



City of Ketchum

April 6, 2020

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to Correct a Noticing Error, Continue the Record By Remanding the PEG Ketchum Hotel, LLC Applications and Associated Agreement, And Adopt Orders Effectuating Such

Recommendation

For purposes of correcting a noticing error and continuing development of the project record, City Staff and the City Attorney recommend that the Ketchum City Council take the following actions:

First Action: Find that there has been an error in mailing of certain public notices and vacate the Decisions, Orders and Findings granting the following applications and remand the same for additional processing as necessary. This Action involves the following PEG Ketchum Hotel, LLC Applications:

- Design Review Permit No. P 20-019
- Floodplain Development Permit No. P 19-062
- Lot-Line Shift Permit No. P 19-064
- Planned Unit Development/Conditional Use Permit No. P 19-063

Recommended Motion: “Based upon a finding of a noticing error, I move to vacate the PEG Ketchum Hotel decisions and findings as designated in the April 6, 2020 Staff Report, remand such for additional process as necessary, and authorize the Mayor to sign the accompanying Orders of such.” See Attachment 1 (Proposed Orders).

Second Action: Finding the same circumstances, vacate the April 6 scheduled Hearing on the City of Ketchum/PEG Ketchum Hotel, LLC Permits Conditions Acceptance Development Agreement and remand the same.

Recommended Motion: “Based upon a finding of a noticing error, I move to vacate the public hearing on the PEG Ketchum Hotel Conditions Acceptance Development Agreement scheduled for April 6 and remand such to the Planning and Zoning Commission, and authorize the Mayor to sign the accompanying Order of such.”

This Action will vacate the public hearing scheduled for April 6; as a result of which no public comment on the Agreement will be received or entered into the record at April 6 Council Meeting.

The reasons for the recommended actions are as follows:

- Notice to neighbors within 300’ of the project was inadequate.

The city followed all noticing procedures, however, the list of adjoining neighbors contacted was generated from only Lot 1 of the project (NE corner of property shown in purple below) and not all three lots (area in yellow below). The result was 40 too few adjoining landowners were notified of the public hearings held by the Ketchum Planning and Zoning Commission and Ketchum City Council.

SITE LOCATION



PUD -
Conditional Use Permit
Noticing Checklist / Certification

Project Name: Ketchum Boutique Hotel
 Address: 260 E River St
 File No: P19-063 Date Filed: 6-19-19
 P&Z City Council Meeting Date: 7-29-19

- Publish in Idaho Mt Express 15 days prior to meeting
- Mail notice to all properties within 300 feet on day of publication
- Post on Premises 7 days prior to meeting
- Post on Website 7 days prior to meeting

7-5-19 Deadline 7-5-19 Date notice sent to paper
7-10-19 Deadline 7-10-19 Date of publication
7-10-19 Deadline 7-10-19 Date mailed to all 300-foot adjoiners
7-22-19 Deadline 7-19-19 Date posted on premises
7-22-19 Deadline 7-19-19 Date posted on website

Copy of Notice and Mailing lists placed in file.
 I, Maureen Puddicombe, Planning Technician for the City of Ketchum, Idaho Planning and Building Department, hereby certify that the above noticing was completed on the dates so indicated.
 Certified on July 19, 2019
 Maureen Puddicombe
 Planning Technician

Background

The PEG Ketchum Hotel has received four sets of approval from the City, starting August 12, 2019 with P&Z’s initial Waterway approval through KCC hearings and approval of the Preliminary Plat and PUD, and, most recently, with the Commission’s approval of the PEG Ketchum Hotel Version No. 4 Master Plan on March 9, 2020. A summary of subject approvals is as follows:

- The City previously approved Waterways and Floodplain Design Review (Waterways). See Attachment E.1
- On February 3, 2020 the Ketchum City Council (KCC or Council) approved Findings of Fact, Conclusions of Law and Decision Preliminary Plat Findings for the PEG Project. See Attachment E.2.A
- The Council granted approval of the PEG Ketchum Hotel Version No. 3 Master Plan with conditions (e.g., increase west side setback to 16’), as set forth in the Planned Unit Development CUP (PUD) Findings approved by Council on February 3, 2020. See Attachment E.4.A
- The Ketchum Planning and Zoning Commission (PZ or Commission) unanimously recommended approval of the Design Review (DR) of the PEG Ketchum Hotel Version No. 4 Master Plan on March 9, 2020. See Attachment E.3.A

To help memorialize key provisions of the City’s deliberations, a Development Agreement (DA) is proposed for recordation against the Project. This is a best practice. The Development Agreement recommended for approval by the Commission on August 12, 2019 has been updated consistent with the approved Waterways, Preliminary Plat, PUD and DR approvals by the City.

- The DA presented to Council reflects: all the key provisions contained in each of the Findings of Fact and Conclusions of Law for each of the Project applications as approved to date. See Attachment E.5.A

For purposes of correcting a noticing error and continued development of the project record, by the actions taken by the Ketchum City Council (above), the PEG Ketchum Hotel, LLC Applications will be re-noticed and remanded to the Planning and Zoning Commission for additional public comment, review, and adoption of Findings of Fact, Conclusions of Law and Decisions for each application.

Attachments

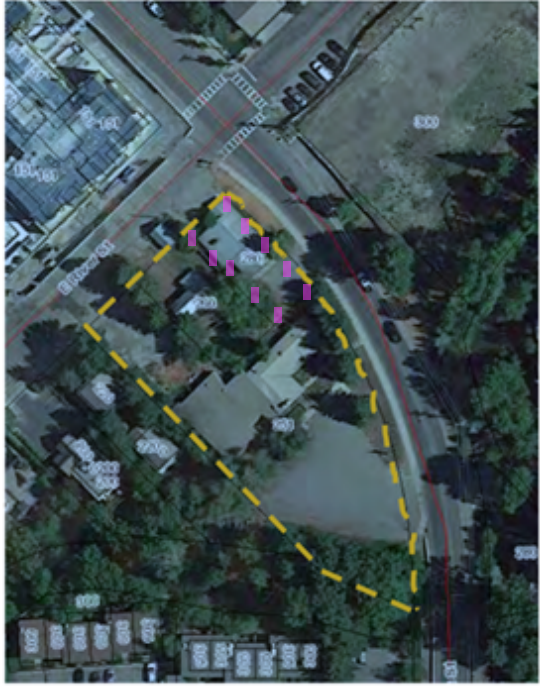
- **Attachment 1** – Proposed Orders
- **Attachment E.1** – Signed Copy of PZ Approved Waterways Findings
- **Attachment E.2.A** – Signed Copy of KCC Approved Preliminary Plat Findings
- **Attachment E.3.A** – Signed Copy of PZ Approved Design Review Findings
- **Attachment E.4.A** – Signed Copy of KCC Approved Planned Unit Development CUP Findings
- **Attachment E.5.A** – *DRAFT* Development Agreement

Attachment 1

**BEFORE THE CITY COUNCIL
OF THE
CITY OF KETCHUM, IDAHO**

IN RE:	)	FILE NO. 19-062
)	
PEG KETCHUM HOTEL, LLC	)	ORDER VACATING FINDINGS
	)	OF FACT, CONCLUSIONS OF
Applicant for	)	LAW, AND DECISION OF THE
Floodplain Development Permit	)	CITY COUNCIL AND
	)	REMANDING THE
	)	APPLICATION TO THE
	)	PLANNING AND ZONING
	)	COMMISSION FOR FURTHER
	)	PROCEEDINGS

THE ABOVE ENTITLED MATTER coming before the City Council of the City of Ketchum (the “Council”) as an adjunct to the hearing on Monday April 6, 2020, regarding the consideration of approval of the “*City of Ketchum/PEG Ketchum Hotel, LLC Permits Conditions Acceptance Development Agreement*” between the City of Ketchum and the PEG Hotel, LLC; which is inclusive of the conditions of the Applicant’s Floodplain Development Permit and the Council having received the Planning and Building Director’s (the “Administrator”) staff report (the “Staff Report”) which included the following information:

<p><i>Notice Error Affecting All Permits:</i></p> <p>Notice to neighbors within 300’ of the project was inadequate.</p> <ul style="list-style-type: none"> • <i>The City staff followed all noticing procedures, however, the list of adjoining neighbors contacted was generated errantly from only Lot 1 of the project (NE corner of property shown in purple) and not all three lots (area in yellow). The result was 40 too few adjoining landowners were notified of the public hearings held by the Ketchum Planning and Zoning Commission and Ketchum City Council.</i> 	<p style="text-align: center;">SITE LOCATION</p> 
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and Mr. Gary D. Slette attorney at law having appeared on behalf of his clients and Deborah Nelson attorney at law appearing on behalf of the Applicant, and the Council being fully informed in the premises:

The City Council makes the following Findings of Fact relevant to this Order:

1. Adopts as their findings of fact the information above stated in the Staff Report.
2. That the Notice provide on this matter, as referenced in the Staff Report, did not comply with the requirements of Ketchum Municipal Code Section 17.88.050(2).

The City Council makes the following Conclusions of Law relevant to this Order:

- Ketchum Municipal Code Section 17.88.050(2) requires:

... 2. If the Administrator determines that a project cannot be approved administratively, the Ketchum Planning and Zoning Commission shall consider and approve, approve with conditions, or deny applications for floodplain development permits as required herein, for waterways design review as required herein and for stream alterations at a duly noticed meeting. The Administrator shall provide written notice of said application to owners of property within three hundred feet (300') of the external boundaries of the land being considered. When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be used in lieu of mailed notice. Said alternate forms of notice shall be per Idaho Code 67-6512 in effect at the time of notice. Said notice shall inform adjacent property owners they may comment on the application during a period of not less than ten (10) days after mailing of the notice and prior to final action on said application....

ORDER OF DECISION

Based upon the above and foregoing Findings of Fact/Conclusions of Law and good cause appearing from the record, IT IS HEREBY ORDERED AND THIS DOES ORDER THAT:

Order No. 1: Vacating FCO: The Findings of Fact, Conclusions of Law and Decision of the City Council entered in the above entitled matter is vacated; and

Order No. 2: Remanding to P& Z: The above stated application is remanded back to the Planning and Zoning Commission for further proceedings.

Order No. 3: Directions to City Clerk: The City Clerk shall forthwith provide and serve a copy of this Order of City Council upon Mr. Gary D. Slette, and upon Deborah E. Nelson, the Administrator and the City Attorney, and to anyone who makes a public records request for the same, and retain the original in the official records of the above entitled matter.

This Order entered on this 6th day of April 2020.

Neil Bradshaw, Mayor
City of Ketchum


Robin Crotty, City Clerk

W:\Work\K\Ketchum, City of 24892\Gateway Hotel Development Proposal .015\REMAND DOCUMENTS\Order Vacation Floodplain Development Permit to P and Z 4-02-2020 lh.docx

**BEFORE THE CITY COUNCIL
OF THE
CITY OF KETCHUM, IDAHO**

IN RE:	)	FILE NO. 19-064
)	
PEG KETCHUM HOTEL, LLC Lot 3A, Block 82 Subdivision	)	ORDER VACATING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION OF THE CITY COUNCIL AND
)	
Applicant for Lot Line Adjustment	)	REMANDING THE APPLICATION TO THE PLANNING AND ZONING COMMISSION FOR FURTHER PROCEEDINGS
)	

THE ABOVE ENTITLED MATTER coming before the City Council of the City of Ketchum (the “Council”) for a hearing on Monday April 6, 2020, pursuant the Request for Reconsideration of the *Findings of Fact, Conclusions of Law and Decision* of the City Council entered in the above entitled matter on February 3, 2020, filed by Mr. Gary D. Slette, attorney at law of the firm of Robertson & Slette, P.L.L.C., as attorney for the clients he listed in the request; and the Council having received the Planning and Building Director’s (the “Administrator”) staff report (the “Staff Report”) which included the following information:

<p><i>Notice Error Affecting All Permits:</i></p> <p>Notice to neighbors within 300’ of the project was inadequate.</p> <ul style="list-style-type: none"> • <i>The City staff followed all noticing procedures, however, the list of adjoining neighbors contacted was generated errantly from only Lot 1 of the project (NE corner of property shown in purple) and not all three lots (area in yellow). The result was 40 too few adjoining landowners were notified of the public hearings held by the Ketchum Planning and Zoning Commission and Ketchum City Council.</i> 	<p style="text-align: center;">SITE LOCATION</p> 
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and Mr. Gary D. Slette having appeared on behalf of his clients and Deborah Nelson attorney at law appearing on behalf of the Applicant, and the Council being fully informed in the premises:

The City Council makes the following Findings of Fact relevant to this Order:

1. Adopts as their findings of fact the information above stated in the Staff Report.
2. That the Notice provided on this matter, as referenced in the Staff Report, did not comply with the requirements of Ketchum Municipal Code Section 16.04.030.

The City Council makes the following Conclusions of Law relevant to this Order:

- Ketchum Municipal Code Section 16.04.030 L requires:

...The administrator shall provide written notice of such application to owners of property immediately adjacent to the subject property. Such notice shall inform adjacent property owners they may comment on the application during a period of not less than ten (10) days after mailing of the notice and prior to final action on such application...

ORDER OF DECISION

Based upon the above and foregoing Findings of Fact/Conclusions of Law and good cause appearing from the record, IT IS HEREBY ORDERED AND THIS DOES ORDER THAT:

Order No. 1: Vacating FCO: The Findings of Fact, Conclusions of Law and Decision of the City Council entered in the above entitled matter on the 3rd of February 2020 is vacated; and

Order No. 2: Remanding to P& Z: The above stated application is remanded back to the Planning and Zoning Commission for further proceedings.

Order No. 3: Directions to City Clerk: The City Clerk shall forthwith provide and serve a copy of this Order of City Council upon Mr. Gary D. Slette, and upon Deborah E. Nelson, the Administrator and the City Attorney, and to anyone who makes a public records request for the same, and retain the original in the official records of the above entitled matter.

This Order entered on this 6th day of April 2020.

Neil Bradshaw, Mayor
City of Ketchum

Robin Crotty, City Clerk


W:\Work\K\Ketchum, City of 24892\Gateway Hotel Development Proposal .015\REMAND DOCUMENTS\Order Vacation Lot line Adjustment to P and Z 4-02-2020 lh.docx

ORDER VACATING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION OF THE CITY COUNCIL AND REMANDING THE APPLICATION TO THE PLANNING AND ZONING COMMISSION FOR FURTHER PROCEEDINGS - 3

**BEFORE THE CITY COUNCIL
OF THE
CITY OF KETCHUM, IDAHO**

IN RE:	)	FILE NO. 20-019
)	
PEG KETCHUM HOTEL, LLC,	)	ORDER SUSPENDING THE
	)	PLANNING AND ZONING
Applicant	)	COMMISSION’S FINDINGS OF
	)	FACT, CONCLUSIONS OF LAW
DESIGN REVIEW	)	AND DECISION AND DIRECTING
	)	AN ADDITIONAL HEARING
	)	BEFORE THE COMMISSION
)	

THE ABOVE ENTITLED MATTER coming before the City Council of the City of Ketchum (the “Council”) as an adjunct to the hearing on Monday, April 6, 2020, regarding the consideration of approval of the “City of Ketchum/PEG Ketchum Hotel, LLC Permits Conditions Acceptance Development Agreement” between the City of Ketchum and the PEG Hotel, LLC, which is inclusive of the conditions of the Applicant’s above entitled Design Review, and the Council having received the Planning and Building Director’s (the “Administrator”) staff report (the “Staff Report”) which included the following information:

<p><i>Notice Error Affecting All Permits:</i></p> <p>Notice to neighbors within 300’ of the project was inadequate.</p> <ul style="list-style-type: none"> • <i>The City staff followed all noticing procedures, however, the list of adjoining neighbors contacted was generated errantly from only Lot 1 of the project (NE corner of property shown in purple) and not all three lots (area in yellow). The result was 40 too few adjoining landowners were notified of the public hearings held by the Ketchum Planning and Zoning Commission and Ketchum City Council.</i> 	<p style="text-align: center;">SITE LOCATION</p> 
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and Mr. Gary D. Slette attorney at law having appeared on behalf of his clients and Deborah Nelson attorney at law appearing on behalf of the Applicant, and the Council being fully informed in the premises:

The City Council makes the following Findings of Fact relevant to this Order:

1. Adopts as their findings of fact the information above stated in the Staff Report.
2. That the Notice provided by the Planning and Zoning Commission on this matter, as referenced in the Staff Report, did not comply with the requirements of Ketchum Municipal Code Section 17.96.080.

The City Council makes the following Conclusions of Law relevant to this Order:

- Ketchum Municipal Code Section 17.96.080 requires:

All property owners adjacent to properties under application for design review shall be notified by mail ten (10) days prior to the meeting of the date at which said design review is to be considered by the commission."

ORDER OF DECISION

Based upon the above and foregoing Findings of Fact/Conclusions of Law and good cause appearing from the record, IT IS HEREBY ORDERED AND THIS DOES ORDER THAT:

Order No. 1: Suspension of P&Z Findings of Fact, Conclusions of Law and Decision and directing an additional hearing: The Findings of Fact, Conclusions of Law and Decision of the Planning and Zoning Commission, entered in the above entitled matter, is suspended and the Planning and Zoning Commission is directed to schedule an additional hearing on this application and provide notice in accordance with City Code and, subject to compliance with this Order directing an additional hearing, original jurisdiction on this matter remains with the Planning and Zoning Commission; and

Order No. 2: Directions to City Clerk: The City Clerk shall forthwith provide and serve a copy of this Order of City Council upon Mr. Gary D. Slette, and upon Deborah E. Nelson, the Administrator, the Chairman of the Planning and Zoning Commission and the City Attorney, and to anyone who makes a public records request for the same, and retain the original in the official records of the above entitled matter.

This Order entered on this 6th day of April 2020.

Neil Bradshaw, Mayor
City of Ketchum

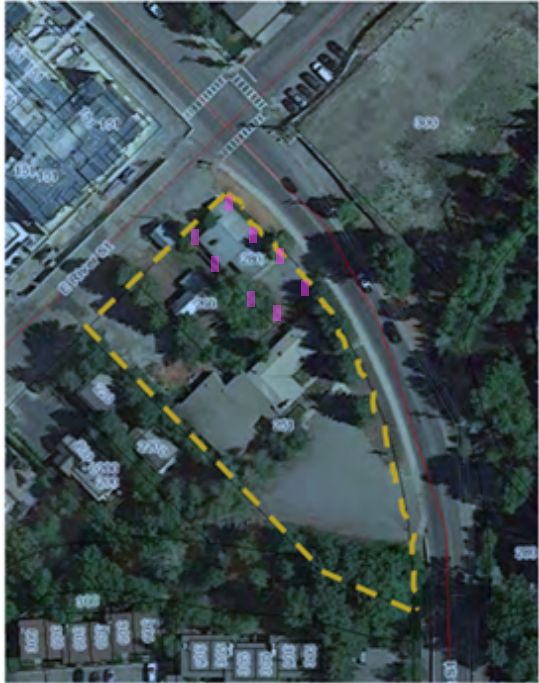
Robin Crotty, City Clerk

W:\Work\K\Ketchum, City of 24892\Gateway Hotel Development Proposal .015\REMAND DOCUMENTS\Order directing an additional hearing to P and Z 4-02-2020 lh.docx

**BEFORE THE CITY COUNCIL
OF THE
CITY OF KETCHUM, IDAHO**

IN RE:	)	FILE NO. P19-063
)	
PEG KETCHUM HOTEL, LLC	)	ORDER VACATING FINDINGS OF
	)	FACT, CONCLUSIONS OF LAW,
Applicant for	)	ORDER OF DECISION OF THE CITY
Planned Unit Development	)	COUNCIL AND REMANDING THE
Conditional Use Permit	)	APPLICATION TO THE PLANNING
	)	AND ZONING COMMISSION FOR
	)	FURTHER PROCEEDINGS
)	

THE ABOVE ENTITLED MATTER coming before the City Council of the City of Ketchum (the “Council”) for a hearing on Monday April 6, 2020, pursuant to a Request for Reconsideration of the Findings of Fact, Conclusions of Law and Decision of the City Council entered in the above entitled matter on February 3, 2020 filed by Mr. Gary D. Slette, attorney at law of the firm of Robertson & Slette, P.L.L.C., as attorney for the clients he listed in the request, and the Council having received the Planning and Building Director’s (the “Administrator”) staff report (the “Staff Report”) which included the following information:

<p><i>Notice Error Affecting All Permits:</i></p> <p>Notice to neighbors within 300’ of the project was inadequate.</p> <ul style="list-style-type: none"> • <i>The City staff followed all noticing procedures, however, the list of adjoining neighbors contacted was generated errantly from only Lot 1 of the project (NE corner of property shown in purple) and not all three lots (area in yellow). The result was 40 too few adjoining landowners were notified of the public hearings held by the Ketchum Planning and Zoning Commission and Ketchum City Council.</i> 	<p style="text-align: center;">SITE LOCATION</p> 
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and Mr. Gary D. Slette having appeared on behalf of his clients and Deborah Nelson attorney at law appearing on behalf of the Applicant, and the Council being fully informed in the premises:

The City Council makes the following Findings of Fact relevant to this Order:

1. Adopts as their findings of fact, the information above stated in the Staff Report.
2. That the Notice provide on this matter, as referenced in the Staff Report, did not comply with the requirements of Idaho Code Sections 67-6515 and 67-6512(b).

The City Council makes the following Conclusions of Law relevant to this Order:

- Idaho Code Section 67-6515 requires:

.... Planned unit developments may be permitted pursuant to the procedures for processing applications for special use permits following the notice and hearing procedures provided in section 67-6512, Idaho Code....

- Idaho Code Section 67-6512(b) requires:

... Notwithstanding jurisdictional boundaries, notice shall also be provided to property owners or purchasers of record within the land being considered, three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be substantially impacted by the proposed special use as determined by the commission, provided that in all cases notice shall be provided individually by mail to property owners or purchasers of record within the land being considered and within three hundred (300) feet of the external boundaries of the land being considered and provided further that where a special use permit is requested by reason of height allowance that notice shall be provided individually by mail to property owners or purchasers of record within no less than three (3) times the distance of the height of the allowed height of a structure when more than one hundred (100) feet and within no less than one (1) mile when the peak height of a structure in an unincorporated area is four hundred (400) feet or more and, when four hundred (400) feet or more, the structure's proposed location and height shall be stated in the notice. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board.

- Ketchum Municipal Code Sections 16.08.110 and 16.08.120 require: That completed PUD applications shall be placed by the administrator on the agenda of the planning and zoning commission for review and recommendation to the city council which in turn is placed upon the agenda of the City Council for final action.

ORDER OF DECISION

Based upon the above and foregoing Findings of Fact/Conclusions of Law and good cause appearing from the record, IT IS HEREBY ORDERED AND THIS DOES ORDER THAT:

Order No. 1: Vacating FCO: The Findings of Fact, Conclusions of Law and Decision of the City Council entered in the above entitled matter on the 3rd of February 2020 is vacated; and

Order No. 2: Remanding to P& Z: The above stated application is remanded back to the Planning and Zoning Commission for further proceedings.

Order No. 3: Directions to City Clerk: The City Clerk shall forthwith provide and serve a copy of this Order of City Council upon Mr. Gary D. Slette, and upon Deborah E. Nelson, the Administrator and the City Attorney, and to anyone who makes a public records request for the same, and retain the original in the official records of the above entitled matter.

This Order entered on this 6th day of April 2020.

Neil Bradshaw, Mayor
City of Ketchum

Robin Crotty, City Clerk

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Attachment E.1 – Waterways Findings



City of Ketchum
Planning & Building

IN RE:)
)
PEG Ketchum Hotel, LLC) KETCHUM PLANNING AND ZONING COMMISSION
251 S. Main Street) FINDINGS OF FACT, CONCLUSIONS OF LAW AND
Floodplain Development/) DECISION
Waterways Design Review)
)
File Number: 19-062)

BACKGROUND FACTS

PROJECT: Ketchum Boutique Hotel

OWNER: PEG Ketchum Hotel, LLC

REPRESENTATIVE: Sean Flynn, Galena Engineering

LOCATION: 251 S. Main Street (Lots 3, 21, FR 22 Blk 82 N 10' x 110' of alley S 20' x 230' of alley, Ketchum Townsite), 260 E. River Street (Lot 2, Block 82, 10' x 110' of alley, Ketchum Townsite), and 280 E. River Street (Lot 1, Block 82, Ketchum Townsite)

ZONING: Tourist (T) with Floodplain Management Overlay with Floodplain, Floodway, and Waterways Design Review subdistricts

REQUEST: Floodplain Development Permit and Waterways Design Review

ASSOCIATED PERMITS: P19-061, P19-063, P19-064, P19-065, P19-066

PUBLIC NOTICE: Property owners within 300 feet and affected agencies were mailed on Friday, July 12, 2019. Public notice was published in the Idaho Mountain Express on Wednesday, July 17, 2019.

FINDINGS OF FACT

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. Under Chapter 65, Title 67 of the Idaho Code, the City is required to pass certain ordinances regarding land use, including a zoning ordinance.
2. The subject property, in particular the parcel addressed 251 S. Main Street, contains 100-year floodplain, floodway, and is adjacent to Trail Creek and therefore contains a regulated riparian zone. As such, the property is within the Floodplain Management Overlay with Floodplain, Floodway, and Waterways Design Review subdistricts. The southerly property boundary is the mean high-water mark on the north side of Trail Creek.

3. Pursuant to Zoning Code Title 17, Section 17.88.050(D)1, the administrator shall have the authority to consider and approve, approve with conditions, or deny applications for floodplain development permits and for waterways design review, but in accordance with 17.88.050(D)2 has the discretion to forward the application to the Planning and Zoning Commission for review during a noticed public meeting.

4. The subject parcels have previously been developed. No existing development encroaches into the riparian zone, floodplain, or floodway. Existing development consists of two vacant structures and an asphalt parking area. The asphalt parking area abuts a 10' wide sewer easement and the 25' riparian zone is adjacent to the southside of the 10' sewer easement. The 25' riparian zone is delineated on the plat associated with the hotel project (application P19-064) as a proposed riparian and scenic easement consistent with KMC § 17.88.040.D.2. The riparian zone is currently in a natural state and the north side of the bank, which is the southern boundary line of the subject property, does not contain man-made bank armoring or riprap. The 10' sewer easement combined with the 25' riparian easement provide a buffer ranging from 35' or more from the existing development and new development proposed on site (see civil sheet 3.0 in the applicant's submittal package dated July 29, 2019).

5. The applicant proposes to demolish and clear the existing development, including the asphalt surface parking area, from the site and to construct a new 100-room hotel, approximately 139,295 gross square feet in size. The hotel and all other site improvements are proposed to be located outside of the 1% annual chance floodplain, floodway, and riparian zone. Because of the sewer easement, the hotel will be located 35' or more from the mean high-water mark of Trail Creek. As indicated on the preliminary civil plans and preliminary landscape plan included in the applicant's submittal package dated July 29, 2019, all construction activity and all permanent site improvements will be located outside of the riparian zone, floodplain, and floodway.

6. As indicated in civil sheet 2.0, Storm Water Pollution Prevention Plan, measures will be taken to protect the adjacent waterway and riparian area. These measures include installation of a silt fence and inlet protection around the existing catch basin, development of a Storm Water Pollution Prevention Plan and Best Management Practices document for erosion control.

7. The applicant is put on notice that city review and approval of this application does not guarantee that flooding will not occur as the subject property is located partially within in the Special Flood Hazard Area (100-year floodplain). Purchasing flood insurance is recommended; standard property owner's insurance policies do not cover losses due to flooding.

Floodplain Development Requirements				
Chapter 17.88, Floodplain Management Overlay Zoning District (FP)				
Compliant			Standards and Staff Comments	
Yes	No	N/A	Regulation	City Standards and Staff Comments
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.88.040.D.3	Prior to issuance of any building permit for a structure located partially or wholly within the one percent (1%) annual chance floodplain, a preconstruction elevation certificate shall be completed by a registered professional engineer, architect or surveyor and submitted to the City of Ketchum building inspector. The elevation certificate form shall be made available from the City. The certificate shall again be completed by the owner and/or his/her agents and submitted to the City upon completion of the foundation and construction of the lowest floor, and again prior to issuance of a certificate of occupancy or a final inspection by the building inspector to evidence the as built elevation of the lowest floor including basement.
			Staff Comments	Civil sheet C3.0 best represents the location of the proposed building with respect to the one percent (1%) annual chance floodplain. As indicated on the plan, the building footprint is located entirely outside of the 1% annual chance floodplain. Therefore, Elevation Certificates are not required.

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.88.040.D.5	Prior to issuance of any floodplain development permit, the property owner or his or her authorized agent shall acknowledge by executed written affidavit that said property is located within the one percent (1%) annual chance floodplain as defined herein and that a violation of the terms of this article shall cause the City to seek legal remedies.
			<i>Staff Comments</i>	<i>The applicant is aware of this requirement and as a condition of approval, the affidavit shall be submitted prior to the Commission Chair signing the Findings of Fact and Conclusions of Law for this permit.</i>
17.88.060: PROVISIONS FOR FLOOD HAZARD REDUCTION				
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.88.050(E)1	Preservation or restoration of the inherent natural characteristics of the river and creeks and floodplain areas. Development does not alter river channel.
			<i>Staff Comments</i>	<p><i>The southern boundary of the property coincides with the mean high water mark of the north side of Trail Creek. Regulatory floodplain, including floodway, exists on the subject property along the southern boundary of the property and the 25'-wide riparian and scenic easement (riparian zone) is offset, landward, from the mean high water mark on the north side of Trail Creek. The riparian zone largely provides a buffer between the limit of the 1% annual chance floodplain and the remainder of the site, with the riparian buffer and floodplain boundary aligning and slightly overlapping only near the southeast corner of the site. An additional 10' wide sewer easement exists on the landward side of the riparian zone, which provides further distance between the developable portion of the property and the floodplain and Trail Creek.</i></p> <p><i>Civil sheet C 1.0 indicates existing development on the subject property with respect to the sewer easement, riparian zone, and the floodplain and floodway boundaries. Currently, two vacant buildings and an asphalt parking surface are located on the subject property. The asphalt parking surface extends directly to the north side of the 10' sewer easement. Therefore, the extent of existing development on the site is offset approximately 10' from the riparian zone and existing development is located entirely outside of the regulatory floodplain. The floodplain and riparian zone are characterized as being in an undisturbed, naturalized state.</i></p> <p><i>Civil sheet 2.0, Storm Water Pollution Prevention Plan, includes the following details: During demolition and clearance of the existing development a silt fence will be installed along the south, west, and east property. Along the southern property boundary the silt fence will be installed along the northern side of the 10' easement, therefore providing at least a 10' buffer from the riparian zone and an even larger buffer (ranging from 10' to 20'+) from the regulatory floodplain. Drain inlet protection will also be installed around the existing catch basin that retains the site's drainage. No encroachment into the floodplain or riparian zone will occur during demolition and clearance.</i></p> <p><i>The proposed new construction with respect to the floodplain and riparian zone is best indicated in Civil sheet 3.0, which includes the footprint of the proposed hotel building. The entirety of the hotel will be located outside of the riparian zone, which in turn means no portion of the hotel will be located within the regulatory floodplain. Additionally, the Landscape plan 1.0 indicates that all proposed landscaping for the project will occur outside of the riparian zone.</i></p> <p><i>Drainage improvements will be located outside of the riparian zone, and the portions of the site that are currently covered with asphalt will largely be replaced with landscaping (per the preliminary Landscape Plan), thereby reducing the impervious surface on the subject property.</i></p>

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.88.050(E)2	Preservation or enhancement 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. No construction activities, encroachment or other disturbance into the twenty five foot (25') riparian zone shall be allowed at any time without written City approval per the terms of this ordinance.
			Staff Comments	<i>As described in 17.88.060(E)1, no construction activity, encroachment, or other disturbance is proposed to occur within the riparian zone. The riparian zone is currently in a natural state and the new development is proposed to occur at 10 or more feet from the riparian zone boundary. No enhancement to the riparian zone is proposed at this time.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.88.050(E)3	No development, other than development by the City of Ketchum or development required for emergency access, shall occur within the twenty five foot (25') riparian zone with the exception of approved stream stabilization work. The Administrator 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 Administrator.
			Staff Comments	<i>Consistent with the plans submitted as part of this application, no development is proposed in the riparian zone.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.88.050(E)4	A landscape plan and time frame shall be provided to restore any vegetation within the twenty five foot (25') riparian zone that is degraded, not natural or which does not promote bank stability.
			Staff Comments	<i>As described in 17.88.060(E)1, the riparian zone will be protected during demolition of the existing structures and for the duration of construction of the hotel. A restoration plan is not necessary at this time as disturbance to the riparian zone is not proposed. However, should the riparian zone inadvertently be disturbed, restoration shall be required, with a restoration plan submitted as part of an amendment to this permit.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.88.050(E)5	New or replacement planting and vegetation shall include 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 chokecherry, serviceberry, elderberry, river birch, skunk bush sumac, Beb's willow, Drummond's willow, little wild rose, gooseberry, and honeysuckle.
			Staff Comments	<i>No new or replacement plantings are required or are proposed.</i>

Compliant			Standards and Staff Comments	
Yes	No	N/A	Guideline	City Standards and Staff Comments
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.88.050(E)6	Landscaping and driveway plans to accommodate the function of the floodplain to allow for sheet flooding. Floodwater carrying capacity is not diminished by the proposal. Surface drainage is controlled and shall not adversely impact adjacent properties including driveways drained away from paved roadways. Culvert(s) under driveways may be required. Landscaping berms shall be designed to not dam or otherwise obstruct floodwaters or divert same onto roads or other public pathways.
			Staff Comments	<i>Floodwater carrying capacity is not diminished by the proposal, which will improve site drainage (reduction of pervious surface) and direct all of its drainage to a on-site drywells/catch basins; site drainage shall not drain to Trail Creek. No landscaping berms are proposed and all proposed landscaping and vehicular accesses will be located outside of the floodplain.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.88.050(E)7	Impacts of the development on aquatic life, recreation, or water quality upstream, downstream or across the stream are not adverse.
			Staff Comments	<i>Adverse impacts on aquatic life, recreation, and water quality are not anticipated. The existing riparian zone will remain intact.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.88.050(E)8	Building setback in excess of the minimum required along waterways is encouraged. An additional ten foot (10') building setback is encouraged to provide for yards, decks and patios outside the twenty five foot (25') riparian zone.
			Staff Comments	<i>The required 25' riparian setback is being respected. Further, a 10' wide sewer easement exists beyond the riparian zone and will provide an additional buffer from the waterway.</i>

Compliant			Standards and Staff Comments	
Yes	No	N/A	Guideline	City Standards and Staff Comments
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.88.050(E)9	The top of the lowest floor of a building located in the one percent (1%) annual chance floodplain shall be a minimum of twenty four inches (24") above the base flood elevation of the subject property. (See section 17.88.060, figures 1 and 2 of this chapter.)
			Staff Comments	<i>This standard applies to buildings that are located partially or entirely within the 1% annual chance floodplain. This proposed new development will be located entirely outside of the 1% annual chance floodplain.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.88.050(E)10	The backfill used around the foundation in the floodplain shall provide a reasonable transition to existing grade but shall not be used to fill the parcel to any greater extent. Compensatory storage shall be required for any fill placed within the floodplain. An LOMA-F shall be obtained prior to placement of any additional fill in the floodplain.
			Staff Comments	<i>No fill is proposed in the floodplain; the proposed new development will be located entirely outside of the 1% annual chance floodplain. The standard for backfill around the foundation applies only to buildings that are located partially or entirely within the 1% annual chance floodplain.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.88.050(E)11	All new buildings shall be constructed on foundations that are approved by a licensed professional engineer.
			Staff Comments	<i>This standard applies to buildings that are located partially or entirely within the 1% annual chance floodplain. This proposed new development will be located entirely outside of the 1% annual chance floodplain.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.88.050(E)12	Driveways shall comply with effective street standards; access for emergency vehicles has been adequately provided for.
			Staff Comments	<i>The vehicular access to the hotel (ramp to a parking garage) and lower-level fire access will receive final approval from the Fire Marshal, City Engineer, and Streets Department Director prior to issuance of a building permit.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.88.050(E)13	Landscaping or revegetation shall conceal cuts and fills required for driveways and other elements of the development.
			Staff Comments	<i>A preliminary landscaping plan has been submitted. All area of the site disturbed during construction are proposed to be finished with landscaping.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.88.050(E)14	(Stream alteration) The proposal is shown to be a permanent solution and creates a stable situation.
			Staff Comments	<i>N/A, stream alteration is not proposed.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.88.050(E)15	(Stream alteration) No increase to the one percent (1%) annual chance floodplain upstream or downstream has been certified, with supporting calculations, by a registered Idaho hydraulic engineer.
			Staff Comments	<i>N/A, stream alteration is not proposed.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.88.050(E)16	(Stream alteration) The recreational use of the stream including access along any and all public pedestrian/fisher's easements and the aesthetic beauty shall not be obstructed or interfered with by the proposed work.
			Staff Comments	<i>N/A, stream alteration is not proposed.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.88.050(E)17	Where development is proposed that impacts any wetland, first priority shall be to move development from the wetland area. Mitigation strategies shall be proposed at time of application that replace the impacted wetland area with a comparable amount and/or quality of new wetland area or riparian habitat improvement.
			Staff Comments	<i>James Joyner, Senior Regulatory Project Manager with the U.S. Army Corps of Engineers, Walla Walla District, provided comment that wetlands exist along the southern property boundary, which is Trail Creek. However, staff discussed the location of the proposed development, which will occur only in areas of the site that have already been developed and will be located 35'+ from Trail Creek, with Mr. Joyner. As such, no change to the proposed project is necessary.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.88.050(E)18	(Stream alteration) Fish habitat shall be maintained or improved as a result of the work proposed.
			Staff Comments	<i>N/A, stream alteration is not proposed.</i>

Compliant			Standards and Staff Comments	
Yes	No	N/A	Guideline	City Standards and <i>Staff Comments</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.88.050(E)19	(Stream alteration) The proposed work shall not be 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. <i>Staff Comments</i> N/A, stream alteration is not proposed.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.88.050(E)20	(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. <i>Staff Comments</i> N/A, stream alteration is not proposed.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.88.060.A.1	A. General Standards: In all areas of special flood hazard, the following standards are required: 1. Anchoring: a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. b. All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over the top or frame ties to ground anchors (reference the Federal Emergency Management Agency's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques). <i>Staff Comments</i> N/A. This standard applies to buildings that are located partially or entirely within the 1% annual chance floodplain. This proposed new development will be located entirely outside of the 1% annual chance floodplain.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.88.060.A.2	2. Construction Materials And Methods: a. All structural and nonstructural building materials utilized at or below the base flood elevation must be flood resistant. Flood damage resistant materials must be used for all building elements subject to exposure to floodwaters, including floor joists, insulation, and ductwork. If flood damage resistant materials are not used for building elements, those elements must be elevated above the base flood elevation. This requirement applies regardless of the expected or historical flood duration. b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage. c. Electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding. <i>Staff Comments</i> N/A. This standard applies to buildings that are located partially or entirely within the 1% annual chance floodplain. This proposed new development will be located entirely outside of the 1% annual chance floodplain.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.88.060.A.3	3. Utilities: a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system; b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and c. On site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding. <i>Staff Comments</i> This standard applies to buildings that are located partially or entirely within the 1% annual chance floodplain. This proposed new development will be located entirely outside of the 1% annual chance floodplain
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.88.060.B.3.a	3. Nonresidential Construction: a. New construction and substantial improvement of any commercial, industrial, nonresidential portion of a mixed use or other nonresidential structure in any A1-30, AE and AH zone shall either have the top of the floor structure of the lowest floor, including basement, elevated to twenty four inches (24") above the base flood elevation or, together with attendant utility and sanitary facilities, shall: (1) Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

Compliant			Standards and Staff Comments	
Yes	No	N/A	Guideline	City Standards and <i>Staff Comments</i>
				<p>(2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;</p> <p>(3) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this article based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in subsection 17.88.050D3c(2) of this chapter;</p> <p>(4) Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsection B2c of this section; and</p> <p>(5) Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot (1') below the floodproofed level (e.g., a building constructed to the base flood level will be rated as 1 foot below that level).</p>
			<i>Staff Comments</i>	<i>N/A. This standard applies to buildings that are located partially or entirely within the 1% annual chance floodplain. This proposed new development will be located entirely outside of the 1% annual chance floodplain.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.88.060.B.2.b	<p>b. All new construction and substantial improvement of nonresidential structures within AO zones shall:</p> <p>(1) Have the lowest floor (including basement) elevated above the highest adjacent grade at least twenty four inches (24") higher than the depth number specified in feet on the FIRM; or</p> <p>(2) Together with the attendant utility and sanitary facilities be completely floodproofed to that level to meet the floodproofing standard specified in subsection B3a of this section.</p>
			<i>Staff Comments</i>	<i>N/A. The subject property is in the AE zone, not the AO zone. Further, this standard applies to buildings that are located partially or entirely within the 1% annual chance floodplain. This proposed new development will be located entirely outside of the 1% annual chance floodplain.</i>

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 ordinance, Title 17.
3. The Commission has the authority to hear the applicant's Floodplain Development and Waterways Design Review application pursuant to Chapter 17.88 of Ketchum Municipal Code Title 17.
4. The City of Ketchum Planning Department provided adequate notice of the time, place and summary of the applicant's proposal to be heard by the Commission for review of this application.
5. The project **does** meet the standards of approval under Chapter 17.88 of Zoning Code Title 17.

DECISION

THEREFORE, the Ketchum Planning & Zoning **approves** this application by PEG Ketchum Hotel LLC this Monday, August 12th, 2019, subject to the following conditions:

1. The term of floodplain development permit and waterways design review shall be twelve (12) months from the date that findings of fact, conclusions of law and decision are signed by the Administrator or upon appeal, the date the approval is granted by the Planning and Zoning Commission, subject to changes in zoning regulations. Application must be made for a building permit (if required) with the Ketchum Building Department during the twelve (12) month term. Once a building permit (if required) has been issued, the approval shall be valid for the duration of the building permit. Unless an extension is granted as set forth in KMC 17.88.050.G, failure to file a complete building permit application (if required) for a project in accordance with these provisions shall cause said approval to be null and void.
2. This Waterways Design Review and Floodplain Development Permit approval is based on the plans presented during the July 29th and July 30th 2019 meetings, and information presented and approved at the meeting on the date noted herein. Any building or site discrepancies which do not conform to the approved plans will be subject to removal;
3. Pursuant to Chapter 17.88.040.C, no chemicals or soil sterilants are allowed within 100 feet of the mean high-water mark. No pesticides, herbicides, or fertilizers are allowed within 25 feet of the mean high-water mark unless approved by the City Arborist. All applications of herbicides and/or pesticides within one hundred feet (100') of the mean high-water mark, but not within twenty-five feet (25') of the mean high-water mark, must be done by a licensed applicator and applied at the minimum application rates. Application times for herbicides and/or pesticides will be limited to two (2) times a year; once in the spring and once in the fall unless otherwise approved by the city arborist. The application of dormant oil sprays and insecticidal soap within the riparian zone may be used throughout the growing season as needed;
4. Prior to commencement of any construction activity on the subject parcel the silt fence and inlet protection shall be installed as indicated in civil sheet 2.0;
5. No maintenance, including the mowing, trimming, and removal of vegetation, and no construction activities, encroachment, or disturbance within the riparian zone shall take place without approval through an amendment to this permit, during the time period the permit is in effect, or through approval of a subsequent permit;
6. It shall be unlawful to dump, deposit or otherwise cause any trash, landscape debris or other material to be placed in any stream, channel, ditch, pond or basin that regularly or periodically carries or stores water.

Findings of Fact **adopted** this 12th day of August 2019.



Neil Morrow, Chair
Ketchum Planning & Zoning Commission

Attachment E.2.A – Preliminary Plat Findings



**City of Ketchum
Planning & Building**

IN RE:)	
)	
PEG Ketchum Hotel, LLC	)	KETCHUM CITY COUNCIL
Lot 3A, Block 82	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND
Subdivision	)	DECISION
)	
File Number: 19-064)	
)	

BACKGROUND FACTS

PROJECT: Lot 3A, Block 82, Ketchum Townsite

OWNER: PEG Ketchum Hotel LLC

REPRESENTATIVE: Galena Engineering

REQUEST: The applicant proposes to combine three parcels (251 S. Main Street – Ketchum Townsite Lots 3, 21, FR 22 Blk 82 N 10’ x 110’ of alley S 20’ x 230’ of alley, 260 E. River Street – Ketchum Townsite Lot 2 Block 82 10’ x 110’ of alley, and 280 E. River Street – Ketchum Townsite Lot 1 Block 82) into one lot, referenced herein as Lot 3A, Block 82, Ketchum Townsite (“new Lot 3A”).

PUBLIC NOTICE: Legal notice with the city’s newspaper of record and for adjoining landowners within 300’ was in compliance with the 15 day and 10 day notice requirements. Notice to neighbors and political subdivisions and publication in the *Idaho Mountain Express* occurred on 19/18/19. On-site notice posting on the premises occurred on 9/30/19.

ZONING: The property is zoned Tourist (T) with Floodplain/Waterways Design Review overlay.

FINDINGS OF FACT

1. The applicant proposes to combine three parcels into a new Lot 3A, Block 82, Ketchum Townsite.
2. The proposal is subject to the City Subdivision requirements as set forth in Title 16, Chapter 16.04 of the Ketchum Municipal Code (“KMC”).

3. The application meets the definition of “readjustment of lot line” as set forth in Title 16, Chapter 16.04.030.L.
4. Applicant has submitted a Master Plan as part of its Planned Unit Development application, pursuant to Title 16, Chapter 16.08. Subject Master Plan includes a request for waiver or deferral of requirements (KMC §16.08.070.F).
5. Consistent with §16.08.070.F, Applicant requests city allow building permit issuance prior to final plat recordation and defer the requirements of KMC §16.04.030.H, which states that “No building permit shall be issued with regard to any parcel of land within a proposed subdivision until the final plat has been recorded.”
6. As set forth in the Applicant’s PUD application and Master Plan, waivers are requested to the following dimensional standard provisions: side yard setbacks, height requirements, and floor area ratio.
7. Details of the Applicant’s Master Plan are set forth in Attachment B. Included in Attachment B is Galena Engineers plat map showing a new Lot 3A, which combines the three existing lots owned by the Applicant within Block 82 of the Ketchum Townsite Plat into one larger lot. Subject map was prepared by Galena Engineers and was stamped by Mark Phillips on 6/12/2019.
8. New Lot 3A is 47,249 square feet and exceeds the minimum Tourist zone lot size of 8,000 square feet. Further, the property exceeds the eighty-foot (80’) minimum lot width established for the Tourist zone and includes the required twenty-five foot (25’) Riparian and Scenic Easement from the Ordinary High Water Mark (“OHWM”) established by the KMC for building setbacks along Trail Creek.
9. The following provides the Ketchum City Council’s findings regarding the new Lot 3A subdivision plat within the City.

Table 1: Zoning Standards Analysis

Compliance with Zoning Standards				
Compliant			Standards and Staff Comments	
Yes	No	N/A	Guideline	City Standards and Staff Comments
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.12.030	Minimum Lot Area: 9,000 square feet minimum.
			<i>Staff Comment</i>	<i>New Lot 3A is 47,249 square feet</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.12.030	Building Coverage
			<i>Staff Comment</i>	<i>A Planned Unit Development Application, pursuant to Title 16, Chapter 16.08 Project proposes a waiver to the FAR requirements consistent with KMC §17.124040 and, subject to approval of the PUD application with conditions, complies with this zoning standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.12.030	Minimum Building Setbacks Minimum: <i>Front: 15’</i> <i>Side: > of 1’ for every 2’ in building height, or 10’, whichever is greater</i> <i>Trail Creek/Rear: 25’</i>

				State Highway 75: 25' to 32' (varies)
			<i>Staff Comment</i>	The Project proposes a waiver to the side yard setback requirements and, subject to approval of the PUD application with conditions, complies with this provision of the Tourist zoning standard.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.12.030	Building Height Maximum Permitted: 35' or greater for hotels
			<i>Staff Comment</i>	The Project proposes a waiver to the height/4-story Tourist zone requirements for hotels and, subject to approval of the PUD application with conditions, complies with this zoning standard
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.125.030.H	Curb Cut Permitted: A total of 35% of the linear footage of any street frontage can be devoted to access off street parking.
			<i>Staff Comment</i>	There are no curb cuts proposed along State Highway 75. The new configuration results in < 35% of the linear footage of street frontage devoted to access the off street parking within the parking garage.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.125.020.A.2 & 17.125.050	Parking Spaces Off-street parking standards of this chapter apply to any new development and to any new established uses.
			<i>Staff Comment</i>	As analyzed by staff and consistent with §17.125 of the KMC, the Project has adequate parking for the proposed uses on the property.

Table 2: Plat Requirements

Plat Requirements				
Compliant			Standards and Staff Comments	
Yes	No	N/A	City Code	City Standards and <i>Staff Comments</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.C.1	The subdivider shall file with the administrator copies of the completed subdivision application form and preliminary plat data as required by this chapter.
			<i>Staff Comments</i>	The application has been reviewed and determined to be complete.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I	Contents Of Preliminary Plat: The preliminary plat, together with all application forms, title insurance report, deeds, maps, and other documents reasonably required, shall constitute a complete subdivision application. The preliminary plat shall be drawn to a scale of not less than one inch equals one hundred feet (1" = 100') and shall show the following:
			<i>Staff Comments</i>	All required materials for the Subdivision Plat application have been submitted.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .1	The scale, north point and date.
			<i>Staff Comments</i>	This standard has been met.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .2	The name of the proposed subdivision, which shall not be the same or confused with the name of any other subdivision in Blaine County, Idaho.
			<i>Staff Comments</i>	This standard has been met.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .3	The name and address of the owner of record, the subdivider, and the engineer, surveyor, or other person preparing the plat.
			<i>Staff Comments</i>	This standard shall be met with the Final Plat with the signed Certificate of Ownership.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .4	Legal description of the area platted.
			<i>Staff Comments</i>	This standard has been met.

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .5	The names and the intersecting boundary lines of adjoining subdivisions and parcels of property.
			<i>Staff Comments</i>	<i>This standard has been met.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .6	A contour map of the subdivision with contour lines and a maximum interval of five feet (5') to show the configuration of the land based upon the United States geodetic survey data, or other data approved by the city engineer.
			<i>Staff Comments</i>	<i>This standard has been met. The Subdivision Plat indicates contour lines at 1 ft intervals.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I.7	The scaled location of existing buildings, water bodies and courses and location of the adjoining or immediately adjacent dedicated streets, roadways and easements, public and private.
			<i>Staff Comments</i>	<i>This standard has been met.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .8	Boundary description and the area of the tract.
			<i>Staff Comments</i>	<i>The legal description appears on the Plat.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .9	Existing zoning of the tract.
			<i>Staff Comments</i>	<i>Each of the affected lots are located in the Tourist Zoning District.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .10	The proposed location of street rights of way, lots, and lot lines, easements, including all approximate dimensions, and including all proposed lot and block numbering and proposed street names.
			<i>Staff Comments</i>	<i>Subject items are reflected on the plat.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.I .11	The location, approximate size and proposed use of all land intended to be dedicated for public use or for common use of all future property owners within the proposed subdivision.
				<i>No land for common or public use is required or proposed.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .12	The location, size and type of sanitary and storm sewers, water mains, culverts and other surface or subsurface structures existing within or immediately adjacent to the proposed sanitary or storm sewers, water mains, and storage facilities, street improvements, street lighting, curbs, and gutters and all proposed utilities.
			<i>Staff Comments</i>	<i>The plat indicates the existing locations of all utilities. An encroachment permit will be required for all improvements to public right of way. A full utility plan will be required prior to final plat recordation and infrastructure construction.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .13	The direction of drainage, flow and approximate grade of all streets.
			<i>Staff Comments</i>	<i>These details are indicated. An encroachment permit will be required for all improvements to public right of way. A full utility plan will be required prior to final plat recordation and infrastructure construction.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .14	The location of all drainage canals and structures, the proposed method of disposing of runoff water, and the location and size of all drainage easements, whether they are located within or outside of the proposed plat.
			<i>Staff Comments</i>	<i>Drainage infrastructure exists within Idaho Transportation Department (ITD) right of way (ROW) near the SE corner of the property. This and related infrastructure are shown on the plat, including a drywell easement (instrument #440075) and two sanitary sewer easement (instrument #130085 and 130089). Also, a proposed new twenty-five foot (25') riparian and scenic easement is shown on the plat. Any work in this area is subject to separate floodplain rules and regulations.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .15	All percolation tests and/or exploratory pit excavations required by state health authorities.
			<i>Staff Comments</i>	<i>Applicant has submitted results of percolation and related tests.</i>

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.I .16	A copy of the provisions of the articles of incorporation and bylaws of homeowners' association and/or condominium declarations to be filed with the final plat of the subdivision.
			<i>Staff Comments</i>	<i>N/A</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .17	Vicinity map drawn to approximate scale showing the location of the proposed subdivision in reference to existing and/or proposed arterials and collector streets.
			<i>Staff Comments</i>	<i>This has been provided.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .18	The boundaries of the floodplain, floodway and avalanche zoning district shall also be clearly delineated and marked on the preliminary plat.
			<i>Staff Comments</i>	<i>New Lot 3A is located within the City's Floodplain Overlay District. The applicant has included an easement on the plat to protect this area.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .19	Building envelopes shall be shown on each lot, all or part of which is within a floodway, floodplain, or avalanche zone; or any lot that is adjacent to the Big Wood River, Trail Creek, or Warm Springs Creek; or any lot, a portion of which has a slope of twenty five percent (25%) or greater; or upon any lot which will be created adjacent to the intersection of two (2) or more streets.
			<i>Staff Comments</i>	<i>KMC §16.040.020 defines Building Envelope as, "the site for location of a structure delineated on a preliminary plat and final plat within which the entire building must be constructed. A building envelope shall conform to all minimum zoning ordinance requirements and requirements of this chapter." This application is a minor amendment to shift an interior boundary line in order to for the Applicant to not build over existing lot lines. Applicant has shown a new easement to assure no building is constructed within 25' of Trail Creek. A building envelope ("BE") will be reflected on the final plat consistent with the approved final Agreement for the Project. Subject BE will reflect the Council's final approval on corner lot radii sight line requirements and side yard setbacks. The BE shall not encroach within 25' of Trail Creek or the edge of ITD ROW.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .20	Lot area of each lot.
			<i>Staff Comments</i>	<i>The areas of each lot are indicated on the Plat.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .21	Existing mature trees and established shrub masses.
			<i>Staff Comments</i>	<i>Existing mature trees and established shrub masses exist on the Property. Subject vegetation along Trail Creek helps provide important habitat and benefits to the stream. Mature trees along River Street provide a visual buffer for the old, dilapidated structures. A landscaping plan has been submitted for the Project, as well as a separate Floodplain Development Permit. The removal of existing mature trees and/or established shrub masses is subject to approval and adoption of the Applicant's landscape plan through the Design Review and/or Floodplain Development Permit process.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .22	A current title report shall be provided at the time that the preliminary plat is filed with the administrator, together with a copy of the owner's recorded deed to such property.
			<i>Staff Comments</i>	<i>A current title report and a copy of the both owners' recorded deed to the subject properties were included in the Plat application submittal.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .23	Three (3) copies of the preliminary plat shall be filed with the administrator.
			<i>Staff Comments</i>	<i>A digital copy for reproduction was submitted with the application. Therefore, Staff required only one (1) full size copy of the preliminary plat.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.A	Required Improvements: The improvements set forth in this section shall be shown on the preliminary plat and installed prior to approval of the final plat.

				<p>Construction design plans shall be submitted and approved by the city engineer. All such improvements shall be in accordance with the comprehensive plan and constructed in compliance with construction standard specifications adopted by the city. Existing natural features which enhance the attractiveness of the subdivision and community, such as mature trees, watercourses, rock outcroppings, established shrub masses and historic areas, shall be preserved through design of the subdivision.</p>
			Staff Comments	<p>The property is served by city water and sewer services, as well as other public and private utilities (TV, gas, electric, etc). Also serving new Lot 3A is an existing six-foot (6') wide sidewalk within ITD ROW. Subject sidewalk width is less than the current eight-foot (8') wide city sidewalk standard. Further, no sidewalks exist for the Property along River Street, which also has an eight-foot (8') wide sidewalk requirement. An encroachment permit from ITD as well as the City will be required for all improvements to public right of way, including the construction of a sidewalk not less than eight-feet (8') in width along River Street. As a condition of Plat approval, subject sidewalk shall be installed prior to final plat recordation unless otherwise approved by the Ketchum City Council.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.B	<p>Improvement Plans: Prior to approval of final plat by the commission, the subdivider shall file two (2) copies with the city engineer, and the city engineer shall approve construction plans for all improvements required in the proposed subdivision. Such plans shall be prepared by a civil engineer licensed in the state.</p>
			Staff Comments	<p>Subject plans are required.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.C	<p>Prior to final plat approval, the subdivider shall have previously constructed all required improvements and secured a certificate of completion from the city engineer. However, in cases where the required improvements cannot be constructed due to weather conditions or other factors beyond the control of the subdivider, the city council may accept, in lieu of any or all of the required improvements, a performance bond filed with the city clerk to ensure actual construction of the required improvements as submitted and approved. Such performance bond shall be issued in an amount not less than one hundred fifty percent (150%) of the estimated costs of improvements as determined by the city engineer. In the event the improvements are not constructed within the time allowed by the city council (which shall be one year or less, depending upon the individual circumstances), the council may order the improvements installed at the expense of the subdivider and the surety. In the event the cost of installing the required improvements exceeds the amount of the bond, the subdivider shall be liable to the city for additional costs. The amount that the cost of installing the required improvements exceeds the amount of the performance bond shall automatically become a lien upon any and all property within the subdivision owned by the owner and/or subdivider.</p>
			Staff Comments	<p>Subject plans and sidewalk improvement is required.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.D	<p>As Built Drawing: Prior to acceptance by the city council of any improvements installed by the subdivider, two (2) sets of as built plans and specifications, certified by the subdivider's engineer, shall be filed with the city engineer. Within ten (10) days after completion of improvements and submission of as built drawings, the city engineer shall certify the completion of the improvements and the acceptance of the improvements, and shall submit a copy of such certification to the administrator and the subdivider. If a performance bond has been filed, the administrator shall forward a copy of the certification</p>

				to the city clerk. Thereafter, the city clerk shall release the performance bond upon application by the subdivider.
				<i>Subject plans are required.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.E	<p>Monumentation: Following completion of construction of the required improvements and prior to certification of completion by the city engineer, certain land survey monuments shall be reset or verified by the subdivider's engineer or surveyor to still be in place. These monuments shall have the size, shape, and type of material as shown on the subdivision plat. The monuments shall be located as follows:</p> <ol style="list-style-type: none"> 1. All angle points in the exterior boundary of the plat. 2. All street intersections, points within and adjacent to the final plat. 3. All street corner lines ending at boundary line of final plat. 4. All angle points and points of curves on all streets. 5. The point of beginning of the subdivision plat description.
			<i>Staff Comments</i>	<i>Monumentation required.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.F	<p>Lot Requirements:</p> <ol style="list-style-type: none"> 1. Lot size, width, depth, shape and orientation and minimum building setback lines shall be in compliance with the zoning district in which the property is located and compatible with the location of the subdivision and the type of development, and preserve solar access to adjacent properties and buildings. 2. Whenever a proposed subdivision contains lot(s), in whole or in part, within the floodplain, or which contains land with a slope in excess of twenty five percent (25%), based upon natural contours, or creates corner lots at the intersection of two (2) or more streets, building envelopes shall be shown for the lot(s) so affected on the preliminary and final plats. The building envelopes shall be located in a manner designed to promote harmonious development of structures, minimize congestion of structures, and provide open space and solar access for each lot and structure. Also, building envelopes shall be located to promote access to the lots and maintenance of public utilities, to minimize cut and fill for roads and building foundations, and minimize adverse impact upon environment, watercourses and topographical features. Structures may only be built on buildable lots. Lots shall only be created that meet the definition of "lot, buildable" in section 16.04.020 of this chapter. Building envelopes shall be established outside of hillsides of twenty five percent (25%) and greater and outside of the floodway. A waiver to this standard may only be considered for the following: <ol style="list-style-type: none"> a. For lot line shifts of parcels that are entirely within slopes of twenty five percent (25%) or greater to create a reasonable building envelope, and mountain overlay design review standards and all other city requirements are met. b. For small, isolated pockets of twenty five percent (25%) or greater that are found to be in compliance with the purposes and standards of the mountain overlay district and this section. 3. Corner lots shall have a property line curve or corner of a minimum radius of twenty five feet (25') unless a longer radius is required to serve an existing or future use. 4. Side lot lines shall be within twenty degrees (20°) to a right angle or radial line to the street line. 5. Double frontage lots shall not be created. A planting strip shall be provided along the boundary line of lots adjacent to arterial streets or incompatible

				<p>zoning districts. Should a double frontage lot(s) be created out of necessity, then such lot(s) shall be reversed frontage lot(s).</p> <p>6. Minimum lot sizes in all cases shall be reversed frontage lot(s).</p> <p>7. Every lot in a subdivision shall have a minimum of twenty feet (20') of frontage on a dedicated public street or legal access via an easement of twenty feet (20') or greater in width. Easement shall be recorded in the office of the Blaine County recorder prior to or in conjunction with recordation of the final plat.</p>
			<i>Staff Comments</i>	<p><i>The Project complies with each of these requirements. A building envelope ("BE") will be reflected on the final plat consistent with the approved final Agreement for the Project. Subject BE will reflect the Council's final approval on FAR , corner lot radii sight line requirements, and front/side yard setbacks. The BE shall not encroach within 25' of Trail Creek or the edge of ITD ROW.</i></p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.G	<p>G. Block Requirements: The length, width and shape of blocks within a proposed subdivision shall conform to the following requirements:</p> <ol style="list-style-type: none"> 1. No block shall be longer than one thousand two hundred feet (1,200'), nor less than four hundred feet (400') between the street intersections, and shall have sufficient depth to provide for two (2) tiers of lots. 2. Blocks shall be laid out in such a manner as to comply with the lot requirements. 3. The layout of blocks shall take into consideration the natural topography of the land to promote access within the subdivision and minimize cuts and fills for roads and minimize adverse impact on environment, watercourses and topographical features. 4. Corner lots shall contain a building envelope outside of a seventy-five foot (75') radius from the intersection of the streets.
			<i>Staff Comments</i>	<p><i>This application does not create a new block. This requirement is not applicable. Notwithstanding, a Building Envelope ("BE") will be reflected on the final plat consistent with the approved final Agreement for the Project. Subject BE will reflect the Council's final approval on corner lot radii sight line requirements.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.H	<p>Street Improvement Requirements:</p> <ol style="list-style-type: none"> 1. The arrangement, character, extent, width, grade and location of all streets put in the proposed subdivision shall conform to the comprehensive plan and shall be considered in their relation to existing and planned streets, topography, public convenience and safety, and the proposed uses of the land; 2. All streets shall be constructed to meet or exceed the criteria and standards set forth in chapter 12.04 of this code, and all other applicable ordinances, resolutions or regulations of the city or any other governmental entity having jurisdiction, now existing or adopted, amended or codified; 3. Where a subdivision abuts or contains an existing or proposed arterial street, railroad or limited access highway right of way, the council may require a frontage street, planting strip, or similar design features; 4. Streets may be required to provide access to adjoining lands and provide proper traffic circulation through existing or future neighborhoods; 5. Street grades shall not be less than three-tenths percent (0.3%) and not more than seven percent (7%) so as to provide safe movement of traffic and emergency vehicles in all weather and to provide for adequate drainage and snow plowing;

			<p>6. In general, partial dedications shall not be permitted, however, the council may accept a partial street dedication when such a street forms a boundary of the proposed subdivision and is deemed necessary for the orderly development of the neighborhood, and provided the council finds it practical to require the dedication of the remainder of the right of way when the adjoining property is subdivided. When a partial street exists adjoining the proposed subdivision, the remainder of the right of way shall be dedicated;</p> <p>7. Dead end streets may be permitted only when such street terminates at the boundary of a subdivision and is necessary for the development of the subdivision or the future development of the adjacent property. When such a dead end street serves more than two (2) lots, a temporary turnaround easement shall be provided, which easement shall revert to the adjacent lots when the street is extended;</p> <p>8. A cul-de-sac, court or similar type street shall be permitted only when necessary to the development of the subdivision, and provided, that no such street shall have a maximum length greater than four hundred feet (400') from entrance to center of turnaround, and all cul-de-sacs shall have a minimum turnaround radius of sixty feet (60') at the property line and not less than forty five feet (45') at the curb line;</p> <p>9. Streets shall be planned to intersect as nearly as possible at right angles, but in no event at less than seventy degrees (70°);</p> <p>10. Where any street deflects an angle of ten degrees (10°) or more, a connecting curve shall be required having a minimum centerline radius of three hundred feet (300') for arterial and collector streets, and one hundred twenty five feet (125') for minor streets;</p> <p>11. Streets with centerline offsets of less than one hundred twenty five feet (125') shall be prohibited;</p> <p>12. A tangent of at least one hundred feet (100') long shall be introduced between reverse curves on arterial and collector streets;</p> <p>13. Proposed streets which are a continuation of an existing street shall be given the same names as the existing street. All new street names shall not duplicate or be confused with the names of existing streets within Blaine County, Idaho. The subdivider shall obtain approval of all street names within the proposed subdivision from the commission before submitting same to council for preliminary plat approval;</p> <p>14. Street alignment design shall follow natural terrain contours to result in safe streets, usable lots, and minimum cuts and fills;</p> <p>15. Street patterns of residential areas shall be designed to create areas free of through traffic, but readily accessible to adjacent collector and arterial streets;</p> <p>16. Reserve planting strips controlling access to public streets shall be permitted under conditions specified and shown on the final plat, and all landscaping and irrigation systems shall be installed as required improvements by the subdivider;</p> <p>17. In general, the centerline of a street shall coincide with the centerline of the street right of way, and all crosswalk markings shall be installed by the subdivider as a required improvement;</p> <p>18. Street lighting may be required by the commission or council where appropriate and shall be installed by the subdivider as a requirement improvement;</p>
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				<p>19. Private streets may be allowed upon recommendation by the commission and approval by the council. Private streets shall be constructed to meet the design standards specified in subsection H2 of this section;</p> <p>20. Street signs shall be installed by the subdivider as a required improvement of a type and design approved by the administrator and shall be consistent with the type and design of existing street signs elsewhere in the city;</p> <p>21. Whenever a proposed subdivision requires construction of a new bridge, or will create substantial additional traffic which will require construction of a new bridge or improvement of an existing bridge, such construction or improvement shall be a required improvement by the subdivider. Such construction or improvement shall be in accordance with adopted standard specifications;</p> <p>22. Sidewalks, curbs and gutters may be a required improvement installed by the subdivider; and</p> <p>23. Gates are prohibited on private roads and parking access/entranceways, private driveways accessing more than one single-family dwelling unit and one accessory dwelling unit, and public rights of way unless approved by the city council.</p>
			<i>Staff Comments</i>	<i>The Project does not create a new street. With the exception of Street lighting these standards are not applicable. Street lighting in compliance with City standards is required of the Applicant consistent with this standard.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.I	<p>Alley Improvement Requirements: Alleys shall be provided in business, commercial and light industrial zoning districts. The width of an alley shall be not less than twenty feet (20'). Alley intersections and sharp changes in alignment shall be avoided, but where necessary, corners shall be provided to permit safe vehicular movement. Dead end alleys shall be prohibited. Improvement of alleys shall be done by the subdivider as required improvement and in conformance with design standards specified in subsection H2 of this section.</p>
			<i>Staff Comments</i>	<i>This proposal does not create a new alley. This standard is not applicable.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.J	<p>Required Easements: Easements, as set forth in this subsection, shall be required for location of utilities and other public services, to provide adequate pedestrian circulation and access to public waterways and lands.</p> <p>1. A public utility easement at least ten feet (10') in width shall be required within the street right of way boundaries of all private streets. A public utility easement at least five feet (5') in width shall be required within property boundaries adjacent to Warm Springs Road and within any other property boundary as determined by the city engineer to be necessary for the provision of adequate public utilities.</p> <p>2. Where a subdivision contains or borders on a watercourse, drainageway, channel or stream, an easement shall be required of sufficient width to contain such watercourse and provide access for private maintenance and/or reconstruction of such watercourse.</p> <p>3. All subdivisions which border the Big Wood River, Trail Creek and Warm Springs Creek shall dedicate a ten foot (10') fish and nature study easement along the riverbank. Furthermore, the council shall require, in appropriate areas, an easement providing access through the subdivision to the bank as a sportsman's access. These easement requirements are minimum standards, and in appropriate cases where a subdivision abuts a portion of the river adjacent to an existing pedestrian easement, the council may require an extension of that</p>

				<p>easement along the portion of the riverbank which runs through the proposed subdivision.</p> <p>4. All subdivisions which border on the Big Wood River, Trail Creek and Warm Springs Creek shall dedicate a twenty five foot (25') scenic easement upon which no permanent structure shall be built in order to protect the natural vegetation and wildlife along the riverbank and to protect structures from damage or loss due to riverbank erosion.</p> <p>5. No ditch, pipe or structure for irrigation water or irrigation wastewater shall be constructed, rerouted or changed in the course of planning for or constructing required improvements within a proposed subdivision unless same has first been approved in writing by the ditch company or property owner holding the water rights. A written copy of such approval shall be filed as part of required improvement construction plans.</p> <p>6. Nonvehicular transportation system easements including pedestrian walkways, bike paths, equestrian paths, and similar easements shall be dedicated by the subdivider to provide an adequate nonvehicular transportation system throughout the city.</p>
			<i>Staff Comments</i>	<i>A ten-foot (10') fishermen's easement needs to be shown on the plat in accordance with subsection 3 herein. The required twenty-five foot (25') riparian and scenic easement along Trail Creek is established in accordance with subsection 4. Standards #1,2, 5 & 6 are not applicable.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.K	<p>Sanitary Sewage Disposal Improvements: Central sanitary sewer systems shall be installed in all subdivisions and connected to the Ketchum sewage treatment system as a required improvement by the subdivider. Construction plans and specifications for central sanitary sewer extension shall be prepared by the subdivider and approved by the city engineer, council and Idaho health department prior to final plat approval. In the event that the sanitary sewage system of a subdivision cannot connect to the existing public sewage system, alternative provisions for sewage disposal in accordance with the requirements of the Idaho department of health and the council may be constructed on a temporary basis until such time as connection to the public sewage system is possible. In considering such alternative provisions, the council may require an increase in the minimum lot size and may impose any other reasonable requirements which it deems necessary to protect public health, safety and welfare.</p>
			<i>Staff Comments</i>	<i>N/A as the existing development connects to the public sewage system.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.L	<p>Water System Improvements: A central domestic water distribution system shall be installed in all subdivisions by the subdivider as a required improvement. The subdivider shall also be required to locate and install an adequate number of fire hydrants within the proposed subdivision according to specifications and requirements of the city under the supervision of the Ketchum fire department and other regulatory agencies having jurisdiction. Furthermore, the central water system shall have sufficient flow for domestic use and adequate fire flow. All such water systems installed shall be looped extensions, and no dead end systems shall be permitted. All water systems shall be connected to the municipal water system and shall meet the standards of the following agencies: Idaho department of public health, Idaho survey and rating bureau, district sanitarian, Idaho state public utilities commission, Idaho department of reclamation, and all requirements of the city.</p>
			<i>Staff Comments</i>	<i>N/A as water system improvements are existing.</i>

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.M	<p>Planting Strip Improvements: Planting strips shall be required improvements. When a predominantly residential subdivision is proposed for land adjoining incompatible uses or features such as highways, railroads, commercial or light industrial districts or off street parking areas, the subdivider shall provide planting strips to screen the view of such incompatible features. The subdivider shall submit a landscaping plan for such planting strip with the preliminary plat application, and the landscaping shall be a required improvement.</p>
			<i>Staff Comments</i>	<i>This standard is not applicable.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.N	<p>Cuts, Fills, And Grading Improvements: Proposed subdivisions shall be carefully planned to be compatible with natural topography, soil conditions, geology and hydrology of the site, as well as to minimize cuts, fills, alterations of topography, streams, drainage channels, and disruption of soils and vegetation. The design criteria shall include the following:</p> <ol style="list-style-type: none"> 1. A preliminary soil report prepared by a qualified engineer may be required by the commission and/or council as part of the preliminary plat application. 2. Preliminary grading plan prepared by a civil engineer shall be submitted as part of all preliminary plat applications. Such plan shall contain the following information: <ol style="list-style-type: none"> a. Proposed contours at a maximum of five foot (5') contour intervals. b. Cut and fill banks in pad elevations. c. Drainage patterns. d. Areas where trees and/or natural vegetation will be preserved. e. Location of all street and utility improvements including driveways to building envelopes. f. Any other information which may reasonably be required by the administrator, commission or council to adequately review the affect of the proposed improvements. 3. Grading shall be designed to blend with natural landforms and to minimize the necessity of padding or terracing of building sites, excavation for foundations, and minimize the necessity of cuts and fills for streets and driveways. 4. Areas within a subdivision which are not well suited for development because of existing soil conditions, steepness of slope, geology or hydrology shall be allocated for open space for the benefit of future property owners within the subdivision. 5. Where existing soils and vegetation are disrupted by subdivision development, provision shall be made by the subdivider for revegetation of disturbed areas with perennial vegetation sufficient to stabilize the soil upon completion of the construction. Until such times as such revegetation has been installed and established, the subdivider shall maintain and protect all disturbed surfaces from erosion. 6. Where cuts, fills, or other excavations are necessary, the following development standards shall apply: <ol style="list-style-type: none"> a. Fill areas shall be prepared by removing all organic material detrimental to proper compaction for soil stability. b. Fills shall be compacted to at least ninety five percent (95%) of maximum density as determined by AASHO T99 (American Association of State Highway Officials) and ASTM D698 (American standard testing methods).

				<p>c. Cut slopes shall be no steeper than two horizontal to one vertical (2:1). Subsurface drainage shall be provided as necessary for stability.</p> <p>d. Fill slopes shall be no steeper than three horizontal to one vertical (3:1). Neither cut nor fill slopes shall be located on natural slopes of three to one (3:1) or steeper, or where fill slope toes out within twelve feet (12') horizontally of the top and existing or planned cut slope.</p> <p>e. Toes of cut and fill slopes shall be set back from property boundaries a distance of three feet (3'), plus one-fifth (1/5) of the height of the cut or the fill, but may not exceed a horizontal distance of ten feet (10'); tops and toes of cut and fill slopes shall be set back from structures at a distance of at least six feet (6'), plus one-fifth (1/5) of the height of the cut or the fill. Additional setback distances shall be provided as necessary to accommodate drainage features and drainage structures.</p>
			Staff Comments	<i>The Applicant has submitted a soils report and landscaping plan for the Project. As conditioned herein, prior to grading occurring on the new Lot 3A, City approval of the Applicant's grading, drainage and landscaping construction drawings is required. Subject construction drawings shall be consistent in concept with approved Design Review, Encroachment Permit, and related drawings.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.O	Drainage Improvements: The subdivider shall submit with the preliminary plat application such maps, profiles, and other data prepared by an engineer to indicate the proper drainage of the surface water to natural drainage courses or storm drains, existing or proposed. The location and width of the natural drainage courses shall be shown as an easement common to all owners within the subdivision and the city on the preliminary and final plat. All natural drainage courses shall be left undisturbed or be improved in a manner that will increase the operating efficiency of the channel without overloading its capacity. An adequate storm and surface drainage system shall be a required improvement in all subdivisions and shall be installed by the subdivider. Culverts shall be required where all water or drainage courses intersect with streets, driveways or improved public easements and shall extend across and under the entire improved width including shoulders.
			Staff Comments	<i>Prior to grading occurring on the new Lot 3A, City approval of the Applicant's grading, drainage and landscaping construction drawings is required. Subject construction drawings shall be consistent in concept with approved Design Review, Encroachment Permit, and related drawings.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.P	Utilities: In addition to the terms mentioned in this section, all utilities including, but not limited to, electricity, natural gas, telephone and cable services shall be installed underground as a required improvement by the subdivider. Adequate provision for expansion of such services within the subdivision or to adjacent lands including installation of conduit pipe across and underneath streets shall be installed by the subdivider prior to construction of street improvements.
			Staff Comments	<i>N/A as the subject property is served by existing utilities.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.Q	Off Site Improvements: Where the offsite impact of a proposed subdivision is found by the commission or council to create substantial additional traffic, improvements to alleviate that impact may be required of the subdivider prior to final plat approval, including, but not limited to, bridges, intersections, roads, traffic control devices, water mains and facilities, and sewer mains and facilities.
			Staff Comments	<i>No off-site improvements are required as a condition of platting new Lot 3A.</i>

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 subdivision ordinance, Title 16.
3. The City of Ketchum Planning Department provided adequate notice of the time, place and summary of the applicant's proposal to be heard by the Council for review of this application.
4. The proposed plat does meet the standards of approval under Title 16, Chapter 16.04, subject to conditions of approval.
5. Approval is granted for the combination of three parcels (251 S. Main Street – Ketchum Townsite Lots 3, 21, FR 22 Blk 82 N 10' x 110' of alley S 20' x 230' of alley, 260 E. River Street – Ketchum Townsite Lot 2 Block 82 10' x 110' of alley, and 280 E. River Street – Ketchum Townsite Lot 1 Block 82) into one lot, referenced as Lot 3A, Block 82, Ketchum Townsite, as stamped by Mark Phillips with Galena Engineers on 6/12/2019.

DECISION

THEREFORE, the Ketchum Planning & Zoning **recommends for approval** to the Ketchum City Council the request of PEG Ketchum Hotel LLC to reconfigure subject lots as depicted on the 6/12/2019 Plat prepared by Galena Engineers consistent with the following fifteen (15) conditions of approval.

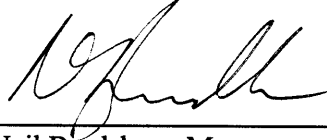
1. Subject to City Council approval of the Master Plan and PUD, including deferment of the final plat Time Limitations set forth in KMC §16.04.030.H, the Applicant may be issued a building permit prior to final plat recordation and shall record the new Lot 3A plat concurrently with a Certificate of Occupancy being issued by the City for the Project;
2. The recorded plat shall show a minimum of two Blaine County Survey Control Monuments with ties to the property and an inverse between the two monuments. The Survey Control Monuments shall be clearly identified on the face of the map;
3. An electronic CAD file shall be submitted to the City of Ketchum prior to final plat signature by the City Clerk. The electronic CAD file shall be submitted to the Blaine County Recorder's office concurrent with the recording of the Plat containing the following minimum data:
 - a. Line work delineating all parcels and roadways on a CAD layer/level designated as "parcel";
 - b. Line work delineating all roadway centerlines on a CAD layer/level designated as "road"; and,
 - c. Line work that reflects the ties and inverses for the Survey Control Monuments shown on the face of the Plat shall be shown on a CAD layer/level designated as "control";
4. All information within the electronic file shall be oriented and scaled to Grid per the Idaho State Plane Coordinate System, Central Zone, NAD1983 (1992), U.S. Survey Feet, using the Blaine

County Survey Control Network. Electronic CAD files shall be submitted in a “.dwg”, “.dgn” or “.shp” format and shall be submitted digitally to the City on a compact disc. When the endpoints of the lines submitted are indicated as coincidental with another line, the CAD line endpoints shall be separated by no greater than 0.0001 drawing units;

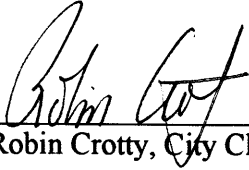
5. The applicant shall provide a copy of the recorded final plat with its recorded instrument number to the Department of Planning and Building for the official file on the application;
6. All requirements of the Fire, Utility, Building, Planning and Public Works departments of the City of Ketchum shall be met. All public improvements shall meet the requirements of the Public Works Department;
7. All other provisions of Ketchum Municipal Code, Chapter 16, Subdivision Regulations, and all applicable ordinances rules and regulations of the city and other governmental entities having jurisdiction shall be complied with by the subdivision;
8. The Project proposes waivers to the side yard setbacks, floor area ratio and height requirements and, subject to approval of the PUD application with conditions, complies with each of the Tourist Zone dimensional standards for hotels;
9. An encroachment permit will be required for all improvements to public right of way. A full utility plan will be required prior to final plat recordation and infrastructure construction;
10. A twenty-five foot (25') riparian and scenic easement is shown on the plat. Any work in this area is subject to separate floodplain rules and regulations;
11. A ten-foot (10') fishermen's easement adjacent to the OHWM of Trail Creek needs to be shown and recorded on the plat;
12. A Building Envelope (“BE”) will be reflected on the final plat consistent with the approved final Agreement for the Project. Subject BE will reflect the Council's final approval on FAR, corner lot radii sight line requirements, and side yard setbacks. The BE shall not encroach within 25' of Trail Creek or the edge of ITD ROW;
13. The removal of existing mature trees and/or established shrub masses is subject to approval and adoption of the Applicant's landscape plan through the Design Review and/or Floodplain Development Permit process;
14. An encroachment permit from ITD as well as the City will be required for all improvements to public right of way, including the construction of a sidewalk not less than eight-feet (8') in width along River Street. As a condition of Plat approval, subject sidewalk and street lighting to city standards shall be installed prior to final plat recordation unless otherwise approved by the Ketchum City Council; **and**

15. Prior to grading occurring on the new Lot 3A, City approval of the Applicant's grading, drainage and landscaping construction drawings is required. Subject construction drawings shall be consistent in concept with approved Design Review, Encroachment Permit, and related drawings.

Findings of Fact **adopted** this 3rd day of February 2020.



Neil Bradshaw, Mayor



Robin Crotty, City Clerk



Attachment E.3.A – Design Review Findings



City of Ketchum
Planning & Building

**BEFORE THE PLANNING & ZONING COMMISSION
OF THE
CITY OF KETCHUM**

IN RE:

PEG Ketchum Hotel, LLC	)	FILE No. P20-019
Applicant	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND
Design Review	)	DECISION
)	

THE ABOVE ENTITLED MATTER coming before the Planning and Zoning Commission of the City of Ketchum (the "PZ" or "Commission") pursuant to the PEG Ketchum Hotel, LLC Application for Design Review and does hereby make and set forth the Record of Proceedings, Findings of Fact, Conclusions of Law, and Order of Decision as follows:

SECTION 1

SUBJECT APPLICATION and RECORD OF PROCEEDINGS

- PROJECT:** PEG Ketchum Hotel, LLC or Ketchum Tribute Hotel or Ketchum Gateway Hotel
- FILE NUMBER:** P20-019
- APPLICATION TYPE:** Design Review
- REPRESENTATIVE:** AJC Architects, Eggers Associates Landscape Architecture, Galena Engineering
- OWNER/APPLICANT:** PEG Ketchum Hotel, LLC (the "Applicant")
- REQUEST:** Design Review
- LOCATION:** 251 S. Main Street – Ketchum Townsite Lots 3, 21, FR 22 Blk 82 N 10' x 110' of alley S 20' x 230' of alley, 260 E. River Street – Ketchum Townsite Lot 2 Block 82 10' x 110' of alley, and 280 E. River Street – Ketchum Townsite Lot 1 Block 82 (Gateway site)
- ZONING:** Tourist (T) Zoning District
- OVERLAY:** Floodplain & Waterways Design Review Subdistricts
- NOTICE and HEARINGS:**

PRIOR PROCEEDINGS:

1. Notice of Hearing on the Application were originally published for the original public hearing on this Application by the Planning and Zoning Commission (the "PZ" or "Commission" or "Commissioners") July 29, 2019 public hearing in the Idaho Mountain Express, the official newspaper, on July 10, 2019. On July 10, 2019 notice of the hearing was mailed to the property owners within 300 feet of the subject real property and affected agencies. The July 29, 2019 hearing was convened including staff report, presentation by the Applicant and public comment. The Commissioners continued the public hearing to July 30, 2019 and again on August 12, 2019. These hearings were centered upon the Commissions review and consideration of the Applicant's project plans for a new hotel at the Gateway site consisting of five inter-related applications.
2. On August 12, 2019 the Commission issued its Findings of Fact, Conclusions of Law, Order of Decision and Recommendation (PZ Findings) inclusive of the approval to advance the developer's Pre-Application Design Review (P19-061) to full Design Review (P20-019). In the PZ Pre-Application Design Review Findings, the Commission provided a Reasoned Statement moving the hotel project from pre-Application Design Review to full Design Review provided that the Applicant specifically address the following with the full Design Review submittal: (a) The Landscape Plan shall provide a comprehensive strategy for the riparian area including public access to Trail Creek, provide a substantial buffer between land uses and particularly between the adjacent office buildings to the west, provide relief and soften the design of the building façade, and mitigate noise pollution; (b) The submittal shall specifically address traffic, circulation, and pedestrian safety as well as associated mitigation measures and remedies; (c) In order to soften the hotel's impact to the adjacent property located at 220 E River Street, the Applicant shall incorporate more undulation, relief, and material differentiation at the west façade; (d) A detailed plan addressing lighting, noise, and signage shall be submitted for review with the final Design Review submittal; (e) The submittal shall address sustainability measures related to building design and hotel operations as well as incorporate above code green standards; and (f) The Applicant shall meaningfully address all feedback provided by the Planning & Zoning Commission, including critiques related to the bulk and mass of the building, the tiered outdoor terrace architectural feature at the northeast corner, and solar access with the final Design Review submittal package. (the " PZ August 12th Recommendation")
3. In October 2019 the Ketchum City Council (KCC or Council) received the PZ August 12th Recommendation on the inter-related applications of the hotel project. After a series of public hearings held by the City Council between October 7, 2019 and February 3, 2020 the following actions were taken by the Council on each of PEG's project applications: (a) The Council conditionally approved the Lot Line Adjustment and Planned Unit Development Conditional Use Permit (PUD) for the Project; and (b) The Council continued its review of the Project Development Agreement.
4. Notice was published for the February 24, 2020 PZ public hearing in the Idaho Mountain Express, the official newspaper, on Wednesday February 5, 2020. On February 5th notice of the hearing was mailed to the property owners within 300 feet of the subject real property and affected agencies. The Public Hearing was conducted by the Commissioners on February 24, 2020 as noticed. At the hearing the

Commissioners conducted a site visit and then reconvened the hearing at City Hall Council Chambers and received the staff report by John Gaeddert Director of Planning and Building; and the presentations from the Applicant Nick Blayden, Ryan McMullen (AJC Architects on behalf of the applicant) and Nicole Carey (Eggers & Associates landscape architect on behalf of the applicant), and public comment. The Commissioners then began preliminary deliberations and continued the hearing, by approved motion to March 9, 2020 to commence at 5:30 p.m., for the purposes of: Receiving an updated landscaping plan, including retaining wall details, and receiving and considering draft Findings of Fact, Conclusions of Law and Order of Decision to be prepared and presented by Staff and City Attorney in accordance with the Commissioners' preliminary deliberations. The Public Hearing was reconvened on March 9, 2020 by the Commissioners and they received the staff report by John Gaeddert Director of Planning and Building who presented the draft Findings of Fact, Conclusions of Law and Order of Decision; and the presentations from the Applicant on the updated submittal materials. The Commissioners then continued their deliberations and by motion approved these Findings of Fact, Conclusions of Law and Order of Decision.

Exhibits and documents included in this proceeding:

<u>Exhibit Identifier</u>	<u>DESCRIPTION OF EXHIBITS AND DOCUMENTS</u>
<u>1</u>	PEG Ketchum Hotel, LLC's Design Review Findings of Fact, Conclusions of Law and Order of Decision, inclusive of 2/24/20 Design Review Submittal Drawings and 3/9/20 Updated Drawings RE Updated Landscape Plan and Renderings – click on following link: https://ketchumidaho.org/sites/default/files/fileattachments/planning_amp_building/project/37921/200304_-_ketchum_hotel_-_design_review_application_update.pdf
<u>2</u>	Ketchum City departmental comments and conditions
<u>3A</u>	Application for Design Review
<u>3B</u>	Notice and Affidavit of July 29, 2019 Planning & Zoning Hearing
<u>3C</u>	Notice and Affidavit of February 24, 2020 Planning & Zoning Hearing
<u>3D</u>	Slette February 27, 2020 Letter and Gigray February 28, 2020 Memorandum
<u>3E</u>	Spectrum Engineering March 2, 2020 Mechanical Narrative & Drawings; Spectrum Engineering March 2, 2020 Electrical Narrative & Drawings

The Commission having reviewed the entire record consistent with Ketchum Municipal Code (KMC) does hereby make the following Findings of Fact, Conclusions of Law, and Order of Decision:

**SECTION II
FINDINGS OF FACT**

1. The City has reviewed a total of four designs for the hotel project. The February 24, 2020 Design Review drawings is referenced as Version No. 4 of the Project Master Plan. The drawings set forth in Version No. 4 of the Project Master Plan are the direct result of the KCC-approved PUD Findings, dated 2/3/20, which as noted in Condition No.1 of that decision required an increased west side yard setback totaling 16'.
2. For the purpose of tracking, the February 24, 2020 drawing set referenced and approved herein by the Commission with this Design Review approval is referenced as Version No. 4 of the Project Master Plan (**Exhibit 1**).
3. The Commission finds that the Applicant's Design Review (DR) application address each of the issues noted by the Commission in its reasoned statement from 2019, as well as further direction the Applicant has received from the Council as a result of its deliberations.
4. The Commission has reviewed the Attachment E.4.A PUD Findings for the PEG Ketchum Hotel, dated 2/3/20, as approved by the Council. The PZ finds that a number of provisions from KCC's approval of the Applicant's PUD application are material to the Commission's review of this DR application. Of particular note is the three-dimensional (3-D) building envelope granted with the project waivers for the PUD, including that the Project: (a) have a Floor Area Ratio (FAR) less than 1.6; (b) a maximum height of not greater than 72'; (c) a front yard setback of not less than 15'; (d) a rear yard / Trail Creek setback of not less than 35' (25' riparian and 10' sewer easement); (e) an east-side / State Highway 75 setback of not less than 20' with an average side setback along the highway of $\geq 31.3'$; and, (f) a west-side setback of not less than 16'.
5. The Commission finds that the February 24, 2020 Design Review drawings (Version No. 4 of the Project Master Plan) comply with the above 3-D building envelope metrics adopted by Council. The project complies with the setbacks specified by Council in the adopted PUD Findings, among other features, as set forth in Attachment E.4.A.
6. The Commission recognizes that Version No. 4 of the Project Master Plan includes the removal of all the vacated buildings on site and construction of a new approximately 130,000 gross square foot building comprised, among other features, of the following: 92 "keys" for hotel rooms; 23 beds of employee housing; a rooftop bar with terrace and patio space; a public outdoor plaza; restaurant, lounge; conference rooms; fitness room; and an outdoor guest space with hot tubs. The project also includes 84 underground parking spaces (53 spaces are dedicated to hotel operations, 18 spaces are dedicated to employee housing, and 13 spaces are devoted to public use), as set forth in the KCC-approved PUD Findings.
7. The Commission concurs with the Council's determination that direct project ingress/egress to State Highway 75 (SH75) for anything other than fire emergency staging is not advisable. Based on 3rd party review by the city's traffic consultant (AECOM), the Commission concurs with Council that River Street is the preferred solution for project access in terms of acceptable level of service, traffic flow, circulation, deliveries, parking, snow removal, and pedestrian access. Conditions of approval, such as a north bound left turn lane, are required to be constructed by the applicant as a condition of certificate of occupancy for the project.
8. A full copy of the applicant's DR submittal drawings, also referenced as Version No. 4 of the Project Master Plan, is attached as **Exhibit 1**.
9. Pursuant to KMC §17.96.020, the purpose of Design Review is to maintain and enhance the appearance, character, beauty, and function of the City, to ensure that new development is complementary to the

design of existing City neighborhoods, and to protect and enhance the economic base of the City of Ketchum. As further identified in the 2014 Ketchum Comprehensive Plan, Design Review criteria and standards are intended to encourage new development to align with the community’s vision for Ketchum as an authentic mountain community with a world-class character, yet small town feel (p. 7). The Commission finds the Project to comply with the purpose and intent of KMC §17.96.020 and the 2014 Ketchum Comprehensive Plan, respectively.

- The Commission finds the Project complies with the City’s Design Review Improvements and Standards Analysis and Considerations. Specifically, Table 1 herein below sets forth how the Version No. 4 Project Master Plan complies with the City’s Design Review Improvements and Standards Analysis and Considerations.

Table 1: Design Review Improvements and Standards Analysis and Considerations

Design Review Improvements and Standards Analysis and Considerations KMC § 16.08.080 G 1 IMPROVEMENTS AND STANDARDS: 17.96.060				
Yes	No	N/A	Ketchum Municipal Code §	City Standards and <i>Commission Findings</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.050.A.1 Criteria	The project does not jeopardize the health, safety or welfare of the public.
			Commission Finding	<i>As conditioned herein with controls on design, inclusion of employee housing, pedestrian circulation and improvements within public rights-of-way, among other provisions set forth in the PUD Findings adopted by Council, the Commission finds the project will not jeopardize the health, safety or welfare of the public.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.08.080 G 1 & 17.96.050.A.2, Criteria	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: Pursuant to subsection 16.08.070D of this chapter, all of the design review standards in chapter 17.96 of this code 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. The project conforms to all applicable standards and criteria as set forth in this chapter, this title, and any other standards as adopted or amended by the City of Ketchum from time to time.
			Commission Finding	<i>The Commission carefully analyzed and considered the standards of these sections and finds the project site plan to be sensitive to the architecture and scale of the surrounding neighborhood and is in harmony with the surrounding area. The Commission also finds that the Project conforms with applicable standards and criteria as set forth in KMC Chapter 96 and Title 17, as are applicable and not in conflict with the provisions of KMC Chapter 08 of Title 16 [the Planned Unit Development Ordinance].</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(A)(1) Streets	The applicant shall be responsible for all costs associated with providing a connection from an existing city street to their development.
			Commission Finding	<i>The property is located at 260-280 E. River Street with approximately 334 linear feet (LF) of frontage along State Highway 75 (SH75) and approximately 170 feet of linear frontage adjacent along River Street. As stipulated by the Ketchum City Council approval of the associated Planned Unit Development application for the</i>

				<i>property, the project will not have direct access onto SH75 for anything other than emergency access staging. The applicant is responsible for all costs associated with connecting the project to River Street, including access to the parking garage, pick-up/drop-off, hybrid delivery/public parking, and various sidewalk and plaza improvement. The project is designed consistent with the recommendation of the city's 3rd party traffic consultant (AECOM) and subject to an encroachment permit by the city. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(A)(2) Streets	All street designs shall be approved by the City Engineer.
			Commission Finding	<i>The final street design, including snowmelt, delivery parking, pick-up/drop off areas, plaza amenities, sidewalk width/locations, ADA ramps, and bulb out are subject to city engineer approval, as well as an encroachment permit by Council. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(B)(1)	All projects under 17.96.010(A) that qualify as a "Substantial Improvement" shall install sidewalks as required by the Public Works Department.
			Commission Finding	<i>The project qualifies as a substantial improvement and 8' sidewalks along River Street and SH75 are required, totaling approximately 504 LF. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060 (B)(2)c	Sidewalk width shall conform to the City's right-of-way standards, however the City Engineer may reduce or increase the sidewalk width and design standard requirements at their discretion.
			Commission Finding	<i>The project qualifies as a substantial improvement and 8' sidewalks along River Street and SH75 are required. The city ROW standards also require on-street parking, which is being mitigated with 13 public parking spaces within the Applicant's parking garage. As conditioned, the Project complies with this standard.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060 (B)(3)	Sidewalks may be waived if one of the following criteria is met: a. The project comprises an addition of less than 250 square feet of conditioned space. b. The City Engineer finds that sidewalks are not necessary because of existing geographic limitations, pedestrian traffic on the street does not warrant a sidewalk, or if a sidewalk would not be beneficial to the general welfare and safety of the public.
			Commission Finding	<i>N/A</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060 (B)(4)	The length of sidewalk improvements constructed shall be equal to the length of the subject property line(s) adjacent to any public street or private street.
			Commission Finding	<i>The applicant proposes to install a new 8' wide sidewalk along the north and east perimeter of the property. The new sidewalk will be approximately 504 total linear feet (LF) as follows: 170 LF along River Street and 334 LF along SH75. The River Street sidewalk will be snow melted by the applicant. The exact location of the sidewalk will be noted within the ITD and River Street Encroachment Permits. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060 (B)(5)	New sidewalks shall be planned to provide pedestrian connections to any existing or future sidewalks adjacent to the site. In addition, sidewalks shall be constructed to provide safe pedestrian access to and around a building.
			Commission Finding	<i>The new sidewalk along the applicant's property connects to existing and future city sidewalk infrastructure. As conditioned, the Project complies with this standard.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060 (B)(6)	The City may approve and accept voluntary cash contributions in-lieu of the above described improvements, which contributions must be segregated by the City and not used for any purpose other than the provision of these improvements. The contribution amount shall be one hundred ten percent (110%) of the estimated costs of concrete sidewalk and drainage improvements provided by a qualified contractor, plus associated engineering costs, as

				approved by the City Engineer. Any approved in-lieu contribution shall be paid before the City issues a certificate of occupancy.
			Commission Finding	<i>N/A. The project does not propose making a voluntary cash contribution in-lieu of improvements for this project.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(C)(1)	All storm water shall be retained on site.
			Commission Finding	<i>All storm water shall be retained on site including water from roof drains. The applicant has submitted Storm Water Pollution Plan (Civil Drawing Sheet C2.0 from Galena Engineering), as well as a preliminary utility plan with drainage details on Civil Drawing Sheet C3.0 of the Design Review submittal. The proposed drainage plan includes a system of drywells. Prior to issuance of a Building Permit for the project, the applicant shall submit a final drainage plan indicating grading, catch basins, piping, and drywells (KMC §17.96.040.C.2b & KMC §17.96.060.C.1-4) prepared by a civil engineer licensed in the state to be submitted for review and approval by the City Engineer and Streets Department. See Attachment for City Department comments including City Engineer and Streets Department conditions. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(C)(2)	Drainage improvements constructed shall be equal to the length of the subject property lines adjacent to any public street or private street.
			Commission Finding	<i>See above Commission Finding for Ketchum Municipal Code §17.96.060(C)(1). All drainage improvements are required to meet City standards. All drainage improvements shall be indicated on civil plans stamped and Idaho licensed engineer and require review approval from the City Engineer & Streets Department prior to issuance of a Building Permit for the project. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(C)(3)	The City Engineer may require additional drainage improvements as necessary, depending on the unique characteristics of a site.
			Commission Finding	<i>A final drainage plan prepared by a civil engineer licensed in the state of Idaho shall be submitted with the Building Permit application to be reviewed and approved by the City Engineer. The City Engineer may require additional drainage improvements as necessary. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(C)(4)	Drainage facilities shall be constructed per City standards.
			Commission Finding	<i>All drainage facilities on both private property and the City owned right-of-way shall meet City standards. Final drainage specifications shall be included with the civil drawings submitted with the Building Permit application to be reviewed and approved by the City Engineer & Streets Department. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(D)(1)	All utilities necessary for the development shall be improved and installed at the sole expense of the applicant.
			Commission Finding	<i>The applicant is aware of this requirement and the preliminary plans indicated in the Galena Engineering set of Civil Drawings show utility connections and locations. Also, will serve letters have been received from all the major utility service providers for the project, including IMG, Idaho Power, City Water and Sewer, Cox, and Clear Creek. See Attached Public Works Department comments and other will serve letters. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(D)(2)	Utilities shall be located underground and utility, power, and communication lines within the development site shall be concealed from public view.
			Commission Finding	<i>All utilities within the development site shall be underground and/or concealed from public view. The transformer and generator proposed for the Project are concealed from public view, in part, with landscape screening. Subject utilities are not permanent structures and, as such, are allowed in the side setback as shown in the Northwest Portion of the site plan. At the applicant's discretion, the generator may be moved inside the hotel building. See above Commission Findings for Ketchum</i>

				<i>Municipal Code §17.96.060(D)(1). As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(D)(3)	When extension of utilities is necessary all developers will be required to pay for and install two (2") inch SDR11 fiber optical conduit. The placement and construction of the fiber optical conduit shall be done in accordance with city of Ketchum standards and at the discretion of the City Engineer.
			Commission Finding	<i>The applicant is aware of this requirement and will comply with these standards. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(E)(1)	The project's materials, colors and signing shall be complementary with the townscape, surrounding neighborhoods and adjoining structures.
			Commission Finding	<p><i>The Applicant notes the following about how the materials and colors selected for the project complement Ketchum's townscape, surrounding neighborhood, and adjoining structures:</i></p> <p>STONE – <i>Located primarily along the base volume of the restaurant and lobby along River Street. Our stone selection is a dry-stack stone with natural buff / light gray tones and horizontal directionality. Natural stone tones intended to reflect the prevalent stone formations around Wood River Valley, and rustic residential architecture of the area.</i></p> <p>BOARD FORMED CONCRETE – <i>The grounding base element of this building, as the site drops, the board formed concrete foundation walls and site terraces with the landscape. Horizontal board formed texture gives a more natural textured finish vs. a traditional smooth face concrete. This material is seen throughout the valley on residential and commercial projects.</i></p> <p>STOREFRONT GLAZING – <i>All windows, doors, and storefront glazing will be a simple dark bronze / black frame with high performance clear glazing. Dark frames tend to visually disappear from the architecture as other textures pop. Dark frames historically relate to old steel framed windows found throughout Western vernacular architecture, and are seen on most commercial and residential buildings in Ketchum.</i></p> <p>CHARWOOD VERTICAL SIDING – <i>This highly sustainable material is a low maintenance, fire resistant, textured gray wood to contrast / compliment the clear cedar siding throughout the project. Historically grey wood is achieved through staining or natural aging (see adjacent Korb property), but requires regular maintenance and sealing. Charred wood produces a natural gray wood aesthetic that doesn't require future staining or sealing. Gray finished wood is seen throughout Wood River Valley on historic structures, commercial structures, and all grades of residential projects.</i></p> <p>STEEL GUARDRAIL / STEEL PLATE FASCIA – <i>Similar to the dark bronze storefront, clean horizontal steel railings and perimeter roof detailing provides a subtle contemporary touch that ideally disappears from the overall project to let other elements pop. The black flat bar railings are visually lighter than a heavy wood railing or panel railing, and require less maintenance / upkeep than a clear glass railing would. Exposed steel details are common on much of the local architecture, and relates back to historic mining and ski tower structure.</i></p>

				<p>CEDAR WOOD HORIZONTAL SIDING – Wood siding is probably the most commonly seen exterior material in the Wood River Valley and Ketchum. It's natural texture provides visual connection to surroundings as opposed to more commercial materials like flat metal panel or stucco. 'Clear' wood defines the grade of wood to have minimal knots or variation in the grain, so just denotes a higher finish grade of wood. This material will be sealed to maintain a more consistent finish, but color will change over time with exposure to the elements.</p> <p>VERTICAL WOOD SLAT W/ METAL PANEL BEHIND – The wood slat siding will use the same clear cedar material as the building siding, but in a lighter slatted application to provide a more vertical structural appearance on a few select locations of the building. The intent of this material is to act as an lighter accent to the mass of the building itself. Dark bronze or black metal panel behind will contrast the clear cedar and make the wood stand out from it's background. Again, wood is one of the most common building materials in the area, and this is a creative use of a common material.</p> <p>Furthermore, the applicant has provided details of materials to be used on each elevation of the building.</p> <p>The Applicant has also submitted a Master Signage Plan consistent with KMC §17.127.030.B. Because a name for the restaurant and hotel has not been determined, generic names (restaurant and hotel) are provided in the submittal package. Locations for four signs have been noted, as depicted in the submitted drawing set.</p> <p>The site is eligible for 56 square feet of wall signage on River Street and 60 square feet along its SH75 frontage. The proposed signs are less than the aforementioned allowable square footage areas available for signage on the property. As such, the signs are eligible for administrative approval.</p> <p>As conditioned, the Project complies with this standard. The project materials, colors and signing are found to be complementary with the townscape, surrounding neighborhoods and adjoining structures.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060(E)(2)	<p>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.</p> <p>Commission Finding N/A. There are no identified landmarks on the property.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060(E)(3)	<p>Additions to existing buildings, built prior to 1940, shall be complementary in design and use similar material and finishes of the building being added to.</p> <p>Commission Finding N/A as the existing buildings on site will be demolished and the project will be new construction.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(F)(1)	<p>Building(s) shall provide unobstructed pedestrian access to the nearest sidewalk and the entryway shall be clearly defined.</p> <p>Commission Finding The proposed sidewalks will connect as required. The subject property is a corner lot with street frontage along River Street and State Highway 75/Main Street. As a substantial improvement, the hotel project is required to install sidewalks equal to the length of the subject property lines adjacent to River and Main Streets. All sidewalks shall be constructed to City standards contained in KMC §12.04.030.M as well as all applicable City right-of-way standards. The main entryway to the hotel lobby is from</p>

				<p><i>River Street. The pedestrian ways along River Street will include a snowmelt system, which serves to further activate the corner of River and Main Streets by enhancing the pedestrian streetscape. The proposed front façade has been designed with ground floor windows and glass doors, which invites the public and hotel guests into the hotel. As conditioned, the Project complies with this standard.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(F)(2) Commission Finding	<p>The building character shall be clearly defined by use of architectural features.</p> <p><i>Congruous with the natural topography of the development parcel, the mass of the building steps up the sloping grade from the south corner of the parcel adjacent to Trail Creek to the front property line at River Street. The vertical mass at the east elevation fronting Main Street is broken up by variation in roof heights, material differentiation, and a combination of horizontal and vertical elements. Projecting balconies and canopy elements serve to articulate breaks within the vertical plane. The circulation corridor design at the center of building serves as a prominent architectural feature anchoring the hotel to the site. Characterized with window openings at the east elevation fronting Main Street, the fenestration proposed with the circulation corridor serves as a visual invitation welcoming the public inside the hotel in order to enjoy the rooftop bar, restaurant, and lounge. The rooftop bar overhang element echoes the overhangs proposed at the entry and the corner of Main & River Streets linking the public amenities proposed with the project including the restaurant, dining area, and lounge.</i></p> <p><i>With its reasoned statement at pre-application Design Review in 2019, the Commission requested the “Applicant meaningfully address ... critiques related to the bulk and mass of the building [including] the tiered outdoor terrace architectural feature at the northeast corner” of SH75 and River Street. This element of the hotel design now integrates with a public plaza, as recommended in the Gateway Study, at the corner of River Street and SH75. This public space adjoins the hotel entry as well as a canopy covered bar patio on Level 01 that is retained by a board formed concrete adjacent a new 8’ wide sidewalk along SH75 and landscape screened from SH75 (toward southeast). The architecture in this corner is tiered from the SH75 street level by a retaining wall, the top of first floor plate level roof overhang canopy above the public outdoor dining, and then three floors of patios that provide terraced outdoor living areas for certain suites. The Commission requested what was previously viewed as imposing and tower-like feature in the design be softened. The new pedestrian interface at this intersection and use of vertical wood slat with sheet metal behind, steel guardrail, and use of thermally broken windows have been specified to address the Commission’s previous concerns.</i></p> <p><i>During the Commission’s pre-application design review hearing, concern was expressed regarding the rooftop bar in relation to noise and light pollution. KMC §17.132.030.H requires all exterior lighting be full cutoff fixtures with the light source fully shielded. Fixtures shielded underneath canopies must be flush mounted or side shielded. KMC §9.08.040.8 enumerates standards for noise levels permitted in the nighttime, daytime, and evening. The Commission encouraged the applicant to consider treatments to mitigate the impact of noise and light emanating for the proposed rooftop bar. The applicant has addressed the previous concerns raised by moving subject rooftop bar one story lower in the overall design of the building (now at Level 03, versus previously at Level 04), by extending the roof canopy over the bar patio space, complying with city lighting specifications, and adding green</i></p>

				<p>roof landscaping to the Level 02 terrace that is one story below and accessible by an outdoor stairway from the rooftop bar/patio.</p> <p>The building character is clearly defined by the combined use of vertical elements, such as char wood vertical siding and wood slats with sheet metal behind panels, and horizontal elements, such as cedar wood horizontal siding. Also characterizing the building is its transparency, including thermally broken windows and accessible balconies with steel guardrails for the hotel rooms, as well as canopies and steel plate knife edge fascia to offset architectural elements.</p> <p>As conditioned, the Project complies with this standard.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(F)(3)	<p>There shall be continuity of materials, colors and signing within the project.</p> <p>Applicant has provided a materials board consisting of Clear Cedar Screen, Clear Cedar T&G, Shou-sugi Ban Wood, Board-formed Concrete, Dry-stacked Stone, Black Steel Trim, Sand-Blasted Concrete and Flat-Bar Railing. Subject material board is characterized by natural materials including stone, steel, and wood with fenestration to celebrate the outside environment within interior common areas and living space. Notably, each of the 92 hotel rooms has access to outdoors with either a Juliet or full walk-out balcony. The materials are carried around the periphery of the building to create design continuity. Additionally, a sign master plan has been submitted by the applicant and will be subject to future administrative approval. As conditioned, the Project complies with this standard.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(F)(4)	<p>Accessory structures, fences, walls and landscape features within the project shall match or complement the principal building.</p> <p>The applicant has proposed a landscape buffer southward of the front plaza bar patio characterized by a mix of landscaping, planter beds, and board-formed concrete and/or stone retaining walls. These improvements create a tiered, low to high, stepped back design complementary of the principal building. The Applicant has provided a more detailed landscape plan that softens the building façade, mitigates SH75 noise, and gives vitality to the 45% project open space. As conditioned, the Project complies with this standard.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(F)(5)	<p>Building walls shall provide undulation/relief, thus reducing the appearance of bulk and flatness.</p> <p>As the building form terraces down towards Trail Creek following the contours of the development parcel, the façade is distinguished by a combination of horizontal and vertical elements, such as the balcony railing and window openings, providing additional relief to the staggered facade. Horizontal elements terminate at the southernmost portion of the building, which is characterized by ample transparency and windows providing views of adjacent Trail Creek. The proposed staggered façade design at all elevations incorporates fenestration through window and door openings, varying roof heights, and material differentiation to provide relief the bulk and mass of the hotel.</p> <p>With the original project master plan in 2019, the Commission expressed concern about the proposed bulk and mass of the building and the associated impact to view corridors, appropriateness of the proposed scale of the hotel and compatibly with the surrounding neighborhoods. In order to mitigate these impacts, the Commission encouraged the Applicant to step back the building in order to improve solar access and view corridors.</p>

				<p><i>The Council agreed with the Commission's bulk assessment and the proposed project FAR has decreased significantly to less than 1.6 as represented in the attached Design Review Drawings. Additional steps to reduce the appearance of bulk and flatness from River Street and along the highway are noted in the Commission finding of subsection (E)(1) above. Notably, the façades now combine horizontal and vertical elements through the variation of natural siding materials, the placement of balconies and associated railings, the steel panels, as well as the fenestration. Further, the Commission complemented the Project Architect on "using open corners at the highest elevations of the building." The entryway and circulation corridor are distinguished through the use of steel siding and the roofing forms at varying elevations. The front elevation is defined by thermally broken storefront glazing and cladding feature integrated with the proposed planters at the ground level and various green roof elements.</i></p> <p><i>Additionally, the Commission requested increased setbacks, landscaping and design considerations at the northwest corner of the building due to the reduced side yard setback. The Commission requested the Applicant provide more undulation and relief to the façade design including more steps and terraced elements. The Commission critiqued the design along this elevation for its lack of modulation and monolithic appearance and encouraged more undulation, stepping of the facades, and material differentiation.</i></p> <p><i>The Council agreed with the aforementioned west setback concern of the Commission and increased the 3-D building envelope as previously noted. Notably, Version No. 4 of the Master Plan is setback 16' from the west property line. The building steps back at its upper floor and significant landscaping has been added.</i></p> <p><i>Two large retaining walls / terrace features are proposed adjacent SH75 using two different sets of material: black plate steel retainage and board formed concrete. To break up the mass of this design element a number of ideas were discussed, which as conditioned herein may require future Commission review.</i></p> <p><i>As conditioned, the Project complies with this standard.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(F)(6)	<p>Building(s) shall orient towards their primary street frontage.</p> <p><i>River Street has been analyzed by the design team, AECOM, city staff and the Council and determined to be the preferred solution for project access in terms of level of service, traffic flow, circulation, deliveries, parking, snow removal, and pedestrian access. Additionally, as determined by Council, direct access to the project from SH75 shall be limited to fire emergency staging only. The hotel is oriented towards River Street as the primary street frontage. As conditioned, the Project complies with this standard.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(F)(7)	<p>Garbage storage areas and satellite receivers shall be screened from public view and located off alleys.</p> <p><i>The project has no access to any public alleyway and, as such, this portion of the DR standard (F)(7) is not applicable. However, garbage storage for the project will be screened from public view. As set forth on the Level 01 Floor Plan, a trash / loading area is located just inside the parking garage off the garage vestibule. The applicant has obtained a will serve letter from Clear Creek Disposal for the project. Furthermore, any satellite receivers for the project or on the property shall be screened from public view. As conditioned, the Project complies with this standard.</i></p>

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(F)(8)	Building design shall include weather protection which prevents water to drip or snow to slide on areas where pedestrians gather and circulate or onto adjacent properties.
			Commission Finding	<i>The building design includes at the entrance to the hotel lobby a cantilevered canopy that terminates at the applicant's property line along River Street. The restaurant bar patio also is covered. Both features will prevent water from dripping or snow from sliding on areas where pedestrians gather and circulate. Furthermore, the applicant proposes to snow melt the front drop off, plaza, public sidewalk areas as part of its River Street Encroachment Permit with the City. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(G)(1)	Pedestrian, equestrian and bicycle access shall be located to connect with existing and anticipated easements and pathways.
			Commission Finding	<i>Approximately 500 linear feet of new sidewalk will be built within the River Street and SH75 public ROW abutting the property. The sidewalks will be 8' in width to comply with city standards. The sidewalk along the north-side of the hotel is proposed to be snow melted. Additional pathways are proposed on the applicant's property that wrap the southwest, southern and southeast parts of the building. These are internal walkways that connect to hotel ingress/egress points, various public entries, the dedicated fisherman's easement noted on the subdivision plat for Trail Creek, required hotel emergency evacuation routes, and the aforementioned public ROW sidewalks. Bike racks are also proposed consistent with hotel requirements. As conditioned, the Project complies with this standard.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060(G)(2)	Awnings extending over public sidewalks shall extend five (5') feet or more across the public sidewalk but shall not extend within two (2') feet of parking or travel lanes within the right of way.
			Commission Finding	<i>N/A as the applicant has not proposed any awnings that project over a public sidewalk. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(G)(3)	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.
			Commission Finding	<i>As noted in the City Council-adopted PUD Findings set forth in Attachment E.4.A, including in part §17.116.030(C), the City finds the Project will be adequately served by necessary vehicular and nonmotorized transportation systems. This finding was made after reviewing the detailed traffic impact study (TIS) prepared by Hales Engineering, which AECOM (on behalf of the city) provided a peer analysis. As conditioned herein, the Commission finds that traffic shall flow safely within the project and onto adjacent streets. Traffic includes vehicle, bicycle, pedestrian and equestrian use. In making this finding, consideration was given to assuring adequate sight distances and proper signage.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(G)(4)	Curb cuts and driveway entrances shall be no closer than twenty (20') feet to the nearest intersection of two or more streets, as measured along the property line adjacent to the right of way. Due to site conditions or current/projected traffic levels or speed, the City Engineer may increase the minimum distance requirements.
			Commission Finding	<i>No curb cuts or driveway entrances are proposed that are closer than twenty (20') feet to an intersection of two or more streets, as measured along the property line adjacent to the right of way. Improvements to River Street are subject to a city encroachment permit. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(G)(5)	Unobstructed access shall be provided for emergency vehicles, snowplows, garbage trucks and similar service vehicles to all necessary locations within the proposed project.

			Commission Finding	<i>Significant attention has been given to the project by the city engineer, fire, streets and planning departments to assure that unobstructed emergency access, snow plowing needs, and other city design considerations are properly addressed with the project. See department comments in Table 2. Furthermore, the applicant has received a will serve letter from Clear Creek Disposal for the project. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(H)(1)	Snow storage areas shall not be less than thirty percent (30%) of the improved parking and pedestrian circulation areas.
			Commission Finding	<i>This standard applies to on-site parking and circulation areas, not pedestrian and parking circulation areas within the public right-of-way. All on-site parking is located within the parking garage and the entrance to the parking garage is within the boundary the applicant plans to snowmelt. An extensive sidewalk network is proposed on-site for the public and guests. Portions of this sidewalk network need to remain free of snow for hotel evacuation purposes. As a result, the applicant walkways along the southwest and south portions of the project that are associated with hotel ingress/egress points will be snow melted. With 45% open space on-site and a network of snowmelt sidewalks, the applicant's pedestrian circulation area is greater than 30%. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(H)(2)	Snow storage areas shall be provided on-site.
			Commission Finding	<i>See above Staff comment for Ketchum City Code §17.96.060(H)(1).</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(H)(3)	A designated snow storage area shall not have any dimension less than five (5') feet and shall be a minimum of twenty five (25) square feet.
			Commission Finding	<i>See above Staff comment for Ketchum City Code §17.96.060(H)(1).</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(H)(4)	In lieu of providing snow storage areas, snow melt and hauling of snow may be allowed.
			Commission Finding	<i>The applicant proposes a snowmelt system for the project. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(I)(1)	Landscaping is required for all projects.
			Commission Finding	<i>Pursuant to KMC §17.96.060.I, landscaping shall serve to enhance and complement the neighborhood and townscape as well as provide a buffer between land uses. The landscape plan incorporates a landscape buffer separating the hotel from Main Street. The landscape plan is comprised of a mixture of trees, bushes, grasses and flowers appropriate to the environment. Street trees are proposed to be incorporated into the streetscape design adjacent to River Street. All proposed street trees will require electrical outlets and irrigation and must maintain a minimum of 6 ft of clearance within the public sidewalk. Materials and vegetation types are required to be readily adaptable to the site's microclimate, soil conditions, and orientation. All trees, grasses, and perennials must be drought tolerant and native species are recommended.</i> <i>Due to the requested waiver to reduce the west side setback, the Commission requested the applicant enhance the landscape design in order to provide a buffer between the hotel and the adjacent office buildings located at 220 E River Streets. A 16' building setback and landscape buffer have been provided.</i> <i>The Commission called for the proposed landscape design to include a comprehensive strategy for the riparian area including a point of access for the public to access Trail Creek. This has been provided, inclusive of public access. Consistent with the Trail Creek Access – Landscape Plan or related amendments thereto, the Floodplain</i>

				<p><i>Development/Waterways Design Review approval previously approved by the Commission can be amended administratively to reflect the final Design Review landscape plan.</i></p> <p><i>The Commission noted the landscape plan should provide details for the proposed rooftop garden.</i></p> <p><i>The final landscape plan submitted with the final Design Review application shall be reviewed and approved by the City Arborist.</i></p> <p><i>Two landscape plans are included in the Design Review submittal. The landscape plan includes Aspen Trees, understory shrubs and wildflowers, native trees, shrubs, and grasses, as well as planters comprised of ornamental grasses and perennial flowers.</i></p> <p><i>As conditioned, the Project complies with this standard.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(I)(2)	<p>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 complement the neighborhood and townscape.</p> <p><i>Commission Finding</i> <i>The landscape materials and vegetation types shall be readily adaptable to the site's microclimate, soil conditions, orientation, and aspect. The proposed landscaping will soften the mass of the building and complement the neighborhood and entry into town. The planters integrated within the front façade enhance the building design and facilitate the creation of inviting outdoor gathering areas. As proposed, the plantings along Main Street will complement the building and Gateway entrance into the City. As conditioned, the Project complies with this standard.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(I)(3)	<p>All trees, shrubs, grasses and perennials shall be drought tolerant. Native species are recommended but not required.</p> <p><i>Commission Finding</i> <i>The landscaping plan indicates native trees, shrubs, and grasses to conserve water will be installed. Proposed species are: (1) conifers, including lodgepole pine and subalpine firs; (2) specialty trees including flowering crabs; (3) deciduous trees including Swedish and quaking aspen; and (4) deciduous shrubs (spirea), groundcover/flowers and native grasses (blue oat). Quantities and locations are shown on Sheet L1. As conditioned, the Project complies with this standard.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(I)(4)	<p>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.</p> <p><i>Commission Finding</i> <i>The proposed landscaping will provide a buffer between office building to the west and SH75 to the east. The natural riparian landscaping along Trail Creek is retained. As conditioned, the Project complies with this standard.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(J)(1)	<p>Where sidewalks are required, pedestrian amenities shall be installed. Amenities may include, but are not limited to, benches and other seating, kiosks, bus shelters, trash receptacles, restrooms, fountains, art, etc. All public amenities shall receive approval from the Public Works Department prior to design review approval from the Commission.</p> <p><i>Commission Finding</i> <i>Public amenities are required to be provided wherever sidewalks are installed. Amenities may include, but are not limited to, benches and other seating, kiosks, bus shelters, trash receptacles, or art. The applicant proposes these amenities along River Street. All public amenities proposed to be installed shall meet all applicable City right-of-way standards and receive approval from the City Engineer and Streets</i></p>

				<i>Department. The addition of benches and other related public amenities where the applicant proposes public access from SH75 toward the south portion of the hotel site are not specified but encouraged at time of certificate of occupancy. As conditioned, the Project complies with this standard.</i>
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11. The Commission finds the Project complies with the City’s PUD Project Waiver Consideration and Analysis / Tourist Zoning District Dimensional Standards. Details of this compliance are set forth within Table 2 herein below as follows. Table 2 sets forth how the Version No. 4 Project Master Plan complies with the City’s PUD Project Waiver Consideration and Analysis / Tourist Zoning District Dimensional Standards.

**Table 2: PUD Project Waiver Consideration and Analysis/
Tourist Zoning District Dimensional Standards.**

The Commission has reviewed the standards set forth in Table 2 (herein below), as well as Attachment E.4.A Section 2.5, as approved by KCC on February 3, 2020 and finds the Project in compliance with the Tourist Zoning District findings as follows.

Tourist Zoning Standards				
Compliant			City Standard & Commission Findings	
Yes	No	N/A	KMC Section	City Standard & Commission Findings
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.12.030	Minimum Lot Area: 9,000 square feet minimum.
			<i>Commission Finding</i>	<i>The property is 47,249 square feet in size and has a lot width with the one-lot subdivision application that exceeds the minimum lot size and widths required in the Tourist Zone. The City finds that this standard has been met.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.12.030	Building Coverage
			<i>Commission Finding</i>	<i>Approximately 21,362 square feet of the property will remain open space, which is approximately 45% of the 47,249 square foot site. The Project has greater than the required thirty-five percent (35%) minimum open space set forth in the KMC for the Tourist Zoning District. The City finds that this standard has been met.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.124.040	Setbacks Front: 15’ Riparian: 25’ SH75: 25’ / 32’ Side: the greater of 1’ for every 3’ in building height, or 5’
			<i>Commission Finding</i>	<i>Front & Riparian Setbacks: The project as set forth in the attached Design Review Drawings complies with the city’s 25’ riparian and 15’ front setback requirements. In accordance with KMC 17.88.050.E.3 the proposed pathway through the riparian zone and providing access to Trail Creek is approvable. Side Yard Setbacks: The Design Review drawings comply with the waivers conditionally approved as part of the PUD process by the City. Notably, the DR drawings show that the average setback of the proposed hotel along SH75 is greater than thirty-one feet (31’) and only one section of the building near River Street, as stipulated in the Council approval of the side setback PUD waiver, is within the 25’ setback. In this instance, the minimum east side setback of twenty feet (20’) is maintained. The project drawings also show that the building sixteen (16’) from the west side property line consistent with KCC approval of the PUD. The City finds that this standard has been met.</i>

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.124.040 <i>Commission Finding</i>	Permitted Gross Floor Area Ratio: 0.5 or greater for hotels <i>Floor Area Ratio (FAR): The Design Review drawings comply with the FAR waiver conditionally approved as part of the PUD process by the City. The Project has a FAR of less than 1.6. The City finds that this standard has been met.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.12.040 <i>Commission Finding</i>	Building Height Maximum Permitted: 35' or greater for hotels <i>The Project proposes a maximum height of 72', which is permissible consistent with the City's PUD approval. Evidence in support of the Project's conditionally permitted allowance has been included in the 2/3/20 PUD approval of the Council. The City finds that this standard has been met, further noting that: (A) The Project site has a large slope from Trail Creek at the south end of the lot to the north end along River Street. The hotel is proposed as a four-story structure on River Street, and step / terrace down to three and then two stories nearest Trail Creek. (B) The KMC does not specify the maximum height of a four-story building. Historic references in the KMC, as well as the top floor plate of the adjoining Limelight Hotel show the hotel fourth floor to equal approximately forty-eight feet (48') while the top of the Limelight hotel penthouse parapet is 73.5' (C) Maximum height of the building shall not exceed 48' when the building is measured from the highest elevation of the property (along River Street) or 72' when building height is measured from the lowest elevation of the property (along Trail Creek). (D) During the transition where the four-story building along River Street steps down approximately thirty feet (30') toward Trail Creek, the forty-eight foot (48') high 4-story building reads like 6-stories at seventy-two feet (72') high. This is permissible consistent with KMC §16.08.020.B and desirable as follows: first, the height of the building at subject central location is below the forty-eight (48') 4-story horizontal plane established by precedent and with the top of the fourth floor at the adjacent Limelight; second, the City recognizes that in this central location of the structure, that the 4-stories of hotel use are sandwiched between two public amenities (employee housing and a roof top bar for the public). The unique characteristics of the site at this location, where the existing grade drops quickly in the center of the site, result in a portion of the building having a taller element of seventy-two feet (72') as measured from existing grade. The City finds this consistent with KMC §16.08.020.B, "[i]n the event of conflict between this PUD chapter and any other ordinance of the city, this PUD chapter shall control." (E) In comparison to both the Limelight and approved Bariteau hotels on opposing corners, the height of the proposed Hotel is lower and more closely aligned to the fourth floor of each building. (F) The Gateway Study and Subarea Analysis indicate that the proposed hotel is both by design and use consistent with envisioned plans for the corner of SH75 and River Street. and, (G) Further, the proposed hotel project is consistent with current Tourist Zoning District zoning allowances for hotels. Each of the attendant uses, including restaurant/bar, meeting rooms, and employee housing are also permitted in the Tourist Zoning District.</i> <i>As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.125.030.H <i>Commission Finding</i>	Curb Cut Permitted: <i>A total of 35% of the linear footage of any street frontage can be devoted to access off street parking.</i> <i>There are no curb cuts proposed along State Highway 75. The new configuration results in less than thirty-five percent (< 35%) of the linear footage of street frontage devoted to access the off street parking within the parking garage. The City finds that this standard has been met.</i>

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>17.125.020.A.2 & 17.125.050</p> <p>Parking Spaces <i>Off-street parking standards of this chapter apply to any new development and to any new established uses.</i></p>
			<p>Commission Finding <i>As analyzed by staff and consistent with KMC §17.125, the Project has adequate parking for the proposed uses on the property. The project is parked with 84 on-site garage parking spaces. Of the 84 spaces provided for the Project not less than 13 spaces are reserved for public use, 18 spaces are reserved for employee housing use, and the remaining 53 spaces are needed for hotel operations. As conditioned, the Project complies with this standard.</i></p>

**SECTION III
CONCLUSIONS OF LAW**

- 3.1 The City is a municipal corporation established in accordance with Article XII of the Constitution of the State of Idaho and Title 50 Idaho Code and is required and has exercised its authority pursuant to the Local Land Use Planning Act codified at Chapter 65 of Title 67 Idaho Code; and
- 3.2 The City pursuant to Chapters 3, 9 and 13 of Title 50 Idaho Code has the authority to enact the Ordinances and regulations which the City has exercised and approved Ordinances codified in the Ketchum City Code ("KMC"), and which are identified in Section II of these Findings of Fact, and which are herein restated as Conclusions of Law by this reference, and which City Ordinances govern the Applicant's Project Application design review.
- 3.3 The City has the authority pursuant to Idaho Code Section 67-6518 to establish standards for building design and related development design which standards may be provided as part of zoning, subdivision, planned unit development, or separate ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided in section 67-6509, Idaho Code, which the City has exercised by ordinance, codified at Chapter .96 of Title 17 of the KMC, for the processing of applications for design review of building development within the City of Ketchum.

ORDER OF DECISION

Based upon the above and foregoing Findings of Fact/Conclusions of Law and good cause appearing from the record, IT IS HEREBY ORDERED AND THIS DOES ORDER THAT:

ORDER NO. 1: Applicant's Design Review application, as referenced herein inclusive of the drawings set forth in **Exhibit 1**, is approved subject to the following seventeen (17) conditions:

1. This Design Review approval is subject to the PUD Findings adopted by the KCC on 2/3/20 for the PEG Ketchum Hotel (also referenced as Attachment E.4.A).
2. This Design Review approval is subject to the conditions as set forth in Tables 1 and 2.
3. This Design Review approval is subject to all Ketchum City departmental comments and conditions as set forth in Table 1 of **Exhibit 2**.
4. The applicant shall submit final civil drawings prepared by an engineer registered in the State of Idaho including the utilities and drainage plans to be reviewed and approved by the City Engineer, Streets, and Utilities departments prior to issuance of a Building Permit for the project.

5. This Design Review approval is based on the plans and information presented and approved at the meeting on the date noted herein. Building Permit plans for all on-site improvements must conform to the approved Design Review plans unless otherwise approved in writing by the Planning and Zoning Commission or Administrator. Any building or site discrepancies which do not conform to the approved plans will be subject to removal.
6. All governing ordinances, requirements, and regulations of the Fire Department (2012 International Fire Code and local Fire Protection Ordinance No.1125), Building Department (2012 International Building Code, the 2012 International Residential Code, and Title 15 of Ketchum Municipal Code), Utilities Department, Street Department (Title 12 of Ketchum Municipal Code), and the City Engineer shall be met prior to Certificate of Occupancy.
7. The term of Design Review approval shall be twelve (12) months from the date that the Findings of Fact, Conclusions of Law, and Decision are adopted by the Commission or upon appeal, the date the approval is granted by the Council (KMC §17.96.090).
8. All Design Review elements shall be completed prior to issuance of a Certificate of Occupancy for the building.
9. All exterior lighting on the property shall be in compliance with Ketchum Municipal Code, Chapter 17.132, Dark Skies, and shall be inspected by Planning Staff and approved prior the issuance of a Certificate of Occupancy for the building.
10. Any satellite receivers located on the hotel property shall be screened from public view.
11. The hotel project is required to install 8' wide sidewalks equal to the length of the subject property lines adjacent to River and Main Streets or 504 linear feet, whichever is greatest. All sidewalks shall be constructed to City standards
12. Lighting and noise related to the rooftop bar shall be in compliance with the following city code requirements: KMC §17.132.030.H requires all exterior lighting be full cutoff fixtures with the light source fully shielded. Fixtures shielded underneath canopies must be flush mounted or side shielded. KMC §9.08.040.8 enumerates standards for noise levels permitted in the nighttime, daytime, and evening.
13. Any modification to the existing Floodplain Waterways Design Review permit is subject to administrative approval.
14. Any modification to the proposed Sign Plan is subject to administrative approval.
15. Sidewalks that are required for the hotel evacuation plan shall be part of the hotel snowmelt system and kept free of snow. A snow melt diagram shall be incorporated into the drawing set approved at the time of building permit issuance to assure areas proposed for snowmelt are constructed as such and found operational as a condition of certificate of occupancy.
16. Construction of the two tallest terrace walls adjacent to SH75 with proposed materials of board formed concrete and block plate steel retainage may be subject to future design review at the time the application is filed for approval at the discretion of the Administrator.
17. The Commission encourages the Council as part of any Encroachment Permit approval for River Street improvements to establish guidelines for the use of natural gas within the proposed fire pit. The goal of such guidelines would be to limit emissions and to avoid continuous (Olympic Torch) type of operation.
18. The Applicant at their discretion may relocate the generator to inside the hotel.

Order No. 2: Final Action: These Findings of Fact, Conclusions of Law and Order of Decision are a final action of the Planning and Zoning Commission on this Design Review application unless the Applicant and or an Affected Property Owner files within Fifteen (15) days of this Order an Appeal to the City Council pursuant to Chapter 17.144 of Title 17 Ketchum Municipal Code.

Order No. 3: Direction to City Clerk: The City Clerk shall forthwith provide and serve a copy of these Findings of Fact, Conclusions of Law, and Order of Decision upon the Applicant, and to anyone who has been provided notice of the proceedings, and retain the original in the official records of the City.

These Findings of Fact are adopted this 9th day March, 2020.



Neil Morrow, Chairman

Notice to Applicant

The subject Design Review Application concerns a site-specific land use request and therefore this notice is provided to the Applicant pursuant to I.C. § 67-6535 (3) of the Applicant's right to request a regulatory taking analysis pursuant to I.C. § 67-8003.

Exhibit 1. PEG Ketchum Hotel, LLC's Design Review Submittal Drawings – **click on following link:**

[https://ketchumidaho.org/sites/default/files/fileattachments/planning_amp_building/project/37921/200304 - ketchum hotel - design review application update.pdf](https://ketchumidaho.org/sites/default/files/fileattachments/planning_amp_building/project/37921/200304_-_ketchum_hotel_-_design_review_application_update.pdf)

Exhibit 2. Ketchum City departmental comments and conditions

Exhibit 1. PEG Ketchum Hotel, LLC's Design Review Submittal Drawings - [click on following link:](#)

https://ketchumidaho.org/sites/default/files/fileattachments/planning_amp_building/project/37921/200304_-_ketchum_hotel_-_design_review_application_update.pdf

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Exhibit 2. Ketchum City Department Comments & Conditions

Table 1: City Department Comments

Design Review standards include criteria regarding street design (KMC §17.96.060.A), sidewalks (KMC §17.96.060.B), circulation design (KMC §17.96.060.G), drainage (KMC §17.96.060.C), and utilities (KMC §17.96.060.C). City Department comments, which include analyses of standards pertaining to public right of way (ROW) improvements, such as the installation of sidewalk, drainage, and utilities, are noted in this Table 1 as follows.

City Department Comments
<p><i>City Department comments are based on the project concept as proposed with the Design Review project plans. All City Departments shall review and approve the project through the Building Permit application process. All comments pertaining to the Design Review drawings are subject to change. All right-of-way improvements must be reviewed and approved by the City Engineer and Streets Department prior to issuance of a Building Permit for the project. All City Department requirements and associated specifications for the required improvements must be verified, reviewed, and approved prior to issuance of a Building Permit for the project.</i></p>
<p>Fire Department:</p> <ul style="list-style-type: none"> • The above project shall meet all 2012 International Fire Code requirements in addition to specific City Building and Fire Ordinances. • The buildings address numbers shall be placed in such a position to be plainly visible and legible from River Street. Numbers and letters shall be a minimum of four (4) inches tall, contrast with their background and be positioned a minimum of forty-eight (48) inches above final grade. • The following doors shall be permanently signed: All room containing an R-Occupancy, Fire Sprinkler Riser Room, Alarm Panel Room, Electrical and Mechanical closets, Elevator Mechanical, Pool Equipment with Hazardous Material Placards for Pool Chemicals, room containing emergency radio repeater. • Vehicle parking and material storage during construction shall not restrict or obstruct public streets or access to any building. A minimum twenty-foot travel lane for emergency vehicle access shall be maintained clear and unobstructed at all times around the entire building as noted on the Construction Management Plan. Once construction begins on the second floor and above, 26-foot aerial ladder truck access is required along one entire side of the building for evacuation of injured persons from upper floors. All required Fire Lanes, including within 15 feet of fire hydrants, shall be maintained clear and unobstructed at all times. • A written onsite emergency notification plan is required to be developed by the contractor's onsite Safety Officer to notify emergency services of an incident and to direct responders to the actual incident location on the site. The plan shall be reviewed and approved by the fire department prior to commencing work on the site. • An approved NFPA 13 Fire Sprinkler system is required throughout the entire building per 2012 IFC Section 903.3.1.1. and City of Ketchum Ordinance #1125 (www.ketchumfire.org). Fire sprinkler systems shall be annually tested and maintained per NFPA 25 with a report of the inspection forwarded to the fire department annually. • Fire sprinkler floor control valves shall be installed on each level. They shall contain Check Valves, Main Drain Valves, flow switch isolation, control and annunciation of water flow on each individual floor. • Inspections of fire department permit required installations shall be scheduled at least 48 hours in advance.

- **NOTE:** One electronic set of fire sprinkler system plans, and two full size sets of fire sprinkler construction drawings shall be submitted to the Ketchum Fire Department in addition to the Idaho State Fire Marshals fire sprinkler plan submittal requirements. A separate Ketchum Fire Department Permit shall be obtained prior to installation of fire sprinkler systems. Inspections of fire sprinkler systems by the Fire Chief or an appointee are required. Inspections must be scheduled at least 48 hours in advance.
- An approved Class I Standpipe system is required to be installed in all stairways. Fire hose connections shall be located on the intermediate landing of each floor including the basement level and roof levels. Fire hose connections to the standpipe system in the stairwells shall be gated 2 ½ inch NHT male couplings. The standpipe system shall be installed by the same contractor that installs the fire sprinkler system and shall meet the requirements of the most current Edition of NFPA Standard 14.
- The fire department connection to the fire sprinkler system and the standpipe system shall be located on the River Street side of the building. The fire department connections to the fire sprinkler system and the standpipe systems shall be 2 ½ inch female (NHT) couplings.
- An approved automatic smoke alarm system is required to be installed per IFC Section 907.2.8 and the requirements of NFPA 72. Two (2) sets of alarm system plans shall be submitted to the Ketchum Fire Department for approval and a Ketchum Fire Department permit is required prior to installation of alarm systems. In addition, all fire sprinkler flow switches and tamper switches shall be interconnected to the buildings alarm system. Inspections and testing of fire detection and notification systems by the Fire Chief or an appointee are required and shall be scheduled at least 48 hours in advance. Note: smoke detection is not required on the first floor in the lobby or restaurant areas.
- A Type I hood shall be installed at or above all commercial cooking appliances and domestic cooking appliances used for commercial purposes that produce grease vapors.
- The hotel shall prepare and Safety Evacuation Plan following the guidelines of Section 408.8 through 408.8.3 of the 2012 International Fire Code prior to the final inspection on the building.
- Stairways shall provide for roof access on all roof levels per Section 504.3 of the 2012 International Fire Code.
- An approved Emergency Responder Radio system shall be installed throughout the building per 2012 IFC Section 510. The Emergency Responder Radio System shall provide acceptable radio coverage for all emergency responders in all locations within the building and around the building. Testing and approval of the system by the fire department is required prior to any occupation of the premises.
- Fire extinguishers shall be installed and maintained per 2012 IFC Section 906 and NFPA Standard 10 both during construction and upon occupancy of the building.
- Approved key boxes shall be installed, with the appropriate keys, for emergency fire department access in a location approved by the fire department. The key boxes shall be a Knox box brand and sized to accommodate keys to every door of the project. Note: Up to four (4) key boxes may be required.
- An approved fire access roadway shall be provided on the South side (River Side) of the building and be installed per 2012 International Fire Code Appendix D. The Fire access road shall be installed prior to any combustible construction on the site. The road shall be a minimum of twenty (20) feet in width and capable of supporting an imposed load of at least 75,000 pounds. The road must be an all-weather driving surface maintained free, clear, and unobstructed at all times.
- An additional Fire hydrant shall be required on the corner of River Street and Main Street to meet the necessary for flow for the building.
- All fire doors shall in emergency stairwells have signage "Do Not Block Open" per Section 703.2.1 of the 2012 International Fire Code.
- Emergency Lighting Exit and Low-Level Exit signs shall be provided following Sections 1006 and 1011.2 of the 2012 International Fire Code.
- Note: Additional requirements may be added upon final plan review.

- An 8 ½ by 11 color coded site map of this project shall be provided on paper and electronically to the fire department. This site map shall show the locations of gas shut-offs, power shut-offs, fire sprinkler riser rooms, fire department connections, alarm panels, Knox boxes, access doors, egress windows, stairways and any additional fire department requirements. Exact details for color coded "On-Sites" can be found at www.ketchumfire.org or by contacting Lieutenant Greg Martin at the Ketchum Fire Department.
- Final inspections of all fire department permit required installations by the Fire Chief or an appointee are required and shall be scheduled at least 48 hours in advance. A Final Inspection Checklist can be found at www.ketchumfire.org.
- Fire Department requirements and associated specifications for the required improvements must be verified, reviewed, and approved prior to issuance of a Building Permit for the project.

City Engineer & Streets Department:

- Pursuant to KMC §12.04.020.C, building/construction plans shall be prepared by a professional engineer registered in the state and shall include the following information: (a) alignment and profile of all streets, (b) location of all underground utilities including alignment and depths, (c) location, size and type of all drainage structures, (d) connections to existing streets, drainage facilities, and all utilities, (e) adequate dimensions and details for accurate construction of all roadway features, and (f) adequate specifications to assure proper materials and workmanship to attain construction with design criteria, standard specifications and standard drawings.
- All drainage shall be retained on site (KMC §17.96.060.C.1). Drainage improvements constructed shall be equal to the length of the subject property lines adjacent to any public street or private street (KMC §17.96.060C).
- A detailed construction management plan is required. All construction for the project must comply with the standards set forth in Ketchum Municipal Code, Chapter 15.06 Construction Activity Standards. The applicant shall submit a Construction Activity Plan addressing all applicable activities (KMC §15.06.030), including how materials will be off-loaded at the site, plan for coordinating with neighbors on temporary closures, temporary traffic control, and construction fencing with appropriate screening, to be reviewed and approved prior to issuance of a Building Permit for the project. Pursuant to KMC §15.06.030.A.2, the applicant shall provide notice of the project, construction schedule, and general contractor's contact information to all neighbors with properties adjacent to the project site.
- The Building Permit plans and construction drawings shall meet all applicable sections of Chapter 12 of Ketchum Municipal Code.
- The applicant shall submit a Street and Alley Digging, Excavation, and Trenching ("DIG") Permit application with an associated traffic control plan for all construction work within the City right-of-way to be reviewed and approved by the Streets Department. The use of City right-of-way for construction including the closure of adjacent streets or sidewalks requires a Temporary Use of Right-of-Way Permit ("TURP").
- Soil nail walls are not permitted within the City of Ketchum.
- Street trees will require electrical outlets and irrigation.
- Applicant shall coordinate with the Streets Department regarding sign locations and associated bases if proposed for the project.
- The applicant shall submit will serves from Idaho Power and Clear Creek Disposal prior to issuance of a Building Permit for the project.
- Lighting within the public right-of-way is required and will need to meet city lighting standards along River Street and SH-75.
- Sidewalk snow removal will be the responsibility of the owner. A Right-of-Way Encroachment Permit is required for the proposed snowmelt system within the public ROW.
- The proposed encroachments within the River Street right-of-way are not approved with this Design Review application and require review and approval by the City Engineer and Streets Department. A ROW

Encroachment Permit approved by the Ketchum City Council will be required prior to issuance of a Building Permit for the hotel project. Final execution of the encroachment permit is required for C of O.

- If the project disturbs over 1 acre applicant must submit for coverage under the CGP and develop a project specific SWPPP prior to starting ground disturbing activities.
- Final civil drawings for all associated ROW improvements shall be submitted with the Building Permit application to be verified, reviewed, and approved by the City Engineer and Streets Department prior to issuance of a Building Permit for the project.

Utilities:

- DEQ approval may be required for all water and sewer lines serving the properties.
- Water service and main lines are private to all properties from the point of connection with city water.
- Water infrastructure maintenance and repair will be the responsibility of the property owners.
- All drywells and non-potable water lines must maintain legal separation from potable water lines.
- Water service must be taken off of the fire system in the mechanical/riser room prior to the point of diversion to the fire backflow device.
- A licensed plumber or mechanical engineer must determine the appropriate size for the meter.
- The proposed plans for the fire riser room, which is where the water meter shall be located, must be reviewed and approved by the Utilities Department.
- Requirements and specifications for the water and sewer connections will be verified, reviewed, and approved by the Utilities Department prior to issuance of a Building Permit for the project.

Building:

- The building must meet the 2012 International Building Code and Title 15 Buildings and Construction of Ketchum Municipal Code.
- Building Department requirements and associated specifications for the required improvements must be verified, reviewed, and approved prior to issuance of a Building Permit for the project.

Planning and Zoning:

Comments are denoted within the analysis of the project's compliance with the Comprehensive Plan, zoning and dimensional standards, and Design Review evaluation standards.

W:\Work\K\Ketchum, City of 24892\Gateway Hotel Development Proposal .015\Design Review Process and Docs\Draft PEG DR Findings for 3-9-20 (wfg Edits).docx

Attachment E.4.A – Findings PUD Conditional Use Permit and CUP

**BEFORE THE CITY COUNCIL
OF THE
CITY OF KETCHUM**

IN RE:	)	FILE NO. P19-063
)	
PEG KETCHUM HOTEL, LLC	)	FINDINGS OF FACT, CONCLUSIONS
	)	OF LAW, ORDER OF DECISION OF
Applicant for	)	THE CITY COUNCIL
Planned Unit Development)	
Conditional Use Permit)	
)	

THE ABOVE ENTITLED MATTER coming before the City Council of the City of Ketchum (the "Council") pursuant to the receipt of the *Findings of Fact, Conclusions of Law, Order of Decision and Recommendation to the City Council* from the Planning and Zoning Commission of the City of Ketchum dated August 12, 2019 (the "P & Z FCDR") which is a Decision and Recommendation of approval of PEG Ketchum Hotel, LLC PUD Project Master Plan (the "PEG PUD Conditional Use Permit Application") subject to terms and conditions of approval as set forth in Section IV therein. Upon receipt of the P & Z FCDR the PEG PUD Conditional Use Permit Application has been processed and was first placed upon the agenda of the Council regular meeting of September 16, 2019 pursuant to Ketchum Municipal Code ("KMC") § 16.08.120 A. The Council having reviewed the entire record before the Ketchum Planning and Zoning Commission (the "P&Z") of the P & Z FCDR and sought additional information and processed the PEG PUD Conditional Use Permit Application and does hereby make and set forth the Record of Proceedings, Findings of Fact, Conclusions of Law, and Order of Decision as follows:

**SECTION 1
SUBJECT APPLICATIONS and RECORD OF PROCEEDINGS**

- 1.1 PEG Ketchum Hotel, LLC (the "Applicant") submitted an Application for a Planned Unit Development (a "PUD Conditional Use Permit") of a Master Plan inclusive of a request for waivers to minimum lot size, setback (side yards), height, and floor area ratio (FAR) limitations for a hotel development to be constructed and operated on a 1.09-acre site located at the southwest corner of the State Highway 75 and River Street intersection at 280 E. River, (the "Project Site").
- 1.2 The Project Site is located within the Tourist District Zone as designed by KMC § 17.12.010
- 1.3 Applicant originally submitted a Master Plan and, during the course of the proceedings before the Council, subsequently on December 2, 2019 submitted Master Plan Version 2 and subsequently on January 21, 2020 submitted Master Plan Version 3 as part of its PUD Application.

RECORD OF PROCEEDINGS

The record of the proceedings of the above-referenced matter consists of the following, to-wit:

1.1 Exhibits and documents included in this proceeding:

<i>DESCRIPTION OF EXHIBITS AND DOCUMENTS</i>	
A	P&Z FCDR (true and correct copy of which is attached as Exhibit A)
B	All exhibits identified in the P&Z FCDR and all documents received by the P&Z in the P&Z FCDR and those posted on or before September 11, 2019 to: https://ketchumidaho.org/sites/default/files/fileattachments/planning_amp_building/project/37921/all_comments_received_by_pz_7.15.19_to_9.11.19.pdf
C	All exhibits and documents hereinafter identified were received by the City Council in addition to A and B above stated and are identified by the letter C followed by a number.
C-1	<p>Notice of hearing documents:</p> <p>C-1 Public Hearing September 16, 2019 and October 7, 2019</p> <p>C-1.1 Notice of Public Hearing Before the Ketchum Planning and Zoning Commission on Monday, September 16th, 2019, at 4:00 p.m.</p> <p>C-1.2 Mailing Public Notice Public Hearing Meeting of Ketchum City Council set September 19, 2019</p> <p>C-1.3 Mailing Public Notice Public Hearing meeting of the Ketchum City Council September 16th and October 7, 2019</p> <p>C-1.4 2nd Mailing Public Notice Public Hearing Meeting of Ketchum City Council September 16th and October 7, 2019</p> <p>C-1.5 Planned Unit Development Noticing Checklist/Certification Meeting date 9-16-19 and 10-7-19</p> <p>C-1.6 Development Agreement Noticing Checklist/Certification Meeting date 10-7-19</p> <p>C-1.7 Public Notice – Public Hearing October 7, 2019 Design, Review, Planned Unit Development, Conditional Use Permit, Development Agreement, Readjustment of Lot Lines, and Flood Plain Development</p> <p>C-1.8 Copy of legal notice published Mountain Express on August 28, 2019 for September 16, 2019 public hearing Design, Review, Planned Unit Development, Conditional Use Permit, Development Agreement, Readjustment of Lot Lines, and Flood Plain Development</p> <p>C-1.9 Copy of legal notice published Mountain Express on September 18, 2019 for public hearing on October 7, 2019 Design, Review, Planned Unit Development, Conditional Use Permit, Development Agreement, Readjustment of Lot Lines, and Flood Plain Development</p> <p>C-1.10 Affidavit of Publication Idaho Mountain Express of Legal Notice for publication on the 28th day of August, 2019 for the hearing on September 16th</p>

	C-1.11 Affidavit of Publication Idaho Mountain Express of Legal Notice for publication on the 18 th day of September, 2019 for the hearing on October 7
C-2	<p>C-2 Documents submissions by the Applicant;</p> <p>C-2.1 Owner's Revised Project Master Plan and Submittal Documents as documented in the staff report dated October 7, 2019 and December 2, 2019, as well as the following January 21, 2020 Ketchum Tribute design updates</p> <p>C-2.2 Top Ten – Project Updates</p> <p>C-2.3 New Maps and Information (since PZ approval on 8/12/19)</p> <ul style="list-style-type: none"> • Hales Engineering Access Memorandum, Dated 8/13/19 • In-Group Hospitality Parking Plan, Dated 8/26/19 <p>C-2.4 Following Ketchum Tribute Design Update Drawings, Dated 10/7/19</p> <ul style="list-style-type: none"> • Tribute Portfolio • Council Update • Architectural Site Plan • Landscape Plan • Floor Plans (Each Level) • Contextual Elevations (5 Drawings) • Project Perspectives from NE, NW, SE, NE, N & Rooftop Bar • Waiver Supporting Exhibits <ul style="list-style-type: none"> ○ Minimum Lot Size for PUD ○ Floor Area Ratio ○ Average Setbacks ○ Height / Contextual Elevations • Planning & Zoning Comments • PZ Response <p>C-2.5 Master Plan Version No. 1 Submitted with the Applicant's Application and approved by the Planning and Zoning Commission on August 12, 2019</p> <p>C-2.6 Master Plan Version No. 2: dated December 2, 2019 with changes summarized in Staff Report submitted by Applicant for Council hearing on December 2, 2019 and including in the December 2, 2019 Council Packet</p> <p>C-2.7 Master Plan Version No. 3: Summary in Staff Report and in Exhibits January 21, 2019 submitted by Applicant for Council hearing on January 21, 2020 posted at: https://ketchumidaho.org/planning-building/project/ketchum-boutique-hotel inclusive of the following:</p> <p>C-2.8 Waiver Supporting Exhibits (15 Sheets)</p> <ul style="list-style-type: none"> • Waiver 1 – Minimum Lot Size for PUD • Waiver 2 – FAR = 1.57 <ul style="list-style-type: none"> ○ Before & After – Building Mass Revision • Waiver 3 – Average Setbacks <ul style="list-style-type: none"> ○ Front = 15' ○ West Side = 17.5' (avg), 12' at closest point to property line ○ East Side = 31.3' (avg), +/- 20' at closest point to SH75 property ○ Rear = > 35' from Trail Creek

	<ul style="list-style-type: none"> • Waiver 4 – Height / Contextual Elevations • River Street Entry Plaza (4 Sheets) <ul style="list-style-type: none"> ○ Option 1 with Rendering ○ Option 2 • SH-75 Service Access Study (2 Sheets) • Sustainability Integration (4 Sheets) <ul style="list-style-type: none"> ○ Building Systems / Geothermal ○ High Performance Building & Site ○ Material & Product Sustainability Assessment ○ Updated Site & Floor Plans (16 Sheets) <ul style="list-style-type: none"> ▪ Landscape Plan ▪ Building Perimeter Before / After ▪ Level -03, -02, -01 Floor Plans (Below River Street) ▪ Level 01, 02, 03, 04 Floor Plans ○ Project Perspectives <ul style="list-style-type: none"> ▪ NE, NW, N, NE, SE, SW ○ Employee Housing Plans (6 sheets) <ul style="list-style-type: none"> ▪ 12 one-bedroom studios (2 different designs) – 12 employees housed ▪ two-bedroom suites (1 design) – 4 employees housed ▪ 1 four-bedroom suite (1 design) – 7 employees housed ○ Setback Analysis <ul style="list-style-type: none"> ▪ 5 Sections ○ River Street Encroachment (2 Sheets) ○ Architectural Site Plan (5 Sheets) <ul style="list-style-type: none"> ▪ Contextual ▪ E, N, W, S
<p>C-3</p>	<p>Staff Reports</p> <p>C-3.1 October 7, 2019</p> <ul style="list-style-type: none"> • Staff Report <ul style="list-style-type: none"> ○ Note 1. The following link includes PEG survey response summary and public comment letters reviewed by the PZ through 8/12/19 and submitted to KCC through 9/11/19 ○ https://ketchumidaho.org/sites/default/files/fileattachments/planning_amp_building/project/37921/all_comments_received_by_pz_7.15.19_to_9.11.19.pdf ○ Note 2. The following link includes letters, petitions, emails and other public comments submitted to KCC: ○ https://ketchumidaho.org/citycouncil/page/ketchum-boutique-hotel <p>C-3.2 December 2, 2019</p>

	<p>C-3.3 January 21, 2020</p> <ul style="list-style-type: none"> • Staff Report • Proposed Findings of Fact, Conclusions of Law and Decision
C-4	<p>City Department, Agency & peer Review letters/Memos;</p> <p>C-4.1 Ketchum Fire Department Preapplications Requirements dated June 24, 2019 Ketchum Boutique Hotel</p> <p>C-4.2 E-mail to John Gaeddert dated July 22, 2019 from Sherri Newland, PE, CPESC Principal Engineer/Owner S&C Associates LLC Acting as consulting engineer for the City of Ketchum.</p> <p>C-4.3 E-mail to Suzanne Frick dated December 2, 2019 from Sherri Newland, PE, CPESC Principal Engineer/Owner S&C Associates LLC Acting as consulting engineer for the City of Ketchum.</p> <p>C-4.4 E-mail and attachment to Suzanne Frick dated January 3, 2020 from Sherri Newland, PE, CPESC Principal Engineer/Owner S&C Associates LLC Acting as consulting engineer for the City of Ketchum.</p>
C-5	<p>Public Comment Sign-up Sheets</p> <p>C-4.1 October 7, 2019 Public Hearing</p> <p>C-4.2 December 2, 2019 Public Hearing</p> <p>C-4.3 January 21, 2019 Public Hearing</p>
C-6	<p>Minutes of Council Meetings</p> <p>C-5.1 October 7, 2019</p> <p>C-5.2 December 2, 2019</p> <p>C-5.3 January 21, 2020</p>
C-7	<p>City Council Hearing Packets posted for public hearings held on:</p> <p>October 7, 2019 Posted at: https://mccmeetingspublic.blob.core.usgovcloudapi.net/ketchid-meet-f374e29900a74b108ca2d3560c836ce0/ITEM-Attachment-001-3abc66dc1caf4df39a96255157b5fd32.pdf</p> <p>December 2, 2019 Posted at: https://mccmeetingspublic.blob.core.usgovcloudapi.net/ketchid-meet-a8da33b7685c429c83f5f788dc6b0a06/ITEM-Attachment-001-8fb4f20629724aa69a20fb83918814a8.pdf</p> <p>January 21, 2020 Posted at: Staff report: https://mccmeetingspublic.blob.core.usgovcloudapi.net/ketchid-meet-fccaf6b775254eb2abab6768479876fd/ITEM-Attachment-001-25e632e69d32409eb1d63b0114fb156f.pdf</p>
C-8	<p>Public written comment submitted [inclusive of written public comment submitted on or before 9/11/19 which is also identified in Public Comment C- 9] posted at: https://ketchumidaho.org/citycouncil/page/ketchum-boutique-hotel</p>

C-9	Public Written Comment <ul style="list-style-type: none"> • Public Comment to Planning and Zoning Commission 7/15/19 to on or before 9/11/19 posted at: https://ketchumidaho.org/planning-building/project/ketchum-boutique-hotel
D	Exhibits to these Findings of Fact, Conclusions of Law and Order of Decision: <ul style="list-style-type: none"> • Exhibit A or Attachment A: <ul style="list-style-type: none"> ○ Planning and Building Staff Reports, Analysis and Presented to Council [also see Exhibit C-3] • Exhibit B or Attachment B: <ul style="list-style-type: none"> ○ Applicant Submissions • Exhibit C or Attachment C: <ul style="list-style-type: none"> ○ City consultant or City Department Comments other than the Planning and Building Department • Exhibit D or Attachment D: <ul style="list-style-type: none"> ○ Written Public Comment [also see Exhibit C-8] • Exhibit E or Attachment E: <ul style="list-style-type: none"> ○ P&Z Findings of Fact Conclusions of Law and Recommendations of P&Z inclusive of: <ul style="list-style-type: none"> ▪ E-1 Waterways Design Review, ▪ E-2 Plat Approval Recommendation, ▪ E-3 Preapplication Plan Review Approval, ▪ E-4 PUD Findings of Fact, Conclusions of Law and Recommendation of Approval; and ▪ E-5 Findings and Recommendation of Approval of the 8/12/19 draft dated "<i>Permits Conditions Acceptance Development Agreement.</i>" ○ City Council inclusive of: <ul style="list-style-type: none"> ▪ E-2A Plat Approval

1.2 Initial Proceeding Conducted on September 16, 2019:

The Public Hearing notice for the September 16, 2019 hearing at 4:00 p.m. due to a notice error it was announced by the Mayor that the hearings on the Ketchum Boutique Hotel at 260 and 280 River Street and 251 S. Main Street applications for Planned Unit Development, Conditional Use Permit, and Development Agreement will not be commenced until October 7, 2019 at 4:00 p.m. No presentation was made by the applicant or staff, and no deliberations or discussion on the matter was held by the Council. However, those members of the public who were in attendance at the hearing and unable to attend the re-noticed public hearing for October 7, 2019 were allowed to provide public comment with said public comment to be included as part of the record of October 7th hearing which included the following:

1.2.1 The following persons making statements before the City Council [paraphrased] are as follows:

- **John Sahlberg**, 321 Leadville, Ketchum who expressed concern and frustration that the P & Z was relying upon a study from 2002 and that it was old and not useful and that the P & Z is recommending the granting of waivers because they have done it before. Referenced the Barriteau project.

- **Gary Hoffman**, 235 Spur Lane in Ketchum, found it refreshing that a large company is coming to Ketchum but would prefer they purchase the Barriteau Hotel property. Discussed proposed construction by ITD and positives and negatives of the proposal. He also mentioned housing and tourism and zoning, rentals and zoning laws need to be changed and would like to see a City stand against oversized construction.
- **Dr. Alexander**, 110 Sweetbrier in Blaine County wanted information as to why the Council and P & Z got to the root of why they recommend this project.
- **Vicky Graves**, resident of Ketchum concerned about safety at the corner and opposed to the hotel.
- **Kevin Livingston**, 115 S. Leadville started the digital petition and no one understands what is being proposed and that the Council needs to uphold with the public wants. He expressed concerns about the waivers granted to the Barriteau project.
- **Penelope Street**, born and raised in Ketchum currently works with homeowners and is concerned about high costs of living and working in Ketchum and concerned about project employee housing.
- **John Heaney**, 110 Williams St. is opposed to the height of the project.
- **Lisa Leach**, Blaine County resident Did not want to see variances granted. Recommended that an industrial psychologist be hired to study the proposed housing and was concerned about the adequacy of employee parking.
- **Pamela Sabel**, business owner at 180 Leadville Ave. N. concerned with the whole in the ground unfinished hotel project across Highway 75 and would like to see that project completed before starting another one and wanted more information.
- **Emily Nardel**, resident since 1983 and resides at the corner of River Street and 1st Ave. S. stated that the building will impact her ability to get out of her home and had concern with zoning changes.
- **Susan Scovell** has served on P & Z and urged Council to support P & Z recommendation.
- **Frank Dressman**, Blaine County Resident was frustrated by the P & Z waivers and recommended that the Marriott possibly build a building that blends with the community.
- **Susan Sahlberg**, 321 Leadville, Ketchum that the project does not fit in the space and that a smaller hotel could fit in the space.

1.3 Hearing Conducted On October 7, 2019:

The Public Hearing correctly noticed October 7, 2019. The public hearing was commenced by the Council, at 4:00 p.m. on October 7, 2019 at 4:00 p.m. for the receipt of testimony and comment from City Staff, the Applicant and the public.

1.3.1 Applicant Representatives [paraphrased]:

- **Cameron Gunter**, CEO of PEG Development. Presented his background information and discussed the benefits of the hotel brand {Marriot} which can be modeled to the community and can bring more people to the area and that onsite employee housing is critical to the success of the hotel project.
- **Nick Blayden**, Applicant Project Manager, presented the site plan provided information on what is currently on the site, the economics of the project and reviewed market study and estimated property tax and sale tax benefits. Stated that the project will have 30 beds for employee housing on site with some employees coming from off site.
- **Justin Heppler**, Applicant Architect, discussed that the Applicant allows design to cater a project to the local community. Discussed who they are trying to attract to the area and their process for creating the hotel. He reviewed the project design, public amenities for each level and the employee housing component of 30 beds for employees. That the project supports the City's comprehensive plan and clarified the height of the project and that it is lower than the neighboring hotel Limelighter and the Bariteau project. He stated the designs are not complete. He reviewed the waivers requested, size of the acreage, floor area ration waiver for employee housing and set back waivers on three sides. He also discussed changes made to the project based upon P & Z review process. Responded to Council questions and concerns.
- **Ryan Hales**, Hales Engineering for Applicant discussed the traffic study, liver of service and how they calculated traffic conditions, signalized, and stop controlled intersections. He also discussed existing conditions and future growth estimates and reviewed the traffic count and River St. and Maine Street intersections.

1.3.2 Public Comment [paraphrased]:

- **Scott Hanson**, Homeowner Trail Creek Crossing. He helped with the online petition. He is not opposed to hotels but objects to location of the Application. That the project is not in scale and would detract from the City's entrance and was concerned about traffic and waivers. That people rely upon zoning and waivers should not be granted. He discussed the survey's and petitions that have been circulated and that the project should not go forward.

- **Elaine Harks**, resident of Ketchum stated she is not anti-hotel concern is zoning are laws standards for only suggestions
- **Pat Duggan**, resident and property owner is Ketchum. She discussed her concerns about waivers granted in the past and that granting waivers needs to stop. Wants projects brought to the public in earlier time frame and references the petitions and other public comments.
- **Tom Benson**, Ketchum resident and property owner. Did not want exceptions to be made and not to grant waivers and discussed the number of employee housing needed and that the employee housing be moved to another location and how to change the design to fit the land.
- **Lars Guy**, Is a tenant in the building on the west side of the Project. He was concerned about the height of the building and was concerned about parking wanted continued review.
- **Jima Rice**, Blaine County resident. Recommended that the project be sent back to Planning and Zoning.
- **Gene Abrams** discussed the variances given to the Limelighter Hotel that should not be precedence for variances for this project. Questioned the occupancy and need for another hotel. Referenced another Marriot down the road and questioned employee housing did not make sense and questioned the tax income benefit to the City.
- **Dick Clotfelter**, resident of 151 S. Main lives on the top floor of the neighboring Limelighter Hotel. He was concerned with the plan and design of the project that he had hired and architect. He was concern with the traffic that will occur on River Street, fire safety on River Street due to the road being closed and that the project plan for parking, loading and garbage removal will cause problems.
- **Sally McCollum**, Ketchum resident, used to own the building to the west of the project. That the project is too large for the site and is too big along with the Limelighter Hotel for the City entrance.
- **Heidi Scherthanner**, Ketchum resident, complained about the City continuing to offer waivers for private homes and hotels and that traffic was a large problem.
- **Mark Penn**, President of East Fork concern that the application ignores the zoning by applying for variances. Wanted the T zone standards maintained. That the building height waiver request was not appropriate and voiced concerns about parking. He was not opposed to the project but wanted it designed to fit in the neighborhood better.
- **Pam Bailey**, Sun Valley Resident voiced concern over traffic and economic development impact.

- **Dell Ann Benson**, Trail Creek Crossing, was concerned about construction and noticing issues and object to the project across the street to the east as the hole in the ground at the entrance to the City and was opposed to the project.
- **Mickey Garcia** referenced the history of Ketchum, and was in favor of the development and the height no worse than the Limelighter across the street and that the public here does not want to let any other development in Ketchum.
- **Michael Brown**, from Aspen Colorado, He owns the Tamarack and Ketchum Hotel. He was against the project and that Ketchum was eclectic and that it should stay that way.
- **Jim Laski**, attorney representing the Limelighter Homeowner's Association, that his client objected to the design and was concerned with traffic. He discussed ITD's plan and not knowing when it would be implemented That the Limelighter did not have any waivers but employee housing and was concerned about traffic circulation plan.
- **Gary Slette**, represents Jan Clotfelter, his client is not against a hotel but concerned about traffic and circulation. He referenced his letter to the Council about River St. access and Main Street road closures.
- **Gary Lipton**, Resident of Ketchum, He is for the Hotel but wants waivers addressed appropriately. If this does not go forward will affect future investors.
- **Melissa Lipton** is against waivers being issued for the project. Concern over character of the entrance to Ketchum.
- **Ben Worst**, 220 River St., LLC His client is in support of a hotel at that location but concern of PUD's waivers and that these waivers make the zoning meaningless. Wants the hotel to be best it can be and was concerned about traffic, parking issues, view corridors.
- **Jerry Seifert** voiced support for the project
- **Ed O's Gara** on River Street, he is the closest resident to the project and the Limelight Hotel. Concern with parking.
- **Brian Barsotti**, Ketchum resident, discussed history of trying to put a hotel in Ketchum that slack is very hard for in this area and hospitality has changed. This is due to competition with Air BnB and other rentals in the area. Concern is waivers given to this project will have to be given everywhere.

1.3.3 Planning and Building Department Staff:

- **John Gaeddert**, Director of the City of Ketchum Planning and Building Department (the "Director") provided the Staff Report, discussed the history of the project Application and a study that had been done.

1.3.4 Mayor and Council issues of concern:

- **The Mayor and members of the Council** questioned the Applicant Representatives regarding the following issues related to the impact of the Application:
 - Traffic circulation and pedestrian safety; and
 - Employee housing and affordable housing; and pedestrian crossing. Responded to the Mayor's and Council's questions and concerns about affordable housing
 - Setbacks and height
- **The Mayor and members of the Council** questioned the Director regarding the following issues related to the impact of the Application:
 - Bulk reduction
 - What the Idaho Transportation Department's plans are for Highway 75 and road improvements
 - Height and traffic flows

1.3.5 Mayor and Council action: Approved a motion to continue the hearing to December 2, 2019 at 4:00 p.m. due to the complexity of this project and the need for more information to be presented.

1.4 Hearing Conducted on December 2, 2019:

The Public Hearing was continued to receive more information by motion of the City Council during the October 7, 2019 public hearing. The public hearing was commenced by the Council, at 4:00 p.m. on December 2, 2019 at 4:00 p.m. for the receipt of testimony and comment from City Staff, the Applicant and the public.

1.4.1 Applicant Representatives [paraphrased]:

- **Nick Blayden**, Applicant Project Manager discussed the Applicant's open house and had heard from the public and were show the changes they have made to the project contained in Applicant's Master Plan Version 2.
- **Justin Heppler**, Applicant Architect presented a power point showing 10 things they changed in the project design since the hearing of October 7th contained in Applicant's Master Plan Version 2. These included changes in the delivery and loading zone area as requested by Sherri Newlands P.E. City Engineering, access from Highway 75, sustainability, updated floor plans and the massing of the building and employee housing plans.

1.4.2 Public Comment [paraphrased]:

- **Heidi Scherthanner:** thanked applicant for improvements in the plans.
- **Jima Rice:** Thanked applicant for improvement in plans, was critical of the P & Z Commissioners review of this application. That the size of the project not small enough in mass and recommended eliminating the

employee housing and that the Applicant make a contribution in lieu of providing housing in the project and eliminate the roof top bar. Discussed the 2014 Comprehensive Plan.

- **Harry Griffith**, Executive Director of Sun Valley Economic Development: Spoke about the economic benefits of this project as being worth \$1.6 million to the community. That it directly impacts tourism and that it was an important project in that regard. He discussed the jobs the project will create and the number of new visitors it will bring to town. He stated that the 23-employee housing units is significant. He discussed the contribution to Local Option Sales Tax (“LOT”) that the project will bring. He referenced that the Marriott brand helps put Ketchum on the map. He obtained his information from the Applicant and found it consistent with the input and output model that has been used in the community.
- **Lucy Barrett**, expressed concern about the City’s infrastructure and if the City has addressed this concern. Expressed concern over parking and the conditions of the City’s Roads. Concern over the number of people this could bring and the ability of the hospital to hand it.
- **Mickey Garcia**, stated the P & Z did a wonderful job on this project, he is pleased with the design and that the people who are against it are selfish.
- **John Sahlberg**, lives in Trail Creek Crossing and was affected by the project and expressed is not wanting Ketchum to be like Jackson, Wyoming or Park City, Utah and opposes granting any waivers and respect for Ketchum’s values.
- **Susan Niemann**, 40 years of residency in Ketchum and agrees with John Sahlberg, and concerns about the Applicant’s renderings and that the project be build and landscaping consistent with project renderings.
- **Lars Guy**, immediate neighbor, questions regarding the T zone and setbacks and concerned about the relative scale and how it will look to the surrounding residents and that it is dangerous to grant waivers.
- **Dick English**, Ketchum resident concerned with utilities and natural resources. Questioned the City’s ability to provide water and accommodate the wastewater and was concerned about electrical power and natural gas needed for the Project effect on these systems.
- **Kevin Livingston**, Concern about transparency and there has been an overwhelming opposition response to the number of waivers applied for. He again discussed his opinion and that it cannot be good for Ketchum. That the people will be paying a lot more taxes that what the project will bring in. Stated the project needs to be scaled back.
- **Tom Benson**, Ketchum resident, opposed to the height variance and that it will devalue the property that surrounds the Project and discussed a

review that praised the Ketchum area and does not want Ketchum to turn into a Jackson, Wyoming or Park City, Utah.

- **Susan Sahlberg** liked the changes to the project that have been made but the waivers are still of concern and she opposed the height waivers.
- **Grace Summers.** She moved to Ketchum for the economy. That for young people this Project is a great opportunity to grow the economy. Discussed how Marriot is involved with corporate travel and how corporate employees then use Marriot hotels with they do personal travel. She was concerned that if this Project is turned down then Ketchum will not be attractive for other major brands of hotels. She also was in favor of the Roof Top bar which the Community could use.
- **DelAnn Benson,** Commended the Applicant on the amount of work they have done but not enough and that the project should meet the standard set for the zone. She questioned the statements of the Executive Director of Sun Valley Economic Development and the jobs this Project will bring. That the Project looks better than what is there now is no reason to grant this Application.
- **Pat Duggan,** stated that the Applicant needs to find another location, that the proposal is in the wrong spot and the P & Z Commissioners should have more thoroughly looked at the location.
- **Jim Laski,** Representing the Limelight Residents HOA. Their major concern is Highway 75 and River St. They oppose the angle parking scenario and the loading zone proposal. Concern about semi-trucks and the timing of deliveries and backing in and out for deliveries and expressed concern that the housing proposed as referenced at this hearing was different than what was in the Council Packet and that the biggest concern was traffic and vehicular use of Highway 75 and River St.
- **Ed Johnson,** Ketchum resident, stated no reason the housing should be on site and wanted the housing off site.
- **Mark Penn,** stated that the Applicant's current design was in response to public concerns but more work needs to be done to address those concerns. Discussed concern over P & Z Commissioners and zoning and concern about approval of the Project as presented creates a bad precedent in Ketchum.
- **Gary Slette,** represents Mr. & Mrs. Clotfelter. They are not opposed to the use if it fits and complies with the Zoning criteria. They are concerned with River St. right-of-way for delivery truck parking and that the Council look at River St. plan to come up with alternatives.

1.4.3 City Engineering Consultant:

- **Kordel Brayley,** Independent Engineer hired by the City of Ketchum, was introduced by the Mayor to discuss traffic circulation issues presented by

this Project. Mr. Brayley recommended the access to the Project be off of River St. He responded to Council question about elimination of the left turn regarding Highway 75 which he has not reviewed.

1.4.4 Mayor and Council issues of concern:

- Concerns about left turning regarding the intersection of River St. and Highway 75; and
- Access to the Project needing to be off of River St. not Highway 75; and
- Discussed encroachment proposals at page 86 and 87 of the Council Packet; and
- Discussion of retaining the middle of River St. where it is and not having diagonal parking move it which will reduce the size of the plaza and the effect on the length of the cross walk over River St.
- Discussion regarding the height waiver; and
- Discussion of benefits of employee housing and discussion of building affordable housing at another location and the need to see the Applicant comply with 1.6 Floor Area Ratio ("FAR") and had concern with the FAR waiver request; and
- Discussion of the setback waiver on the west side.

1.4.5 Mayor and Council action: Approved a motion to continue the hearing to January 21, 2020 at 4:00 p.m. due to the complexity of this project and the need for more information to be presented.

1.5 Hearing Conducted on January 21, 2020:

The Public Hearing was continued to receive more information by motion of the City Council during the December 2, 2019 public hearing. The public hearing was commenced by the Council, at 4:00 p.m. on January 21, 2020 at 4:00 p.m. for the receipt of testimony and comment from City Staff, the Applicant and the public.

1.5.1 Applicant Representatives (paraphrased):

- **Nick Blayden** Applicant Project Manager discussed that this was their third presentation of the Application. the Applicant's open house and had heard from the public and were show the changes they have made to the project contained in Applicant's Master Plan Version 2.
- **Justin Heppler**, Architect who referenced the Applicant's Master Plan Version 3 and discussed the 4 waivers that are being requested by the Applicant as a part of Applicant's PUD Application
 - #1 – Minimum Lot Size for PUD waiver is necessary in order to build a hotel on the site; and
 - #2 – Floor Area Ratio – The Master Plan Version 3 maintains the employee housing component but have reduce the FAR to 1.57 as

compared with the original Master Plan of 1.9. He used a power point to assist his statement about how they were able to make that reduction. He also referenced that the FAR 1.57 is lower than the request by the Council at the December 2nd hearing to reduce it to 1.6.

#3 – Average Setbacks – The Applicant was still seeking set back waivers on 3 sides and then described the Master Plan Version 3 on each of the 3 sides.

#4 – Height/Contextual Elevations – He explained showed that the elevations of the building in the Master Plan Version 3 is 27’ lower than the Barriteau project across Highway 75 and 25’ feet lower than the Limelight hotel. He talked about the Right of Way Waivers and outlined the curb lines.

He also referenced that the Applicant in discussion with Idaho Transportation Department on Highway 75 and making some headway.

He also discussed the sustainability facets of the project and briefly reviewed the floor plan and the views of the project and employee housing component.

1.5.2 City Attorney (paraphrased):

- **Bill Gigray**, Reviewed with the Council Planned Unit Development Standards and Process as it applies to the pending application.

1.5.3 Planning and Building Department Staff (paraphrased):

- **Abby Rivin Associate Planner**, Discussed the waivers and how the FAR is calculated and how setbacks and height is calculated for waiver purposes and what the standards were without waivers.

1.5.4 Public Comment (paraphrased):

- **Ben Worst**, Attorney representing 220 East LLC, neighboring property owner to the west of the Project. Stated that the waivers being requested are huge. Stated that Ketchum has never had average setbacks. That the formulas used to determine the setbacks that it is only 11’8” from the Project to his client’s property line. He requested the Council to increase that distance as much as possible up to 24’. He questioned what the undue hardship was for the Applicant. He stated under the PUD ordinance there is a need to set conditions and the need to meet the standard by reducing the height, increase setback and primarily meet the City’s standards and compatibility with the neighboring properties.
- **Scott Hanson**, homeowner at Trail Creek Crossing stated the City has misinterpreted its code. That the Applicant was aware of the Code requirements prior to the purchase of the subject property and that the waivers requested are detrimental to public health & safety and referenced the signed petitions and letters posted. He has concerns about

traffic and the traffic study and problems that will be created by the Project. He stated this project would decrease the value of property around the project. He stated the property owners have hired an attorney and will fight for their rights. He stated the Project is inconsistent with the Tourist zone it is in and inconsistent with the neighborhood. That granting the waivers constitutes spot zoning without a rezone of the property and requested the Council to deny the requests for waivers.

- **Jima Rice**, Complained that the Mayor and the head of P & Z had solicited the hotel and those communications were not given to the Council or the P & Z Commissioners and this was Open Meeting Law violation. She requested that the Council deny waivers that were defacto approved and if the Applicant cannot meet those standards then must withdraw the application.
- **Dick Clotfelter**, 151 S. Main St. Ketchum requested that the zoning standards of the Tourist Zone be followed and that the Council reject the application. He recommended that new plans be brought back to P & Z accordingly.
- **John Sahlburg**, homeowner at Trail Creek Crossing stated the height waiver requests are monumental and the process is frustrating the public. Concerned the project would forever change Ketchum. This project and waiver will be detrimental to the public welfare and referenced all the letters and petitions that have been submitted. He stated there is nothing being proposed that is for the public welfare and that the property owners on 3 of 4 sides have stated it will be detrimental to the surrounding are. He requested the Council to deny the application.
- **Sharon Patterson Grant**, representing the KSEAC discussed the groups support (not inclusive of City members) of the sustainability measures the Applicant has incorporated in the Master Plan Version 3 that reflect the group's goals. She recommended getting some level of 3rd party certifications to guarantee energy efficiency such as Lead Certification and that they are proceeding with Green House Inventory in Blaine County with all jurisdictions including Ketchum. She is only speaking for water/waste and energy reduction.

1.5.5 Mayor and Council action:

- Closed public comment
- Proceed to deliberate:
 - Sought legal clarifications from Bill Gigray City Attorney
 - Sought clarification on the procedure for design review of this Application and Project and average setbacks from John Gaeddert
 - Continued their deliberations

- Sought clarification from the Applicant's architect on setbacks
- Motion made by Councilor Hamilton, Seconded by Council President Breen to approve the Planned Unit Development Conditional Use Permit and CUP for the PEG Ketchum Hotel for Master Plan Version 3 as recommended in the Staff Report Findings with the condition in section 2.2.11 of the recommended Staff Report findings be revised for the west setback to be not less than 16' and that section 4.5.2 of the recommended Staff Report findings include that the building be LEED Silver Certified and to direct the City Engineer, consistent with condition 4.2.4 of Attachment E.4.A, to work with the Applicant to complete the State Highway 75 (SH75) Encroachment Permit with the Idaho Transportation Department (ITD) that excludes (other than emergency Access) and direct approach into the project; and Direct the City Attorney and Planning Staff to Prepare Findings of Fact, Conclusions of Law, Order of Decision of the City Council for the City Council's consideration, approval and adoption at the continuance of this hearing.
 - Voting Yea: Council President Breen, Councilor David, Councilor Hamilton
 - Voting Nay: Councilor Slanetz
- Motion to continue the public hearings to the Ketchum City Council meeting to be held on February 3, 2020 at 4:00 pm as follows:
 - Regarding the development agreement, to receive applicant reports, staff reports and public testimony for City Council consideration and action; and
 - Regarding the application for Planned Unit Development Use Permit and CUP in order, to receive the city attorney's and planning staffs prepared Findings of Fact, Conclusions of Law, Order of Decision as directed in first Motion for City Council consideration, approval and adoption and final action.
 - Regarding the application for Preliminary Plat in order, to receive prepared Findings of Fact, Conclusions of Law, Order of Decision as directed in second Motion for City Council consideration, approval and adoption and final action.

1.6 Hearing Conducted on February 3, 2020:

The Public Hearing was continued by motion of the City Council during the January 21, 2020 public hearing to receive the draft Findings of Fact, Conclusions of Law and Order of Decision presented by Staff and City Attorney and continue deliberation and review of the same. The public hearing was commenced by the Council, at 4:00 p.m. on February 3, 2020 at 4:00 p.m.¹

1.6.1 Mayor and Council action:

- Reviewed and considered the draft Findings of Fact, Conclusions of Law and Order of Decision presented by Staff and City Attorney.
- Motion to approve and authorized the Mayor to sign these submitted Findings of Fact, Conclusions of Law and Order of Decision.

DECISION

WHEREUPON THE COUNCIL being duly informed and having reviewed the record, evidence, and testimony received and being fully advised in the premises, DO HEREBY MAKE THE FOLLOWING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF DECISION, to-wit:

¹ *Added to section 1.1 Exhibits and documents included in this proceeding as a part of Exhibit C-8 is Letter posted by Gary D. Slette attorney for Mr. & Mrs. Clotfelter posted and dated January 27, 2020

***City Attorney** (paraphrased): Bill Gigray presented to the Mayor and City Council an overview of the legal issues presented by the Letter posted by Gary D. Slette on January 27, 2020 as being and in the context of an issue of the City Council's construction of KMC §§ 16.08.080 A, 17.18.100, 17.124.040 and 17.124.050 as it related to the PUD Application which is the subject of the above entitled matter and provided the Mayor and Council with copies of these KMC ordinance provisions. He also responded to question on where the subject application is in the process.

***Public Comment** (paraphrased):

- **Jim Hungleman** objected to the hotel application as not needed and incompatible with the space around it and urged the Council to play by the rules.
- **Ben Worst** attorney for owner of 220 River Street property expressed gratitude for changes in the master plan and wanted assurance there would be a full 16' setback. He also asked for clarification on where the subject application was in the process.
- **Ananda Kriya** expressed concern with the speed of the project application process does not see the need in another hotel.
- **Pamela Zabel** was concerned with the construction of the project and the streets. Did not believe the existing hotels were overcrowded and does not see the need for another hotel.

II.
FINDINGS OF FACT and CONCLUSIONS OF LAW

[As set forth in this section are findings of fact and corresponding citations to KMC provisions which are also Conclusions of Law]

2.1 Findings Regarding Notice:

2.1.1 **Notice Required:** Notice has been given in accordance with the Law as required by KMC Sections 16.08.110 and 17.116.040.

2.1.2 **Notice Provided:**

2.1.2.1 Notice was published for the October 7, 2019 public hearing in the Idaho Mountain Express, the official newspaper, which has general circulation within the boundaries of the City of Ketchum.

Newspaper	Date Published
Idaho Mountain Express	Wednesday, September 18, 2019

2.1.2.2 Notice of the October 7, 2019 hearing was mailed on Friday, September 18, 2019 to the property owners within 300 feet of the subject real property and affected Agencies and was posted on the subject property on September 30, 2019.

2.2 Findings Regarding Applications Filed:

2.2.1 PEG Ketchum Hotel, LLC has submitted and completed an Application for a Planned Unit Development of a Master Plan for a hotel development on a 1.09-acre site located at the southwest corner of the State Highway 75 and River Street intersection at 280 E. River, (the "Project Site") inclusive of a request for waivers to minimum lot size, setback (side yards), height, and floor area ratio (FAR) limitations.

2.2.2 The Application is made pursuant and is subject to the provisions of the Ketchum Planned Unit Development (PUD) Ordinance Codified at Chapter 16.08 Ketchum Municipal Code as a PUD conditional use permit within in the City Tourist District Zone (KMC § § 16.08.050 and 16.08.060.)

2.2.3 KMC §16.08.020 provides:

A. *This chapter is adopted pursuant to authority granted by Idaho Code section 67-6501 et seq., and article 12, section 2 of the Idaho constitution. It is enacted for the purpose of protecting and promoting the public health, safety and welfare; to secure the most appropriate use of lands, to encourage flexibility and creativity in the development of land in order to improve the design, character and quality of new development, and to provide usable open space; to preserve the scenic and aesthetic qualities of lands; to protect property rights and enhance property values; to ensure that adequate public facilities and services are provided; to ensure that the local economy is protected and*

enhanced; to encourage and promote the development of affordable housing; to ensure that the important environmental features are protected and enhanced; to avoid undue concentration of population and overcrowding of land; to ensure that the development on land is commensurate with the physical characteristics of the land; to protect life and property in areas subject to natural hazards; to protect fish, wildlife and recreation resources; to avoid undue water and air pollution; and to protect the quality of life offered by the city and surrounding resources enjoyed by residents and visitors alike.

- B. The provisions for planned unit developments contained in this chapter are intended to encourage the total planning of developments. In order to provide the flexibility necessary to achieve the purposes of this chapter, specified uses may be permitted subject to the granting of a conditional use permit. Because of their unusual or special characteristics, PUD conditional uses require review and evaluation so that they may be located properly with respect to the purposes of this chapter, the comprehensive plan, and all other applicable ordinances, and with respect to their effects on surrounding properties and the community at large. In the event of conflict between this PUD chapter and any other ordinance of the city, this PUD chapter shall control. The review process prescribed in this chapter is intended to assure compatibility and harmonious development between conditional uses and surrounding properties and the city at large. The provisions for planned unit developments contained in this chapter are intended to encourage the total planning of developments. In order to provide the flexibility necessary to achieve the purposes of this chapter, specified uses may be permitted subject to the granting of a conditional use permit. Because of their unusual or special characteristics, PUD conditional uses require review and evaluation so that they may be located properly with respect to the purposes of this chapter, the comprehensive plan, and all other applicable ordinances, and with respect to their effects on surrounding properties and the community at large. In the event of conflict between this PUD chapter and any other ordinance of the city, this PUD chapter shall control. The review process prescribed in this chapter is intended to assure compatibility and harmonious development between conditional uses and surrounding properties and the city at large.*

- 2.2.4 Applicant Master Plan Submittals:** Applicant originally submitted a Master Plan and subsequently on December 2, 2019 submitted Master Plan Version 2 and subsequently on January 21, 2020 submitted Master Plan Version 3 as part of its PUD Application, pursuant to Title 16, Chapter 16.08. KMC Subject Master Plan (also herein referred to as the “Project”) includes a request for waiver or deferral of requirements pursuant to (KMC §16.08. 070.F).

- 2.2.5 **Waiver Requests:** As set forth in the Applicant's PUD Application and Master Plan, Master Plan Version 2 dated December 2, 2019 and Master Plan Version 3 dated January 21, 2020, waivers are requested to the following dimensional standards: Floor Area Ratio (FAR), side yard setbacks, and height requirements. Additionally, a waiver is requested for the PUD to occur on a Project Site with a minimum lot size of less than three (3) acres, which is permissible subject to stipulations set forth in KMC §16.08.080. A.
- 2.2.6 **Minimum Lot Size:** The Council may waive the three (3) acre minimum lot size requirement consistent with KMC §16.08.080. A.4 as allowed for hotels. To do so, the Council must find the Project meets the definition of hotel as set forth in KMC §17.08.020 and complies with the purpose of the Tourist zone as set forth in KMC §17.180 by providing the opportunity for tourist use. Additional relevant analysis is consistency of the Project with the Subarea Analysis and Gateway Study Excerpts, as set forth in **Attachment A**.
- 2.2.7 **Waivers Part of PUD Ordinance:** Title 16, Chapter 16.04.020 defines Waiver as a:

Modification of a relevant provision and regulation of this chapter not contrary to public interest or public health, safety or welfare, and due to physical characteristics of the particular parcel of land and not the result of actions of the subdivision where literal enforcement of this chapter would result in undue hardship. The granting of waiver(s) ... rests with the sound discretion of the commission and council, on a case by case basis.

Similarly stated relevant standards for the analysis of waiver requests are set forth in KMC §16.08.070.L and KMC §16.04.120.

- 2.2.8. **Four (4) waivers are submitted for the Project:** These include waivers to minimum lot size, setback (side yards), height, and floor area ratio (FAR) limitations. These waivers were requested by the Applicant consistent with KMC §16.04.120, §16.08.080 and §17.124.050, in part, as the literal enforcement of city code in the context of the special physical characteristics and conditions affecting the property would result in undue hardship. In particular, the Hotel site has a large slope with a grade differential of approximately thirty-seven feet (37') from Trail Creek at the south end of the lot to the north end along River Street. The site is constrained by the river to the south and the City desires to setback structures from riparian and flood areas. The City also desires to setback structures from State Highway 75 (SH75) in this location to help preserve the entry to town and minimize shading of the highway during winter months. Further, the grade along SH75, future Idaho Transportation Department (ITD) bridge and highway expansion plans, and a desire for no access onto SH75 in this location create unique conditions for development.

- 2.2.9 **Floor Area Ratio:** KMC §17.124.050.A states: “Hotels may exceed the maximum floor area [0.5] ... requirements of this title subject to ... [a] Planned Unit Development ... which specifically outlines the waivers to bulk regulations requested.” A subarea analysis is also required in the review process (KMC §17.124.050.A.2). The total developed gross floor area of the Project, as defined in KMC §17.08.020, is proposed to not exceed a FAR of 1.57 exclusive of basement areas and underground parking as shown in **Attachment B**. Total building area when each of the three (3) basement and parking garage levels and four (4) hotel stories are calculated in aggregate, as set forth in the PUD Findings and **Attachment B**, total approximately 131,881 square feet for the Project.
- 2.2.10 **Height:** KMC§17.124.050.A states: “Hotels may exceed the ... height ... requirements of this title subject to ... [a] Planned Unit Development ... which specifically outlines the waivers to bulk regulations requested.” A subarea analysis is also required in the review process (KMC §17.124.050.A.2). As noted, the Project Site has a large slope from Trail Creek at the south end of the lot to the north end along River Street. The hotel is proposed as a four-story structure on River Street that then stair steps and terraces down to three floors near Trail Creek. As depicted in the **Attachment B** Height Analysis, the maximum height of the building along River Street does not exceed forty-eight feet (48’) and the building scales down to approximately twenty-eight (28’) closer to the river on the south end of the property. The exception to this height analysis is in the center of the structure where 4-stories of hotel use are sandwiched between two public amenities (employee housing and a roof top bar for the public). At this more central site location, the existing grade drops at a fairly acute angle resulting in a portion of the building having a maximum height of seventy-two feet (72’) as measured from existing grade. In comparison to both the built Limelight hotel and approved Bariteau / Harriman Hotel on opposing corners, the height of the proposed Project will be lower and more closely align to the fourth-floor elevation of each of these buildings.

2.2.11 Setback: No rear/river or front setback waivers are requested. However, a waiver of the side yard setbacks is requested. KMC §17.124.050.A, subsections 1 and 2, specifies that a PUD and Subarea Analysis process shall be used in the granting of waivers to bulk regulations for hotels. KMC §17.12.030 sets forth the following minimum side yard setbacks: (A) the greater of one-foot (1') for every three-feet (3') of building height, or five feet (5') for the west side setback; and (B) Twenty-five foot (25') to thirty-two foot (32') setbacks adjacent to State Highway 75 (SH75), as calculated based on the adjacent right of way width. The Project, as amended, proposes a 31.3' average setback along SH75 with portions of the building as close as 20' from edge of SH75 ROW. See the Setback Analysis in **Attachment B** for exact details on subject building setback intrusion adjacent SH75. On the west-side of the structure, portions of the building are proposed as close as 11.8' from the neighboring west property line. Council approves the following side setback waivers: a minimum of sixteen feet (16') west side yard setback waiver and a minimum east side setback of twenty feet (20') consistent with **Attachment B** provided the average east side setback is greater than thirty-one feet (31').

2.2.12 Project Details: Details of the Project are set forth in **Attachment B** and include both narratives and maps. Narratives include a written project description, development plan, project analysis, social impact study, schedule, parking analysis, traffic study, employee housing plan, Subarea Analysis, and contextual hotel component analysis. Exhibit maps include plans, elevations, sections, sun study, height analysis, civil drawings, landscape plan, exterior color palate, dark sky compliant fixtures, traffic study diagrams, plat map, and public way improvements. Also provided are application forms, analyses of code compliance, soils report, and a waiver list.

2.3 Findings Summarizing Public Comment Concerns and Objections to and Benefits of the Application:

The Council having reviewed the written comment and having listened to the oral comments presented by the public summarizes the same as follows:

- Objections to the granting of waivers to the regulations and standards of the subject Tourist zone; and
- Objections to Building edifice bulk, setback location and height
- Concerns for traffic circulation and safety regarding Project access to and use of River Street on the north, Highway 75 on the east and the intersection of Highway 75 and River Street and concern with the unknown improvements Idaho Transportation may make to Highway 75; and
- Concerns with parking, loading and vehicular access when the Project is operational; and
- Concerns regarding the look of the Gateway entrance to the City; and

- Concern about the character of the City
- Benefit of increase in tourism
- Benefit of additional employment opportunities and on-site employee housing
- Benefit of increased tax revenue
- Benefit of the addition to this tourist community of well-designed and landscaped hotel facility with natural area enhancements and public use availability features.

City Council Standards Findings Planned Unit Development Conditional Use Permit:

The Council having reviewed the Project Master Plan Version 3, as set forth in **Attachment B** to these Findings, as well as public comment, staff analyses, and agency/peer review/department inputs as set forth in **Attachments A, C and D** to these Findings and makes the findings as set forth in Sections 2.4, 2.5 and 2.6 below regarding the Planned Unit Development Conditional Use Permit standards:

2.4 PUD Ordinance Standards and City Council Evaluation Compliance Analysis and Findings:

EVALUATION STANDARDS: 16.08.080

The standards set forth in this section shall apply to review of all PUD conditional use permit applications. The standards shall be used to review and evaluate the proposal in comparison to the manner of development and effects of permitted uses and standard development allowed on the property in question. Modification or waiver from certain standard zoning and subdivision requirements may be permitted subject to such conditions, limitations and/or additional development standards, pursuant to section 16.08.130 of this chapter, as the city council may prescribe to mitigate adverse impact at the proposed planned unit development, or to further the land use policies of the city, or to ensure that the benefits derived from the development justify a departure from such regulations. Where the city council determines that conditions cannot be devised to achieve the objectives, and/or the standards contained in this chapter are not met, applications for conditional use permits shall be denied. The city council shall make findings that each of the following evaluation standards have been met. The evaluation standards are as follows:

KMC § 16.08.080.A

Minimum lot size of three (3) 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 such waiver or deferral only for projects which:4. For a hotel which meets the definition of "hotel" in section 17.08.020, "Terms Defined", of this code, and conforms to all other requirements of section 17.18.130, "Community Core District (CC)", or section 17.18.100, "Tourist District (T)", of this code. Waivers from the provisions of section 17.18.130 of this code may be granted for hotel uses only as outlined in section 17.124.040 of this code. Waivers from the provisions of section 17.18.100 of this code may be granted for hotel uses only as outlined in section 17.124.040 of this code.

City Council Findings: The Project Site is approximately 1.09 acres and does not meet the minimum standard of (3) acres for a PUD. However, as noted herein below, the Council finds that this requirement may be waived consistent with KMC §16.08.080.A.4 as allowed for hotels. Specifically, this Project:

(A) Meets the definition of hotel as set forth in KMC §17.08.020. The Project consists of ninety-two (92) rooms, includes on site food and beverage service with kitchen facilities, common reservation and cleaning services, meeting room space, combined utilities, on site management and reception services, access to all sleeping rooms through an inside lobby supervised by a person in charge no less than eighteen (18) hours per day, and adequate on site recreational facilities. There are no other residential uses proposed in connection with the hotel operation, other than the proposed 23 beds of employee housing.

(B) Complies with the purpose of the Tourist zone as set forth in KMC §17.180 by providing the opportunity for tourist use. Consistent with the sub-area analysis and Gateway Study Excerpts, as set forth in Exhibit A, the Project is compatible both in design and use with the surrounding uses and development.

(C) Allows the granting of waivers for hotel-related Tourist District Floor Area Ratio (FAR), setback, and height dimensional standards as outlined in KMC §17.124.040. The Project proposes to exceed the 0.5 Tourist Zone permitted Gross FAR as set forth in KMC §17.124.040.A and may exceed its FAR maximum in accordance with the pertinent code provisions allowing for fourth floor hotel uses, as set forth in KMC §17.124.040.B.3 and by reference KMC §17.124.050. In accordance with the aforementioned and also precedent (e.g., entitled Bariteau / Harriman Hotel site at 300 E. River Street across SH75 was also approved as a PUD on an approximately 0.9-acre site and the Limelight was approved as a PUD on an approximately 1.09-acre site), the Council finds this evaluation standard to have been met.

The City Council further finds: That it is the intent of the Council that paragraph 4 of subsection A of KMC Section 16.08.080 exclusively and directly applies to Hotel planned unit development waivers. That paragraph 4 of subsection A of KMC Section 16.08.80 requires that developments which meet the definition of a Hotel in KMC section 17.08.020 and conform to the requirements of KMC section 17.18.100 be granted waivers of the three (3) acre minimum lot size for their PUD Development. That KMC Section 17.18.100.A is a statement of purpose of the City's Tourist District and as such states the purpose of the district to provide the opportunity for high density residential and tourist use and development which can be justified as a primary use within the district. There is a general but not specific reference to the specific dimensional requirements of the Zoning ordinances in KMC Section 17.18.100. The zoning ordinance requirements of KMC section 17.124.040, which refers to KMC section 17.124.050, are not mandated by KMC Section 17.18.100 unless a waiver of 17.18.100 is required. In this instance the subject PUD application is a hotel use only, a waiver of 17.18.100 is not required, and the PEG Ketchum Hotel complies with the intent, purpose, and use requirements of the Tourist Zone set forth in KMC Section 17.18.100.

KMC § 16.08.080.B and KMC § 16.08.080.D

KMC § 16.08.080.B: *The proposed project will not be detrimental to the present and permitted uses of surrounding areas.*

KMC § 16.08.080.D: *The development shall be in harmony with the surrounding area.*

City Council Findings: As set forth in the Attachment A Gateway Study and the Attachment B Subarea Analysis, the proposed hotel is both by design and use consistent with envisioned plans for the corner of SH75 and River Street. Further, the proposed hotel project is consistent with current Tourist Zoning District zoning allowances for hotels. Each of the attendant uses, including restaurant/bar, meeting rooms, and employee housing are also permitted in the Tourist Zoning District. The site was defined as Site 2 in the 2007 Gateway Scale and Massing Study and was identified as a priority urban infill site for a potential hotel development, inclusive of a public plaza near the project intersection with SH75. As such, the Property is in the Ketchum Urban Renewal District (KURA) Revenue Allocation Area. The Project Site borders three other hospitality focused uses. The Limelight Hotel is located directly across River Street to the North. The Best Western Hotel is located diagonally across Main Street from the Project Site. The Planned Future Harriman Hotel by Bariteau is located directly across Main Street to the East. The two closest properties to the West are commercial office buildings, (220 and 200 East River Street). The site is bordered by commercial uses to its North, East, and West and is separated from the multifamily residential uses to the South by Trail Creek. Accordingly, the Council finds this Project will (A) not be detrimental to the present and permitted uses of surrounding areas and (B) be in harmony with the surrounding area.

KMC § 16.08.080.C

The proposed project will have a beneficial effect not normally achieved by standard subdivision development.

City Council Findings: The proposed hotel will benefit the city in ways not normally achieved by standard subdivision. These include public access to the river and, open space in excess of thirty-five percent (35%), and access to a 3,000 square foot bar patio terrace, which features landscaping and solar exposure unique for a built project. The Project will have significant economic and public amenity benefits to Ketchum that would not be achievable on this site without the PUD process due to the constraints created by the topography of the site (37' differential in grade between front property line on River and rear property line along Trail Creek), access constraints on the east side due to the east side bordering SH 75, and development constraints due to the south side of the property being Trail Creek. The provision of waivers through the PUD process allows the design of the building, interior layout, operations and programmatic aspects of the hotel to infuse economic and public benefits beyond what would be accomplished by hotel rooms alone.

Economic benefits of the development include local option taxes generated by the 92 new hotel rooms that will be booked through the international reach of the internationally recognized hotel brand's reservation network. The hotel will feature a number of public amenities, including a street front restaurant and lounge, banquet/meeting rooms, and a roof top bar with panoramic views of Bald Mountain and Dollar Mountain; there is no other publicly accessible rooftop space in Ketchum city limits with a similarly large footprint (approximately 2,035 net square feet of roof-top Bar Patio on Level 03 and 1,425 net square feet of roof-top Bar Terrace on Level 03 02) or that has 280-degree views and is operational in all four seasons. The hotel will also provide on-site employee housing, with a minimum of 23 beds, in a mix of traditional apartments and dorm style apartment units.

The hotel's inclusion of on-site employee housing will result in the project providing more on-site for employees than any other development in Ketchum city limits and the mix of housing unit styles will, as conditioned herein in §4.10, accommodate employees at different life stages and career stages (seasonal vs. long-term, full-time). Further, although the employee units are located on Lower Level 3 and Lower Level 2, which are partially below grade on the River Street portion of the building, because the grade of the site drops toward the south.

If the rooftop bar and lower floor employee housing units were removed from the project (or if the employee housing were located in a basement) the benefits of this project to the community would be lessened; the employee housing and roof-top amenity comprise approximately 12,883 square feet of the approximately 131,881 gross square foot development. Due to the site constraints, the allowance for waivers from the typical standards of the code is what makes inclusion of these public benefits truly benefits and is what makes these benefits possible.

Accordingly, the Council finds the PUD process as having a beneficial effect not normally achieved by standard development.

KMC § 16.08.080.D

The development shall be in harmony with the surrounding area.

City Council Findings: The Council finds this Project to be in harmony with the surrounding area. Details of this finding are presented jointly with KMC §16.08.080.B findings above stated.

KMC § 16.08.080.E

1. *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 percent (30%) of community or employee housing, as defined in section 16.08.030 of this chapter; 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.**
2. *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.*

City Council Findings: N/A. The Applicant is not requesting any density transfers.

KMC § 16.08.080.F

The proposed vehicular and nonmotorized transportation system:

1. *Is adequate to carry anticipated traffic consistent with existing and future development of surrounding properties.*
2. *Will not generate vehicular traffic to cause undue congestion of the public street network within or outside the PUD.*
3. *Is designed to provide automotive and pedestrian safety and convenience.*
4. *Is designed to provide adequate removal, storage and deposition of snow.*
5. *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.*
6. *Includes the use of buffers or other physical separations to buffer vehicular movement from adjacent uses.*
7. *Is designed so that roads are placed so that disturbance of natural features and existing vegetation is minimized.*
8. *Includes trails and sidewalks that create an internal circulation system and connect to surrounding trails and walkways.*

City Council Findings: **Attachment B** includes documents from the Applicant that address how vehicular and pedestrian traffic will circulate in and around the proposed Project. Included in **Attachment B** is an SH75 ingress/egress diagram and associated access analysis addressing safety, aesthetics, grading limitations, and Trail Creek Impacts, which was requested by a member of the public, duly analyzed by the Council, and determined by the Council after hearing from the project engineer, as well as the city independent traffic engineering consultant as not being in the public interest. No operational issues are found to exist with Project vehicular ingress / egress being on River Street with acceptable level of service (LOS) noted for each circulation component (parking garage access, hotel pick-up/drop-off, and SH75 approaches). See AECOM memo in **Attachment C**. Foremost of these exhibits is the detailed traffic impact study (TIS) prepared by Hales Engineering, which AECOM (on behalf of the city) has provided a peer analysis. **Attachment B** also includes River Street Public ROW Civil Plan Encroachment Options 1 and 2 that feature the Applicant's circulation plan, sidewalk improvements, and proposed snowmelt system for the Project. Finally, **Attachment A** includes two excerpts of professional studies. The first is an excerpt from the Idaho Transportation District (ITD) Record of Decision (ROD) and proposed Fiscal Year 2025 (FY25) road improvements to State Highway 75 (SH75) adjacent the property between the Trail Creek Bridge and River Street. These include a 3-lane urban section with curb, gutter and sidewalk. Importantly, the middle lane features a left turn lane for north bound traffic on SH75 that would permit adequate queuing and protected westbound (WB) turning movement onto River Street and the Project. The second excerpt is from Vitruvian and references a city-sponsored recommendation to upgrade the unsignalized crossing at SH75/River Street (north-side of intersection between Limelight Hotel and the Best Western) with a Rectangular Rapid Flashing Beacon (RRFB) to enhance pedestrian safety. After receiving input from ITD, as shown in Attachment A.4., including the August 8, 2019 Minutes of the Ketchum Transportation Authority, KCC recommends that enhancements to pedestrian safety are better accommodated with a HAWK system on River Street than an RRFB system. Also proposed to improve vehicular LOS movements is making east bound (EB) and WB River Street at the intersection with SH75 right turn only movements (signing and striping required). To further reduce traffic and to meet City sustainability goals, as expressed throughout the Ketchum Comprehensive Plan, the operation of the hotel will integrate strategies to reduce vehicular impact on Ketchum's streets from this Project. These include strategies such as a Guest Shuttle (airport and to local destinations), Employee Car Share Program, and Employee Transit Passes. As conditioned herein, the Council finds this standard to have been met. The Project will be adequately served by necessary vehicular and nonmotorized transportation systems.

KMC § 16.08.080.G

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:

1. Pursuant to subsection 16.08.070D of this chapter, all of the design review standards in chapter 17.96 of this code 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.
2. 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.
3. The site design should cluster units on the most developable and least visually sensitive portion of the site.

City Council Findings: As previously set forth in the findings for KMC §16.08.080 subsections B, D and F (above), the Project as conditioned, will be adequately served by necessary vehicular and nonmotorized transportation systems and will be in harmony with the surrounding area. The Project will pay applicable fees, from Local Option Taxes (LOT) for construction materials to applicable building permit fees and connection fees for such items as water and sewer connections. The Conditionally Granted Project shall pay the plan check and building permit fees that are in effect at the time of plan check and building permit submittal and all fees required by law prior to issuance of building permit. Further, details have been added as conditions of approval to assure that Marriott or other reward stays pay LOT to the city. Pursuant to KMC §16.08.070.D, all of the design review standards set forth in KMC §17.96 are conditionally attached to the City's approval of the Planned Unit Development and are memorialized in the Project Development Agreement. Staff has analyzed and the Council has found, as noted in **Attachment A**, Staff Analysis Project Compliance with the Ketchum Comprehensive Plan subsection, that the Project both conforms with and promotes the purposes and goals of the comprehensive plan. As noted in **Attachment B** and the Applicant's site design drawings, Project massing has been carefully designed with a four-story bench design on River Street that terraces down (southward) to follow the topography drop from River Street to Trail Creek. Subject terraces then become gathering spots for guests and the public to enjoy the outdoor and take in the scenic views from the hotel. As noted by the Applicant, "the massing also provides for a façade that steps in and out of plane, which is enhanced by a layer balconies and articulation of those forms. The building pulls back over 35' from Trail Creek and has minimal visual impact on Forest Service Park." The building footprint near the front property line is setback 15' from the River Street frontage where it has an appropriate relationship to the sidewalk and street scape. The footprint is then pulled back to respect the riparian setback along Trail Creek to minimize the impact of the new building adjacent to a natural feature. Site landscape design has been designed to complement the bench topography and creek bank features of the site." As conditioned herein, this standard has been met.

KMC § 16.08.080.H

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

City Council Findings: Three significant natural features are recognized by the Council, including: the site's location on a bench; Trail Creek along the south property line; and, the 360-degree scenic views from the site including Bald Mountain and Dollar Mountain. The hotel has been designed to step down, following the bench topography, creating rooftop terraces and public spaces that take advantage of solar orientation and available views. The landscape plan includes pedestrian pathways for hotel guest and the public to access Trail Creek viewpoint areas set outside of the riparian zone setback. As conditioned herein, this standard has been met and the Master Plan is found to properly incorporate the site's significant natural features.

KMC § 16.08.080.I

Substantial buffer planting strips or other barriers are provided where no natural buffers exist.

City Council Findings: As noted in KMC §17.12.040, 21,362 square feet of the property will remain open space, which is forty-three percent (45%) of the 47,591 square foot site. The Project has greater than the required thirty-five percent (35%) minimum open space set forth in the KMC for the Tourist Zoning District. Three notable buffer strips that benefit the public are proposed. The first is the twenty-five foot (25') setback from SH75/Main Street that will be landscaped. Subject setback, as set forth in Attachment B, averages 31.3'. Portions of this area are proposed to include an outdoor dining patio toward the intersection of Main Street and River Street and will have landscape and architectural barriers such as raised planters, raised water features, and architecturally integrated railings separating the dining patio from the street. The second buffer is a twenty-five foot (25') Riparian Easement along with a ten foot (10') Utility Easement that combine to create a thirty-five foot (35') setback from the property line adjacent Trail Creek. The third design element includes the placement of a buffer landscape island between the hotel's Porte Cochere drive along River Street. Given the significant public amenities integrated into the hotel design and invitation of the public into the building, the Council finds a favorable exchange to exist with details to be enumerated in the pending River Street encroachment permit request by the applicant. This design element is subject to a separate Encroachment Permit application that will be reviewed by Council concurrently with the PUD. As conditioned herein, this standard has been met.

KMC § 16.08.080.J

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

City Council Findings: As set forth in **Attachment B**, the Applicant proposes to develop the Project in a single phase. To assure that that the development contains all the necessary elements and improvements to exist in a stable manner, the Council finds this standard (KMC §16.08.080.J) to be met, provided as a conditioned of the issuance of any Building Permit for the construction of the Project that an appropriate project completion assurance (e.g., an irrevocable letter of credit on a bank acceptable to the City in an amount equal to 130% of engineering estimates of the Master Plan) and all fees required by law prior to and for issuance of a building permit.

KMC § 16.08.080.K

Adequate and usable 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 usable and convenient to the residents of the project. The amount of usable 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.

City Council Findings: As previously noted, 21,362 square feet of the property will remain open space, which is approximately 45% of the 47,591 square foot site. Further, subject rooftop bar also includes patio space plus an additional 1,425 net square feet of landscaped terrace area devoted to public use. The open space, green roofs and patios that are provided exceeds the requirement by more than 8%, which is an amount “greater than that which would be provided under the applicable aggregate lot coverage requirements for the zoning district or districts within the proposed project.” The Council finds that subject open space is both adequate and useable and complemented by the Project’s addition of the outdoor roof top bar space with adjacent living garden terrace, which is available to the public and managed and maintained by the Project.

KMC § 16.08.080.L

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.

City Council Findings: The Council has reviewed the Applicant's response to this standard of evaluation, including reference to its sun study and height analysis/compatibility view drawings as set forth in **Attachment B**, and generally concurs with the finding that "The Ketchum Boutique Hotel is configured along a northwest spine that has allowed for the building's mass to be pulled back from the roadway view corridor leading to Main Street. All onsite parking is contained below grade and will have no visual impact on the site. The hotel features an interior courtyard located on level 2 that faces south, the courtyard will be hotel's 'private' exterior amenities space that is reasonably shielded from the view of most adjacent properties. The hotel features many architectural balcony elements that serve to create another layer of structure between the guests and the exterior, enhancing a sense of a perimeter of privacy in those guest rooms. The Sun Studies provided ... demonstrate that the massing of the hotel will have very minimal shade impact on adjacent buildings, only during the December studies do any shadows from the hotel intrude appreciably on any adjacent properties, and in those cases the shadow impacts from [the PEG Ketchum] hotel are not any more intrusive than the affected buildings have on their adjacent neighbors." As conditioned herein, the Council finds this standard to have been met.

KMC § 16.08.080.M

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 of such facilities 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.

City Council Findings: Programmed recreation facilities within the Project, as depicted in **Attachment B**, include a 1,002 square foot fitness center and a 3,301 square foot outdoor terrace, including hot tubs. The Council finds these on-site guest amenities to adequately meet the recreational needs appropriate to the scale of the Project. In addition, the Council finds that the proposed use, inclusive of the employee housing units, does not warrant the provision of on-site daycare services.

KMC § 16.08.080.N

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.

City Council Findings: As noted in the Gateway Study set forth in **Attachment A**, the City of Ketchum has established special development objectives for the four corners surrounding the intersection of River Street/SH75. The Council has reviewed and analyzed this Study and recognizes subject Project Site is on a bench with approximately 37 feet of grade change and without the PUD process would unlikely be developable as a hotel as it would have to have one building along River Street, and a second building at the bottom of the hotel accessible via SH75 Street. This latter access is not desirable for site visibility and safe ingress/egress as attested to by the city's independent traffic consultant upon review of project development drawings, Hales access memorandum, and ITD highway specifications. Accordingly, the Council finds there to be special development objectives and special characteristics of the site and its physical conditions that justify the granting of the PUD conditional use permit.

KMC § 16.08.080.O

The development will be completed within a reasonable time.

City Council Findings: As set forth in the Applicant's submittal, as set forth in **Attachment B**, a Spring 2020 construction start and an Autumn 2021 opening are proposed. Similar to the Council's finding on KMC §16.08.080.J, the Council finds this standard is met; provided that a project completion assurance agreement is entered into between the Applicant and City Council for the Project prior to the issuance of any Building Permit for the construction of the Project.

KMC § 16.08.080.P

Public services, facilities and utilities are adequate to serve the proposed project and anticipated development within the appropriate service areas.

City Council Findings: Street, water, sewer, and fire personnel have met with the Applicant and found that adequate city services are available to serve the Project. See **Attachment C** for details on various departmental reviews. The Applicant and the City have also met with ITD regarding the Project and, as conditioned herein, is requesting improvements be installed by the Applicant at the intersection of SH75/River Street as a condition of Certificate of Occupancy. Formally, this will occur upon acceptance by ITD of a specific Encroachment Permit application submitted by the Applicant in conjunction with city recommendations to ITD for approval. Prior to building permit issuance, the Applicant will need will-serve letters from other utility providers (gas, electric, waste and recycling). To date, no issues of service have been identified. The payment of impact, local option tax, and building permit fees pursuant to approved city schedules are required. The Council finds this standard has been met. Subject to the conditions set forth herein, public services, facilities and utilities are adequate to serve the Project and anticipated development within this area.

KMC § 16.08.080.Q

The project complies with all applicable ordinances, rules and regulations of the city of Ketchum, Idaho, except as modified or waived pursuant to this section

City Council Findings: KMC §16.08.080 Subsections G and Q both stipulate that the Project conform with and promote the purposes of applicable ordinances and not conflict with the public interest. This Project involves six (6) interrelated permits (floodplain, subdivision, design review, PUD, CUP, and a development agreement), as well as encroachment permits that will be required for SH75 from ITD and for River Street from the Ketchum City Council. Each of these eight (8) sets of approvals, as well as future compliance of Project construction drawings with other city regulations, such as Building, Fire, and Green Building Codes are required of the Applicant. As conditioned herein, the Council finds that this Project complies with all applicable rules and regulations of the City. The Council makes this finding in recognition of its previous finding in favor of waiving the three (3) acre minimum PUD eligibility criteria as detailed under KMC §16.08.080.A as allowed for hotels. Further, the Council makes this finding in recognition of the following dimensional standard and project waiver analysis for the proposed FAR, height/story, and setbacks proposed for the Project. Further, as noted in general finding 2.2.3 herein, Ketchum’s planned unit development ordinance is intended to encourage the total planning of developments, provide flexibility, and work with unusual or special characteristics of the land or a development project. Notably, KMC §16.08.020.B states, “[i]n the event of conflict between this PUD chapter and any other ordinance of the city, this PUD chapter shall control.”

2.5 Tourist Zoning District Dimensional Standards and Project Waiver Analysis and City Council Evaluation Compliance Analysis and Findings:

KMC § 17.12.030

Minimum Lot Area & Lot Width: 9,000 square feet minimum & 80’ average.

City Council Findings: The property is 47,249 square feet in size and has a lot width with the one-lot subdivision application that exceeds the minimum lot size and widths required in the Tourist Zone.

KMC § 17.12.030

Minimum Open Space

City Council Findings: As set forth in **Attachment B**, 21,362 square feet of the property will remain open space, which is approximately 45% of the 47,249 square foot site. The Project has greater than the required thirty-five percent (35%) minimum open space set forth in the KMC for the Tourist Zoning District. The Council finds that this standard has been met.

KMC § 17.12.030

Setbacks

Front: 15’

Riparian: 25’

SH75: 25’ / 32’

Side: the greater of 1’ for every 3’ in building height, or 5’

City Council Findings: The project as set forth in **Attachment B** complies with the city's 25' riparian and 15' front setback requirements. A waiver of the side yard setbacks is requested. KMC §17.124.050.A, subsections 1 and 2, specifies that a PUD and Subarea Analysis process shall be used in the granting of waivers to bulk regulations for hotels. KMC §17.12.030 sets forth the following minimum side yard setbacks: (A) the greater of one-foot (1') for every three-feet (3') of building height, or five feet (5') for the west side setback; and (B) Twenty-five foot (25') to thirty-two foot (32') setbacks adjacent to State Highway 75 (SH75), as calculated based on the adjacent right of way width. The Project, as amended, proposes a 31.3' average setback along SH75 with portions of the building as close as 20' from edge of SH75 ROW. See the Setback Analysis in **Attachment B** for exact details on subject building setback intrusion adjacent SH75. On the west-side of the structure, portions of the building are proposed as close as 11.8' from the neighboring west property line. Council approves the following side setback waivers: a minimum of sixteen feet (16') west side yard setback waiver and a minimum east side setback of twenty feet (20') consistent with **Attachment B** provided the average east side setback is greater than thirty-one feet (31').

KMC § 17.12.030

Permitted Gross Floor Area Ratio: 0.5 or greater for hotels

City Council Findings: The Council finds the Project meets the definition of hotel as set forth in KMC §17.08 and, as a consequence, is eligible to exceed listed FAR consistent with the Council's previous finding within KMC §17.08.080, subsections B and D. A FAR of 1.57 is proposed for the hotel, which incorporates employee housing and other public amenities within the Project. Significantly, the Council has reviewed the **Attachment B** Subarea Analysis and two **Attachment A** documents - the Gateway Study and a Comparative Hotel PUD Summary Chart. The Council finds the proposed hotel is both by design and use consistent with envisioned plans for the corner of SH75 and River Street. The FAR of the Project is significantly less than the CC-Limelight Hotel and Tourist Zone Harriman Hotel Project - neither of which incorporate community housing on the hotel site. The Project Site was defined as Site 2 in the 2007 Gateway Scale and Massing Study and was identified as a priority urban infill site for potential hotel development. As such, the Property is in the Ketchum Urban Renewal District (KURA) Revenue Allocation Area. The allowance of a 1.57 FAR, as herein conditionally approved by the Council, is warranted due to special development objectives and special characteristics of the site and its physical conditions. In reaching this finding, the Council finds that the proposed FAR, as stipulated, will not be detrimental to the public welfare, health and safety nor injurious to property owners in the immediate area.

Subject to the approval of the PUD application with conditions as noted herein, the Council finds that the Project FAR warrants a waiver and, as a result, complies with this provision of the Tourist Zoning District.

KMC § 17.12.030

Building

Height

Maximum Permitted: 35' or greater for hotels

City Council Findings: The Project proposes to exceed the thirty-five foot (35') height limit, which is permissible subject to the city's fourth floor hotel use allowance in the Tourist Zoning District provisions, as set forth in KMC §17.124.040.B.3 and by reference KMC §17.124.050.A and B.6. Evidence in support of the Project height waiver up to seventy-two feet (72') from existing grade and an interpretation that the "hotel" does not exceed four floors are as follows:

- (A) The Project site has a large slope from Trail Creek at the south end of the lot to the north end along River Street. The hotel is proposed as a four-story structure on River Street, and step / terrace down to three and then two stories nearest Trail Creek.
- (B) The KMC does not specify the maximum height of a four-story building. Historic references in the KMC, as well as the top floor plate of the adjoining Limelight Hotel show the hotel fourth floor to equal approximately forty-eight feet (48') while the top of the Limelight hotel penthouse parapet is 73.5'.
- (C) Maximum height of the building shall not exceed 48' when the building is measured from the highest elevation of the property (along River Street) or 72' when building height is measured from the lowest elevation of the property (along Trail Creek), as depicted in the **Attachment B** Height Analysis.
- (D) During the transition where the four-story building along River Street steps down approximately thirty feet (30') toward Trail Creek, the forty-eight foot (48') high 4-story building reads like 6-stories at seventy-two feet (72') high. This is permissible consistent with KMC §16.08.020.B and desirable as follows: first, the height of the building at subject central location is below the forty-eight (48') 4-story horizontal plane established by precedent and with the top of the fourth floor at the adjacent Limelight; second, the Council recognizes that in this central location of the structure, that the 4-stories of hotel use are sandwiched between two public amenities (employee housing and a roof top bar for the public). The unique characteristics of the site at this location, where the existing grade drops quickly in the center of the site, result in a portion of the building having a taller element of seventy-two feet (72') as measured from existing grade. The Council finds this consistent with general finding 2.2.3 herein and KMC §16.08.020.B, "[i]n the event of conflict between this PUD chapter and any other ordinance of the city, this PUD chapter shall control."
- (E) In comparison to both the Limelight and approved Harriman Hotels on opposing corners, the height of the proposed Boutique Hotel is lower and more closely aligned to the fourth floor of each building.

(F) The **Attachment A** Gateway Study and **Attachment B** Subarea Analysis indicate that the proposed hotel is both by design and use consistent with envisioned plans for the corner of SH75 and River Street.

(G) Further, the proposed hotel project is consistent with current Tourist Zoning District zoning allowances for hotels. Each of the attendant uses, including restaurant/bar, meeting rooms, and employee housing are also permitted in the Tourist Zoning District. The Project proposes a height waiver for hotels in the Tourist Zone District and, subject to approval of the PUD application with conditions as noted herein, complies with this zoning standard.

KMC § 17.125.030.H

Curb Cut Permitted: A total of 35% of the linear footage of any street frontage can be devoted to access off street parking.

City Council Findings: There are no curb cuts proposed along State Highway 75. The new configuration results in less than thirty-five percent (< 35%) of the linear footage of street frontage devoted to access the off street parking within the parking garage.

KMC § 17.125.020.A.2 and KMC § 17.125.050

Parking Spaces: Off-street parking standards of this chapter apply to any new development and to any new established uses.

City Council Findings: As analyzed by staff and consistent with KMC §17.125 and the revised Project parking analysis, a minimum of eighty-four (84) parking spaces in the underground parking garage are required. The Project proposes eighty-four (84) spaces in the parking garage. Of the 84 spaces provided for the Project not less than thirteen (13) spaces are reserved for public use and eighteen (18) spaces are reserved for employee housing use. As conditioned herein, the Project complies with this standard.

2.6 Conditional Use Permit Standards Analysis and City Council Evaluation Compliance Analysis and Findings:

KMC § 17.116.030 (A)

The characteristics of the conditional use will not be unreasonably incompatible with the types of uses permitted in the applicable zoning district.

City Council Findings: The proposed hotel and each of the attendant uses within the Project, including restaurant/bar, meeting rooms, and employee housing, are permitted uses in the Tourist Zoning District. The characteristics of the conditional use for the Planned Unit Development CUP and the waivers approved herein pursuant to KMC §17.124.050 are compatible with the types of uses permitted in the Tourist Zoning District. The Council finds this standard of evaluation has been met.

KMC § 17.116.030 (B)

The conditional use will not materially endanger the health, safety and welfare of the community.

City Council Findings: The Project will be served with essential public services and facilities, an acceptable level of service for traffic operations and pedestrian safety as set forth in the applicable findings noted in §16.08.080.F and §17.116.030 (B). As conditioned herein, the Council finds this standard has been met.

KMC § 17.116.030 (C)

The conditional use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood.

City Council Findings: The Council found in KMC §16.08.080.F herein above that the Project will be adequately served by necessary vehicular and nonmotorized transportation systems. This finding was made after reviewing **Attachment B**, which includes documents from the Applicant that address how vehicular and pedestrian traffic will circulate in and around the proposed Project. Foremost of these exhibits is the detailed traffic impact study (TIS) prepared by Hales Engineering, which AECOM (on behalf of the city) has provided a peer analysis. **Attachment B** also includes River Street Public ROW Encroachment details that feature the Applicant's circulation plan, sidewalk improvements, and proposed snowmelt system for the Project. Finally, **Attachment A** includes two excerpts of professional studies. The first is an excerpt from the Idaho Transportation District (ITD) Record of Decision (ROD) and proposed Fiscal Year 2025 (FY25) road improvements to State Highway 75 (SH75) adjacent the property between the Trail Creek Bridge and River Street. As conditioned herein, the Council finds this standard to have been met. In particular, three off-site mitigation measures that will be required as a condition of development, including:

- (A) Developer to accommodate a northbound left-turn lane plus taper at River/Main. The developer will need to coordinate with ITD to determine where the west edge of SH-75 will be and whether ITD will accept temporary paving. The developer would install sidewalk, curb and gutter to the city's standard. As noted in **Attachment C**, AECOM suggests that "ITD and the City consider creating an opposing left-turn lane and better aligning the approach and departure lanes through the intersection. In addition, it's understood that this will help prevent queuing and also be a safety improvement.
- (B) Developer to install "right-turn only" signs on the eastbound and westbound approaches (City would likely pay for the cost on the westbound approach).
- (C) At the discretion of the Ketchum City Council, the developer shall install a HAWK system on the crosswalk on the north leg. No crosswalk required on the south leg. However, as noted by AECOM in **Attachment C**, "Before constructing a HAWK signal at River Street, an engineering study should be performed using the guidance provided in Section 4F.01 of the MUTCD."

KMC § 17.116.030 (D)

The conditional use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts.

City Council Findings: Consistent with the findings made for KMC §17.116.03 subsections B and C, the Council finds this standard to have been met.

KMC § 17.116.030 (E)

The conditional use is not in conflict with the policies of the Comprehensive Plan or the basic purposes of this Section.

City Council Findings: The proposed conditional use is supported by the following goals and policies of the 2014 Comprehensive Plan. Specific findings and analysis are as set forth in **Attachment A**. As noted herein, the proposed conditional does not conflict with the policies of the Comprehensive Plan or the basic purposes of Chapter 17.116 Conditional Uses.

2.7 Findings Regarding Applicant's PUD Bulk Area Waivers:

- 2.7.1 The Applicant's Project includes waivers to the floor area ratio, side yard setbacks, and height requirements and, subject to compliance by the Applicant with conditions as noted herein, the Project complies with each of the Tourist Zone dimensional standards for hotels.
- 2.7.2 The proposed Planned Unit Development and Conditional Use Permit Application meets the standards of approval under KMC Title 16 and Title 17, subject to conditions of approval.
- 2.7.3 The Project may exceed the maximum floor area, height, setback or minimum lot size requirements of Title 17 KMC, subject to a planned unit development having been prepared for the Project's proposed hotel and subject to approval by the City Council which outlines the waivers to bulk regulations requested.
- 2.7.4 All height and bulk Project limitations shall be in accordance with Tourist District except those items waived as an incident of the PUD Development Plan approval. The approved Project plans illustrate areas where buildings may exceed height and bulk limitations. As conditioned herein, the Council refers to the zoning and subdivision waivers set forth in these PUD Findings.

**III.
CONCLUSIONS OF LAW**

The following are the legal principles that provide the basis for the Ketchum City Councils' decision which the Councilors have applied to the facts presented at the hearing of the above entitled matter:

- 3.1 The City is a municipal corporation established in accordance with Article XII of the Constitution of the State of Idaho and Title 50 Idaho Code and is required and has exercised its authority pursuant to the Local Land Use Planning Act codified at Chapter 65 of Title 67 Idaho Code; and
- 3.2 The City pursuant to Chapters 3, 9 and 13 of Title 50 Idaho Code has the authority to enact the Ordinances and regulations which the City has exercised and approved Ordinances codified in the Ketchum City Code (“KMC”), and which are identified in Section II of these Findings of Fact, and which are herein restated as Conclusions of Law by this reference, and which City Ordinances govern the Applicant’s Project Applications for the Development and use of the Project Site.
- 3.3 The City pursuant to Idaho Code Section 67-6515 has the authority, which it has exercised by ordinance, codified at Chapter .08 of Title 16 of the KMC, which is separate from its zoning ordinance for the processing of applications for planned unit development permits.
- 3.4 KMC section 16.08.120 C provides that prior to final approval of a PUD conditional use permit, the City Council may require a written agreement executed by the Applicant to secure performance of any requirement or condition to be imposed as part of the approval, including, but not limited to Development and may also require recordation of documents establishing and guaranteeing the operation and maintenance of the Project; and
- 3.5 The Project Applications, which includes waivers to the floor area ratio, side yard setbacks, and height requirements is governed under KMC Sections 16.08.020 B, 16.08.030, 16.08.040, 16.08.070, 16.08.080 and 17.124.050 are reviewed and considered by the Council in accordance with the following:
 - 3.5.1 In the event of a conflict Chapter 8 of Title 16 KMC controls over any other City ordinance; and
 - 3.5.2 A planned unit development involves a development of land in which the standard land use regulations of the City may be modified or waived in order to promote beneficial development of an entire tract of land in conformance with an approved planned unit development conditional use permit accentuating usable open space, recreational uses, public amenities, community housing, and harmonious development with surrounding properties and the city at large; and
 - 3.5.3 Any person wishing to develop a planned unit development shall comply with the requirements of chapter 8 of Title 16 KMC in addition to the zoning, subdivision and other applicable laws, ordinances, regulations and rules, subject to any modification or waiver granted as part of the planned unit development (PUD) conditional use permit; and

- 3.5.4 The Planning and Zoning Commission can make recommendations and the City Council has authority to grant waivers or deferrals of any of the requirements of sections 16.08.070 and 16.08.080 KMC on a case-by-case basis when the waiver or deferral will not be detrimental to the public welfare, health and safety nor injurious to property owners in the immediate area; and
- 3.5.5 The proposed Planned Unit Development and Conditional Use Permit meets the standards of approval under Title 16 and Title 17 KMC, subject to conditions of approval.

IV. ORDER OF DECISION

Based upon the above and foregoing Findings of Fact/Conclusions of Law and good cause appearing from the record, IT IS HEREBY ORDERED AND THIS DOES ORDER THAT:

Order No. 1 PEG Ketchum Hotel, LLC Application for a Planned Unit Development Conditional Use Permit Version 3 Master Plan (“Project”) for a hotel development on a 1.09-acre site located at the southwest corner of the State Highway 75 and River Street intersection at 280 E. River, (the “Project Site”) inclusive of a request for waivers to minimum lot size, setback (side yards), height, and floor area ratio (FAR) limitations as set forth in **Attachment B** (the “Conditionally Granted Project”) is granted subject to and contingent upon the following terms and conditions:

Condition No. 1 Revised Master Plan West Side Set Back: Applicant shall revise the Version 3 Master Plan with a redesign of the subject Hotel structure within the same locations on the north, east and south with an additional setback on the west side of four feet four inches (4’-4”) from the property line than is shown in Version 3 Master Plan; and

Condition No. 2 Emergency Services Conditions: The following are emergency services and safety terms and conditions:

- 2.1 **Completion of Fire Improvements:** The City Building Official or the City Fire Marshal may withhold building and/or fire inspection approval for any phase of construction until all necessary components of the water and/or fire alarm system sufficient to provide protection for that portion of the Conditionally Granted Project are complete.
- 2.2 **Fire Access During Construction:** Vehicle parking and material storage during Conditionally Granted Project construction shall not restrict or obstruct public streets or access to any building. Emergency vehicle access shall be maintained as required by the Fire Chief. Once construction begins on the second floor and above, 26-foot aerial ladder truck access is required along one entire side of the building, in a location approved by the Fire Marshal, for evacuation of injured persons from upper floors. All required Fire Lanes, including within 15 feet of fire hydrants, shall be maintained clear and unobstructed at all times.

- 2.3 **Fire Code Requirements:** The Conditionally Granted Project shall comply with all the terms and conditions set forth in the Ketchum Fire Department Pre-application Requirements Memo dated June 24, 2019 from Tom Ancona, Assistant Chief & Fire Marshall, inclusive of subsequent amendments thereto, as well as all 2012 International Fire Code requirements and any additional specific City Building (Chapter 15.04 and 15.06) and Fire Ordinances (Chapter 15.08).

Condition No. 3 ROW Improvements Conditions: The following ROW Improvements are required of the Applicant:

- 3.1 **DIG:** The Applicant shall submit a Street and Alley Digging, Excavation, and Trenching (“DIG”) Permit application with an associated traffic control plan for all construction work within the City ROW to be reviewed and approved by the City Streets Department.
- 3.2 **TURP:** The use of City right-of-way for construction which includes the closure of adjacent streets or sidewalks requires a Temporary Use of Right-of-Way Permit (“TURP”).
- 3.3 **River Street Encroachment Permit Improvements:** KMC §17.96.030.C states: “The City Council shall approval all permanent encroachments within the City-owned ROW associated with a development Conditionally Granted Project.” Applicant has made application as a part of the Conditionally Granted Project to the City for a license to encroach into the River Street Public Right of Way (“River Street ROW”) with a preference for Civil Plan Option 1, as set forth in the 1/21/20 design update **Attachment B**, which includes the following improvements: guest pick-up/drop-off, underground utilities, landscaping, street trees with decorative tree grates, public art, bike racks, sidewalks, pedestrian walkway lighting, and street lighting, and related improvements along River Street, pursuant to KMC §12.08.040. Further, the Applicant proposes that all walkway and driving surfaces within this encroachment area be hooked into its private boiler or similar snowmelt system within the Conditionally Granted Project mechanical room. The snow melt system is proposed to be operational every winter after the Hotel Operations begins operations. Final approval of the River Street ROW improvement plans is required and is subject to review and approval by the Ketchum City Council through a separate encroachment agreement. If approved via separate City encroachment process, such order or decision on encroachment, including any and all conditions thereon, is hereby incorporated by reference and made a part of these findings.
- 3.4 **SH75 Encroachment Permit:** ITD has an approved Record of Decision (“ROD”) that includes a 3-lane section with a six-foot (6’) wide sidewalk abutting the Subject Real Property. Subject ITD improvements to the SH75 ROW are proposed to be installed by ITD in Fiscal Year 2025 with road work in the vicinity, at the earliest, occurring in October of 2025. The installation of these SH75 Improvements by ITD and, particularly, the striping of a dedicated left turn lane West Bound onto River Street with adequate queuing for cars turning onto River Street is important to traffic flow both along SH75 and into the Conditionally Granted Project.

- 3.4.1 Given the Applicant's timeframe for construction and Certificate of Occupancy, subject SH75 work will not be conducted by ITD prior to the Developed Conditionally Granted Project and the commencement of Hotel Operations opening. Given that the City finds that a center turn lane with adequate queuing of approximately fifty to one hundred feet (50' – 100') is necessary for the SH75/River Street intersection to retain its current Level of Service ("LOS") for vehicular car movement, therefore the Applicant shall file with ITD an application for an encroachment permit. The Applicant and City shall work together to attain approval from ITD for the construction and striping of a partial center turn near the River Street intersection north of the Trail Creek bridge. The Applicant shall pay for engineering, traffic control and construction costs for subject SH75 improvements adjacent to the Conditionally Granted Project.
- 3.4.2 Further, to avoid excessive delays for East Bound traffic on River Street, the Applicant shall work with the City and ITD to install appropriate signage and improvements to allow only a right turn onto southbound SH75 at this intersection.
- 3.4.3 **Pedestrian Safety:** To help assure pedestrian safety and consistent with KMC, at the discretion of the Ketchum City Council upon the recommendation of the Ketchum Transportation Authority and the city's peer review engineering firm (AECOM), the Applicant shall work with the City and ITD to upgrade the unsignalized SH75 and River Street crossing (on north-side) to include a HAWK system. The circulation design shall meet all standards as specified in KMC §17.96.060.G. Further, as recommended by AECOM, "Before constructing a HAWK signal at River Street, an engineering study should be performed using the guidance provided in section 4F.01 of the MUTCD."
- 3.5 **Letter of Credit:** The Applicant shall provide an irrevocable letter of credit to the City for the aforementioned ROW Improvements affecting both the SH75 and River Street ROWs.

Condition No. 4 Terrace Walls: Construction of terrace walls or features of the outdoor dining patio with landscaping and architectural features adjacent to SH75 may be subject to future design review at the time the application is filed for approval at the discretion of the Administrator.

Condition No. 5 Time Limits: The following are the time limits that govern this Conditionally Granted Project:

- 5.1 Pursuant to KMC §17.96.090, a design review permit is valid for twelve (12) months from the date of final decision on the associated Findings of Fact, Conclusions of Law, and Decision. The Application for the Conditionally Granted Project building permit must be filed within the time as specified in KMC §17.96.090(A)(2). Any extension shall only be as allowed and specified in KMC §17.96.090.

- 5.2 Unless extended by the Ketchum City Council, a building permit shall be issued within twelve (12) months from the date of the last issued Permit.
- 5.3 A certificate of occupancy shall be issued for the Conditionally Granted Project no later than 18 months after the building permit is issued unless the time for completion of the Conditionally Granted Project is extended by the City Council.

Condition No. 6 Certificate of Occupancy: No Certificate of Occupancy shall be issued for the use and occupancy of this Conditionally Granted Project until the following items are complete:

- 6.1 All Design Review elements of the Conditionally Granted Project have been completed and approved by the Planning & Building Department; and
- 6.2 All occupancies in the Conditionally Granted Project (residential, commercial, etc) shall meet the Leadership in Energy and Environmental Design (LEED) Silver or equivalent standards consistent with (A) representations of the Applicant as set forth in **Attachment B** and its 1/21/20 design update Sustainability Integration representations (building system / geothermal, high performance building and site, material and product sustainability assessment) and (B) provisions of the City of Ketchum Green Building Code as set forth in KMC §15.20, inclusive of additional recommendations of the Planning & Zoning Commission during Conditionally Granted Project Design Review; and
- 6.3 All proposed encroachments within the City's River Street right-of-way have been installed in accordance with the Conditionally Granted Project Master Plan and approved by the City Engineer; and
- 6.4 All rooftop mechanical and electrical equipment is fully screened from public vantage points and approved by the Planning & Building Department; and
- 6.5 The City's Fire, Utilities, Building, Arborist, Streets, and Planning Departments have conducted final inspections and authorized issuance of Certificate of Occupancy; and
- 6.6 Prior to Certificate of Occupancy, a Parking Plan verifying free public use, the thirteen (13) displaced public parking spaces, and other details at the discretion of the City, shall be provided and approved by Ketchum City Council for the Conditionally Granted Project Parking Garage.

Condition No. 7 City Permit Performance Fees: The Applicant shall be charged and shall pay the City Permit Performance Fees for the administration of the City's performance of the Permit Conditions Acceptance Development Agreement.

Condition No. 8 Conditions to Applicant's Obligations: The Applicant's obligations hereunder are conditioned upon (1) receiving all the referenced approvals from the City and (2) securing financing as provided in the Permit Conditions Acceptance Development Agreement.

Condition No. 9 Drainage: Conditionally Granted Project Drainage system plans shall be submitted to the City Engineer for review and approval. Pursuant to KMC §17.96.060.C, all

storm water shall be retained on site, drainage improvements constructed shall be equal to the length of the Subject Real Property boundary lines, and all drainage facilities shall be constructed per City standards. All drainage improvements shall meet the applicable design criteria as specified in KMC §12.04.030.

Condition No. 10 Utilities Plan: The Applicant shall submit a Conditionally Granted Project Utility Plan indicating the location and size of water and sewer mains as well as gas, electric, TV and phone services (KMC §17.96.040.C.2c & KMC §17.96.060.D.1-3). Per KMC §17.96.060.D.2, utilities shall be located underground and utility, power, and communications lines within the Conditionally Granted Project Site should be concealed from public view.

Condition No. 11 Employee Housing Units: The Applicant shall either maintain or enter into a master lease with the Hotel Operator for apartment units within the Developed Conditionally Granted Project containing not less than 23 beds, as materially set forth in the 1/21/21 employee housing plan design update set forth in **Attachment B**, and thereby fulfill and satisfy the employee housing obligation of this Conditionally Granted Project consistent with the KMC.

- 11.1 Notwithstanding, consistent with the recommendations of the BCHA and the Commission, the Applicant may as part of the Design Review process seek to amend the employee housing plan configurations to have fewer shared bedroom configurations, improved bathroom to bed ratio, and more individual or couple employee housing suites; and
- 11.2 All leased apartment units must be subleased, assigned or otherwise made available to employees of the Hotel Operator on terms and conditions that emphasize the retention of a local workforce consistent with Blaine County Housing Authority (BCHA) community housing guidelines, and providing employee housing at a price point that is commensurate with its employees' ability to pay. The Applicant may enter into a master lease with the Hotel Operator for apartment units containing twenty-three (23) beds and thereby fulfill and satisfy the employee housing obligation of this Conditionally Granted Project consistent with KMC §17.124.050.
- 11.3 All leased apartment units must be subleased, assigned or otherwise made available to employees of the Hotel Operator on terms and conditions determined by it in the exercise of its discretion consistent with the goals of retaining a local workforce and adhering to the BCHA community housing guidelines.
- 11.4 Apartment leases and the management of this covenant of the developer to provide employee housing in the hotel are subject to annual recertification audits by the City and / or its designee. A fee established by resolution of the City may be charged for this service and associated compliance and monitoring activities.

Condition No. 12 Hotel Operations: The core feature of the Conditionally Granted Project is a hotel building operated at an industry acknowledged Four Star Hotel Operations Standard. Adherence to a Four-Star Hotel Operations Standard, particularly during Peak Travel Season, affects the sufficiency of on-site parking and traffic circulation in the

immediate vicinity of the Conditionally Granted Project and is a requirement of the occupancy and use of the Developed Conditionally Granted Project.

Condition No. 13 Lower Parking Demand and Traffic Impacts: To assure that the Applicant and/or Hotel Operator provides guest shuttle, employee shuttle, car share program, transit passes, carpool program, alternative transportation (such as bike storage for employees), and strict monitoring and management of deliveries and garbage pick-up, as set forth in §4.13, the Applicant and/or Hotel Operator shall include in the irrevocable letter of credit a Lower Parking Demand and Traffic Impacts amount of fifty thousand dollars (\$50,000) for a period of not greater than five (5) years upon which the City Council may request a draw to cover the City's costs in the mitigation of lowering traffic impacts and/or parking demands associated with the Applicant and/or Hotel Operator's failure to comply.

Condition No. 14 Parking & Loading: The Applicant shall present a Conditionally Granted Project Parking Plan for review and consideration by the Commission as part of its full Design Review Submittal. Prior to Certificate of Occupancy, a Conditionally Granted Project Parking Plan verifying public use, validation processes for determining parking charges (if any) for the public and the thirteen (13) displaced public parking spaces, and other details at the discretion of the City, shall be provided and approved by Ketchum City Council for the Conditionally Granted Project Parking Garage. The Conditionally Granted Project is required to have a minimum of eighty-four (84) parking spaces in the underground parking garage. Of these spaces, 53 spaces are required for the Four-Star Hotel Operations Standard, 18 spaces are required for employee housing, and 13 are required for the public to mitigate displaced public parking spaces from River Street. Of this total, not less than:

- 14.1 Eighteen (18) stalls shall be allocated for employee housing, inclusive of at least one (1) car share vehicle; and
- 14.2 Thirteen (13) underground parking stalls will be available to the general public at no charge to the public while visiting the property or using the conference center, spa, restaurant and bar. Subject to city final approval, a validation system may be employed by the Applicant and/or Hotel Operator with regard to the monitoring of public use of the thirteen, free-of-charge, underground public spaces located in the Conditionally Granted Project Parking Garage; and
- 14.3 Guest shuttle, employee shuttle, car share program, transit passes, and bike storage shall be provided as a part of the Four-Star Hotel Operations Standard.
- 14.4 During and upon completion of the construction of the Conditionally Granted Project, delivery vehicles associated with the Conditionally Granted Project shall not interfere with the regular flow of traffic surrounding the Conditionally Granted Project Site. Delivery vehicles shall not block the regular flow of traffic along River Street. Accordingly, deliveries will be made (a) preferably with single-unit trucks, not large tractor-trailer trucks; (b) during off-peak hours; and, (c) with hand trucks from the designated on-street loading zone. The Applicant shall strictly monitor and manage deliveries and garbage pick-up to ensure these activities do not occur during peak traffic periods, and that they do not occur simultaneously.

Condition No. 15 Local Option Tax: The Conditionally Granted Project shall be subject to the provisions of KMC Section 3.12, relating to local option taxes.

- 15.1 **Beverage, Food & Retail Sales:** All retail, food and beverage sales on the Conditionally Granted Project Site and in the Conditionally Granted Project shall be subject to the local option tax.
- 15.2 **Building Materials:** The Conditionally Granted Project and Conditionally Granted Project Site shall be subject to the local option tax on building materials.
- 15.3 **Employee Housing:** The obligation to pay local option tax shall not apply to the rental of employee housing units.
- 15.4 **Future Amendments to LOT Ordinance:** Any amendments to or repeal of Ketchum's Local Option Tax Ordinance and/or Idaho law relating to such local option taxes shall also apply to and modify this Section to the extent of such amendment(s) and/or repeal.
- 15.5 **Hotel Rooms:** All hotel rentals in the Conditionally Granted Project Four-Star Hotel Operations Standard shall be subject to the local option tax, regardless of who makes the reservation, including independent third-party travel agencies or other independent parties.
- 15.6 **Short-term rentals:** All non-hotel rentals, if any, shall be subject to the local option tax on short-term rentals.
- 15.7 **Marriott Rewards:** Reward stay bookings for any evening shall be assigned a room rate in accordance with the Idaho Administrative Procedures Act (IDAPA) and similar Idaho State Tax Commission rules and regulations. In all cases, subject reward stay booking shall be tracked as room revenue and charged the applicable local option tax rate. Local option taxes shall be remitted for all stays.

Condition No. 16 Waivers: Setbacks, FAR, and height for the Conditionally Granted Project shall comply with final Design Review for the Conditionally Granted Project as approved by the City. The final plans once approved and integrated into the Permit Conditions Acceptance Development Agreement by the Ketchum City Council illustrate areas where buildings may exceed height and bulk limitations. As conditioned herein above, Ketchum acknowledges the zoning and subdivision waivers set forth in the PUD Findings.

Condition No. 17 City Department Requirements: All requirements of the Fire, Utility, Building, Planning and Public Works departments of the City of Ketchum shall be met. All public improvements shall meet the requirements of the Public Works Department.

Condition No. 18 Compliance with the Applicable Laws and Ordinances: All other provisions of Ketchum Municipal Code, Chapters 16 and 17 and all applicable ordinances rules and regulations of the City and other governmental entities having jurisdiction shall be complied with by the Conditionally Granted Project.

Condition No. 19 Building Permit Requirements: The building permit for the Conditionally Granted Project shall not be issued until:

- 19.1 The Conditionally Granted Project is subject to completion assurances and a letter of credit, which shall be detailed by the City Attorney and Finance Director and approved by the Ketchum City Council as provided in the Permit Conditions Acceptance Development Agreement governing this Conditionally Granted Project; and
- 19.2 The Conditionally Granted Project shall pay the plan check and building permit fees that are in effect at the time of plan check and building permit submittal and all fees required by law prior to and for the issuance of a building permit.
- 19.3 Storm Water Management Pollution Prevention Plan (“SWPPP”) in accordance with local, state and federal laws and regulations is in place for the Conditionally Granted Project; and
- 19.4 A detailed Conditionally Granted Project Construction Staging and Mitigation Plan which is consistent with the standards specified in Chapter 15.06 of KMC, including provisions for off-site parking for contractors, sub-contractors, and other trades associated with the construction of the Conditionally Granted Project, off-site storage of bulk materials, and required right of way encroachments during construction, shall be submitted and approved by the City Planning and Building Administrator prior to building permit approval.
- 19.5 The Applicant has secured a will serve letter from Idaho, Clear Creek Disposal and other applicable public and private utility providers prior to issuance of a Building Permit.
- 19.6 The River Street Encroachment Permit encroachment agreement shall be obtained.
- 19.7 The Applicant shall cause to be issued in irrevocable letter of credit for the aforementioned Public ROW Improvements affecting both the SH75 and River Street ROWs. The amount of the financial guarantee shall be at 150% of engineering estimates for the guaranteed improvements. Partial and/or full release(s) of the letter of credit may be made upon: (i) Acceptance of subject River Street ROW improvements by the City; (ii) formal commencement of work by ITD of the SH75 ROW improvements adjacent the Subject Real Property and/or upon complete installation of the SH75 ROW improvements adjacent the Property.

Condition No. 20 Written Permit Conditions Agreement: The City Council has approved and the Applicant has entered into a Permit Conditions Acceptance Development Agreement inclusive of all the conditions of approval and consistent in form with Attachment E but subject first to inclusion of conditions of the Planning and Zoning Commission’s Design Review of Conditionally Approved Project and which Permit Conditions Acceptance Development Agreement is finalized and Approved by the City Council having completed its public hearing process regarding the same.

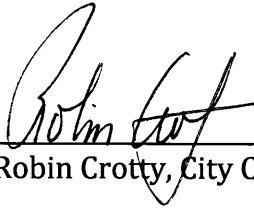
Order No. 2 Not a Final Action: These Findings of Fact, Conclusions of Law and Order of Decision are not a final action of the City Council on this Matter by reason of the fact that:

- 2.1 The Conditionally Approved Project must proceed with Design Review before the Planning and Zoning Commission; and
- 2.2 The City Council shall receive and consider, together with notice and the conduct of a public hearing, the final draft of the Permit Conditions Acceptance Development Agreement which shall be inclusive of the terms and conditions of the Planning and Zoning Commissioners' Design Review Order, the Terms and Conditions of Order No.1 and the Applicant's revisions to Version No. 3 Master Plan in compliance with Order No. 1.

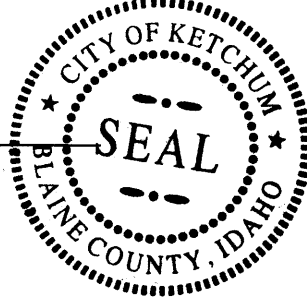
Findings of Fact **adopted** this 3rd day of February, 2020.



Neil Bradshaw, Mayor
City of Ketchum



Robin Crotty, City Clerk



Attachment E.4.A (February 3, 2020)

W:\Work\K\Ketchum, City of 24892\Gateway Hotel Development Proposal .015\PUD FCO Drafts\USE THIS PEG E.4.A PUD Findings as Revised and Approved by KCC on 2320 - FINAL for SIGNATURE copy.docx

Attachment E.5.A – *DRAFT* Development Agreement

Draft Date 4/6/20

**Recording Requested By and
When Recorded Return to:**

City of Ketchum
Attn: City Clerk
P.O. Box 2315
Ketchum, Idaho 83340

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

City of Ketchum / PEG Ketchum Hotel, LLC

Permits Conditions Acceptance Development Agreement

Parties to the Agreement:

City of Ketchum	“City”	City Hall P.O. Box 2315 480 East Ave. N. Ketchum, Idaho 83340
PEG Ketchum Hotel, LLC	“Developer”	Attn: Nick Blayden 180 N. University Avenue, #200 Provo, Utah 84601
PEG Ketchum Hotel, LLC	“Owner”	Attn: Nick Blayden 180 N. University Avenue, #200 Provo, Utah 84601

Draft Date 4/6/20

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[insert commencing with final drafts]

LIST OF EXHIBITS

EXHIBIT A: KETCHUM MUNICIPAL CODE ORDINANCE EXHIBITS:

1. DEMOLITION OF STRUCTURES ORDINANCE/ DEMOLITION OF BUILDINGS ORDINANCE
2. DESIGN REVIEW ORDINANCE
3. FLOODPLAIN MANAGEMENT OVERLAY ZONING ORDINANCE
4. SUBDIVISION ORDINANCE / LOT LINE SHIFT
5. PLANNED UNIT DEVELOPMENT ORDINANCE
6. CONDITIONAL USE PERMIT ORDINANCE
7. OFF STREET PARKING AND LOADING
8. DEVELOPMENT STANDARDS

EXHIBIT B: PROJECT MASTER PLAN / OWNER SUBMITTAL DOCUMENTS:

1. ALL DOCUMENTS SUBMITTED BY THE APPLICANT REGARDING THE APPROVED FLOODPLAIN DEVELOPMENT PERMIT, AS REFERENCED IN THE FINDINGS OF FACT CONCLUSIONS OF LAW, ORDER OF DECISION OF THE PLANNING & ZONING COMMISSION FOR FILE NO. P19-062 DATED _____, 2020.
2. ALL DOCUMENTS SUBMITTED BY THE APPLICANT AS SET FORTH IN EXHIBIT C-2 OF ATTACHMENT E.4.A REGARDING THE APPROVED PLANNED UNIT DEVELOPMENT FINDINGS OF FACT CONCLUSIONS OF LAW, ORDER OF DECISION OF THE CITY COUNCIL FOR FILE NO. P19-063 DATED _____, 2020.
3. ALL DOCUMENTS SUBMITTED BY THE APPLICANT AS SET FORTH IN EXHIBIT 1 AND 3E OF THE APPROVED DESIGN REVIEW FINDINGS OF FACT CONCLUSIONS OF LAW, ORDER OF DECISION OF THE KETCHUM CITY PLANNING AND ZONING COMMISSION FOR FILE NO. P20-019 DATED _____, 2020.
4. PLAT SHOWING LOT 3A, BLOCK 82, KETCHUM TOWNSITE DATED MARCH 2020, AS PREPARED BY GALENA ENGINEERING, INC.

EXHIBIT C: FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDERS OF DECISION:

1. FLOODPLAIN DEVELOPMENT PERMIT
2. PLAT / READJUSTMENT OF LOT LINES
3. DESIGN REVIEW
4. PUD CONDITIONAL USE PERMIT AND CUP
5. DEVELOPMENT AGREEMENT

Draft Date 4/6/20

Permits Conditions Acceptance Development Agreement

City of Ketchum/PEG Ketchum Hotel, LLC

THIS Permits Conditions Acceptance Development Agreement (this “**Agreement**”) is entered into by and between the CITY OF KETCHUM, a municipal corporation organized and existing under the laws of the state of Idaho, and PEG Ketchum Hotel, LLC, a Utah limited liability company authorized to do business in the state of Idaho as a foreign limited liability company (“**Developer**”) and (“**Owner**”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and in consideration of the premises and the mutual representations, covenants and agreements hereinafter contained, City and Developer/Owner represent, covenant and agree as follows:

SECTION 1 DEFINITIONS

For all purposes of this Agreement, the following words in **bold** print that appear in this Section have the definitions as herein provided in this Section unless the context of the term clearly requires otherwise and/or is not capitalized:

- 1.1 **Act:** Means and refers to the Local Land Use Planning Act as codified in Chapter 65 of Title 67, Idaho Code.
- 1.2 **Administrator:** Means and refers to the person appointed by the Mayor and City Council to interpret and administer Title 17 of the KMC also designated as the Director of Planning and Building.
- 1.3 **Agreement:** Means and refers to this “*Permits Conditions Acceptance Development Agreement.*”
- 1.4 **Applications:** Means and refers collectively to all of Owner’s applications to the City regarding the Development of the Subject Real Property in accordance with the Project Development Plan inclusive of: Pre-Application Design Review, Building Demolition Application [pending], Lot Line Shift Application, Floodplain Development Application, Planned Unit Development/Conditional Use Application, Design Review Application, and Right of Way Encroachment Permit [pending].
- 1.5 **Building Demolition Development Application:** Means and refers to the Developer/Owner’s application to the City for a demolition permit for buildings upon the Subject Real Property as the first part of City Development approval.
- 1.6 **Building Demolition Permit No. P 20-___:** Means and refers to that certain approved Permit issued to Developer/Owner by the Building Official subject to conditions pursuant

to the Building Demolition Development Application issued on ____ day of _____, 2020. [pending]

- 1.7 **Building Official:** Means and refers to the City Building Official.
- 1.8 **Building Permit:** Means and refers to the Building Permit/s issued by the Building Official for the construction of the Project Development Plan pursuant to Chapters 15.6 and 15.16 KMC.
- 1.9 **City:** Means and refers to the City of Ketchum, an Idaho Municipal Corporation and Party to this Agreement.
- 1.10 **City Administrative Review Fees:** Means and refers to the City Administrative Review Fee [as approved by the City Council in accordance with Idaho Code § § 63-1311 and 63-1311A, inclusive of use of outside consultants for plan checking, 3rd party verifications, and/or inspections for the City Services provided to the Developer/Owner for the City's administration of the Developer/Owner's Permits compliance as conditioned herein. [need to clarify this process in city fee resolution]
- 1.11 **City Council:** Means and refers to the City Council of the City.
- 1.12 **City Project Development Plan Agent:** Means and refers to the City's Director of Planning and Building Department or their designee/s who acts on behalf of the City in the Section 4 approval process of the Project Development Plan Completion Assurance Process and Conditions and Section 6 Default process.
- 1.13 **Construction Plans:** Means and refers to the construction drawings for the Project Development Plan as approved by the City.
- 1.14 **Default Cure Remedy:** Means and refers to any remedy inclusive of a City draw on the letter of credit issued pursuant to Section 4 that will cure the default and will provide for the specific performance of the terms of this Agreement.
- 1.15 **Demolition Of Buildings Ordinance:** Means and refers to the Demolition Of Building Ordinance of the KMC Codified at Section 15.16.040, a true and correct copy of which is attached marked *Exhibit A*.
- 1.16 **Design Review Development Application:** Means and refers to the Developer/Owner's application to the City for design review approval of the proposed construction and Development by the Developer/Owner on the Subject Real.
- 1.17 **Design Review Ordinance:** Means and refers to the Design Review Ordinance of the KMC Codified at Section 17.96.010 et. seq., a true and correct copy of which is attached marked *Exhibit A*.

- 1.18 Design Review Permit No. P 20-019:** Means and refers to that certain approved Permit issued to Developer by the City Planning and Zoning Commission subject to conditions pursuant to the Design Review Development Application issued on the _____ day of _____, 2020.
- 1.19 Developed:** Means and refers to the completion of construction of the Project Development Plan as the development of the Project by the Developer/Owner in accordance with the provisions of this Agreement.
- 1.20 Developer:** Means and refers to PEG Ketchum Hotel LLC, a Delaware limited liability company, authorized to do business in the state of Idaho as a foreign limited liability company, which is developing the Project and is also the Project Owner and is a Party to this Agreement.
- 1.21 Developer/Owner:** Means and refers to both the Developer and the Owner as of the Effective Date, but subsequently if there are assignments of either the Developer and/or the Owner's Rights, pursuant to this Agreement, this term is inclusive of Developer/Owner assigns.
- 1.22 Developer/Owner's Representative:** Means and refers to the representatives for the Developer/Owner, which is Mr. Nick Blayden, AJC Architects/ Mr. Justin Heppler, BHD Structural Engineers/ Brett Goodman and is inclusive of any designee appointed by Developer as provided herein.
- 1.23 Development:** Means and refers to the process by which the Project is Developed.
- 1.24 Development Rights:** Means and refers to the Subject Real Property land use and development rights in connection with entitlements as provided in the Permits issued by the City in the process of the Applications as provided in this Agreement.
- 1.25 Development Standards Ordinance:** Means and refers to the Development Standards Ordinance of the KMC Codified at Section 17.124.010 et. seq. a true and correct copy of which is attached marked *Exhibit A*.
- 1.26 Effective Date:** Means and refers to the date of the Building Demolition Permit No. P 20-_____, dated 6 _____ day of _____, 2020. [need permit and date]
- 1.27 Encroachment Permit City:** Means and refers to encroachment permit issued by the City as a part and parcel of the Project Development Plan.
- 1.28 Encroachment Permit ITD:** Means and refers to encroachment permit issued by the ITD as a part and parcel of the Project Development Plan.

- 1.29 Four Star Hotel Operations Standard:** Means and refers to the operation of the Developed Project as an upscale hotel providing guests with a luxury experience in a distinctive setting, including expanded amenities and exceptional service which includes the following characteristics:
- An impressive, well integrated and excellent architectural design; and
 - A lobby area located away from main traffic areas with multiple conversation groupings and recognizable guest services; and
 - A full-service restaurant, separate lounge and bar area; and
 - An onsite fitness center and hot tubs; and
 - Conference rooms; and
 - Onsite housing for 23 employees; and
 - Turn down service, valet parking, baggage service, laundry service, newspaper service, room service, computer access, fitness center service, ice service, and concierge service; and
 - Staff preparation and training to ensure integrate services from initial reservation call to departure.
- 1.30 Floodplain Development Permit Application:** Means and refers to the Developer/Owner’s application to the City for approval of the Developer/Owner’s plan for floodplain management of the Developed Subject Real Property as the third part of City Development approval.
- 1.31 Floodplain Management Overlay Zoning Ordinance:** Means and refers to the Flood Damage Prevention Ordinance of the KMC Codified at Section 17.88.010 et. seq., a true and correct copy of which is attached marked *Exhibit A*.
- 1.32 Floodplain Management Permit No. P 19-062:** Means and refers to that certain City approved Permit issued to Developer/Owner by the City Planning and Zoning Department subject to conditions pursuant to the Floodplain Management Development Application issued on the _____ day of _____, 2020.
- 1.33 Hotel Operator:** Means and refers to the person and or entity that is in possession of the Developed Project and using and occupying the same as a Four Star Hotel Operations Standard.
- 1.34 Hotel Operations:** Means and refers to the occupation and use of the Developed Project in compliance with a Four Star Hotel Operations Standard.
- 1.35 International Codes:** Means and refers to any Building, Residential, Energy, Mechanical, Rules of Building Safety, Plumbing Code, National Electrical Code or other codes adopted by the Idaho Division of Building Safety and by the Idaho State Fire Marshall and/or by the City which govern the Development.
- 1.36 ITD:** means and refers to the Idaho Transportation Department, an administrative department of the state of Idaho.

- 1.37 KMC:** means and refers to the Ketchum Municipal Code, which is the codified ordinances of the City.
- 1.38 Level of Service:** Means and refers to an identified standard by which service is provided in the context of the terms appearance in this Agreement.
- 1.39 Lot Line Shift Development Application:** Means and refers to the Developer/Owner's application to the City for a Lot Line Shift or Readjustment of Lot Lines of the existing Parcels of the Subject Real Property into one parcel as the second part of City Development approval.
- 1.40 Lot Line Shift Ordinance:** Means and refers to the Readjustment of Lot Line Procedures Lot Line Shift Ordinance of the KMC Codified at Section 16.04.030, a true and correct copy of which is attached marked *Exhibit D*.
- 1.41 Lot Line Shift Permit No. P 19-064:** Means and refers to that certain Lot Line Shift Permit issued to Developer by the approval of the City Council subject to conditions pursuant to the Lot Line Shift Development Application issued on ___ day of _____, 2020.
- 1.42 Master Plan:** Means and refers to the Master Plan filed by the Developer/Owner in support of their Project Development Plan, including the Planned Unit Development/Conditional Use Permit Application which depicts the Project proposed for construction.
- 1.43 Off Street Parking and Loading Ordinance:** Means and refers to the Off Street Parking and Loading Ordinance of the KMC Codified at Section 17.125.010 et. seq., a true and correct copy of which is attached marked *Exhibit A*.
- 1.44 Ordinances:** Means and refers collectively to the Demolition of Buildings Ordinance, Lot Line Shift Ordinance, Floodplain Management Overlay Zoning Ordinance, Planned Unit Development/Conditional Uses Ordinances, Design Review Ordinance, Off Street Parking and Loading Ordinance and the Development Standards Ordinance. This term may appear in this Agreement in the singular or the plural.
- 1.45 Owner:** Means and refers to PEG Ketchum Hotel, LLC, a Utah limited liability company, authorized to do business in the state of Idaho as a foreign limited liability company, who is the owner of the Subject Real Property on the Effective Date and Party to this Agreement, and after the Effective Date of this Agreement shall refer to the owner or owners of the Subject Real Property.
- 1.46 Peak Travel Season:** Means and refers to that period in each calendar year that commences on June 15th and continues to September 15th and then resumes on December 15th and end on the following President's Day holiday.

- 1.47 Parcels:** Means and refers to tract or parcels of distinctly legally described real property located within the Subject Real Property. This term may appear in this Agreement in the singular or the plural.
- 1.48 Party or Parties:** Means and refers to the City and/or the Developer/Owner, as the Parties to this Agreement, depending upon the context of the term as used in this Agreement.
- 1.49 Permits:** Means and collectively refers to the following permits approved and issued by the City [inclusive of ITD issued encroachment permit] to the Developer/Owner for the Development of the Project as part and parcel of the Project Development Plan are inclusive of the following:
- River Street ROW Encroachment Permit City P 19-____; and [pending]
 - State Highway 75 ROW Encroachment Permit ITD; and [pending]
 - Building Demolition Permit No. P 19-____; and [pending]
 - Lot Line Shift Permit No. P 19-064; and
 - Floodplain Management Permit No. P 19-062; and
 - Planned Unit Development/Conditional Use Permit No. P 19-063; and
 - Design Review Permit No. P 20-019; and
 - Waiver Applications granted by the City in conjunction with the above stated Permits; and
 - Building Permit(s). [pending]
- 1.50 Planned Unit Development/Conditional Use Permit Application:** Means and refers to the Developer/Owner's application to the City for approval of the proposed construction and development of the Project by the Developer/Owner as a planned unit development/conditional use.
- 1.51 Planned Unit Development/Conditional Use Permit No. P 19-063:** Means and refers to that certain Planned Unit Development/Conditional Use Permit issued to Developer/Owner approved by the City Council subject to conditions pursuant to the Planned Unit Development/Conditional Use Permit Development Application issued on the ____ day of _____, 2020.
- 1.52 Planned Unit Development/Conditional Uses Ordinances:** Means and refers to the Planned Unit Development Ordinance of the KMC codified at Section 16.08.060 et. seq., a true and correct copy of which is attached marked *Exhibit A* and the Conditional Uses Ordinance of the City Codified at Section 17.116 et. seq. of the KMC, a true and correct copy of which is attached marked *Exhibit A*.
- 1.53 Project:** Means and refers to the intended development of the Subject Real Property in accordance with the Project Development Plan and subsequent occupation and use conduction Hotel Operations in accordance with a Four Star Hotel Operations Standard and as governed by this Agreement.

1.54 Project Development Plan: Means and refers to and is all-inclusive of all City approved Developer/Owner plans, specifications and Permits for the completion of the Developed Project and is inclusive of the following:

- July 29, 2019 submittal package:
 - Written Description of Project
 - Narrative 01.02 – Development Plan
 - Narrative 01.03 – Project Analysis | Social Impact Study
 - Narrative 01.04 – Application of Standards 16.08.080
 - Narrative 01.05 – Development Schedule
 - Narrative 01.06 – Parking Analysis, July 16, 2019, Hales Engineering and Traffic Impact Study, July 12, 2019, Hales Engineering
 - Narrative 01.07 – Employee Housing Plan
 - Narrative 01.08 – Sub-Area Analysis
 - Narrative 01.09 – Contextual Hotel Components
 - Narrative 01.11 – Standards of Evaluation, Design Review, Conditional Use Permit, Development Agreement, and Hotels
 - Exhibit 02.01 – Plans, June 18, 2019 | Elevations, July 2, 2019 | Sections, July 2, 2019
 - Exhibit 02.02 – Floor Area Ratio (includes calculations, plans, and sections)
 - Exhibit 02.03 – Height Analysis (includes Contextual Elevations, Invisible Plane Diagram, Existing Topography Diagram, Compatibility Views, Gateway Study Recommendations)
 - Exhibit 02.04 – Sun Studies
 - Exhibit 02.05 – Civil Drawings, sheets C0.1, C0.2, C1.0, C2.0, C3.0, and C4.0
 - Exhibit 02.06 – Landscape Drawings sheet L1.0
 - Exhibit 02.07 – Exterior Color Palate
 - Exhibit 02.08 – Dark Sky Compliant Fixtures

- Exhibit 02.09 – Traffic Study Diagrams
- Exhibit 02.10 – Plat Map | Lot Line Adjustment
- Exhibit 02.11 – ROW Improvements
- Exhibit 02.12 – Soils Report | Perc Test
- Exhibit 02.13 – Flood Plain | Riparian Corridor
- Exhibit 02.14 – List of Adjacent Property
- Exhibit 02.15 – Waiver List
- July 29, 2019 and July 30, 2019 hearing submittal documents
 - Galena Staking Exhibit
 - AJC Architecture Virtual Reality Images
 - AJC Architecture PowerPoint Presentation
 - Hales Engineering PowerPoint Presentation
- River Street Encroachment Permit [pending]

1.55 ROW: Means and refers to public right-of-way for streets and utilities either owned by the City or ITD.

1.56 ROW Improvements: Means and refers to ROW improvements.

1.57 Section: Means and refers to a Section of this Agreement.

1.58 SH75: Means and refers to State Highway 75 as it lies within the City under the ownership and jurisdiction of ITD.

1.59 Subject Real Property: Means and refers to 1.048 acres more or less located within the City and Blaine County, Idaho, legally described and depicted in *Exhibit B*.

- This definition is inclusive of the real property described in the Preliminary Plat prepared by Galena Engineering for the purpose of removing the lot line that bisects the Subject Real Property and will revise pursuant to this Agreement the legal description of record in Blaine County.

1.60 Term: Means and refers to the duration of this Agreement which is perpetual as is set forth herein unless the word “term” is not capitalized.

1.61 Waiver Applications: Means and refers to four (4) waiver Developer/Owner's applications to the City for approval of the following requirements:

- Floor Area Ratio; and
- Height; and
- Minimum Lot Size; and
- Setback

SECTION 2 RECITALS

The Parties recite and declare:

- 2.1** The Developer/Owner is the owner of the Subject Real Property which is within the City limits of the City; and
- 2.2** The Developer/Owner intends to develop its Project upon the Subject Real Property in accordance with the Project Development Plan and thereafter occupy and possess the same in the conduct of Hotel Operations. In order to accomplish its intentions, the Developer/Owner has filed the Applications which have resulted in the City's approval of the Permits which include terms and conditions of compliance by the Developer/Owner; and
- 2.3** The City is a municipal corporation established in accordance with Article XII of the Constitution of the State of Idaho and Title 50 Idaho Code and is required and has exercised its authority pursuant to the Local Land Use Planning Act codified at Chapter 65 of Title 67 Idaho Code and pursuant to Chapters 3, 9 and 13 of Title 50 Idaho Code to enact the Ordinances and regulations which Ordinances which govern the Developer/Owner's intentions for the Developed Project and use of the Subject Real Property; and
- 2.4** The City has the following authority pursuant to Idaho Code Section 50-335 which provides:

50-335. DESTRUCTION OF BUILDINGS INIMICAL TO SAFETY AND HEALTH. All cities in the state of Idaho shall have power to declare any building or structure to be a nuisance which, in the opinion of the city council, is so dilapidated or is in such condition as to menace the public health or the safety of persons or property on account of increased fire hazard or otherwise; and any council may cause the destruction or removal of any such building or structure at the expense of the person or persons, associations, corporations or copartnerships holding, owning or maintaining the same, and to levy a special assessment as provided in section 50-1008 [, Idaho Code], on the land or

premises whereon the nuisance is situated, to defray the cost or to reimburse the city for the cost of destruction or removal of said building or structure so declared to be a nuisance.

- 2.5 A failure of the Developer/Owner to construct and occupy the Project has great potential to result in a vacant and abandoned partially completed Project. The Project is located in a very visible and central location within the City. A vacant and abandonment Project, particularly due to its size and location, will become an eyesore, become a negative effect upon neighboring properties, tourism and the commerce and the health and welfare of the residents, and property owners of the City and would resultantly become a nuisance; and
- 2.6 KMC section 16.08.120 C provides that prior to final approval of a PUD conditional use permit, the City Council may require a written agreement executed by the Developer/Owner to secure performance of any requirement or condition to be imposed as part of the approval, including, but not limited to Development and may also require recordation of documents establishing and guaranteeing the operation and maintenance of the Project; and
- 2.7 A special consideration for the City to issue the Permits to the Developer/Owner for the Project Development Plan is the Developer Owner's assurance of financial performance of the timely completion of the Developed Project in accordance with the terms and conditions of this Agreement.
- 2.8 The City's approval of the Permits and granting to the Developer/Owner's Development Rights is conditioned upon and is in consideration of the Developer/Owner's acceptance of the terms and conditions of the Permits which acceptance is in accordance with and governed under the terms and conditions of this Agreement.

SECTION 3 PERMIT CONDITIONS

The Developer/Owner, by entering into this Agreement for its Term, does hereby accept and agrees to perform in accordance with and abide by the terms and conditions of the Permits which terms and conditions are herein stated and to abide by the terms and conditions of the issuance of a Building Permit which are also stated in Sections 4 and 5 of this Agreement as follows:

- 3.1 **Construction and Occupancy Time Limits:** The following are the time limits that govern construction and occupancy of this Project:
 - 3.1.1 **Design Review Permit:** Pursuant to KMC §17.96.090, a design review permit is valid for twelve (12) months from the date of final decision on the associated Findings of Fact, Conclusions of Law, and Decision. _____, 2020 is the date of the final decision on the Design Review Permit No. P20-019. The Application for the Conditionally Granted Project building permit must be filed within the time

as specified in KMC §17.96.090(A)(2). Any extension shall only be as allowed and specified in KMC §17.96.090.

3.1.2 Building Permit: The Developer/Owner must apply and have issued a building permit within twelve (12) months from the date of the last issued Permit. Any extension shall only be as allowed and specified in KMC §17.96.090.B.

3.1.2.1 Agreement Termination: In the event the Developer/Owner fails to complete the process of obtaining the issuance of the Building Permit for the Project within _____ months from the Effective Date, the Project Development Plan approvals and Permits and this Agreement shall then immediately terminate and be null and void.

3.1.3 Project Development Plan Phase Completion Timelines: The Developer/Owner shall complete the following Project Development Plan Phases in accordance with the following timelines following the issuance of Building Permit for the Project Development Plan: [detailed construction sequencing & approximate inspection dates – pending]

3.1.3.1 Demolition of existing structures on Subject Real Property: _____[date of completion]

3.1.3.2 Project site preparation after demolition including utility connection work: _____[date of completion]

3.1.3.3 Project foundation construction _____[date of completion]

3.1.3.4 Project framing including mechanical, fire sprinkler, electrical, windows and exterior doors _____[date of completion]

3.1.3.5 Project Roofing and siding -- HVAC _____[date of completion]

3.1.3.6 Project Interior /including utilities _____[date of completion]

3.1.3.7 Project construction outside of the hotel and Landscaping _____[date of completion]

3.1.4 Certificate of Occupancy: The following are Certificate of Occupancy issuance conditions:

3.1.4.1 Time Limits: A certificate of occupancy shall be issued for the Conditionally Granted Project no later than 18 months after the Building Permit is issued unless the time for completion of the Conditionally Granted Project is extended by the City Council.

3.1.4.2 Conditions Precedent: No Certificate of Occupancy shall be issued until the following items are complete:

- 3.1.4.2.1** All Design Review elements are complete to the satisfaction of the Planning & Building Department, including in part, (A) Lighting and noise related to the rooftop bar shall be in compliance with the following city code requirements: KMC §17.132.030.H requires all exterior lighting be full cutoff fixtures with the light source fully shielded. Fixtures shielded underneath canopies must be flush mounted or side shielded. KMC §9.08.040.8 enumerates standards for noise levels permitted in the nighttime, daytime, and evening. (B) Any satellite receivers located on the hotel property shall be screened from public view. (C) Any modification to the proposed Sign Plan is subject to administrative approval. (D) Compliance with Tables 1 and 2 of the PUD Findings and Table 1 of Exhibit 2. (E) All Design Review elements shall be completed prior to issuance of a Certificate of Occupancy for the building. (F) Any modification to the existing Floodplain Waterways Design Review permit for purposes of public access as set forth in the DR Submittal or otherwise is subject to administrative approval; and
- 3.1.4.2.2** All occupancies in the Conditionally Granted Project (residential, commercial, etc.) shall meet the Leadership in Energy and Environmental Design (LEED) Silver or equivalent standards consistent with (A) representations of the Applicant as set forth in Exhibit B and its Sustainability Integration representations set forth in the approved 2/3/20 PUD Application and 3/9/20 Design Review Application (building system / geothermal, high performance building and site, material and product sustainability assessment) and (B) provisions of the City of Ketchum Green Building Code as set forth in KMC §15.20; and
- 3.1.4.2.3** All proposed encroachments within River Street right-of-way have been installed in accordance with the Approved Plans and to the satisfaction the City Engineer; and
- 3.1.4.2.4** All rooftop mechanical and electrical equipment is fully screened from public vantage points to the satisfaction of the Planning & Building Department, and
- 3.1.4.2.5** The Fire, Utilities, Building, Arborist, Streets, and Planning Departments have conducted final inspections and authorized issuance of a Certificate of Occupancy; and

3.1.4.2.6 Prior to Certificate of Occupancy, a Parking Plan verifying free public use, the thirteen (13) displaced public parking spaces, and other details at the discretion of the City, shall be provided and approved by Ketchum City Council for the Conditionally Granted Project Parking Garage.

3.1.4.2.7 All River Street and SH75 ROW Improvements shall be completed in accordance with approved encroachment permit approvals to the satisfaction of the City Engineer and the ITD Engineer, respectively.

3.2 Building Permit Requirements. The following are the conditions precedent to the issuance of the Building Permit for the Project Development Plan:

3.2.1 Project Development Plan Approval. The Project Development Plan, including Final Design Review approval and the recordation of this Agreement, shall be approved by the City; and

3.2.2 Building Demolition Permit Conditions: The Developer/Owner right to proceed to demolish all or any portion of the existing structures on the Subject Real Property pursuant to the Building Demolition Permit approval shall follow the permit process as specified in KMC §15.16.040 including a 60 day waiting period for the demolition of historic buildings, prior to demolishing any historic structure on the Subject Real Property.

3.2.3 Subdivision Lot Line Shift Development Application Conditions: The Developer/Owner as part of the process for approval of the Project Development Plan has made application to the City for removal of the common lot lines shared between the three lots that comprise the Subject Real Property, pursuant to subsection L of KMC §16.04.030. As set forth in the Preliminary Plat by Galena Engineering, subject plat amendment will remove the lot line bisecting the Property into a new one-lot subdivision. The Lot Line Shift Permit No. P 19-064 approved final Plat Map reflecting such changes shall not be recorded and become effective until either (A) after all River Street ROW improvements and utilities have been installed to the satisfaction of the City Council as set forth in §16.04 of the City Subdivision Ordinance or (B) consistent with Condition 19.7 of the approved Planned Unit Development/Conditional Use Permit No. P 19-063 Application, the Applicant issues an irrevocable letter of credit for Public ROW Improvements affecting the River Street right of way prior to building permit issuance for the Project.

3.2.3.1 City Department Requirements: All requirements of the fire, utility, building, planning and streets and facilities departments of the City shall be met and all public improvements shall meet the requirements of the City Engineer.

- 3.2.3.2 Utility Plan:** A full utility plan will be required prior to final plat recordation and infrastructure construction.
 - 3.2.3.3 Riparian and Scenic Easement:** A twenty-five foot (25') riparian and scenic easement is shown on the plat. Any work in this area is subject to separate floodplain rules and regulations; and
 - 3.2.3.4 Fisherman's Easement:** A ten-foot (10') fishermen's easement adjacent to the OHWM of Trail Creek and access through the Subject Real Property shall be shown on the plat; and
 - 3.2.3.5 Building Envelope:** A Building Envelope ("BE") will be reflected on the final plat consistent with the approved final Agreement for the Project. Subject BE will reflect the Council's final approval on FAR, corner lot radii sight line requirements, and front/side yard setbacks. The BE shall not encroach within 25' of Trail Creek or within 25' of the edge of ITD ROW; and
 - 3.2.3.6 Removal Existing Vegetation:** The removal of existing mature trees and/or established shrub masses is subject to approval and adoption of the Applicant's landscape plan through the Design Review and/or Floodplain Development Permit process; and
 - 3.2.3.7 Encroachment Permits:** An encroachment permit from ITD as well as the City will be required for all improvements to public right of way. As a condition of Plat approval, subject sidewalk and street lighting to city standards shall be installed prior to final plat recordation unless otherwise approved by the City Council; and
 - 3.2.3.8 Drawing Approvals:** Prior to grading occurring on the new Lot 3A, City approval of the Applicant's grading, drainage and landscaping construction drawings is required. Subject construction drawings shall be consistent in concept with approved Design Review, Encroachment Permit, and related drawings.
- 3.2.4** Storm Water Management Pollution Prevention Plan ("SWPPP") in accordance with local, state and federal laws and regulations is in place for the Project Development Plan; and the Project Development Plan includes a Construction Staging and Mitigation Plan consistent with the standards as specified in KMC §15.06 has been reviewed and approved by the City.
- 3.2.5** A detailed Project Development Plan Construction Staging and Mitigation Plan which is consistent with the standards specified in Chapter 15.06 of KMC, including provisions for off-site parking for contractors, sub-contractors, and other trades associated with the construction of the Project, off-site storage of bulk materials, and required right of way encroachments during construction, shall be submitted and approved by Building Administrator prior to Building Permit approval.

- 3.2.6 The Developer/Owner has secured a will serve letter from Idaho Power for the Project and the project generator and other equipment shall be located consistent with the Design Review Permit No. P20-019.
 - 3.2.7 Sidewalks that are required for the hotel evacuation plan shall be part of the hotel snowmelt system and kept free of snow. A snow melt diagram shall be incorporated into the drawing set approved at the time of Building Permit issuance to assure areas proposed for snowmelt are constructed as such and found operational as a condition of certificate of occupancy.
 - 3.2.8 The River Street Encroachment Permit from the City has been issued.
 - 3.2.9 The Developer/Owner has completed the process set forth in Section 4 with the issuance of the irrevocable letter of credit and the City Project Development Plan Agent has accepted and secured subject irrevocable letter of credit consistent with this Agreement. As set forth in §4.5 herein, the irrevocable letter of credit shall include: (A) an amount equal to 130% of the approved Project Development Plan Bid; (B) an amount equal to 150% of engineering estimates of the ROW Improvements; and, (C) an amount to lower parking demand and traffic impacts as set forth herein.
- 3.3 **Emergency Services and Standards Conditions:** The following are emergency services and safety terms and conditions of the Project Development Plan construction:
- 3.3.1 **Completion of Fire Improvements.** The City Building Official or the City Fire Marshal may withhold building and/or fire inspection approval for any phase of construction of the Project Development Plan until all necessary components of the water and/or fire alarm system sufficient to provide protection for that portion of the Project are complete.
 - 3.3.2 **Fire Access During Construction.** Vehicle parking and material storage during Project construction shall not restrict or obstruct public streets or access to any building. Emergency vehicle access shall be maintained as required by the Fire Chief. Once construction begins on the second floor and above, 26-foot aerial ladder truck access is required along one entire side of the building, in a location approved by the Fire Marshal, for evacuation of injured persons from upper floors. All required Fire Lanes, including within 15 feet of fire hydrants, shall be maintained clear and unobstructed at all times.
 - 3.3.3 **Fire Code Requirements.** The Project shall comply with all the terms and conditions set forth in the City Fire Department Pre-application Requirements Memo dated June 24, 2019 from Tom Ancona, Assistant Chief & Fire Marshall, inclusive of subsequent amendments thereto, all 2012 International Fire Code requirements and any additional specific City Building (Chapter 2 15.04 and 15.06) and Fire Ordinances (Chapter 15.08), as well as the Fire Department Conditions set forth in Table 1 of Exhibit 2 of the Design Review Permit No. P20-019.

3.3.4 Evacuation Route / Snowmelt Plan. Sidewalks that are required for the hotel evacuation plan shall be part of the hotel snowmelt system and kept free of snow. A snow melt diagram shall be incorporated into the drawing set approved at the time of Building Permit issuance to assure areas proposed for snowmelt are constructed as such and found operational as a condition of certificate of occupancy.

3.4 Project Development Plan Construction Plans and Master Plan Conditions: The following are conditions of Construction Plans and the Master Plan approval for the Project Development Plan:

3.4.1 ROW Improvements and Use Conditions: The following are Project Development Plan ROW Improvements and use terms and conditions of Project Development Plan construction:

3.4.1.1 DIG Permit: The Developer/Owner shall submit a Street and Alley Digging, Excavation, and Trenching (“DIG”) Permit application with an associated traffic control plan for all construction work within the City ROW to be reviewed and approved by the Streets and Facility Department.

3.4.1.2 Temporary Use of Right-of-Way Permit: The use of City right-of-way for Project Development Plan construction which includes the closure of adjacent streets or sidewalks requires a Temporary Use of Right-of-Way Permit (“TURP”).

3.4.1.3 Public ROW Encroachments. Abutting the Subject Real Property are two public rights of way (“ROW”). To the east is State Highway 75 (“SH75”), which is owned and maintained by the Idaho Transportation Department (“ITD”). To the north is River Street, which is owned and maintained by the City. This Project qualifies as a substantial improvement, there for the Project Development Plan must include the installation of sidewalks equal to the length of the subject Real Property boundary line adjacent to any public street (KMC §17.96.060). Prior to issuance of a Building Permit, the Developer/Owner shall obtain approval of all ROW encroachments within the ROW pursuant to a separate ROW encroachment agreement approved by the City Council.

3.4.1.3.1 SH75 Encroachment Permit. ITD has an approved Record of Decision (“ROD”) that includes a 3-lane section with a six-foot (6’) wide sidewalk abutting the Subject Real Property. Subject ITD improvements to the SH75 ROW are proposed to be installed by ITD in Fiscal Year 2025 with road work in the vicinity, at the earliest, occurring in October of 2025. The installation of these SH75 Improvements by ITD and, particularly, the striping of a dedicated left turn lane West Bound onto River Street with adequate queuing

for cars turning onto River Street is important to traffic flow both along SH75 and into the Project.

3.4.1.3.2 Center Turn Lane for SH 75/River Street Intersection:

Given the Owner's timeframe for construction and Certificate of Occupancy, subject SH75 work will not be conducted by ITD prior to the Developed Project and the commencement of Hotel Operations. Given that the City has determined that a center turn lane with adequate queuing of approximately fifty to one hundred feet (50' – 100') is necessary for the SH75/River Street intersection to retain its current Level of Service ("LOS") for vehicular car movement, therefore the Developer/Owner shall file with ITD an application for an encroachment permit. The Developer/Owner and City shall work together to attain approval from ITD for the construction and striping of a partial center turn near the River Street intersection north of the Trail Creek bridge. The Developer/Owner shall pay for engineering, traffic control and construction costs for subject SH75 improvements adjacent the Project.

3.4.1.3.3 Signage & Striping: To avoid excessive delays for east bound traffic on River Street, subject to review and approval by ITD and the City, the Developer/Owner shall fund and install appropriate signage and improvements to allow only a right turn onto southbound SH75 as the intersection of SH75 and River Street.

3.4.2 Pedestrian Safety. To help assure pedestrian safety and consistent with KMC §§16.08.080 and 17.116.030, at the discretion of the Ketchum City Council upon the recommendation of the Ketchum Transportation Authority and the city's peer review engineering firm (AECOM), the Developer/Owner shall work with the City and ITD to upgrade the unsignalized SH75 and River Street crossing (on north-side) to include a rectangular rapid flashing beacon (RRFB) crosswalk similar to 4th Street. The circulation design shall meet all standards as specified in KMC §17.96.060.G.

3.4.3 Terrace Walls. Developer/Owner plans for and construction of terrace walls, **inclusive of the two tallest walls with proposed materials of board formed concrete and block plate steel retainage**, on the Subject Real Property adjacent to SH75 and neighboring property to the west will be subject to future design review as provided by KMC at the time the application is filed for approval at the discretion of the Administrator.

- 3.4.4 Setback, FAR and Height Waivers Limitations:** The Project Development Plan Setbacks, FAR, and height conditions shall comply with Design Review Permit No P 20-019 and Planned Unit Development/Conditional Use Permit No. P19-063.
- 3.4.5 Floodplain.** All conditions of Floodplain Development Permit P19-062 shall be adhered to. Any deviations to said permit shall be issued in writing through an amendment to the permit process in accordance with the terms and conditions and process of Section 5 of this Agreement.
- 3.4.5.1** At minimum, structures on the north side of Trail Creek shall be set back a minimum of twenty-five feet (25') from the mean high water mark. No unauthorized construction activity shall occur within the riparian setback. Riparian vegetation shall be maintained in its natural state.
- 3.4.5.2** The term of floodplain development permit and waterways design review shall be twelve (12) months from the date that findings of fact, conclusions of law and decision are signed by the Administrator or upon appeal, the date the approval is granted by the Planning and Zoning Commission, subject to changes in zoning regulations. Application must be made for a Building Permit (if required) with the City Building Department during the twelve (12) month term. Once a Building Permit (if required) has been issued, the approval shall be valid for the duration of the Building Permit. Unless an extension is granted as set forth in KMC 17.88.050.G, failure to file a complete Building Permit application (if required) for a project in accordance with these provisions shall cause said approval to be null and void.
- 3.4.5.3** This Waterways Design Review and Floodplain Development Permit approval is based on the plans, as referenced above, and information presented and approved at the meeting on the date noted herein. Any building or site discrepancies which do not conform to the approved plans will be subject to removal.
- 3.4.5.4** Pursuant to Chapter 17.88.040.C, no chemicals or soil sterilants are allowed within 100 feet of the mean high-water mark. No pesticides, herbicides, or fertilizers are allowed within 25 feet of the mean high-water mark unless approved by the City Arborist. All applications of herbicides and/or pesticides within one hundred feet (100') of the mean high-water mark, but not within twenty-five feet (25') of the mean high water mark, must be done by a licensed applicator and applied at the minimum application rates. Application times for herbicides and/or pesticides will be limited to two (2) times a year; once in the spring and once in the fall unless otherwise approved by the city arborist. The application of dormant oil sprays and insecticidal soap within the riparian zone may be used throughout the growing season as needed.

- 3.4.5.5** Prior to commencement of any construction activity on the Subject Real Property the silt fence and inlet protection shall be installed as indicated in civil sheet 2.0.
- 3.4.5.6** No maintenance, including the mowing, trimming, and removal of vegetation, and no construction activities, encroachment, or disturbance within the riparian zone shall take place without approval through an amendment to this permit, during the time period the permit is in effect, or through approval of a subsequent permit.
- 3.4.5.7** It shall be unlawful to dump, deposit or otherwise cause any trash, landscape debris or other material to be placed in any stream, channel, ditch, pond or basin that regularly or periodically carries or stores water.
- 3.4.5.8** This Waterways Design Review and Floodplain Development Permit approval is based on the plans, as referenced above, and information presented and approved at the meeting on the date noted herein. Any building or site discrepancies which do not conform to the approved plans will be subject to removal.
- 3.4.5.9** Pursuant to Chapter 17.88.040.C, no chemicals or soil sterilants are allowed within 100 feet of the mean high-water mark. No pesticides, herbicides, or fertilizers are allowed within 25 feet of the mean high-water mark unless approved by the City Arborist. All applications of herbicides and/or pesticides within one hundred feet (100') of the mean high-water mark, but not within twenty-five feet (25') of the mean high water mark, must be done by a licensed applicator and applied at the minimum application rates. Application times for herbicides and/or pesticides will be limited to two (2) times a year; once in the spring and once in the fall unless otherwise approved by the city arborist. The application of dormant oil sprays and insecticidal soap within the riparian zone may be used throughout the growing season as needed.
- 3.4.5.10** Prior to commencement of any construction activity on the Subject Real Property the silt fence and inlet protection shall be installed as indicated in civil sheet 2.0.
- 3.4.5.11** No maintenance, including the mowing, trimming, and removal of vegetation, and no construction activities, encroachment, or disturbance within the riparian zone shall take place without approval through an amendment to this permit, during the time period the permit is in effect, or through approval of a subsequent permit.
- 3.4.5.12** It is unlawful to dump, deposit or otherwise cause any trash, landscape debris or other material to be placed in any stream, channel, ditch, pond or basin that regularly or periodically carries or stores water.

3.4.5.13 Any modification to the existing Floodplain Management Permit No. P 16-062 is subject to administrative approval.

3.4.6 Utilities Plan: As a part of the Construction Plans the Developer/Owner shall submit Project utilities plan indicating the location and size of water and sewer mains as well as gas, electric, TV and phone services (KMC §17.96.040.C.2c & KMC §17.96.060.D.1-3). Per KMC §17.96.060.D.2, utilities shall be located underground and utility, power, and communications lines within the Project Development Plan site shall be concealed from public view **consistent with Design Review Permit No P 20-019**.

3.4.7 Water & Sewer: Developer/Owner shall engineer, construct and extend, at its sole expense, the City water and sewer system improvements throughout the Project.

3.4.7.1 Connection Fee Credit. Owner requests water and sewer service from the City to the Subject Real Property and the City agrees to provide such water and sewer service at the same fees as charged to equivalent users of City's water and sewer systems in accordance with the fee methodology in effect at the issuance of the Building Permit. Final fee calculations shall credit, as applicable, services abandoned with the demolition of the previous mixed use buildings on Subject Real Property.

3.4.7.2 Improvements. All such improvements shall be designed and constructed in accordance with the standards of, and Construction Plans and specifications approved by, the State of Idaho, Department of Health and Welfare, Division of Environmental Quality, and City.

3.4.7.3 As-built Drawings. All construction plans shall be approved by the City and as-built drawings provided to the City upon acceptance of the Project improvements by the City.

3.4.7.4 The Project shall comply with all the terms and conditions set forth in the Utilities / Water & Sewer Department Conditions set forth in Table 1 of Exhibit 2 of the Design Review Findings of Fact, Conclusions of Law, Order of Decision, dated March 9, 2020.

3.4.8 Drainage. Project Drainage system Construction Plans shall be submitted to the City Engineer for review and approval. Pursuant to KMC §17.96.060.C, all storm water shall be retained on site, drainage improvements constructed shall be equal to the length of the Subject Real Property boundary lines, and all drainage facilities shall be constructed per City standards. All drainage improvements shall meet the applicable design criteria as specified in KMC §12.04.030, **as well as the City Engineer and Street Department Conditions set forth in Table 1 of Exhibit 2 of the Design Review Permit No P 20-019**.

3.4.9 Landscaping. Developer/ Owner shall install all landscaping and related improvements for the Project located on private property in accordance with Design Review requirements which includes the detailed Landscape Plans as submitted as part of the Design Review Permit. The landscape Plans shall include the following, which is not exhaustive: species sizes, quantities and location; significant stepping and retaining walls between the Subject Real Property and State Highway 75; in compliance with all floodplain and riparian regulations. Pursuant to KMC §17.96.060.I, landscape materials and vegetation types specified shall be readily adaptable to the microclimate, soil conditions, orientation and aspect, and shall serve to enhance and complement the townscape. All trees, shrubs, grasses, and perennials shall be drought tolerant. Any landscaping or improvements within the ROW shall be installed consistent with the approved ROW Encroachment Agreement.

3.4.10 Lighting. All Project lighting shall comply with the City Dark Sky Standards, Chapter 17, KMC. The Design Review Permit includes the required exterior lighting plan identifying the location, height, type, lumen output, and specifications for fixtures (KMC §17.96.040.C.2h). All exterior lighting fixtures shall be full cutoff fixtures with the light source fully shielded and an associated color temperature not to exceed 2700 Kelvin (KMC §17.132.030). Street lights shall be installed within the ROW subject to the review and approval of the City Engineer.

3.4.11 Employee Housing Units. The Developer/Owner shall use and maintain the Subject Real Property for Hotel Operations and shall either maintain or enter into a master lease with the Hotel Operator for apartment units within the Developed Project containing **twenty-three (23) beds, as set forth in the employee housing plan design update approved by City Council in accordance with the Planned Unit Development/Conditional Use Permit No. P16-063, and thereby fulfill and satisfy the employee housing obligation of this Project consistent with KMC §17.124.050.**

3.4.11.1 Notwithstanding, consistent with the recommendations of the Blaine County Housing Authority (“BCHA”) and the City Planning and Zoning Commission, the Applicant may as part of the Design Review process seek to amend the employee housing plan configurations of the Design Review Permit No. P 20-019 to have fewer shared bedroom configurations, improved bathroom to bed ratio, and more individual or couple employee housing suites; and

3.4.11.2 All leased apartment units must be subleased, assigned or otherwise made available to employees of the Hotel Operator on terms and conditions that emphasize the retention of a local workforce consistent with BCHA community housing guidelines, and providing employee housing at a price point that is commensurate with its employees’ ability to pay. The Applicant may enter into a master lease with the Hotel Operator for apartment units containing twenty-three (23) beds and thereby fulfill and satisfy the employee housing obligation of the Planned Unit Development/Conditional Use Permit No. P19-063 and Design Review Permit No. P20-019 consistent with KMC §17.124.050.

3.4.11.3 All leased apartment units must be subleased, assigned or otherwise made available to employees of the Hotel Operator on terms and conditions determined by it in the exercise of its discretion consistent with the goals of retaining a local workforce and adhering to the BCHA community housing guidelines.

3.4.11.4 Apartment leases and the management of this covenant of the developer to provide employee housing in the hotel are subject to annual recertification audits by the City and / or its designee. A fee established by resolution of the City may be charged for this service and associated compliance and monitoring activities.

3.4.12 Hotel Operations. The core intended feature of the Developed Project is a hotel building being used for Hotel Operations at an industry acknowledged Four Star Hotel Operations Standard. Adherence to a Four Star Hotel Operations Standard, particularly during Peak Travel Season, affects the sufficiency of on-site parking and traffic circulation in the immediate vicinity of the Project and is a requirement of the Hotel Operator's occupancy and use of the Developed Project.

3.4.13 Lower Parking Demand and Traffic Impacts. To assure that the Developer/Owner and/or Hotel Operator provides guest shuttle, employee shuttle, car share program, transit passes, carpool program, and alternative transportation (such as bike storage for employees), the Developer/Owner and/or Hotel Operator shall include in the irrevocable letter of credit a Lower Parking Demand and Traffic Impacts amount of **fifty thousand dollars (\$50,000)** for a period of not greater than five (5) years upon which the City Council may request a draw to cover the City's costs in the mitigation of lowering traffic impacts and/or parking demands associated with the Developer/Owner and/or Hotel Operator's failure to comply. The process to be followed for a request for a draw, pursuant to this Section on the letter of Credit is governed chronologically first by Section 4 and then Section 5 of this Agreement.

3.4.14 Parking & Loading. The Applicant presented its Project Parking Plan for review by the City Planning and Zoning Commission as part of its full Design Review Submittal. Prior to Certificate of Occupancy, a Conditionally Granted Project Parking Plan verifying public use, validation processes for determining parking charges (if any) for the public and the thirteen (13) displaced public parking spaces, and other details at the discretion of the City, shall be provided and approved by City Council for the Conditionally Granted Project Parking Garage. The Project Development Plan is required to have a minimum of eighty-four (84) parking spaces in the underground parking garage. Of these spaces, 53 spaces are required for the Four-Star Hotel Operations Standard, 18 spaces are required for employee housing, and 13 are required for the public to mitigate displaced public parking spaces from River Street. Of this total, not less than:

- 3.4.14.1 **Eighteen (18)** stalls shall be allocated for Hotel Operations employee housing, inclusive of at least one (1) car share vehicle; and
- 3.4.14.2 **Thirteen (13)** underground parking stalls s will be available to the general public at no charge to the public while using the conference center, spa, restaurant and bar. A validation system may be employed by the Developer/Owner and/or Hotel Operator with regard to the monitoring of public use of the six, free-of-charge, underground public spaces located in the Project Parking Garage; and
- 3.4.14.3 Guest shuttle, employee shuttle, car share program, transit passes, and bike storage shall be provided as a part of the Four Star Hotel Operations Standard.
- 3.4.14.4 **During and upon completion of the construction of the Project Development Plan, delivery vehicles associated with the construction of the Project Development Plan shall not interfere with the regular flow of traffic surrounding the Project Development Plan Site. Delivery vehicles shall not block the regular flow of traffic along River Street. Accordingly, deliveries will be made (A) preferably with single-unit trucks, not large tractor-trailer trucks; (B) during off-peak hours; and, (C) with hand trucks from the designated on-street loading zone. The Applicant shall strictly monitor and manage deliveries and garbage pick-up to ensure these activities do not occur during peak traffic periods, and that they do not occur simultaneously.**

3.5 Planned Unit Development Conditional Use Permit Conditions: Planned Unit Development/Conditional Use Permit No. P 19-063 approval includes the following conditions and other conditions as provided in this Agreement:

- 3.5.1 **Project Height Limitations:** The maximum height of the Project shall comply with the provisions of Section 3.4.4.
- 3.5.2 **Final Plat Time Limitation:** The Project final plat time limitations are set forth in Section 3.2.3.
- 3.5.3 **Certificate of Occupancy Conditions:** No Certificate of Occupancy shall be issued until the Certificate of Occupancy Conditions [Section 3.1.4 of this Agreement] have been complied with.
- 3.5.4 **Drainage system plans:** The drainage system conditions are set forth in Section 3.4.8.
- 3.5.5 **Utility plans:** The Utility Construction Plans conditions are set forth in Section 3.4.6.

- 3.5.6 Hotel Operations Employee Housing:** The Hotel Operations employee housing conditions are set forth in Section 3.4.11.
 - 3.5.7 Hotel Operations:** The Hotel Operations Conditions are set forth in Section 3.4.12.
 - 3.5.8 Parking Spaces:** The Developed Project and Hotel Operations parking space conditions are set forth in Section 3.4.13.
 - 3.5.9 Letter of Credit Conditions and Process:** The letter of credit issuance and process Project completion assurance conditions are set forth in Section 4.
 - 3.5.10 Public ROW Improvements and Use:** Public ROW improvements and use conditions are set forth in Section 3.4.1.
 - 3.5.11 Emergency Services and Safety Conditions:** The emergency services conditions and safety conditions as set forth in Section 3.3.
 - 3.5.12 City Department Requirements:** All requirements of the Fire, Utility, Building, Planning and Streets and Facilities departments of the City shall be met. All public improvements shall meet the requirements of the Public Works Department.
 - 3.5.13 KMC Compliance Conditions:** All other provisions of KMC, Chapters 16 and 17 and all applicable ordinances rules and regulations of the City and other governmental entities having jurisdiction shall be complied with in the Project Development process.
- 3.6 Loading Requirements.** During and upon completion of the construction of the Project Development Plan, delivery vehicles associated with the Project shall not interfere with the regular flow of traffic surrounding the Subject Real Property. Delivery vehicles shall not block the regular flow of traffic along River Street.
- 3.7 Utilities and Warranty.** All Project Development Plan utilities, including water, sewer, gas, cable, phone and electric shall be installed underground within the street rights-of-way. This includes on site and off-site utilities: no above-ground utility lines are permitted on the Subject Real Property. Detailed engineered construction drawings and specifications for construction of such improvements shall be prepared by Developer/Owner and approved by the City prior to construction. Prior to acceptance of any such improvements to be dedicated to City, the City shall inspect and approve same and Developer/Owner shall provide the City with “as built” drawings thereof. The Developer/Owner warrants to the best of its knowledge the “as built drawings” are substantially correct and Developer/Owner shall, for a period of one (1) year from the date of the City’s receipt of said drawings, be liable and hold the City harmless for any damage proximately caused by reason of a material error in said drawings.
- 3.7.1 Transfer of Warranties.** Developer/Owner agrees to assign any warranties accruing to it and arising out of construction of the improvements described in this Section

remaining in effect at the time such improvements are transferred and/or dedicated to and accepted by the City.

- 3.8 Certificate of Occupancy:** No Certificate of Occupancy shall be issued for the use and occupancy of this Project until the following items are complete:
- 3.8.1** All Design Review elements of the Project Development Plan have been completed and approved by the Planning & Building Department; and
 - 3.8.2** All proposed encroachments within the City’s River Street right-of-way have been installed in accordance with the Project Development Plan and approved by the City Engineer; and
 - 3.8.3** All rooftop mechanical and electrical equipment is fully screened from public vantage points and approved by the Planning & Building Department; and
 - 3.8.4** The City’s Fire, Utilities, Building, Arborist, Streets, and Planning Departments have conducted final inspections and authorized issuance of a Certificate of Occupancy; and
 - 3.8.5** All occupancies in the Developed Project Development Plan (residential, commercial, etc.) shall meet the Leadership in Energy and Environmental Design (LEED) Silver or equivalent standards consistent with (A) representations of the Applicant as set forth in Exhibit B and the Applicant’s Sustainability Integration representations set forth in the Planned Unit Development/Conditional Use Permit No. P 19-063 and Design Review Permit No. P20-019 (building system / geothermal, high performance building and site, material and product sustainability assessment) and (B) provisions of the City of Ketchum Green Building Code as set forth in KMC §15.20; and
 - 3.8.6** Prior to Certificate of Occupancy, a Parking Plan verifying free public use, the thirteen (13) displaced public parking spaces, and other details at the discretion of the City, shall be provided and approved by City Council for the Conditionally Granted Project Parking Garage.
- 3.9 City Administrative Review Fees:** The Developer/Owner shall be charged and shall pay the City Administrative Review Fees for the administration of the Developer/Owner’s and the City’s performance of this Agreement.
- 3.10 Conditions to Owner’s Obligations.** Owner’s obligations hereunder are conditioned upon (1) receiving all the referenced approvals from the City and (2) securing financing. If either of those conditions (or part of one) is not satisfied, then this Agreement shall no longer be valid.
- 3.11 Local Option Tax.** Hotel Operations shall be subject to the provisions of KMC Section 3.12 (the City “Local Option Tax Ordinance”) and any amendments or recodifications thereof relating to local option taxes inclusive of the following:

- 3.11.1 Beverage, Food & Retail Sales.** All retail, food and beverage sales on the Subject Real Property and in the Project shall be subject to the local option tax.
- 3.11.2 Building Materials.** The Project and Subject Real Property building materials shall be subject to the local option tax on building materials.
- 3.11.3 Employee Housing.** The obligation to pay local option tax shall not apply to the rental of employee housing units.
- 3.11.4 Future Amendments to LOT Ordinance.** Any amendments to or repeal of Local Option Tax Ordinance and/or Idaho law relating to such local option taxes shall also apply to and modify this Section to the extent of such amendment(s) and/or repeal.
- 3.11.5 Hotel Rooms.** All hotel rentals shall be subject to the local option tax, regardless of who makes the reservation, including independent third party travel agencies or other independent parties.
- 3.11.6 Short-term rentals.** All non-hotel rentals, if any, shall be subject to the local option tax on short-term rentals.
- 3.11.7 Marriott Rewards:** Reward stay bookings for any evening shall be assigned a room rate in accordance with the Idaho Administrative Procedures Act (IDAPA) and similar Idaho State Tax Commission rules and regulations. In all cases, subject reward stay booking shall be tracked as room revenue and charged the applicable local option tax rate. Local option taxes shall be remitted for all stays.

SECTION 4 PROJECT DEVELOPMENT PLAN COMPLETION ASSURANCE PROCESS AND CONDITIONS

- 4.1** This Section contains the terms and conditions of the process to assure that the Developed Project is constructed in compliance with the Project Development Plan and completed in accordance with the Project Development Plan Phase Condition Timelines and the performance by the City of the provisions of this section shall be conducted by the City Project Development Plan Agent.
 - 4.1.1** In the event the City Project Development Plan Agent designates a designee/s the same shall be in writing and a copy thereof shall be provided to the Developer/owner.
- 4.2** Within Sixty Days of the Effective Date the Developer/Owner shall obtain and provide to the City Project Development Plan Agent an irrevocable bid or commitments from licensed contractor/s [and construction managers if desired] to enter into construction contract with the Developer/Owner to construct the Project Development Plan in accordance with the

Project Development Plan Phase Condition Timelines (the “Project Development Plan Bid”) which bid or commitments includes all of the following:

- 4.2.1 Each separate and total bid cost: and
 - 4.2.2 The respective schedules of values apportioned to the various divisions or phases of the Project Development Plan Work with each line item containing a schedule of monetary price values such that the total of all items shall equal the total bid cost; and
 - 4.2.3 A reasonable liquidated damages penalty for failure to timely construct; and
 - 4.2.4 A Developer/Owner option for failure to timely construct to secure another contractor to timely construct the Project Development Plan; and
 - 4.2.5 Performance bond and a payment bond equal to the total bid costs to assure the timely completion of the construction of the Project Development Plan; and
 - 4.2.6 Permission to allow City Project Development Plan Agent or their designee to inspect as may be reasonably needed in compliance with this Agreement.
- 4.3 The Developer/Owner shall then provide a copy of the Project Development Plan Bid to the City Project Development Plan Agent who shall review the same and determine (within 28 days) whether or not it is:
- Complete; and
 - Complies with this Agreement; and
 - Has been submitted by a reasonably responsible bidder.
- 4.3.1 The City Project Development Plan Agent shall, within the 28 days, conduct a reasonable inspection and provide a written report to the Developer/Owner either approving the Project Development Plan Bid or specify any failures and identifying what is needed to obtain compliance and approval.
- 4.4 Subsequent to the City Project Development Plan Agent’s approval of the Project Development Plan Bid, the Developer/Owner shall enter into a contract/s for the Project Development Plan construction (the “Project Development Plan Construction Contract”) in accordance with the approved Project Development Plan Bid.
- 4.5 **Letter of Credit:** In coordination with the entering into the Project Development Plan Construction Contract the Developer/Owner shall cause to be issued an irrevocable letter of credit on a bank, acceptable to the City Finance Manager and in a form acceptable to the City Project Development Plan Agent and the City Attorney which complies with the following which shall govern its use:

- 4.5.1** In an amount equal to 130% of the approved Project Development Plan Bid [the additional 30% to cover contingencies, and City Administrative Review Fees costs] and additionally:
- 4.5.2** An amount equal to 150% of engineering estimates of the ROW Improvements; and
- 4.5.3** A Lower Parking Demand and Traffic Impacts amount of **\$50,000**.
- 4.5.4** For a period of sixty-four (64) months from the date of issue as a financial guarantee to the City
- 4.5.5** Which letter of credit shall provide for and accommodate the following process:
 - 4.5.5.1** Requests for partial releases of the amount of letter of credit shall be made by the Developer/Owner to the City Project Development Plan Agent in writing in amounts equal to an approved request for payment in accordance with the Project Development Plan Construction Contract. In the event the request involves Partial release involving ROW Improvements the same may be made when there has been an acceptance of subject River Street ROW Improvements by the City; and when there has been formal commencement of work by ITD of the SH75 ROW Improvements adjacent the Subject Real Property; and/or upon complete installation of the SH75 ROW Improvements adjacent the Subject Real Property.
 - 4.5.5.1.1** The City Project Development Plan Agent shall then have 5 business days to review and conduct a reasonable inspection and provide a written report to the Developer/Owner of review either approving or denying the request in which approval or denial shall be based upon whether or not the request is in compliance with the terms of this Agreement together with an invoice for the then accrued City Administrative Review Fees which the Developer/Owner may elect to pay directly or to authorize a draw on the line of credit by the City equal to the amount of the accrued City Administrative Review Fees. In the event of a denial of the request, the City Project Development Plan Agent shall specify any failures and identify what is needed for compliance and approval.
 - 4.5.5.1.2** The Developer/Owner shall then within 5 business days provide to the City Project Development Plan Agent their response.
 - 4.5.5.1.3** In the event of an approval by the Parties the Bank shall be notified in writing of the approval and partial release and of any authorized City Administrative Review Fees draw by the City.

- 4.5.5.2** Request for full release of the letter of credit shall be made by the Developer/Owner to the City Project Development Plan Agent in writing upon the completion and acceptance of the Developed Project and upon the issuance of by the City of a certificate of occupancy.
- 4.5.5.2.1** The City Project Development Plan Agent shall then have 5 business days to review and conduct a reasonable inspection and provide a written report to the Developer/Owner of review either approving or denying the request in which approval or denial shall be based upon whether or not the request is in compliance with the terms of this Agreement together with an invoice for the then accrued City Administrative Review Fees which the Developer/Owner may elect to pay directly or to authorize a draw on the line of credit by the City equal to the amount of the accrued City Administrative Review Fees. In the event of a denial of the request the City Project Development Plan Agent shall specify any failures and identify what is needed for compliance and approval.
- 4.5.5.2.2** The Developer/Owner shall then within 5 business days provide to the City Project Development Plan Agent their response.
- 4.5.5.2.3** In the event of an approval by the Parties the Bank shall be notified in writing of the approval and the final release subject to any authorized draw by the City.
- 4.5.5.3** The City may draw upon the letter of credit in accordance with the following process:
- 4.5.5.3.1** In the circumstance of City Council decision finding a default on the part of the Developer/Owner, the request is made in writing by the City Project Development Plan Agent together with the following proof with a copy to the Developer/Owner:
- Certified copy of the City Council’s Findings of Fact, Conclusions of Law and Order of Decision finding a default of this Agreement by the Developer/Owner which order of decision authorizes a draw from the letter of credit; and
 - In the even the City Project Development Plan Agent draws on the letter of credit, the funds received shall then be place by the City Finance Manager in the City’s Custodial Holding Fund for expenditure in accordance with the City Council’s Findings of Fact, Conclusions of

Law and Order of Decision and order finding a default in the enforcement of the specific performance of this Agreement.

4.5.5.3.2 In the circumstance of an approved partial release and Developer/Owner consent to an authorized City Administrative Review Fees draw by the City the request is made in writing by the City Project Development Plan Agent together with the following proof with a copy to the Developer/Owner:

- The Developer/Owner's written authorization of the draw on the line of credit.

4.6 City Project Development Plan Agent: The City officials, who are involved in the process of approval of the Developer/Owner's performance of the terms and conditions of this Agreement, shall notify the City Project Development Plan Agent of the timely performance or default of the Developer/Owner and the Project Development Plan Agent shall coordinate with the Developer/Owner on such matters in the process of the completion of the Developed Project and subsequent Developer/Owner performance matters governed under this Agreement.

4.6.1 In the event the City Project Development Plan Agent appoints a designee, written notice of the name and contact information and authority designated shall be immediately provided to the Developer/Owner.

SECTION 5 PROJECT DEVELOPMENT PLAN MODIFICATIONS SUBSEQUENT TO BUILDING PERMIT ISSUANCE

5.1 The construction of the Project pursuant to the Building Permit issue shall substantially comply with the Project Development Plan and comply with any other applicable KMC and approved plan submittals required and relied upon for the issuance of the Building Permit.

5.2 The Administrator is authorized to approve minor modifications, as defined by KMC §17.08.020, to the Project Development Plan.

5.3 Any material change to the Project Development Plan, after the Building Permit has been issued, must be applied for by Developer/Owner in accordance with the follow process and authorization:

5.3.1 The proposed change shall be submitted in writing as a Design Review request to the Planning & Building Department for review by the Administrator; and

- 5.3.2 A written description shall be included which depicts all proposed modifications and all changes which are clearly indicated on the associated drawings; and
- 5.3.3 Pursuant to KMC §17.96.030.A, the Administrator reviews the Design Review requests and determines whether the request must be reviewed by the Administrator or by the Planning and Zoning Commission for recommendation to the City Council of denial or approval of the request; and
- 5.3.4 The recommendation of the Administrator or the Planning and Zoning Commission, as the case may be, is submitted to the City Council who shall conduct a public hearing and provide notice in accordance with the PUD approval process to decide the matter as the final administrative action of the City.

SECTION 6 DEFAULT

- 6.1 **Enforcement of Terms and Conditions of the Agreement.** The enforcement of the terms and conditions of this Agreement and the Permits issued by the City, excepting any terms and conditions which are based upon International Codes under the jurisdiction of the Building Official or the Fire Marshall, are as follows:
 - 6.1.1 **International Code Defaults:** The failure of the Developer/Owner, or the failure of the City to comply or perform, in accordance with the terms and conditions of this Agreement which involve conditions of Permits governed under International Codes shall be processed in accordance with the provisions of the applicable International Code involved.
 - 6.1.2 **All Other Defaults:** Otherwise the failure of the Developer/Owner, or the failure of the City to comply or perform, in accordance with the terms and conditions of this Agreement or the terms and conditions of any Permit which is the subject of this Agreement, shall be a Default of this Agreement (“Default”) and processed as follows:
 - 6.1.2.1 **City Default Claims.** A claim of Default by the City will be made by the City Project Development Plan Agent may be made against the Developer/ Owner.
 - 6.1.2.2 **Developer, Owner Default Claims:** A claim of Default may be made by the Developer/Owner against the City.
 - 6.1.3 **Claimant and Accused.** For purposes of this Section of the Agreement, a claim of Default is made by a (“**Claimant**”) against an (“**Accused**”).
 - 6.1.4 **Written Default Notice of Intent.** The Claimant shall serve the Accused with a Written Default Notice of Intent (“**Notice of Intent**”).

6.1.4.1 The Notice of Intent shall state the factual and legal basis for the claim of Default, the actions required to be taken by the Accused to cure the claim of Default and shall state the Default Cure Remedy that will be sought if the Default is not cured and a demand that the Accused respond in writing, within a reasonable stated time, as to whether or not the Accused consents to comply with the Notice of Intent or denies the claim of Default. The reasonable time frame shall depend upon the exigencies surrounding the matters and facts set forth in said Notice of Intent.

6.1.4.2 The Accused shall have a minimum of fourteen (14) days to remedy to the Notice of Intent.

6.1.4.3 The Notice of Intent shall be served as follows upon:

- **Developer:** by U.S. Mail to the address herein designated by Developer; and
- **Owner:** by U.S. Mail to the address of its registered agent; and
- **City:** by U.S. Mail to the address herein designated by the City.

6.1.5 Notice to Show Cause. In the event the Accused fails to correct and remedy a Notice of Intent, within the reasonable time designated in the Notice of Intent, to the satisfaction of the Claimant, the Claimant shall then request the City Council to proceed to set a hearing and provide written notice of the hearing to show cause to the Accused why the Claimant's Default Cure Remedy to cure the claim of Default as identified in the Notice of Intent should not be ordered.

6.1.5.1 The written notice of the hearing to show cause shall be served upon the Claimant and the Accused at least twenty-eight (28) days in advance of the hearing.

6.1.5.2 At the hearing to show cause, the Accused may present evidence as to why it or they are not in Default.

6.1.5.3 Following any presentation of evidence by the Accused and any rebuttal by the Claimant and any other interested persons, the City Council shall determine the matter and issue Findings of Fact, Conclusions of Law and an Order of Decision in accordance with the evidence presented at the Show Cause hearing.

6.1.5.4 The Findings of Fact, Conclusions of Law and Order of Decision issued by the City Council shall be the final administrative remedy of any claim of Default under this Agreement and the Parties may thereafter seek legal action in a court of competent jurisdiction for any legal or equitable remedy, including, without limitation, declaratory relief and

or specific performance of this Agreement as the case may be, but the Parties shall not be entitled to consequential damages in any such action.

6.1.6 Prevailing Party. In the event any Party shall file suit or action at law or equity to interpret or enforce this Agreement, the provisions of Idaho Code Section 12-117, or any subsequent amendment or recodification of the same, shall apply to the determination of the prevailing Party and the award of reasonable attorney's fees, witness fees and other reasonable expenses.

SECTION 7 SHARED LEGAL DEFENSE OF THIS AGREEMENT

7.1 Shared Agreement Legal Defense Costs. In the event that any legal or equitable action or other proceeding is instituted by a third-party challenging the validity of any provision of this Agreement, the Parties will cooperate in defense of such action or proceeding. The City and the Developer may agree to select mutually agreeable legal counsel to defend such action or proceeding with the Parties sharing equally in the cost of such joint legal counsel, or each Party may select its own legal counsel at each Party's expense. All other costs of such defense(s) shall be shared equally by the Parties. Each Party retains the right to pursue its own independent legal defense.

SECTION 8 NOTICES AND FILINGS

8.1 Manner of Serving. All notices, filings, consents, approvals and other communications provided for herein or delivered in connection herewith shall be validly delivered, filed, made, or served if in writing and delivered personally or delivered by a nationally recognized overnight courier or sent by certified United States Mail, postage prepaid, return receipt requested, if to:

City:

City Project Development Plan Agent
P.O. Box 2315
480 East Ave. N.
Ketchum, Idaho 83340

Developer:

PEG Ketchum Hotel, LLC
Attn: Nick Blayden
180 N. University Avenue, No. 200
Provo, Utah 84601

With a copy to:

William F. Gigray, III
WHITE PETERSON
5700 E. Franklin Rd., Suite 200
Nampa, ID 83687

Owner:

PEG Ketchum Hotel, LLC
Attn: Nick Blayden
180 N. University Avenue, No. 200
Provo, Utah 84601

or to such other addresses as either Party hereto may from time to time designate in writing and delivery in a like manner.

- 8.2 Mailing Effective.** Notices, filings, consents, approvals and communication given by mail shall be deemed delivered immediately if personally delivered, 24 hours following deposit with a nationally recognized courier, or 72 hours following deposit in the U.S. mail, postage prepaid and addressed as set forth above.

SECTION 9 DEVELOPER/OWNER ASSIGNMENT OF AGREEMENT RIGHTS

- 9.1 Developer/Owner Assignment:** The assignment of any of the Developer/Owner's rights and obligations of this Agreement shall in accordance with the following:

9.1.1 Complete Assignment of Developer/Owner's rights. A total assignment of the Developer/Owner's rights and obligations under this Agreement in connection with all undeveloped portions of the Subject Real Property shall be assigned subject to written consent of the City Council which shall not be unreasonably withheld, conditioned or delayed subject only to the following conditions:

9.1.1.1 Prior written notice from the Developer/Owner to the City Council together with the identification of the proposed assignee together with the proposed assignee's proof of their intentions and ability to perform and be bound to the conditions of this Agreement inclusive to provisions of Section 4 of this Agreement; and

9.1.1.2 Developer/Owner is not in Default of this Agreement or the Assignee tenders to the City a guarantee of the Assignee's performance of the Developer/Owner's Default upon assignment; and

9.1.1.3 The total assignment by the Developer/Owner shall be by a written instrument including the acceptance of the assignee to the terms and conditions of this Agreement, and the City Council's written consent and shall then be recorded in the official records of Blaine County, Idaho, expressly assigning such rights and obligations.

9.1.1.4 In the event of such total assignment of the Developer's Owner's rights and obligations hereunder, the Developer/Owner's liability under this Agreement shall then terminate.

9.1.2 Successors and Assigns. Notwithstanding any other provisions of this Agreement, the Developer/Owner may assign all or part of the Developer's or Owner's rights and duties under this Agreement as collateral to any financial institution from which the Developer/Owner has borrowed funds for use in

Development of the Project. Such an assignment shall not relieve the Developer/Owner from any subsequent obligations of this Agreement.

SECTION 10 MISCELLANEOUS

- 10.1 Agreement runs with the Subject Real Property.** The burdens of this Agreement for the Term of this Agreement and are binding upon, and the benefits inure to, all successors in interest of the Parties to this Agreement and constitute covenants that run with the Subject Real Property. Each commitment and restriction of this Agreement on the Subject Real Property shall be a burden on the Subject Real Property and shall be appurtenant to and for the benefit of the Subject Real Property and shall run with the land.
- 10.1.1** This Agreement shall be binding on the Developer and the Owner, and their respective heirs, administrators, executors, agents, legal representatives, successors, and assigns.
- 10.2 Agreement Amendment.** This Agreement may only be amended in accordance with the following process:
- 10.2.1** An amendment may be proposed by a Party; and
- 10.2.2** A proposed amendment must be in writing and include this entire Agreement as then existing and shall therein include a strikethrough of any language to be deleted and underline of any new language of the proposed amendment; and
- 10.2.3** A proposed Amendment shall contain Statement of Purpose (which shall include a statement of how the Parties will be affected by the amendment); the Party to contact for information; the amended Agreement text; and
- 10.2.4** City approval of a proposed Amendment must be processed in the same manner as the affected provision or provisions of the Agreement were originally approved subject to final approval of the City Council.
- 10.3 Choice of Law.** This Agreement shall be construed in accordance with the laws of the state of Idaho in effect on the Effective Date. Any action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Blaine County, Idaho.
- 10.4 Construction.** All Parties hereto have either been represented by separate legal counsel or have had the opportunity to be so represented. Thus, in all cases, the language herein shall be constructed simply in accord with its fair meaning and not strictly for or against a Party, regardless of whether such Party prepared or caused the preparation of this Agreement.

- 10.5 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single document so that the signatures of all Parties may be physically attached to a single document.
- 10.6 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties, except for the Permits and or approvals issued pursuant to this Agreement, pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are hereby superseded and merged herein. No modification or amendment to this Agreement of any kind whatsoever shall be made or claimed by Developer/Owner or City shall have any force or effect whatsoever unless the same shall be endorsed in writing and signed by the Party against which the enforcement of such modification or amendment is sought, and then only to the extent set forth in such instrument. Such approved amendment shall be recorded in the Official Records of Blaine County, Idaho.
- 10.7 Exhibits and Recitals.** Any exhibit attached hereto shall be deemed to have been incorporated herein with the same force and effect as if fully set forth in the body hereof. The Recitals set forth at the beginning of this Agreement are hereby acknowledged and incorporated herein and the Parties hereby confirm the accuracy thereof. The Definitions set forth prior to the Recitals are hereby acknowledged and incorporated herein.
- 10.8 Further Acts.** Each of the Parties shall promptly execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.
- 10.9 Good Standing; Authority.** Each of the Parties represents to the other as follows:
- 10.9.1 Developer/Owner.** Developer/Owner represents that it is a Utah limited liability company duly qualified to do business in Idaho; and
- 10.9.2 City.** City represents that it is an Idaho municipal corporation in the state of Idaho; and
- 10.9.3 Authority.** Each Party represents to the other that the individual(s) executing this Agreement on behalf of the Parties are authorized and empowered to bind the Party on whose behalf each such individual is signing.
- 10.10 Headings.** This Agreement shall be construed according to its fair meaning and as if prepared by both Parties hereto. Table of Contents, titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

- 10.11 Names and Plans.** Developer/Owner shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature at any time developed, formulated or prepared by or at the request of the Developer/Owner in connection with the Project Development Plan and the Project; provided, however, that in connection with any conveyance of portions of the Subject Real Property to the City, such rights pertaining to the portions of the Subject Real Property so conveyed shall be assigned to the City to the extent that such rights are assignable.
- 10.12 No Partnership; Third-Parties.** It is hereby specifically understood, acknowledged and agreed that neither the City nor the Developer/Owner shall be deemed to be an agent of the other for any purpose whatsoever. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Developer/Owner and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any third-party, person, firm, organization or legal entity not a Party hereto, and no such other third-party, person, firm, organization or legal entity shall have any right to cause of action hereunder.
- 10.13 Obligation to Complete Development.** The obligation of the Developer/Owner to complete any part or all of the Development of the Project within a specific time line, phasing schedule or other schedules, or any other plan, are provided in this Agreement as required as a condition of the Permits.
- 10.14 Parties' Intent.** It is the Parties' express intention that the terms and conditions be construed and applied as provided herein, to the fullest extent possible. It is the Parties' further intention that, to the extent any such term or condition is found to constitute an impermissible restriction of the police power of the City, such term or condition shall be construed and applied in such lesser fashion as may be necessary to not restrict the police power of the City.
- 10.15 Recordation.** After its execution, this Agreement shall be recorded in the real property records of Blaine County, Idaho by the City.
- 10.16 Severability.** If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.
- 10.17 Time of Essence.** Time is of the essence in implementing the terms of this Agreement.
- 10.18 Waiver.** No delay in exercising any right or remedy shall constitute a waiver by either Party thereof, and no waiver by the City or the Developer of the breach of any covenant or condition of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.
- 10.19 Agreement Term.** The Term of this Agreement is effective upon the Effective Date and is thereafter perpetual unless terminated pursuant to Section 3.1.2.1 of this Agreement.

IN WITNESS WHEREOF, the Parties hereto, having been duly authorized, have executed this Development Agreement to be effective on the Effective Date.

CITY:

CITY OF KETCHUM, Idaho, a municipal corporation organized and existing under the laws of the state of Idaho

By: _____
Neil Bradshaw, Mayor

Attest:

By: _____
Robin Crotty, City Clerk

CITY ATTORNEY APPROVAL AS TO FORM AND AUTHORITY:

The foregoing Agreement has been received by the undersigned attorney, who has opined that it is in proper form and within the power and authority granted under the laws of the state of Idaho to the City of Ketchum

Wm. F. Gigray, III, City Attorney

DEVELOPER:

PEG Ketchum Hotel, LLC

By: The PEG Ketchum Hotel, L.L.C., an Utah limited liability company,

By: _____
Nick Blayden, Manager

OWNER:

PEG Ketchum Hotel, LLC, an Utah limited liability company

By: _____
Nick Blayden, Manager

STATE OF IDAHO)
) ss.
COUNTY OF BLAINE)

On this ____ day of _____, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared **Neil Bradshaw**, known or identified to me to be the Mayor of the City of Ketchum, the municipal corporation that executed the instrument or the person who executed the instrument on behalf of said municipal corporation, and acknowledged to me that such municipal corporation executed the same.

Draft Date 4/6/20

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

[seal]

Notary Public for Idaho
My Commission expires: _____

Draft Date 4/6/20

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared **Nick Blayden**, Manager of PEG Ketchum Hotel, L.L.C., an Utah limited liability company, 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 affixed my official seal the day and year in this certificate first above written.

[seal]

Notary Public for _____
My Commission expires: _____

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Draft Date 4/6/20

EXHIBIT A
Ordinances

EXHIBIT A

Draft Date 4/6/20

EXHIBIT B
Project Development Plans

EXHIBIT B

Draft Date 4/6/20

EXHIBIT C
Approved Findings

EXHIBIT C