory.
 - a. *Conformance:* This condition remains in full effect. The Amended and Restated Development Agreement dated October 5, 2015, includes provisions for all of the items listed above. The draft amendment included in Attachment P does not remove any of those provisions and continues to enforce all the requirements as outlined in this condition of approval.
9. *Condition:* The applicant shall provide a detailed Employee Housing Plan, which provides for housing for 18 employees on a site acceptable to the Ketchum City Council, and within Ketchum City limits. The following elements shall be required in the Employee Housing Plan:
 - a) Provide salary/hourly wages (2008 dollars) for the various income categories of employees.
 - b) The expected number of each level of employee that is intended to be served by the employee housing units.
 - c) Which employee category will be served by which type/size of units.
 - d) Provide information on anticipated rental rates (in 2008 dollars) or subsidized and/or free rent to employees; will utilities and homeowners dues (if any) be included in proposed rates.
 - e) Establishment of maximum occupancy per unit type (i.e. 1 person per 1 bedroom unit; 2 persons per 2 bedroom 1mits).
 - f) Location of units to be within Ketchum City limits. Hotel Ketchum PUD CUP Application Findings of Fact, Conclusions of Law and Decision, City Council 09-15-08 Page 34
 - g) Provide a matrix on breakdowns of the different types of units (IBD; square footage; total number of units; anticipated rent, etc.)
 - h) Create a priority for occupancy program of these units; (i.e. first availability employees that are full-time, secondly to seasonal employees, and third to persons that are verified to be working in the City of Ketchum.
 - i) What units will be available and how will the pool of units available be determined.
 - j) What minimum standards will be used to determine employee eligibility to live

in the employee housing; is full-time status required for employees to qualify for the employee housing and what constitutes full-time status. k) How will overflow of demand of 1111its by employees be handled; will there be a priority system. 1) Provide information on housing families (with children) and/or married couples. The proposed Employee Housing shall meet minimum size thresholds and income categories established by BCHA. The following information shall be provided to the City: 1) Wage/salary range and a breakdown the number of employees within the aforementioned classifications 2) Information on type of housing provided per employee classification 3) Costs incurred in rent (and utilities) and transportation/parking by employees o Details on anticipated lease terms/rental agreements for employees housed on-site 4) Anticipated transport and parking scenarios for both on-site and commuting employees. The Employee Housing Plan shall be submitted and approved by the City Council prior to issuance of a building permit. This plan shall be an exhibit to an amendment to the PUD agreement and recorded prior to issuance of a building permit. All of the required Employee Housing shall be available prior to the issuance of any Certificates of Occupancy for the Hotel, or any other uses in the hotel.

a. Conformance: This condition remains in full effect. The applicant has provided an updated employee housing plan with updated employment and salary projections included in Attachment C. The City reviewed and approved an employee housing plan in 2016, and a revision in 2018, permitting the construction of the required employee housing units at an off-site location within Ketchum at 391 N 4th Ave. The employee housing units are currently under construction and are expected to be completed in Spring 2023. Per the condition of approval, the employee housing units will be available prior to issuance of a certificate of occupancy for the hotel. Staff will continue to work with the applicant on the other provisions of this condition to be resolved prior to building permit issuance for the hotel.

10. Condition: A privacy wall or landscaping buffer shall be developed as a buffer for the 200 South Leadville Townhomes.

a. Conformance: The applicant is working with the adjacent property owners of the 200 S Leadville Townhomes to determine the type of landscape buffer to be installed. The condition of approval did not have a timeframe associated with compliance of the condition. The draft development agreement amendment adds a section to the agreement that requires resolution of this condition prior to the issuance of a building permit for the hotel project. As required by the development agreement amendment, this condition will be met.

11. Condition: Operational hours for the observatory shall be developed that provides for access for the public, schools and other interest groups.

a. Conformance: This condition remains in full effect. The Amended and Restated Development Agreement dated October 5, 2015, requires that the applicant shall develop the hours of operation and present a proposal to City Council for approval prior to certificate of occupancy.

12. Condition: This PUD CUP approval is contingent upon the approval of the Design Review/Waterways Design Review application.

a. Conformance: This condition remains in full effect. The applicant has applied to amend the Design Review approval for the hotel project per the terms of the Settlement Agreement. That application is under review by the Commission. No revisions to the approved Waterways Design review approval are being requested.

13. *Condition:* This PUD CUP shall be valid for a period of two (2) years from the date of approval of Findings of Fact, Conclusions of Law and Decision by the City Council. An application for building permit shall be submitted within 2 years, unless extended by the City Council upon written request by the applicant.
 - a. *Conformance:* Since the original approval in 2008, multiple extensions have been granted through amendments to the original development agreement. In July 2022, the City Council reinstated the expired approvals subject to a new construction and completion schedule outlined in the Settlement Agreement. The draft development agreement in Attachment P reflects the agreed upon construction and completion schedule in the Settlement Agreement. If the revised Design Review application and development agreement amendment are approved by the Commission and the City Council, the timelines reflected in Attachment P will be the new requirements for construction and completion.
14. *Condition:* The setback for the southernmost penthouse condominium unit adjacent to Leadville Avenue shall be increased to ten feet (10') either by reducing overhangs or other means.
 - a. *Conformance:* As shown on Sheet A2.06 in Attachment B, the penthouse on the fourth floor is set back 10 feet from the property line along N Leadville Ave. This condition has been met.
15. *Condition:* Prior to issuance of any building permits, a plan shall be brought back to the City Council showing a third lane (through lane) instead of a dedicated right turn lane on Highway 75/Main Street, including consultation with the Idaho Transportation Department.
 - a. *Conformance:* Sheets C1.0 and C1.1 of Attachment B show the current Hwy 75/Main Street land configuration as jointly coordinated by the City of Ketchum and the Idaho Transportation Department. This configuration includes one left turn lane, one through lane, one bike lane, and a sidewalk adjacent to the proposed project. This configuration will be reviewed by City Council during review and approval of the amended Right-of-Way Encroachment Agreement for the proposed project.
16. *Condition:* A PUD-Conditional Use Permit shall be issued in writing. The issuance thereof shall not be considered a binding precedent for the issuance of other conditional use permits. A conditional use permit is not transferable from one parcel of land to another.
 - a. *Conformance:* The Findings of Fact, Conclusions of Law, and Decision for the PUD/CUP were approved and signed on October 5, 2015, by the City Council. The signed findings constitute the written permit of approval. This condition has been met.
17. *Condition:* Failure to comply with any condition or term of said permit shall cause said permit to be void ab initio. A PUD - Conditional Use Permit may be revoked at any time for violation of the permit or any condition thereof by motion of the City Council after a due process hearing upon ten (10) days written notice to the holder of the PUD - Conditional Use Permit.
 - a. *Conformance:* This condition remains in full effect. As noted in this document, staff believes the current application meets or will meet all conditions of approval of the PUD/CUP.
18. *Condition:* All projects receiving a PUD - Conditional Use Permit, as a condition of said permit, shall be required to submit and receive design review approval for each structure to be constructed within the project prior to making application for a building permit irrespective of what zoning district or districts within which the project is located.

- a. *Conformance*: As noted above, the 2008 Design Review approval was reinstated in July 2022. The applicant has applied for an amendment to the 2008 Design Review approval that is currently under review by the Commission.

Criteria #7: Special Development Objectives

The Findings for the 2008 PUD/CUP outline eight special development objectives of the project that were noted as public benefits to justify the granting of the PUD/CUP. As noted in Table 10 of the Findings, those special objectives include:

- 4-star hotel of 73 “hot beds”
- Conference Space (seating for 290)
- Employee Housing for 18 employees
- Contribution of \$250,000 towards the undergrounding of overhead power lines
- Restoration of Trail Creek riparian setback, provision of overlook and trail to creek
- Functional Observatory – open to public
- Reutilization of Materials and/or photo gallery of historic Trail Creek Village
- Pedestrian improvements to public right-of-way to create Gateway Plaza

As outlined in the staff report and shown in Attachments A, B, and C, all special objectives identified in the PUD/CUP are still being provided with the current application. Staff has provided some comments related to the design of the Gateway Plaza in the design review analysis, however, the plaza is still present in the design and can achieve the intended purpose of the PUD/CUP approval with some design changes.



APPELLATION HOTEL DESIGN REVIEW CRITERIA ANALYSIS

Per the Amended and Restated Development Agreement, the Appellation Hotel development is subject to the zoning requirements in effect at the time of the original PUD/CUP approval in 2008 (File No 08-007). What this means is that the proposed Appellation Hotel development is to be evaluated under the 2008 design review standards, not the design review criteria in effect today. Below is an overview of all 2008 design review criteria and standards for the currently proposed Appellation Hotel. Each standard will outline any changes proposed and how the changes compare to the approved Design Review application from 2008 (DR08-007). Please see Attachment F for the Findings of Fact, Conclusions of Law, and Decision of the 2008 design review approval.

There are 8 categories of criteria for Design Review as follows:

- Site Design
- Compatibility
- Architectural Quality
- Circulation Design
- Landscape Quality
- Energy Design
- Public Amenities
- Green Building

As the subject property is adjacent to Trail Creek, the proposed development is also subject to a Waterways Design Review. No changes are being proposed to the approved Waterways Design Review approval from 2008 therefore no additional analysis is being provided at this time. All conditions of approval in the Waterways Design Review approval will remain in full effect.

Criteria #1 - SITE DESIGN	Conformance
The site’s significant natural features such as hillsides, mature trees and landscaping shall be preserved. Cuts and fills shall be minimized and shall be concealed with landscaping, revegetation and/or natural stone material.	YES

Analysis: The 2008 Findings noted that the original development was in conformance with this standard because of the preservation of existing healthy trees, planting of new trees and proposed riparian restoration, and screening of the proposed retaining walls throughout the development with stone materials that matched that of the principal building and additional landscaping. The initial tree assessment identified that of the 83 existing trees on site, 18 trees were to be preserved and two were to be transplanted. The original development proposed 46 new trees and 118 new shrubs to be planted, which included the 5 new trees and 28 new shrubs proposed in the riparian restoration plan along Trail Creek.

The current application includes a revised landscape plan reflecting a revised planting plan, revised plaza area adjacent to the riparian area, and revised retaining walls proposed along Hwy 75 and Leadville Ave. The application proposes 42 new trees, 91 new shrubs, and 120 ornamental grasses which includes the 5 new trees and 28 shrubs proposed for the riparian restoration. No changes to the approved riparian restoration plan are being requested.

Prior to start of construction in 2016, the buildings commonly known as Trail Creek Village were demolished along with the removal of the trees designated for removal in the tree assessment. The trees slated for preservation still exist on the property today and will continue to be preserved as part of the proposed project.

Staff has expressed concerns related to the reduced landscaping and wrapping of retaining walls in the project. Staff believes that if the project is found to be in conformance with the landscape design criteria and architectural criteria, this criteria will also be met.

Criteria #2 - COMPATIBILITY	Conformance
The structure shall be compatible with the townscape and surrounding neighborhoods with respect to height, bulk, setbacks and relationship to the street.	NO

Analysis: Please see staff report dated December 7, 2022.

Criteria #3 - COMPATIBILITY	Conformance
The project's materials, colors and signing shall be compatible with the townscape, surrounding neighborhoods and adjoining structures.	NO

Analysis: Please see staff report dated December 7, 2022.

Criteria #4 - COMPATIBILITY	Conformance
Consideration shall be given to significant view corridors from surrounding properties.	YES

Analysis: The most significant view corridor that warrants consideration is the view of Baldy from surrounding properties to the south and east. In the initial analysis, the commission evaluated the height of a building that was permitted by right (44 ft) and compared the 58 feet that was proposed. In this consideration, the commission determined that the proposed 58-foot-tall building would not obstruct the views of Baldy any more than a 44-foot building and that no further mitigation was required.

No changes to the approved building height of the main structure or the observatory is being requested with the current application therefore the current application meets this standard.

Criteria #5 - COMPATIBILITY	Conformance
Preservation of significant landmarks shall be encouraged and protected, where applicable. A significant landmark is one which gives historical and/or cultural importance to the neighborhood and/or community.	YES

Analysis: The subject property is now vacant, having demolished the Trail Creek Village structures in 2016. Per condition of approval 12 outlined in the Findings “Photographs of the existing buildings shall be retained and displayed in a publicly accessible location with the hotel. The current development will uphold this commitment to the community by memorializing the Trail Creek Village history in an art installation in the main lobby of the hotel.

As no changes to the application commitment are being requested, staff believes the current application meets this criterion.

Criteria #6 - ARCHITECTURAL QUALITY	Conformance
Consideration shall be given to natural light reaching public streets, sidewalks and open spaces.	YES

Analysis: A solar study was prepared and reviewed as part of the 2008 approval. The current application does not request changes in building height, setbacks, roof forms, or overall building configuration that would alter the conclusions of the initial solar study. The solar study found that the sidewalk area on the corner of Main Street and River Street would remain in the sun throughout the day, even during the winter. The hotel’s courtyard would receive sun most of the year except for afternoon hours in autumn, winter, and spring.

As no changes are being proposed, staff believes the current application meets this criterion.

Criteria #7 - ARCHITECTURAL QUALITY	Conformance
The building character shall be clearly defined by use of sloped roofs, parapets, cornices or other architectural features.	YES

Analysis: The 2008 Findings notes that the building character is primarily defined by the various reverse pitch roofs and observatory. The current application reflects changes to the proposed materials for the roofs and observatory; however, the type of roofs (reverse pitch) and prominence of the observatory have not been altered. Additionally, the roof lines remain below the 58 ft building height maximum and the height of the observatory is unchanged.

Although changes to materials are proposed, no change to the primary architectural features is being proposed. Staff believes the current application meets this criterion.

Criteria #8 - ARCHITECTURAL QUALITY	Conformance
There shall be continuity of materials, colors and signing within the project.	YES

Analysis: The current application proposes material and color changes for all four sides of the building. Although staff has outlined concerns related to the proposed changes in the staff report, staff does believe that the proposed materials are consistent and complementary to each other within the development.

As such, staff believes the current application is in conformance with this criterion.

Criteria #9 - ARCHITECTURAL QUALITY	Conformance
There shall be continuity among accessory structures, fences, walls and landscape features within the project.	NO

Analysis: Please see staff report dated December 7, 2022.

Criteria #10 - ARCHITECTURAL QUALITY	Conformance
Building walls which are exposed to the street shall be in scale with the pedestrian.	NO

Analysis: Please see staff report dated December 7, 2022.

Criteria #11 - ARCHITECTURAL QUALITY	Conformance
Building walls shall provide undulation/relief thus reducing the appearance of bulk and flatness.	NO

Analysis: Please see staff report dated December 7, 2022.

Criteria #12 - ARCHITECTURAL QUALITY	Conformance
Exterior lighting shall not have an adverse impact upon other properties and/or public streets.	YES

Analysis: Per the 2008 Findings, condition of approval #6 states “All exterior lighting shall comply and continue to comply with Chapter 17.132 of Ketchum Code”. The current application includes a revised lighting plan produced by Niteo, an exterior lighting consultant. All proposed exterior lighting meets the city’s current light temperature limit of 2,700 Kelvin and all fixtures are full cutoff which is also required by the Ketchum municipal code. In addition to information specific to the proposed light fixtures, the plan also includes a full photometric study of the current application, demonstrating zero light trespass across the property lines on all sides except River Street. River Street is provided an exception as the 2008 approval allowed for a substantial encroachment into the right-of-way for the porte cochere of the hotel which includes downcast recessed lighting under the pass through and downcast lighting in the screen panels in the landscape island between the car circulation area and River Street. As shown on page 7 of the plan, no light trespasses beyond the end of the curb and gutter along River Street where the porte cochere ends.

Street lighting is being evaluated by ITD and the City Engineer and will be finalized prior to approval of an amended encroachment agreement and prior to issuance of a building permit application for the project.

Criteria #13 - ARCHITECTURAL QUALITY	Conformance
Garbage storage areas and satellite receivers shall be screened from public view.	YES

Analysis: Garbage and recycling areas are entirely enclosed within the building and accessed from N Leadville Ave. The location of the proposed garbage and recycling area has not changed since the original approval in 2008. All other satellite receivers related to the project are located on the roof and sufficiently set back as to not be visible by the public at the ground level of the project.

Staff believes the project meets this criteria.

Criteria #14 - ARCHITECTURAL QUALITY	Conformance
Utility, power and communication lines within the development site are concealed from public view where feasible.	YES

Analysis: Per the conditions of approval of the CUP, the applicant worked with Idaho Power to underground not only the power lines within the development site, but power lines that service properties further south. The applicant paid for the undergrounding of power lines along Hwy 75 and N Leadville Ave to Gem Street. The work was completed in 2019 and no above ground power lines exist today. All lines related to utilities and communication are underground and will be pulled from in street locations on Hwy 75, River St., or N Leadville Ave. An above ground transformer is being proposed on N Leadville Ave, however is screened with a horizontal wood slat fence.

Staff believes the project meets this criteria.

Criteria #15 - ARCHITECTURAL QUALITY	Conformance
Door swings shall not obstruct or conflict with pedestrian traffic.	YES

Analysis: Most entry doors are sliding doors. Doors that open outward do not extend onto public sidewalks. Doors shall be pursuant to International Building Code requirements.

Criteria #16 - ARCHITECTURAL QUALITY	Conformance
Building design should include weather protection which prevents water to drip or snow to slide on areas where pedestrians gather and circulate or to adjacent properties.	YES

Analysis: All proposed roofs are either flat or with a reverse pitch. These types of roof forms do not require additional snow retention devices to be placed, however, the roof drainage must be adequate to manage stormwater runoff. The project proposes a series of roof drains that connect to on-site stormwater management. The most heavily trafficked pedestrian area is the front of the hotel on River Street which is mostly protected by a large projecting port cochere with a reverse pitch to the building. Any buildup of snow on flat roofs creating a cornice must be managed by the property owner as to ensure no falling of ice and snow will occur over pedestrian walkways or gathering areas.

Staff believes the project meets this criteria.

Criteria #17 - ARCHITECTURAL QUALITY	Conformance
Exterior siding materials shall be of natural wood or masonry origin or similar quality. Metal siding is discouraged in all zoning districts.	YES

Analysis: Although staff has expressed concerns related to the proposed color palette in relation to architectural features, the materials proposed are of a natural wood and masonry. The original approval included the use of metal paneling as noted in the 2008 Findings. The current project continues the use of non-reflective metal siding, however, alternative color tones have been requested.

As the use of metal paneling was approved in 2008, staff believes the current proposal meets this criteria.

Criteria #18 - CIRCULATION DESIGN:	Conformance
Pedestrian, equestrian and bicycle access which is adequate to satisfy demands relative to development size shall be provided. These accesses shall be located to connect with existing and anticipated easements and pathways.	YES

Analysis: No changes to the required sidewalks are being proposed with the project with the exception of Hwy 75 where the width increases to 8 feet on the northern end of the property. The Idaho Transportation Department is working with the City of Ketchum for the reconstruction of Hwy 75 which will include one through lane, one left turn lane, a bike lane, and sidewalks on the east side of the road. The sidewalk will extend to the southern end of the property and connect with future sidewalk proposed on the east side of Hwy 75 through the Gem Streets.

Final locations of bicycle racks will be reviewed and approved by the City Engineer prior to approval of the amended encroachment agreement and prior to issuance of a building permit for the project. Staff believes the project meets the criteria.

Criteria #19 - CIRCULATION DESIGN:	Conformance
The building(s) is primarily accessed from the public sidewalk for the majority of the individual uses proposed. It is the intent to promote exterior circulation with numerous connections to the public sidewalk and exposure to the street. This includes utilizing arcades, courtyards and through block connections.	YES

Analysis: The proposed building is accessed directly from the public sidewalks on both Main Street and River Street. There are multiple entrances accessing key interior uses such as the restaurant, retail/bakery, and hotel lobby. The project also provides a public pedestrian connection from Hwy 75 to the rear of the property, connecting to the pool/jacuzzi deck and plaza area and the public access to Trail Creek.

Staff believes the project meets the criteria.

Criteria #20 - CIRCULATION DESIGN:	Conformance
Traffic shall flow safely within the project and onto adjacent streets. Traffic includes vehicle, bicycle, pedestrian and equestrian use. Consideration shall be given to adequate sight distances and proper signage.	YES

Analysis: Traffic circulation will be primarily within the three public streets and along public sidewalks fronting the building. A motor court separated from River Street by a landscaped island is proposed for drop-offs and those checking in. The entrance to the hotel garage is on the N Leadville Ave side of the project and provides forward movement entrance and exit to the hotel. The garbage and service bay is also accessed from N Leadville Ave with an approved backup turn movement to access this portion of the building. The original approval required snowmelt of N Leadville Ave not only to manage drainage concerns, but to address site distance and stopping concerns related to vehicle travel in the winter months. The proposed project remains committed to snow melting N Leadville Ave and therefore no changes to the underlying circulation assumptions are being requested.

Staff has provided comments in the staff report regarding site distance concerns at the corner of Hwy 75 and River Street related to a revised design of the Gateway Plaza. Please see the staff report dated December 7, 2022 for that discussion. Once the applicant has addressed site distance concerns related the Gateway Plaza, staff believes the project to be in conformance with the criteria.

Criteria #21 - CIRCULATION DESIGN:	Conformance
Parking areas have functional aisle dimensions, backup space and turning radius.	YES

Analysis: The underground parking areas have 24-foot aisle widths in all locations with all parking accommodated in designated parking spaces. No valet parking is permitted that will reduce the size of the drive aisles to less than 24 feet as required.

Staff believes the project is in conformance with the criteria.

Criteria #22 - CIRCULATION DESIGN:	Conformance
Location of parking areas is designed for minimum adverse impact upon living areas within the proposed development and minimizes adverse impact upon adjacent properties with regard to noise, lights and visual impact.	YES

Analysis: All parking areas are within the building except for four on street parking spaces on River Street. The entrance and exit of the parking garage is on the N Leadville Ave side of the project, across from existing residential uses. Both the garage and service bay have roll-up doors that will open and close automatically to reduce the amount of light from vehicles impacting adjacent properties. The location of the garage and service bays have not moved nor have been altered following the original approval.

As no changes are being proposed to the location or configuration of the parking garage and service entrance, staff believes the project to be in conformance with the criteria.

Criteria #23 - CIRCULATION DESIGN:	Conformance
Curb cuts are located away from major intersections and off high volume roadways where possible.	YES

Analysis: Curb cuts are located on River Street and Leadville Avenue. The curb cuts on River are 72 feet from Main Street and 52 feet from Leadville Avenue intersection centerlines. No changes to approved curb cuts are being proposed or requested with the current application.

Staff believes the project to be in conformance with this criteria.

Criteria #24 - CIRCULATION DESIGN:	Conformance
Adequate unobstructed access for emergency vehicles, snow plows, garbage trucks and similar service vehicles to all necessary locations within the proposed project is provided.	YES

Analysis: Emergency vehicles and snow plows will utilize the city streets. As noted above, a large portion of N Leadville Ave will be snow melted which will minimize snow plowing in that area. Garbage trucks and service and delivery vehicles will enter the underground parking and loading area directly from Leadville Avenue. The current application is required to meet all requirements for the 2018 building and fire codes which require additional ingress and egress for emergency

purposes. Final review of the amended encroachment agreement and compliance with applicable building and fire codes will be completed at the time of building permit review.

Staff believes the project to be in conformance with the criteria.

Criteria #25 - CIRCULATION DESIGN:	Conformance
The project is designed so as to provide adequate snow storage areas or removal for snow cleared from the parking areas and roadways within the project. (50 percent).	YES

Analysis: No snow removal areas are needed because on-site parking is underground, and all sidewalks and the motor court at the hotel’s main entrance are to have a snow-melt system. No changes to the proposed snow melt system are being proposed or requested with the current application.

Staff believes the project is in conformance with the criteria.

Criteria #26 - LANDSCAPE QUALITY:	Conformance
Substantial landscaping is to be provided, which is in scale with the development and which provides relief from and screening of hard surfaces. Total building surface area and street frontage will be considered when determining whether substantial landscape is being provided. (Landscaping shall be defined as trees, shrubs, planters, hanging plants, ground cover and other living vegetation).	NO

Analysis: Please see staff report dated December 7, 2022.

Criteria #27 - LANDSCAPE QUALITY:	Conformance
Landscape materials and vegetation types specified shall be readily adaptable to a site’s microclimate, soil conditions, orientation and aspect, and shall serve to enhance and compliment the neighborhood and townscape. Consideration should be given to the use of native, drought-resistant plant materials.	NO

Analysis: A revised landscape plan has been provided with the current application. Although staff agrees that the planting plan is adaptable to the site’s microclimate, staff has concerns about the proposed plan and how it complements the neighborhood and townscape particularly on the Hwy 75 side of the project. It is important to note that the proposed riparian restoration plan including proposed plantings is not being revised with the current application. Staff believes that if the project is found to be in conformance with criteria #26, this criteria will be met as well.

Criteria #28 - LANDSCAPE QUALITY:	Conformance
<i>The preservation of existing significant trees, shrubs and important landscape features (mapped in accordance with Site Design, Paragraph 1) shall be encouraged.</i>	YES

Analysis: The approved project included the preservation of eighteen (18) trees, seven (7) of which were considered resource trees, to be preserved in their current location. Two other trees were to be transplanted. The construction mitigation plan evaluated in 2016 noted preservation of the identified trees, which remain on site today. No changes to the tree preservation plan are being proposed and future construction activities must demonstrate adequate preservation of trees and surrounding riparian area.

Staff believes the project to be in conformance with this criteria.

Criteria #29 - LANDSCAPE QUALITY:	Conformance
<i>Landscaping shall provide a substantial buffer between land uses, including, but not limited to, structures, streets and parking lots. The development of landscaped public courtyards, including trees and shrubs where appropriate shall be encouraged.</i>	NO

Analysis: Please see staff report dated December 7, 2022.

Criteria #30 - ENERGY DESIGN:	Conformance
<i>Consideration shall be given to proper solar orientation within the project. Recognition shall be given to the solar benefits of adjoining properties. (A sun chart as a means of understanding the solar possibilities and limitations shall be encouraged)</i>	YES

Analysis: A solar study was provided to inform the original approval. The hotel's courtyard is sunny except for certain afternoon hours in autumn, winter and spring. Solar access for Kentwood Lodge and 200 South Leadville Townhomes is affected at certain times of day particularly in the winter. Leadville Avenue is also shaded much of the day in winter; the applicant is proposing to provide a snow melt system for a portion of Leadville. Ultimately, the project was approved with the understanding that a building built per the by-right allowances of the zoning regulations would have the same impact as the building proposed and therefore additional height waivers were provided. No changes to the approved height waivers are being requested therefore no changes to the project's conformance with this criteria are occurring with the current application.

Staff believes the project remains in conformance with this criteria.

Criteria #31 - PUBLIC AMENITIES:	Conformance
Pedestrian amenities are encouraged for all projects and shall be required for commercial uses. Amenities may include, but are not limited to benches and other seating, kiosks, telephone booths, bus shelters, trash receptacles, restrooms, fountains, art, etc. The use of “Ketchum Streetscape Standards” shall be encouraged.	NO

Analysis: Please see staff report dated December 7, 2022.

Criteria #32 - GREEN BUILDING:	Conformance
Consideration shall be given to green building features within the project. Recognition shall be given to projects that achieve the United States Green Building Council’s LEED Certification or earn the Environmental Protection Agency’s Energy Star Label. Projects are encouraged to consider energy conservation, indoor air quality, water use, location, waste reduction, recycling and use of sustainable construction materials.	YES

Analysis: The approved project did not require or indicate pursuit of a LEED certification, but committed to employing the following:

- Utilization of construction methods to control dust, pollution, erosion and contamination.
- Access to public transportation. Bicycle storage.
- Trail Creek habitats actively protected and restored.
- Roofing and site paving of low reflectance and pervious nature where feasible to minimize “heat island” effect.
- Energy systems designed for high efficiency and optimal energy performance. E.g. snowmelt heat rejection design.
- High standards of materials utilization for thermal insulation, use of recycled content, regional materials, low embodied energy in production.
- Implementation of active reuse, recycling and waste management programs.
- Specification of materials with low VOC, offgassing and indoor pollutance.
- Provision of individually monitored lighting and thermal comfort control system.

At the time of the initial approval, the city had not adopted the Green Building Code standards we have today. The project will need to comply with the city’s green building standards for the residential portions of the project and meet the 2018 International Energy Code Council (IECC) requirements for new construction. These current requirements are above and beyond what was recommended and required at the time of the original approval.

Staff believes the project meets this criteria.

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

SECOND AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT (“**Second Amendment**”) is dated for reference purposes this ____ day of _____, 2022, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation (“**Ketchum**” or “**City**”) and HARRIMAN KETCHUM HOTEL, LLC, an Idaho limited liability company (“**Owner**”, and together with the City, the “**Parties**”).

RECITALS

- A. Ketchum is a municipal corporation possessing all powers granted to municipalities under the applicable provisions of the Idaho Code, including the power to grant conditional use permits, approve planned unit developments, subdivide real property and the power to contract.
- B. Owner owns the real property situated in the State of Idaho, County of Blaine, commonly known as 300 River Street East, Ketchum, Idaho and more particularly described as Lot 2, Block 83 of the City of Ketchum, according to the plat thereof on file in the office of the County Recorder of Blaine County, Idaho under Instrument No. 210798 (“**Property**”).
- C. Owner’s predecessor in interest to the Property (“**Original Owner**”) entered into an Amended and Restated Development Agreement, dated October 5, 2015 (“**Development Agreement**”) and recorded in the records of Blaine County, Idaho as Instrument No. 630816, as corrected and amended by Instruments recorded as Nos. 635897 and 652281, respectively under and by virtue of which Ketchum issued a Planned Unit Development Conditional Use Permit (“**CUP**”) to develop and operate a Hotel on the Property (“**Project**”) and a building permit to construct certain Project improvements (“**Building Permit**” and together with the Development Agreement, CUP, Design Review, and Encroachment Agreement, the “**Entitlements**”).
- D. As an incident of the Project Original Owner and City entered into an agreement providing for reclamation of the Property in the event the Project did not proceed which agreement included a bond bearing number 2416447 issued in the amount of \$452,928 issued by Great American Insurance Company (“**Bond**”).

E. A dispute arose between Ketchum and the Original Owner regarding performance of obligations under the Development Agreement resulting in Ketchum declaring a breach of the Development Agreement, purporting to revoke all of the Entitlements and making a claim against the Bond. The Original Owner disputed Ketchum's claims and asserted breach of contract and tort claims against Ketchum.

F. Ketchum and the Original Owner entered into a Settlement Agreement dated June 24, 2022, and recorded in the records of Blaine County, Idaho as Instrument No. 694658 under and by virtue of which the parties settled their dispute and released all claims and Ketchum reinstated the Development Agreement and all the Entitlements, and released and terminated the Bond. The Settlement Agreement provides replacement alternatives to the Bond for securing restoration of the Property as may be required.

G. Owner has applied to change certain aspects of the Project including the square footage and layout of certain uses internal to the building, the number and size of the condominium units, addition of lock-offs to the condominium units, and adjustments to the proposed right-of-way improvements. The Project proposed, as shown in the project plans dated September 21, 2022, consists of 73 hotel rooms and 12 condominium units, 6 of which have lock-offs, and associated hotel uses as outlined in Table ____ of the Design Review Findings of Fact, Conclusions of Law, and Decision dated _____.

H. Ketchum received a Design Review application from Owner to amend Design Review application (File No. 08-007) reinstated per the terms of the Settlement Agreement. Said amendment was reviewed, considered, and approved by the Planning and Zoning Commission on _____.

I. Owner and Ketchum desire to amend and supplement the Development Agreement as provided in this Second Amendment to ensure the Project complies with all applicable conditions of approval contained in the Entitlements and that the Second Amendment reflects the Project as currently proposed. For absence of doubt, Owner and Ketchum acknowledge that this Second Amendment is not intended in any way to undermine, change or limit the reinstatement of the Entitlements that the Parties agreed to and approved in the Settlement Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises, agreements, terms and conditions set forth herein, the Parties agree to amend and supplement the Agreement 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. Section 2 (Incorporation of Related Agreements, Approvals, Plans, Permits and other documents) is deleted and the following substituted therefore:

The following agreements, approvals, plans, permits and other documents are hereby incorporated into and made an integral part of this Agreement by reference as if stated herein in full:

- PUD CUP Findings of Fact, Conclusions of Law and Decision, including all conditions of approval, dated November 17, 2008, or as amended from time to time. Conditions of approval are excerpted in Exhibit A.
- PUD CUP No. 08-007 dated November 17, 2008, or as amended from time to time.
- PUD Development Plans referenced in the PUD CUP Findings of Fact, Conclusions of Law and Decision, or as amended from time to time.
- Design Review Findings of Fact, Conclusions of Law and Decision, including all conditions of approval, dated _____, or as amended from time to time.
- Site Plan No. _____, showing both on-site and off-site improvements, which off-site improvements may be amended to meet final right-of-way improvement design approvals, or as amended from time to time.

Any material failure to comply with the terms and conditions of any of the above-referenced agreements, approvals, plans, permits and other documents after written notice and opportunity to cure, shall constitute a breach of this Agreement.

In the event of any inconsistency between the terms and conditions of this Second Amendment and the agreements, approvals, plans, permits and other documents listed above, the terms and conditions of this Second Amendment, shall govern.

Except as provided otherwise in this Second Amendment, 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 Effective Date of the Development Agreement. Any amendments or additions made during the term of this Second Amendment to City policies, procedures, guidelines, ordinances, codes or regulations shall not apply to or affect the conditions of development of the Project; provided, however, the following are exempt from vesting under this Second Amendment:

- i) plan review fees and inspection fees (to the extent not previously paid by Owner);
- ii) amendments to building, plumbing, fire and other construction codes;
- iii) City enactments that are adopted pursuant to State or federal mandates that preempt the City's authority to vest regulations.

Owner may request to be bound by future amendments to the Ketchum Municipal Code, or other regulations, policies or guidelines affecting development, and such request may be approved administratively provided no new land use not allowed under this Second Amendment and no increase in total square footage of structures to be developed is proposed. In all other instances, the request to be bound by future amendment(s) shall be approved by the Council in the form of an amendment to this Second Amendment.

Any application for a building permit submitted by Owner shall substantially comply with the requirements of the above-referenced applicable codes, agreements, approvals, plans, permits and other documents as such requirements exist on the day the building permit application is submitted. A complete Building Permit Application showing compliance with all adopted codes referenced in Title 15 of the Ketchum Municipal Code and applicable fees (net of previously paid fees, as described below) shall be submitted to the City no later than six months after the city's final approval of the 2022 Design Review application and Development Agreement amendment application, A Certificate of Occupancy shall be issued for the Project no later than 41 months after the date of Building Permit issuance.

If a building permit application contains material deviations from the above-referenced applicable codes, agreements, approvals, plans, permits and other documents an amendment to this Second Amendment must be applied for by Owner and considered by the City Council. If such amendment is approved by City Council, one or more approvals referenced in Section 2 may be subject to amendment. A new or amended building permit may be required to reflect the changes made to the approvals in Section 2.

Ketchum acknowledges and agrees that Owner has paid the following fees and shall receive credit toward any additional fees or costs for the full amount of the fees paid.

- \$440,734 for impact fees
- \$1,072,940 for in-lieu housing fees for 27,370.91 net residential square feet
- \$ _____ for building permit fees paid for the permit issued July 6, 2016

Section 3 (Hotel Uses and Restrictions) is deleted and the following substituted therefore:

Owner may use the Property as a "Hotel" as defined in KMC 17.08.020 as that section existed at the time of the Development Agreement and for private residential uses. The following units and any residential owner storage, designated and assigned reserved parking spaces in the underground garage or limited common area associated with such units may be used as either private residential units by their owners, or as a "Hotel" rental unit if eligible for inclusion into the voluntary residential condominium rental program:

- 12 residential units, 6 of which have lock-offs rooms, located on the third and fourth floors of the Project as shown by the Design Review project plans filed with the City dated September 21, 2022.

Residential Condominium Rental Program: The operator and manager of the hotel contracted by the Owner of the Property ("**Hotel Operator**") shall implement and maintain a voluntary rental program for the purpose of managing, operating, and marketing of the rental of the 12 residential condominium units and 6 lock-offs rooms as shown in the project plans. Each residential unit owner may at his or her discretion place his or her residential unit in the voluntary Residential Condominium Rental Program the terms and conditions of which shall substantially conform to the provisions set forth in Exhibit B, attached hereto and incorporated herein by reference.

Prior to issuance of a Certificate of Occupancy for the Project, the Hotel Operator shall provide the City Planning Director with a redacted and confidential, to the extent reasonably necessary to protect trade secrets or proprietary information, copy of the Hotel Management Agreement between the Hotel Operator and Owner to substantiate the existence of the voluntary rental program consistent with Exhibit B and providing the Hotel Operator with the exclusive right to manage the voluntary Residential Condominium Rental program.

All other units and space on the Property and in the improvements constructed thereon shall be used exclusively as a "Hotel". The following are acknowledged as allowable accessory uses of the Property: conference and banquet facilities, kitchen, restaurant and bar areas, outdoor seating and dining, swimming pool, fitness facilities, retail and spa/salon uses, bakery, back-of-house administrative offices and housekeeping uses, and an observatory and exterior deck on the fifth floor as further detailed in Table ___ of the Design Review Findings of Fact, Conclusions of Law, and Decision and shown on the design review project plans dated September 21, 2022. Owner agrees that this Second Amendment specifically allows only the uses set forth above and those incidental to the permitted and accessory uses and no others. Owner shall not be obligated to use the Property for all permitted or accessory uses. Owner may not substantially change or expand on the uses of the Property and improvements thereon specified in this Second Amendment without the prior written approval of City which approval shall not be unreasonably withheld, conditioned or delayed. Any substantial changes or expansions in the uses permitted by this Second Amendment without such prior written consent and formal modification of this Agreement as allowed by applicable law shall after written notice and opportunity to cure constitute a breach of this Agreement.

Section 7 (Construction and Completion Schedule) is deleted and the following substituted therefore:

Improvements shall be constructed and substantially completed pursuant to the following schedule:

- A Construction Mitigation Plan shall be provided with application for building permit within 6 months after final approvals of the 2022 Design Review application and Development Agreement amendment application.
- City will provide comments within 20 working days of the building permit being deemed complete and all applicable fees paid.
- Owner shall submit revised plans, addressing all comments from City, within 20 working days of receipt of comments.
- Subsequent City review comments and Owner responses/revisions will respectively occur within 10 days of the previous action.
- Prior to issuance of a building permit by City, Owner must secure an encroachment permit from ITD for any and all improvements within the Hwy 75 ITD right-of-way
- City will issue a building permit within 7 days of resolution of all City comments and payment of any remaining applicable fees.
- Construction shall commence upon the later of May 1, 2023 or 5 months after issuance of the building permit.

- A Certificate of Occupancy shall be issued for the Project no later than 41 months after the Building Permit is issued.

Section 12 (Employee Housing) is deleted and the following substituted therefore:

Owner agrees to provide 18 Employee Housing beds as provided by Ketchum Municipal Code and as set forth in the Revised Employee Housing Plan dated _____ approved by the City on _____ (Exhibit “C”). All required employee housing shall be available prior to any certificate of occupancy for the Property.

Section 13 (Condominium Plat) is deleted and the following substituted therefore:

City agrees to accept and process applications for condominium preliminary and final plat approval prior to issuance of a Certificate of Occupancy of the Project, pursuant to KMC 16.04.070, to allow for financing of the improvements and individual sale of private residential units. An application for preliminary plat approval for the Project, including a declaration of covenants, conditions and restrictions (“**Declaration**”) will be made by Owner within 60 calendar days after issuance of the building permit. An application for final plat approval will be submitted 60 or more days prior to the request for a Certificate of Occupancy for the Project. The condominium final plat must be approved by the City prior to recording. The individual Residential Condominium units and the Hotel commercial and/or common and/or limited common area units shall be use restricted through the Declaration.

A new section to be designated as 21 (Off-site Improvements) is added as follows:

Prior to issuance of the building permit, Owner will provide to the Planning Director a written agreement, with applicable diagrams illustrating proposed improvements, the owners of 220 S. Leadville and 400 E River Street, evidencing their acceptance of Owner’s proposal for resolving their landscaping and screening concerns as were noted and conditioned in the CUP. This submission will be timely reviewed and approved by the Planning Director for verification it resolves the CUP condition, which such approval will not be unreasonably withheld or delayed.

A new section to be designated as 22 (Financial Capability) is added as follows:

It is a condition of this Second Amendment that the proof of financing and financial capability to complete the project is a standing condition of the Development Agreement, and such condition will continue in force until substantial completion of construction.

A new section to be designated as 23 (Default and Restoration) is added as follows:

Provided Ketchum is not in default of its obligations hereunder, if Owner defaults in performance of any of its obligations hereunder prior to commencement of construction and the default continues for 60 days after receipt by Owner of Ketchum’s written notice of default, Owner agrees to reclaim the Property and restore it to the same or better condition as specified in the Reclamation Plan previously prepared, agreed to, and made a part of the Development Agreement. To secure Owner’s obligation hereunder, Owner shall obtain for Ketchum’s benefit an irrevocable stand-by letter of credit issued by a bank authorized to transact business in the state of Idaho in the amount of one hundred twenty-five percent of the estimated cost of

reclamation or shall provide some other form of security reasonably acceptable to Ketchum. The security, in whatever form, may be requested by Owner for release, partially or in full, with approval by City, not to be unreasonably withheld, if justified by substantial progress toward completion of construction in accordance with the following schedule: one half upon completion of the foundation stem walls and one half upon completion of framing.

9. 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 Second Amendment 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 Second Amendment 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 Second Amendment, in addition to all other remedies at law or in equity, this Second Amendment 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 Second Amendment, 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 Second Amendment 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: Morgan Landers, Planning Director
Telephone: 208.726.7801
Email: mlanders@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

with copies to:

Harriman SV Properties, LLC
Attn. Andy Blank, Manager
3455 NW 54th Street
Miami, FL 33142-33009

Alyse Blank
745 N Alta Vista Blvd
Los Angeles, CA 90046
avblank@archiveamerica.com

Justin C. Jones
Justin C. Jones, LLM, P.C.
Post Office Box 487
182 Lopez Road, Suite C
Lopez Island, WA 98261
Telephone: 360. 378.4450

Lawson Laski Clark, 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

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 Second Amendment is intended by Owner to be considered by Ketchum as part of Owner's application for a modification of the existing design review approval and building permits for the Project. Owner acknowledges and intends the City to consider and rely upon this Second Amendment in its review and consideration of said applications.

g) Relationship of Parties. It is understood that the contractual relationship between Ketchum and Owner is such that neither party is the agent, partner, or joint venturer of the other party. The Parties agree at all times to cooperate with each other and exercise good faith to achieve the purposes of this Second Amendment. In the event any legal or equitable action or other proceeding is instituted by a third party or other governmental entity or official challenging the validity of any provision of Ketchum's approval and/or implementation of this Second Amendment or the Entitlements, the Parties agree to reasonably cooperate in and communicate regarding respective or joint plans defending such action or proceeding.

h) Successors and Assigns; Covenant Running With the Land. This Second Amendment shall inure to the benefit of City and Owner and their respective heirs, successors and assigns. This Second Amendment 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.

i) Recordation and Release. This Second Amendment shall be recorded with the Blaine County Recorder. City agrees 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 Second Amendment, 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 Second Amendment shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Second Amendment with regard to any subsequent default or breach.

k) Partial Invalidity. In the event any portion of this Second Amendment, or part hereof, shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions of this Second Amendment, 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 Second Amendment and the Settlement Agreement constitute 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 Second Amendment by reference, whether or not actually attached.

n) Authority. Each of the persons executing this Second Amendment represents and warrants that he or she has the lawful authority and authorization to execute this Second

Amendment, as well as all deeds, easements, liens and other documents required hereunder, for and on behalf of the entity executing this Second Amendment.

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

p) Choice of Law. This Second Amendment 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 Second Amendment or the subject matter hereof.

[end of text – signatures appear on following page]

DRAFT

SIGNATURE PAGE

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

Harriman Ketchum Hotel, LLC, an Idaho limited liability company

City of Ketchum, Idaho, a municipal corporation

By: _____
Name:
Title:

By: _____
Neil Bradshaw, Mayor

Attest: _____
Trent Donat, City Clerk

DRAFT

FW: Appellation Hotel (formerly Harriman Hotel) Public Hearing Comments

Heather Nicolai <HNicolai@ketchumidaho.org>

Tue 12/6/2022 5:23 PM

To: Morgan Landers <MLanders@ketchumidaho.org>

Cc: Suzanne Frick <sfrick@ketchumidaho.org>; Heather Nicolai <HNicolai@ketchumidaho.org>

Morgan – PC on Appellation.

Heather

Sent from [Mail](#) for Windows

From: [Participate](#)

Sent: Tuesday, December 6, 2022 4:21 PM

To: [Heather Nicolai](#)

Subject: FW: Appellation Hotel (formerly Harriman Hotel) Public Hearing Comments

Public comment.

LISA ENOURATO | CITY OF KETCHUM

Public Affairs & Administrative Services Manager

P.O. Box 2315 | 191 Fifth St. W. | Ketchum, ID 83340

o: 208.726.7803 | f: 208.726.7812

lenourato@ketchumidaho.org | www.ketchumidaho.org

From: Carolyn Coiner <cbcoiner@gmail.com>

Sent: Tuesday, December 6, 2022 2:34 PM

To: Participate <participate@ketchumidaho.org>

Subject: Appellation Hotel (formerly Harriman Hotel) Public Hearing Comments

City of Ketchum

Planning and Zoning

We own and live full time in a townhouse directly across the street to the west from the proposed project.

We would like to comment on the following items in the Design Review Amendment:

1. We would like to see more year round screening on the west side of the proposed hotel. Currently the landscape plan shows primarily deciduous trees and grasses. We would like to have evergreen trees used to provide year round screening for our property and larger shrubs and trees rather than just low grasses.
2. We are concerned with the height of the east rooftop mechanical structures which seem to be larger and more extensive than the original plan. The location of these structures will be the equivalent of adding another floor to the building from our vantage point and will cut off any remaining views of the mountain we will have to the west.
3. We understand that Leadville Ave adjacent to the project will be regraded to allow for the egress/exit for the parking and delivery area under the building, and Leadville will then be repaved with pavers and a snowmelt system. We have an ongoing problem at the corner of our property at Leadville and River Streets. The snow is plowed from both streets and ends up blocking our driveway multiple times during the winter.

We are requesting the pavers and snowmelt system be extended to the end of our property on River St as per the amenities agreement we have with the developer, titled "Hotel Ketchum Amenities Agreement".

4. We prefer that there be no balconies with access on the east side of the hotel facing our townhome due to concern with noise from guests on outside spaces directly across from our home. We do not have air conditioning and noise from these spaces could be very disturbing in the summer months with our open windows.

5. We request that service delivery times be restricted to 8am - 7pm due to the disruption of service and garbage trucks back up alarms early in the morning directly across from our home.

Thank you for your consideration,
Carolyn and Charles Coiner
400 W River Street
Ketchum, ID 83340