

- LEGEND**
- Property Boundary
  - Zoning Boundary
  - LR Limited Residential District
  - CC Community Core
  - T Tourist District
  - GR-L General Residential District - Low Density

NO	DATE	BY	REVISIONS
1	11/17/07	JBZ	ISSUE FOR DESIGN
2	01/10/08	JBZ	ISSUE FOR DESIGN REVIEW

**GALENA ENGINEERING, INC.**  
 Civil Engineers & Land Surveyors  
 650 Second Avenue North  
 P.O. Box 425  
 Ketchum, Idaho 83340  
 (208) 726-4723  
 (208) 726-4783 fax  
 email galena@galena-engineering.com

**NOT FOR CONSTRUCTION**

**REUSE OF DRAWINGS**  
 If these drawings are used for a project, extension of this project or any other project, the user must obtain the permission of the original author, Galena Engineering, Inc.

JBZ	01/10/08	DATE
CSK/PCD/SV	DATE	
SMF	01/10/08	DATE
SWW/SV	DATE	
JBZ	01/10/08	DATE
CSK/PCD/SV	DATE	

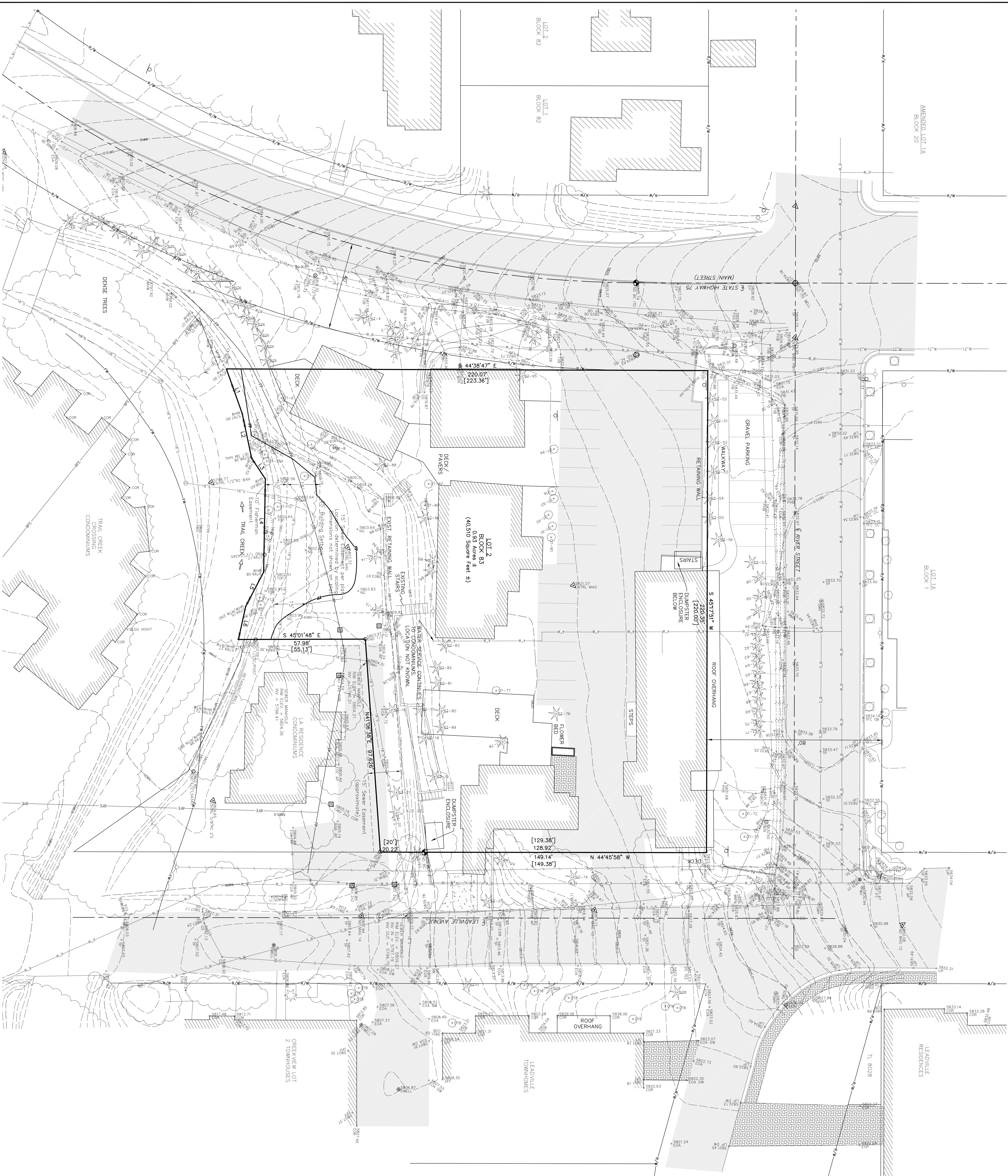
VICINITY AND ZONING MAP

# HOTEL KETCHUM

WITHIN SECTION 18, T.4N., R.18E., B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO  
 PREPARED FOR TRAIL CREEK FUND, LLC

P:\S05KPROJ\6560\dwg\6560-topo.dwg 4/3/2008 9:30:54 AM MDT

SHT 1 OF 4



AMENDED LOT 1A  
BLOCK 20

LOT 1A  
BLOCK 1

LEADVILLE  
RESIDENCES

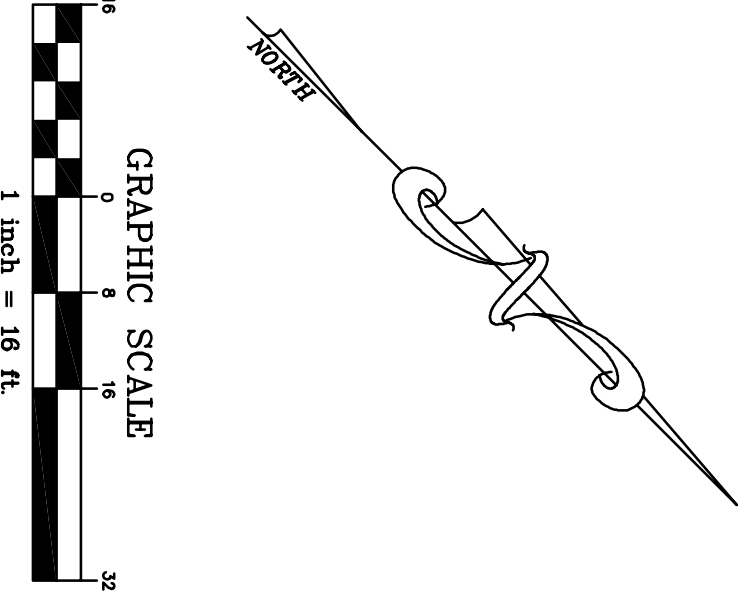
LEADVILLE  
TOWNHOMES

LEADVILLE  
RESIDENCES

**LEGEND**  
 Property Line  
 Adjoining Lot Line  
 Right-of-Way Line  
 Existing Curbs and Gutters  
 Fence Line  
 Overhead Power Line  
 PB = Underground Power Line  
 PH = Telephone Line  
 FO = Fiber Optic Line  
 TV = Television Line  
 GS = Gas Service  
 GS = Gas Main  
 Existing 2" Water Line  
 Existing 4" Water Line  
 Existing 6" Water Line  
 Existing 8" Water Line  
 Existing 12" Water Line  
 Existing 18" Sewer Line  
 Existing 24" Sewer Line  
 Existing 36" Sewer Line  
 Edge of Slope  
 5' Existing Contour Interval  
 1' Existing Contour Interval  
 MHW = Mean High Water  
 Edge of Water  
 Floodplain Line per onsite study  
 Floodplain Line per FEMA FIRMA panel  
 Floodplain Line per FEMA FIRMA panel  
 Base Flood Elevation per FEMA FIRMA panel  
 Vegetation Line  
 Existing Asphalt  
 Existing Building  
 Powers  
 Existing Concrete  
 Existing GMP Pipe  
 Found 5/8" Rebar  
 Found 1/2" Rebar  
 Survey Control Point  
 Found Brass Cap  
 DWELL = Existing Dry Well  
 W = Water Valve  
 PH = Fire Hydrant  
 Sign  
 PHEOX = Telephone Riser  
 PP = Utility Pole  
 GUY = Guy Wire  
 Light  
 PMTR = Power Meter  
 GS MTR = Gas Meter  
 SMH = Sewer Manhole  
 CMU = Concrete Masonry Unit  
 DT = Center Tree  
 DT = Deciduous Tree  
 198471 Record Boundary Information  
 85a Age of Asphalt  
 85b Grade Break  
 85c Point on Curve  
 85d Point on Tangent  
 85e Fog Line  
 85f Top of Pavement  
 85g Lip of Gutter  
 85h Contour  
 85i Gas Main  
 85j Edge of Concrete Retaining Wall  
 85k Control  
 85l Found  
 85m Brass Cap  
 85n Aluminum Cap  
 85o Red Cap  
 85p No Cap  
 85q Illegal Cap  
 85r Top Face of Curb  
 85s Garage Finished Floor  
 85t Existing Powers  
 85u Existing Powers  
 85v Natural Ground  
 85w Top of Slope  
 85x Top of Wall  
 TW

LINE	LENGTH	BEARING
L1	21.77'	N 25°41'16" E
L2	20.75'	N 33°14'52" E
L3	42.62'	N 45°31'56" E
L4	17.60'	S 72°43'59" W
L5	15.56'	S 57°37'08" W
L6		

**NOTES**  
 1) Utility locations are approximate and locations should be verified before any excavation.  
 2) This topographic survey is a compilation of an aerial survey performed by Benchmark and Associates in 1998 and field data furnished by Stano Engineering in November of 2007.



NO	DATE	BY	REVISIONS
1	11/17/07	JBZ	ISSUE FOR DESIGN
2	01/10/08	JBZ	ISSUE FOR DESIGN REVIEW

**GALENA ENGINEERING, INC.**  
 Civil Engineers & Land Surveyors  
 680 Second Avenue North  
 P.O. Box 425  
 Ketchum, Idaho 83340  
 (208) 726-4729  
 (208) 726-4783 fax  
 email: galena@galena-engineering.com

**NOT FOR CONSTRUCTION**

PROFESSIONAL ENGINEER  
 JAMES E. ZARUBKA  
 STATE OF IDAHO

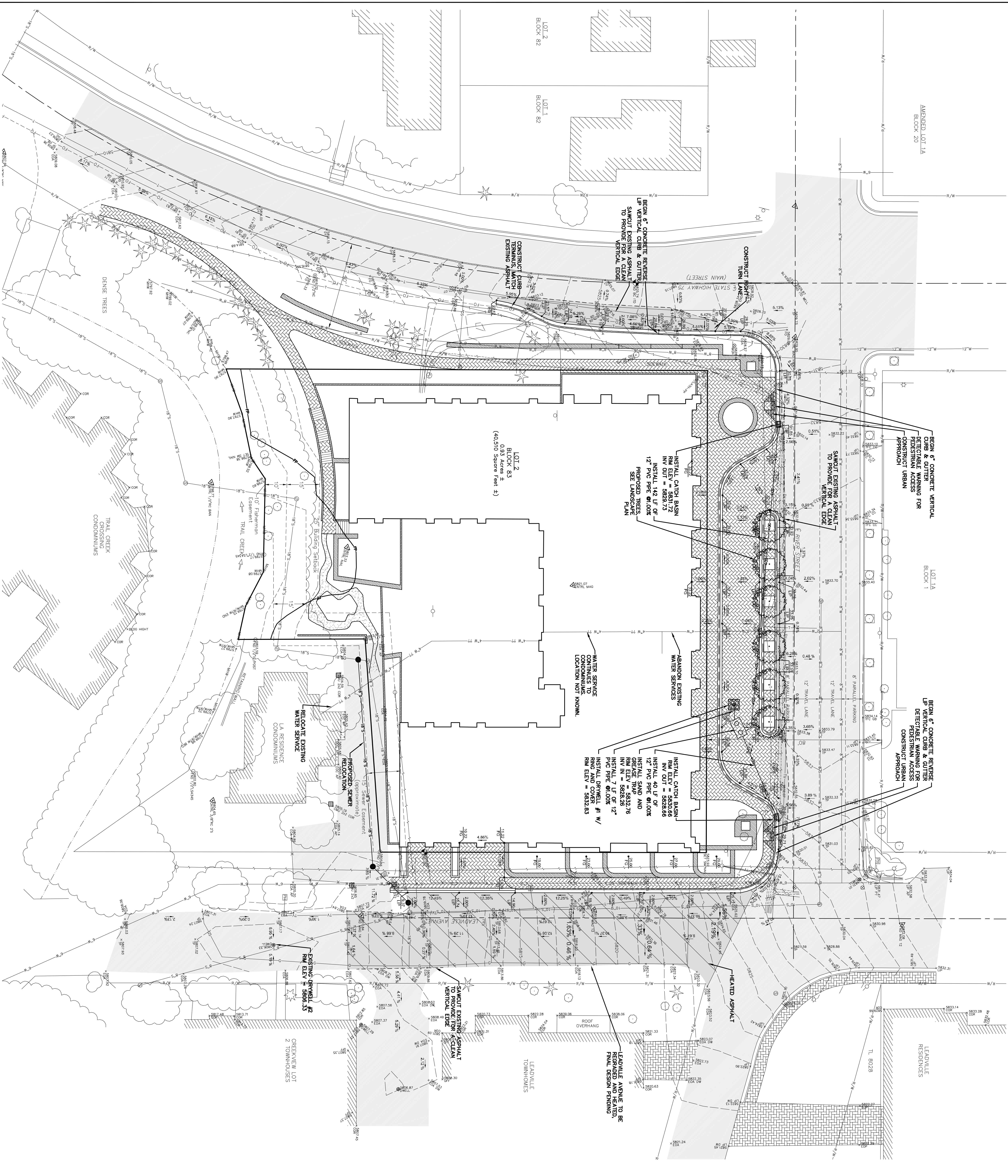
**REUSE OF DRAWINGS**  
 These drawings, or any portion thereof, shall not be used on any project or extension of this Project except by agreement in writing with Galena Engineering, Inc.

DESIGNED BY	DATE
JBZ	01/10/08
DRAWN BY	DATE
JBZ	01/10/08
CHECKED BY	DATE

**HOTEL KETCHUM**  
 EXISTING CONDITIONS  
 WITHIN SECTION 18, T.4N., R.18E., B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO  
 PREPARED FOR TRAIL CREEK FUND, LLC

PROJECT INFORMATION  
 P:\\_SDSKPROJ\6560\dwg\6560-topo.dwg 4/3/2008 9:25:13 AM MDT

SHT 2 OF 4

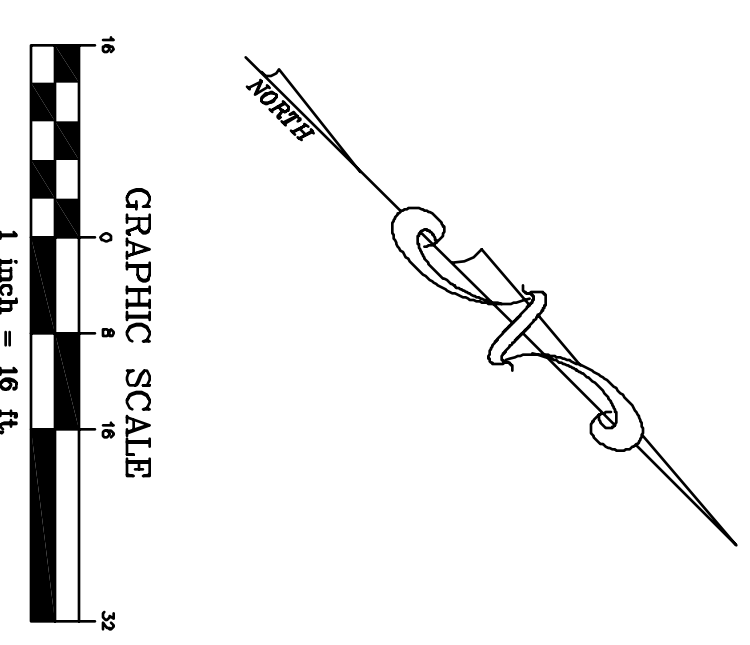


**LEGEND**

- Property Line
- Adjoiners Lot Line
- Right-of-way Line
- Centerline of Right-of-way
- Existing Curb and gutter
- Proposed Curb and gutter
- Proposed Power Line
- Proposed Sewer Line
- Proposed Gas Line
- Proposed Water Line
- Proposed 4" Water Line
- Proposed 6" Water Line
- Proposed 8" Water Line
- Proposed 10" Water Line
- Proposed 12" Water Line
- Proposed 14" Water Line
- Proposed 16" Water Line
- Proposed 18" Water Line
- Proposed 20" Water Line
- Proposed 24" Water Line
- Proposed 30" Water Line
- Proposed 36" Water Line
- Proposed 42" Water Line
- Proposed 48" Water Line
- Proposed 54" Water Line
- Proposed 60" Water Line
- Proposed 72" Water Line
- Proposed 84" Water Line
- Proposed 96" Water Line
- Proposed 108" Water Line
- Proposed 120" Water Line
- Proposed 132" Water Line
- Proposed 144" Water Line
- Proposed 156" Water Line
- Proposed 168" Water Line
- Proposed 180" Water Line
- Proposed 192" Water Line
- Proposed 204" Water Line
- Proposed 216" Water Line
- Proposed 228" Water Line
- Proposed 240" Water Line
- Proposed 252" Water Line
- Proposed 264" Water Line
- Proposed 276" Water Line
- Proposed 288" Water Line
- Proposed 300" Water Line
- Proposed 312" Water Line
- Proposed 324" Water Line
- Proposed 336" Water Line
- Proposed 348" Water Line
- Proposed 360" Water Line
- Proposed 372" Water Line
- Proposed 384" Water Line
- Proposed 396" Water Line
- Proposed 408" Water Line
- Proposed 420" Water Line
- Proposed 432" Water Line
- Proposed 444" Water Line
- Proposed 456" Water Line
- Proposed 468" Water Line
- Proposed 480" Water Line
- Proposed 492" Water Line
- Proposed 504" Water Line
- Proposed 516" Water Line
- Proposed 528" Water Line
- Proposed 540" Water Line
- Proposed 552" Water Line
- Proposed 564" Water Line
- Proposed 576" Water Line
- Proposed 588" Water Line
- Proposed 600" Water Line
- Proposed 612" Water Line
- Proposed 624" Water Line
- Proposed 636" Water Line
- Proposed 648" Water Line
- Proposed 660" Water Line
- Proposed 672" Water Line
- Proposed 684" Water Line
- Proposed 696" Water Line
- Proposed 708" Water Line
- Proposed 720" Water Line
- Proposed 732" Water Line
- Proposed 744" Water Line
- Proposed 756" Water Line
- Proposed 768" Water Line
- Proposed 780" Water Line
- Proposed 792" Water Line
- Proposed 804" Water Line
- Proposed 816" Water Line
- Proposed 828" Water Line
- Proposed 840" Water Line
- Proposed 852" Water Line
- Proposed 864" Water Line
- Proposed 876" Water Line
- Proposed 888" Water Line
- Proposed 900" Water Line
- Proposed 912" Water Line
- Proposed 924" Water Line
- Proposed 936" Water Line
- Proposed 948" Water Line
- Proposed 960" Water Line
- Proposed 972" Water Line
- Proposed 984" Water Line
- Proposed 996" Water Line
- Proposed 1008" Water Line
- Proposed 1020" Water Line
- Proposed 1032" Water Line
- Proposed 1044" Water Line
- Proposed 1056" Water Line
- Proposed 1068" Water Line
- Proposed 1080" Water Line
- Proposed 1092" Water Line
- Proposed 1104" Water Line
- Proposed 1116" Water Line
- Proposed 1128" Water Line
- Proposed 1140" Water Line
- Proposed 1152" Water Line
- Proposed 1164" Water Line
- Proposed 1176" Water Line
- Proposed 1188" Water Line
- Proposed 1200" Water Line
- Proposed 1212" Water Line
- Proposed 1224" Water Line
- Proposed 1236" Water Line
- Proposed 1248" Water Line
- Proposed 1260" Water Line
- Proposed 1272" Water Line
- Proposed 1284" Water Line
- Proposed 1296" Water Line
- Proposed 1308" Water Line
- Proposed 1320" Water Line
- Proposed 1332" Water Line
- Proposed 1344" Water Line
- Proposed 1356" Water Line
- Proposed 1368" Water Line
- Proposed 1380" Water Line
- Proposed 1392" Water Line
- Proposed 1404" Water Line
- Proposed 1416" Water Line
- Proposed 1428" Water Line
- Proposed 1440" Water Line
- Proposed 1452" Water Line
- Proposed 1464" Water Line
- Proposed 1476" Water Line
- Proposed 1488" Water Line
- Proposed 1500" Water Line
- Proposed 1512" Water Line
- Proposed 1524" Water Line
- Proposed 1536" Water Line
- Proposed 1548" Water Line
- Proposed 1560" Water Line
- Proposed 1572" Water Line
- Proposed 1584" Water Line
- Proposed 1596" Water Line
- Proposed 1608" Water Line
- Proposed 1620" Water Line
- Proposed 1632" Water Line
- Proposed 1644" Water Line
- Proposed 1656" Water Line
- Proposed 1668" Water Line
- Proposed 1680" Water Line
- Proposed 1692" Water Line
- Proposed 1704" Water Line
- Proposed 1716" Water Line
- Proposed 1728" Water Line
- Proposed 1740" Water Line
- Proposed 1752" Water Line
- Proposed 1764" Water Line
- Proposed 1776" Water Line
- Proposed 1788" Water Line
- Proposed 1800" Water Line
- Proposed 1812" Water Line
- Proposed 1824" Water Line
- Proposed 1836" Water Line
- Proposed 1848" Water Line
- Proposed 1860" Water Line
- Proposed 1872" Water Line
- Proposed 1884" Water Line
- Proposed 1896" Water Line
- Proposed 1908" Water Line
- Proposed 1920" Water Line
- Proposed 1932" Water Line
- Proposed 1944" Water Line
- Proposed 1956" Water Line
- Proposed 1968" Water Line
- Proposed 1980" Water Line
- Proposed 1992" Water Line
- Proposed 2004" Water Line
- Proposed 2016" Water Line
- Proposed 2028" Water Line
- Proposed 2040" Water Line
- Proposed 2052" Water Line
- Proposed 2064" Water Line
- Proposed 2076" Water Line
- Proposed 2088" Water Line
- Proposed 2100" Water Line
- Proposed 2112" Water Line
- Proposed 2124" Water Line
- Proposed 2136" Water Line
- Proposed 2148" Water Line
- Proposed 2160" Water Line
- Proposed 2172" Water Line
- Proposed 2184" Water Line
- Proposed 2196" Water Line
- Proposed 2208" Water Line
- Proposed 2220" Water Line
- Proposed 2232" Water Line
- Proposed 2244" Water Line
- Proposed 2256" Water Line
- Proposed 2268" Water Line
- Proposed 2280" Water Line
- Proposed 2292" Water Line
- Proposed 2304" Water Line
- Proposed 2316" Water Line
- Proposed 2328" Water Line
- Proposed 2340" Water Line
- Proposed 2352" Water Line
- Proposed 2364" Water Line
- Proposed 2376" Water Line
- Proposed 2388" Water Line
- Proposed 2400" Water Line
- Proposed 2412" Water Line
- Proposed 2424" Water Line
- Proposed 2436" Water Line
- Proposed 2448" Water Line
- Proposed 2460" Water Line
- Proposed 2472" Water Line
- Proposed 2484" Water Line
- Proposed 2496" Water Line
- Proposed 2508" Water Line
- Proposed 2520" Water Line
- Proposed 2532" Water Line
- Proposed 2544" Water Line
- Proposed 2556" Water Line
- Proposed 2568" Water Line
- Proposed 2580" Water Line
- Proposed 2592" Water Line
- Proposed 2604" Water Line
- Proposed 2616" Water Line
- Proposed 2628" Water Line
- Proposed 2640" Water Line
- Proposed 2652" Water Line
- Proposed 2664" Water Line
- Proposed 2676" Water Line
- Proposed 2688" Water Line
- Proposed 2700" Water Line
- Proposed 2712" Water Line
- Proposed 2724" Water Line
- Proposed 2736" Water Line
- Proposed 2748" Water Line
- Proposed 2760" Water Line
- Proposed 2772" Water Line
- Proposed 2784" Water Line
- Proposed 2796" Water Line
- Proposed 2808" Water Line
- Proposed 2820" Water Line
- Proposed 2832" Water Line
- Proposed 2844" Water Line
- Proposed 2856" Water Line
- Proposed 2868" Water Line
- Proposed 2880" Water Line
- Proposed 2892" Water Line
- Proposed 2904" Water Line
- Proposed 2916" Water Line
- Proposed 2928" Water Line
- Proposed 2940" Water Line
- Proposed 2952" Water Line
- Proposed 2964" Water Line
- Proposed 2976" Water Line
- Proposed 2988" Water Line
- Proposed 3000" Water Line

**NOTES**

- 1) Utility locations are approximate and locations should be verified before any excavation.
- 2) This topographic survey is a compilation of an aerial survey performed by Benchmark and Associates in 1998 and a field survey performed by Galena Engineering in November of 2007.



NO	DATE	BY	REVISIONS
1	11/17/07	JBZ	ISSUE FOR DESIGN
2	01/10/08	JBZ	ISSUE FOR DESIGN REVIEW

**GALENA ENGINEERING, INC.**  
 Civil Engineers & Land Surveyors  
 680 Second Avenue North  
 P.O. Box 422  
 Ketchum, Idaho 83340  
 (208) 726-4729  
 (208) 726-4783 fax  
 email: galena@galena-engineering.com

**NOT FOR CONSTRUCTION**

PROFESSIONAL ENGINEER  
 CIVIL ENGINEER  
 STATE OF IDAHO  
 LANCE B. ZARUBKA

**REUSE OF DRAWINGS**  
 These drawings, or any portion thereof, shall not be used on any project or extension of this Project except by agreement in writing with Galena Engineering, Inc.

JBZ	DESIGNED BY	01/10/08	DATE
SMF	DRAWN BY	01/10/08	DATE
JBZ	CHECKED BY	01/10/08	DATE

**HOTEL KETCHUM**

WITHIN SECTION 18, T.4N., R.18E., B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO  
 PREPARED FOR TRAIL CREEK FUND, LLC

PROJECT INFORMATION  
 P:\328\PROJ\6560\dwg\6560-grading.dwg 4/3/2008 9:30:21 AM MDT

SHT 3 OF 4



**BEFORE THE KETCHUM PLANNING AND ZONING COMMISSION**

IN RE: ) Case No: DR 08-007  
)  
HOTEL KETCHUM ) FINDINGS OF FACT, CONCLUSIONS OF LAW  
DESIGN REVIEW ) AND DECISION  
& WATERWAYS DESIGN )  
REVIEW )

The above-entitled Design Review application came before the Ketchum Planning and Zoning Commission for consideration on June 16, 2008 and July 28, 2008. The Ketchum Planning and Zoning Commission having taken written and oral testimony, and having duly considered the matter, makes the following findings of fact, conclusions of law and decision.

**FINDINGS OF FACT**

**A. APPLICATION SUMMARY.**

**APPLICANT/OWNER:** Trail Creek Fund, LLC, a California limited liability company  
700 Emerson Street, Palo Alto, CA 94301  
[keenanld@yahoo.com](mailto:keenanld@yahoo.com)

**DEVELOPMENT TEAM:** Jack Bariteau, Managing Member, Trail Creek Fund LLC  
Paolo Petrone, Piazza Hotels (Operator and part owner)  
John Davis, Hornberger + Worstell (HWI) (Architect)  
Rob King, Clemens & Associates (Landscape)  
Jim Zarubica, Galena Engineering (Civil)  
Ed Lawson, Lawson & Laski, PLLC (Legal)

**LEGAL DESCRIPTION:** Lot 2, Block 83, Ketchum Townsite

**LOT LOCATION/DESCRIPTION:** 200 S Main Street  
(aka Trail Creek Village)  
0.93 acre (40,510 sqft)  
Irregular:  
Hwy 75 – 220’ Frontage  
River St. – 220’ Frontage  
Leadville Ave – 149’ Frontage

**ZONING:** Tourist (T)

OVERLAY DISTRICT: Floodplain Management Overlay (FP)

PROPOSED USE: Hotel (73 rooms – See Table 1)

WAIVERS REQUESTED: Minimum Lot Size; Maximum Height; FAR; Setbacks; Time Period for CUP & Design Review Approval

PUD FILE: CUP 08-007

SUBMITTAL DATES/  
CERTIFICATION: Application received February 8, 2008  
Certified complete on February 27, 2008  
An update to the formal application submittal received on May 9, 2008, and design revisions as requested by the Planning and Zoning Commission at the June 16 meeting received on July 21, 2008. Additional revisions were presented to the Commission on July 28, 2008.

**B. NOTICE OF PUBLIC HEARING OF THE COMMISSION.**

March 24, 2008 – Workshop on materials needed for Commission Review.

**PUBLIC NOTICE:** Mailing: March 17, 2008 to property owners within 300 feet.  
Publication: Display Advertisements – March 19 and March 21, 2008 Idaho Mountain Express.

April 28, 2008 – Commission determination on what, if any, additional notice for PUD CUP. Additional notice was determined to include: mailed notice to additional properties in the areas known as Gopher Gulch neighborhood and the Onyx subdivision.

**PUBLIC NOTICE:** Agenda posted at City Hall, website and Idaho Mountain Express.

June 16, 2008 – Public Hearing on Planned Unit Development CUP, Design Review and Waterways Design Review.

**PUBLIC NOTICE:** Mailing: May 29, 2008 to property owners within 300 feet, and property owners in the areas known as Gopher Gulch neighborhood and the Onyx subdivision, as found in the County records.  
Publication: May 28, 2008 Idaho Mountain Express; Display Advertisements – June 4 and Jun 11, 2008 Idaho Mountain Express.  
Posting: June 6, 2008 on all street frontages of the property

July 28, 2008 – Public Hearing on Design Review and Waterways Design Review, continued from June 16, 2008.

**PUBLIC NOTICE:**

**Mailing:** July 9, 2008 to property owners within 300 feet, and property owners in the areas known as Gopher Gulch neighborhood and the Onyx subdivision, as found in the County records.

**Publication:** July 16, 2008 Idaho Mountain Express; Display Advertisements – July 11, 23 and 25, 2008 Idaho Mountain Express.

**Posting:** July 11, 2008 on City of Ketchum website; July 17, 2008 on all street frontages of the property.

**C. COMPANION APPLICATIONS**

An application for a Planned Unit Development Conditional Use Permit was received in connection with this Design Review application on February 8, 2008.

**D. STUDIES SUBMITTED**

1. Traffic Impact Analysis by Galena Engineering, dated April 2008.
2. Soils report by Butler Associates - pending. Initial letter regarding geotechnical and civil engineering considerations dated March 20, 2008.
3. Arborist's Assessment Report by Alpine Tree Service, dated December 12, 2007.

**E. PROJECT DESCRIPTION**

The proposed project is described by the applicant as a four-star hotel. The proposal contains the following components: 73 guest suites (condominiums), reception and lobby area, full service restaurant and bar, full spa (available for use to outside guests), retail space, meeting and conference room facilities accommodating up to 290 people (also available for use by outside groups), six penthouse residences (condominiums), operational observatory with public access, exterior courtyard and swimming pool, and two levels of underground parking.

**Table 1: Proposed Hotel Ketchum Square Footage**

<b>FLOOR LEVEL</b>	<b>DESCRIPTION</b>	<b>SQUARE FEET</b>
Parking Level 2	Underground parking	23,575
Parking Level 1	Underground parking/ loading	27,700
	<b>SUBTOTAL PKG LEVELS</b>	<b>51,275</b>
Lower Level	Kitchen/dining; Meeting rooms; Spa; Administration	20,900
Ground Level	Reception/lobby; Retail; Bar/ restaurant; Guest rooms	21,650
Second Level	Guest rooms	20,800
Third Level	Guest rooms	19,890
Fourth Level	Private Residential Units	14,260
Fifth Level	Observatory	550
<b>HOTEL GROSS FLOOR AREA</b>		<b>98,050</b>
<b>TOTAL FLOOR AREA INCLUDING PARKING</b>		<b>149,325</b>



**Table 2: Hotel Matrix**

<b>HOTEL CONFIGURATION</b>	<b>Units</b>	<b>Square Feet</b>
Guest Rooms	73	
SqFt		45,844
Condominium Units	6	
SqFt		11,770
Hotel Key Count	79	
Hotel Bed Count	82	
BOH, Circ. Support and Interior Public Areas (SqFt)		25,626
<b>TTL HOTEL SqFt</b>		<b>83,240</b>
<b>RESIDENTIAL CONFIGURATION</b>		
Residential Condominiums (Non-Hotel Residential)		14,260
Less 17% Circulation		(2,424)
Net Residential Sq. Ft.		11,700
Permitted Non-Hotel Residential (Hotel Sq Ft / .75 – Hotel Sq Ft)		27,747
<b>Over / (Under)</b>		<b>(15,977)</b>

**Table 3: Waiver Requests, Hotel Ketchum**

Code Section	Requirement	Waiver Requested	Comments
<p><b>Zoning Ord.</b> 17.52.010 (F) SETBACKS</p>	<p><b>REQUIRED:</b> FRONT (River St): 15 ft</p> <p>REAR: 1 ft for every 3 ft or fraction of building height, but no less than 10 ft. The proposed building has a height at the rear of 58 feet, requiring a 19.3 foot setback.</p> <p>SIDE: 1 ft for every 3 ft or fraction of building height, but no less than 5 ft. The proposed building has a height on the Leadville Ave side of 58 feet, requiring a 19.3 foot setback.</p> <p>SIDE: all sides Highway 75 where ROW is 80 ft: 25ft</p> <p>RIPARIAN: 25 ft</p>	<p><b>PROPOSED:</b> FRONT (River St): 3 ft</p> <p>REAR: 9 ft</p> <p>SIDE (Leadville Ave): 0'</p> <p>SIDE (Hwy 75): 11 ft to columns, 15 ft to walls</p> <p>Edge of Hwy to Bldg Façade: 41 ft</p> <p>RIPARIAN: 25 ft (no waiver)</p>	<p>Gateway Study recommendation: "Edge of highway to the building façade" - 35 ft.</p>
<p>17.52.010 (H) FLOOR AREA RATIO</p>	<p>MAXIMUM FAR: 0.5</p>	<p>PROPOSED FAR: 2.4</p>	<p>17.52.010. H.3 states, "Hotels which meet the definition of Hotel...<i>may exceed the maximum floor area...</i>" (No specific FAR is listed.)</p>

17.52.010 (I) HEIGHT	MAXIMUM: 35 ft	PROPOSED: 58 ft  NOTE: Architectural Feature – Observatory Dome height is 75 feet. Elevator housing and other roof features extend above 58 ft as shown in A1-D dated May 1, 2008, and are set back from primary building wall. [See 17.96.090(B)(3)(b)]	17.52.010. H.3 states, “Hotels which meet the definition of Hotel... <i>may exceed the maximum ...height...</i> ” (No specific height is listed.)
17.116.080  (and) 17.96.130	Construction shall commence within 1 year of granting CUP.  Term of Design Review is 1 year.	Increase time period for validity of PUD CUP and Design Review to 2 years.	Complexities of construction plans associated with hotel developments require increased time periods for all approvals.
<b>Subdivision Ordinance:</b> 16.08.080(A)(1)	Minimum lot size of three acres	Lot is 0.92 acres	16.08.080(A)(1)(d) states that modification of the 3 acre provision may be granted for hotel uses.

**Table 4: Required Parking, Hotel Ketchum**

USE	REQUIREMENT	# SPACES REQUIRED
Hotel	.66 spaces per room (x 73 rooms)	48.18
Condominiums	1 space per 1,500 net sq ft (x 11,770 sq ft)	7.84
+Residential guest space	1 guest space for every 4 units (x 6 units)	1.50
Conference facility	1 space per 200 sq ft seating area (x 3,270 sq ft)	16.35
Retail/spa/office	1 space per 600 sq ft net floor area (x 3,715 sq ft)	6.19
Restaurant	1 space per 200 sq ft seating area (x3390 sq ft)	16.95
<b>TOTAL REQ SPACES</b>		<b>97.01</b>

**Table 4.1 Proposed Parking**

<b>Underground</b>	Valet Parking (Levels 1 & 2)	94.0
<b>Surface</b>	River Street	4.0
<b>TTL SPACES</b>		98.0

**Table 5: Miscellaneous Code Requirements**

<i>SUBJECT</i>	<i>ORDINANCE REQUIREMENT</i>	<i>PROPOSED</i>
Open Site Area	17.52.010 (J): 35 % minimum with 5% allowance for private decks (= Net 30%)	30.08%
Curb Cuts	River Street 35% allowed Leadville Avenue 35% allowed	29.0% 29.5%

**F. STAFF REPORT ATTACHMENTS**

The following documents and drawings were referenced as attachments to staff reports and incorporated herein.

- Attachment 1: Application items
- Attachment 2: Department Head and Agency comments
- Attachment 3: Public comment
- Attachment 4: Applicant correspondence
- Attachment 5: Traffic Impact Analysis
- Attachment 6: Arborist’s Assessment Report
- Attachment 7: Economic Impact Study
- Attachment 8: Comprehensive Plan/Sub-Area Analysis
- Attachment 9: Staff Analysis of Gateway Area Mass & Scale Study
- Attachment 10: Permitted and conditional uses in T, CC and GR-L
- Attachment 11: Draft Development Agreement

A full set of architectural, landscape and civil drawings are on file in the Planning Department, and are set forth in Exhibit A attached hereto. The Commission’s decision was based on these drawings, as noted.

**G. KETCHUM CITY CODE 17.96.090 (B) DESIGN REVIEW STANDARDS AND  
KETCHUM CITY CODE 17.88.060 (E) WATERWAYS DESIGN REVIEW STANDARDS**

On June 16, 2008 and July 28, 2008 the Planning and Zoning Commission conducted public hearings and used the following design review criteria and standards as a basis in favorably concluding by a vote of 4 to 1, that the Trail Creek LLC's applications for Design Review and Waterways Design Review for the project named "HOTEL KETCHUM" complies with Ketchum Code Title 17, Chapters 17.96 and 17.88. Commissioners Burns, Doty, Fabiano and Williams voted in favor and Commission Cook voted in opposition.

The following sets forth the applicable Design Review Standard and the Commission's conclusion:

**STANDARD 17.96.090(B)(1) SITE DESIGN:**

**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.**

**Finding:**

The site slopes to the south toward Trail Creek, from an elevation of approximately 5831 feet at the northwest corner to 5799 feet along the southern boundary at Trail Creek. The slope becomes steeper closer to the creek. Existing grade is shown on Civil Sheet C2.

The site includes an area of riparian setback from the creek that has been altered and degraded, which is proposed for restoration by the applicant. Landscape Sheet L-5, Riparian Enhancement Plan, shows preliminary riparian landscape plantings.

The site also contains eighty-three (83) existing trees, including several mature conifer trees. An Arborist's Assessment Report by Alpine Tree Service (Attachment 6) was submitted with the application, giving further information about the health of the 83 trees on site. Eighteen (18) trees, seven (7) of which are designated as "resource trees" in the Arborist's Assessment Report, are to be preserved in their current location. Two (2) other conifer trees will be transplanted. Sheet L-4 shows specifically which trees will be retained. Forty-six (46) new trees and 118 new shrubs are proposed to be planted by the applicant. Sheet L-3 shows the preliminary planting plan. The Commission found the preservation and proposed planting plans in compliance with this standard, despite the fact that a total of sixty-three (63) trees will be removed. The Arborist's Assessment Report notes that 43 trees are diseased or dying, inappropriate species for the location, or not considered valuable.

The development requires demolition and removal of the existing Trail Creek Village structures, and necessitate the excavation of a significant amount of material in connection with construction of the 2-level underground parking garage. Six retaining walls are proposed, both in the Main

Street right-of-way and also on the south side of the project as the land slopes down toward Trail Creek. The retaining walls will be faced with the same stone as featured on the hotel.

**Conclusion:**

Upon compliance with conditions of approval, the site's significant natural features such as hillsides, mature trees and landscaping are acceptably preserved. Cuts and fills are minimized and are concealed with landscaping, revegetation and/or natural stone material.

**STANDARD 17.96.090(B)(2)(a-d) COMPATIBILITY:**

**a. The structure shall be compatible with the townscape and surrounding neighborhoods with respect to height, bulk, setbacks and relationship to the street.**

**Finding:**

Bulk is defined in the Ketchum Zoning Code as follows:

3.13 Bulk - "Bulk" is the term used to decide the size and mutual relationships of buildings and other structures, and therefore includes:

- (1) The size of buildings and other structures;
- (2) The shape of buildings and other structures;
- (3) The location of exterior walls of buildings and other structures, in relation to area of a lot, to the centerline of streets, to other walls of the same building, and to other buildings or structures; and,
- (4) All open spaces relating to a building or a structure.

The following chart shows projects which are located adjacent to or directly across the street from the proposed hotel. Building footprint, setback from street, and building height are noted for each one.

PROJECT	FOOTPRINT SIZE (sq. ft.)	SETBACK FROM STREET	NUMBER OF STORIES
Kentwood Lodge	21,780	1' (River)	3
Leadville Residences	7,000	15' (Leadville)	3
200 S Leadville TH	3,800	14' (Leadville)	2-3
Trail Creek Crossings	16,086	100' (Main); 75' (Leadville)	2
La Residence	2,210	22' (Leadville)	2
Sotheby's	770	7' (Main)	1 + daylight

\*Note: Figures shown are approximate.

The applicant has provided computer simulated renderings showing the proposal and surrounding buildings from various points as well as aerial viewpoints, Sheets A-1A1, A-1A2, A-1A3, A-1A4, SK.01, and SK.02.

The analysis of the Gateway Area Mass & Scale Study, Attachment 9, also addresses bulk, scale and relationship to street. The study recommends setting upper floors back. Levels 3 and 4 are both stepped back creating a lower building toward Trail Creek. Level 3 is stepped back approximately 13 feet and level 4 is stepped back 29 feet from the south (Trail Creek) side. Level 4 is stepped back approximately 7 feet from the north (River Street) side. Level 4 is also stepped back 5 feet from both the west (Main Street) side and east (Leadville Ave) side.

The Gateway Area Mass & Scale Study also notes that “River Street edges of these properties may be more urban, as a transition into the downtown core.”

The Commission found that the proposed hotel, located on River Street in the Tourist District and adjacent to the Community Core, is acceptable in terms of compatibility with the townscape to the north including the adjacent Kentwood Lodge. Commissioner Cook dissented on this point, finding the project’s bulk not compatible with the vicinity.

**Conclusion:**

Upon compliance with conditions of approval, the structure is compatible with the townscape and surrounding neighborhoods with respect to height, bulk, setbacks and relationship to the street

**b. The project’s materials, colors and signing shall be compatible with the townscape, surrounding neighborhoods and adjoining structures.**

**Finding:**

The following chart shows the exterior materials and colors of buildings which are located adjacent to or directly across the street from the proposed hotel.

<b>PROJECT</b>	<b>EXTERIOR MATERIALS</b>	<b>COLORS</b>
Kentwood Lodge	Stucco; stone, wood and log trim	Tan; natural wood and green trim
Leadville Residences	Stucco; stone and wood trim	Beige; dark red and natural wood trim
200 S Leadville TH	Stucco; wood trim	Beige; natural wood trim
Trail Creek Crossings	Shake siding; wood and stone trim	Gray/beige; natural wood trim
La Residence	Log, stone and stucco	Natural wood, beige; green trim
Sotheby’s	Wood siding, stone	Gray

The proposed building features primarily cement plaster, metal panels, stone and wood. Low reflecting metal panels are located at certain upper balcony bays on all elevations. Wood is

presented in horizontal wood slats and heavy timber columns and beams. There is a standing seam metal roof. Canopies are also of metal. Sheets A3.01 through A3.04 call out exterior materials. Sheets A8.01 and A8.02 are details of exterior elevations.

The Commission approved a general palette of Cor-Ten steel, copper or other metal with a matte finish and in a warm color, cut moss rock as or similar to that presented, and plaster in a color to be decided. All specific materials and colors are to be decided by the Commission at a later date. Prior to construction of the building exterior, the applicant shall provide an on-site, large scale (wall size) mock up that will be portable and visible in sun and shade and at different times of day. This is a condition of approval.

Conclusion:

Upon compliance with conditions of approval, the project's materials, colors and signing are compatible with the townscape, surrounding neighborhoods and adjoining structures.

**c. Consideration shall be given to significant view corridors from surrounding properties.**

Finding:

The most significant view from the surrounding properties is toward Baldy. The view of Baldy will be blocked by the proposed hotel for properties to the east and northeast of the subject property across Leadville Avenue. Sheet A-1A2 is a computer rendered view from Leadville Avenue.

Primary views along Main Street to the north may be affected from points south of the hotel, but unaffected adjacent to the hotel. Primary views toward Baldy from Main Street will not be affected.

The Commission found that views of Baldy from across Leadville Avenue and views to the north from Main Street would also be significantly obstructed by a 44 foot high building, which could be built (with pitched roof) in this location without waivers.

Conclusion:

Consideration has been given to significant view corridors from surrounding properties.

**d. 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.**

Finding:

Demolition of the existing historic buildings in Trail Creek Village will be subject to Ketchum's demolition ordinance (Municipal Code Chapter 15.16). According to the 2005 Windshield Survey by Walsworth and Associates, these buildings were constructed in the 1940s and were



originally a motel complex, later renovated into shops and restaurants. The applicant will be required to apply for a demolition permit and may not demolish or relocate the buildings until a building permit is issued for the new building. Re-use of any buildings, re-use of any building materials in the new project, and/or provision of an interpretive area on the site with photographs and history of the Trail Creek Village are options to acknowledge the historic buildings. The applicant may re-use certain of the existing materials. The applicant shall have photographs of the old Trail Creek Village in a "photo gallery" area in the hotel; this is a condition of approval.

**Conclusion:**

Upon compliance with conditions of approval, preservation of significant landmarks (Trail Creek Village) are encouraged and protected.

**STANDARD 17.96.090(B)(3)(a-I) ARCHITECTURAL QUALITY:**

**a. Consideration shall be given to natural light reaching public streets, sidewalks and open spaces.**

**Finding:**

A solar study has been provided and is shown on Sheets A-1G1 through A-1G4. Details of the study follow:

**Spring (March 21) and Autumn (September 21) These are nearly identical.**

**9 AM: Main Street sidewalks and River street roadway and sidewalks are entirely in shadow, as are small areas of Kentwood Lodge.**

**12 Noon: Sidewalks on River and Leadville are mostly in shadow.**

**3 PM: Sidewalk and roadway of Leadville Avenue are entirely in shadow. 200 South Leadville Townhomes begins to be shaded.**

**Summer (June 21)**

**9 AM: Most of Main Street roadway and sidewalks, a small part of River Street roadway and most of River Street sidewalks adjacent to the hotel are in shadow.**

**12 Noon: Most of River Street sidewalk adjacent to hotel is shaded.**

**3 PM: All of Leadville Avenue sidewalk and a small portion of the roadway is shaded.**

**Winter (December 21)**

**9 AM: All of River Street roadway and sidewalks and significant portions of Kentwood Lodge are in shadow.**

**12 Noon: Most of River Street continues to be shaded. All of the River Street/Leadville Avenue intersection and most of Leadville Avenue adjacent to the hotel are in shadow.**

**3 PM: Leadville Avenue and much of 200 South Leadville Townhomes are in shadow. A very small portion of the River/Leadville Avenue intersection is still shaded.**

The extended sidewalk area on the corner of Main and River Streets remains in sun throughout the day, even during the winter. The hotel's courtyard is sunny except for afternoon hours in autumn,

winter and spring. While public streets, sidewalks and open spaces are shaded at certain times, the Commission acknowledged that a 44-foot high building could be built in this location under current zoning, and that a building that high would also significantly affect natural light reaching public areas.

Conclusion:

Consideration has been given to natural light reaching public streets, sidewalks and open spaces.

**b. The building character shall be clearly defined by use of sloped roofs, parapets, cornices or other architectural features.**

Finding:

The building features a reverse pitch shed roof with a slope of 1:12, according to Sheet A2.06, Roof Plan. The proposed observatory with a domed roof is a unique feature of the proposed building. The observatory is 75 feet high, extending approximately 17 feet above the 58-foot height plane.

The elevator shaft also projects up to 12 feet above the 58-foot height plane, as shown on Sheet A3.01R. The elevator has been extended to provide ADA access to the observatory level. The elevator is set back 44 feet on the primary building wall on River Street, 36 feet from Main Street, and 130 feet from Leadville, so is unlikely to be visible from ground level near the building, but may be visible from the upper stories of other properties and from higher ground.

The Commission found that, with the exception of the proposed observatory, most of the roof elements that extend above the 58-foot height plane are set back from the edge of the building an adequate distance that their visibility is mitigated. Concern was expressed that mechanical equipment should not extend above the 58-foot height plane. The applicant stated that final mechanical design has not yet been completed and building code requirements will force some equipment to the top of the roof. A final roof plan showing the elevator design and other rooftop equipment is required as a condition of approval.

Conclusion:

Upon compliance with conditions of approval, the building character is clearly defined by use of sloped roofs, parapets, cornices or other architectural features. In this case, the observatory dome is an architectural feature.

**c. There shall be continuity of materials, colors and signing within the project.**

Finding:

The use of varied materials – stone, timber columns and beams, wood slats, two colors of cement plaster, metal panels and trim, and the cast in place concrete – is continued on all elevations of the building.

Final materials and colors are to be approved by the Commission at a later date. Prior to construction of the building exterior; the applicant shall provide an on-site, large scale mock up that will be portable and visible in sun and shade and at different times of day. This is a condition of approval.

A master signage plan is to be approved by the Commission at a later date. This is a condition of approval.

**Conclusion:**

Upon compliance with conditions of approval, there is continuity of materials, colors and signage within the project.

**d. There shall be continuity among accessory structures, fences, walls and landscape features within the project.**

**Finding:**

No accessory structures or fences are proposed. Six retaining walls are proposed – in the Main Street right-of-way, in the Leadville Avenue right-of-way where the retaining walls function as landscape beds for several aspen trees, and on the south side of the project as the land slopes down toward Trail Creek. The retaining walls will be faced with the same stone as featured on the hotel.

**Conclusion:**

There is continuity among accessory structures, fences, walls and landscape features within the project

**e. Building walls which are exposed to the street shall be in scale with the pedestrian.**

**Finding:**

The proposed building walls are exposed to the streets on all sides – Main, River and Leadville. All three of these elevations use a variety of materials at street level. Storefront windows are also on the ground level (eight on the River Street elevation). A cut moss stone with horizontal orientation is proposed for the ground level and up to the observatory level and the main hotel entrance. The final stone material is to be approved by the Commission at a later date. Prior to construction of the building exterior; the applicant shall provide an on-site, large scale mock up that will be portable and visible in sun and shade and at different times of day. This is a condition of approval. The Commission found that these materials and elements provide an appropriate scale.

**Conclusion:**

Upon compliance with conditions of approval, building walls which are exposed to the street are in scale with the pedestrian.

**f. Building walls shall provide undulation/relief thus reducing the appearance of bulk and flatness.**

**Finding:**

The building walls offer relief by the upper floors stepped back to different distances, and by the recessed balconies. Levels 3 and 4 are both stepped back creating a lower building toward Trail Creek. Level 3 is stepped back approximately 13 feet and level 4 is stepped back 29 feet from the south (Trail Creek) side. Level 4 is stepped back approximately 7 feet from the north (River Street) side. Level 4 is also stepped back 5 feet from both the west (Main Street) side and east (Leadville Ave) side. Elevations, Sheets A3.01R through A3.04R, show these step-backs. The Gateway Area Mass & Scale Study contemplated a four story building in this location, recommending that the four story portion be located along River Street with other elevations stepping back.

Varying materials also contribute to reducing the appearance of bulk and flatness. Materials are indicated on Sheets A3.01A through A3.04A. Additional exterior materials were suggested by the Commission at the June 16, 2008, hearing as a method of further reducing the perceived bulk and flatness.

The introduction of metal panels at certain balcony bays on all four building elevations was presented at the July 28, 2008 hearing. The variation in materials is intended to break the rhythm of the facades and give the appearance of separating the building into smaller sections. The metal panels wrap around from the west and east elevations to the south elevation, providing additional material changes to break up the mass of the building. The metal panels are also placed on the River Street façade, above the hotel's main entry doors, bringing further definition to the hotel's entrance.

Blade awnings, also described as metal shade canopies, at the 2<sup>nd</sup> and 3<sup>rd</sup> level balconies as well as over the garage entrance were also added to the proposal. These awnings project out beyond the building face up to two feet. The awnings are intended to add depth and shadow to the building, to further articulate the facades.

Levels three and four feature horizontal wood slats to add articulation and rhythm, also additional elements presented on July 28. These wood slats are to be outside the windows and some portions of walls. The wood slats outside windows will be moveable. The Commission required further information and demonstration of how the movement of these slats would affect the appearance of the building. This is a condition of approval.

The Commission found that, with the addition of new building materials and elements as requested at the June 16 hearing and presented on July 28, adequate undulation and relief are provided to reduce the appearance of bulk and flatness. Commissioner Cook dissented on this point, finding inadequate undulation and relief.

**Conclusion:**

Upon compliance with conditions of approval, building walls provide undulation/relief thus reducing the appearance of bulk and flatness.

**g. Exterior lighting shall not have an adverse impact upon other properties and/or public streets.**

**Finding:**

The exterior lighting plan is shown on Sheet A2.01L. The architect's recommended light fixtures are shown on (un-numbered) spec sheets dated March 24, 2008. The proposed lighting plan and light fixtures appear to meet Ketchum's Dark Sky Ordinance. Submittal of a final lighting plan and continued compliance with Chapter 17.132 are conditions of approval. No uplighting is allowed.

**Conclusion:**

Upon compliance with conditions of approval, exterior lighting will not have an adverse impact on other properties and/or public streets.

**h. Garbage storage areas and satellite receivers shall be screened from public view.**

**Finding:**

Garbage and recycling areas are entirely enclosed within underground Parking Level 1, Sheet A2.P1. Garage doors, when closed, will further shield the garbage storage area.

Any telecommunication receivers that may be needed will be a maximum of approximately one meter in diameter and located on a flat portion of the roof not visible from surrounding locations. A final roof plan showing satellite devices and other rooftop equipment is required as a condition of approval.

**Conclusion:**

Upon compliance with conditions of approval, garbage storage areas and satellite receivers are screened from public view

**i. Utility, power and communication lines within the development site are concealed from public view where feasible.**

**Finding:**

All such utility service lines within the site will be installed underground. Contribution by the applicant to undergrounding power lines in the adjacent rights-of-way is included as a condition of the PUD CUP approval.

**Conclusion:**

Utility, power and communication lines within the development site are concealed from public view.

**j. Door swings shall not obstruct or conflict with pedestrian traffic.**

**Finding:**

Entrances are shown on Ground Level Floor Plan, A2.01. 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.

**Conclusion:**

Door swings do not obstruct or conflict with pedestrian traffic.

**k. 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.**

**Finding:**

The pedestrian entrances to the building are protected by the building above, and at the motor court by a metal canopy. The roof is a reverse pitched shed roof; snow will not slide onto pedestrian areas or adjacent properties. Roof Plan is shown on Sheet A2.06.

**Conclusion:**

Building design includes weather protection which prevents water to drip or snow to slide on areas where pedestrians gather and circulate or to adjacent properties.

**l. Exterior siding materials shall be of natural wood or masonry origin or similar quality. Metal siding is discouraged in all zoning districts.**

**Finding:**

The proposed building features cement plaster, metal panels, stone and wood (both heavy timbers and wood slats). These materials are found on all four elevations. Sheets A3.01 through A3.04 call out exterior materials. Sheets A8.01 and A8.02 are details of exterior elevations.

The Commission specified a Cor-ten, copper or other metal with a “matte” finish for the panels. The Commission finds the use of the metal panels as specified to be appropriate in this application.

All specific exterior siding materials are to be decided by the Commission at a later date. Prior to construction of the building exterior; the applicant shall provide an on-site, large scale mock up that will be portable and visible in sun and shade and at different times of day. This is a condition of approval.

Conclusion:

Upon compliance with conditions of approval, exterior siding materials include natural wood or masonry origin or similar quality.

**STANDARD 17.96.090(B)(4)(a-h) CIRCULATION DESIGN:**

**a. 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.**

Finding:

Sidewalks are proposed along all three street frontages, providing pedestrian access via City sidewalks in the vicinity. Sidewalk widths are 6 feet on Main Street, as proposed but not less than 5 feet on River Street, and 5 feet on Leadville Avenue. Civil Sheet C3 shows proposed sidewalks. Sidewalk improvements will be installed southward along Main Street to the bridge to Trail Creek Crossings, pursuant to a condition of approval. Bicycle access is provided on City streets in this vicinity. Bike racks are required. There is no known equestrian use in this location.

Conclusion:

Upon compliance with conditions of approval, pedestrian, equestrian and bicycle access which is adequate to satisfy demands relative to development size are provided. These accesses are located to connect with existing and anticipated easements and pathways.

**b. 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.**

Finding:

The proposed building is accessed directly from the public sidewalks on both Main Street and River Street. There are four doorways off River Street – to the hotel, restaurant, retail and spa. There are two doorways off Main Street – to the restaurant and the meeting facilities. The Ground Level Floor Plan, Sheet A2.01, shows these ground level entrances from the public sidewalks.

Conclusion:

The building is primarily accessed from the public sidewalk for the majority of the individual uses proposed. There are numerous connections to the public sidewalk and exposure to the street.

**c. 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.**

**Finding:**

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 curb cuts for this motor court are 72 feet from Main Street and 52 feet from Leadville Avenue intersection centerlines. The Traffic Impact Analysis recommends that the landscaping within this island will allow adequate site distance for drivers and pedestrians; this is a condition of approval.

Traffic circulation on Leadville Avenue is further described in item (e) below. All guest parking will be by valet. A snowmelt system will be installed within Leadville Avenue. See Sheet A-2A and A-3F. A condition of the PUD CUP approval is the extension of 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.

A low retaining wall is proposed within the Main Street right-of-way. Such a wall provides physical separation between pedestrians and vehicular traffic. Final design of this wall is subject to ITD and City Engineer approval. As the retaining wall would be located within the public right-of-way, it shall be subject to removal at any time.

**Conclusion:**

Upon compliance with conditions of approval, traffic will flow safely within the project and onto adjacent streets. Consideration has been given to adequate sight distances.

**d. Parking areas have functional aisle dimensions, backup space and turning radius.**

**Finding:**

The underground parking areas have 24-foot aisle widths in all locations; this is the standard for 90 degree parking pursuant to Ketchum Code 17.124.060 (A).

**Conclusion:**

Parking areas have functional aisle dimensions, backup space and turning radius.

**e. 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.**

**Finding:**

Sheet A-2A shows vehicular circulation on Leadville Avenue and in the location of the underground parking and service areas, which are indicated on Parking Level 1 Floor Plan, Sheet A2.P1. Vehicles will access the parking garage via the right-hand entrance, which is 20 feet wide, allowing for both ingress and egress lanes. All vehicles are expected to enter and exit the parking garage in a forward motion. The majority of traffic into and out of the garage will be by valet parking. Valet parking is found to be more efficient than self-parking and the number of on-site



parking spaces is deemed adequate, with 4 River Street spaces available. Impacts to adjacent residences on Leadville will be noise from the auto traffic, and at night, headlights as autos turning from River onto Leadville and as they exit the garage.

The left-hand entrance is 22 feet wide and is for delivery, service and garbage vehicles. According to the applicant, it will allow for entry by "25' to 30' panel-type trucks" and trash overloader trucks. The bay area is 35 feet deep, so that such trucks will be able to back into the bay area their full length and be completely off the street. The applicant states: "Tractor trailer-type trucks are expected to be a rare occurrence, but will likely not be able to back into the dock area." Partial obstruction of Leadville Avenue will occur at these times.

Dumpsters and/or trash compactors will be inside the bay area. Garbage trucks are anticipated to turn into the bay area to the trash compactor, and then back out onto Leadville Avenue. There is ample clearance for trucks to approach the dock, pick up the dumpster, and back up a few feet to over-swing the dumpster within the bay area.

There will be functional rolling garage doors at both entrances to shield the views into the service and parking levels. The doors will also aid in noise control. However, there will be times when the doors are open as vehicles are moving into and out of these areas and maneuvering on Leadville Avenue. There will be low level lighting to reduce glare.

The applicant is to provide additional screening in the form of landscaping and fencing on the property of 200 South Leadville Townhomes.

The Commission found that while service vehicle and auto movements on Leadville will have some adverse impact on the adjacent residences, the impact will be reduced to an acceptable level by the design and operation components described above.

**Conclusion:**

Upon compliance with conditions of approval, underground parking area 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.

**f. Curb cuts are located away from major intersections and off high volume roadways where possible.**

**Finding:**

Civil Sheet C3 shows roadways, intersections and proposed curb cuts. Curb cuts are located on River Street and Leadville Avenue. The curb cuts on River Street are 72 feet from Main Street and 52 feet from Leadville Avenue intersection centerlines. The curb cut on Leadville Avenue is 132 feet from the River Street intersection centerline.

**Conclusion:**

Curb cuts are located away from major intersections and off high volume roadways.

**g. Adequate unobstructed access for emergency vehicles, snow plows, garbage trucks and similar service vehicles to all necessary locations within the proposed project is provided.**

**Finding:**

Emergency vehicles and snow plows will utilize the city streets. Emergency vehicles would access the hotel via the motor court off River Street. Garbage trucks and service and delivery vehicles will enter the underground parking and loading area directly from Leadville Avenue. A snowmelt system will be installed within Leadville Avenue. Sheet A-2A and A-3F show vehicular circulation and snowmelt plan, respectively. A condition of the PUD CUP approval is the extension of 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.

**Conclusion:**

Upon compliance with conditions of approval, adequate unobstructed access for emergency vehicles, snow plows, garbage trucks and similar service vehicles to all necessary locations within the proposed project is provided.

**h. 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).**

**Finding:**

No snow storage areas are proposed. On-site parking is underground, and the motor court at the hotel's main entrance is to have a snow-melt system. Sheet A-3F shows the proposed snowmelt plan. A condition of the PUD CUP approval is that 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.

**Conclusion:**

Upon compliance with conditions of approval, the project provides adequate snow storage areas or removal for snow cleared from the parking areas and roadways within the project

**STANDARD 17.96.090(B)(5)(a-d) LANDSCAPE QUALITY:**

**a. 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).**

**Finding:**

The southern portion of the site includes an area of riparian setback from the creek that has been altered and degraded. The southern property line frontage along Trail Creek measures approximately 125 feet and is bordered to the east by La Residence Condominiums and to the west by Highway 75. The applicant proposes to restore and revegetate the riparian area. The preliminary riparian enhancement plan is shown on Landscape Sheet L-5.

Eighteen (18) of eighty-three (83) existing trees are to remain in their current location. Forty-six (46) new trees and 118 new shrubs are proposed to be planted by the applicant. Sheet L-3 shows the preliminary planting plan.

Street trees along Main Street will be maple or other mid-size deciduous street tree. Final tree species selections must be administratively approved.

**Conclusion:**

Upon compliance with conditions of approval, substantial landscaping is provided, which is in scale with the development and which provides relief from and screening of hard surfaces.

**b. 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.**

**Finding:**

Landscape Sheet L-3 shows the preliminary landscape plan. Proposed planting materials are hardy to Ketchum's zone.

The tree species proposed on the east and west property boundaries are not utility line compliant. If the utility lines are not relocated underground, different tree species should be chosen that are utility line compliant. Kentucky Bluegrass is not an acceptable high elevation ground cover as it requires too much irrigation. Submittal of final plans for administrative approval by the City Arborist for tree species and by the Planning Department for the overall landscape plan, is a condition of approval.

**Conclusion:**

Upon compliance with conditions of approval, landscape materials and vegetation types are readily adaptable to a site's microclimate, soil conditions, orientation and aspect, and serve to enhance and compliment the neighborhood and townscape. Consideration has been given to the use of native, drought-resistant plant materials.

**c. The preservation of existing significant trees, shrubs and important landscape features (mapped in accordance with Site Design, Paragraph 1) shall be encouraged.**

**Finding:**

The site contains eighty-three (83) existing trees, including several mature conifer trees. Eighteen (18) trees, seven (7) of which are designated as “resource trees” in the Arborist’s Assessment Report (Attachment 6), are to be preserved in their current location. Two (2) other conifer trees will be transplanted. Sheet L-4 shows specifically which trees will be retained. A condition of approval states that an ISA Certified Arborist shall be retained by the developer to: (a) provide a written Tree Preservation Plan for the public and private trees, to be reviewed and approved by the City Arborist; and (b) provide monthly site visits with the City Arborist during construction for compliance checks. The Commission found the preservation plan in compliance with this standard, despite the fact that a total of sixty-three (63) trees will be removed.

**Conclusion:**

Upon compliance with conditions of approval, an acceptable level of preservation of existing significant trees, shrubs and important landscape features is met.

**d. 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.**

**Finding:**

The preliminary design, Sheet L-3, shows a low retaining wall with landscaping within the Main Street right-of-way. Such a wall provides physical separation and buffer between pedestrians and the street. Final design of this wall is subject to ITD and City Engineer approval. As the retaining wall would be located within the public right-of-way, it shall be subject to removal at any time.

A landscape island between the motor court and River Street provides a buffer between the street and the sidewalk directly in front of the hotel.

Landscape beds on the Leadville Avenue and a portion of the south side of the building are provide a buffer between the structure and sidewalk and street.

The applicant is to provide additional screening (landscaping and/or fencing) on the property of 200 South Leadville Townhomes to buffer the parking and service traffic.

**Conclusion:**

Upon compliance with conditions of approval, landscaping provides a substantial buffer between land uses, including, but not limited to, structures, streets and parking lots.

**STANDARD 17.96.090(B)(6) ENERGY DESIGN:**

**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)**

**Finding:**

A solar study has been provided and is shown on Sheets A-1G1 through A-1G4. Details of the study follow:

**Spring (March 21) and Autumn (September 21) These are nearly identical.**

**9 AM:** Main Street sidewalks and River street roadway and sidewalks are entirely in shadow, as are small areas of Kentwood Lodge.

**12 Noon:** Sidewalks on River and Leadville are mostly in shadow.

**3 PM:** Sidewalk and roadway of Leadville Avenue are entirely in shadow. 200 South Leadville Townhomes begins to be shaded.

**Summer (June 21)**

**9 AM:** Most of Main Street roadway and sidewalks, a small part of River Street roadway and most of River Street sidewalks adjacent to the hotel are in shadow.

**12 Noon:** Most of River Street sidewalk adjacent to hotel is shaded.

**3 PM:** All of Leadville Avenue sidewalk and a small portion of the roadway is shaded.

**Winter (December 21)**

**9 AM:** All of River Street roadway and sidewalks and significant portions of Kentwood Lodge are in shadow.

**12 Noon:** Most of River Street continues to be shaded. All of the River Street/Leadville Avenue intersection and most of Leadville Avenue adjacent to the hotel are in shadow.

**3 PM:** Leadville Avenue and much of 200 South Leadville Townhomes are in shadow. A very small portion of the River/Leadville Avenue intersection is still shaded.

The extended sidewalk area on the corner of Main and River Streets remains in sun throughout the day, even during the winter. The hotel's courtyard is sunny except for afternoon hours in autumn, winter and spring. While public streets, sidewalks and open spaces are shaded at certain times, the Commission acknowledged that a 44-foot high building could be built in this location under current zoning, and that a building that high would also affect natural light reaching public areas.

**Conclusion:**

Consideration has been given to proper solar orientation within the project. Recognition has been given to the solar benefits of adjoining properties.

**STANDARD(a) 17.96.090(B)(7) PUBLIC AMENITIES:**

**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.**

**Finding:**

The Commission found that the size and location of the planned Gateway “plaza” area, as shown on Civil Sheet C3, are acceptable. The design for the entire intersection, including public/pedestrian amenities, will be accomplished during the time that the hotel construction plans are being developed. Public pedestrian amenities to be included within adjacent street rights-of-way are included as a condition of the PUD CUP approval.

**Conclusion:**

Upon compliance with conditions of approval, pedestrian amenities are provided.

**STANDARD 17.96.090(B)(8) GREEN BUILDING:**

**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.**

**Finding:**

The project design includes the following, as stated in applicant correspondence (Hornberger + Worstell, April 29, 2008):

- 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.

Conclusion:

Consideration has been given to green building features within the project.

**STANDARD 17.88.060(E)(1-19) WATERWAYS DESIGN REVIEW:**

**1. Preservation or restoration of the inherent natural characteristics of the river and creeks and floodplain areas. Development does not alter river channel.**

Finding:

The current state of the riparian setback zone is degraded. It has a steep bank that is denuded of vegetation in certain areas. The applicant proposes to restore and enhance the setback area with riparian trees, shrubs, grasses and ground cover. The preliminary riparian enhancement plan is shown on Landscape Sheet L-5. Approval of a detailed plant materials list, detailed plans for riparian restoration, and plans for protection of riparian area and the creek (from debris, chemicals, erosion) during construction is a condition of approval.

The creek channel will not be altered.

Conclusion:

Upon compliance with conditions of approval, the inherent natural characteristics of the river and creeks and floodplain areas are restored. The development does not alter the river channel.

**2. Preservation of riparian vegetation and wildlife habitat, if any, along the stream bank and within the required minimum twenty-five (25) foot setback or riparian zone.**

Finding:

Riparian vegetation and wildlife habitat will be improved with the proposed restoration within the riparian zone. The preliminary riparian enhancement plan is shown on Landscape Sheet L-5.

Conclusion:

Upon compliance with conditions of approval, riparian vegetation and wildlife habitat along the stream bank and within the required minimum twenty-five (25) foot riparian zone is preserved.

**3. No development other than development by the City of Ketchum or development required for emergency access shall occur within the twenty-five (25) foot riparian zone with the exception of approved stream stabilization work. The Planning and Zoning Commission may approve access to property where no other primary access is available. Private pathways and staircases shall not lead into or through the riparian zone unless deemed necessary by the Planning and Zoning Commission.**

Finding:

A single gravel/stone walkway within the riparian setback down to the water's edge is proposed, as shown on Landscape Sheet L-5. The single walkway down to the creek is intended to prevent

rogue pathways that people may make in order to get to the water's edge if no defined way is available. By providing a distinct gravel walkway, erosion from potential rogue pathways will be prevented. This will create a safer situation in terms of the stability of the creek bank. The proposed location of the pathway is visible from the rear of the hotel courtyard. The Commission found that this improved single pathway would effectively limit degradation by pedestrian traffic and is necessary for safety reasons. The Commission specified a pathway of gravel or stone. No raised boardwalk shall be allowed.

Conclusion:

No development occurs within the twenty-five (25) foot riparian zone with the exception of approved stream stabilization work. Private pathways and staircases shall not lead into or through the riparian zone except for the single pathway approved, as deemed necessary by the Planning and Zoning Commission

**4. Plan and time frame are provided for restoration of riparian vegetation damaged as a result of the work done.**

Finding:

No riparian vegetation is to be damaged "as a result of the work done." The riparian area will be avoided during construction and a full restoration of the riparian setback zone is planned as a part of the development proposal. A condition of approval requires plans for protection of riparian area and the creek (from debris, chemicals, erosion) during construction. A separate condition of approval requires restoration of damaged riparian vegetation within riparian zone prior to completion of the proposed project. A bond to assure such restoration may be required prior to commencement of such work.

Conclusion:

Upon compliance with conditions of approval, a plan and time frame are provided for restoration of riparian vegetation damaged as a result of the work done

**5. New or replacement planting and vegetation includes plantings that are low-growing and have dense root systems for the purpose of stabilizing stream banks and repairing damage previously done to riparian vegetation. Examples of such plantings include: red osier dogwood, common choke cherry, service berry, elder berry, river birch, skunk bush sumac, beeb's willow, drummond's willow, little wild rose, gooseberry, and honeysuckle.**

Finding:

A preliminary planting plan has been submitted and includes, from the above list, dogwood, elderberry, willows, gooseberry. Other riparian plantings proposed are shown on sheet L-5. A detailed plant materials list is a condition of approval.



**Conclusion:**

Upon compliance with conditions of approval, new or replacement planting and vegetation includes plantings that are low-growing and have dense root systems for the purpose of stabilizing stream banks and repairing damage previously done to riparian vegetation.

**6. Landscaping and driveway plans to accommodate the function of the floodplain to allow for sheet flooding. Flood water carrying capacity is not diminished by the proposal. Surface drainage is controlled and does not adversely impact adjacent properties including driveways drained away from paved roadways. Culvert(s) under driveways may be required. Landscaping berms are designed to not dam or otherwise obstruct floodwaters or divert same onto roads or other public pathways.**

**Finding:**

No driveways or berms are proposed. No stream alteration is proposed, nor any change to existing grades within the riparian setback, so flood water carrying capacity will not be diminished. Surface drainage will be more controlled by the addition of appropriate riparian plantings in areas that are currently bare and subject to erosion.

**Conclusion:**

Landscaping plans accommodate the function of the floodplain to allow for sheet flooding. Flood water carrying capacity is not diminished by the proposal. Surface drainage is controlled and does not adversely impact adjacent properties.

**7. Impacts of the development on aquatic life, recreation, or water quality upstream, downstream or across the stream are not adverse.**

**Finding:**

Aquatic life, recreation and water quality will be improved with the proposed restoration and planting of appropriate riparian plants within the riparian zone. Currently the riparian zone is subject to erosion.

**Conclusion:**

Impacts of the development on aquatic life, recreation, or water quality upstream, downstream or across the stream are not adverse.

**8. Building setback in excess of minimum required along waterways is encouraged.**

**Finding:**

The building is set back in excess of twenty-five (25) feet; however, a retaining wall for walkway and stairs is at the minimum setback at one point.

**Conclusion:**

Building setback is in excess of the minimum required along waterways.

**9. The bottom of the lowest floor in the floodplain is a minimum of one (1) foot above the I.R.F.**

**Finding:**

The building is not in the floodplain.

**Conclusion:**

The standard is not applicable.

**10. The back fill used around the foundation in the floodplain provides a reasonable transition to existing grade, but is not used to fill the parcel to any greater extent.**

**Finding:**

No building foundation in floodplain.

**Conclusion:**

The standard is not applicable.

**11. Driveways comply with effective Street Standards; access for emergency vehicles has been adequately provided for.**

**Finding:**

No driveways or access areas are located within the riparian area.

**Conclusion:**

The standard is not applicable.

**12. Landscaping or revegetation conceals cuts and fills required for driveways and other elements of the development.**

**Finding:**

No cut and fill is proposed within the riparian zone.

**Conclusion:**

The standard is not applicable.

**13. (Stream Alteration) The proposal is shown to be a permanent solution and creates a stable situation.**

**14. (Stream Alteration) No increase to the 100-year floodplain upstream or downstream has been certified by a registered Idaho engineer.**

**15. (Stream Alteration) The recreational use of the stream including access along any and all public pedestrian/fisherman's easements and the aesthetic beauty is not obstructed or interfered with by the proposed work.**

**16. Wetlands are not diminished.**

**17. (Stream Alteration) Fish habitat is maintained or improved as a result of the work proposed.**

**18. (Stream Alteration) The proposed work is not in conflict with the local public interest, including, but not limited to, property values, fish and wildlife habitat, aquatic life, recreation and access to public lands and waters, aesthetic beauty of the stream and water quality.**

**19. (Stream Alteration) The work proposed is for the protection of the public health, safety and/or welfare such as public schools, sewage treatment plant, water and sewer distribution lines and bridges providing particularly limited or sole access to areas of habitation.**

Finding: No Stream Alteration is proposed. No Wetlands are present on the site.

Conclusion:

Items 13 through 19 of Standard 17.88.060(E) are not applicable.

**CONCLUSIONS OF LAW**

1. The City of Ketchum is a municipal corporation organized under Article XII of the Idaho Constitution and the laws of the State of Idaho, Title 50, Idaho Code.

2. Under Chapter 65, Title 67 of the Idaho Code, the City has passed a land use and zoning ordinance, Title 17.

3. The Planning and Zoning Commission has authority to hear the applicant's Design Review application pursuant to Chapter 17.88 and Chapter 17.96, Ketchum Code Title 17.

4. The Commission's Monday, June 16, 2008 and Monday, July 28, 2008 public hearings and consideration of the applicant's application were properly noticed.

5. The project, Hotel Ketchum, **does** meet the standards for approval under Chapter 17.96 and 17.88 of Ketchum Code Title 17 only if the following conditions of approval are met.

## DECISION

**THEREFORE**, the Ketchum Planning and Zoning Commission **approves** this Design Review application for a new hotel building, Hotel Ketchum, this 28th day of July, 2008, provided the following conditions are met:

1. Ketchum Water, Sewer, Fire and Building Department requirements shall be met.
2. Design review elements shall be completed prior to final inspection/occupancy.
3. This Design Review approval is based on the plan sheets dated as referenced in Exhibit A. Building Permit plans must conform to the approved Design Review plans unless otherwise approved in writing by the Commission or Planning and Zoning Administrator. Any building or site discrepancies which do not conform to the approved plans will be subject to removal.
4. This Design Review approval is contingent upon approval of the PUD CUP application and is subject to the requirements set forth in the PUD Agreement.
5. The existing mature trees that are indicated to be preserved or transplanted shall be fenced at the dripline and protected from construction impacts. The survival of all such trees shall be guaranteed for a period of two years. Any tree that is more than 50% dead (as determined by the City's Arborist) within two years of issuance of Certificate of Occupancy shall be replaced with a specimen tree of significant size in a location as near to the existing location as feasible.
6. All exterior lighting shall comply and continue to comply with Chapter 17.132 of Ketchum Code.
7. Any exterior telecommunication devices shall be located on a flat portion of the roof and not visible from surrounding properties.
8. Landscaping within the island between the motor court and River Street shall allow for adequate sight distance. Final street tree species selection and locations shall be approved by the City Arborist prior to installation. The final landscape plan shall be submitted to the Planning staff for administrative approval prior to installation.
9. If the utility lines on the east and west sides of the building are not relocated underground, different (utility line compliant) tree species shall be chosen. Final species selection for trees below utility lines, if any, shall be approved by the City Arborist prior to installation.
10. An ISA Certified Arborist be retained by the developer to: (a) provide a written Tree Preservation Plan for the public and private trees, to be reviewed and approved by the City Arborist; and (b) provide monthly site visits with the City Arborist during construction for compliance checks.

11. The pedestrian amenities within the public street right-of-way areas shall include at a minimum:

- a) Sidewalks shall be a minimum width of 6 feet on Main Street, as shown but not less than 5 feet on River Street, and 5 feet on Leadville Avenue.
- b) Sidewalk along Main Street shall extend south to the bridge to Trail Creek Crossings.
- c) Bike racks, trash receptacles, benches and other amenities shall be incorporated in the final landscape plan, to be reviewed and approved by the Commission prior to installation, and prior to any certificates of occupancy.

12. A demolition permit shall be obtained prior to demolition of any structure on the subject property, pursuant to Chapter 15.16 of Ketchum Code. Photographs of the existing buildings shall be retained and displayed in a publicly accessible location within the hotel.

13. Prior to issuance of a building permit and prior to any on-site excavation, a construction mitigation plan shall be submitted to the Planning Department pursuant to Resolution Number 785.

14. The following conditions related to the Waterways Design Review shall be met:

- a) A detailed plant materials list, detailed plans for riparian restoration, and plans for protection of riparian area and the creek (from debris, chemicals, erosion) during construction shall be submitted for approval by the Planning Department prior to issuance of a building permit.
- b) Riparian vegetation and other landscaping shall be maintained in perpetuity as shown on approved plans.
- c) Construction and silt fencing shall be located at the twenty-five (25) foot setback line prior to issuance of a building permit, and shall remain in place for the duration of construction to limit the disturbance to the riparian areas. No construction materials shall be placed within the riparian setback at any time.
- d) No decks, patios, outdoor furnishings, or exterior lighting shall be installed within the twenty-five (25) foot riparian zone. No maintenance, including mowing, trimming, and removal, of vegetation within the riparian zone shall take place without approval from the Planning Department.
- e) Restoration of damaged riparian vegetation within riparian zone shall be required prior to completion of the proposed project. A bond to assure such restoration may be required prior to commencement of such work.

f) A single, natural (stone, gravel, decomposed granite or similar) walkway to the water's edge shall be constructed.

15. A general material and color palette is approved, consisting of Cor-Ten steel or patina'd copper with a matte finish and in a warm color, cut moss rock similar to that presented at the hearing, and plaster in a warm color to be determined. All specific materials and colors shall be reviewed and approved by the Commission prior to installation and prior to the issuance of any Certificates of Occupancy. The applicant shall provide an on-site, large scale (minimum 80 square feet) materials mock up that will be portable and visible in sun and shade and at different times of day.

16. A signage master plan shall be submitted for Commission review and approval prior to installation and prior to the issuance of any Certificates of Occupancy.

17. A final roof plan and plans for all rooftop elements shall be submitted for Commission review and approval prior to issuance of a building permit. The plans shall show at a minimum all mechanical and/or telecommunications equipment, the elevator shaft, and the observatory and dome, along with the size, materials/color/exterior finish of all elements. The drawing titled Building Height Analysis, Sheet A-1D, shall be modified and presented along with the Roof Plan, Sheet A2.06, to illustrate how the rooftop elements relate to the maximum roof height permitted by the PUD Conditional Use Permit.

18. A final exterior lighting plan showing location, type, mounting height, lumen output, and spec sheets for fixtures, shall be submitted for staff review and approval prior to installation and prior to the issuance of any Certificates of Occupancy.

19. Final plans for the upper level wooden slats shall be submitted for Commission review and approval prior to installation and prior to the issuance of any Certificates of Occupancy. These elements shall be exterior, and the plans shall indicate how they move and the resulting appearance.

Findings of Fact **adopted** this 8th day of September, 2008.

  
\_\_\_\_\_  
Deborah Burns, Co-Chair  
Planning and Zoning Commission

## EXHIBIT "A"

The full set of architectural, landscape and civil drawings are on file in the Planning Department.

### Architectural:

DRAWING	DATE	DESCRIPTION
A1.00	July 28, 2008	Site Plan
A-2A	May 1, 2008	Vehicular Circulation
A-3F	May 1, 2008	Snowmelt Plan
A2.P2	July 28, 2008	Parking Level 2 Floor Plan
A2.P1	July 28, 2008	Parking Level 1 Floor Plan
A2.00	July 28, 2008	Lower Level Floor Plan
A2.01	July 28, 2008	Ground Level Floor Plan
A2.01L	January 1, 2008	Ground Level Lighting Plan
A2.02	July 28, 2008	Level 2 Floor Plan
A2.03	July 28, 2008	Level 3 Floor Plan
A2.04	July 28, 2008	Level 4 Floor Plan
A2.05	July 28, 2008	Level 5 Floor Plan
A2.06*	July 28, 2008	Roof Plan
A3.01A	July 28, 2008	West Elevation (w/materials)
A3.01R	July 28, 2008	West Elevation
A3.02A	July 28, 2008	North Elevation (w/materials)
A3.02R	July 28, 2008	North Elevation
A3.03A	July 28, 2008	East Elevation (w/materials)
A3.03R	July 28, 2008	East Elevation
A3.04A	July 28, 2008	South Elevation (w/materials)
A3.04R	July 28, 2008	South Elevation
A3.05R	January 8, 2008	West Courtyard Elevation/Section
A3.06R	January 8, 2008	East Courtyard Elevation/Section
A4.01	January 8, 2008	Enlarged Guest Room Plans
A4.02	January 8, 2008	Enlarged Guest Room Plans
A4.03	January 8, 2008	Enlarged Condo Unit Plan
A4.04	January 8, 2008	Enlarged Condo Unit Plan
A4.05	January 8, 2008	Enlarged Condo Unit Plan
A8.01	July 28, 2008	Enlarged Elevation, Plan + Section
A8.02	July 16, 2008	Partial Enlarged West Elevation
A-1B1	May 1, 2008	West Courtyard Elevation/Section*check these dups
A-1B2	May 1, 2008	East Courtyard Elevation/Section
A-1A1	May 1, 2008	Southwest Corner View
A-1A2	May 1, 2008	View from Leadville Avenue
SK.01	July 16, 2008	North Perspective
SK.02	July 16, 2008	Northeast Perspective

A-1A3	May 1, 2008	Northeast Aerial View
A-1A4	May 1, 2008	Southwest Aerial View
A-1G1	May 1, 2008	Shadow Study (Spring)
A-1G2	May 1, 2008	Shadow Study (Summer)
A-1G3	May 1, 2008	Shadow Study (Autumn)
A-1G4	May 1, 2008	Shadow Study (Winter)
A-1D*	July 28, 2008	Building Height Analysis
A-1E	May 1, 2008	Gateway Master Plan Design Guidelines
(not numbered)	March 24, 2008	Exterior Lighting Fixtures

\* These plans, Roof Plan and Building Height Analysis, were not attached to the Commission's staff report, but were received following the Commission's decision. The Commission's decision was based on the following plans, as presented for the PUD CUP hearing on June 16, 2008:

A2.06	May 1, 2008	Roof Plan
A-1D	May 1, 2008	Building Height Analysis

Landscape:

DRAWING	DATE	DESCRIPTION
L-1	January 10, 2008	Site Plan
L-2	January 10, 2008	Grading Plan
L-3	January 10, 2008	Landscape Plan
L-4	January 10, 2008	Tree Assessment Plan
L-5	January 10, 2008	Riparian Enhancement Plan

Civil:

DRAWING	DATE	DESCRIPTION
C1	January 10, 2008	Vicinity and Zoning Map
C2	January 10, 2008	Existing Conditions
C3	January 10, 2008	Grading Plan
C4	January 10, 2008	Detail Sheet



DESIGN REVIEW SUBMITTAL



# HOTEL KETCHUM

Prepared for:

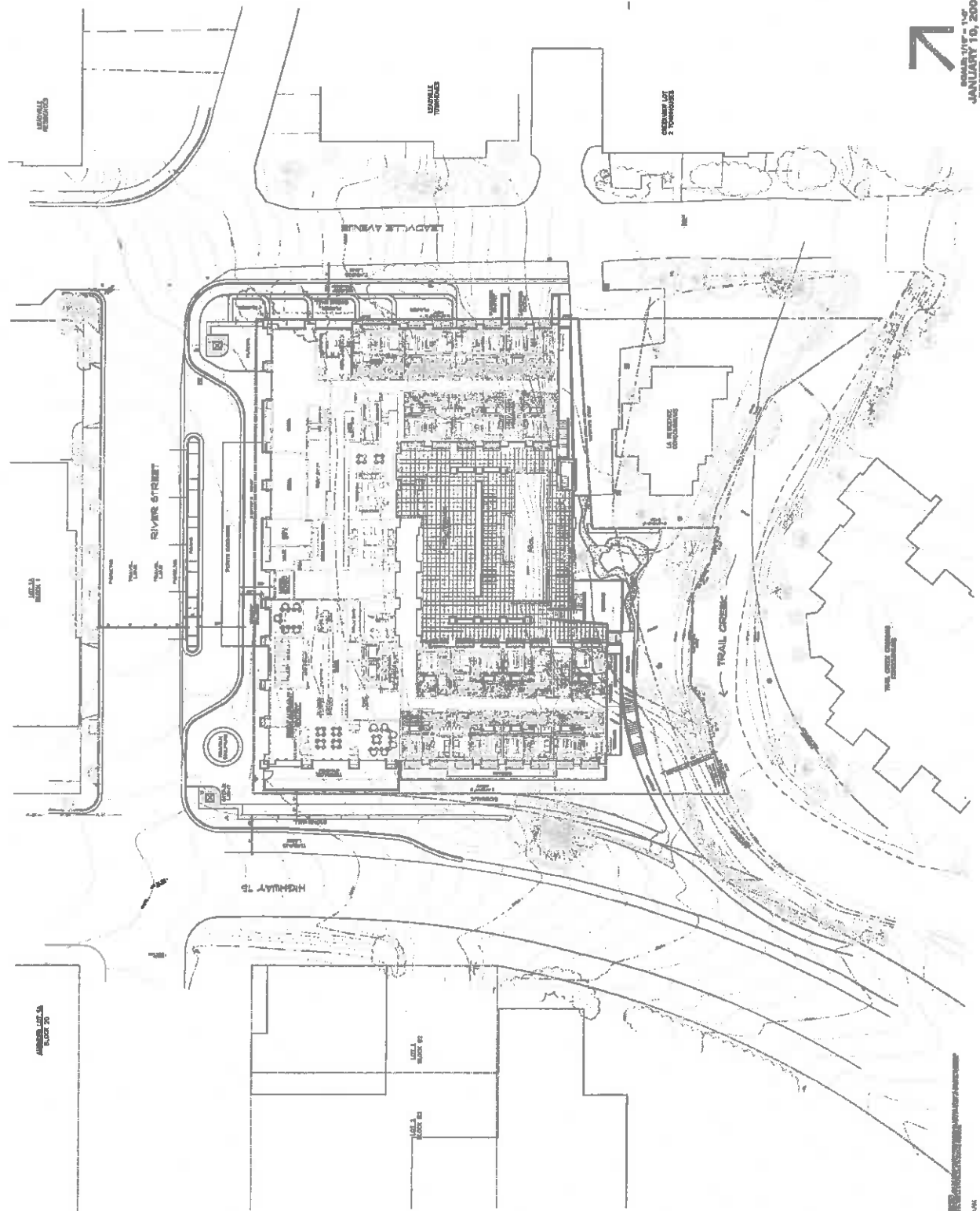
Trail Creek Fund, L.L.C.



Hornberger+Woistell, Inc.  
Architects and Planners  
July 2008



SITE PLAN



HOTEL KETCHUM

LOT 2 BLOCK 89 KETCHUM TOWNSITE  
TRAIL CREEK VILLAGE  
KETCHUM, IDAHO

CLARENCE ASSOCIATES PLANNING AND DESIGN CONSULTANTS PC BOX 500 KETCHUM, IDAHO 83840 208.738.5251

DATE: 1/10/08  
DRAWN: J.T.  
CHECKED: J.T.  
DATE: JANUARY 10, 2008  
REVISIONS:

L-1

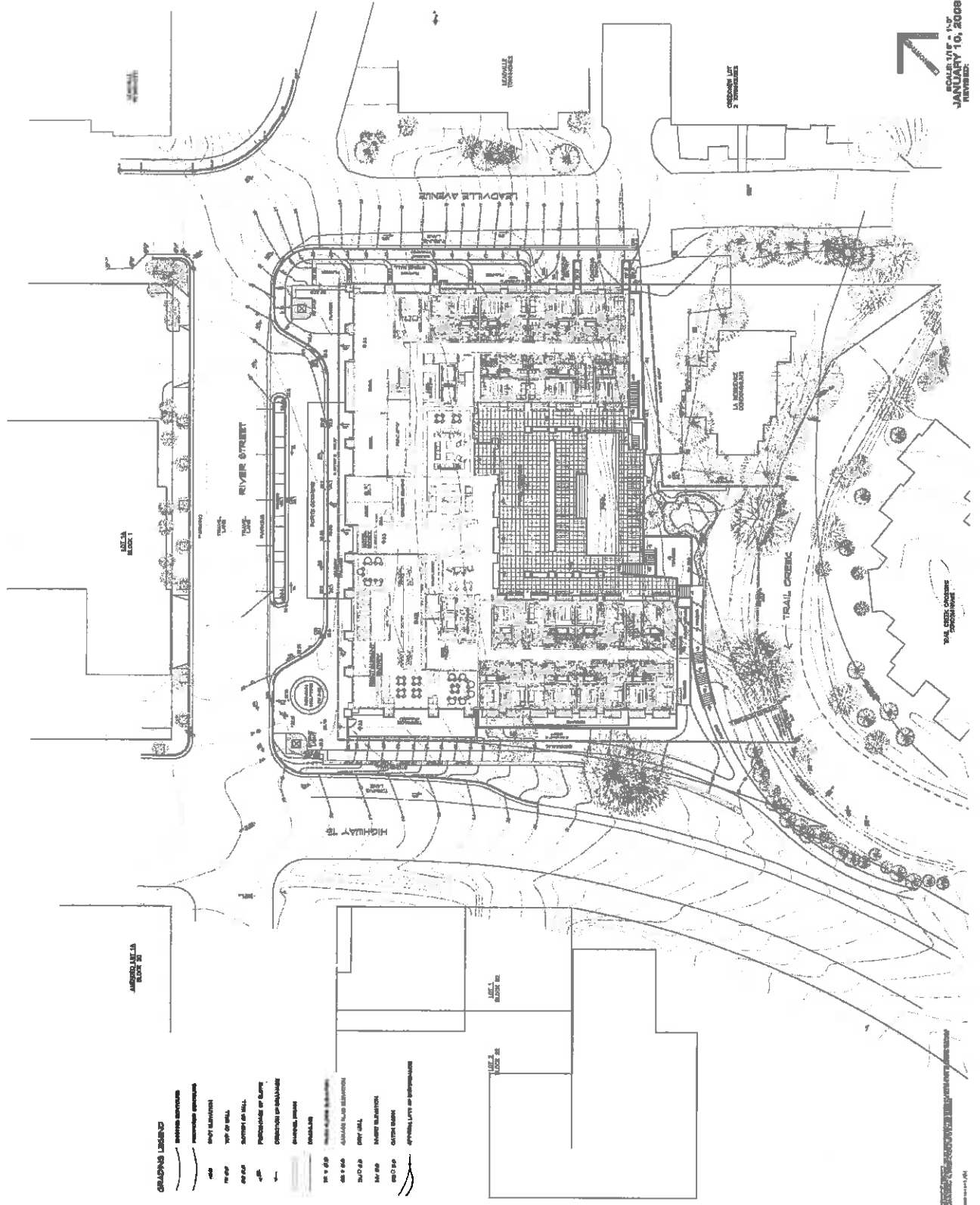
**SITE PLAN  
GRADING PLAN**

**HOTEL KETCHUM**

LOT 2 BLOCK 88 KETCHUM TOWNSITE  
TRAIL CREEK VILLAGE  
KETCHUM, IDAHO

CLARKSON ASSOCIATES, PLANNING AND DESIGN CONSULTANTS, P.O. BOX 300 KETCHUM, IDAHO 83840 208.726.1531

SCALE: 1/8" = 1'-0"  
JANUARY 10, 2008  
REVISED:



**GRADING LEGEND**

	EXISTING CONTOURS
	PROPOSED CONTOURS
	SPOT ELEVATION
	TOP OF WALL
	BOTTOM OF WALL
	FOUNDATION OR FOOTING
	CONSTRUCTION OR DRAINAGE
	EXISTING ROAD
	PROPOSED ROAD
	EXISTING UTILITY
	PROPOSED UTILITY
	EXISTING LOT OR SUBDIVISION
	PROPOSED LOT OR SUBDIVISION
	SPOT ELEVATION
	PROPOSED SPOT ELEVATION
	EXISTING STRUCTURE
	PROPOSED STRUCTURE
	EXISTING WALL
	PROPOSED WALL
	EXISTING DRAINAGE
	PROPOSED DRAINAGE
	EXISTING UTILITY
	PROPOSED UTILITY
	EXISTING LOT OR SUBDIVISION
	PROPOSED LOT OR SUBDIVISION

CLARKSON ASSOCIATES, PLANNING AND DESIGN CONSULTANTS, P.O. BOX 300 KETCHUM, IDAHO 83840 208.726.1531

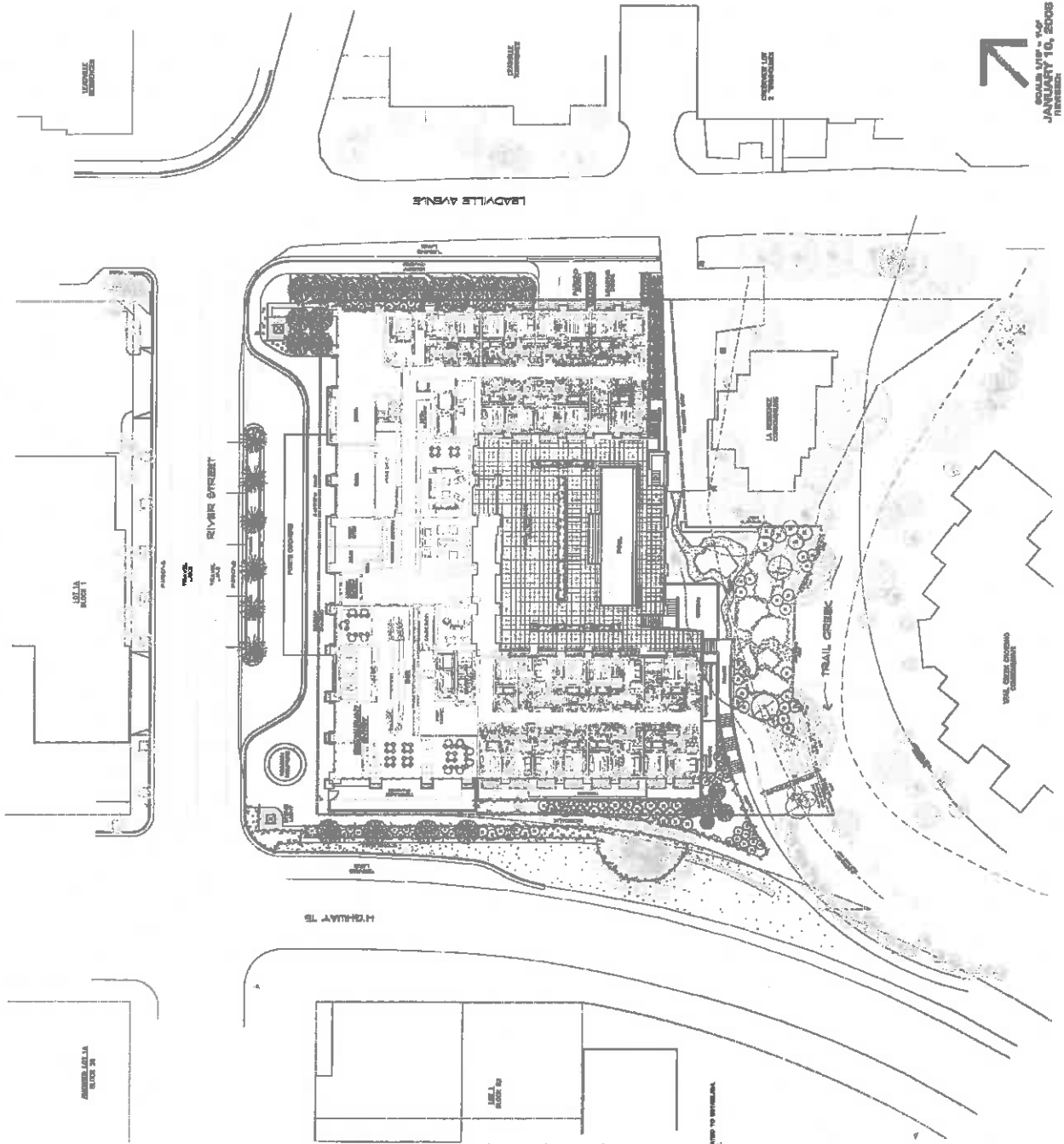
**SITE PLAN  
LANDSCAPE PLAN**

**HOTEL KETCHUM**

LOT 2 BLOCK 88 KETCHUM TOWNSITE  
TRAIL CREEK VILLAGE  
KETCHUM, IDAHO

CLARENCE ASSOCIATES PLANNING AND DESIGN CONSULTANTS PC BOX 900 KETCHUM, IDAHO 83840 208/728-5231

L-3  
SCALE 1/8" = 1'-0"  
JANUARY 16, 2008



**PLANT LEGEND**

	10' x 10' TREE
	12' x 12' TREE
	14' x 14' TREE
	16' x 16' TREE
	18' x 18' TREE
	20' x 20' TREE
	22' x 22' TREE
	24' x 24' TREE
	26' x 26' TREE
	28' x 28' TREE
	30' x 30' TREE
	32' x 32' TREE
	34' x 34' TREE
	36' x 36' TREE
	38' x 38' TREE
	40' x 40' TREE
	42' x 42' TREE
	44' x 44' TREE
	46' x 46' TREE
	48' x 48' TREE
	50' x 50' TREE
	52' x 52' TREE
	54' x 54' TREE
	56' x 56' TREE
	58' x 58' TREE
	60' x 60' TREE
	62' x 62' TREE
	64' x 64' TREE
	66' x 66' TREE
	68' x 68' TREE
	70' x 70' TREE
	72' x 72' TREE
	74' x 74' TREE
	76' x 76' TREE
	78' x 78' TREE
	80' x 80' TREE
	82' x 82' TREE
	84' x 84' TREE
	86' x 86' TREE
	88' x 88' TREE
	90' x 90' TREE
	92' x 92' TREE
	94' x 94' TREE
	96' x 96' TREE
	98' x 98' TREE
	100' x 100' TREE

NOTES:  
1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.  
2. ALL DIMENSIONS TO BE VERIFIED BY THE CONTRACTOR.


CLARENCE ASSOCIATES  
PLANNING AND DESIGN CONSULTANTS  
PC BOX 900 KETCHUM, IDAHO 83840  
208/728-5231





**EXISTING TREES**


AS PART OF THE PROPOSED DEVELOPMENT, AN ASSESSMENT OF THE EXISTING TREES HAS BEEN CONDUCTED. EXISTING TREES LARGER THAN 8" DIAMETER CALIPER, AND SMALLER TREES SIGNIFICANT TO THE LANDSCAPE, HAVE BEEN IDENTIFIED AND RECORDED ON THIS PLAN. THE RECOMMENDATIONS FOR THE EXISTING TREES ARE INCLUDED IN THE TREE ASSESSMENT REPORT PREPARED BY ALPINE TREE SERVICE DATED DECEMBER 14, 2007.

**EXISTING TREE LEGEND**

- 

1. TREES TO BE REMOVED FOR THE CONSTRUCTION OF THE TRAIL CREEK VILLAGE. THESE TREES ARE LOCATED WITHIN THE TRAIL CREEK VILLAGE DEVELOPMENT.
- 

2. TREES TO BE MAINTAINED AND PROTECTED. THESE TREES ARE LOCATED WITHIN THE TRAIL CREEK VILLAGE DEVELOPMENT.
- 

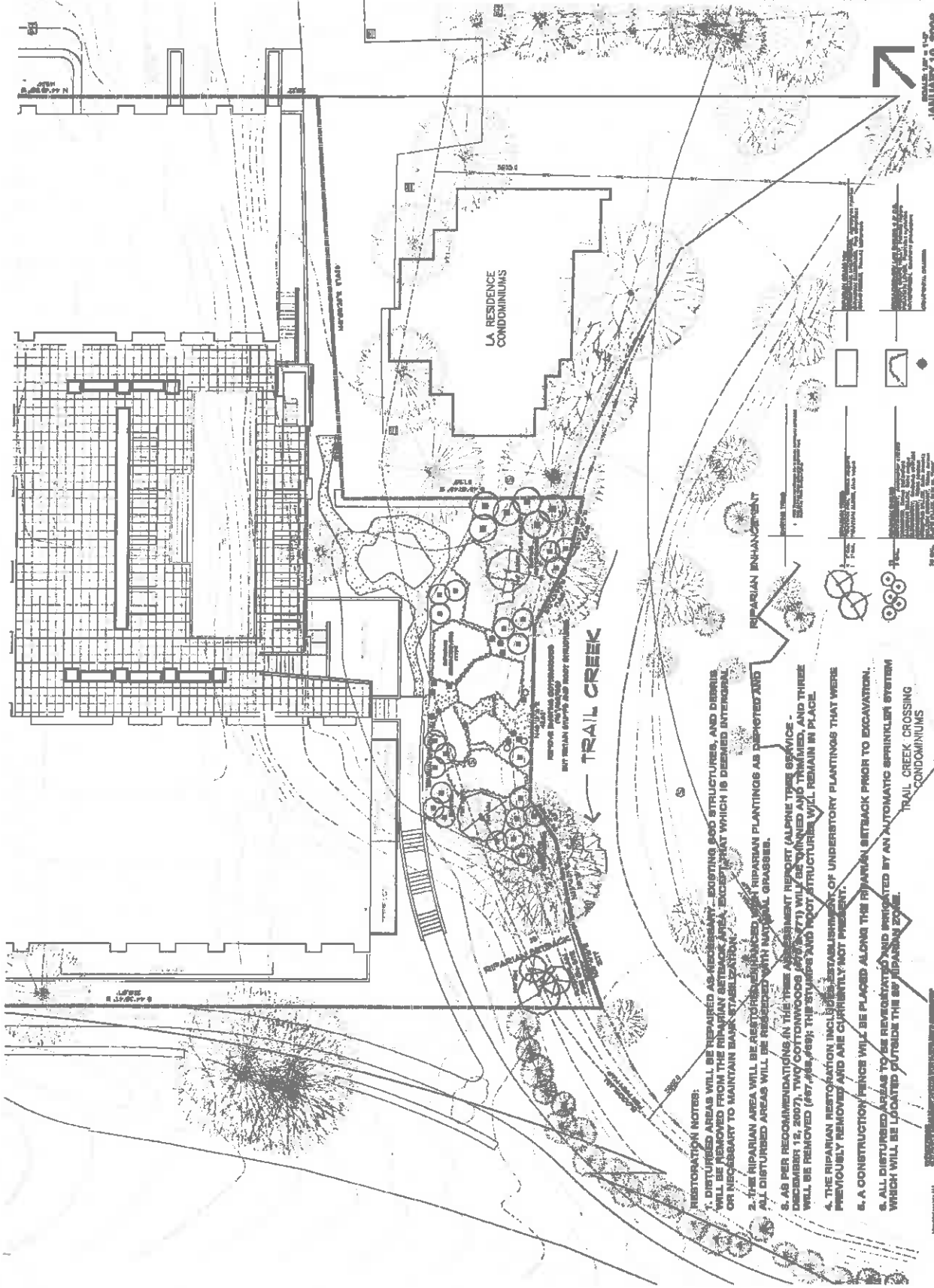
3. TREES TO BE MAINTAINED AND PROTECTED. THESE TREES ARE LOCATED WITHIN THE TRAIL CREEK VILLAGE DEVELOPMENT.
- 

4. TREES TO BE MAINTAINED AND PROTECTED. THESE TREES ARE LOCATED WITHIN THE TRAIL CREEK VILLAGE DEVELOPMENT.

**MITIGATION**

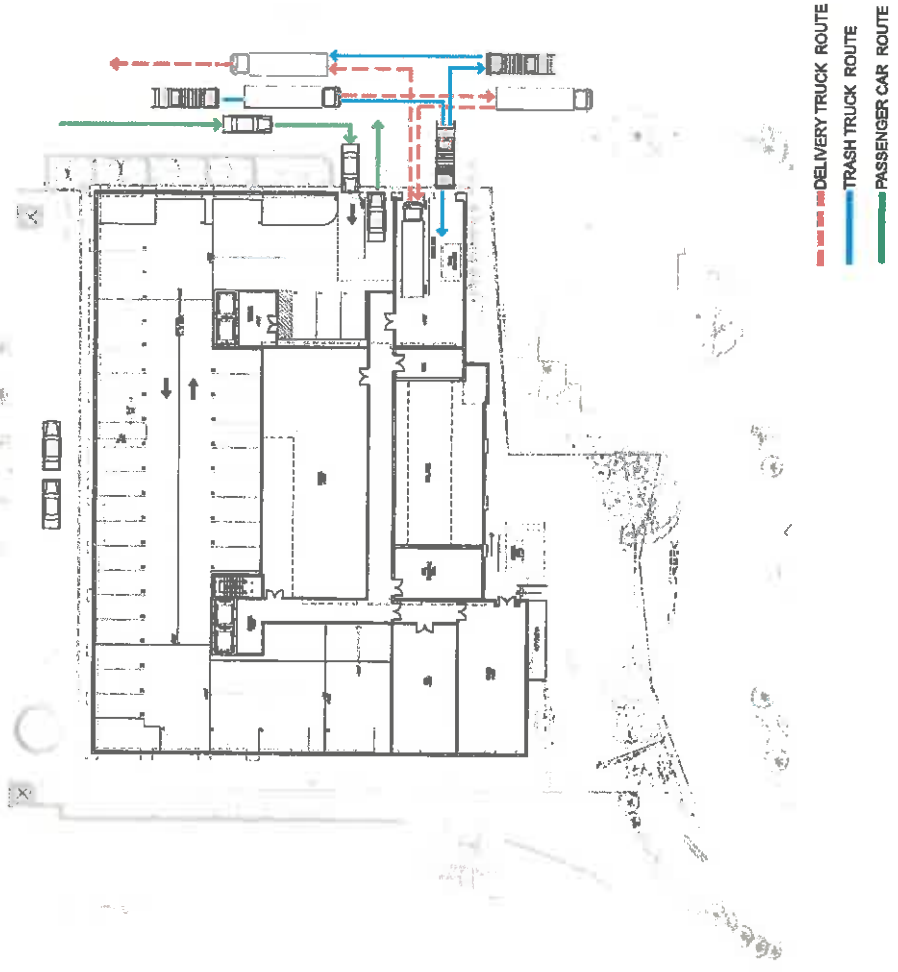
APPROXIMATELY 44 EXISTING TREES TO BE MITIGATED.  
 84 EXISTING TREES TO BE REMOVED. MAKE SURE EXISTING TREES IN POOR HEALTH - 44 EXISTING TREES TO BE MITIGATED.  
 AS PART OF THE PROPOSED DEVELOPMENT, NEW LANDSCAPING WILL BE PROVIDED TO REPLACE THE TREES TO BE REMOVED. THE PLANTINGS ARE SHOWN ON THE LANDSCAPE PLAN (SHEET L-2) AND THE REPAIRS ENHANCEMENT PLAN (SHEET L-3).  
 600 NEW TREES TO BE PLANTED  
 (500 NEW TREES TO BE PLANTED  
 (50 REPAIRING)

DATE: JANUARY 10, 2008  
PROJECT: HOTEL KETCHUM



**RESTORATION NOTES:**

1. DISTURBED AREAS WILL BE REPAIRED AS NECESSARY - EXISTING BOG STRUCTURES, AND DEBRIS WILL BE REMOVED FROM THE RIPARIAN SETBACK AREA, EXCEPT THAT WHICH IS DEEMED INTERIOR OR NECESSARY TO MAINTAIN BANK STABILIZATION.
2. THE RIPARIAN AREA WILL BE RESTORED WITH NATIVE RIPARIAN PLANTINGS AS DEPICTED AND PREVIOUSLY REMOVED AND ARE CURRENTLY NOT PRESENT.
3. AS PER RECOMMENDATIONS IN THE TREE ASSESSMENT REPORT (ALPINE TREE SERVICES - DECEMBER 12, 2007), TWO COTTONWOODS (PT. 5771) WILL BE THINNED AND THREES AND THREE WILL BE REMOVED (#87, #88, #89); THE STUMPS AND ROOT STRUCTURES WILL REMAIN IN PLACE.
4. THE RIPARIAN RESTORATION INCLUDES ESTABLISHMENT OF UNDERSTORY PLANTINGS THAT WERE PREVIOUSLY REMOVED AND ARE CURRENTLY NOT PRESENT.
5. A CONSTRUCTION FENCE WILL BE PLACED ALONG THE RIPARIAN SETBACK PRIOR TO EXCAVATION.
6. ALL DISTURBED AREAS TO BE REVEGETATED AND PROTECTED BY AN AUTOMATIC SPRINKLER SYSTEM WHICH WILL BE LOCATED OUTSIDE THE RIPARIAN ZONE.



design review  
 1  
 s u b m i t t a l  
 May 2008

Marabougo  
 Homburger + Westfall, Inc.  
 Architects, Planners  
 San Francisco, California  
 www.korabkperencepl.com

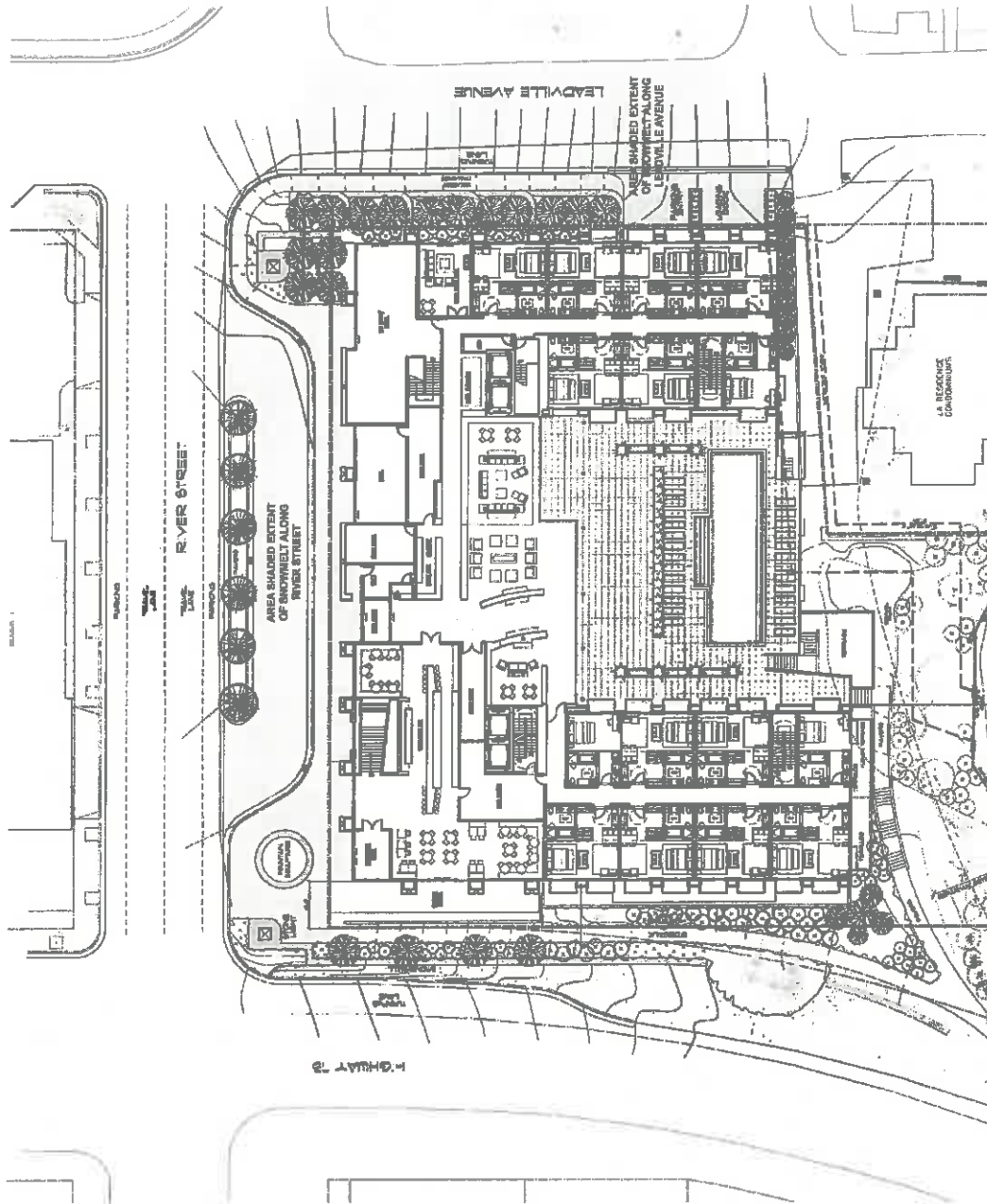
All drawings and information appearing  
 herein, including the original and  
 reproductions, are the confidential  
 property of the firm and shall remain  
 the sole property of the firm.  
 © 2007 Homburger + Westfall, Inc.

Vehicular Circulation

A-2A

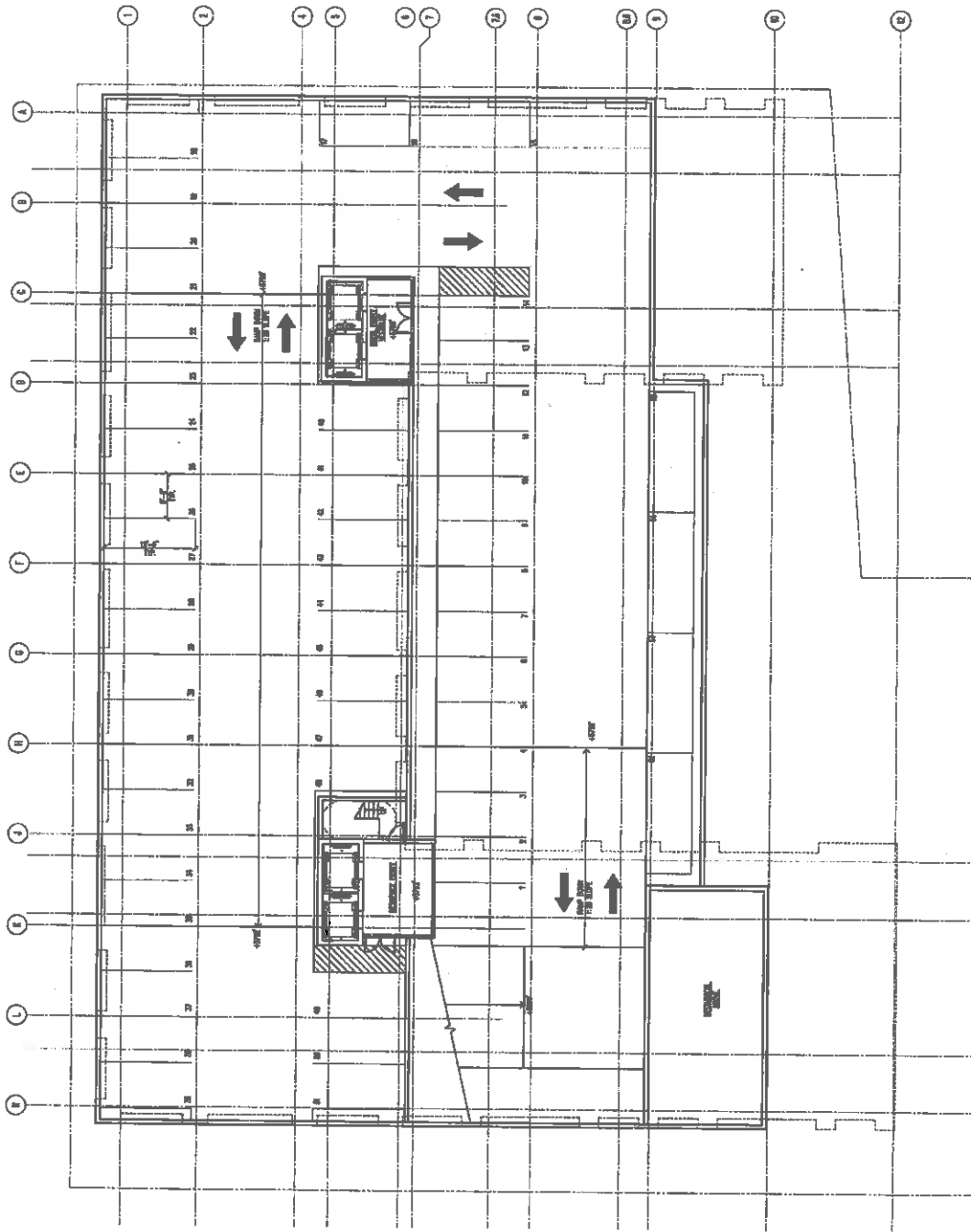






Hamberger + Wood, Inc.  
 Architects  
 1000  
 San Francisco, California  
 www.hambergerwood.com

All drawings and specifications are subject to change without notice. The contractor shall be responsible for obtaining all necessary permits. © 2007 Hamberger + Wood, Inc.



PARKING LEVEL 2 - 55 SPACES



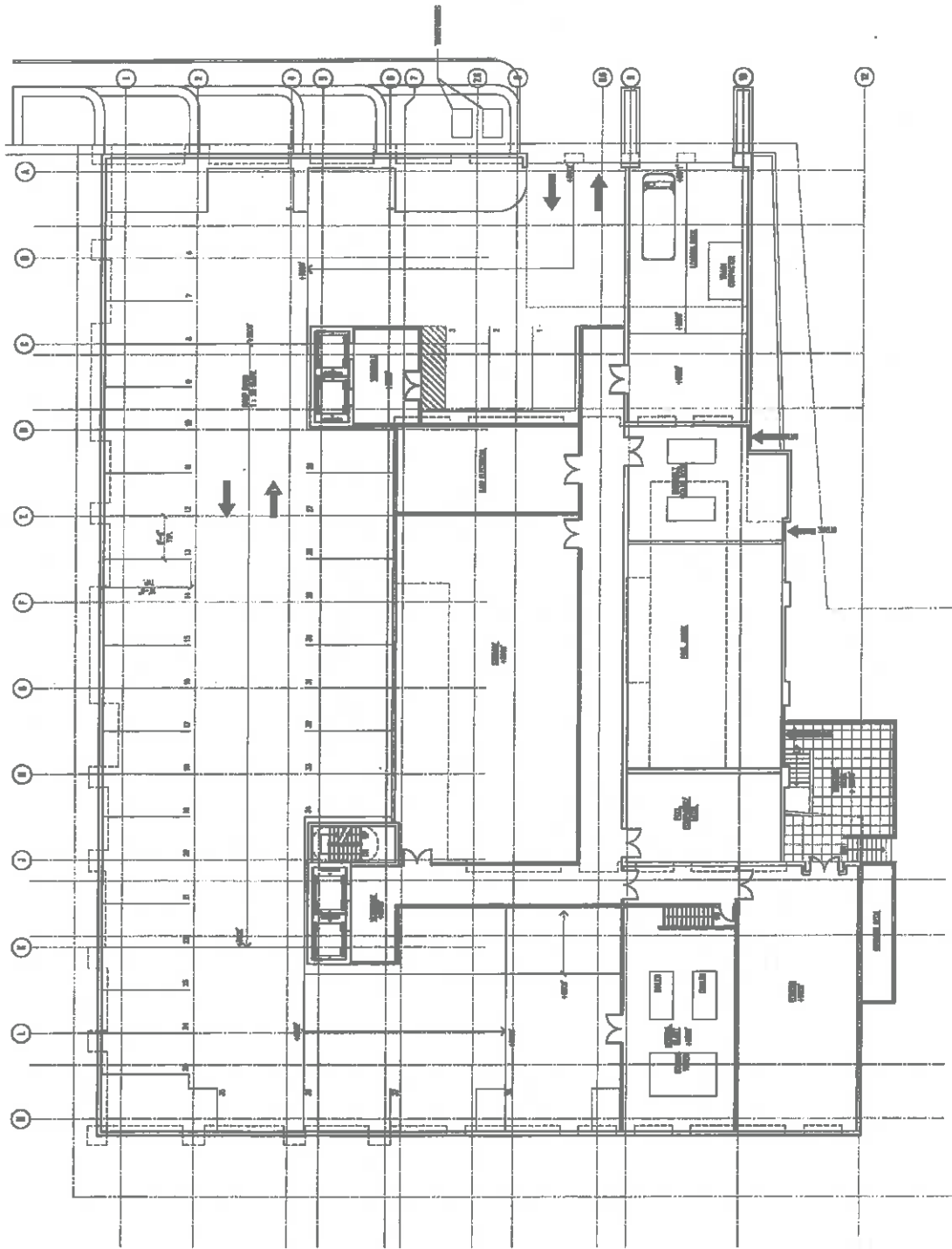
design review  
 s u b m i t t a l  
 28 July 2008

Kornberger  
 Kornberger & Woodell Inc  
 Architects  
 250  
 Riverside  
 Cambridge MA 02142  
 www.kornbergerwoodell.com

THIS DOCUMENT IS THE PROPERTY OF KORNBERGER & WOODSELL INC. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF KORNBERGER & WOODSELL INC.  
 © 2007 Kornberger & Woodsell, Inc.

Parking Level 2 Floor Plan  
 EL. +5788.0'

A2.P2



PARKING LEVEL 1 - 39 PARKING SPACES



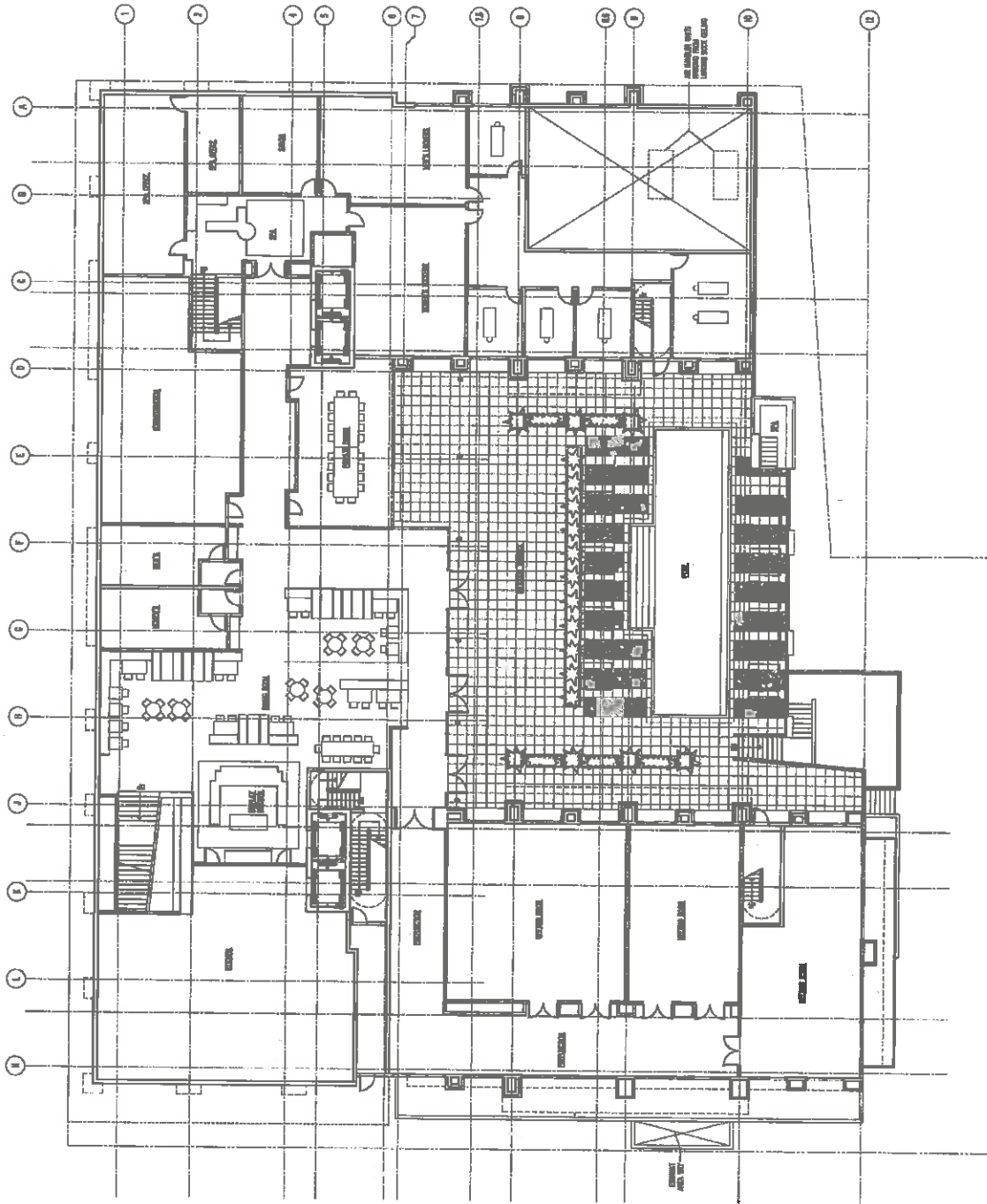
**KETCHUM**  
 design review  
 s u b m i t t a l  
 28 July 2008

**HEINIGER**  
 HEINIGER + WOODRUFF  
 ARCHITECTS  
 4000  
 SAN FRANCISCO, CALIFORNIA 94108  
 www.heinigerwoodruff.com

All design and construction documents are prepared and issued under the professional seal and license of the architect. The user shall assume all liability for the use of these documents. © 2007 Heiniger + Woodruff, Inc.

Parking Level 1 Floor Plan  
 EL. +880.0'

A2.P1



**KETCHUM**

design review  
 s u b m i t t a l  
 28 JULY 2008



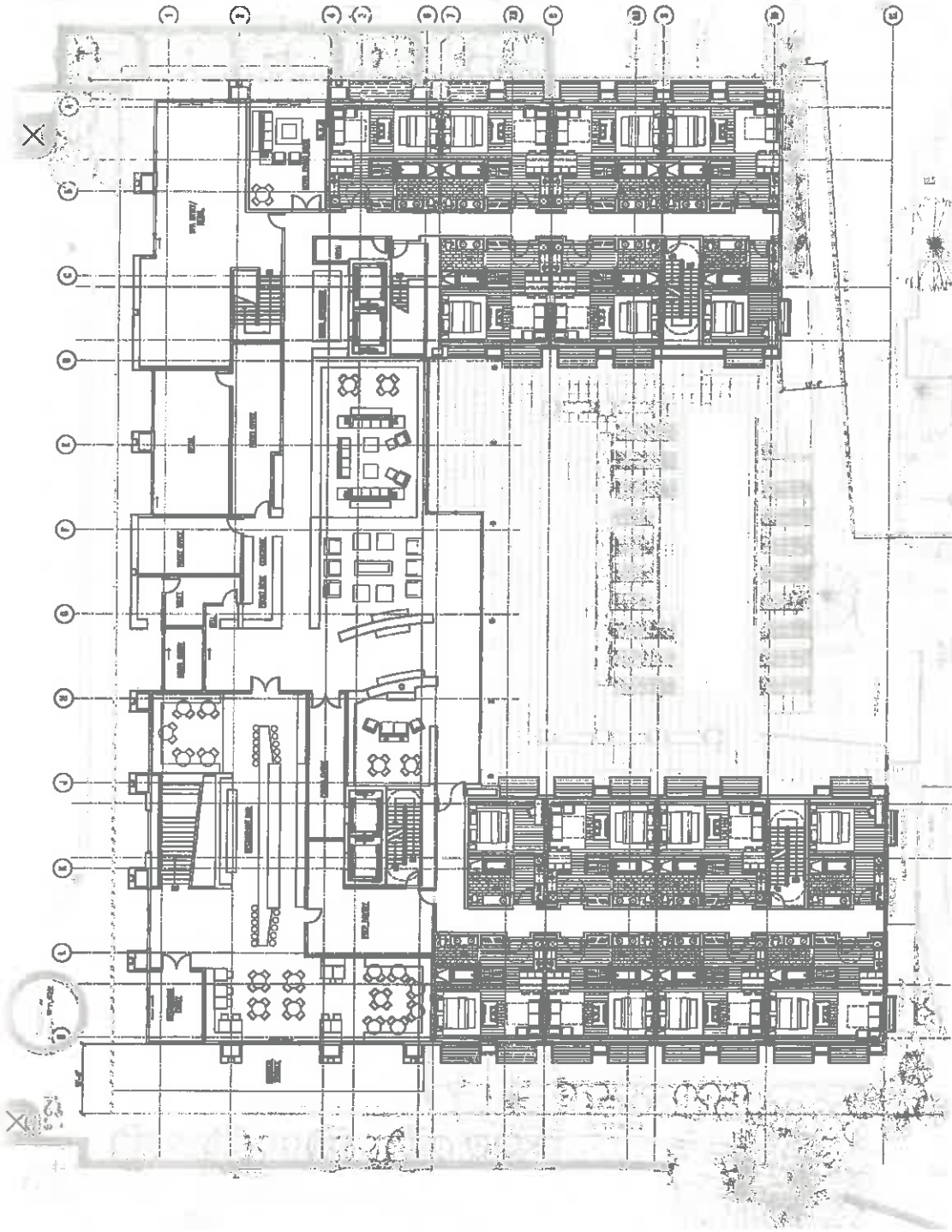
Ketchum Architecture  
 1000 California Street  
 San Francisco, California 94108  
 www.ketchum.com

All drawings are the property of Ketchum Architecture and shall remain confidential. No part of this drawing may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without the prior written consent of Ketchum Architecture.  
 © 2007 Ketchum Architecture, Inc.

Lower Level Floor Plan  
 El. +88'6.0"

A2.00





**KETCHUM**

design review  
 s u b m i t t a l  
 28 July 2008

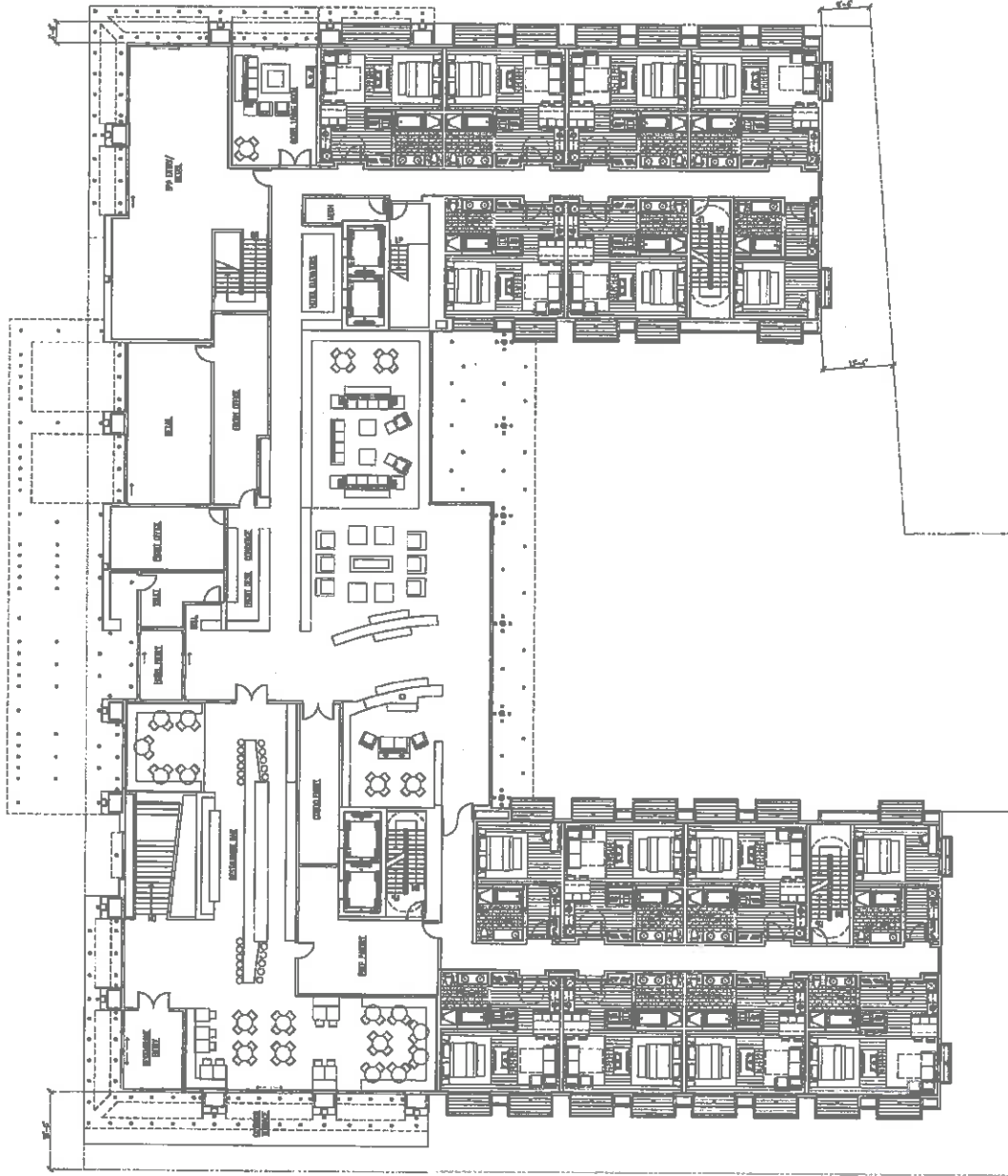


Hensinger  
 Hensinger + Wenzel Inc  
 Architects & Planners  
 1000  
 San Francisco, California 94104  
 www.hensingerwenzel.com

All drawings and information contained  
 herein, including the original and  
 reproduced copies, are the property of  
 the firm and are not to be distributed  
 outside the firm without the consent of the architect.  
 © 2007 Hensinger + Wenzel, Inc

Ground Level Floor Plan  
 E1 - 4983.0'

A2.01



LIGHTING LEGEND

- ⊕ RECESSED DOWNLIGHT TYPE CA
- ⊕ WALL SCONCE TYPE BA
- WALL SCONCE TYPE BC
- ⊕ WALL SCONCE TYPE BD
- ⊕ WALL SCONCE TYPE BE
- ⊕ WALL SCONCE TYPE BF

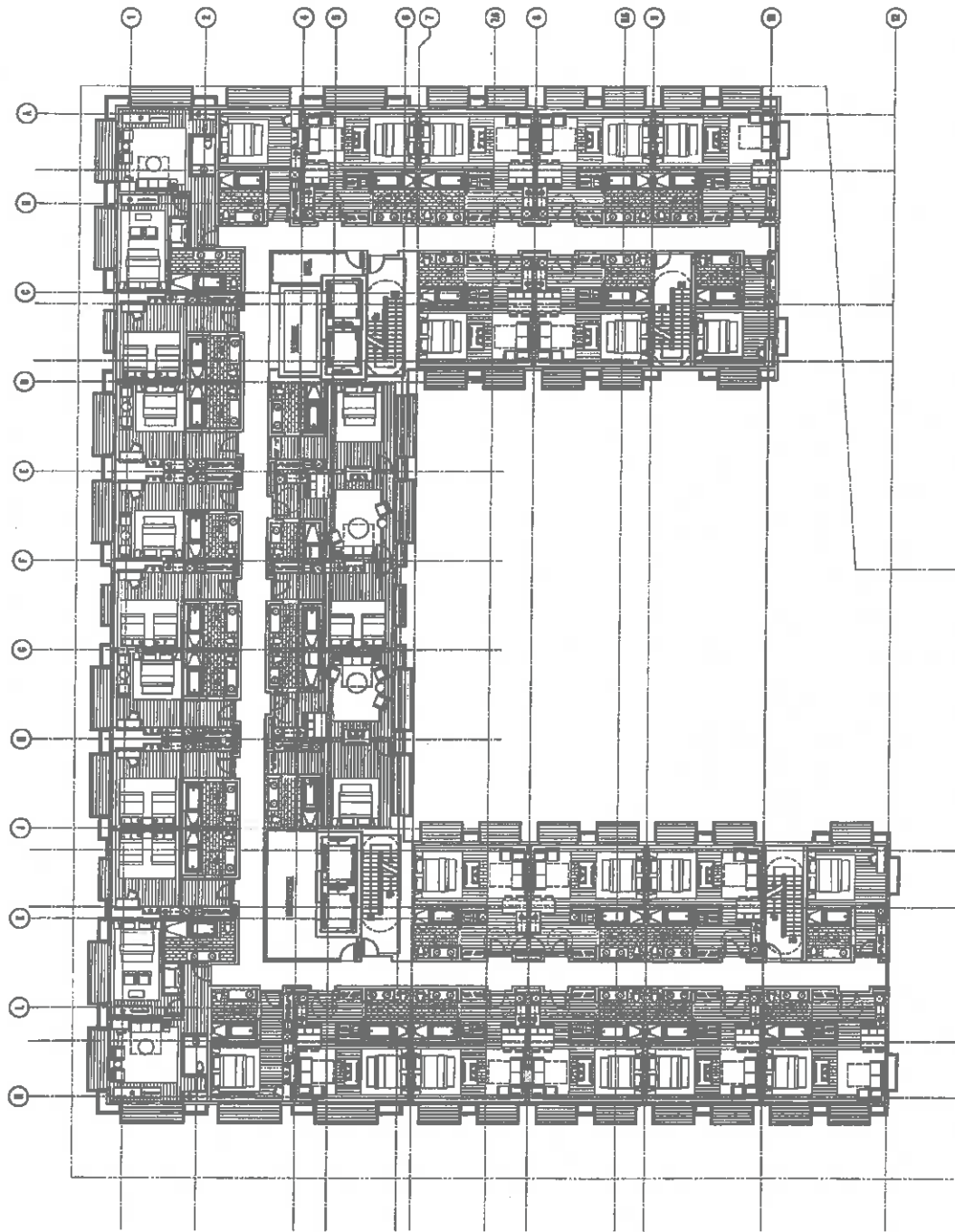


Hamberger  
 Hamberger + Hamberger  
 Architects  
 1700  
 Site: San Francisco, California 94103  
 www.hamberger-hamberger.com

All dimensions are in feet and inches, unless otherwise noted.  
 All dimensions are to the center of the wall, unless otherwise noted.  
 All dimensions are to the center of the window, unless otherwise noted.  
 © 2007 Hamberger + Hamberger, Inc.

Ground Level Lighting Plan  
 EL. +0883.0'

A2.01L



**KETCHUM**

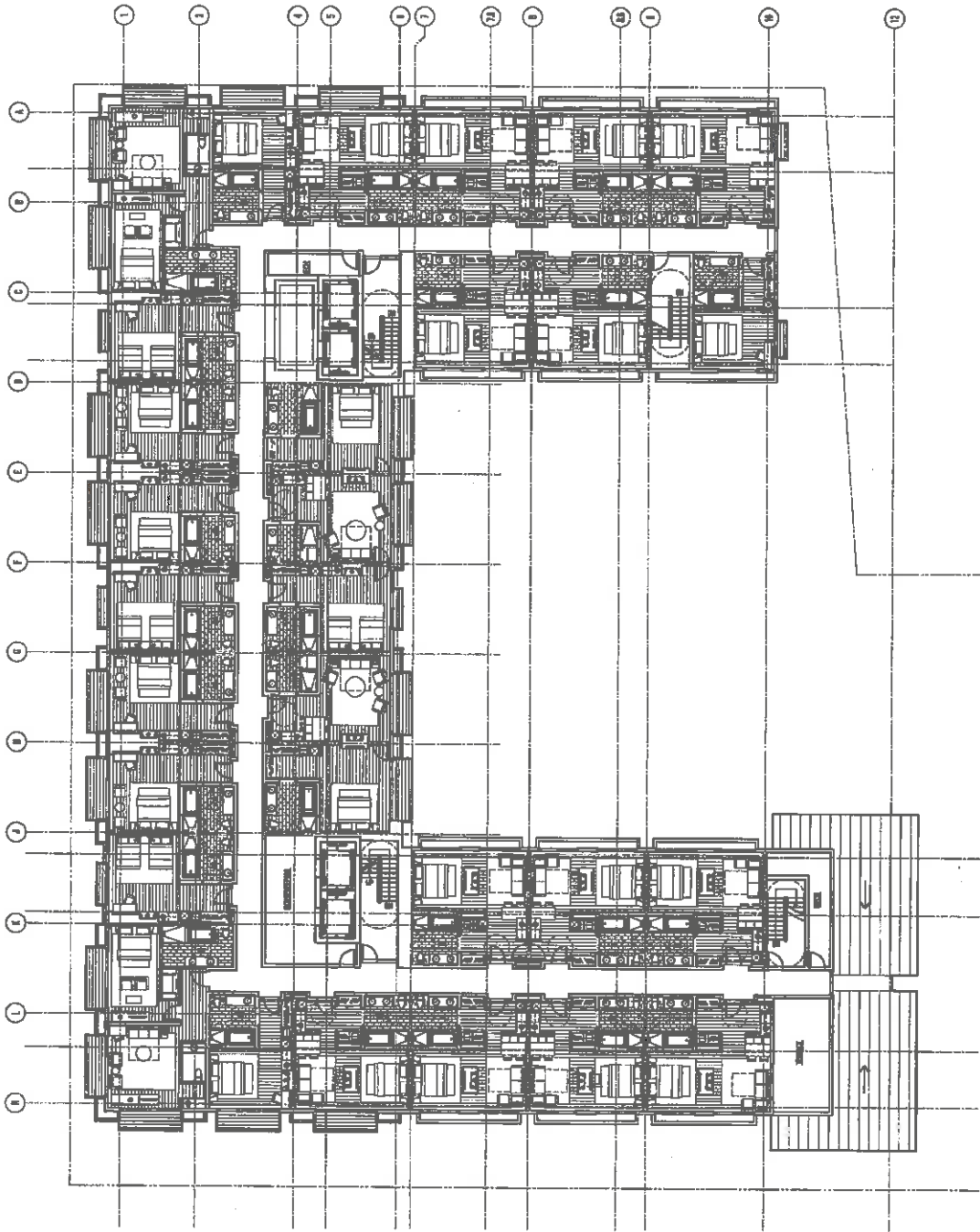
design review  
 submitted  
 July 28, 2008

Herrington & Associates  
 Architects & Planners  
 200 Harrison, California 94108  
 www.herringtonassociates.com

All drawings and specifications are prepared by Herrington & Associates, Inc. and are the property of Herrington & Associates, Inc. No part of this document may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without the prior written consent of the architect.  
 © 2007 Herrington & Associates, Inc.

Level 2 Floor Plan  
 EL: +0445.0

A2.02



design review  
 submit  
 July 28, 2008



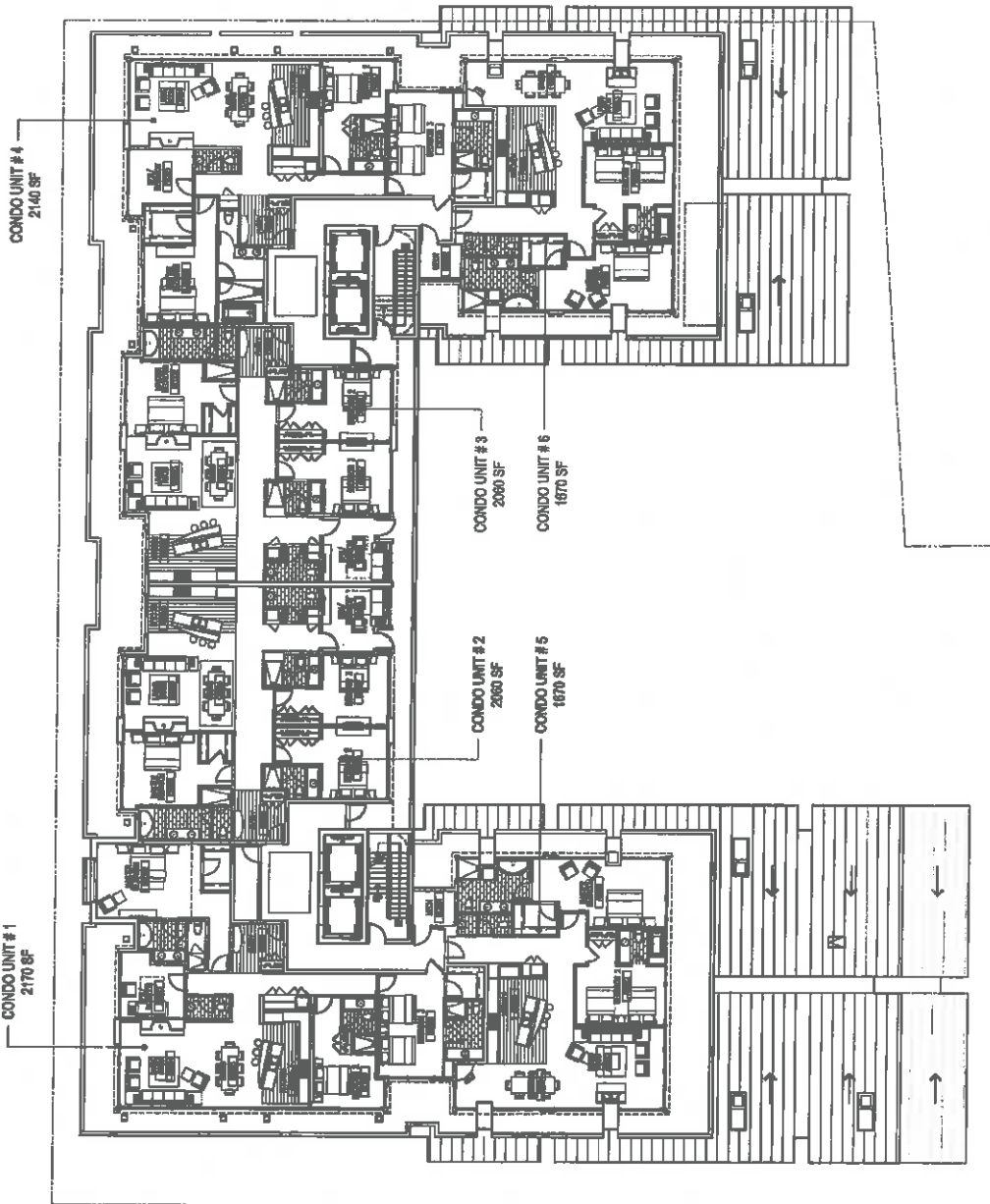
Kernberger  
 Kernberger + Woodell Inc.  
 Architects & Planners  
 1000 California Street  
 San Francisco, California 94108  
 www.kernbergerwoodell.com

ASB prepared the initial concept design. Kernberger + Woodell Inc. has reviewed the original and revised designs and approved the final design. Kernberger + Woodell Inc. is not responsible for the accuracy of the information contained in this plan.

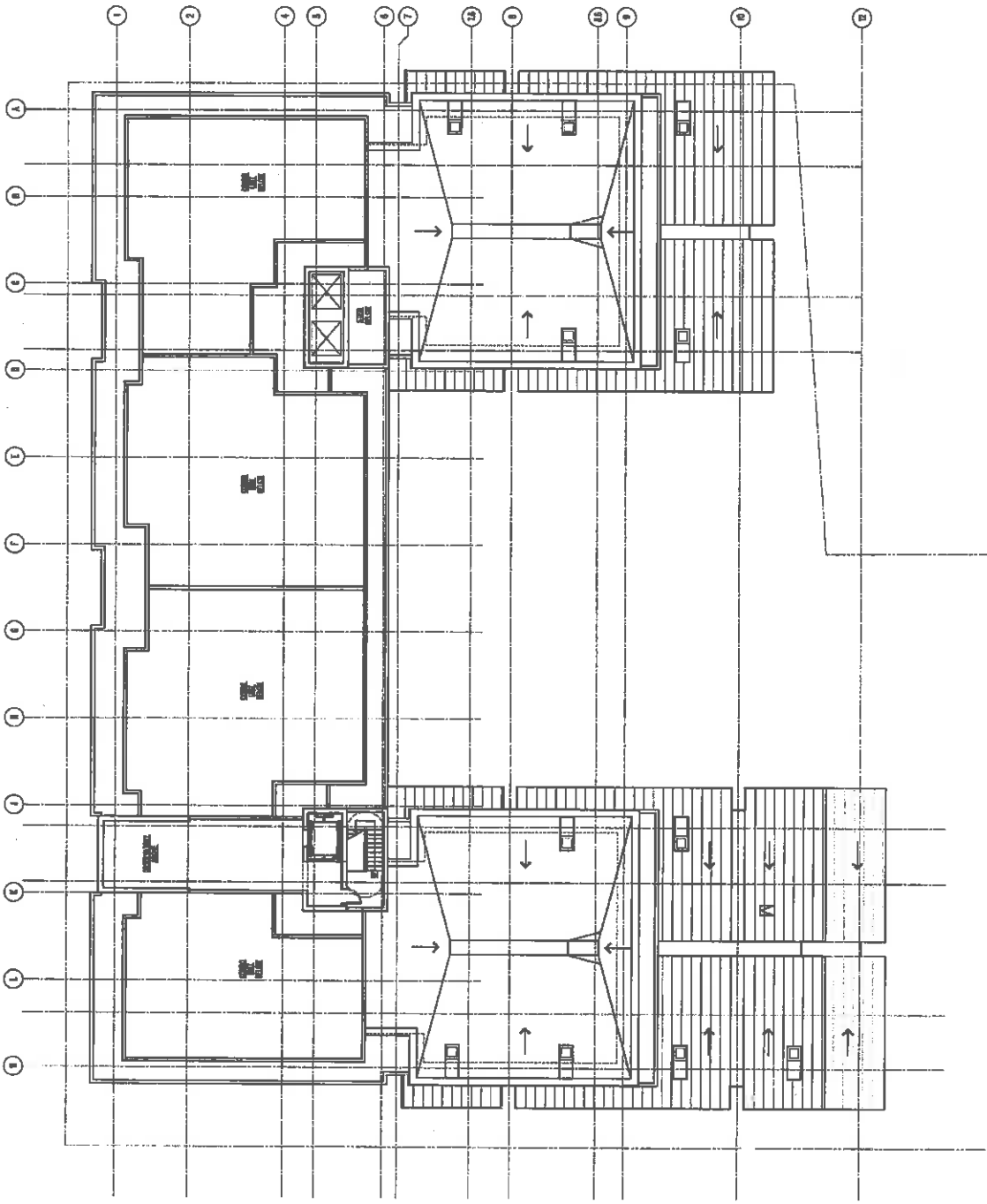
Level 3 Floor Plan  
 EL. +668.0'

A2.03

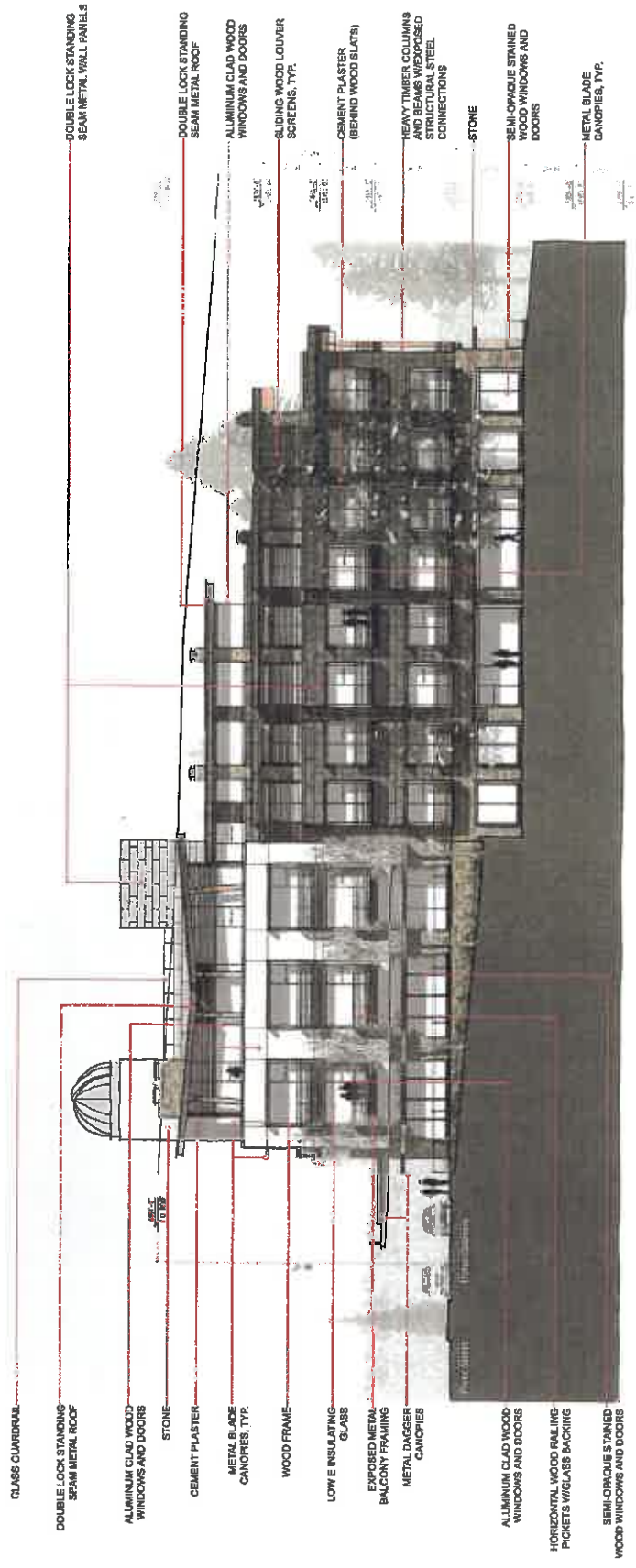




	<b>design review</b> SUBMIT 20 July 2008	Project: 	Hamilton + Howard Inc. 1700 San Francisco, California 94108 www.hamiltonhoward.com	After design review, the original and revised drawings shall be submitted to the architect for review and approval. The architect shall be responsible for the final design and construction of the project. © 2007 Hamilton + Howard, Inc.	<b>Level 4 Floor Plan</b> EL. +687.0'	<b>A2.04</b>







design review  
 s u b m i t t a l  
 28 July 2008

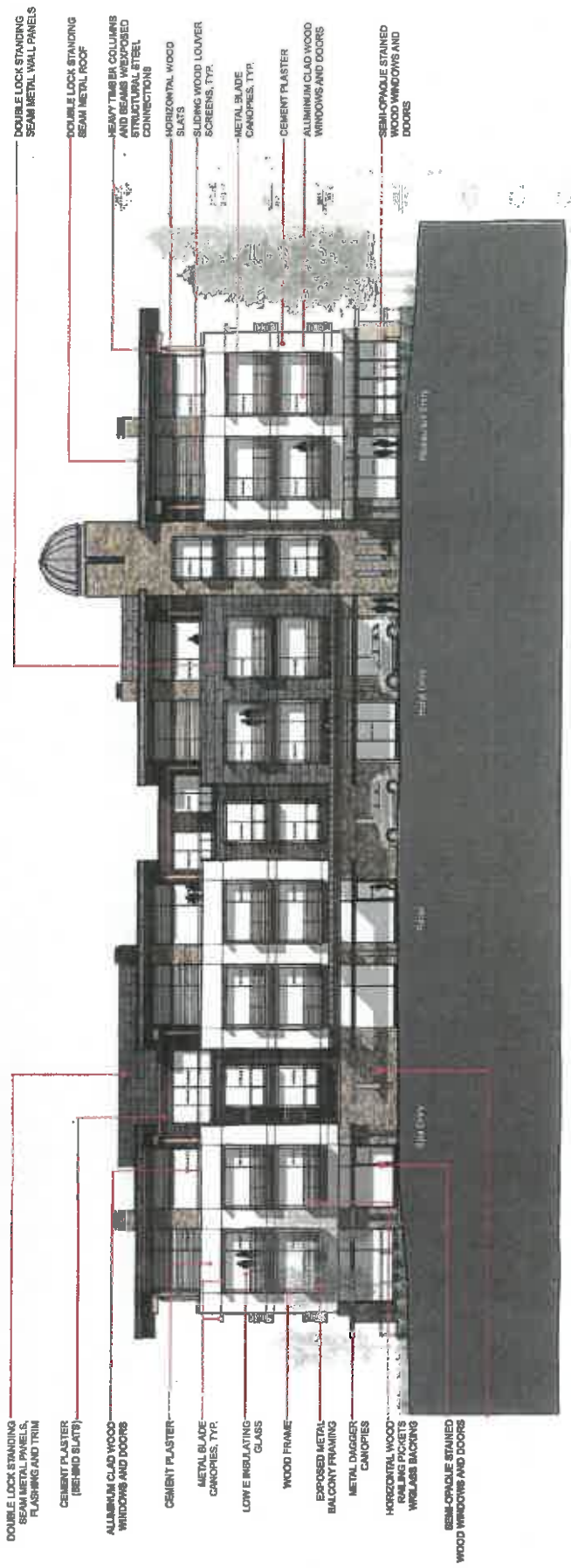


Hornberger + Vertel Inc  
 Architects  
 170 Madison Street  
 San Francisco, California 94108  
 www.hornberger+vertel.com

All drawings are preliminary and subject to change without notice. The user of these drawings shall be responsible for verifying the accuracy of the information shown hereon. © 2007 Hornberger + Vertel, Inc.

West Elevation

A3.01A



design review  
 s u b m i t t a l  
 28 July 2008

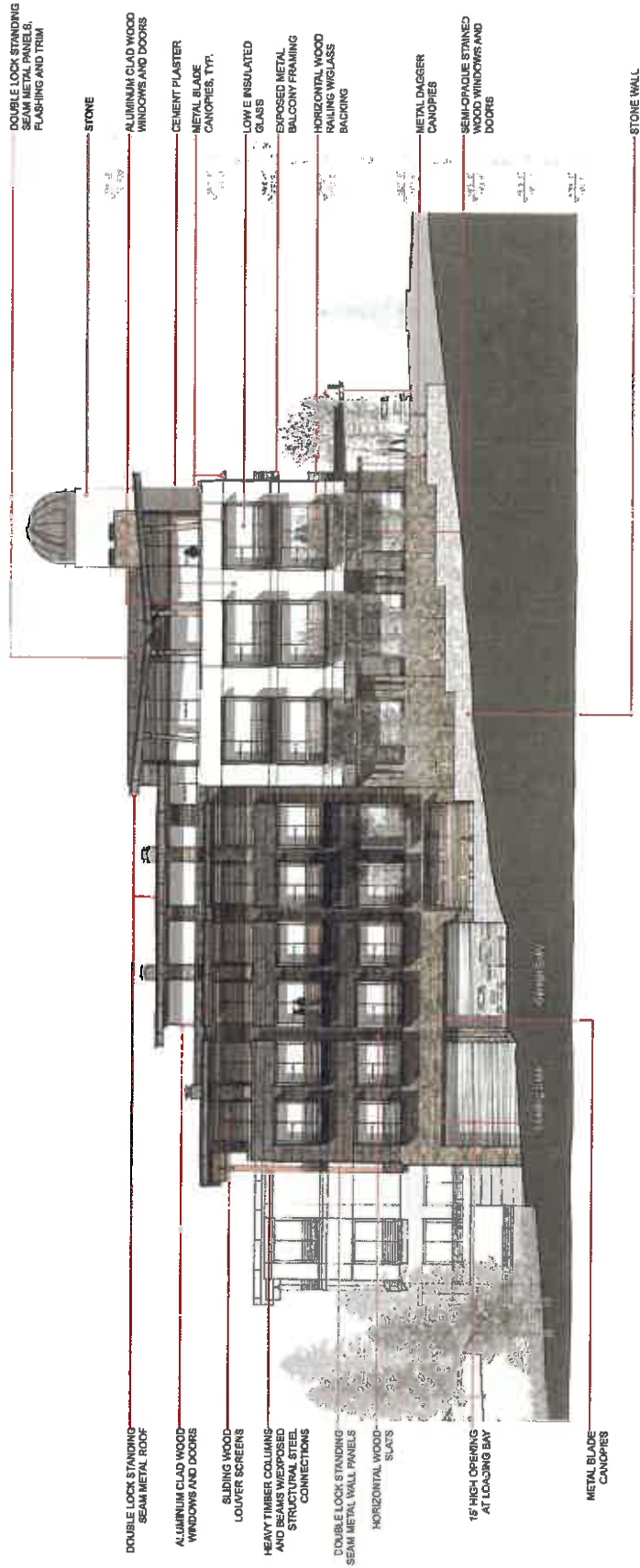


Hornberger Architects  
 1000 North  
 San Francisco, California 94108  
 www.hornbergerarchitects.com

All drawings and materials depicting the original and proposed construction shall be subject to the review and approval of the City of San Francisco, California, and the Department of Planning and Building, 3200 Market Street, San Francisco, CA 94114.

North Elevation

A3.02A



Architectural rendering prepared by Ketchum for the client. All materials and construction methods are subject to change without notice. © 2007 Ketchum + Associates, Inc.

Ketchum + Associates, Inc.  
 1000 California Street  
 San Francisco, California 94108  
 www.ketchum.com

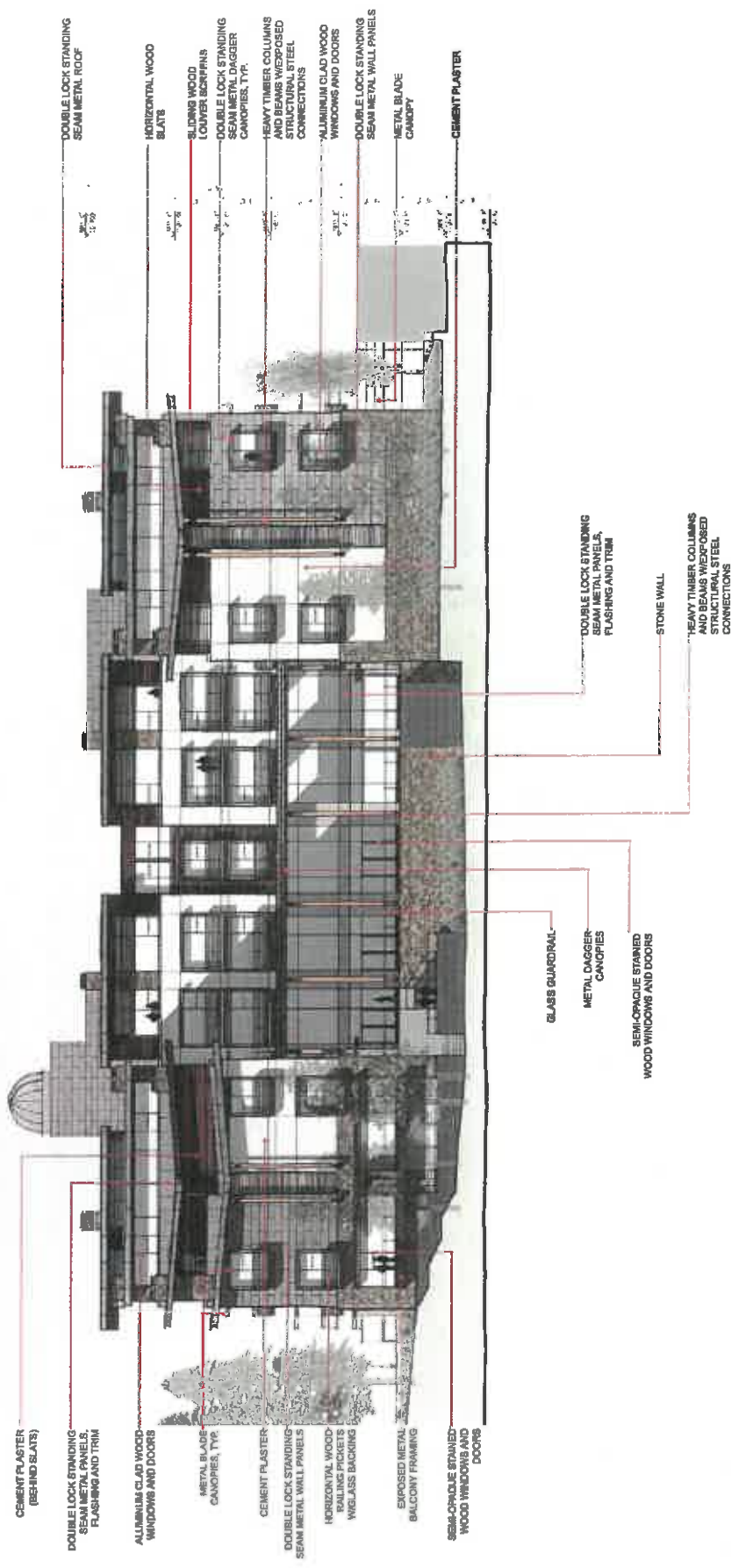


design review  
 submitted  
 28 July 2008

KETCHUM

East Elevation

A3.03A



CEMENT PLASTER (BEHIND SLATS)

DOUBLE LOCK STANDING SEAM METAL PANELS, FLASHING AND TRIM

ALUMINUM CLAD WOOD WINDOWS AND DOORS

METAL BLADE CANOPIES, TYP

CEMENT PLASTER

DOUBLE LOCK STANDING SEAM METAL WALL PANELS

HORIZONTAL WOOD RAILING PICKETS W/ GLASS BACKING

EXPOSED METAL BALCONY FRAMING

SEMI-OPAQUE STAINED WOOD WINDOWS AND DOORS

GLASS GUARDRAIL

METAL DAGGER CANOPIES

SEMI-OPAQUE STAINED WOOD WINDOWS AND DOORS

DOUBLE LOCK STANDING SEAM METAL PANELS, FLASHING AND TRIM

STONE WALL

HEAVY TIMBER COLUMNS AND BEAMS W/ REINFORCED STRUCTURAL STEEL CONNECTIONS

DOUBLE LOCK STANDING SEAM METAL PANELS, METAL BLADE CANOPY

CEMENT PLASTER

ALUMINUM CLAD WOOD WINDOWS AND DOORS

HEAVY TIMBER COLUMNS AND BEAMS W/ REINFORCED STRUCTURAL STEEL CONNECTIONS

DOUBLE LOCK STANDING SEAM METAL DAGGER CANOPIES, TYP

GLASS WOOD COOPER BOPPINS

HORIZONTAL WOOD SLATS

DOUBLE LOCK STANDING SEAM METAL ROOF



design review  
 s u b m i t t a l  
 28 July 2006

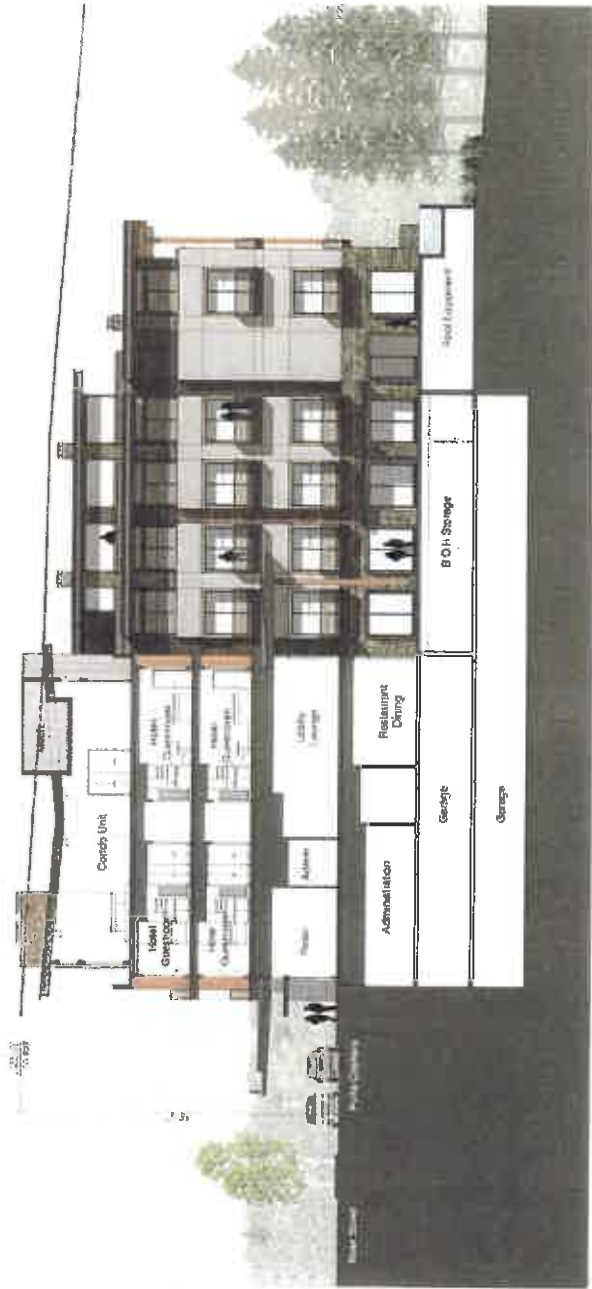


Hornbarger + Woodell, Inc  
 Architects & Planners  
 2nd Floor  
 2nd Floor  
 San Francisco, California 94102  
 www.hornbarger-woodell.com

All drawings are the property of the architect and are not to be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written consent of the architect.  
 © 2006 Hornbarger + Woodell, Inc

South Elevation

A3.04A



A3.05R

West Courtyard Elevation/ Section

THIS DOCUMENT IS THE PROPERTY OF HORNBY & WATSON INC. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF HORNBY & WATSON INC.

Hornby & Watson Inc.  
 Architects  
 5000 West 10th Avenue  
 Suite 1000  
 Denver, Colorado 80202  
 www.hornbyandwatson.com

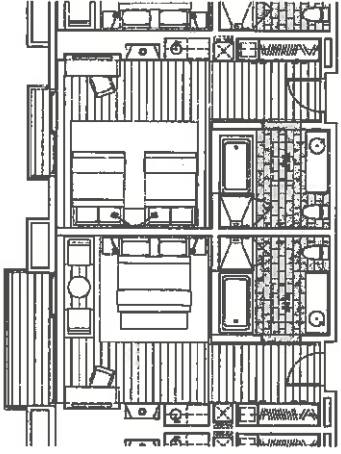


design review  
 submittal  
 January 2008

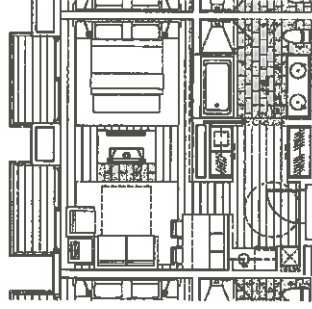




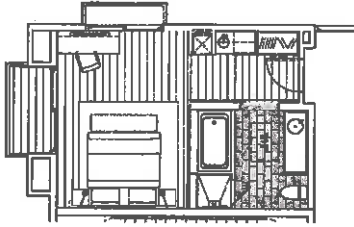




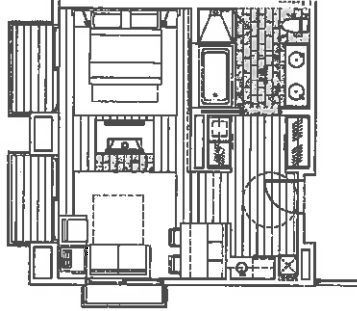
DOUBLE UNIT  
400 S.F.



END UNIT  
200 S.F.



END UNIT  
200 S.F.



END UNIT  
200 S.F.



design review  
s u b m i t t a l  
January 2008



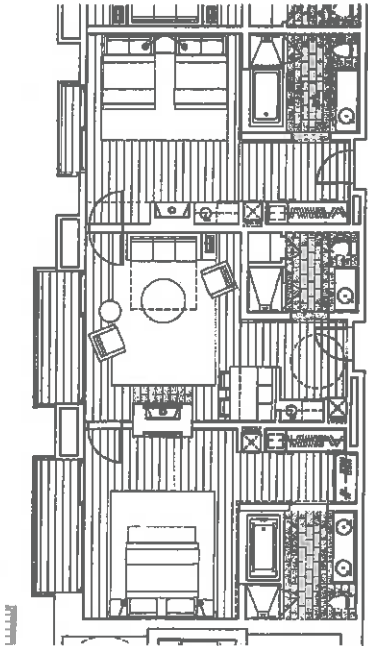
Doninger + Worrell Inc  
Architects  
500 Fremont, Oakland, CA 94601  
www.doningerworrell.com

All dimensions and quantities shown on these drawings are approximate and subject to change without notice. The contractor shall verify all dimensions and quantities before construction.

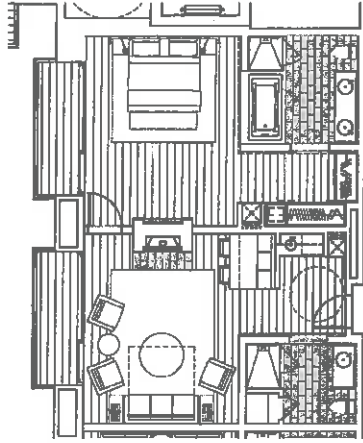
Enlarged Guest Room Plans

A4.01

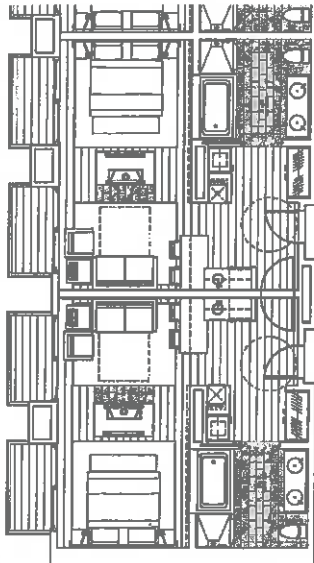




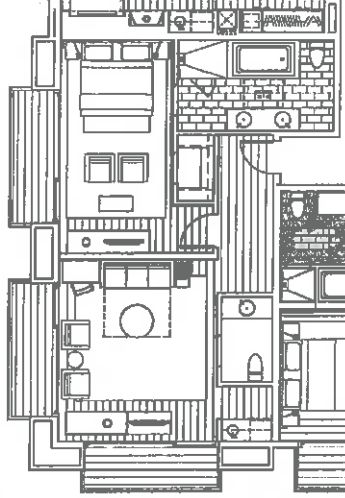
ONE BEDROOM UNIT WITH DOUBLE DOORS  
189 SF.



ONE BEDROOM UNIT PLAN  
209 SF.

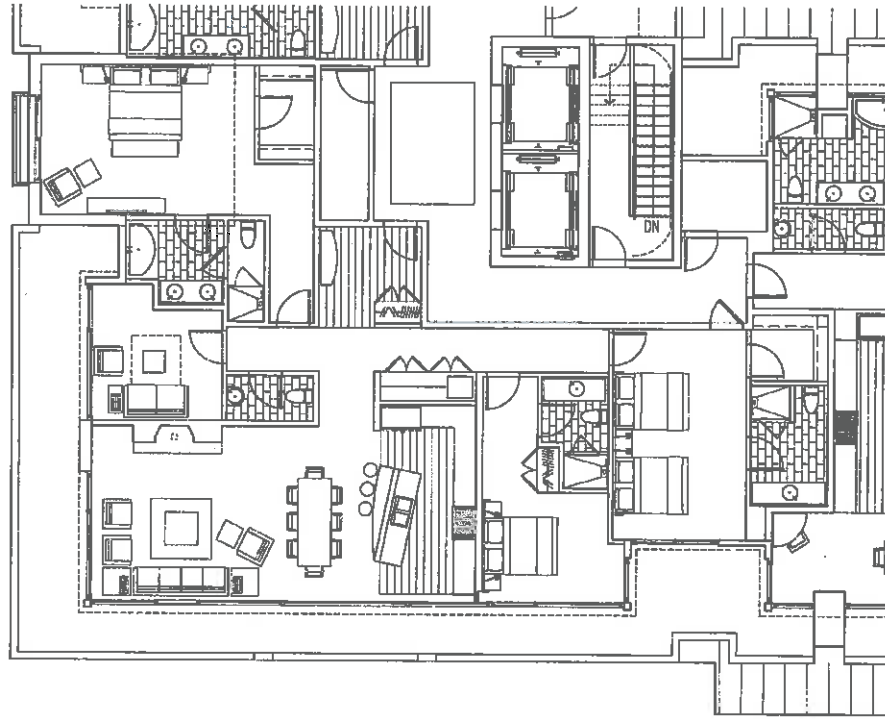


ONE PLUS INTERCONNECT  
210 SF.



ONE PLUS  
210 SF.





CONDO UNIT IN NEW BUILDING



design review  
 s u b m i t t a l  
 8 January 2008

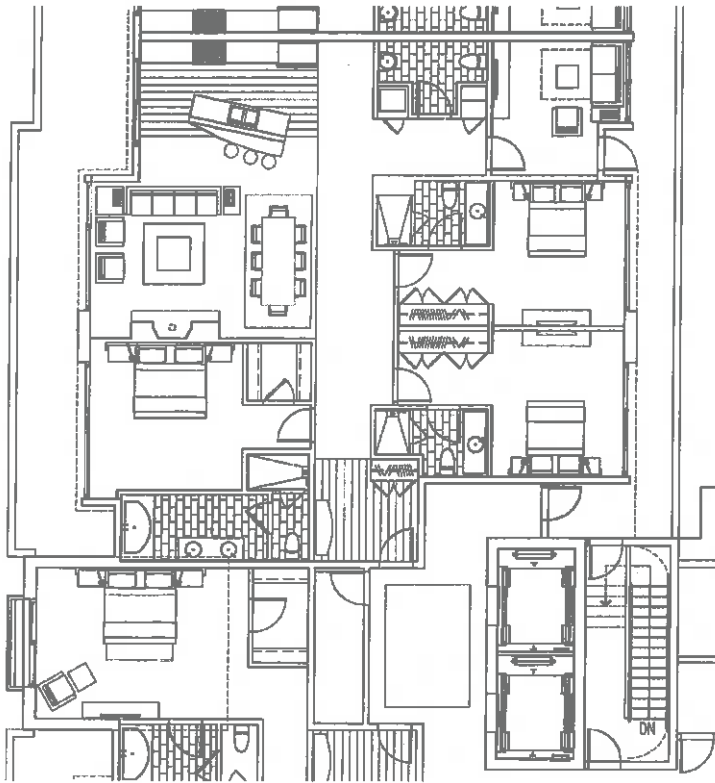
H O J I C I  
 KETCHUM

Homburger + Wenzel Inc  
 Architects  
 1000  
 San Francisco, California 94109  
 www.homburgerwenzel.com

All drawings and notes are the property of Homburger + Wenzel Inc. No part of this drawing may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without the prior written permission of Homburger + Wenzel Inc.

Enlarged Condo Unit Plans

A4.03



CONDONITZ PLAN  
2008.01.01



**KETCHUM**

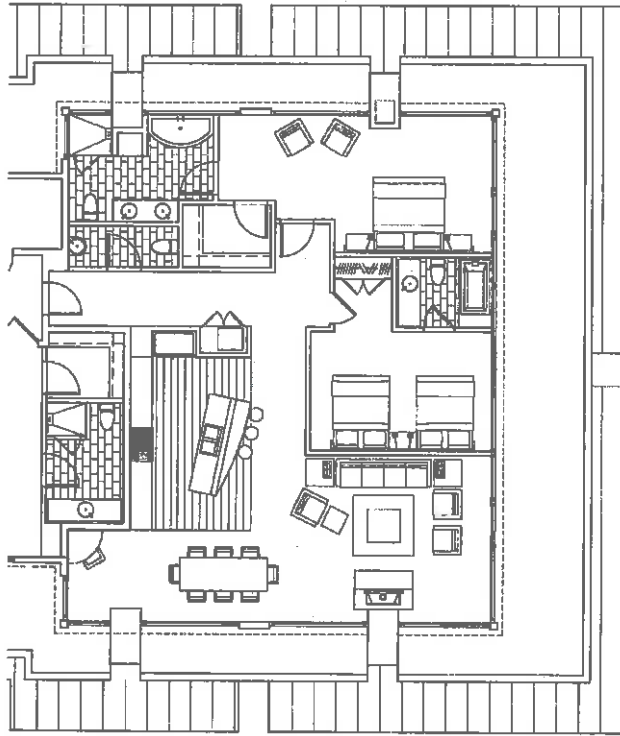
design review  
s u b m i t t a l  
January 2008

Hombler + Wornat  
Planners  
Alhambra, California  
www.homblerwornat.com

All drawings and construction documents  
are prepared by the architect and  
engineer and are subject to the  
professional seal of the architect  
© 2007 Hombler + Wornat, Inc.

**Enlarged Condo Unit Plan**

**A4.04**



CONDO UNIT FLOOR PLAN  
10/03/08



design review  
s u b m i t t a l  
8 January 2008

KETCHUM

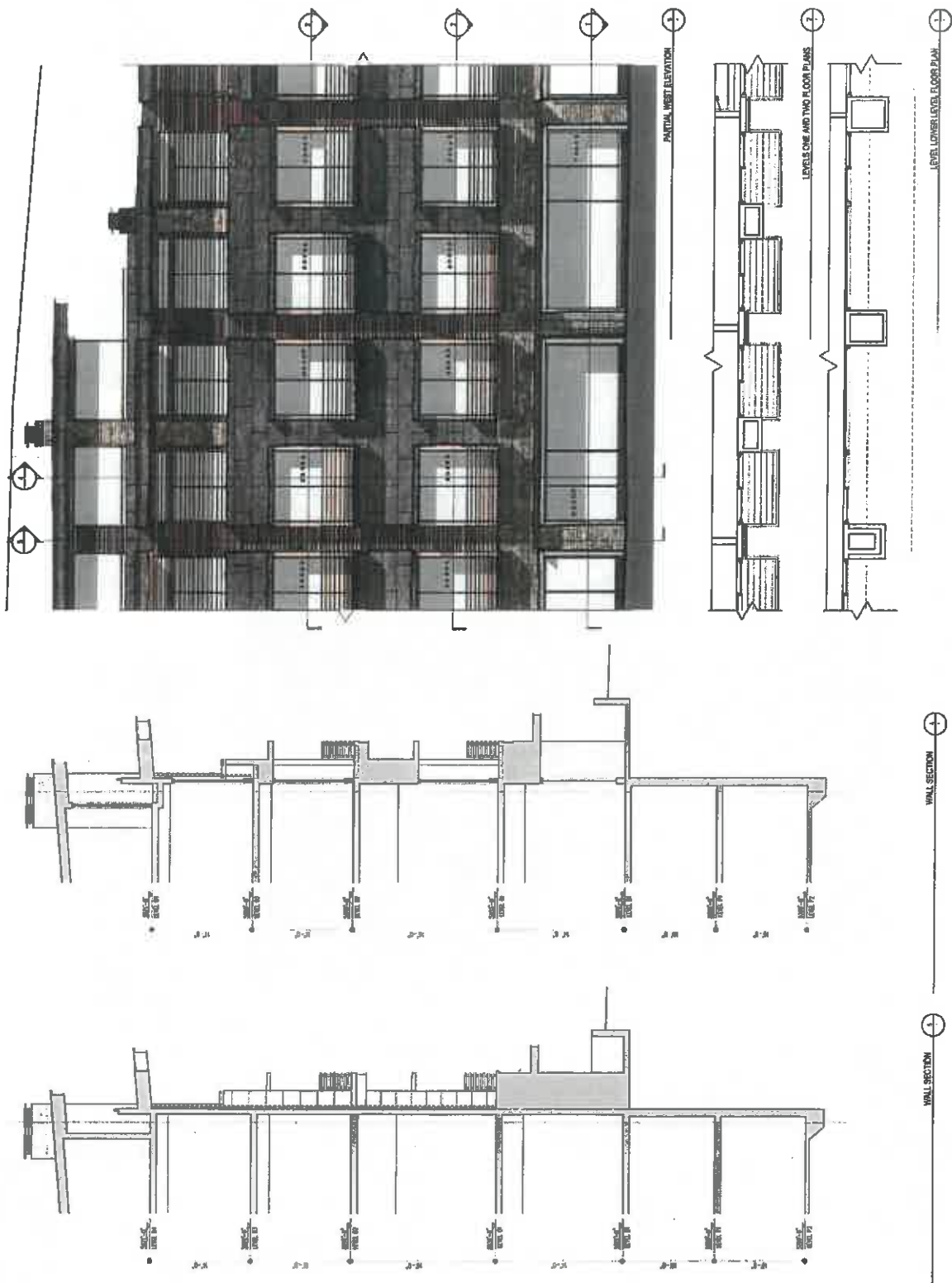


Ketchum Architecture  
1000 West 10th Street  
Suite 100  
Portland, Oregon 97204  
www.ketchumarch.com

All drawings and floor plans are prepared by Ketchum Architecture, Inc. and are the property of Ketchum Architecture, Inc. No part of this document may be reproduced or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written consent of the architect.  
© 2007 Ketchum Architecture, Inc.

Enlarged Condo Unit Plan

A4.05



**KETCHUM**

design review  
 submittal  
 25 July 2008

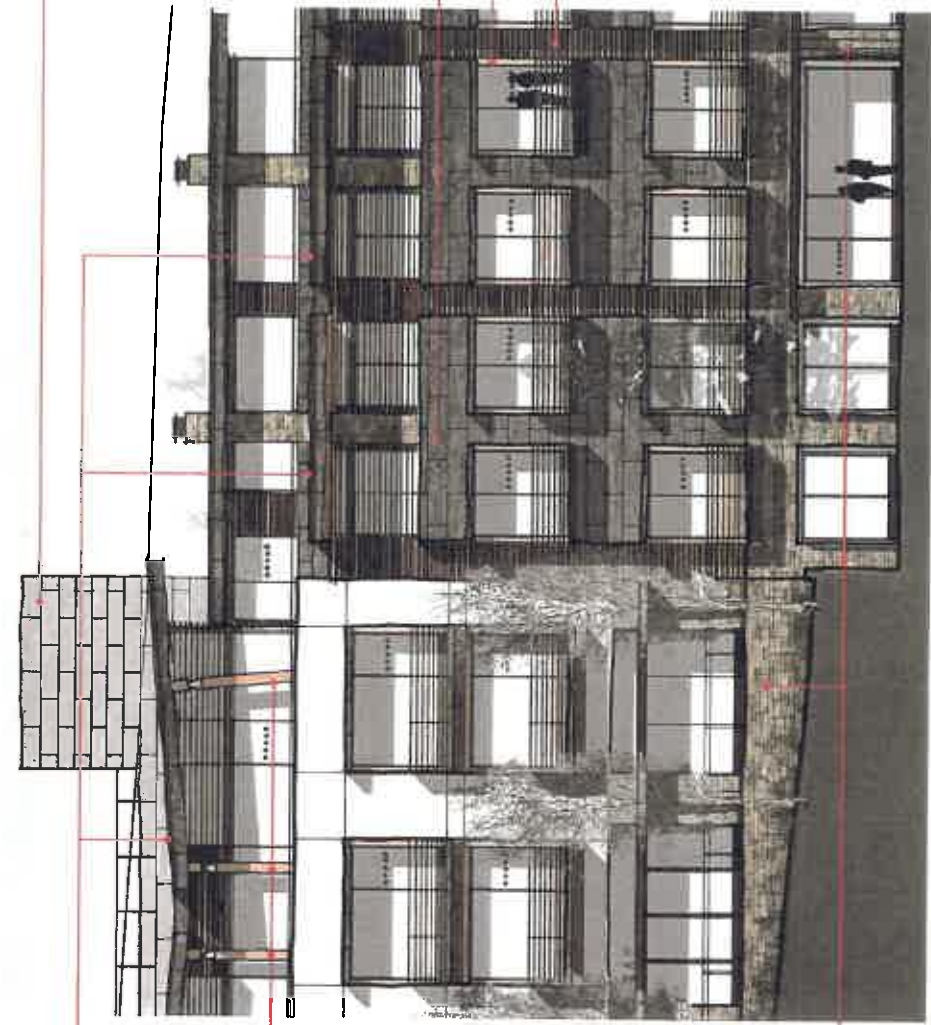


Westmeadow  
 by Pappas  
 Homberger + Womack, Inc.  
 Architects  
 San Francisco, California  
 www.hwbjbrgwestmead.com

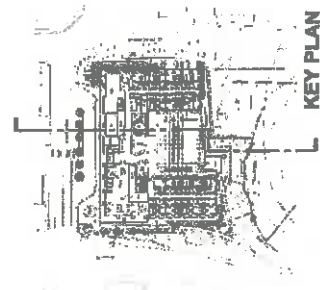
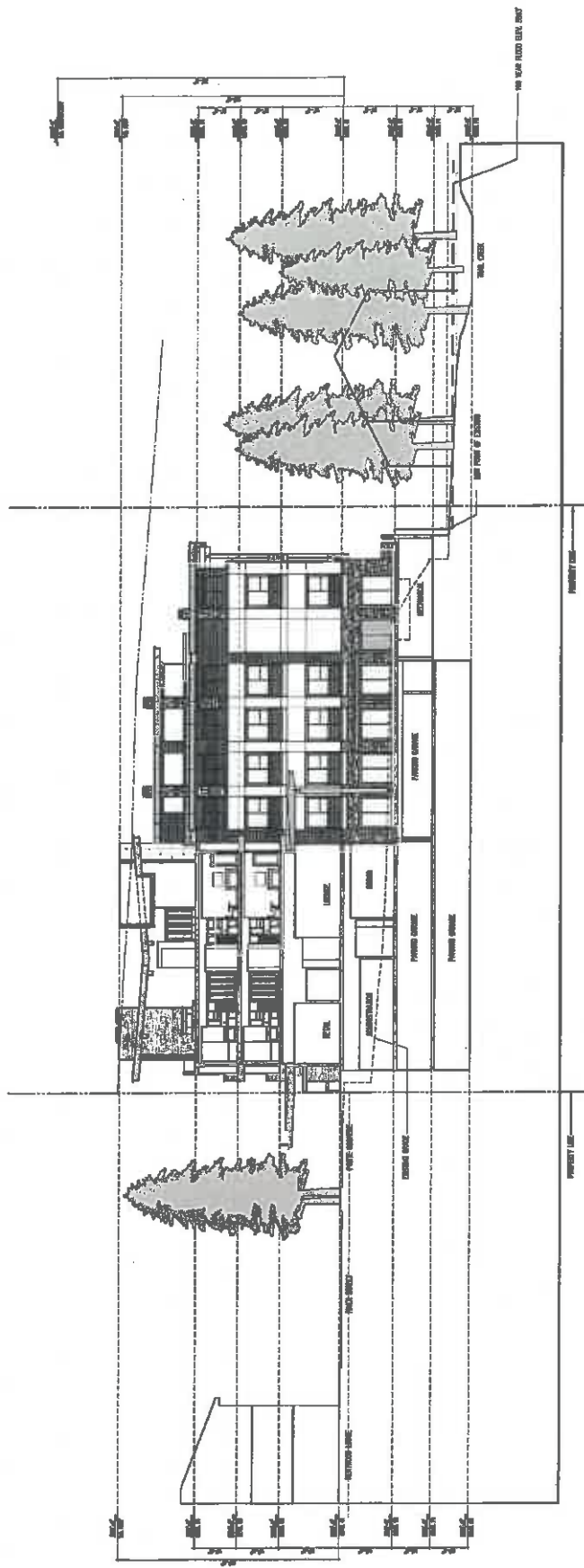
All drawings are printed with no appearing lines unless the original and reproduction used, and shall not be used for any other purpose of the architect.  
 © 2007 Homberger + Womack, Inc.

Enlarged Elevation, Plan, + Section

A8.01







A-1B1

West Courtyard Elevation / Section

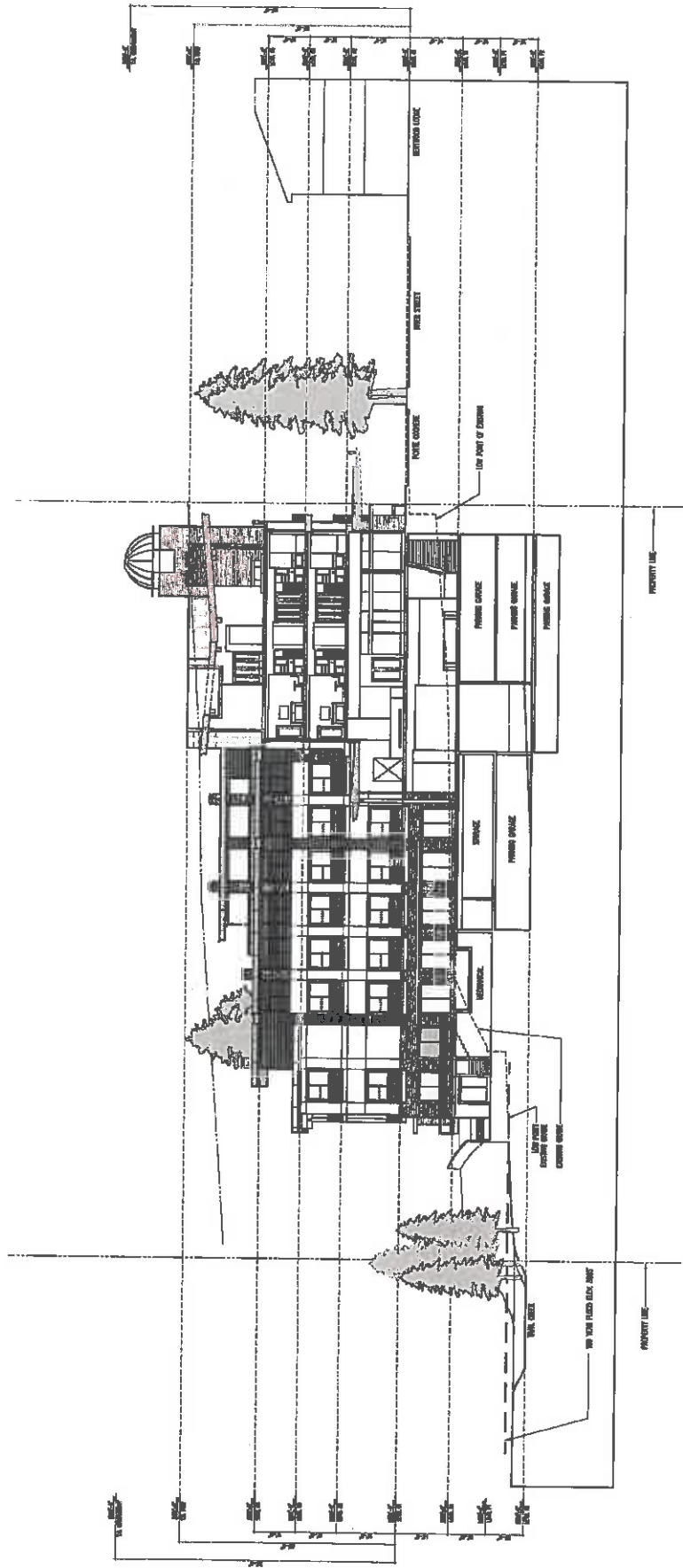
All drawings and sections are preliminary and subject to change without notice. The user assumes all responsibility for the accuracy of the information and any errors. © 2007 HOK Group Inc.

HOK Group Inc.  
Architects  
300 Franklin Street  
Boston, MA 02110  
www.hok.com



design review  
submission  
1 May 2008

**KETCHUM**



KEY PLAN

**KETCHUM**

design review  
 s u b m i t t a l  
 1 May 2008



Herberger + Workell Inc  
 Architects  
 200 Fremont, California 94104  
 www.herbergerworkell.com

Herberger + Workell Inc  
 Architects  
 200 Fremont, California 94104  
 www.herbergerworkell.com

East Courtyard Elevation / Section

A-1B2



**KETCHUM**

design review  
 submission  
 1  
 May 2008

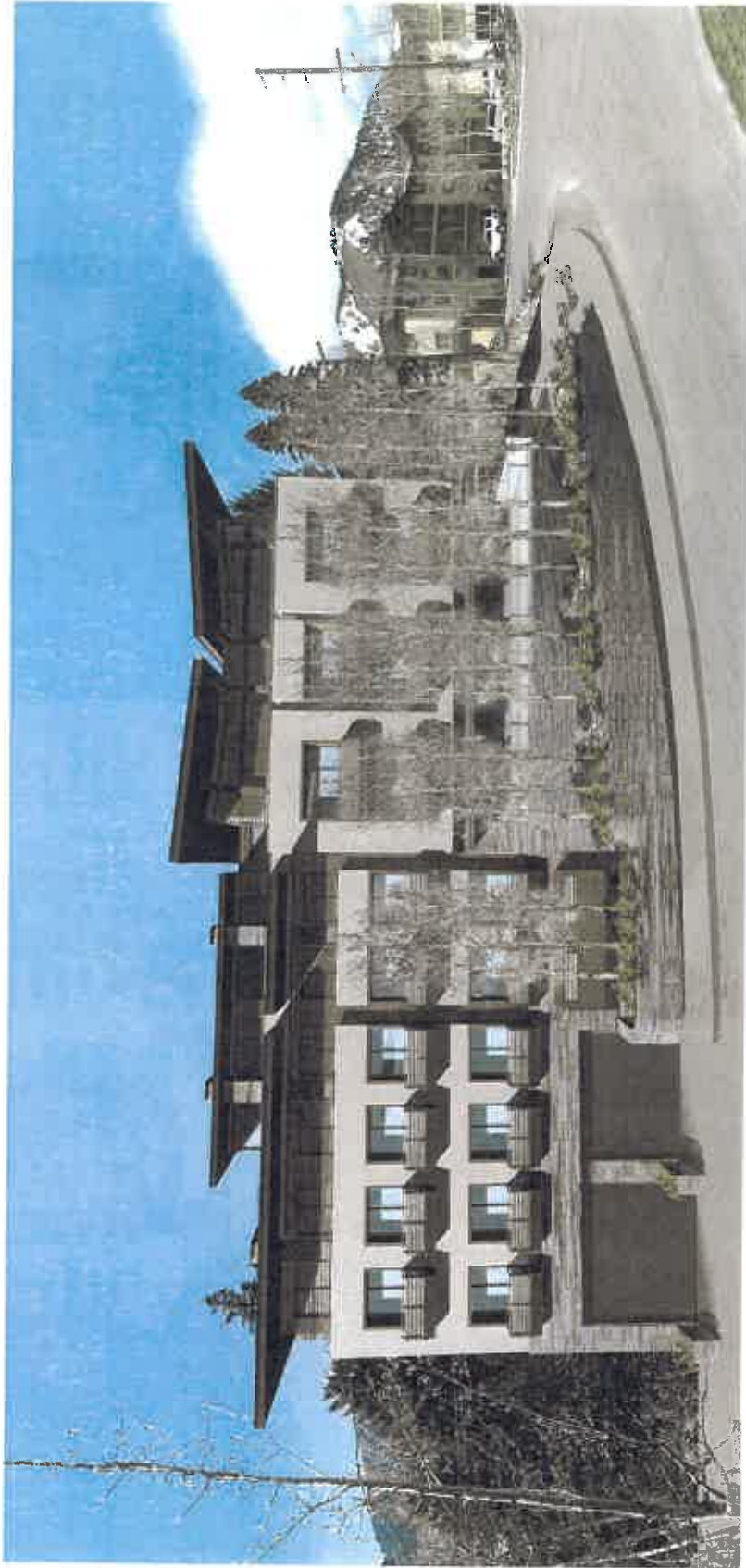


Saraberg + Associates, Inc.  
 Architects + Planners  
 2000  
 San Francisco, California 94109  
[www.saraberg.com](http://www.saraberg.com)

All developed and reserved applicable  
 herein, available by copyright and  
 reproduction, and/or other means, without  
 the prior written consent of the architect.  
 © 2008 Saraberg + Associates, Inc.

Southeast Corner View

A-1A1





design review  
 submittal  
 10 July 2008



Herringer + Hound, Inc.  
 Planners  
 Architects  
 San Francisco, California  
 www.herringerhound.com

All drawings and photographs are the property of the original author and are not to be reproduced without the written consent of the original author.  
 © 2007 Herringer + Hound, Inc.

NORTH PERSPECTIVE VIEW TO INTERSECTION OF  
 STATE HIGHWAY 75 & RIVER STREET

SK.01



**KETCHUM**

design review  
 8 u b m i t t a l  
 16 July 2008



Homburger + Wiestle, Inc.  
 4700  
 5th  
 San Francisco, California 94108  
 www.homburgerwiestle.com

All drawings and renderings are prepared by Ketchum and are not to be used for any other project without the written consent of Ketchum. © 2008 Homburger + Wiestle, Inc.

NORTH-EAST PERSPECTIVE VIEW TO INTERSECTION OF  
 STATE HIGHWAY 76 & RIVER STREET

SK.02





design review  
s u b m i t t a l  
1 May 2008

Horibarger + Hockell, Inc.  
Architects  
5m Francisco, California 94118  
www.horibargerhockell.com

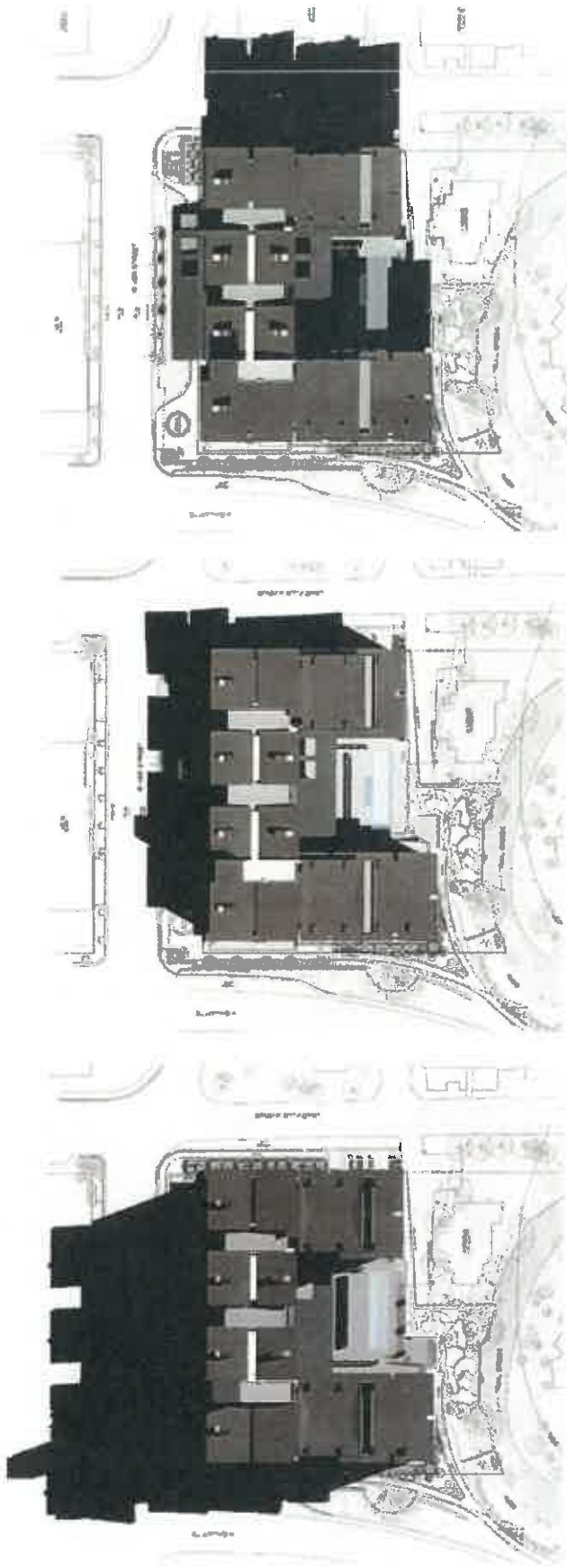
All drawings and architectural approvals  
herein constitute an offer and  
no other representations shall be made  
© 2007 Horibarger + Hockell, Inc.

Southwest Aerial View

A-1A4







March 21 at 9 am

March 21 at 12 pm

March 21 at 3 pm



design review  
 s u b m i t t a l  
 1  
 May 2008

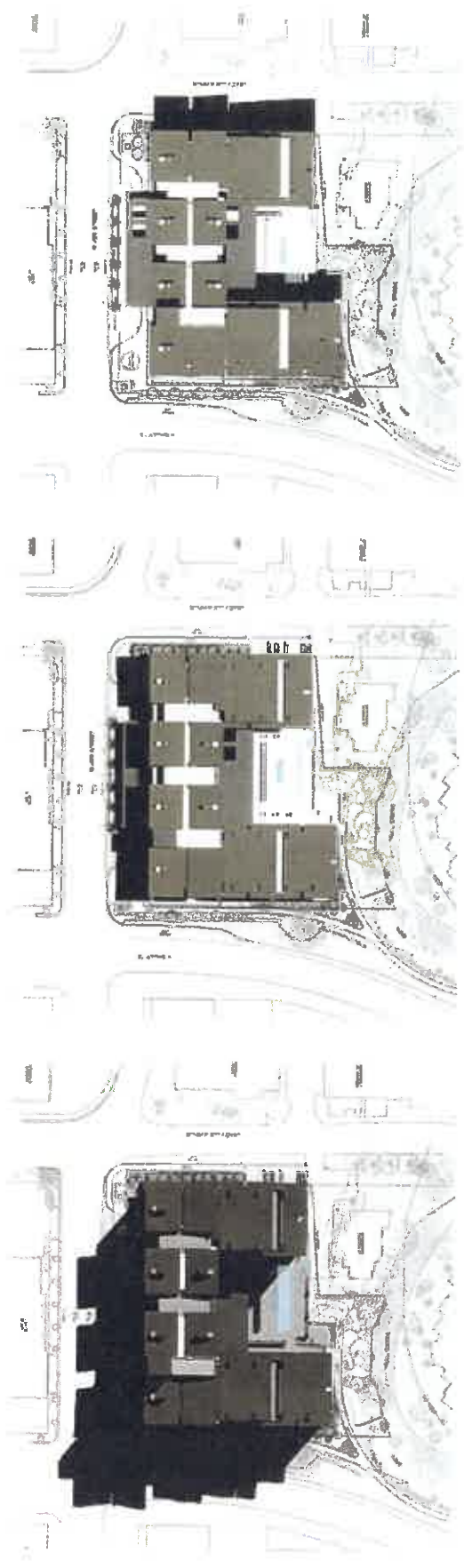


Homburger + Whitfield  
 Architects  
 200 Franklin Street  
 San Francisco, California 94102  
 www.homburgerwhitfield.com

All dimensions and materials appearing  
 herein are for informational purposes  
 only and do not constitute a contract.  
 The project owner is the architect.  
 © 2008 Homburger + Whitfield, Inc.

Shadow Study  
 Spring

A-1G1



June 21 at 9 am

June 21 at 12 pm

June 21 at 3 pm



design review  
s u b m i t t a l  
i May 2008

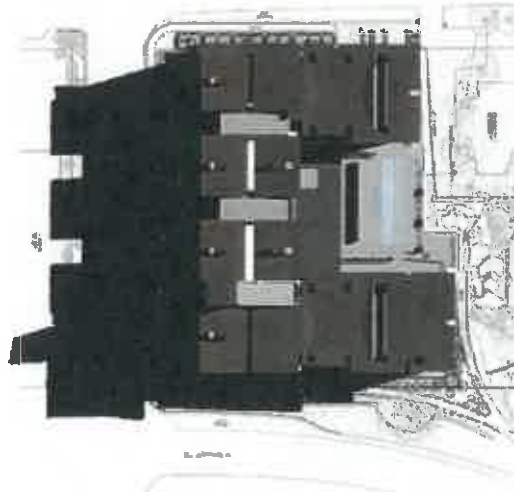


Hornberger + Woodall  
Architects  
500 Piedmont  
San Francisco, California 94111  
www.hornbergerwoodall.com

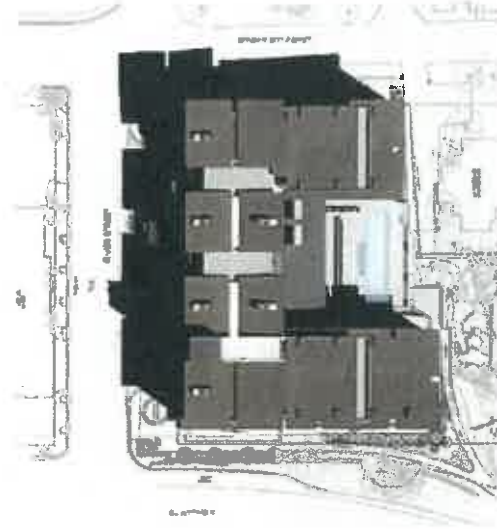
All models and renderings are for informational purposes only and are not to be used for any other purpose without the prior written consent of the architect.  
© 2008 Hornberger + Woodall, Inc.

Shadow Study  
Summer

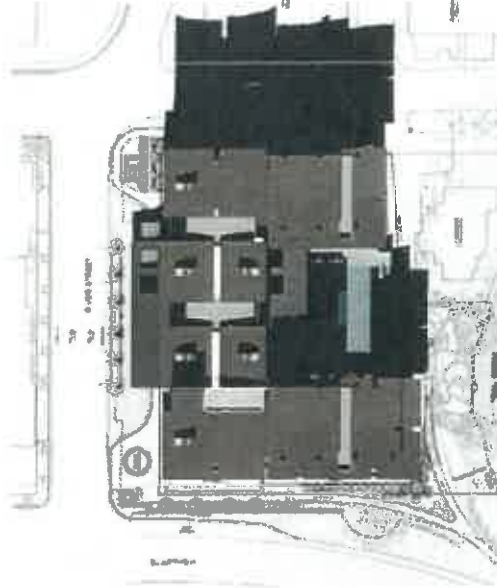
A-1G2



September 21 at 8 am



September 21 at 12 pm



September 21 at 3 pm



design review  
 submittal  
 May 2008

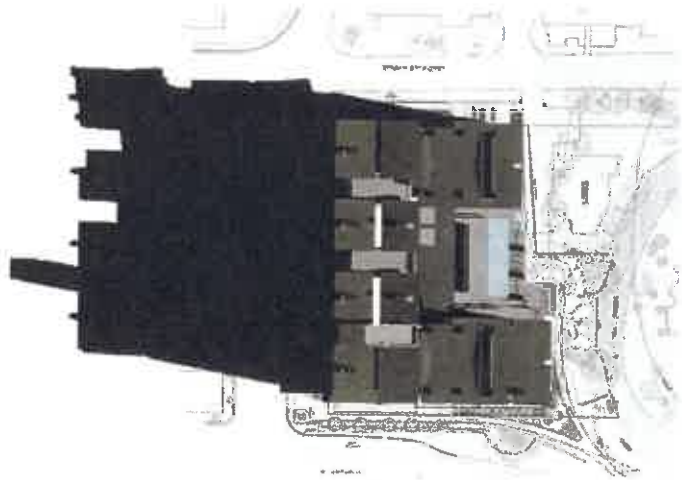


Hornberger + Vitroval Inc  
 Architects  
 200  
 Pennsylvania  
 Avenue, N.W.  
 Washington, D.C. 20004  
 www.hornberger-vitroval.com

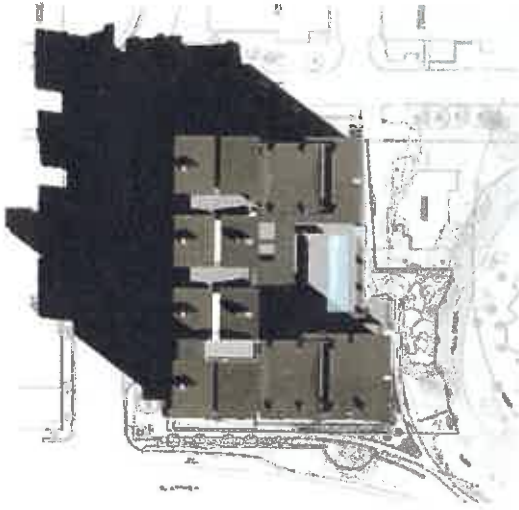
Architects and other interested agencies  
 should contact the original and  
 final design and construction documents  
 for the job under license of the architect.  
 © 2008 Hornberger + Vitroval, Inc.

Shadow Study  
 Autumn

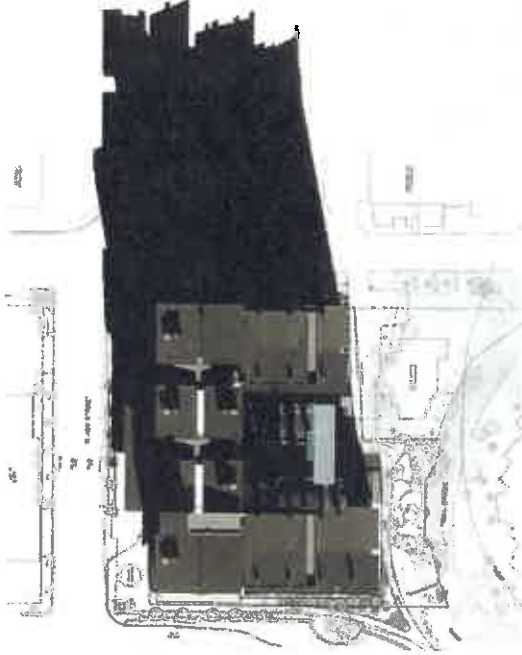
A-1G3



December 21 at 9 am



December 21 at 12 pm



December 21 at 3 pm



design review  
s u b m i t t a l  
1 M a y 2 0 0 8

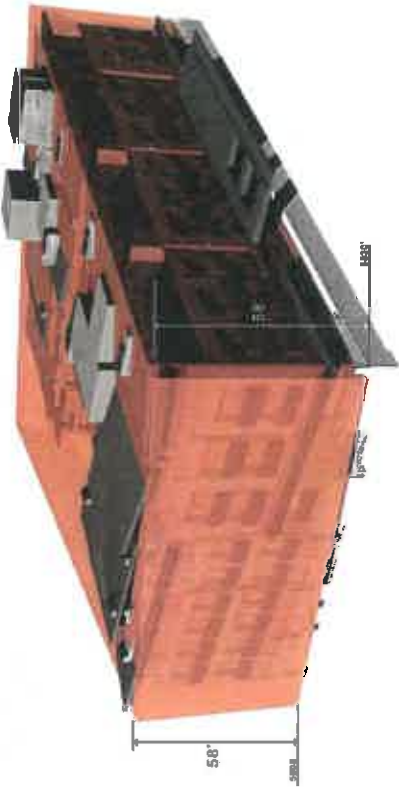


Homburger & Woodell, Inc.  
Architects  
1000  
San Francisco, California 94104  
www.homburgerwoodell.com

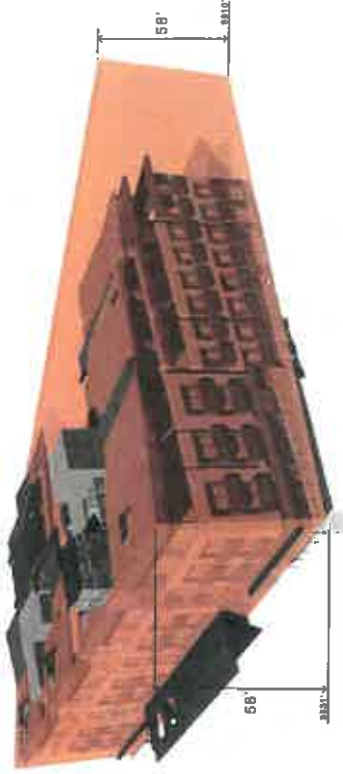
All drawings are the property of Homburger & Woodell, Inc. and are not to be reproduced or used in any form without the written consent of the architect.  
© 2007 Homburger & Woodell, Inc.

Shadow Study  
Winter

A-1G4



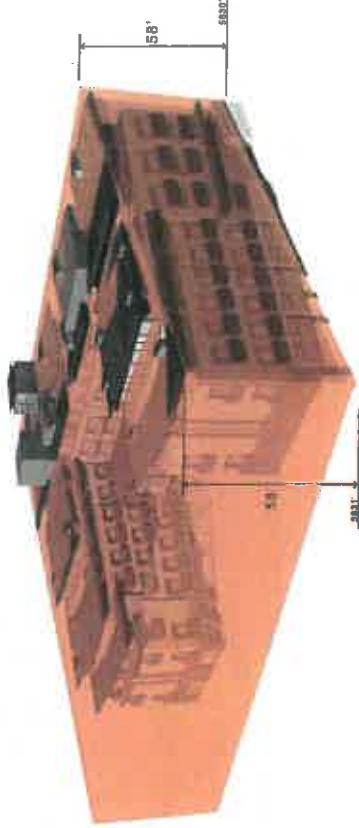
Northeast corner



Southeast corner



Southwest corner



Northwest corner



design review  
 s u b m i t t a l  
 28 July 2008



Hornbarger & Worstell, Inc.  
 Architects in Pasadena  
 San Francisco, California, USA  
 www.alphaheightsdesign.com

All drawings and/or related engineering  
 herein, including the general and  
 individualized conditions and specifications,  
 are the property of the architect.  
 © 2008 Hornbarger & Worstell, Inc.

Building Height Analysis

A-1D

**Sites 1 - Design Principles**  
 These principles apply to Sites 1. A key objective is to provide a transition from a low scale, residential form character of the neighborhoods to the south and east of the site to the more urban downtown.



Gateway Master Plan Design Guidelines

Proposed Design



# Mammoth Series®



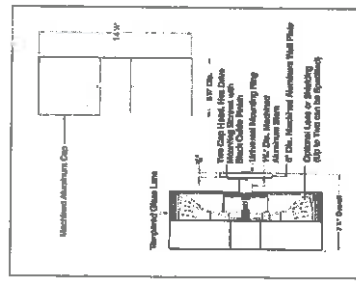
The Mammoth Series™ is a sleek, up/down wall-mounted fixture that utilizes the PAR30 or PAR38 halogen lamp to create dramatic lighting effects for various applications. Its architectural design provides powerful lumen output with PAR30 lamps to 75 watts or PAR38 lamps to 250 watts with 500 watts maximum, combined. Its constructed of high quality machined aluminum components, powder coated in one of eight luxurious standard colors and stainless steel hardware. With its stylish design, the Mammoth Series provides great performance from an outdoor architectural wall-mounted fixture.

**Features**

- Torque proof design.
- Completely sealed optical compartment.
- Clear, tempered glass lens, factory sealed.
- Machined aluminum construction with stainless steel hardware.

- Medium base lamp holder with 250° C, 19 pin, wire leads.
- 8' & 6' Leads to accommodate lamp up to 250W.
- For use with 120V, no transformer required.

CATALOG NUMBER LOGIC		MB	75/77	BL/W	8W	DN	UP
Example:							
Part No.	75-50-8W-DN-UP						
Series	75-50						
Watts	75						
Lamp Type	PAR30						
Finish	BL/W						
Mounting	DN						
Options	UP						
Notes	1 - Torque proof design. 2 - Clear, tempered glass lens, factory sealed. 3 - Machined aluminum construction with stainless steel hardware. 4 - Medium base lamp holder with 250° C, 19 pin, wire leads. 5 - 8' & 6' Leads to accommodate lamp up to 250W. 6 - For use with 120V, no transformer required.						



## FIXTURE TYPE EG

83



Hambberger + Worstell, Inc.  
Architects  
3000  
San Ramon, California 94583  
www.hambbergerworstell.com



Product Number	Lamp	Rings	Supported Finish
BWMA2246	100WV A 19	S: S:	Not at
BWMA2216	100WV A 19	Cozyr	Not at
BWMA2265	100WV A 19	S: S:	Not at

The large shade, season of the Beacon West Mount Luminous offers additional shading. For more information, please call 503-753-1000. The 20" light fixture is available for outdoor use. The 20" light fixture is available for outdoor use. The 20" light fixture is available for outdoor use. The 20" light fixture is available for outdoor use.

## FIXTURE TYPE ED

## EXTERIOR LIGHTING FIXTURES

All drawings and when revised showing items, coordinate the design and installation work of the work or discussed with the architect within 30 days of the date of the drawing. © 2007 Hambberger + Worstell, Inc.





**BEFORE THE KETCHUM CITY COUNCIL**

IN RE:	)	Case No: CUP 08-007
	)	
HOTEL KETCHUM	)	FINDINGS OF FACT, CONCLUSIONS OF LAW
PLANNED UNIT	)	AND DECISION
DEVELOPMENT	)	
CONDITIONAL USE PERMIT	)	

The above-entitled Conditional Use Permit application came before the Ketchum Planning City Council for consideration on August 12, 2008, and September 15, 2008. The Ketchum City Council having taken written and oral testimony, and having duly considered the matter, makes the following findings of fact, conclusions of law and decision.

**FINDINGS OF FACT**

**A. APPLICATION SUMMARY.**

**APPLICANT/OWNER:** Trail Creek Fund, LLC, a California limited liability company  
700 Emerson Street, Palo Alto, CA 94301

**DEVELOPMENT TEAM:** Jack Bariteau, Managing Member, Trail Creek Fund LLC  
Paolo Petrone, Piazza Hotels (Operator and part owner)  
John Davis, Hornberger + Worstell (HWI) (Architect)  
Rob King, Clemens & Associates (Landscape)  
Jim Zarubica, Galena Engineering (Civil)  
Ed Lawson, Lawson & Laski, PLLC (Legal)

**LEGAL DESCRIPTION:** Lot 2, Block 83, Ketchum Townsite

**LOT LOCATION/DESCRIPTION:** 200 S Main Street  
(aka Trail Creek Village)  
0.93 acre (40,510 sqft)  
Irregular:  
Hwy 75 – 220’ Frontage  
River St. – 220’ Frontage  
Leadville Ave – 149’ Frontage

**ZONING:** Tourist (T)

OVERLAY DISTRICT: Floodplain Management Overlay (FP)

COMP PLAN  
LAND USE

DESIGNATION: Current: Residential Occupancy. "Area appropriate for housing of permanent and second home residents and selective short term uses supporting the tourist industry."  
Proposed: No change proposed.

PROPOSED USE: Hotel (73 rooms – See Tables 1 and 2)

WAIVERS REQUESTED: Minimum Lot Size; Maximum Height; FAR; Setbacks; Time Period for CUP & Design Review Approval (See Table 3)

PUD FILE: CUP 08-007

SUBMITTAL DATES/  
CERTIFICATION: Application received February 8, 2008  
Certified complete on February 27, 2008  
An update to the formal application submittal received on May 9, 2008.

B. NOTICE OF PUBLIC HEARING OF THE CITY COUNCIL.

August 12, 2008 – Public hearing and site visit.

PUBLIC NOTICE: Mailing: July 24, 2008 to property owners within 300 feet, and property owners in the areas known as Gopher Gulch neighborhood and the Onyx subdivision, as found in the County records.  
Publication: July 25, 2008 Idaho Mountain Express;  
Display Advertisements – July 30, August 1, August 6 and August 8, 2008 Idaho Mountain Express.  
Posting: July 22, 2008 on City of Ketchum website; July 28, 2008 on all street frontages of the property

September 15, 2008 – Public hearing, continued from August 12, 2008.

PUBLIC NOTICE: Mailing: August 26, 2008 to property owners within 300 feet, and property owners in the areas known as Gopher Gulch neighborhood and the Onyx subdivision, as found in the County records.

Publication: August 27, 2008 Idaho Mountain Express;  
Display Advertisements – August 29, September 3, September  
10 and September 12, 2008 Idaho Mountain Express.  
Posting: August 29, 2008 on City of Ketchum website;  
September 3, 2008 on all street frontages of the property.

#### C. COMPANION APPLICATIONS

An application for a Design Review/Waterways Design Review was received in connection with this Conditional Use Permit application on February 8, 2008. The Planning & Zoning Commission approved the Design Review/Waterways Design Review application on July 28, 2008.

#### D. STUDIES SUBMITTED

1. Traffic Impact Analysis by Galena Engineering, dated April 2008.
2. Soils report by Butler Associates - pending. Initial letter regarding geotechnical and civil engineering considerations dated March 20, 2008.
3. Arborist's Assessment Report by Alpine Tree Service, dated December 12, 2007.

#### E. RELATED STUDIES

1. Gateway Area Mass & Scale Study, dated June 12, 2007.
2. Economic Impact Study by Richard Caplan & Associates, dated April 28, 2008.

#### F. PROJECT DESCRIPTION

The proposed project is described by the applicant as a four-star hotel. The proposal contains the following components: 73 guest suites (condominiums), reception and lobby area, full service restaurant and bar, full spa (available for use to outside guests), retail space, meeting and conference room facilities accommodating up to 290 people (also available for use by outside groups), six penthouse residences (condominiums), operational observatory with public access, exterior courtyard and swimming pool, and two levels of underground parking.

**Table 1: Proposed Hotel Ketchum Square Footage**

<b>FLOOR LEVEL</b>	<b>DESCRIPTION</b>	<b>SQUARE FEET</b>
Parking Level 2	Underground parking	23,575
Parking Level 1	Underground parking/ loading	27,700
	<b>SUBTOTAL PKG LEVELS</b>	<b>51,275</b>
Lower Level	Kitchen/dining; Meeting rooms; Spa; Administration	20,900
Ground Level	Reception/lobby; Retail; Bar/ restaurant; Guest rooms	21,650
Second Level	Guest rooms	20,800
Third Level	Guest rooms	19,890
Fourth Level	Private Residential Units	14,260
Fifth Level	Observatory	550
<b>HOTEL GROSS FLOOR AREA</b>		<b>98,050</b>
<b>TOTAL FLOOR AREA INCLUDING UNDERGROUND PARKING</b>		<b>149,325</b>

**Table 2: Hotel Matrix**

<b>HOTEL CONFIGURATION</b>	<b>Units</b>	<b>Square Feet</b>
Guest Rooms	73	
SqFt		45,844
Condominium Units	6	
SqFt		11,770
Hotel Key Count	79	
Hotel Bed Count	82	
BOH, Circ. Support and Interior Public Areas (SqFt)		25,626
<b>TTL HOTEL SqFt</b>		83,240
<b>RESIDENTIAL CONFIGURATION</b>		
Residential Condominiums (Non-Hotel Residential/ “cold beds”)		14,260
Less 17% Circulation		(2,424)
Net Residential Sq. Ft.		11,700
Permitted Non-Hotel Residential (Hotel Sq Ft / .75 – Hotel Sq Ft)		27,747
<b>Over / (Under)</b>		<b>(15,977)</b>

**Table 3: Waiver Requests, Hotel Ketchum**

Code Section Zoning Ord.	Requirement	Waiver Requested	Comments
17.52.010 (F) SETBACKS	<p><u>REQUIRED:</u> FRONT (River St): 15 ft</p> <p>REAR: 1 ft for every 3 ft or fraction of building height, but no less than 10 ft. The proposed building has a height at the rear of 58 feet, requiring a 19.3 foot setback.</p> <p>SIDE: 1 ft for every 3 ft or fraction of building height, but no less than 5 ft. The proposed building has a height on the Leadville Ave side of 58 feet, requiring a 19.3 foot setback.</p> <p>SIDE: all sides Highway 75 where ROW is 80 ft: 25ft</p> <p>RIPARIAN: 25 ft</p>	<p><u>PROPOSED:</u> FRONT (River St): 3 ft</p> <p>REAR: 9 ft</p> <p>SIDE (Leadville Ave): 0'</p> <p>SIDE (Hwy 75): 11 ft to columns, 15 ft to walls</p> <p>Edge of Hwy to Bldg Façade: 41 ft</p> <p>RIPARIAN: 25 ft (no waiver)</p>	<p>Gateway Study recommendation: "Edge of highway to the building façade" - 35 ft.</p>
17.52.010 (H) FLOOR AREA RATIO	MAXIMUM FAR: 0.5	PROPOSED FAR: 2.4	17.52.010. H.3 states, "Hotels which meet the definition of Hotel... <i>may exceed the maximum floor area...</i> " (No specific FAR is listed.)

17.52.010 (I) HEIGHT	MAXIMUM: 35 ft	PROPOSED: 58 ft  NOTE: Architectural Feature – Observatory Dome height is 75 feet. Elevator housing and other roof features extend above 58 ft as shown in A1-D dated May 1, 2008, and are set back from primary building wall. [See 17.96.090(B)(3)(b)]	17.52.010. H.3 states, “Hotels which meet the definition of Hotel... <i>may exceed the maximum ...height...</i> ” (No specific height is listed.)
17.116.080  (and) 17.96.130	Construction shall commence within 1 year of granting CUP.  Term of Design Review is 1 year.	Increase time period for validity of PUD CUP and Design Review to 2 years.	Complexities of construction plans associated with hotel developments require increased time periods for all approvals.
<b>Subdivision Ordinance:</b> 16.08.080(A)(1) )	Minimum lot size of three acres	Lot is 0.92 acres	16.08.080(A)(1)(d) states that modification of the 3 acre provision may be granted for hotel uses.

**Table 4: Required Parking, Hotel Ketchum**

Use	Requirement	# Spaces Required
Hotel	.66 spaces per room (x 73 rooms)	48.18
Condominiums	1 space per 1,500 net sq ft (x 11,770 sq ft)	7.84
+Residential guest space	1 guest space for every 4 units (x 6 units)	1.50
Conference facility	1 space per 200 sq ft seating area (x 3,270 sq ft)	16.35
Retail/spa/office	1 space per 600 sq ft net floor area (x 3,715 sq ft)	6.19
Restaurant	1 space per 200 sq ft seating area (x3390 sq ft)	16.95
<b>Total Required Spaces</b>		<b>97.01</b>

**Table 4.1 Proposed Parking**



<b>Underground (on-site)</b>	Valet Parking (Levels 1=39; Level 2=59)	98
<b>On-street surface</b>	River Street	4
<b>Valet staging</b>	Motor Court	7

**Table 5: Miscellaneous Code Requirements**

<b>Subject</b>	<b>Ordinance Requirement</b>	<b>Proposed</b>
Open Site Area	17.52.010 (J): 35 % minimum with 5% allowance for private decks (= Net 30%)	30.08%
Curb Cuts	River Street 35% allowed	29.0%
	Leadville Avenue 35% allowed	29.5%

### G. STAFF REPORT ATTACHMENTS

The following documents and drawings were referenced as attachments to staff reports and incorporated herein.

- Attachment 1: Application items
- Attachment 2: Department Head and Agency comments
- Attachment 3: Public comment
- Attachment 4: Applicant correspondence
- Attachment 5: Traffic Impact Analysis (on file with the Planning Department)
- Attachment 6: Arborist's Assessment Report (on file with the Planning Department)
- Attachment 7: Economic Impact Study
- Attachment 8: Comprehensive Plan/Sub-Area Analysis
- Attachment 9: Staff Analysis of Gateway Area Mass & Scale Study
- Attachment 10: Permitted and conditional uses in T, CC and GR-L
- Attachment 11: Draft Development Agreement
- Attachment 12: Planning & Zoning Commission - Findings of Fact, Conclusions of Law and Decision
- Attachment 13: E-mail from Idaho Power, Spreadsheet showing Idaho Power estimates
- Attachment 14: Hotel Ketchum building stakeout exhibit (Galena)
- Attachment 15: Hotel Ketchum tree elevation exhibit (Galena)
- Attachment 16: LIDAR power pole and maximum tree height exhibit (Benchmark Associates)
- Attachment 17: Letter from Environmental Resource Center
- Attachment 18: Sheet A2.01 – Ground Level Floor Plan (9/3/08)
- Attachment 19: Sheet A2.P2 – Parking Level 2 Floor Plan (9/3/08)

A full set of architectural, landscape and civil drawings are on file in the Planning Department, and are set forth in Exhibit A attached hereto. The Council's decision was based on these drawings.

## H. KETCHUM CITY CODE STANDARDS

On August 12, 2008, and September 15, 2008 the City Council conducted public hearings and used the following zoning and PUD criteria and standards as a basis in favorably concluding, by a unanimous vote, that the Trail Creek LLC's application for a Planned Unit Development (PUD) Conditional Use Permit for the project named "HOTEL KETCHUM" complies with Ketchum Code Title 17, Chapter 17.52 (Tourist District) and Title 16, Chapter 16.08 (Planned Unit Developments).

The following sets forth the applicable Standards and the Council's findings and conclusions:

### **Title 17, Chapter 17.52 (Tourist District)**

#### **17.52.010. H.3.**

**3. Hotels: Hotels which meet the definition of Hotel in Chapter 17.08 may exceed the maximum floor area and height or minimum open site area requirements of this chapter subject to the following review process:**

**a. A Planned Unit Development shall be prepared for the proposal and approved by the City which specifically outlines the waivers to bulk regulations requested.**

#### **Finding:**

A Planned Unit Development application was prepared and submitted by the applicant. The proposed hotel is subject to the approval of this PUD application. Table #3 outlines the waivers/modifications to bulk regulations requested.

#### **Conclusion:**

Upon compliance with conditions of approval, this standard is met.

**b. A subarea analysis shall be prepared which addresses the Comprehensive Plan designation for the subarea; impacts of the proposed hotel on the character and scale of the surrounding neighborhood; impacts on proposed height and mass relative to the City's Design Review Standards and the PUD Standards, and the appropriateness of the subarea for a hotel which exceeds the bulk requirements of this Section.**

#### **Finding:**

A subarea analysis was prepared to address the Plan's designation for the subarea (Southern Entrance Corridor). Staff report Attachment 8 comprises the Comprehensive Plan subarea

analysis. Also related to the Comprehensive Plan subarea designation is the Gateway Area Mass and Scale Study. Staff report Attachment 9 contains an analysis of the proposed development in relation to this study. The proposal is found to be in general conformance with several of the study's recommendations.

Conclusion:

Upon compliance with conditions of approval, this standard is met.

**c. For hotel developments, Community Housing calculations apply to all residential units. However, 100% of the Community Housing requirement will be waived only for the residential portion of Hotel Projects that meet the Hotel definition adopted by the Ketchum City Council provided the project obtains a complete building permit prior to June 1, 2010.**

Finding:

The residential units within the project are the six (6) penthouse units, totaling 11,770 net square feet. These residential units are also referred to as "cold beds". The hotel definition requires that at least 75% of the building meets the hotel definition. Based on the total building size, this allows up to 27,747 square feet of "cold beds". The community housing requirement associated with the residential units ("cold beds") will be waived if the project applies for a building permit prior to June, 2010. Note that if the Council amends this section of the code to change the June 2010 date to a later date, this requirement may not apply.

Conclusion:

Upon issuance of a building permit prior to June 1, 2010, this standard is met. If a building permit is not issued by this date, 2354 square feet of Community Housing must be provided.

**d. Employee Housing. Hotel developments are required to mitigate employee housing impacts at a ratio of twenty-five (25) percent of the total number of employees calculated by the following formula: 1 employee per hotel room or bedroom.**

Finding:

The applicant has not submitted an Employee Housing Plan at this time. For the 70 hotel rooms proposed, 18 employees must be housed. All of the employees to be house are planned to be housed off-site due to the small site. Staff report Attachment 1 describes the various options under consideration by the applicant. Conditions of approval address the employee housing requirement.

Conclusion:

Upon compliance with conditions of approval, this standard is met.

**e. Employee Housing Plan. The applicant shall provide an Employee Housing Plan which outlines the number of employees, income categories and other pertinent data. The**

**Employee Housing Plan shall be the basis of the applicant’s proposal for a mix of employee housing which addresses the range of employees needed to serve the hotel.**

**Finding:**

No detailed employee housing plan has been submitted. The following table, Table 6, will be used once more detailed information is available.

**Table 6: City of Ketchum Workforce Housing Requirements**

Proposal	# of Rentable Rooms in the Hotel	Employees (= # of Rentable Rooms)	# of Employees to be housed on site	% of Employees Housed on site	# of Employees per Unit	Livable Square Feet for WF Housing	Type of Rooms	Square Feet of Each Room	Total Employees
70 hot beds 6 cold beds Total Sq. Ft: \$101,000	70	70	0	0					

Once an Employee Housing Plan is developed, the Blaine County Housing Authority (BCHA) would like to see information on the following:

- Wage/salary range and a breakdown the number of employees within the aforementioned classifications
- Information on type of housing provided per employee classification
- Costs incurred in rent (and utilities) and transportation/parking by employees
- Details on anticipated lease terms/rental agreements for employees housed on-site
- Anticipated transport and parking scenarios for both on-site and commuting employees.

Additionally, the BCHA recommended the applicant review the BCHA Employee Housing Guidelines which are expected to be adopted and approved as part of the BCHA 2008 Community Housing Guidelines. The Commission recommended that the applicant provide resources and information related to off-site housing opportunities.

Employee recruitment efforts should also be described. To support hotel and hospitality employee recruitment, the City proposes a collaborative effort to create a relationship with the College of Southern Idaho (Main – Twin Falls and Hailey campuses) to train and expand education and skill sets to serve this hotel and restaurant market.

Due to a lack of a Workforce Housing Plan, the Commission recommended a number of requirements be included in the Development Agreement. This shall include general information regarding employees served, administrative process, employee income and costs of housing, operating information/administration of units, proper design and monitoring of reasonable housing plan oversight.

The following elements should be required in the Workforce Housing Plan:

1. Provide salary/hourly wages (2008 dollars) for the various income categories of employees.
2. The expected number of each level of employee that is intended to be served by the employee housing units.
3. Which employee category will be served by which type/size of units.
4. 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 rates.
5. Establishment of maximum occupancy per unit type (i.e. 1 person per 1 bedroom unit; 2 persons per 2 bedroom units).
6. Location of units to be within Ketchum City limits.
7. Provide a matrix on breakdowns of the different types of units (1 bedroom; square footage; total number of units; anticipated rent, etc.)
8. Create a priority for occupancy program of these units; (i.e., first available employees that are full-time, secondly, to seasonal employees, and third, to persons that are verified to be working in the City of Ketchum.
9. What units will be available and how will the pool of units available be determined.
10. 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.
11. How will overflow of demand of units by employees be handled; will there be a priority system.
12. Provide information on housing families (with children) and/or married couples.

Through the development of Employee Housing, the BCHA has established certain size minimum thresholds. Overall, the proposed Workforce Housing must meet certain size minimums. The table below, Table 7, sets forth the allowable minimum livable square footage for each employee home type and income category (Table 6.4 in the BCHA Employee Housing Guidelines). The applicant should meet or exceed the Guidelines below.

**Table 7: Minimum Livable Square Footage for Each Employee Housing**

<b>Employee Home Type</b>	<b>Square Footage for Income Categories 1-3</b>	<b>Square Footage for Income Categories 4-6</b>
Studio – 1 occupant	400	600
Studio – 2 occupants	350	600
1 Bedroom	550	700
2 Bedroom	750	900
3 Bedroom	950	1100

The Commission recommended the selection of one of the above the above income category brackets (1-3 or 4-6). Additionally, the design of the Workforce Housing Building(s) should be

addressed. Section 6.92 of the BCHA Development of Employee Housing Guidelines, states the following key recommendations:

- All employee housing designed to accommodate roommates should provide separate closets for each occupant.
- Studios should be limited to one occupant unless a couple is married or there is a pre-existing relationship among occupants since there is no privacy for two unrelated adults in a studio.
- Bedrooms should be sized to accommodate sleeping arrangements for two unrelated adults.
- Each Employee Home should contain adequate storage space for bicycles, skis, camping gear, etc.
- Dishwashers, garbage disposals, self cleaning ovens, frost free refrigerators, sound insulation, gas forced air heating and internet service are highly recommended.
- Individual utility metering is encouraged to discourage excessive usage and waste.
- Whenever possible, individual entries should be provided without the use of a common hallway.
- Adequate on-site parking should be based upon the employee profile provided by the operator.

The Commission recommended that stringent design requirements, consistent with the BCHA design guidelines, should be followed. These requirements should also conform to language in the Workforce Housing Plan.

A preliminary monitoring system could be set up internally in an agreement between the City and the Applicant. The Commission recommended the Applicant provide to the City an accounting of its actual workforce to insure they are meeting their proposed percentage of required housing.

Conclusion:

Upon compliance with conditions of approval, this standard is met.

**f. The City Council may consider a request by the hotel developer to satisfy any required employee or community housing square footage by alternate means. Off site mitigation, payment of in lieu fees, land in lieu of units, voluntary real estate transfer fees or other considerations may be proposed by the hotel developer. Larger sites are encouraged to include workforce housing on-site. The City Council has full discretionary power to deny said request.**

Finding:

The applicant is proposing to locate all of the required employee housing off-site. The Development Agreement shall spell out when the Employee Housing must be available to employees. The Commission recommended that all of the required Employee Housing be

available prior to the issuance of any Certificates of Occupancy for the Hotel, or any other uses in the Hotel Building.

Conclusion:

Upon compliance with conditions of approval, this standard is met.

**g. Hotels shall enter into a Development Agreement with the City as part of the approval process. Said Development Agreement may address the following subjects: Community housing, hotel room uses and restrictions, public access on the property, alternatives and remedies if the hotel use ceases, and any other issue the Planning and Zoning Commission or City Council deems appropriate. Said Development Agreement shall follow the public hearing process as outlined in Section 16.08 Ketchum Municipal Code, Planned Unit Developments. Said Development Agreement shall be subject to Section 17.154.060, Enforcement and Section 17.154.070, Modification and Termination, Title 17, Ketchum Municipal Code.**

Finding:

A Development Agreement will be utilized to embody all of the conditions of approval associated with this project.

Conclusion:

Upon execution of the Development Agreement, this standard is met.

**Title 16, Chapter 16.08 (Planned Unit Developments)**

**16.08.080(A) STANDARDS:**

**1. Minimum lot size of three acres. All land within the development shall be contiguous except for intervening waterways. Parcels that are not contiguous due to intervening streets are discouraged. However, the Commission and the council may consider lands that include intervening streets on a case by case basis. The commission may recommend waiver or deferral of the minimum lot size and the council may grant said waiver or deferral only for projects which:**

- a. Include a minimum of thirty (30) percent of community or employee housing, as defined in Section 16.08.030;**
- b. Guarantee the use, rental prices, or maximum resale prices thereof based upon a method proposed by the applicant and approved by the Blaine County housing authority and/or the Ketchum city council; and,**
- c. Are on parcels that are no less than one and one-half acres (sixty-five thousand three hundred forty [65,340] square**

feet). Application for waiver or deferral of this criteria shall include a description of the proposed community or employee housing and the proposed guarantee for the use, rental cost, or resale cost thereof; or,

- d. For a hotel which meets the definition of hotel in Chapter 17.08, Definitions, and conforms to all other requirements of Chapter 17.64, Community Core District. Modifications or waivers from the provision of Chapter 17.64 may be granted for hotel uses only as outlined in Chapter 17.64.010(H)(c).

Waiver to three acre minimum lot size is requested.

The subject property is 0.93 acres. The proposed development is a hotel which meets the definition of hotel in Chapter 17.08. This standard states that a waiver of the minimum lot size may be granted for hotels, per item (d).

Conclusion:

Waiver to this standard shall be granted pursuant to 16.08.080 (A)(1)(d).

             **2. That the proposed project will not be detrimental to the present and permitted uses of surrounding areas.**

Finding:

The present uses of the surrounding area include:

- Commercial buildings across Main Street directly to the west. A vacant block across Main Street diagonally.
- The Kentwood Lodge hotel across River Street to the north.
- Residential condominiums and townhomes across Leadville to the east and directly adjacent to the south and across Trail Creek to the south.

The subject property is zoned Tourist (T), and surrounding zoning includes Tourist (T), Community Core (CC) and General Residential – Low Density (GR-L). Staff report Attachment 10 provides the complete list of permitted and conditional uses allowed in these districts. Hotels are permitted uses in the Tourist (T) district.

The subject property presently comprises a group of commercial buildings, which house offices, retail shops and restaurants, known as Trail Creek Village.

The La Residence Condominiums share a property boundary with the proposed development. The driveway for these units is located on the northern part of that property, and in fact extends over the property line, encroaching by up to nearly 8 feet onto the subject property. The proposed hotel building is set back adequately to allow the La Residence owners to continue use



of the full width of their driveway in its current location. The applicant will provide an easement for driveway ingress and egress to benefit La Residence.

Construction mitigation will conform to the City of Ketchum's Construction Mitigation Ordinance. Condition #1 addresses this matter.

Conclusion:

Upon compliance with conditions of approval, the proposed project will not be detrimental to the present and permitted uses of surrounding areas.

\_\_\_           **3. That the proposed project will have a beneficial effect not normally achieved by standard subdivision development.**

Finding:

N/A – the project is not a subdivision. Benefits of the project are covered in standard 16.08.080(A)(14) below.

Conclusion:

This standard is not applicable.

\_\_\_           **4. The development shall be in harmony with the surrounding area.**

Finding:

Uses in the surrounding neighborhood include a hotel and commercial uses, as well as residential. The hotel, restaurant, spa, other commercial uses are permitted under the Tourist (T) zoning, and are common in the adjacent CC district.

Bulk: Bulk is defined in the Ketchum Zoning Code as follows:

3.13 Bulk - "Bulk" is the term used to decide the size and mutual relationships of buildings and other structures, and therefore includes:

- (1) The size of buildings and other structures;
- (2) The shape of buildings and other structures;
- (3) The location of exterior walls of buildings and other structures, in relation to area of a lot, to the centerline of streets, to other walls of the same building, and to other buildings or structures; and,
- (4) All open spaces relating to a building or a structure.

The following tables, Tables 8 and 9, provide information on buildings which are located adjacent to or directly across the street from the proposed hotel.

**Table 8: Approximate Surrounding Area Floor Area Ratios:**

Density	Tourist (T)	General Residential	Community Core
---------	-------------	---------------------	----------------

<b>Allowed</b>		<b>(GR-L)</b>	<b>(CC)</b>
<b>Density allowed per zoning district</b>	0.5 FAR per lot (approx. 21 units per 1 acre site)	10.89 units per acre	1.0 FAR; 2.25 FAR w/CH
<b>Current Density of surrounding area</b>	Trail Creek Crossings: 0.8 FAR La Residence Condos: 0.49 FAR Sotheby's: 0.28 FAR	200 S. Leadville Townhomes: approx 8 units/acre (.59 FAR)	Kentwood Lodge: 1.14 FAR Leadville Residences: 1.19 FAR

The proposed project is at a floor area ratio (FAR) of 2.4. The most similar building in downtown Ketchum having an FAR of over 2.0 is the new building being constructed at the corner of Leadville Avenue and Sun Valley Road, with a FAR of 2.21.

**Table 9: Chart of Surrounding Projects**

<b>PROJECT</b>	<b>FOOTPRINT SIZE (sq. ft.)</b>	<b>SETBACK FROM STREET</b>	<b>NUMBER OF STORIES</b>
Kentwood Lodge	21,780	1' (River)	3
Leadville Residences	7,000	15' (Leadville)	3
200 S Leadville TH	3,800	14' (Leadville)	2-3
Trail Creek Crossings	16,086	100' (Main); 75' (Leadville)	2
La Residence	2,210	22' (Leadville)	2
Sotheby's	770	7' (Main)	1 + daylight

\*Note: Figures shown are approximate.

The elevation drawings submitted indicate that the architectural design includes materials and colors, such as stone, wood and stucco, that are found and are in harmony with surrounding buildings.

The building steps down from the north to the south, following the site's topography. The slope of the site also allows for underground and enclosed parking and service areas. All on-site parking, loading and trash removal areas are enclosed within the two below-grade parking levels and therefore hidden from view. Surface parking for 97 vehicles and exposed delivery and service areas would not be harmonious with the neighborhood.

The proposed building is set back in excess of the required 25 feet from the ordinary high water mark of Trail Creek, allowing for adequate riparian area and retention of existing large trees.

Various hotel projects within the City of Ketchum are currently under consideration. All projects are requesting waivers to bulk requirements. The Council has recognized that additional bulk is needed for hotels.

While the bulk of the proposed development is greater than the bulk of surrounding buildings, the Council finds that the proposed bulk is not unreasonable for this location adjacent to the Community Core. Other features of the proposed hotel, such as the materials and colors, the underground/enclosed parking and service areas, and setback from Trail Creek, are harmonious with the neighborhood.

Conclusion:

The proposed development is in harmony with the surrounding area.

**\_\_\_\_\_ 5. Densities and uses may be transferred between zoning districts within a PUD as permitted under this chapter provided the aggregate overall allowable density of units and uses shall be no greater than that allowed in the zoning district or districts in which the development is located. Notwithstanding the above, the commission may recommend waiver or deferral of the maximum density and the council may grant additional density above the aggregate overall allowable density only for projects which construct community or employee housing; and which:**

- a. Include a minimum of thirty (30) percent of community or employee housing, as defined in Section 16.08.030; and,**
- b. Guarantee the use, rental prices, or maximum resale prices thereof based upon a method proposed by the applicant and approved by the Blaine County housing authority and/or the Ketchum city council.**

**Application for waiver or deferral of this criteria shall include a description of the proposed community or employee housing and the proposed guarantee for the use, rental cost, or resale cost thereof.**

Finding:

N/A – No density transfer or use transfer is proposed.

Conclusion:

This standard is not applicable.

**\_\_\_\_\_ 6. That the proposed vehicular and nonmotorized transportation system:**

- a. Is adequate to carry anticipated traffic consistent with existing and future development of surrounding properties;**

Finding:

The subject property is located at two corners of the existing grid of the Ketchum Townsite: Main & River Streets, and River Street & Leadville Ave. This provides options for safe and efficient vehicular movement. The three adjacent public streets are paved to a width of 32-45 feet (Main), 36 feet (River) and 26 feet (Leadville). Certain encroachments are proposed within each of the public rights-of-way. Civil sheet C3 shows streets and proposed encroachments.

The Council finds that the proposed encroachments into the River Street right-of-way are acceptable due to the specific existing condition of the road in that location, i.e. that the paved portion of River Street is off center; the roadway is a low-volume roadway; it is within a grid where other streets have been planned for a higher volume of traffic. The centerline of the asphalt is offset by 12 feet to the north of the centerline of the 80-foot right-of-way, with the edge of asphalt 10 feet from the right-of-way boundary on the Kentwood Lodge side and 34 feet from right-of-way boundary on the subject property side.

The Council finds the encroachment of proposed porte cochere (canopy) over the River Street right-of-way acceptable as a traditional safety feature of the hotel.

The Council finds the encroachment of landscaping terraces within the Leadville Avenue right-of-way acceptable in order to provide buffering, and that a 5-foot sidewalk will be adequate in this location of relatively little foot traffic.

The Council finds the encroachment of landscaping and a low retaining wall within the Main Street right-of-way acceptable in order to provide for pedestrian amenities, a buffer for pedestrians, and to handle retainage. The applicant shall meet with the City Street Department, City Engineer, Idaho Transportation Department (ITD) and the planning staff, in order to finalize the right-of-way design prior to issuance of a building permit. Any retaining wall or other encroachment in the highway right-of-way is subject to removal at any time.

The Council finds that Main Street shall be improved adjacent to the hotel to provide an additional traffic lane to serve as a through lane, not a dedicated right turn lane. The length and width of the lane must meet ITD requirements and must be located to best accommodate the transition from the single lane to two lane roadway north of River Street.

The Council finds that for safety reasons the heated asphalt shall be extended to include the entire River Street/Leadville Avenue intersection plus one car length distance on each street, and that the heated asphalt shall be extended southward to a location that will adequately contain drainage. The snowmelt system and physical coverage area shall be reviewed and approved by the City Engineer and Street Superintendent. The developer is required to maintain the heating system and any repairs to the heating system that may be necessary after underground utilities have been repaired. An environmentally friendly heating system is recommended.

ADA ramp locations must be lined up to the extent reasonably practical with existing and future ramp locations across River Street.

All street slope and drainage issues must be resolved.

The applicant must maintain all sidewalks including on the Main Street side of the project.

- b. Will not generate vehicular traffic to cause "undue congestion" of the public street network within or outside the PUD;**

Finding:

The Traffic Impact Analysis (staff report Attachment 5) notes that the “proposed development will contribute a small portion of the overall vehicles at the study area intersections (e.g., 1% of the Main Street/First Avenue intersection traffic during the p.m. peak period of 2011).”

- c. Is designed to provide automotive and pedestrian safety and convenience;**

Finding:

A motor court off River Street will accommodate drop-offs and those checking into the hotel. Access to parking and for delivery and services is off Leadville Avenue.

Sidewalks are proposed along all three street frontages. The widths proposed vary. The Gateway Area Mass & Scale Study suggests wider sidewalks along Main Street, from 10 to 14 feet at the “urban” street edges, which may be more appropriate north of River Street in the CC district. In addition, there is some conflict between the suggestion of wider sidewalks and the goal for significant landscaping along the highway at this location, the grade issues, and the regulations and policies of ITD. The Council approves the following minimum sidewalk widths adjacent to the proposed hotel: 6 feet on Main Street, to accommodate as much landscaping as possible, 5 feet on Leadville Avenue, and as shown but not less than 5 feet on River Street.

Civil sheet C3 shows the proposed motor court and sidewalks.

- d. Is designed to provide adequate removal, storage and deposition of snow;**

Finding:

No snow removal areas are proposed on-site because parking is underground, and all sidewalks and the motor court at the hotel’s main entrance are to have a snow-melt system. Sheet A-3F shows the proposed snowmelt plan. (The snowmelt system on the streets is to be extended per sub-item (a) above.)

- e. Is designed so that traffic ingress and egress will have the least impact possible on adjacent residential uses. This includes design of roadways and access to connect to arterial streets wherever possible, and design of ingress, egress and parking areas to have the least impact on surrounding uses.**

Finding:

Due to the topography of the site, access to underground parking and services can only be feasibly accomplished along Leadville Avenue or Main Street. Access off Main Street is undesirable for traffic safety reasons and would not be permitted by ITD; therefore, it is located off Leadville.

Sheet A-2A shows vehicular circulation on Leadville Avenue at the location of the underground parking and service areas. Vehicles will access the parking garage via the right-hand entrance, which is 20 feet wide, allowing for both ingress and egress lanes. All vehicles are to enter and exit the parking garage in a forward motion. The majority of traffic into and out of the garage will be by valet parking. Impacts to adjacent residences on Leadville will be noise from the auto traffic, and at night, headlights of vehicles turning from River onto Leadville and as they exit the garage.

The left-hand entrance is 22 feet wide and is for delivery, service and garbage vehicles. According to the applicant, it will allow for entry by “25’ to 30’ panel-type trucks” and trash overloader trucks. The bay area is 35 feet deep, so that such trucks will be able to back into the bay area their full length and be completely off the street. The applicant states: “Tractor trailer-type trucks are expected to be a rare occurrence, but will likely not be able to back into the dock area.” Partial obstruction of Leadville Avenue will occur at these times.

Dumpsters and/or trash compactors will be inside the bay area. Garbage trucks are anticipated to turn into the bay area to the trash compactor, and then back out onto Leadville Avenue. There is ample clearance for trucks to approach the dock, pick up the dumpster, and over-swing the dumpster within the bay area.

There will be rolling garage doors at both entrances to shield the views into the service and parking levels. The doors will also aid in noise control. However, there will be times when the doors are open as vehicles are moving into and out of these areas.

The applicant is to provide some additional screening in the form of landscaping and fencing on the property of 200 South Leadville Townhomes.

A separated motor court along River Street will accommodate drop-offs and those checking into the hotel. Connection to the arterial (Main Street/Highway 75) will be via River Street. According to the Traffic Impact Analysis, virtually no inbound nor outbound traffic is anticipated to utilize Leadville Avenue to the south of the parking and service entrances, or River Street east into residential areas. Traffic is anticipated to flow into the commercial areas of town or onto Highway 75.

- f. Includes the use of buffers or other physical separations to buffer vehicular movement from adjacent uses;**

Finding:

A landscape island between the motor court and River Street is proposed, providing a physical separation.

The preliminary design shows low retaining walls within the Main Street right-of-way, providing a physical buffer. The applicant shall meet with ITD, City Engineer, Street Department and the planning staff, in order to finalize the design prior to issuance of a building permit. Any encroachments into the right-of-way are subject to removal at any time.

These physical separation buffers are shown on Civil Sheet C3.

There will be functional garage doors on both of the Leadville Avenue entrances to the underground parking garage and the service and delivery bay to buffer adjacent uses from the noise, lights and activity taking place within those areas. In addition, the applicant is to provide some additional screening (landscaping and/or fencing) on the property of 200 South Leadville Townhomes.

- g. Is designed so that roads are placed so that disturbance of natural features and existing vegetation is minimized;**

Finding:

N/A – no new roadways are proposed.

- h. Includes trails and sidewalks that creates an internal circulation system and connect to surrounding trails and walkways.**

Finding:

Sidewalks will be constructed on all three street sides of the proposed hotel, as shown on Civil Sheet C3. Sidewalk improvements shall be installed southward along Main Street to the bridge accessing Trail Creek Crossings.

A paver walkway and gravel pathway from Main Street into the pool deck area of the hotel and to Trail Creek shall be provided as seen on Sheet L1. A proposed walkway to and over the driveway of La Residence Condominiums is found not necessary. The pathway shall not extend to the driveway or through to Leadville Avenue.

Conclusion:

Upon compliance with conditions of approval, the proposed project:

- (a) will be adequate to carry anticipated traffic consistent with existing and future development of surrounding properties.
- (b) Will not generate vehicular traffic to cause "undue congestion" of the public street network within or outside the PUD.
- (c) Is designed to provide automotive and pedestrian safety and convenience.
- (d) Is designed to provide adequate removal, storage and deposition of snow.
- (e) Is designed so that traffic ingress and egress will have the least impact possible on adjacent residential uses.

- (f) Includes the use of buffers or other physical separations to buffer vehicular movement from adjacent uses.
- (g) Is designed so that roads are placed so that disturbance of natural features and existing vegetation is minimized (not applicable).
- (h) Includes trails and sidewalks that creates an internal circulation system and connect to surrounding trails and walkways.

**7. That the plan is in conformance with and promotes the purposes and goals of the comprehensive plan, zoning ordinance, and other applicable ordinances of the city, and not in conflict with the public interest.**

Finding:

Comprehensive Plan:

The amendment to the PUD does not conflict with the goals of the Ketchum comprehensive plan. An analysis of the plan, including the specific sub-area analysis for the Southern Entrance Corridor, is found in staff report Attachment 8. Also related to the Comprehensive Plan subarea is the Gateway Area Mass and Scale Study. Staff report Attachment 9 contains an analysis of the proposed development in relation to this study. The proposal is found to be in general conformance with several of the study's recommendations.

Zoning Ordinance:

The proposed development shall meet the standards of the zoning ordinance with the exception of the waivers granted by the City through the PUD process.

Subdivision Ordinance:

The Developer proposes to condominiumize the proposed development, so the proposed development shall meet the standards set forth in the Subdivision Ordinance at the time of such condominium platting.

Demolition Ordinance:

Demolition of the existing historic buildings in Trail Creek Village will be subject to Ketchum's demolition ordinance (Municipal Code Chapter 15.16). According to the 2005 Windshield Survey by Walsworth and Associates, these buildings were constructed in the 1940s and were originally a motel complex, later renovated into shops and restaurants. The applicant will be required to apply for a demolition permit and may not demolish or relocate the buildings until a building permit is issued for the new building. Re-use of any buildings, re-use of any building materials in the new project, and/or provision of an interpretive area on the site with photographs and history of the Trail Creek Village would acknowledge the historic buildings. The applicant may re-use certain existing materials, for example the exterior stonework. The applicant shall have photographs of the old Trail Creek Village in a "photo gallery" area in the hotel.



- a. **Pursuant to Section 16.08.070.D, all of the design review standards in Chapter 17.96 shall be carefully analyzed and considered. This includes detailed analysis of building bulk, undulation and other design elements. The site plan should be sensitive to the architecture and scale of the surrounding neighborhood.**

Finding:

A Design Review application was approved by the Planning and Zoning Commission on July 28, 2008.

- b. **The influence of the site design on the surrounding neighborhood, including relationship of the site plan with existing structures, streets, traffic flow and adjacent open spaces shall be considered.**

Finding:

Standards of evaluation for Design Review as well as the PUD include consideration of these issues.

- c. **The site design should cluster units on the most developable and least visually sensitive portion of the site.**

Finding:

N/A – a single building is proposed.

Conclusion:

Upon compliance with conditions of approval, the proposal is in conformance with and promotes the purposes and goals of the comprehensive plan, zoning ordinance, and other applicable ordinances of the city, and not in conflict with the public interest.

**8. That the development plan incorporates the site's significant natural features.**

Finding:

The site's natural features include the slope down toward Trail Creek, the creek's bank, and the existing mature trees.

The site slopes to the south toward Trail Creek, from an elevation of approximately 5831 feet at the northwest corner to 5799 feet along the southern boundary at Trail Creek. The slope becomes steeper closer to the creek. Existing grade is shown on Civil Sheet C2.

The site includes an area of riparian setback, 25 feet from the creek, that has been altered and degraded. This area is proposed for restoration by the applicant. Landscape Sheet L-5, Riparian Enhancement Plan, shows preliminary riparian landscape plantings.

The site also contains eighty-three (83) existing trees, including several mature conifer trees. An Arborist's Assessment Report by Alpine Tree Service (staff report Attachment 6) was submitted

with the application, giving further information about the health of the 83 trees on site. Eighteen (18) trees, seven (7) of which are designated as “resource trees” in the Arborist’s Assessment Report, are to be preserved in their current location. Two (2) other conifer trees will be transplanted. Sheet L-4 shows specifically which trees will be retained. Forty-six (46) new trees and 118 new shrubs are proposed to be planted by the applicant. Sheet L-3 shows the preliminary planting plan. The Arborist’s Assessment Report notes that 43 trees are diseased or dying, inappropriate species for the location, or not considered valuable.

Conclusion:

The development plan incorporates the site’s significant natural features.

\_\_\_ 9. **Substantial buffer planting strips or other barriers are provided where no natural buffers exist.**

Finding:

Planting beds totaling approximately 640 square feet are proposed on the east (Leadville) side of the hotel, between the building and the sidewalk, to provide a buffer on that side of the building. The applicant is also to provide some additional screening on the property of 200 South Leadville Townhomes.

A landscape island between the motor court and River Street is proposed.

The preliminary design shows low walls and landscaping within the Main Street right-of-way as a physical separation between traffic and pedestrian areas.

These buffer features are shown on Sheets L1 and L3.

Conclusion:

Upon compliance with conditions of approval, substantial buffer planting strips or other barriers are provided where no natural buffers exist.

\_\_\_ 10. **Each phase of such development shall contain all the necessary elements and improvements to exist independently from proposed future phases in a stable manner.**

Finding:

N/A - The proposed development will occur in a single phase.

Conclusion:

This standard is not applicable.

\_\_\_ 11. **Adequate and useable open space shall be provided. The applicant shall dedicate to the common use of the homeowners or to the public adequate open space in a configuration useable and convenient to the residents of the project. The amount of useable**

**open space provided shall be greater than that which would be provided under the applicable "aggregate lot coverage" requirements for the zoning district or districts within the proposed project. Provision shall be made for adequate and continuing management of all open spaces and common facilities to ensure proper maintenance thereof.**

Finding:

Useable open space within the project includes riparian area of Trail Creek and the outdoor courtyard area which provides a swimming pool and spa pool available to residents and hotel guests. Such "open space" may be appropriate for this urban hotel type of project as it is "useable and convenient" to the residents of the project – in this case the hotel guests and condominium owners.

Conclusion:

Adequate and useable open space is provided.

**12. Location of buildings, parking areas and common areas shall maximize privacy within the project and in relationship to adjacent properties and protect solar access to adjacent properties.**

Finding:

A single building is located on the site. Two levels of underground parking are proposed. The nearest private property is to the south, the La Residence Condominiums. The hotel hot tub is located in the corner of the pool deck nearest these residential units, however, not visible from their ground floor levels, as shown on Sheet A-1B1. In addition, a low wall on that side of the hot tub is proposed.

A solar study has been provided and shown on Sheets A-1G1 through A-1G4. Shadow studies are presented for each of the four seasons on the equinox and solstice, at three different times of day: 9:00 AM, 12 Noon, and 3:00 PM.

Spring (March 21) and Autumn (September 21) These are nearly identical.

9 AM: Main Street sidewalks and River street roadway and sidewalks are entirely in shadow, as are small areas of Kentwood Lodge.

12 Noon: Sidewalks on River and Leadville are mostly in shadow.

3 PM: Sidewalk and roadway of Leadville Avenue are entirely in shadow. 200 South Leadville Townhomes begins to be shaded.

Summer (June 21)

9 AM: Most of Main Street roadway and sidewalks, a small part of River Street roadway and most of River Street sidewalks adjacent to the hotel are in shadow.

12 Noon: Most of River Street sidewalk adjacent to hotel is shaded.

3 PM: All of Leadville Avenue sidewalk and a small portion of the roadway is shaded.

### Winter (December 21)

9 AM: All of River Street roadway and sidewalks and significant portions of Kentwood Lodge are in shadow.

12 Noon: Most of River Street continues to be shaded. All of the River Street/Leadville Avenue intersection and most of Leadville Avenue adjacent to the hotel are in shadow.

3 PM: Leadville Avenue and much of 200 South Leadville Townhomes are in shadow. A very small portion of the River/Leadville Avenue intersection is still shaded.

The extended sidewalk area on the corner of Main and River Streets remains in sun throughout the day, even during the winter. The hotel's courtyard is sunny except for afternoon hours in autumn, winter and spring. While public streets, sidewalks and open spaces, as well as certain nearby properties, are shaded at certain times, the Commission recommended compliance with this standard, recognizing that a 44-foot high building could be built in this location (44 feet is the maximum permitted height for buildings with a roof pitch of 5:15 or greater), and that a building 44 feet high would also significantly affect natural light reaching public areas and solar access on surrounding streets and properties.

### Conclusion:

Location of buildings, parking areas and common areas maximize privacy within the project and in relationship to adjacent properties and protect solar access to adjacent properties.

**13. "Adequate recreational facilities" and/or daycare shall be provided. Provision of adequate on-site recreational facilities may not be required if it is found that the project is of insufficient size or density to warrant same and the occupant's needs for recreational facilities will be adequately provided by payment of a recreation fee in lieu thereof to the city for development of additional active park facilities. On-site daycare may be considered to satisfy the adequate recreational facility requirement or may be required in addition to the recreational facilities requirement.**

### Finding:

A swimming pool and spa pool are provided in the courtyard for residents and hotel guests.

Also proposed is a fully operational observatory with a telescope sized for viewing the night sky. There will be an outdoor deck on the observatory level suitable for small gatherings. The observatory will be available to hotel guests and open to the public, with operational hours to be developed that provides for access for the public, schools and other interest groups. The observatory shall be equipped with at least one telescope that is a minimum of 16 inches. The acceptance of the observatory as a recreational benefit results in an increase in height for both the observatory itself and also the elevator shaft, which is required to provide ADA access. The applicant and the Environmental Resource Center have been collaborating regarding the equipment and operation of the observatory.

The Council finds these amenities adequate and appropriate recreational facilities for a hotel.

No day care is proposed.

Conclusion:

Upon compliance with conditions of approval, adequate recreational facilities are provided.

14. **There shall be special development objectives and special characteristics of the site or physical conditions that justify the granting of the PUD conditional use permit.**

Finding:

Table 10 below summarizes the special development objectives of the proposal:

**TABLE 10: Special Development Objectives**

<b>Special Development Objective, special Characteristics of the Site or Physical Conditions</b>	<b>Type of Objective</b>	<b>Where Analyzed in Staff Report</b>
4-Star Hotel of 73 “hot beds”	Economic	Attachment 7, Caplan Fiscal Report; Attachment 8, Ketchum Comprehensive Plan
Conference Space (seating for 290 persons)	Economic	Attachment 7, Caplan Fiscal Report
Employee Housing for 18 employees	Social	Attachment 8, Ketchum Comprehensive Plan; Ketchum Zoning Code
Contribution of \$250,000 towards the undergrounding of overhead power lines	Aesthetic; Economic	Attachment 8, Ketchum Comprehensive Plan; Attachment 9, Gateway Massing Study
Restoration of Trail Creek riparian setback, provision of overlook and trail to creek	Environmental; Aesthetic; Recreational	Attachment 8, Ketchum Comprehensive Plan; Zoning and Subdivision Code; Standard 8 herein
Functional Observatory – open to public	Recreational	Attachment 8, Ketchum Comprehensive Plan
Reutilization of materials and/or photo gallery of historic Trail Creek Village	Historic	Attachment 8, Ketchum Comprehensive Plan; Attachment 9, Gateway Massing Study
Pedestrian improvements to public right-of-way to create Gateway Plaza	Aesthetic; Economic	Attachment 8, Ketchum Comprehensive Plan; Attachment 9, Gateway Massing Study

The “Economic Impact Study of Three Proposed Hotels” by Richard Caplan & Associates, dated April 23, 2008, (staff report Attachment 7) notes that the hotel would provide the following sources of revenue to the City of Ketchum:

One time sources:

- Impact fees and permits
- LOT on construction materials
- Employment of construction workers

On-going sources:

- Employment of hotel and retail workers
- City and URA property taxes
- LOT – Lodging, retail, liquor
- Franchise fees, state shared revenues

The projected revenue for Hotel Ketchum for 15 years is estimated at \$7.9 million. With estimated cost of associated city services of \$1.6 million, the net revenue surplus is estimated at \$6.3 million. The study’s assumptions state that the associated city service levels are based on the 2008 budget and current personnel levels. Financial information and assumptions from the applicant are found in Jack Bariteau’s letter of May 9, pages 9-12 (staff report Attachment 4). This letter also includes a brief description of the applicant’s proposal related to deed restricting the project for continued hotel uses.

Undergrounding power lines is a goal mentioned frequently in the Comprehensive Plan. The Council finds that the applicant shall contribute a pro rata share of the cost of undergrounding overhead power lines in the vicinity of the project, based on linear feet of line adjacent to the proposed hotel as compared to the total linear feet of power lines to be undergrounded. The pro rata share shall be based on the frontage of the subject property along Main Street, Leadville Avenue, and River Street.

Idaho Power has provided actual lineal footage of the power lines to be relocated underground, along with a cost estimate. Staff report Attachment 13 includes Idaho Power’s memo and an internally created spreadsheet.

Two options for undergrounding of lines along Main Street are proposed by Idaho Power, as follows:

“Option 1) Bring one feeder back up existing pole 30 feet south of bridge and then a new pole would need to be installed to bring the second feeder back up. A down guy would be required to be installed on this new pole to hold the tension of the existing powerline continuing south – 610 feet of excavation @ \$600.00 estimated cost per foot - \$366,000.00.

Option 2) If new pole is not a preferred option then excavation could continue south 251 feet to tangent pole with overhead transformer. This transformer would have to be converted to a padmount transformer (transformer sitting on private property with an easement to cover encroachment) and then this pole could be used to transition the underground back up to overhead. If this options if chosen the most northern pole left may need to be relocated some (15') south to allow for enough room to down guy this pole. Currently it is 30 feet south of the bridge. The anchor in the ground would need to be forty-five feet away from the butt of the pole in the ground – Additional footage = 251 feet of excavation @ \$600.00 estimated cost per foot - \$150,600.00.”

The Council finds that Option 2 shall be pursued, because the City’s franchise agreement calls for no new overhead equipment or poles.

Adjacency to Trail Creek is a special characteristic of the site. The riparian setback zone of Trail Creek is currently degraded. The applicant shall restore and improve this area. The landscape plans L3 and L5 show the addition of significant riparian plantings.

The observatory equipped with a telescope sized for viewing the night sky, as described in Standard 16.08.080(A)(13) above, may also be considered a special development objective.

Conclusion:

Upon compliance with conditions of approval, there are special development objectives and special characteristics of the site or physical conditions that justify the granting of the PUD conditional use permit.

\_\_\_            15.    **The development will be completed within a reasonable time.**

Finding:

The applicant states that the design and construction documents phase will be approximately 10 to 12 months commencing with the final PUD CUP approval. They hope to obtain a “phased building permit process allowing sequential submission of documents to receive permits to break ground on construction expeditiously.” Actual construction is anticipated to take 22 to 24 months, including demolition, excavation and building construction.

A related standard of the Zoning Ordinance sets forth the term of a PUD Conditional Use Permit, as follows:

**17.116.080 Term of Permits.**

**All conditional use permits shall be issued and construction shall commence within six months from the date that such conditional use permit is granted; otherwise, the conditional use permit shall no longer be considered valid.**

The applicant has requested a waiver to this term limit, to allow the CUP permit to be valid for a period of two years. The applicant explained that the reason for the request is to allow additional time to obtain financing for the project. He stated that the conventional debt market typically used for construction financing does not exist today, so he will need additional time to raise funds for the project. The Council finds that the current economic situation is a significant factor that justifies the granting of the modification of the term of permits for this project, both CUP and Design Review, from 6 months to 2 years.

The project will require significant excavation and will have an extensive construction period. The applicant has stated that after a general contractor has been selected, they can provide a detailed construction staging and mitigation plan. Off-site parking for construction workers and an off-site staging area for bulk materials are anticipated. Provision of these mitigation plans and programs are included as a condition of approval, to be provided prior to issuance of a building permit. Construction mitigation will conform to the City of Ketchum's Construction Mitigation Ordinance. Condition 1 requires a construction staging and mitigation plan to be submitted within 8 months from the date of PUD approval.

Conclusion:

Upon compliance with conditions of approval, the development will be completed within a reasonable time.

\_\_\_\_ 16. **That public services, facilities and utilities are adequate to serve the proposed project and anticipated development within the appropriate service areas.**

Finding:

The proposed development is within the Ketchum Townsite and in easy proximity to public services, facilities and utilities. This and other large projects may require additional public staffing and equipment. The projected revenue for Hotel Ketchum and other projects are anticipated to be more than adequate to cover additional city services.

The Utilities Department has several requirements related to the existing main lines, service lines, manholes, etc. that will need to be maintained or improved. These are included as conditions of approval.

Conclusion:

Upon compliance with conditions of approval, public services, facilities and utilities are adequate to serve the proposed project and anticipated development within the appropriate service areas.

\_\_\_\_ 17. **That the project complies with all applicable ordinances, rules and regulations of the city of Ketchum, Idaho except as modified or waived pursuant to this subsection A.**

Finding:



This standard is also analyzed in Standard 16.08.080(A)(7). Comprehensive Plan: Conformance is found with the goals of the Ketchum comprehensive plan, the sub-area (Southern Entrance Corridor) of the Plan, and the related Gateway Area Mass and Scale Study.

**Demolition Ordinance:**

Demolition of the existing historic buildings in Trail Creek Village will be subject to Ketchum's demolition ordinance (Municipal Code Chapter 15.16).

**Subdivision Ordinance:**

Waiver to Section 16.08.080(A)(1) is granted as set forth in Table 3 above. All other standards of Section 16.08.080 are to be met.

**Zoning Ordinance:**

Waivers and modifications are granted as set forth in Table 3 above. All other zoning standards are to be met. Substantial public benefits as set forth and described in Table 10 and findings for Standard 14 above are found to justify the granting of waivers and modifications requested.

Further regarding waivers and modifications, the Council finds that there has been a significant amount of public involvement in the design of the Downtown Master Plan, during which the majority expressed positive opinions regarding the need for high quality hotels in Ketchum. In discussions regarding density and commercial areas in the Core, it was acknowledged that the City would make exceptions for hotels and hospitality projects, noting the vibrancy they would bring to the City, along with the potential for employment and internships for our youth. Further, it is recognized that the City does not have any 4-star or 5-star hotels which are deemed important for economic growth.

**Conclusion:**

Upon compliance with conditions of approval, the project complies with all applicable ordinances, rules and regulations of the city of Ketchum, Idaho except as modified or waived pursuant to this subsection A.

**CONCLUSIONS OF LAW**

1. The City of Ketchum is a municipal corporation organized under Article XII of the Idaho Constitution and the laws of the State of Idaho, Title 50, Idaho Code.
2. Under Chapter 65, Title 67 of the Idaho Code, the City has passed a land use and zoning ordinance, Title 17 and a subdivision ordinance, Title 16.

3. The City Council has authority to hear the applicant's Conditional Use Permit application pursuant to Idaho Code Section 67-6512 of the Local Land Use Planning Act and Chapter 16.08 of Ketchum Subdivision Code Title 16.

4. The City Council's August 12, 2008 and September 15, 2008 public hearings and consideration of the applicant's Conditional Use Permit application was properly noticed pursuant to the Local Land Use Planning Act, Idaho Code Section 67-6512.

5. The application does comply with Ketchum Zoning Code Title 17 and Ketchum Subdivision Code Title 16 and the Ketchum Comprehensive Plan only if the following conditions of approval are met.

### DECISION

**THEREFORE**, the Ketchum City Council **approves** this Planned Unit Development Conditional Use Permit application for a new hotel building, Hotel Ketchum, this 15th day of September, 2008, provided the following conditions are met:

1. 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.
2. 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.
3. 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.
4. 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

5. 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.
6. 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.
7. 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.
8. 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.
9. 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 units).
- f) Location of units to be within Ketchum City limits.

- g) Provide a matrix on breakdowns of the different types of units (1BD; 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 units by employees be handled; will there be a priority system.
- l) 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:

- o Wage/salary range and a breakdown the number of employees within the aforementioned classifications
- o Information on type of housing provided per employee classification
- o Costs incurred in rent (and utilities) and transportation/parking by employees
- o Details on anticipated lease terms/rental agreements for employees housed on-site
- o Anticipated transport and parking scenarios for both on-site and commuting employees.

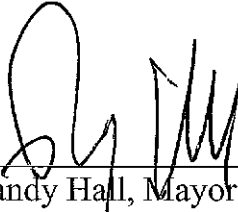
The Employee Housing Plan shall be submitted and approved by the City Council prior to issuance of a building permit. This plan shall be an exhibit to an amendment to the PUD agreement and recorded prior to issuance of a building permit.

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.

- 10. A privacy wall or landscaping buffer shall be developed as a buffer for the 200 South Leadville Townhomes.
- 11. Operational hours for the observatory shall be developed that provides for access for the public, schools and other interest groups.
- 12. This PUD CUP approval is contingent upon the approval of the Design Review/Waterways Design Review application.

13. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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.

Findings of Fact **adopted** this 6th day of October, 2008.

  
\_\_\_\_\_  
Randy Hall, Mayor

## EXHIBIT "A"

The full set of architectural, landscape and civil drawings are on file in the Planning Department.

### Architectural:

DRAWING	DATE	DESCRIPTION
A1.00	July 28, 2008	Site Plan
A-2A	May 1, 2008	Vehicular Circulation
A-3F	May 1, 2008	Snowmelt Plan
A2.P2	July 28, 2008	Parking Level 2 Floor Plan
A2.P1	July 28, 2008	Parking Level 1 Floor Plan
A2.00	July 28, 2008	Lower Level Floor Plan
A2.01	July 28, 2008	Ground Level Floor Plan
A2.01L	January 1, 2008	Ground Level Lighting Plan
A2.02	July 28, 2008	Level 2 Floor Plan
A2.03	July 28, 2008	Level 3 Floor Plan
A2.04	July 28, 2008	Level 4 Floor Plan
A2.05	July 28, 2008	Level 5 Floor Plan
A2.06	July 28, 2008	Roof Plan
A3.01A	July 28, 2008	West Elevation (w/materials)
A3.01R	July 28, 2008	West Elevation
A3.02A	July 28, 2008	North Elevation (w/materials)
A3.02R	July 28, 2008	North Elevation
A3.03A	July 28, 2008	East Elevation (w/materials)
A3.03R	July 28, 2008	East Elevation
A3.04A	July 28, 2008	South Elevation (w/materials)
A3.04R	July 28, 2008	South Elevation
A3.05R	January 8, 2008	West Courtyard Elevation/Section
A3.06R	January 8, 2008	East Courtyard Elevation/Section
A4.01	January 8, 2008	Enlarged Guest Room Plans
A4.02	January 8, 2008	Enlarged Guest Room Plans
A4.03	January 8, 2008	Enlarged Condo Unit Plan
A4.04	January 8, 2008	Enlarged Condo Unit Plan
A4.05	January 8, 2008	Enlarged Condo Unit Plan
A8.01	July 28, 2008	Enlarged Elevation, Plan + Section
A8.02	July 16, 2008	Partial Enlarged West Elevation
A-1B1	May 1, 2008	West Courtyard Elevation/Section
A-1B2	May 1, 2008	East Courtyard Elevation/Section
A-1A1	May 1, 2008	Southwest Corner View
A-1A2	May 1, 2008	View from Leadville Avenue
SK.01	July 16, 2008	North Perspective
SK.02	July 16, 2008	Northeast Perspective

A-1A3	May 1, 2008	Northeast Aerial View
A-1A4	May 1, 2008	Southwest Aerial View
A-1G1	May 1, 2008	Shadow Study (Spring)
A-1G2	May 1, 2008	Shadow Study (Summer)
A-1G3	May 1, 2008	Shadow Study (Autumn)
A-1G4	May 1, 2008	Shadow Study (Winter)
A-1D	July 28, 2008	Building Height Analysis
A-1E	May 1, 2008	Gateway Master Plan Design Guidelines
(not numbered)	March 24, 2008	Exterior Lighting Fixtures

Landscape:

DRAWING	DATE	DESCRIPTION
L-1	January 10, 2008	Site Plan
L-2	January 10, 2008	Grading Plan
L-3	January 10, 2008	Landscape Plan
L-4	January 10, 2008	Tree Assessment Plan
L-5	January 10, 2008	Riparian Enhancement Plan

Civil:

DRAWING	DATE	DESCRIPTION
C1	January 10, 2008	Vicinity and Zoning Map
C2	January 10, 2008	Existing Conditions
C3	January 10, 2008	Grading Plan
C4	January 10, 2008	Detail Sheet

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT**  
**(City of Ketchum/Trail Creek Fund, LLC, et al.**

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of the 5<sup>th</sup> day of October, 2015, by and between the CITY OF KETCHUM, an Idaho municipal corporation ("City") and TRAIL CREEK FUND, LLC, a California limited liability company ("Owner").

**RECITALS**

WHEREAS, Owner owns that certain real property located at 200 South Main Street, Ketchum, Idaho legally described as Lot 2 of Block 83, of the City of Ketchum, according to the official plat thereof, on file in the office of the County Recorder of Blaine County, Idaho (the "Property"); and

WHEREAS, Owner has applied with the City to develop and operate a Hotel ("Project") currently referred to as the "Auberge Resort Hotel" on the Property pursuant to a Planned Unit Development Conditional Use Permit; and

WHEREAS, Ketchum Municipal Code ("KMC") Section 17.52.010.H.3.g requires that the developer of such a hotel enter into a Development Agreement with the City as part of the approval process and this Agreement satisfies such requirement; and

WHEREAS, KMC 16.08.070 requires the developer of a PUD to submit a Development Plan and this Agreement will ensure compliance with such Plan; and

WHEREAS, KMC 16.08.120.C.1 allows the City Council to require such written agreements executed by the developer to secure performance of any requirement or condition imposed as part of the PUD approval and this Agreement is such a written agreement; and

WHEREAS, City has identified the Property as a site which is suited for the proposed development; and

WHEREAS, the City's Planning and Zoning Commission and City Council have held properly noticed public hearings pursuant to applicable code with respect to the development of the Property and this Agreement; and

WHEREAS, the original agreement between the City of Ketchum and Trail Creek Fund LLC was first amended on April 15, 2010 for the purpose of extending the entitlement expiration dates; and

WHEREAS, the original agreement between the City of Ketchum and Trail Creek Fund LLC was amended for a second time on July 16, 2012 for the purpose of extending the entitlement expiration dates; and



WHEREAS, the original agreement between the City of Ketchum and Trail Creek Fund LLC was amended for a third time on November 5, 2013 for the purpose of extending the entitlement expiration dates; and

WHEREAS, Trail Creek Fund LLC requested a fourth amendment to the Development Agreement in July 2015 for the purpose of extending the entitlement expiration dates by seven (7) months; and

WHEREAS, on September 3, 2015 the Ketchum City Council approved the request from Trail Creek Fund LLC to extend the entitlement expiration dates by seven (7) months from October 6, 2015 to May 6, 2016; and

WHEREAS, the Ketchum City Council approved the fourth extension with the understanding that this would be the last and final amendment to the Development Agreement as to time extensions; and

WHEREAS, it is the intent and desire of the parties hereto that development and uses of the Property proceed as provided herein.

#### **AGREEMENT**

NOW THEREFORE, in consideration of the above recitals and the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are hereby incorporated into and made an integral part of this Agreement.
2. Incorporation of Related Agreements, Approvals, Plans, Permits and other documents. 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 restated 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 September 8, 2008, or as amended from time to time.
  - Site Plan No. L-1 dated January 10, 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 shall constitute a breach of this Agreement.

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

Except as provided otherwise in this Agreement, 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 this Agreement. Any amendments or additions made during the term of this Agreement 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 Agreement:

- i) plan review fees and inspection fees;
- 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 Agreement 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 as an amendment to this Agreement.

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 and applicable fees shall be submitted to the City no later than May 6, 2016. A Certificate of Occupancy shall be issued for the Project no later than 30 months after the Building Permit is issued.

A building permit application that does not substantially comply with the requirements contained in applicable codes, agreements, approvals, plans, permits and other project documents may be rejected by the City within a reasonable time after completing review of the application by providing written notice to Owner describing the non-compliance in detail unless the non-compliance is cured by Owner within thirty days. If a building permit application contains material changes to the above-referenced applicable codes, agreements, approvals, plans, permits and other documents an amendment to this agreement must be applied for by Owner and considered by the City Council. If such amendment is approved by City Council, all approvals referenced in Section 2 may be subject to amendment. A new building permit may be required to reflect the changes made to the approvals in Section 2.

3. List of Uses to be Allowed (Hotel Uses and Restrictions). Owner may use the Property as a "Hotel" as defined in KMC 17.08.020 as that section existed at the time of PUD application and for private residential uses. The following units and any storage, parking or limited common area associated with such units may be used as either private residential units or as a "Hotel": Units 1 through 6, located on the fourth floor unless otherwise amended by the City of Ketchum. 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 facilities, restaurant and bar areas within the hotel, fitness facilities, retail and spa/salon uses, and an observatory on the fifth floor. Owner agrees that this Agreement specifically allows only the uses set forth above and no others. Owner may not change the uses of the Property and improvements thereon specified in this Agreement without the prior written approval of City which may be withheld for any reason permitted by law. Any substantial changes or expansions in the uses permitted by this Agreement without such prior written consent and formal modification of this Agreement as allowed by applicable law shall constitute a breach of this Agreement.
4. Permitted Square Footage and Building Location. Owner shall construct improvements on the Property in the locations depicted in the Design Review Approval. The gross square footage of the improvements shall not be greater than 149,325 square feet distributed as set forth in the Design Review Approval.
5. Identification of Development Standards & Right-of-Way Improvements. Owner shall develop the Property pursuant to the standards set forth in Title 15 of the Ketchum Municipal Code "Buildings and Construction" as such standards exist as of the date on which Owner applies for a building permit. Owner shall develop the public rights-of-way adjacent to the Property pursuant to the Site Plan and pursuant to the standards set forth in Title 12 of the Ketchum Municipal Code "Streets, Sidewalks, Public Utility Easements and Public Places" as such standards exist on the date on which Owner applies for a building permit. Improvements within the public rights-of-way that shall be dedicated to the public include:
- Pedestrian amenities such as bike racks, benches and other amenities provided within the Gateway Plaza area at the intersection of Main Street and River Street.
  - Public art.
  - Trees.
  - Street lights.
- Improvements within the public rights-of-way that shall remain in the ownership of the Owner and be subject to a revocable Right-of-Way Encroachment License include:
- Heated sidewalks within the Main Street, River Street and Leadville Avenue rights-of-way.
  - Heated asphalt or other paving within the River Street and Leadville Avenue rights-of-way.
  - Retaining walls.
  - Planter beds, screen and contents within Main Street, River Street and Leadville Avenue rights-of-way.

- Porte cochere and any other structural elements of the hotel building that project into or over the public right-of-way.
  - Curb and gutter and all ingress and egress improvements that are essential for access to the hotel entries and underground parking garage and loading dock areas of the Project.
6. Plaza Area. The size and location of the planned Gateway “plaza” area for the Property, shall be approved by the City Engineer and the City Council prior to issuance of a building permit and installed prior to the issuance of any Certificate of Occupancy.
7. Construction and Completion Schedule. Improvements shall be constructed and substantially completed pursuant to a schedule set forth in the Revised Construction Mitigation Plan, which shall be submitted by the Owner and approved by the City no later than March 6, 2016. A Certificate of Occupancy shall be issued for the Project no later than 30 months after the Building Permit is issued.
8. Infrastructure Improvements. Owner shall engineer, construct, and otherwise provide, at its sole expense, improvements, facilities and services (public and private) as provided in the PUD Conditional Use Permit and this Agreement:
- 8.1 Owner requests water and sewer service from Ketchum to the PUD Property and Ketchum hereby agrees to provide such water and sewer service at the same fees as charged to equivalent users of Ketchum.
- 8.2 All utilities, including water, sewer, gas, cable, phone and electric shall be installed underground within the street rights-of-way. Detailed engineered construction drawings and specifications for construction of such improvements shall be prepared by Owner and approved by the Ketchum Engineer prior to construction. Prior to acceptance of any such improvements to be dedicated to Ketchum, the Ketchum Engineer shall inspect and approve same and Owner shall provide Ketchum with "as built" drawings thereof. Owner hereby warrants that to the best of its knowledge the "as built drawings" are substantially correct and Owner shall, for a period of one year from Ketchum’s receipt of said drawings, be liable and hold Ketchum harmless for any damage which may result from material errors in said drawings after acceptance by the Ketchum Engineer of said utilities unless such damage is caused directly or indirectly by the acts or omissions of Ketchum, or its agents or contractors.
9. Design Review. The improvements on the Property shall be built exclusively as permitted under the Design Review Approval unless otherwise amended by the City of Ketchum. Any development of any portion of the Property substantially inconsistent with this Agreement or the Design Review Approval, as determined by the Planning and Zoning Administrator, without modification of the Design Review Approval, shall constitute a breach of this Agreement by Owner.
10. Phasing. Owner shall not phase the development of the Property; therefore, no security agreement shall be required for any such phasing.

11. Public Access to the Observatory. The observatory has been accepted as a public amenity and as such shall be open to the public a reasonable number of hours. The applicant shall make a proposal to the City Council regarding the operation of the observatory, to be approved by the City Council prior to issuance of any Certificate of Occupancy. The operation of the observatory is subject to approval and adjustment periodically as determined by Owner and the City Council.
12. Employee Housing. The Owner agrees to provide Employee Housing as provided by Ketchum Municipal Code and as set forth in an Employee Housing Plan, which shall be submitted by the Owner and approved by the City Council no later than April 6, 2016. Such plan shall include items set forth in Exhibit A. The approved Employee Housing Plan shall be added to this Agreement by addendum and recorded prior to issuance of a building permit. All required employee housing shall be available no later than six months after the issuance of any certificate of occupancy for the PUD property. Security for the employee housing shall be provided in the form of either a letter of credit issued by a bank, a set-aside agreement with the lender, or a lien on the property in favor of the City sufficient to cover the Employee Housing requirement.
13. Condominium Plat. A condominium plat shall be submitted by the Owner and recorded, pursuant to KMC 16.04.060, to allow for financing of the improvements and individual sale of private residential units. The condominium plat and an operations management plan must be approved by the City prior to recording. The individual condominium units and the commercial and/or common area units shall be use restricted through a recorded declaration of covenants and restrictions.
14. Relocation of Overhead Distribution Power Lines. Owner 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 Property along Main Street, Leadville Avenue, and River Street. Said contribution shall be utilized by the City solely for the relocation of power lines from overhead to underground in the vicinity of the Property. Staff shall bring alternatives to the Council regarding the payment method within six (6) months of the Effective Date of this Agreement.
15. Conditions of Approval. Owner agrees to comply with all conditions incorporated into the PUD Conditional Use Permit. Any and all approvals as adopted or amended as listed in Section 2, shall be valid until May 6, 2016. These approvals may be retained by Owner and the validity date extended past May 6, 2016 by Owner submitting a building permit application by May 6, 2016, provided the requirements of Section 7 have been met.

In the event Owner has need to revise the approvals listed in Section 2, the following schedule shall be observed to provide Owner the best opportunity to submit a complete building permit by May 6, 2016:

- If necessary, a preliminary plat must be submitted to the City no later than December 15, 2015.

- Application for Conditional Use Permit (CUP) to amend the Planned Unit Development (PUD) approval of 2008 shall be submitted no later than January 15, 2016.
- Application to amend the Design Review approval of 2008 shall be submitted no later than January 15, 2016.
- Revised Construction Mitigation Plan shall be submitted to the City no later than March 6, 2016.
- Complete Building Permit Application and applicable fees shall be submitted to the City no later than May 6, 2016.
- A Certificate of Occupancy shall be issued for the Project no later than 30 months after the Building Permit is issued.

Owner acknowledges the public processes required to amend the approvals listed in Section 2 provide no guarantees of timelines for approval and even by observing the schedule above, Owner may not be in a position to submit a complete building permit application by May 6, 2016.

16. Amendment of Agreement. This Agreement shall be amended or cancelled, in whole or in part, only by the mutual consent of the parties, executed in writing.
17. Remedies. This Agreement shall be enforceable in any Court of competent jurisdiction by either City or Owner or by any successor or successors in title or interest or by the assigns of the parties hereto, unless otherwise expressly provided in paragraph 21, below. Enforcement may be sought by an appropriate action at law or in equity to secure the performance of the covenants, agreements, conditions, and obligations contained herein. In the event of a material breach of this Agreement, the parties agree that the City and Owner shall have sixty (60) days after delivery of notice of said breach to correct the same prior to the non-breaching party's seeking of any remedy provided for herein, provided, however, that in case of any such default which cannot with diligence be cured within such sixty (60) day period, if the defaulting party shall commence to cure the same within such sixty (60) day period and thereafter shall prosecute the curing of the same with diligence and continuity, then the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity.
18. Mediation. Prior to either party filing suit, the parties shall participate in a minimum of one mediation session to determine if a resolution can be reached. The mediator shall be agreed to by both parties and the cost of mediation shall be split between the parties.
19. Default. In the event the Owner fails to comply with the terms and conditions hereof in any material respect, and such default is not cured after reasonable written notice to Owner, Ketchum may, without further notice to Owner, exercise any or all of the following remedies until the default is cured:
  - a. Withhold the issuance of a certificate of occupancy of any structure or unit located within the PUD;
  - b. Withhold the connection of water or sewer to any structure or unit located within the PUD;

- c. Refuse to accept public ownership and maintenance of public improvements within the PUD and record a notice of such action with the Blaine County Recorder's office;
- d. Issue a stop work order for any building or unit under construction within the PUD;
- e. Bring an action for damages, injunctive relief, specific performance or any other remedy available at law or in equity;

All of the above remedies are cumulative and to the extent not wholly inconsistent with each other, may be enforced simultaneously or separately, at the sole discretion of the Ketchum.

In the event that City fails to comply with the terms and conditions hereof in any material respect, and such default is not cured after reasonable written notice to City, Owner may, without further notice to City, exercise any and all remedies available under law or in equity.

## 20. Miscellaneous Provisions.

- a. Covenant Running with the Land/Successors and Assigns. Unless this Agreement is modified by mutual written agreement of the Parties or terminated by City, this Agreement and all conditions, terms, duties and obligations included in this Agreement shall be binding upon Owner, each subsequent owner of the Property and every person or entity acquiring any interest in the Property. This Agreement shall constitute a covenant running with the land burdening the Property in favor of City and shall be binding upon Owner, its successors in interest, personal representatives, heirs, vendees and assigns. Nothing herein shall in any way prevent sale or alienation of the Property, or portions thereof, except that any sale or alienation shall be subject to the provisions hereof, except as provided below, and any successor owner or Owner shall be both benefited and bound by the conditions and restrictions herein expressed. The words "successors" and "assigns" as used in this Agreement shall include all successors, assigns, personal representatives, administrators, trustees and holders of a security interest in the PUD Property or any portion thereof or interest therein except for purchasers of condominiums as designated in Section 13 (a) and 13 (b) of this Agreement. Nothing contained herein shall be deemed or construed to create any third party beneficiaries or third party rights. Upon conveyance of a condominium unit as designated in Section 13 (a) and 13 (b) of this Agreement to a third party, the lien and encumbrance of this Agreement shall be automatically released from said unit and a prospective third party purchaser, lender and all title insurers are entitled to rely upon said release.
- b. Force Majeure. In the event the performance of any covenant to be performed hereunder by either Owner or the City is delayed for causes which are beyond reasonable control of the party responsible for such performance, which shall include without limitation, acts of God (such as but not limited to fires, explosions, earthquakes, drought and floods); war, hostilities, invasion, act of foreign enemies; acts of civil disobedience, rebellion, revolution, insurrection or

civil war; contamination by radioactivity; riot, commotion, lock-outs or disorder, strikes; discontinuance of electrical supply; any litigation which directly or indirectly prevents or interrupts construction or would cause a reasonably prudent person to delay the commencement or continuation of construction pending the final resolution of such litigation; acts of terrorism; or similar causes, the time for such performance shall be extended by the amount of time of such delay.

- c. Waiver. Any waiver of any of the terms or conditions of this Agreement by City or Owner must be in writing to be effective and shall apply solely to the breach and breaches waived and shall not bar any other rights or remedies of City or Owner of applying to any subsequent breach of any such or other covenants and conditions.
- d. Notices. Any and all notices, demands, requests, and other communications required to be given hereunder by either of the parties hereto shall be in writing and be deemed properly served or delivered if delivered by hand to the party to whose attention it is directed, or when sent, seven (7) days after deposit in the U.S. Mail, postage pre-paid, or upon the sending of a facsimile, followed by a copy sent by U.S. Mail as provided herein, addressed as follows:

City: City of Ketchum  
c/o Planning & Zoning Administrator  
Post Office Box 2315  
Ketchum, Idaho 83340  
(208) 726-7801 Phone  
(208) 726-7812 Fax

Owner: Jack E. Bariteau, Jr.  
Trail Creek Fund, LLC  
Post Office Box 84  
Sun Valley, Idaho 83353  
(650) 906-5636 Phone  
(208) 727-1091 Fax

With a copy to: Lawson Laski Clark & Pogue, PLLC  
675 Sun Valley Road, Suite A  
Post Office Box 3310  
Ketchum, Idaho 83340  
(208) 725-0055 Phone  
(208) 725-0076 Fax

Or at such other address, or facsimile number, or to such other party which any party entitled to receive notice hereunder designates to the other in writing as provided above.

- e. Attorney Fees. In the event either party to this Agreement is required to retain the services of an attorney to enforce its rights hereunder, the defaulting party shall



pay to the non-defaulting party reasonable attorney fees and costs incurred as a result of such default whether or not litigation is commenced and including reasonable attorney fees and costs on appeal.

- f. Time is of the Essence. The parties hereto acknowledge and agree that time is hereby made expressly of the essence with respect to each and every term, condition, and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of and a default under this Agreement by the party so failing to perform.
- g. Effective Date of Agreement. This Agreement shall be effective as of the date approved by the City Council.
- h. Requirement for Recordation. Owner shall record this document, including all of the Exhibits, and submit proof of such recording to the City. Failure to comply with this section shall be deemed a default of this Agreement by Owner.
- i. No Precedent. The issuance of the PUD Conditional Use Permit shall not be considered a binding precedent for the issuance of other PUD conditional use permits. The permit is not transferable from one parcel of land to another.
- j. Police Powers. Nothing contained herein is intended to limit the police powers of the City. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation, including without limitation, applicable building codes, fire codes, zoning ordinances, subdivision ordinances, or comprehensive plan provisions, unless expressly provided herein.
- k. Final Agreement. This Agreement sets forth all promises, inducements, agreements, conditions, and understandings between Owner and the City relative to the subject matter hereof, and there are no promises, conditions, or understandings, either oral or written, express or implied, between Owner and the City, other than as stated herein. Except as herein otherwise provided, no subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by them or their successors in interest or their assigns, and pursuant, with respect to the City, to a duly adopted ordinance or resolution of the City.
- l. No Presumptions. There shall be no presumptions for or against either party hereto as a result of the preparation of this Agreement.
- m. Invalid Provisions. If any provision of this Agreement is held not valid, such provision shall be deemed to be excised there from and the invalidity thereof shall not affect any of the other provisions contained herein.
- n. Choice of Law. This Agreement shall be governed by the laws and decisions of the state of Idaho.

IN WITNESS WHEREOF, the parties, having been duly authorized, have hereunder caused this Agreement to be executed on the day and year first-above written, the same being done after public hearing, notice and statutory requirements having been fulfilled.

“CITY”:

CITY OF KETCHUM,  
an Idaho municipal corporation

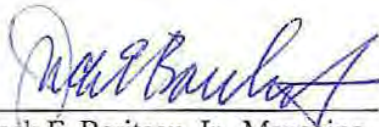
By:

  
\_\_\_\_\_  
Nina Jonas, Mayor

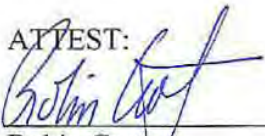
“OWNER”:

TRAIL CREEK FUND, LLC,  
a California limited liability company

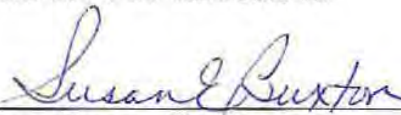
By:

  
\_\_\_\_\_  
Jack E. Bariteau, Jr., Managing  
Member

ATTEST:

  
\_\_\_\_\_  
Robin Crotty  
Interim City Clerk

APPROVED AS TO FORM AND  
CONTENT EXCLUSIVELY FOR  
THE CITY OF KETCHUM:

  
\_\_\_\_\_  
Susan Buxton, City Attorney

ACKNOWLEDGEMENT FOR CITY

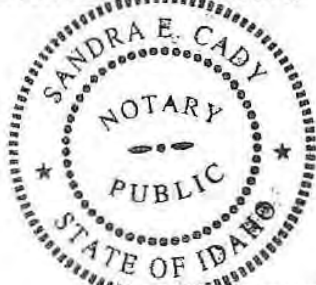
STATE OF IDAHO )  
 ) ss.  
COUNTY OF BLAINE )

SUZANNE FRICK

City Administrator

On this 6th day of October, 2015, before me, the undersigned Notary Public in and for said State, personally appeared ~~Nina Jones~~, known or identified by me to be the ~~Mayor~~ of the City of Ketchum, Idaho, and the person who executed the foregoing instrument and acknowledged to me that he executed the same on behalf of such city.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first written above.



Sandra E. Cady  
Notary Public for the State of ID.  
Residing at Blaine County  
My Commission Expires 11-20-2019

ACKNOWLEDGEMENT FOR OWNER

STATE OF IDAHO )  
 ) ss.  
COUNTY OF BLAINE )

On this 28 day of OCTOBER, 2015, before me, a Notary Public in and for said State, personally appeared JACK E. BARITEAU, JR., known to me to be the Managing Member of Trail Creek Fund, LLC, a California limited liability company, and known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Lilly Oppe  
Notary Public for the State of IDAHO  
Residing at KETCHUM, ID  
My Commission Expires 01/27/2018



## **Exhibit A**

1. 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 Engineer and the Director of Planning and Building, prior to issuance of a building permit.
2. Right-of-way encroachments including retaining walls and landscape beds, and curblin 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.
3. 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.
4. 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 Activity Standards Plan
  - Minimum access for the public to the observatory.
5. 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 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 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 units).
- f) Location of units to be within Ketchum City limits.

- g) Provide a matrix on breakdowns of the different types of units (1BD; 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 units by employees be handled; will there be a priority system.
- l) 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:

- o Wage/salary range and a breakdown the number of employees within the aforementioned classifications
- o Information on type of housing provided per employee classification
- o Costs incurred in rent (and utilities) and transportation/parking by employees
- o Details on anticipated lease terms/rental agreements for employees housed on-site
- o 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.

- 6. A privacy wall or landscaping buffer shall be developed as a buffer for the 200 South Leadville Townhomes.
- 7. Operational hours for the observatory shall be developed that provides for access for the public, schools and other interest groups.
- 8. This PUD CUP approval is contingent upon the approval of the Design Review/Waterways Design Review application.
- 9. 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.

10. 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.
11. 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.
12. 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.
13. 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.

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

Micah Austin  
City of Ketchum  
Post Office Box 2315  
Ketchum, Idaho 83340

**Instrument # 635897**

HAILEY, BLAINE, IDAHO  
06-22-2016 9:49:37 AM No. of Pages: 11  
Recorded for: BLAINE COUNTY TITLE  
JOLYNN DRAGE Fee: \$40.00  
Ex-Officio Recorder Deputy: JB  
Electronically Recorded by Simplifile

**CORRECTED AMENDMENT TO THE AMENDED  
AND RESTATED DEVELOPMENT AGREEMENT  
(City of Ketchum/Trail Creek Fund, LLC, et al.)**

This Corrected Amendment to the Amended and Restated Development Agreement (“Corrected Amendment”) is made as of June 21, 2016, by the City of Ketchum, Idaho (“Ketchum”), a municipal corporation.

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

1.1 The City entered into that certain Amended and Restated Development Agreement as of October 5, 2015, and recorded in the records of Blaine County, Idaho as Instrument No. 630816 (the “Amended Agreement”) with Trail Creek Fund, LLC, a California limited liability company (“Owner”). The Amended Agreement related to certain approvals by the City for development of Owner’s real property located at 200 South Main Street, Ketchum, Idaho, legally described as Lot 2 of Block 83, of the City of Ketchum, according to the official plat thereof, on file in the office of the County Recorder of Blaine County, Idaho (the “Property”).

1.2 Pursuant to Section 12 of the Amended Agreement, Owner was required to obtain approval by the City Council of an Employee Housing Plan no later than April 6, 2016, which approved plan was required to be added to the Amended Agreement “by addendum and recorded prior to issuance of a building permit.” (Amended Agreement, §12).

1.3 The Employee Housing Plan was submitted by letter to the City on April 5, 2016 and was approved by the City Council on April 4, 2016. The approved Employee Housing Plan and amendment to the Amended Agreement was executed by the Parties and recorded on April 22, 2016 in the records of Blaine County as Instrument No. 634489 (the “Housing Amendment”).

1.4 The Housing Amendment included a reference to properties located at 100 East 6<sup>th</sup> Street and North 1<sup>st</sup> Avenue, Ketchum, Lots 5 & 6 of Block 35, respectively, which properties were not owned by Owner at the time the Housing Amendment was recorded. The Parties agree that the Housing Amendment was intended to be recorded in connection with, and as an amendment/addendum to, the Amended Agreement, and that the properties identified in the Housing Amendment were not intended to be encumbered, and are not encumbered, by the Housing Amendment.

2. **Corrected Amendment.** In view of the foregoing recitals, the Parties have agreed to correct the Amended Agreement as follows:



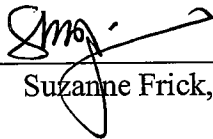
2.1 The approved Employee Housing Plan is hereby added as **Exhibit B** to the Amended Agreement.

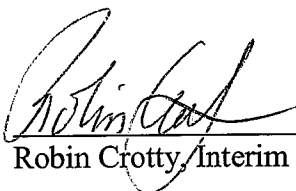
3. **Construction.** This Corrected Amendment and the Amended Agreement constitute one agreement between the Parties.

4. **Ratification.** The Amended Agreement, as corrected by this Corrected Amendment, is hereby ratified and affirmed. This Corrected Amendment is executed by the Parties as of the date first above written.

IN WITNESS WHEREOF, the City, having been duly authorized, has hereunder caused this Corrected Amendment to be executed on the day and year first above written, and hereby requests recording of the Corrected Amendment as an amendment to the Amended Agreement.

CITY OF KETCHUM  
an Idaho municipal corporation

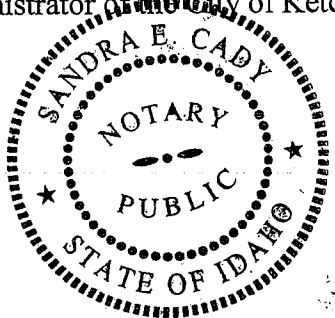
By:   
Suzanne Frick, City Administrator


Attest:  
  
  
Robin Crotty, Interim City Clerk

**ACKNOWLEDGMENT FOR CITY**

STATE OF IDAHO )  
                              ) ss.  
County of Blaine )

On this 21<sup>st</sup> day of June, 2016, before me, a Notary Public in and for said State, personally appeared Suzanne Frick, City Administrator of the City of Ketchum, Idaho, known or identified to me to the person whose name is subscribed to the within instrument as the City Administrator of the City of Ketchum, Idaho, and acknowledged to me that she executed the same as City Administrator of the City of Ketchum, Idaho.



  
Notary Public for Idaho  
Residing at Blaine Court  
Commission expires 11-20-2019

# EXHIBIT "B"

April 5, 2016

Jack Bariteau  
Managing Member  
Trail Creek Fund LLC  
P. O. Box 84  
Sun Valley, Idaho 83353

Micah Austin, AICP  
City of Ketchum Planning and Building Director  
480 East Avenue North, P.O. Box 2315  
Ketchum, Idaho 83340

## **AUBERGE RESORT SUN VALLEY – EMPLOYEE HOUSING PLAN**

Dear Micah:

Trail Creek Fund LLC is pleased to provide the City of Ketchum with our draft Employee Housing Plan, a requirement of the Amended and Restated Development Agreement between Trail Creek Fund LLC, owner and developer of the Auberge Resort Sun Valley hotel and residence development project and the City of Ketchum that was approved on October 5, 2015. The requirements set forth in the Agreement are here reprinted in a lesser font than our response for your ease of reference.

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.

Our approach to providing the employee bed requirement as originally contained in the Development Agreement approved for the development in 2008 is based on delivering in Ketchum living to our employees. We will provide separate living arrangements for all of the required employee beds to reflect the number of employees we need to provide for under the City's employee housing formula. We have also met with David Patrie, Director of the Blaine County Housing Authority, for his input and guidance on the employee housing plan we intend to implement if approved by the City Council. As the only lodging development (Limelight Hotel is exempt) or other commercial development to date ever to be required to provide employee housing, we see the mission of providing

this housing as one which must be innovative in design and developed by entirely different financial model and method. The housing must be highly suitable and attractive living units for our future employees as we see this housing being provided as part of the overall salary package for qualified employees who elect to occupy the housing to be constructed in a separate development project that our ownership or an affiliated ownership will bring forward to the City after we have received the City Council's blessing on our approach to creating this housing stock. The highlights of this approach are as follows:

1. The City's formula for providing employee housing was originally calculated at a ratio of 25% of total employees assuming a 1 to 1 ratio of employees to hotel rooms. For a 73 room hotel this resulted in the 18 employees to be housed per the Development Agreement. If recalculated for the revised 65 hotel room count, the revised requirement would be 16, but we will agree to hold to the 18 requirement. A classic and traditional approach to creating this housing would be to build a dormitory style level of living with common kitchen, restroom and storage components. Our most readily accessible example of this housing is the employee housing built to serve the Sun Valley Lodge and Inn properties. In our view this model is unsuitable for the labor pool. To attract the level of employee that the Auberge hotel will require whether recruiting within or without the Wood River Valley market, the employee living unit must provide a sense of well thought architectural design that provides for ease of accessibility, privacy and convenience. Our conclusion is that we must find a way to build an apartment component as part of a larger mixed residential project as the economics of developing this project on a stand-alone basis and supported solely by the hotel do not work.
2. The only feasible way that the hotel can support the development of the employee housing is for it to be built as part of another residential project containing market rate for sale housing located above the employee housing. As you are aware our development is also obligated to pay an in lieu fee against the non-hotel room component of the project so allocating more precious project dollars away from the hotel construction and operations to produce employee housing is a non-starter. Market rate housing will in effect subsidize the development of the employee housing and make the project financeable to build as a separate project with a master lease and lump sum annual rental of the employee housing units by the hotel developer for a minimum of 20 years. This burden has been factored into the hotel annual operating budget for the hotel and will permit the hotel operator maximum flexibility to place approximately 19% of its projected first year of operation 85 employee work force into this housing. Hotel operations intends to offer this housing to full time employees across the spectrum of mid and lower

tiers of the fulltime job workforce (as delineated on the attached TRI Project Salary Schedule prepared by Auberge Resorts for the Idaho Commerce Department) as they are hired. It is not anticipated that upper tier employees earning in excess of \$80,000 per year will locate in employee housing given the anticipated level of experience, financial net worth and larger housing preferences of these individuals.

3. The site we have identified for the Employee Housing is at the corner of 1<sup>st</sup> Avenue and 6<sup>th</sup> Street in downtown Ketchum. It is comprised of two adjacent 55' x 100' sites identified as 100 East 6<sup>th</sup> Street and 560 North 1<sup>st</sup> Avenue, Ketchum Lots 5 & 6 of Block 35 respectively. The site is zoned for this use and we have planning studies in progress that show it to be well suited for this project.

As you are aware, the applicant, Trail Creek Fund LLC, shall provide a detailed Employee Housing Plan (which originally provided for housing for employee housing equal to 18 beds for 73 rooms in the original hotel room layout) in the hotel project as approved by the City of Ketchum on a site acceptable to the Ketchum City Council, and within City of Ketchum City limits. The project plan has now evolved into a 65 room hotel, but as stated above we will hold to the 18 employee bed requirement. The applicant, Trail Creek Fund LLC, intends to entitle and construct a separate three story real estate project within the City Limits at one of two possible locations that will create this employee housing and that is specifically designed for use by the hotel employees as part of their employee compensation plan. The development envisioned is unique in its goal to create on grade, street present walk up apartment housing in smaller configurations from 400 to 750 square feet versus providing a dormitory style level of living. The upper two levels of the three story structure would consist of three market rate flats on the second floor and two penthouses on the third floor. In plan, the building would be located on two 5,500 square foot lots combined into an 11,000 square foot lots. Our preliminary plans indicate that 12 apartments could be developed over underground parking and storage with two levels of market rate housing above. The 18 employees would be accommodated in the ground floor developed as a single condominium unit that will be master leased by Trail Creek Fund LLC, the developer and owner of the completed hotel project for the exclusive use Auberge Resorts employees. The apartment units would be provided to qualifying employees as part of their salary package with no rent charged to the employee. The employees selected would be responsible for payment of utilities and personal communications services including internet and cable and phone. Each apartment would be designed and fitted out to provide front door street entry, window line to the street, full kitchens and private bathroom and closet spaces with adequate storage provided for bicycles, ski and snow equipment and general storage needs in the underground garage. One parking space per apartment would be provided in the underground garage.

The following elements shall be required in the Employee Housing Plan:

- a) Provide salary/hourly wages for the various income categories of employees.

The hotel operated and managed by Auberge Resorts Collection under a long term management contract with our ownership, Trail Creek Fund LLC, is projected to employ 85 employees and workforce positions per the attached TRI Project Salary Schedule prepared by Auberge Resorts Collection. Please refer to this schedule for annual salary projections.

- b) The expected number of each level of employee that is intended to be served by the employee housing units.

The job descriptions and salaries on the Project Salary Schedule range significantly between upper senior management and the lowest entry position. The intention of Trail Creek Fund LLC and Auberge Resorts is to recruit and find the right combination of employees in all categories. We see the middle and lower tier employees of the Salary Schedule as ideally qualified to apply for this employee housing.

- c) Which employee category will be served by which type/size of units.

It is anticipated that all but the top level of management and pay grade would be eligible for the apartments or a pool of over 70 employees.

- d) Provide information on anticipated rental rates or subsidized and/or free rent to employees; will utilities and homeowners dues (if any) be included in proposed rates.

There are no rental rates proposed as the apartments will be offered to the employees at no charge other than payment of utilities and prorated homeowner dues reimbursed to the master lessee. Property taxes will be paid by Trail Creek Fund LLC under its master lease obligations.

- e) Establishment of maximum occupancy per unit type (i.e. 1 person per 1 bedroom unit; 2 persons per 2 bedroom units).

All apartments as planned in the development will be a combination of single and double occupancy units as best fits the plan to provide for the total 18 employee required occupancy.

- f) Location of units to be within Ketchum City limits.

The apartments will be located within the City of Ketchum on one of two preferred sites under consideration, one within walking distance of the hotel project and the other a short ride to the city center readily accessible via public transportation, bicycle or car.

- g) Provide a matrix on breakdowns of the different types of units (1BD; square footage; total number of units; anticipated rent, etc.)

The units will be a combination of studios, one-bedroom, and two-bedroom apartments ranging from 400 SF to 750 SF as is necessary to meet the 18 employee housing requirement. All units will be provided rent free to the employees.

- 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.

All units will be needed for fulltime employees and spouses if married.

- i) What units will be available and how will the pool of units available be determined.

All apartment units will be available within 6 months of Certificate of Occupancy for the hotel as agreed in the last Amendment of the Development Agreement and upon completion of the employee housing portion of the project. The employee apartments are all on the ground floor of the proposed building.

- 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.

The minimum standard for employee eligibility will be execution of an employment contract for full time work for at least one calendar year. Fulltime work is a 40 hour work week five days a week or a flexible schedule of longer hours and fewer days as to be determined by Auberge Resorts management.

- k) How will overflow of demand of units by employees be handled; will there be a priority system.

We will not be able to provide for overflow employee housing beyond the 18 bed requirement as the hotel project is incapable of financially supporting this subsidy to be successful in the long term. It is anticipated that employees recruited and located within our employee housing will experience the benefits of living in the City of Ketchum and eventually matriculate to more traditional and larger forms of housing. The normal pattern of life may lead to the establishment of families needing larger types of housing creating a turnover of employee housing for those individuals who find employment with Auberge in future years as employees accommodated in the employee housing project relocate.

- l) Provide information on housing families (with children) and/or married couples.

We do not see the employee housing in the apartments as suitable for families but do anticipate double occupancy by married couples as a possibility in a number of the apartments.

The proposed Employee Housing shall meet minimum size thresholds and income categories established by BCHA.

The following information shall be provided to the City:

- Wage/salary range and a breakdown the number of employees within the aforementioned classifications

See attached employee and salary schedule.

- Information on type of housing provided per employee classification

At this juncture, the apartment portion of the building will consist of studios, one-bedroom, and two-bedroom units, some appropriate for possible double occupancy.

- Costs incurred in rent (and utilities) and transportation/parking by employees

No costs for rent other than utilities, homeowner dues, and personal communication services are forecast. These exact costs are all unknown at this time. Underground parking for one car per apartment is provided. Transportation costs are not calculated given the short walking distance from the preferred employee housing site to the hotel.

- Details on anticipated lease terms/rental agreements for employees housed on-site

There are no hotel employees that will be housed within or on the hotel premises. Employment by the hotel company will dictate the employee qualifying for the employee housing to be provided by hotel ownership.

- Anticipated transport and parking scenarios for both on-site and commuting employees.

No onsite parking will be available for the entire work force in the hotel garage although a valet managed parking system may provide for potential employee parking opportunities for those employees other than the employees housed in the apartment units provided by Trail Creek Fund LLC.

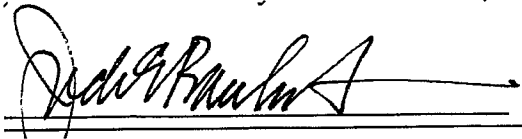
The Employee Housing Plan shall be submitted and approved by the City Council prior to issuance of a building permit. This plan shall be an exhibit to an amendment to the PUD agreement and recorded prior to issuance of a building permit.



This completes our Employee Housing Plan for Auberge Resort Sun Valley as provided by Trail Creek Fund LLC. Our ownership looks forward to working with you and the City of Ketchum to implement this plan. We are always available to discuss any additional questions you may have.

Best Regards,

Trail Creek Fund LLC

A handwritten signature in black ink, appearing to read "Jack Bariteau, Jr.", is written over a horizontal line. The signature is stylized and cursive.

Jack Bariteau, Jr.  
Managing Member



---

## RIGHT-OF-WAY ENCROACHMENT AGREEMENT

THIS AGREEMENT, made and entered into this 14th day of July, 2016, by and between Trail Creek Fund LLC (collectively referred to as "Owner"), whose address is P. O. Box 84, Sun Valley, Idaho 83353, and the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho.

### RECITALS

WHEREAS, Owner is the owner of real property described as 300 River Street ("Subject Property"), located within the City of Ketchum, State of Idaho; and

WHEREAS, Owner wishes to permit construction, installation and placement of a number of physical improvements that are required for the development of the hotel and residence project in the City of Ketchum right-of-way on River Street, Leadville Avenue and Highway 75 or Main Street as well as under the City right-of-way located on River Street, Leadville Avenue and Highway 75 or Main Street. These improvements are shown in Exhibit "A" attached hereto and incorporated herein (collectively referred to as the "Improvements"); and are described as follows: Structural retaining systems to include structural soil nailing underneath the right-of ways described above; installation of snow melt radiant tubing and supply; concrete curb and gutter; stone or concrete pavers within sidewalks on River Street and Leadville Avenue; driveways and curb cuts; landscaping including trees, groundscape, irrigation and landscape lighting; architectural retaining walls; public art and water features; drywells and non-consumptive water production and water injection well or wells as permitted by the Idaho Department of Water Resources 37W-099-001 required to operate the hotel and residence building ground source heat pump mechanical cooling and heating systems; above and or below ground well heads and water proof vault and manhole covers; outdoor dining area; public seating whether benches or other forms of outdoor seating; electrical outlets and general overhead down lighting; the hotel's main entry porte cochere overhang; drainage systems; bicycle racks or storage; and building and pedestrian and safety directional signage;

WHEREAS, Ketchum finds that said Improvements will not impede the use of said public right-of-way at this time subject to the terms and provisions of this Agreement;

NOW, THEREFORE, in contemplation of the above stated facts and objectives, it is hereby agreed as follows:

### TERMS AND CONDITIONS

1. Ketchum shall permit Owner to maintain and repair the Improvements identified in Exhibit "A" within the public right-of-way of Highway 75 or Main Street, River Street and Leadville Avenue, located adjacent to the real property described as 300 River Street, Ketchum, Idaho.

2. Prior to constructing improvements identified in Exhibit A within the public right of way, plans and specifications shall be submitted to the City Engineer for review and approval.

3. Owner shall be responsible for the maintenance, repair and replacement of said Improvements.

4. In consideration of Ketchum allowing Owner to maintain the Improvements in the public right-of-way, Owner agrees to indemnify and hold harmless Ketchum from and against any and all claims of liability for any injury or damage to any person or property arising from the Improvements constructed, installed and maintained in the public right-of-way. Owner shall further indemnify and hold Ketchum harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Owner's part to be performed under this Agreement, or arising from any negligence of Owner or Owner's agents, contractors or employees and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such action or proceeding brought thereon. In the event any action or proceeding is brought against Ketchum by reason of such claim, Owner, upon notice from Ketchum, shall defend Ketchum at Owner's expense by counsel satisfactory to Ketchum. Owner, as a material part of the consideration to Ketchum, hereby assumes all risk of damages to property or injury to persons in, upon or about the Improvements constructed, installed and maintained in the public right-of-way arising from the construction, installation and maintenance of said Improvements and Owner hereby waives all claims in respect thereof against Ketchum.

5. Ketchum shall not be liable for injury to Owner's business or loss of income therefrom or for damage which may be sustained by the person, goods, wares, merchandise or property of Owner, its tenants, employees, invitees, customers, agents or contractors or any other person in or about the Subject Property caused by or resulting from the Improvements constructed, installed, removed or maintained in the public right-of-way.

6. Owner understands and agrees that by maintaining the Improvements in the public right-of-way pursuant to this Agreement, Owner obtains no claim or interest in said public right-of-way which is adverse to that of Ketchum and that Owner obtains no exclusive right to said public right-of-way nor any other right to use the public right-of-way not specifically described herein.

7. This Agreement shall be a covenant running with the Subject Property and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties and the respective heirs, personal representatives, successors and assigns of the parties hereof.

8. In the event either party hereto retains an attorney to enforce any of the rights, duties and obligations arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney's fees at the trial and appellate levels and, whether or not litigation is actually instituted.

9. This Agreement shall be governed by, construed, and enforced in accordance with the laws and decisions of the State of Idaho. Venue shall be in the District Court of the fifth Judicial District of the State of Idaho.

10. This Agreement sets forth the entire understanding of the parties hereto, and shall not be changed or terminated orally. It is understood and agreed by the parties hereto that there are no verbal promises or implied promises, agreements, stipulations or other representations of any kind or character pertaining to the Improvements maintained in the public right-of-way other than as set forth in this Agreement.

11. No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of this document.

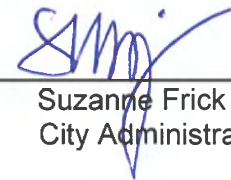
12. Prior to issuance of a certificate of occupancy, this Agreement shall be recorded with the Blaine County Recorder by Ketchum.

13. The parties fully understand all of the provisions of this Agreement, and believe them to be fair, just, adequate and reasonable, and accordingly accept the provisions of this Agreement freely and voluntarily.

TRAIL CREEK FUND, LLC

By:   
\_\_\_\_\_  
Jack E. Bariteau, Jr.  
Its: Managing Member

CITY OF KETCHUM:

By:   
\_\_\_\_\_  
Suzanne Frick  
Its: City Administrator

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

STATE OF IDAHO )  
) ss.  
County of Blaine )

On this 19<sup>th</sup> day of NOVEMBER 2019, before me, the undersigned Notary Public in and for said State, personally appeared SUZANNE FRICK, known or identified to me to be the Mayor of the CITY OF KETCHUM, IDAHO, and the person who executed the foregoing instrument on behalf of said municipal corporation and acknowledged to me that said municipal corporation executed the same.

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

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
Commission expires \_\_\_\_\_

**EXHIBIT "A"**

Exhibit A



PLANT LEGEND

- 12" (12' dia) **SPRINGING SYSTEM**  
 5 (8" dia) **SPRINGING SYSTEM**  
 3 (6" dia) **SPRINGING SYSTEM**
- 12" (12' dia) **SPRINGING SYSTEM**  
 5 (8" dia) **SPRINGING SYSTEM**  
 3 (6" dia) **SPRINGING SYSTEM**
- 12" (12' dia) **SPRINGING SYSTEM**  
 5 (8" dia) **SPRINGING SYSTEM**  
 3 (6" dia) **SPRINGING SYSTEM**
- 12" (12' dia) **SPRINGING SYSTEM**  
 5 (8" dia) **SPRINGING SYSTEM**  
 3 (6" dia) **SPRINGING SYSTEM**
- 12" (12' dia) **SPRINGING SYSTEM**  
 5 (8" dia) **SPRINGING SYSTEM**  
 3 (6" dia) **SPRINGING SYSTEM**
- 12" (12' dia) **SPRINGING SYSTEM**  
 5 (8" dia) **SPRINGING SYSTEM**  
 3 (6" dia) **SPRINGING SYSTEM**
- 12" (12' dia) **SPRINGING SYSTEM**  
 5 (8" dia) **SPRINGING SYSTEM**  
 3 (6" dia) **SPRINGING SYSTEM**
- 12" (12' dia) **SPRINGING SYSTEM**  
 5 (8" dia) **SPRINGING SYSTEM**  
 3 (6" dia) **SPRINGING SYSTEM**
- 12" (12' dia) **SPRINGING SYSTEM**  
 5 (8" dia) **SPRINGING SYSTEM**  
 3 (6" dia) **SPRINGING SYSTEM**
- 12" (12' dia) **SPRINGING SYSTEM**  
 5 (8" dia) **SPRINGING SYSTEM**  
 3 (6" dia) **SPRINGING SYSTEM**

AUBERGER RESORT SUN VALLEY  
 City of Ketchum, Idaho

Clayton Associates, LLC  
 ARCHITECTS & LANDSCAPE ARCHITECTS



Scale: 1/8" = 1'-0"  
 Drawn By: Brian Egan  
 Checked By: Rob King

Homburger + Worstell  
 GATEWAY  
 PROGRESS  
 PLAN

L-G1.0



<b>RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:</b>	<b>Instrument # 652281</b> HAILEY, BLAINE, IDAHO 06-05-2018 8:55:07 AM No. of Pages: 7 Recorded for: BLAINE COUNTY TITLE JOLYNN DRAGE Fee: \$28.00 Ex-Officio Recorder Deputy: JB Electronically Recorded by Simplifile
--	---

(Space Above Line For Recorder's Use)

**FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

**(City of Ketchum/Trail Creek Fund, LLC, et al.)**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT ("Amendment") is made and entered into as of the 4 day of June 2018, by and between the CITY OF KETCHUM, an Idaho municipal corporation ("City") and TRAIL CREEK FUND, LLC, a California limited liability company ("Owner").

**RECITALS**

WHEREAS, Owner owns that certain real property located at 300 River Street East (formerly 200 South Main Street), Ketchum, Idaho legally described as Lot 2 of Block 83, of the City of Ketchum, according to the official plat thereof, on file in the office of the County Recorder of Blaine County, Idaho (the "Property"); and

WHEREAS, Owner and City entered into an Amended and Restated Development Agreement, dated October 5, 2015 and recorded in the records of Blaine County, Idaho as Instrument No. 630816 and a Corrected Amendment To Amended and Restated Development Agreement, dated June 21, 2016 and recorded in the records of Blaine County, Idaho on June 22, 2016, as Instrument No. 635897 ("Agreement"); and

WHEREAS, pursuant to the Agreement the City issued Owner a Planned Unit Development Conditional Use Permit ("CUP") to develop and operate a Hotel ("Project") on the Property and a building permit to construct the Project related improvements ("Building Permit") and together with the CUP, the "Entitlements"; and

WHEREAS, a dispute exists between the Owner and the City regarding the date on which the Building Permit was issued and whether Owner's performance obligations were properly extended by a force majeure event. By this Amendment, the parties desire to settle and compromise their differences, release any claims they have ("Claims") and resolve the disputes between them without litigation.

WHEREAS, Owner has applied for and requested an extension and modification of certain deadlines and requirements in respect to the Entitlements and City is agreeable to certain amendments to address Owner's request and so as to update the Agreement.

<b>RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:</b>	
--	--

(Space Above Line For Recorder's Use)

**FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT**  
**(City of Ketchum/Trail Creek Fund, LLC, et al.)**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT ("Amendment") is made and entered into as of the 4 day of June 2018, by and between the CITY OF KETCHUM, an Idaho municipal corporation ("City") and TRAIL CREEK FUND, LLC, a California limited liability company ("Owner").

**RECITALS**

WHEREAS, Owner owns that certain real property located at 300 River Street East (formerly 200 South Main Street), Ketchum, Idaho legally described as Lot 2 of Block 83, of the City of Ketchum, according to the official plat thereof, on file in the office of the County Recorder of Blaine County, Idaho (the "Property"); and

WHEREAS, Owner and City entered into an Amended and Restated Development Agreement, dated October 5, 2015 and recorded in the records of Blaine County, Idaho as Instrument No. 630816 and a Corrected Amendment To Amended and Restated Development Agreement, dated June 21, 2016 and recorded in the records of Blaine County, Idaho on June 22, 2016, as Instrument No. 635897 ("Agreement"); and

WHEREAS, pursuant to the Agreement the City issued Owner a Planned Unit Development Conditional Use Permit ("CUP") to develop and operate a Hotel ("Project") on the Property and a building permit to construct the Project related improvements ("Building Permit" and together with the CUP, the "Entitlements"); and

WHEREAS, a dispute exists between the Owner and the City regarding the date on which the Building Permit was issued and whether Owner's performance obligations were properly extended by a force majeure event. By this Amendment, the parties desire to settle and compromise their differences, release any claims they have ("Claims") and resolve the disputes between them without litigation.

WHEREAS, Owner has applied for and requested an extension and modification of certain deadlines and requirements in respect to the Entitlements and City is agreeable to certain amendments to address Owner's request and so as to update the Agreement.

Electronic recording of this document is required by the State of Idaho. This document is being recorded electronically on 06/20/2018 at 10:10:00 AM. The recording fee is \$15.00. The recording fee is being paid by the filer. The recording fee is being paid by the filer. The recording fee is being paid by the filer.

## AGREEMENT

NOW THEREFORE, in consideration of the above recitals and the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Amendments. The Agreement is amended and supplemented as follows:

A. *Schedule and Certificate of Occupancy*. All references to the requirement to issue a certificate of occupancy for the Project no later than 30 months after issuance of the Building Permit, including those in paragraphs 2, 7 and 14 are deleted and the following substituted therefore:

- (1) Owner, at no cost to the City, shall work with, provide for, and cause Idaho Power Company to initiate and undertake the work required to underground the electrical power poles and electrical and related utility lines along the east side of Highway 75 from Gem Street to River Street as shown on the Work Order documentation and Map as provided by Idaho Power and Owner dated March 27, 2018. Owner and the City agree to cooperate and provide requested reasonable assistance to Idaho Power and its contractors, vendors and employees. Said undergrounding work is to be completed on or before December 31, 2018.
- (2) Owner shall provide and show sufficient evidence to the City of full financing and funding for completing the Hotel Project to the satisfaction of City by September 30, 2019. Owner shall evidence such financing by recording on the Property a deed of trust to secure a construction loan on or before September 30, 2019 and by such other proof of financing reasonably necessary for the satisfaction of the City Council that this condition is met. Owner will not commence additional excavation work on the Property until acceptance and approval of such financing evidence by the City, unless the City Planning and Building Director otherwise grants such permission for good cause upon receipt of a written request from Owner.
- (3) *Site Restoration*. Owner shall submit to City by October 31, 2018 a Site Restoration Plan and security instrument naming City as beneficiary, such as a letter of credit, sufficient to fund such restoration. The Restoration Plan shall:
  - a. Identify a clear restoration plan sufficient to restore site to finished elevations compatible with neighboring streets and residences, including landscaping and other details, and subject to City review and approval;
  - b. Be accompanied by a licensed engineer's estimate of one hundred and fifty percent (150%) of the estimated reclamation costs, with such estimate subject to verification and approval by the City;

- c. Be accompanied by a security instrument naming City as beneficiary, with the proposed method and form of such security subject to City review and approval, sufficient to fund the 150% reclamation estimate and provide for the City to immediately pursue reclamation and restoration on the site in the event of a failure of condition, other breach of the Development Agreement, or abandonment of the Project.
- d. The Site Restoration Plan shall be recorded in the records of Blaine County, Idaho.

In the event Owner fails a condition or otherwise breaches this Amendment and/or the Agreement then City shall be entitled to immediately commence reclamation and restoration pursuant to such Restoration Plan and security instrument. Dates of breach could include, but are not limited to:

- i. November 1, 2018 in the event the Amended Employee Housing Plan is not complete;
  - ii. January 1, 2019 in the event the powerline undergrounding specified is not complete;
  - iii. In the event the Applicant's building permit lapses or is terminated by the City;
  - iv. October 1, 2019 in the event Project financing and funding is not secured to the satisfaction of the City Council by September 30, 2019;
  - v. Date of any other breach or failure of the Development Agreement requirements.
- (4) Owner shall complete the Project and City will issue a certificate of occupancy on or before December 31, 2021.
- (5) Owner shall provide its required Employee Housing and receive a certificate of occupancy for its Employee Housing on or before December 31, 2021.

B. *Construction and Completion Schedule.* The Revised Construction Mitigation Plan referenced in Provision 7 (Construction and Completion Schedule) is amended to conform to the schedule set forth in 1(A), above.

C. *Employee Housing.* Provision 12 of the Agreement regarding an Employee Housing Plan is hereby amended to allow Owner to submit an Amended Employee Housing Plan. The Amended Plan must be submitted to the City by October 31, 2018. The Amended Plan will be subject to review and approval by the City by December 31, 2018. The requirements for the Amended Plan are:

- a. Be generally consistent with the existing Employee Housing Plan and provide for 18 beds;
- b. Any alternate site location must be within the Community Core zoning district of the City;

- c. Provide a schedule and project deadlines, including design review, building permit, start of construction, and Certificate of Occupancy for the Amended Plan concurrent with issuance of a Certificate of Occupancy for the Hotel Project.
- d. The Amended Employee Housing Plan shall be recorded in the records of Blaine County, Idaho.
- e. To provide adequate security, approved as to form by and to the satisfaction of the City, to ensure completion and performance of the Amended Plan.

D. *Power Lines.* Provision 14 (Relocation of Overhead Distribution Power Lines) is deleted, as its purpose is replaced by amendment 1(A)(1) set forth above.

E. *Force Majeure.* Provision 20(b) is replaced as follows:

Force Majeure. In the event either party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of acts of God (fires, explosions, earthquakes, droughts and floods), strikes, lockouts, failure of power or other utility services, moratoria, riots, insurrection, war, terrorism or other reason of a like emergency nature, and specifically excluding economic conditions, which is beyond the reasonable control and not the fault of the party delayed in performing work or doing acts required under this Agreement, then performance of such act shall be excused for the period of the delay, and the period for performance of any such act will be reasonably extended for a period equivalent to the period of such delay. Any claim of a force majeure event must be submitted to the other party within thirty days of such event.

2. Release.

A. *Release by Owner.* Owner does hereby fully, finally and forever release and discharge the City and its officers, employees, directors, agents, attorneys, successors and assigns pursuant to the terms set forth in Section 2 C. below.

B. *Release by City.* The City does hereby fully, finally and forever release and discharge Owner, and its members, shareholders, officers, employees, directors, agents, attorneys, successors and assigns pursuant to the terms set forth in Section 2 C, below.

C. *Terms of Release.* This release includes all the Claims, manner of actions, causes of action, suits, debts, bonds, bills, moneys owed, accounts, covenants, agreements, promises, damages, judgments, claims and demands whatsoever, in law or equity, which are the subject of or arising from the time for performance of Owner's obligations under the Agreement or pursuant to the Entitlements, whether known or unknown, up to the date of this Agreement.

D. *Excluded Claims.* This Agreement does not apply to any separate continuing contractual and/or equitable obligations as may currently exist between or

among the Parties, including the obligations contained in the Agreement, this Amendment or pursuant to the Entitlements.

E. *Disputed Claims.* The facts and ultimate liability of any Party are unclear and disputed. Each of the Parties understands and agrees that this Amendment and the settlement provided for herein, are intended to compromise disputed claims and defenses, to avoid litigation and to buy peace, and that this Amendment and the settlement provided for herein shall not be construed or viewed as an admission by any Party of liability or wrongdoing, such liability being expressly denied. This Amendment, and the settlement provided for herein, shall not be admissible in any lawsuit, administrative action, or any judicial or administrative proceeding if offered to show, demonstrate, evidence or support a contention that any of the Parties acted illegally, improperly, or in breach of law, contract or proper conduct.

F. *Representations and Warranties.* Each of the Parties (i) represents, warrants, and covenants on behalf of himself, herself or itself, that he, she or it has not assigned to any other persons or entities any right to payment in connection with the matters herein settled and released and that he, she or it is fully entitled to enter into this Agreement, and (ii) agrees to the extent permitted by Idaho law to indemnify, defend and hold harmless each other Party from and against any claims based upon or arising in connection with any such prior assignment, transfer, lien, or right by him, her or it or as a result of any breach by him, her or it of his, her or its representatives, warranties or agreements set forth in this Agreement.

G. *Covenant Not to Sue.* The Parties agree not to cause claims to be made in any court or other forum against the other Parties for any matter within the scope of the releases contained herein.

### 3. General Provisions.

A. *Recitals and Construction.* The City and Owner incorporate the above recitals into this Amendment and affirm such recitals are true and correct. All capitalized terms used in this Amendment, unless specifically defined herein, have the same meanings attributed to them in the Agreement.

B. *Conflict with Agreement.* Except as amended by this Amendment, the Agreement remains unchanged and in full force and effect. If there is any conflict between the provisions of the Agreement and the provisions of this Amendment, the provisions of this Amendment shall control.

C. *Effective Date.* This Amendment is effective as of the date on which the last of the City and Owner execute this Amendment. Neither party shall have any rights with respect to this Amendment until both have executed this Amendment.

D. *Owner Representations.* Owner represents and warrants to City that (a) Owner holds fee simple title to the Property, (b) there is no mortgage or deed of trust lien encumbering any portion of the Property, except as previously disclosed to City, and (c) no joinder or approval of another person or entity is required with respect to Owner's

authority to make and execute this Amendment.

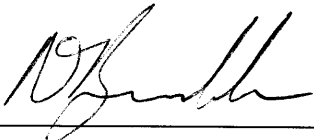
E. *Neutral Interpretation.* City and Owner acknowledge they and, if they so choose, their respective counsel have reviewed and revised this Amendment and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of the Agreement, this Amendment or any exhibits, attachments and addenda to the Agreement and/or this Amendment.

F. *Counterparts.* This Amendment may be executed in multiple counterparts, each of which taken together shall constitute one and the same agreement binding upon the parties. Signatures transmitted by facsimile or via e-mail in a "PDF" format shall have the same force and effect as original signatures on this Amendment. The Original of this Amendment shall be recorded with the Blaine County Recorder.

IN WITNESS WHEREOF, the parties, having been duly authorized, have hereunder caused this Amendment to be executed, the same being done after public hearing, notice and statutory requirements having been fulfilled.


"CITY":

CITY OF KETCHUM,  
an Idaho municipal corporation

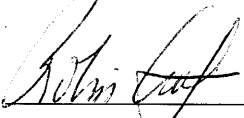
By:   
Neil Bradshaw, Mayor

"OWNER":

TRAIL CREEK FUND, LLC,  
a California limited liability company

By:   
Jack E. Bariteau, Jr. as Trustee of The  
Jack E. Bariteau, Jr. Separate Property  
Trust, as Managing Member of Trail  
Creek Fund, LLC'

ATTEST:

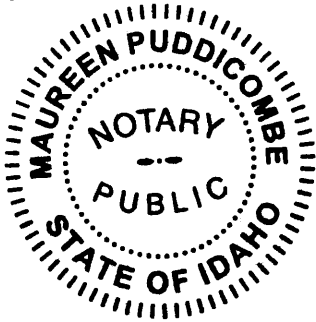
  
Robin Crotty, City Clerk

**ACKNOWLEDGEMENT FOR CITY**

STATE OF IDAHO )  
 ) ss.  
COUNTY OF BLAINE )

On this 5<sup>th</sup> day of June, 2018, before me, the undersigned Notary Public in and for said State, personally appeared NEIL BRADSHAW, known or identified by me to be the Mayor of the City of Ketchum, Idaho, and the person who executed the foregoing instrument and acknowledged to me that he executed the same on behalf of such city.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first written above.



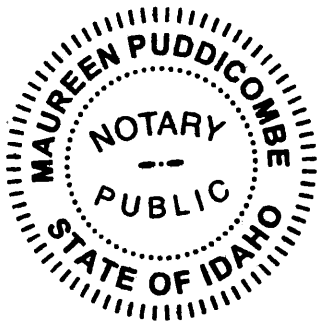
Maureen Puddicombe  
Notary Public for the State of Idaho  
Residing at 101 Emerald St  
My Commission Expires 2-14-24

**ACKNOWLEDGEMENT FOR OWNER**

STATE OF Idaho )  
 ) ss.  
COUNTY OF Blaine )

On this 5<sup>th</sup> day of June, 2018, before me, a Notary Public in and for said State, personally appeared JACK E. BARITEAU, JR., known to me to be the trustee of the Jack E. Bariteau Separate Property Trust, the Managing Member of Trail Creek Fund, LLC, a California limited liability company, and known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Maureen Puddicombe  
Notary Public for the State of Idaho  
Residing at 101 Emerald St  
My Commission Expires 2-14-24





Bond No. 2416447

### License Bond

KNOW ALL MEN BY THESE PRESENTS that we, Conrad Brothers of Idaho, Inc.  
 \_\_\_\_\_ as Principal,  
 and **GREAT AMERICAN INSURANCE COMPANY**, a corporation organized under the laws of the State of Ohio,  
 as Surety, are held and firmly bound unto City of Ketchum \_\_\_\_\_ as Obligee,  
 in the sum of Three Hundred Sixty Three Thousand and 00/100  
 Dollars (\$ 363,000.00 ), lawful money of the United States of America, to be paid unto the said  
 Obligee or its successors; for which payment, well and truly to be made and done, we bind ourselves, our  
 successors and assigns, jointly and severally, firmly by these presents.

Signed, sealed and dated June 14 \_\_\_\_\_, 2018 .

WHEREAS, the said Principal now has or will be granted a license or permit to engage in the business of  
Demolition and Site Improvements and backfilling to existing grades  
 in the City of Ketchum

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall faithfully comply with all  
 laws, ordinances, rules and regulations pertaining to such License and Permit and shall indemnify and save  
 harmless the Obligee from all loss or damage that the Obligee shall suffer by reason of the said Principal's failure to  
 comply with said laws, ordinances, rules and regulations, then this obligation to be void; otherwise to remain in full  
 force and effect.

PROVIDED, that the Surety may terminate its liability hereunder at any time by giving thirty (30) days written notice  
 of such termination sent through the United States mail to the Obligee.

The term of this bond shall be from June 14, 2018 \_\_\_\_\_ to June 14, 2019 \_\_\_\_\_

but may be continued on a year to year basis by continuation certificate at the option of the Surety.

Conrad Brothers of Idaho, Inc.

\_\_\_\_\_  
 Principal

**GREAT AMERICAN INSURANCE COMPANY**

By: Paul Conrad  
Conrad Brothers of Idaho, Inc.

By: Terri Strawhand  
 Terri Strawhand, Attorney-in-Fact



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 229789

Certificate No. 007090874

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Mark C. Bundy, Tammy A. Ward, Terri Strawhand, and Kathryn Snell

of the City of Virginia Beach, State of Virginia, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 5th day of January, 2017.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

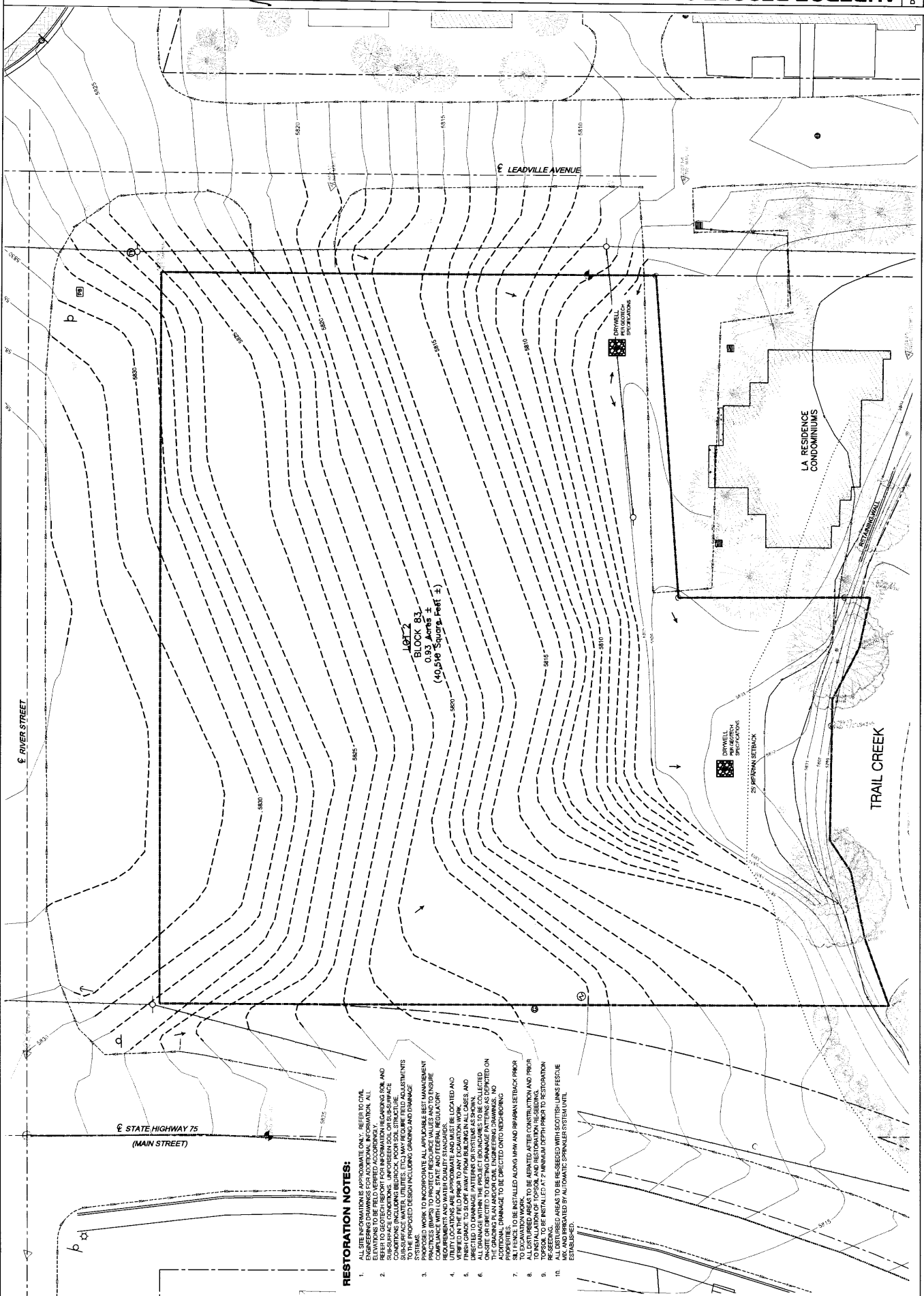
By: [Signature]
Robert L. Raney, Senior Vice President

On this the 5th day of January, 2017, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2021.



[Signature]
Marie C. Tetreault, Notary Public

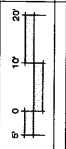


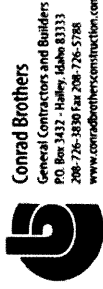
**LOT 2**  
**BLOCK 83**  
 0.93 Acres ±  
 (40,518 Square Feet ±)

**RESTORATION NOTES:**

1. ALL SITE INFORMATION IS APPROXIMATE ONLY. REFER TO CIVIL ENGINEERING DRAWINGS FOR ADDITIONAL INFORMATION. ALL REFER TO GEOTECH REPORT FOR INFORMATION REGARDING SOIL AND SUBSURFACE CONDITIONS. UNUSUAL SOILS, SUBSURFACE SURFACE WATER, UTILITIES, ETC.) MAY REQUIRE FIELD ADJUSTMENTS TO PROPOSED DESIGN INCLUDING GRADING AND DRAINAGE SYSTEMS.
2. PROPOSED WORK TO INCORPORATE ALL APPLICABLE BEST MANAGEMENT REQUIREMENTS AND WATER QUALITY STANDARDS. COMPLIANCE WITH LOCAL, STATE AND FEDERAL REGULATION.
3. FINISH GRADE TO BE SET AS LOW AS POSSIBLE TO MAINTAIN AND VERIFY IN THE FIELD PRIOR TO ANY EXCAVATION WORK.
4. ALL DRAINAGE WITHIN THE PROJECT BOUNDARIES TO BE COLLECTED THROUGH EXISTING OR NEW DRAINAGE SYSTEMS. DRAINAGE TO BE DIRECTED ONTO ADJACENT PROPERTY OR TO NEIGHBORING WATERBODIES.
5. SLOPES TO BE INSTALLED ALONG WITH AND APPROPRIATE SETBACK PRIOR TO EXCAVATION WORK.
6. ALL EXCAVATION TO BE INSTALLED AFTER CONSTRUCTION AND PRIOR TO INSTALLATION OF TOPSOIL AND RESTORATION SEEDING.
7. ALL DISTURBED AREAS TO BE RE-SEED WITH SCOTT'S LINKS RESOLVE MIX AND IRRIGATED BY AUTOMATIC SPRINKLER SYSTEM UNTIL ESTABLISHED.
- 8.
- 9.
- 10.

**RESTORATION PLAN**  
 SCALE: 1" = 10' ±





**Job Name: TCF, LLC**  
**Project Description: TCF Site Restoration**  
**Date: 9.20.18**

Qty.	Unit	Estimated Costs				Notes		
		Material	Labor	Subs	Others		Total	
<b>Division 1 - General Conditions</b>								
01034	Permitting			\$ -		\$ -	N/A	
01040	Project Manager	\$ 1,500.00				\$ 1,500.00		
01072	Legal					\$ -	By Owner	
<b>Total Division 1 - General Conditions</b>							\$ 1,500.00	
<b>Division 2 - Sitework</b>								
Backfill and Grading of Site								
	Remove Barricades			\$ 242,000.00		\$ 242,000.00	Per Plan and Galena Elevations Document	
	Top Soil			\$ 3,500.00		\$ 3,500.00		
02025	Utilities- Service			\$ 19,000.00		\$ 19,000.00	500 Tons	
02800	Landscaping			\$ -		\$ -	N/A	
	Clean Up, Seeding, Irrigation			\$ -		\$ -	Temp Irrigation	
				\$ 34,452.00		\$ 34,452.00		
<b>Total Division 2 - Sitework</b>							\$ -	
<b>Subtotal</b>							\$ 301,952.00	
<b>Fees</b>							\$ -	0%
<b>Contingency</b>							\$ -	3%
<b>Total Estimate</b>							\$ 301,952.00	
<b>150% Valuation</b>							\$ 452,928.00	

# GALENA ENGINEERING, INC.

CIVIL ENGINEERING & LAND SURVEYING

## MEMO

---

DATE: June 4, 2018  
TO: Trail Creek Fund, LLC  
FROM: Samantha Stahlnecker, P.E.  
Galena Engineering  
RE: Site Embankment Opinion of Probable Construction Cost

---

Galena Engineering has prepared an opinion of probable cost to fill the existing foundation excavation at 200 S Main Street (Ketchum Replat Block 83, Lot 2). This estimate includes approximate construction costs to import, place, and compact fill material at a constant slope from River Street south to the southern property boundary.

Galena Engineering utilized LIDAR data collected by Quantum Spatial for Blaine County, Idaho in the fall of 2017 to approximate the existing conditions on site. Grading limits were defined at the approximate property boundary and an average ground slope of 15% was modeled over the site as the proposed embankment finish ground elevation. Galena Engineering approximates the in-place, compacted embankment quantity to be 11,000 CY.

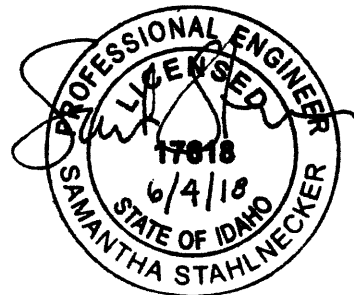
Based upon feedback from local contractors given the site's proximity to Ohio Gulch and the large quantity of material required, Galena Engineering estimates the unit cost per CY of embankment to be \$22.

It is Galena Engineering's opinion that the total estimated cost to fill the existing foundation excavation is approximately \$242,000.

Please contact me with any questions regarding the assumptions made to prepare this opinion of probable cost.

Sincerely,

Samantha Stahlnecker, P.E.



Webb Landscape, Inc.  
162 Glendale Rd  
Bellevue, ID 83313



Office: 208-726-4927  
Fax: 208-726-4767  
www.webbland.com

**ESTIMATE**

To: Rob King  
Address:  
Billing Info:

Date: September 13, 2018  
Phone:  
Email:

Re: Auberge Resort Restoration

**108 MOBILIZATION/DELIVERY FEES:**

8 Hours Labor, Supervisor

subtotal 492.00

500's

**IRRIGATION INSTALLED:**

\*Assumes irrigation POC will be drawn from La Residence Condo's  
\*Assumes appropriate GPM and Pressure to accomadate needs  
\*Assumes Existing controller will be able to accommodate zone requirements  
\*Assumes irrigation to be above ground and temporary  
\*Includes time for removal of system after establishment

10 Hours Labor, Technician  
320 Hours Labor  
16 Hours Trackhoe  
300 Linear Feet 18/6 Multi Wire  
13 1-1/2" Automatic PGA Valve Assembly  
300 Linear Feet Of 2" Poly Mainline  
1400 Linear Feet Of 1.5" Poly Lateral Lines  
1 Miscellaneous Fittings for Mainline & Lateral Assembly  
58 Rainbird 5006 SAM/PRS Rotors Assembly

subtotal 22,620.00

**607 HYDROSEED INSTALLED:**

\*Assumes excavation contractor leaves area prepped for seed

40510 Square Feet Hydroseed, Roadside Mix

subtotal 10,533.00

**113 SANITARY FACILITIES**

Porta-Potty- Week  
1 Porta-Potty- Month

subtotal 119.00

**114 FINISH WORK & CLEAN UP**

6 Hours Labor  
2 Hours Loader/Trackhoe  
1 Trash Haul- 12 cubic yards per haul

subtotal 688.00

Thank You,  
Cooper Hayes  
Project Manager

**JOB TOTAL, ESTIMATED: \$ 34,452.00**

To: Rob King

Date: September 13, 2018

Re: Auberge Resort Restoration

**JOB TOTAL, ESTIMATED: \$ 34,452.00**

**WEBB LANDSCAPE CONTRACT:**

**OUR COMMITMENT:**

- ▶ Webb maintains the integrity of our brand through accountability for our projects with an emphasis on quality, efficiency, industry best practices, and a mindful stewardship of environmental conservation.
- ▶ Webb is committed to our client relationships. We will not be party to dishonesty, distortion, or the misrepresentation of our brand. We stand behind our work and our dedication to customer satisfaction.
- ▶ Webb insures that our work is constructed of the highest quality materials and is completed in a professional and timely manner in accordance with the highest industry standard.
- ▶ Webb maintains a positive working relationships with every client by providing the highest level of comprehensive, year round service while sustaining the long term value for your property.

**GUARANTEES & INCLUSIONS:**

- ▶ 3 weeks of lawn mowing on new sod installations
- ▶ One turf fertilization for all new sod and hydroseed installations

**GENERAL TERMS & POLICIES:**

- ▶ Prices reflect the 2018 work season
- ▶ Winter weather conditions may increase costs.
- ▶ This is a cost estimate based on information and/or plans provided to Webb.
- ▶ Any engineering, permitting or subcontracted work not listed on this estimate is considered the responsibility of the contracting party
- ▶ Estimates are subject to change or cancellation after the end of the current growing season
- ▶ Final costs may vary according to on site changes and actual quantities installed.
- ▶ Final billing shall be imposed upon actual quantities used and labor to install.
- ▶ **Additional costs may be incurred to relieve soil compaction associated with construction traffic as needed.**
- ▶ **Change orders will be given as an estimate that must be agreed upon prior to change work commencing.**
- ▶ **A deposit of one-third the estimate total is due prior to the start of the project. Invoicing will be submitted, on a monthly basis as work progresses.**
- ▶ **A 1.5% monthly finance charge shall be imposed on any portion of account not paid within 30 days of each billing.**

**ACCEPTANCE:**

The pricing, specifications and conditions are satisfactory and accepted.  
Webb Landscape, Inc. is hereby authorized to perform the work as specified.  
Payments shall be made as outlined above.

\_\_\_\_\_  
Responsible Party

\_\_\_\_\_  
Date

**GREAT AMERICAN INSURANCE COMPANY®**

Administrative Office: 301 E 4TH STREET • CINCINNATI, OHIO 45202 • 513-369-5000 • FAX 513-723-2740

The number of persons authorized by this power of attorney is not more than **THREE**

No. 0 20818

**POWER OF ATTORNEY**

**KNOW ALL MEN BY THESE PRESENTS:** That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below, each individually if more than one is named, its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below.

Name	Address	Limit of Power
MARK C. BUNDY	ALL OF	ALL
TERRI STRAWHAND	VIRGINIA BEACH, VIRGINIA	\$100,000,000
TAMMY A. WARD		

This Power of Attorney revokes all previous powers issued on behalf of the attorney(s)-in-fact named above.

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this **12TH** day of **SEPTEMBER** 2016



*Mark C. Bundy*  
Assistant Secretary

*David C. Kitchin*  
Divisional Senior Vice President

STATE OF OHIO, COUNTY OF HAMILTON - ss:

On this **12TH** day of **SEPTEMBER**, 2016, before me personally appeared **DAVID C. KITCHIN**, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.

DAVID C. KITCHIN (877-377-2405)



**Susan A. Kohorst**  
Notary Public, State of Ohio  
My Commission Expires 06-18-2020

*Susan A. Kohorst*

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated June 9, 2008.

**RESOLVED:** That the Divisional President, the several Divisional Senior Vice Presidents, Divisional Vice Presidents and Divisional Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.

**RESOLVED FURTHER:** That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

**CERTIFICATION**

I, **STEPHEN C. BERAHA**, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_



*Mark C. Bundy*  
Assistant Secretary





Bond No. 2416447

### License Bond

KNOW ALL MEN BY THESE PRESENTS that we, Trail Creek Fund, LLC  
 \_\_\_\_\_ as Principal,  
 and **GREAT AMERICAN INSURANCE COMPANY**, a corporation organized under the laws of the State of Ohio,  
 as Surety, are held and firmly bound unto City of Ketchum \_\_\_\_\_ as Obligee,  
 in the sum of Four Hundred Fifty Two Thousand Nine Hundred Twenty Eight Dollars and 00/100  
Dollars (\$ 452,928.00 ), lawful money of the United States of America, to be paid unto the said  
 Obligee or its successors; for which payment, well and truly to be made and done, we bind ourselves, our  
 successors and assigns, jointly and severally, firmly by these presents.

Signed, sealed and dated June 14 \_\_\_\_\_, 2019 .

WHEREAS, the said Principal now has or will be granted a license or permit to engage in the business of  
Site Improvements and backfilling to existing grades in conjunction with restoration plan with  
seeding and irrigation  
in the City of Ketchum

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall faithfully comply with all  
 laws, ordinances, rules and regulations pertaining to such License and Permit and shall indemnify and save  
 harmless the Obligee from all loss or damage that the Obligee shall suffer by reason of the said Principal's failure to  
 comply with said laws, ordinances, rules and regulations, then this obligation to be void; otherwise to remain in full  
 force and effect.


PROVIDED, that the Surety may terminate its liability hereunder at any time by giving thirty (30) days written notice  
 of such termination sent through the United States mail to the Obligee.

The term of this bond shall be from June 14, 2019 \_\_\_\_\_ to June 14, 2020 \_\_\_\_\_  
 but may be continued on a year to year basis by continuation certificate at the option of the Surety.  
 Trail Creek Fund, LLC

Principal  
 \_\_\_\_\_  
 By: [Signature]  
MANAGEMENT MEMBER

**GREAT AMERICAN INSURANCE COMPANY**

By: [Signature]  
 Terri Strawhand, Attorney-in-Fact

<p>RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:</p> <p>City of Ketchum PO Box 2315 Ketchum, ID 83340</p>	<p><b>Instrument # 694658</b>  <b>HAILEY, BLAINE, IDAHO</b>  6-29-2022 04:00:53 PM No. of Pages: 10  Recorded for : CITY OF KETCHUM  STEPHEN MCDOUGALL GRAHAM Fee: 0.00  Ex-Officio Recorder Deputy  Index to: AGREEMENT/CORRECTION</p> 
---	---

(SPACE ABOVE LINE FOR RECORDER'S USE)

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“**Agreement**”) is dated for reference purposes this 24<sup>th</sup> day of June, 2022, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation (“**Ketchum**” or “**City**”) and HARRIMAN HOTEL, LLC, an Idaho limited liability company (“**Owner**”, and together with the City, the “**Parties**”).

### BACKGROUND AND CONTEXT

A. Ketchum is a municipal corporation possessing all powers granted to municipalities under the applicable provisions of the Idaho Code, including the power to grant conditional use permits, approve planned unit developments, subdivide real property and the power to contract. A development agreement between the Parties is a collaboration that will provide mutual benefit for the Parties and residents of the City.

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 (“**Property**”).

C. The Parties entered into an Amended and Restated Development Agreement, dated October 5, 2015 (the “**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 08-007 (“**CUP**”), Right of Way Encroachment Agreement (“**Encroachment Agreement**”), and Design Review Permit and Waterways Design River Permit DR 08-007 (“**Design Review**”) with Owner 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. A dispute arose between the Parties regarding Owner’s performance of its obligations under the Development Agreement resulting in Ketchum declaring a breach of the Development Agreement and revoking the Development Agreement and CUP. Owner disputed Ketchum’s claims of breach, disputed Ketchum’s attempt to collect on a bond for site restoration and has asserted contract and tort claims against Ketchum.

E. Owner has secured an investor for the Project, Harriman SV Properties, LLC (“Investor”), with closing and Project funding by Investor (“Investment”) conditioned on Owner and Ketchum resolving their dispute and reinstating the Entitlements, as existed at time of the dispute. Such reinstatement to be considered for approval at a meeting of the City Council to be held on June 23, 2022.

F. Owner’s securing of the Investment addresses the primary basis of Ketchum’s alleged breach, and Ketchum finds it in the public interest to treat such as analogous to a delayed cure in order for more timely recommencement of development on the Property without the need to engage in time-consuming and costly expenditures on litigation reasonably anticipated with respect to either site restoration or the threatened claims by Owner.

G. So that Owner can complete the Investment and move forward with the Project, the Parties agree that it is in their respective best interests to resolve and settle their dispute and enable the Project to proceed by reinstating the Development Agreement, Encroachment Agreement, Design Review, and the CUP as provided herein.

## **AGREEMENT**

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

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

**2. Reinstatement of Development Agreement and Entitlements.** Ketchum covenants and agrees to and hereby does withdraw, cancel and rescind its notices of breach of the Development Agreement and cancellation of the Development Agreement, CUP, Design Review, and Encroachment Agreement and reinstates and reaffirms such for the Project are in effect and in good standing as if the notices of breach and cancellation were timely cured or had never been issued or asserted. The Parties understand and agree that the reinstatement herein does not constitute an amendment or modification of the Development Agreement, CUP, Design Review, or other Entitlements, with the sole exception of time limits being extended in a limited reasonable manner as if the intervening period of dispute were a force majeure type event. Owner understands that any revised plans will require applications to the City Planning & Zoning Commission for any proposed changes, anticipated primarily to be architectural elevation material and building form changes to the building as originally approved and permitted including the expansion of the roof top observatory deck to permit additional seating of hotel guests and the public where food and beverage services will be offered and which will be reasonably reviewed and considered in good faith in accord with City Code and Idaho Code, and that no such amendments or approvals of revisions are committed to in this Agreement. To the extent there is any inconsistency between this Agreement and the Development Agreement, this Agreement shall govern.

**3. Right to Develop.** Subject to the requirements of this Agreement, the Owner and all future owners of some or all of the Property shall have the right to redevelop, construct,

improve and use the Property as a Hotel and for sale residences as described and defined in the CUP and Design Review, and in accord with the Development Agreement.

The performance timeline for the Project is as follows:

Item No.	Estimated Date	Action
1	By June 30, 2022	Closing of equity funding into escrow pending reinstatement of Development Agreement and Entitlements
2	June 23, 2022	City Council approves Settlement Agreement and reinstatements; Parties execute Settlement Agreement no later than June 30, 2022.
3	By July 1, 2022	Pre-application conference between Parties to discuss scope of any revised plans and need for subsequent applications, to be considered in process contemporaneously, including but not limited to any needed amendment of the Development Agreement CUP, and/or Design Review, amended or new building permits, design review modification, and/or subdivision.
4	By August 1, 2022	Owner submission of complete applications as determined needed from Item 3.
5	Within 60 days of submitted applications being deemed complete.	City will conduct a public hearing or hearings as necessary under City Code and/or Idaho Code, and then thereafter in a reasonably timely manner proceed to deliberation and decision.
6	Within 6 months after City final approvals on Item 4 applications	Owner applies for a building permit under the 2018 building and energy codes as adopted by the City.
7	Within 20 days of a deemed complete building permit application	City will provide comments.
8	Within 20 days of City comments provided to Owner	Owner will submit revised plans. Subsequent City review comments and Owner responses/revisions will respectively occur within 10 days of the previous action.
9	Prior to issuance of a building permit	Owner to secure ITD encroachment permit for any improvements within the Highway 75 ITD right-of-way.
10	Within 7 days of finalization of comments and review on building permit application(s).	Issuance of building permit.
11	Later of May 1, 2023 or 5 months after Item 10	Start of construction
12	Within 36 months after Item 11	Complete construction and issue certificate of occupancy

Time is of the essence. City shall be entitled to application but not impact fees based on current schedule but shall credit Owner with amounts of building impact and affordable in lieu housing fees paid to date of the reinstated application Development Agreement and Entitlements.

**4. Condition to Obligations.** The obligations of each of the Parties hereunder are expressly conditioned upon (i) Owner consummating the Investment in amounts and on substantially the terms and conditions set forth in that certain confidential Term Sheet, dated March 3, 2022, as modified and agreed by the parties thereto; (ii) Ketchum reinstating the Development Agreement and Entitlements as provided in Paragraph 2 on or before the date set forth in Paragraph 3; and (iii) the Ketchum Urban Renewal Agency (KURA), at its sole discretion, entering into an Owner Participation Agreement with Owner for reimbursement of certain costs substantially similar to those approved in the OPA dated February 21, 2017. The Parties understand that Ketchum has no authority or control over the KURA and the KURA's review and decision on any OPA application contemplated under Condition (iii) above. City agrees to reasonably cooperate with Owner in its efforts to obtain the Owner Participation Agreement.

Owner agrees as a condition of this Agreement that the proof of financing and financial capability to complete the project is a standing condition of this Settlement Agreement and of the underlying Development Agreement, and such condition will continue in force until substantial completion of construction.

Understanding that this Property serves as a gateway into Ketchum, Owner and City will also enter into a discussion of aesthetic improvements for the construction screening associated with the Project, and reasonably cooperate to agree upon an improved aesthetic design for screening to be installed by Owner within sixty days of this Agreement.

**5. Owner Default and Reclamation of Site.** 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.

**6. Settlement of Dispute.** Effective as of the date the conditions described in Paragraph 4 are fulfilled, for valuable consideration, the receipt and sufficiency of which Owner and City acknowledge, Owner and City, jointly and severally, agree to and each does hereby release the other and their respective directors, officers, managers, members, shareholders,

agents, representatives, attorneys and employees from any and all claims, damages, costs, and causes of action either may have now or in the future arising directly or indirectly from the acts or omissions of the other through the date hereof, including the City declaring a breach of the Development Agreement and revoking the Development Agreement and CUP. The Parties acknowledge that the giving and receiving of the consideration called for herein and the execution of this Agreement are the result of compromise, that this Agreement is entered into in good faith, and that the execution of and performance of obligations under this Agreement shall not be considered or construed at any time for any purpose as, or evidence of, an admission of wrongdoing or liability by any Party.

**7. Indemnification.** Owner shall indemnify and hold City and its officers, members, agents, employees and representatives, harmless against and in respect of:

(i) all suits, actions, proceedings and investigations brought by any person (other than by, or at the behest of, City) which questions the validity or legality of this Agreement, the Development Agreement, or the Entitlements; and

(ii) any actions, judgments, costs and expenses (including without limitation reasonable attorneys' fees and costs and other expenses incurred in investigating, preparing or defending any litigation or proceeding, commenced or threatened) incident to any of the foregoing, or the enforcement of this Agreement.

City shall promptly notify Owner of the assertion by any third party of any claim with respect to which the indemnification set forth in this Agreement relates. Owner shall have the right at all times, upon notice to City, to undertake the defense of or, with the consent of City (which consent shall not be unreasonably withheld), to settle or compromise such claim, provided that Owner shall be responsible for all attorneys' fees and costs incurred before and after the decision to undertake such defense other than attorneys' fees and costs incurred by City after such decision as provided below. The election by Owner to undertake the defense of a third-party claim shall not preclude City from participating or continuing to participate in the defense, so long as it bears its own legal fees and costs for so doing.

City shall have no rights, hereunder or otherwise, to indemnification or contribution from Owner with respect to any nonfulfillment of any covenant or obligation of City based upon the Development Agreement or the Entitlements pertaining to the Project except as otherwise expressly provided for herein.

**8. Miscellaneous Provisions.**

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

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

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

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

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

Notices to City shall be addressed as follows:

City of Ketchum  
Post Office Box 2315  
Ketchum, ID 83340  
Attn: Jade Riley, City Administrator  
Telephone: 208.727-5084  
Email: [jriley@ketchumidaho.org](mailto:jriley@ketchumidaho.org)

Notices given to Owner shall be addressed as follows:

Harriman Hotel, LLC  
c/o Waypoint, LLC  
Jack E. Bariteau, Jr. Its Managing Member  
Post Office Box 84  
Sun Valley, ID 83353  
Telephone: 650.906-5636  
Email: [jack@waypointsunvalley.com](mailto:jack@waypointsunvalley.com)

with a copy to:

Lawson Laski Clark, PLLC  
675 Sun Valley Road, Suite A  
Post Office Box 3310  
Ketchum, Idaho 83340  
Attn.: Edward A. Lawson  
Telephone: 208.725-0055

Email: [eal@lawsonlaski.com](mailto:eal@lawsonlaski.com)

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

f) Reliance by the Parties. This Agreement is intended by Owner to be considered by Ketchum as part of Owner's application for a modification of the existing design review approval and building permits for the Project, and such other applications as Owner may submit in connection with the Project. Owner acknowledges and intends the City to consider and rely upon this Agreement in its review and consideration of said applications.

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

h) Successors and Assigns; Covenant Running With the Land. This Agreement shall inure to the benefit of City and Owner and their respective heirs, successors and assigns. This Agreement, including all covenants, terms, and conditions set forth herein, shall be and is hereby declared a covenant running with the land with regard to the Property or any portion thereof, and is binding on both Parties to this Agreement as well as their respective heirs, successors and assigns.

i) Recordation and Release. This Agreement 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 Agreement, any forbearance of any kind that may be granted or allowed by Owner, City, or their successors and assigns, to the other party under this Agreement shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Agreement with regard to any subsequent default or breach.

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

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



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

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

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

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

[end of text – signatures appear on following page]

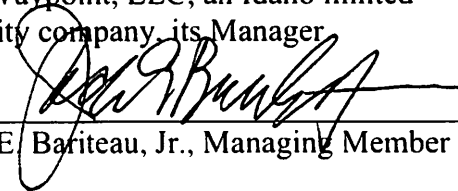
**SIGNATURE PAGE**

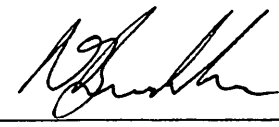
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Harriman Hotel, LLC, an Idaho limited liability company

City of Ketchum, Idaho, a municipal corporation

By: Waypoint, LLC, an Idaho limited liability company, its Manager

By:   
Jack E. Bariteau, Jr., Managing Member

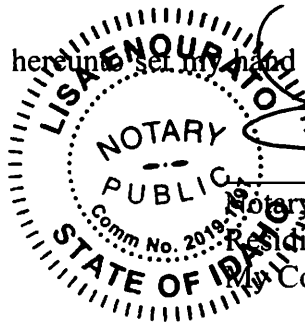
By:   
Neil Bradshaw, Mayor

ACKNOWLEDGMENTS

STATE OF IDAHO )  
 )ss.  
County of Blaine )

Subscribed and sworn before me on this 23<sup>rd</sup> day of June, 2022, before me a Notary Public in and for said State, personally appeared NEIL BRADSHAW, known to me to be the Mayor of the CITY OF KETCHUM, IDAHO and the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of the City Of Ketchum, Idaho.

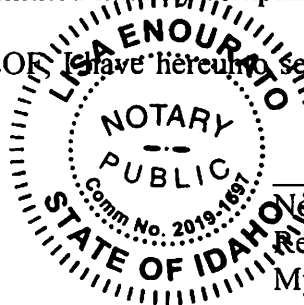
IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first written above.

  
\_\_\_\_\_  
Notary Public  
Residing at Hayes, ID  
My Commission Expires 8/12/25

STATE OF IDAHO )  
 )ss.  
County of Blaine )

Subscribed and sworn before me on this 23<sup>rd</sup> day of June, 2022, before me a Notary Public in and for said State, personally appeared JACK E. BARITEAU, JR. known or identified to me to be the Managing Member of WAYPOINT, LLC the Managing Member of HARRIMAN HOTEL, LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

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

  
\_\_\_\_\_  
Notary Public  
Residing at Hayes, ID  
My Commission Expires 8/12/25