



City of Ketchum
Planning & Building

STAFF REPORT
KETCHUM PLANNING AND ZONING COMMISSION
SPECIAL MEETING OF MAY 7, 2025

PROJECT: Limelight Hotel PUD CUP & DA Amendment

FILE NUMBERS: P25-001 & P25-001a

APPLICATIONS: Planned Unit Development Conditional Use Permit Amendment & Development Agreement Amendment

OWNER: Limelight Ketchum 2 LLC

REPRESENTATIVE: Jim Garrison

REQUEST: Convert 11 hotel rooms on the fourth floor into 2 residential condominium units

LOCATION: 151 S Main Street (151 South Main Hotel & Residences)

ZONING: Retail Core of the Community Core (CC-1 Zone)

REVIEWER: Abby Rivin, AICP – Senior Planner

NOTICE: A public hearing notice for the project was mailed to all owners of property within 300 feet of the project site and all political subdivisions on April 16, 2025. The public hearing notice was published in the Idaho Mountain Express on April 16, 2025. A notice was posted on the project site and the city's website on April 22, 2025.

ATTACHMENTS	
<i>Application Materials</i>	
A	Amendment Request Narrative & Project Plan Set
B	PUD CUP Amendment Application & Submittal Materials
C	DA Amendment Application & Submittal Materials
<i>Staff Analysis</i>	
D	PUD Standards Analysis
<i>Limelight Hotel Approvals & Agreements</i>	
E	Bald Mountain Lodge PUD CUP Amendment Approval: City Council Findings
F	Limelight Hotel Design Review Modification Approval: Planning & Zoning Commission Findings
G	Limelight Hotel Development Agreement (April 20, 2015)

EXECUTIVE SUMMARY

The applicant, Limelight Ketchum 2 LLC, represented by Jim Garrison, has applied for amendments to the Planned Unit Development (PUD) Conditional Use Permit (CUP) and the Development Agreement (DA) for the Limelight Hotel located at 151 S Main Street in the Retail Core of the Community Core (CC-1 Zone). The applicant proposes converting 11 hotel rooms on the fourth floor into two market-rate residential condominium units. This request requires amendments to the Limelight Hotel PUD CUP & DA.

Pursuant to the definition of hotel specified in Ketchum Municipal Code (KMC) §17.08.020, hotels are permitted to include residential uses provided that the total gross square footage of hotel uses comprise 75% or more of the project's total gross square footage. As approved through the original 2010 PUD, the 2013 PUD amendment (Attachment E), and the 2015 Design Review Modification (Attachment F), the Limelight Hotel currently provides 99 hotel 109 hotel rooms (including 10 lock-off units) and 14 residential units. 78.3% of the total building area is currently dedicated to hotel use.

The conversion proposed with the amendment request would result in 98 total hotel rooms (including 10 lock-off units) and 16 residential units. The total building area dedicated to hotel uses would be reduced to 75.1%, which complies with the hotel definition specified in KMC §17.08.020. The proposal requires an amendment to the Limelight Hotel PUD CUP to reflect the program changes. In addition, the proposed conversion requires amendments to the Limelight Hotel DA (see Attachment G).

Staff supports the proposed conversion provided the applicant fulfills the community housing contribution required for the new residential use by paying the associated in-lieu fee. The staff report provides an overview of Ketchum's zoning code history related residential use in hotels, summarizes past Limelight Hotel approvals and agreements, and highlights certain PUD standards for consideration by the Planning and Zoning Commission ("Commission").

BACKGROUND

Zoning Code History

Hotel Definition: Residential Use

Hotels, motels, and lodges have been permitted in downtown Ketchum since the city adopted its first comprehensive zoning ordinance in 1965. Until the adoption of Ordinance No. 353 in 1982, hotel rooms were limited to short-term occupancy and could be rented for no more than 30 days. Ordinance No. 353 updated the hotel definition to allow for both short-term occupancy and time-share occupancy. Time-share occupancy was permitted for hotels until the adoption of Ordinance No. 861 in 2001, which amended the hotel definition to prohibit interval or time-share ownership.

The hotel definition was updated to permit residential occupancy through the adoption of Ordinance No. 999 in 2006. The updated definition stated that a hotel building may contain residential uses other than hotel rooms provided that the total net square footage of residential use did not exceed 20% of the net floor area of hotel rooms. The hotel definition was updated again in 2008 through the adoption of Ordinance No. 1040. The updated hotel definition is still effective in zoning code today. Pursuant to KMC §17.08.020:

A hotel building may contain other residential uses not used in connection with the Hotel operation, so long as the total gross square footage of the hotel rooms, associated common areas, and other

hotel uses outlined above comprises seventy five percent (75%) or more of the entire project's gross square footage.

Hotel Incentive: Community Housing Waiver

When the hotel definition was first updated to permit residential occupancy in 2006, the city also established a form-based code for the Community Core to implement the Downtown Master Plan through the adoption of Ordinance No. 994. The form-based code added the following standard specifying that residential units within hotels were subject to community housing requirements:

Hotels are not subject to the Floor Area Ratio Inclusionary Housing Incentive of twenty percent (20%) for all hotel uses and hotel sleeping rooms. The twenty percent (20%) Inclusionary Housing Incentive is required for all residential units within a hotel that are not available for short-term rental.

A community housing waiver for residential portions of hotel projects was established in the zoning code through the adoption of Ordinance No. 1033 in 2008. The waiver stated:

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

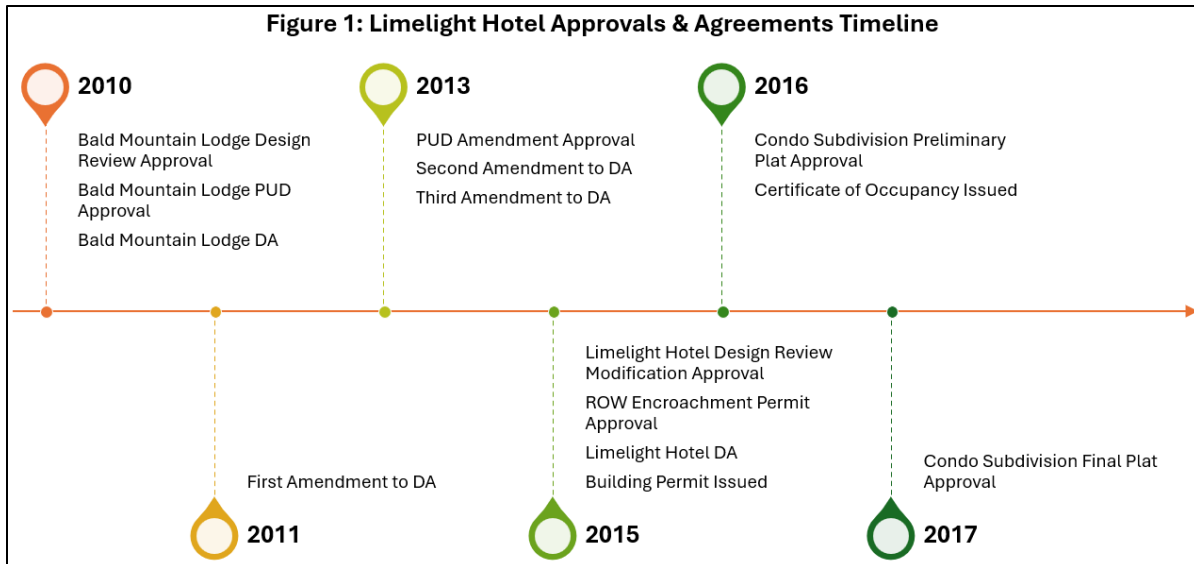
At the time, the city believed hotels were integral for economic revitalization, and the waiver was deemed necessary to incentivize hotel development.

The city approved several hotel projects that relied on the community housing waiver but had not obtained a building permit within the required timeframe. A two-year extension to this waiver was approved in 2010 through the adoption of Ordinance No. 1068. The extension covered several hotel projects that would have been significantly impacted by the expiration of the community housing waiver, including the Limelight Hotel.

The community housing waiver to incentivize hotel development was removed from Ketchum's zoning code in 2014 through the adoption of Ordinance No. 1117. The zoning code was amended to state that, "For hotel uses, community housing calculations apply to all portions of the hotel development except the hotel units, which are addressed pursuant to Employee Housing, 17.64.010.I, Hotel Uses."

Limelight Hotel Approvals & Agreements

The City Council approved the original PUD CUP for the Limelight Hotel on June 7, 2010. At the time of the original PUD approval, the hotel was named Bald Mountain Lodge. Following the original PUD approval in 2010, the Limelight Hotel received numerous approvals for design and programming changes and entered into multiple agreements with the city. The timeline of Limelight Hotel approvals and agreement is provided in Figure 1.



The hotel program approved through the original 2010 PUD included 82 hotel rooms, 9 lock-off units on the fourth floor, and 26 residential condominium units on the fourth and fifth floors. The hotel program resulted in: (1) an employee housing requirement of 23 employee housing units and (2) a community housing requirement of 7,444 square feet or approximately \$2.36 million in-lieu fee payment. The employee and community housing requirements were waived in their entirety through the PUD process as an incentive to commence construction of the hotel project.

The PUD Ordinance gives City Council the authority to grant waivers from zoning and subdivision standards on a case-by-case basis provided the waiver is not detrimental to the public welfare, health, and safety or injurious to property owners in the surrounding area. The PUD Ordinance states:

Modification or waiver from certain standard and subdivision requirements may be permitted subject to 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 benefits derived from the development justify a departure from such regulations (KMC §16.08.080).

The Limelight Hotel was granted multiple waivers through the PUD CUP. A summary of these waivers is provided in Table 5 of the 2013 PUD CUP Amendment approval (Attachment E: pages 8-10). Waivers were granted for multiple zoning code requirements, including use, site, mass, and height specifications required for developments in the Community Core. The employee and community housing waivers were used as incentives to commence construction quickly and expedite the issuance of a Certificate of Occupancy for the hotel portion of the project in order to derive the economic benefits that would result from increasing accommodations for tourists.

The Limelight Hotel (formerly Bald Mountain Lodge) DAs and amended DAs provided incentives for different construction timelines. The original Bald Mountain Lodge DA was amended three times to extend the construction timelines before the current Limelight Hotel DA (Attachment G) became effective. The construction timelines and incentives specified in the original Bald Mountain Lodge DA and current Limelight Hotel DA are summarized in Table 1.

Table 1: DA Construction Timelines & Incentives		
Timelines		Incentives
<i>Bald Mountain Lodge DA (Effective Date: September 17, 2010)</i>		
A	<ul style="list-style-type: none"> building permit applied for by December 31, 2011 commencement of construction by June 30, 2012 Certificate of Occupancy issuance for hotel portion of project by January 30, 2015 	<ul style="list-style-type: none"> community housing requirement waived in its entirety employee housing requirement waived in its entirety
B	<ul style="list-style-type: none"> building permit applied for by December 31, 2012 commencement of construction by December 31, 2013 Certificate of Occupancy issuance for hotel portion of project by January 2016 	<ul style="list-style-type: none"> community housing requirement waived in its entirety 50% of employee housing requirement waived Remaining 50% of employee housing requirement (\$1.38 million) must be satisfied through either construction of employee housing units, payment via real estate transfer fee, or by other method approved by the city.
C	building permit application shall be submitted within 4 years of 2010 PUD approval unless extended by City Council upon written request by Owner prior to PUD CUP expiration	waivers do not apply under this timeline—community and employee housing requirements must be met in their entirety
<i>Limelight Hotel Development Agreement (Effective Date: April 20, 2015)</i>		
A	<ul style="list-style-type: none"> building permit applied for by May 31, 2015 commencement of construction by November 30, 2015 Certificate of Occupancy issuance for hotel portion of the project by June 30, 2018 	<ul style="list-style-type: none"> community housing requirement waived in its entirety employee housing requirement waived in its entirety
B	<ul style="list-style-type: none"> building permit applied for by May 31, 2016 commencement of construction by November 30, 2016 Certificate of Occupancy issuance for hotel portion of project by June 30, 2019 	<ul style="list-style-type: none"> community housing requirement waived in its entirety 50% of employee housing requirement waived Remaining 50% of employee housing requirement (\$1.38 million) must be satisfied through either construction of employee housing units, payment via real estate transfer fee, or by other method approved by the city.
C	building permit application shall be submitted by May 6, 2017 (expiration date for 2013 PUD) unless extended by City Council upon written request by Owner prior to PUD CUP expiration	waivers do not apply under this timeline—community and employee housing requirements must be met in their entirety

On November 5, 2012, the City Council considered a request from Bald Mountain Lodge LLC for a second extension to the construction timelines specified in the DA. In exchange for extending the timelines, the developer agreed to modify the original fourth-floor program from residential condominium units to hotel guest rooms. The PUD CUP Amendment to reflect this change was approved on May 6, 2013 (see Attachment E). The conversion of the fourth-floor residential units to hotel rooms resulted in a total of 119 hotel rooms and 8 residential units on the fifth floor. 86.7% of the total building area was dedicated to hotel uses.

On November 24, 2014, Aspen Skiing Company and Bald Mountain Lodge LLC conducted a workshop with the Planning and Zoning Commission on proposed modifications to the design of the approved hotel project. The Commission determined that the proposed programming changes would not necessitate a PUD amendment but that the proposed exterior changes required the

Commission's review and approval of a Design Review Modification. Aspen Skiing Company, the current owner, purchased the Bald Mountain Lodge project in December of 2014. The Commission approved the Limelight Hotel Community Core Design Review Modification on April 2, 2015 (Attachment F). The modifications included changes to the hotel program that resulted in 98 total hotel rooms, 10 lock-off units, and 14 residential units. 78.3% of the total building area was dedicated to hotel uses.

On April 20, 2015, the city entered into a DA with Limelight Hotel LLC (see Attachment G). This DA superseded and replaced the original DA with Bald Mountain Lodge LLC. Building Permit No. 15-038 was issued for the construction of the Limelight Hotel on October 1, 2015, and the Certificate of Occupancy was issued on December 22, 2016.

ANALYSIS

PUD & DA Procedures

Hotels may exceed maximum floor area, height, and minimum open site area requirement through a PUD (KMC §17.124.050.A). PUDs are considered a conditional use within all zoning districts (KMC §16.08.060) and are required to obtain conditional use permits pursuant to KMC §16.08.050. The procedures for evaluating PUD CUPs are outlined in KMC §16.08.110 and KMC §16.08.120. The first step in the PUD CUP review process is a public hearing with the Commission. Pursuant to KMC §16.08.110:

The commission shall make findings, together with recommendations, including but not limited to, approval with appropriate conditions or denial of the application. Thereafter, the conditional use permit application together with the record and recommendations of the commission, shall be forwarded to the City Council for final action.

KMC 16.08.130 provides a non-exhaustive list of conditions that the City Council may impose as part of the PUD CUP process. Conditions may include:

- Minimizing adverse impact on surrounding properties, developments and/or public services, facilities or utilities.
- Designating the exact location and nature of development.
- Requiring more restrictive development standards than those generally required in applicable ordinances.
- Restrictions on the future use of the proposed development. This includes appropriate mechanisms to guarantee the affordability of community housing units (for example, deed restrictions).
- Require provision of adequate employee housing.
- Such other reasonable conditions as the City Council may deem appropriate with regard to the proposed PUD.

Conditions are not limited to those listed in the PUD Ordinance.

Hotels must enter into a DA with the city as part of the approval process. Pursuant to KMC §17.124.050.B5, the DA may address, "community housing, hotel room uses and restrictions, public access on the property, alternatives and remedies if the hotel use ceases, and any other issues the Commission or City Council deems appropriate." Hotel DAs follow the process outlined for PUDs.

PUD Standards (KMC §16.08.080)

KMC §16.08.080 provides evaluation standards that apply to review of all PUD CUP applications. Staff's comprehensive analysis of all PUD standards is provided in Attachment D. Many standards

are not applicable to the request as no changes are proposed to the existing design, height, bulk, or mass of the Limelight Hotel.

Special Development Objectives

Pursuant to 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."

When the PUD was approved in 2010, the City Council found that, "The City has established that increasing tourist accommodations by encouraging hotel development is a priority," and, "the economic benefits of such a development have been recognized by the City Council as an important factor in approving the project. The City Council findings for the 2013 PUD amendment (see Attachment G) state:

The current PUD amendment proposes to convert the entire fourth floor from residential to hotel use. This results in an economic benefit of an addition thirty seven (37) hotel rooms in the Community Core. The employee housing requirement has changed from a requirement of twenty-three (23) employee housing units to thirty (30) employee housing units. These are special development objectives that continue to justify the granting of a PUD. The City has established the need for hotels and hotbeds as a priority. The economic benefits of such a project are substantial.

Figure 2 shows the special development objectives that were summarized in the City Council findings for the original 2013 PUD Amendment. When both the original 2010 PUD and 2013 PUD amendment were approved, The City Council found that the economic benefits of the 4-star hotel justified granting approval of the PUD and associated waivers.

The Limelight Hotel continues to provide economic benefits to the city through the Local Option Tax (LOT) collected from hotel room, liquor-by-the drink, and retail sales. The LOT money remains in Ketchum and is invested in a wide range of City services and economic development initiatives that benefit local residents and businesses in accordance with the allowable uses approved by voters. Those uses include: municipal transportation, open space acquisition and recreation, capital improvements, emergency services, city promotion, visitor information, and special events.

TABLE 10: SPECIAL DEVELOPMENT OBJECTIVES

Special Development Objective, special Characteristics of the Site or Physical Conditions	Type of Objective
4-Star Hotel	Economic (see fiscal impact analysis by Randy Young dated January 31, 2010)
Conference Space (seating for 250-275 persons)	Economic
Employee Housing for 23 employees (waived if construction commences by 2012; partial waiver if construction commences by 2013)	Social and Economic
Proposed contribution towards the undergrounding of overhead power lines (amount to be determined)	Aesthetic; Economic
Pedestrian improvements to public right-of-way to create enhance pedestrian experience, Gateway Architectural Element	Aesthetic; Economic

Figure 2: 2013 PUD Amendment--Special Development Objectives

Conformance with Comprehensive Plan & Zoning Ordinance

2014 Comprehensive Plan Analysis

Pursuant to KMC §16.08.080.G, PUD proposals must be, “in conformance with and promote 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.”

The 2014 Comprehensive Plan (“2014 Plan”) highlights the tourism industry as an essential component of Ketchum’s economy and encourages growing the lodging industry, increasing visitor numbers through marketing, and enhancing tourism services and attractions downtown. Goal E-3 of the 2014 Plan states, “Ketchum depends heavily on tourism to support the local economy and will continue to support this industry” (page 17). Policy E-3(b) states that the city will, “Continue to support tourism-related land uses and businesses including lodging development and venues” (page 17).

The 2014 Plan emphasizes Ketchum’s dire need of affordable housing that is attainable to the local workforce and acknowledges that workforce housing is essential for our economy. The 2014 Plan states, “The Ketchum community wants the majority of people who work in Ketchum to have an opportunity to reside here,” and that, “a diversity of housing is critically linked to a strong economy and year-round population” (page 19). Policy H-1.2 encourages “locally-developed solutions” to provide more attainable housing (page 20). Policy H-3.1 states that, “The City should encourage the private sector, through land-use regulations and incentive programs, to provide a mixture of housing types with varied price ranges and densities that meet a variety of needs.”

The Limelight Hotel is the only hotel project in Ketchum that has received waivers for 100% of the employee and community housing requirements. The waivers were granted as an incentive to start construction quickly. The Limelight Hotel received a Certificate of Occupancy on December 22, 2016. The incentive to quickly commence construction is no longer applicable. As further detailed in the analysis below, the new residential use proposed with the conversion request is subject to the community housing requirement.

Zoning Ordinance Analysis

Pursuant to FAR and community housing standards specified in KMC §17.124.040.B3:

In the CC district, the maximum floor area incentive applies to buildings up to three stories in height. Buildings above three stories may exceed the 2.25 FAR maximum only in accordance with the pertinent provisions allowing for a fourth floor (for example, hotels, PUDs and 100 percent community housing project, etc.) For hotel uses, community housing calculation apply to all those portions of the hotel development except the hotel units, which are addressed pursuant to employee housing of this chapter.

Community housing calculations are also addressed in the standards that apply to hotels in the Tourist Zone and Community Core listed in KMC §17.124.050.B. Pursuant to KMC §17.124.050.B1, “For hotel developments, community housing calculations apply to all residential units. However, 100 percent of the community housing requirement will be waived only for the residential portion of hotel projects that meet the hotel definition adopted by the Ketchum City Council.”

These sections of zoning code provide two different standards for applying the community housing calculation for hotels in the Community Core. KMC §17.124.040.B3 requires that the community housing calculation apply to all portions of a hotel development except hotel units. KMC

§17.124.050.B1 states that the community housing requirement is waived for the residential portion of projects that meet the hotel definition.

Regulations for the interpretation and application of the zoning code are provided in KMC §17.04.040. The application of overlapping regulations is addressed in KMC §17.04.040.B, which states:

Whenever the provisions of this title, or a provision in this title and any provision in any other ordinance, resolution, rule or regulation of any kind, contain any restrictions covering the same subject matter, the more restrictive or higher standards or requirements shall govern. All uses and all locations and bulk permitted under the terms of this title shall be in conformity with all other provisions of law.

Applying the community housing calculation for all portions of the hotel development except hotel units as required by KMC §17.124.040.B3 is a more restrictive and higher standard compared to KMC §17.124.040.B3. This more restrictive and higher standard shall govern pursuant to KMC §17.04.040.B.

The request to convert 11 existing hotel rooms on the fourth floor into two residential penthouses would result in 4,573 square feet of new non-hotel floor area. The community housing contribution and associated in-lieu fee for the new residential use is calculated as follows:

- New Non-Hotel Floor Area: 4,573 gross square feet
- 20% of New Non-Hotel Floor Area: 915 square feet
- Net Livable (15% Reduction): 777 square feet
- Community Housing In-Lieu Fee (\$600 per square foot): 777square feet x \$600 = \$466,200

The applicant summarizes the proposed housing mitigation in their narrative (Attachment A) and references the following sections of the zoning code:

KMC §17.124.040—Floor Area Ratios and Community Housing

B.2g. In addition to those outright options noted in this section, the City Council may consider alternative proposals by the applicant to fulfill the community housing incentive. The City Council has full discretionary power to determine said request. Options for fulfillment of the community housing incentive include, but are not limited to:

1. Land conveyance to the City;
2. Existing housing unit buy down or mortgage buy down; or
3. Other proposals and options as approved by the City Council.

KMC §17.124.050—Hotels

B4. Alternate Means for housing. The City Council may consider a request by the hotel developer to satisfy any required employee or community housing square footage by alternate means. Off site mitigation, payment of in lieu fees, land in lieu of units, voluntary real estate transfer fees or other considerations may be proposed by the hotel developer. Larger sites are encouraged to include workforce housing on site. The City Council has full discretionary power to deny said request.

In their narrative, the applicant summarizes their housing mitigation proposal as follows:

The LLK has subsidized employee rents for over 7 years. The average rental subsidy is between \$50,000 and \$60,000 per year and total \$350,000 to date. This practice is integral to the LLK

operations and there is no foreseen reason why this employee housing subsidy would be discontinued.

Council has encouraged and continues to encourage subsidies as an offset to either construction of actual for-rent units or payment of in lieu fees. The Applicant submits that these employee rent subsidies qualify as an appropriate alternative housing contribution offset to the in-lieu fee payment.

The applicant has proposed satisfying the community housing requirement for the new residential use by continuing to subsidize rents for their employees. Staff believes it is important to distinguish that the hotel is subject to two different housing requirements—the employee housing requirement and the community housing requirement.

Employee housing is required pursuant to KMC §17.124.050.B2, which states, “Hotel developments are required to mitigate employee housing impacts at a ratio of 25 percent of the total number of employees calculated by the following formula: one employee per hotel room or bedroom.” The 2013 PUD amendment waived the requirement to provide housing for 30 employees as an incentive to construct the project quickly. The request to convert 11 hotel rooms to two residential units decreases the employee housing demand for the project. The proposed amendment decreases the total number of hotel rooms to 98, which would require housing for 25 employees.

Community housing is required pursuant to KMC §17.124.040.B3, which states that, “For hotel uses, community housing calculations apply to all those portions of the hotel development except the hotel units, which are addressed pursuant to employee housing of this chapter.” The applicant’s request proposes two new market-rate residential condominium units on the fourth floor of the Limelight Hotel. The two new residential units have a total floor area of 4,573 square feet. The associated community housing requirement based on the proposed new residential use is 777 square feet of community housing or a community housing in-lieu fee of \$466,200.

Staff acknowledges the value of the ongoing rent subsidies that the Limelight Hotel provides to their employees. The 2013 PUD amendment waived the employee housing requirement to provide housing for 30 employees. While the city’s employee housing requirement was waived, Limelight Hotel depends on access to a stable workforce for their operations and voluntarily provides employee rent subsidies. Staff believes these ongoing employee rent subsidies underscore Ketchum’s shortage of affordable housing options that are attainable for the local workforce. Staff recommends the applicant satisfy the community housing requirement by paying the \$466,200 in-lieu fee to help further the city’s goal to produce and preserve housing that is affordable for our local workforce and community.

STAFF RECOMMENDATION

Staff recommends the Commission make a recommendation to approve and move the PUD CUP & DA Amendment applications to the City council subject to the condition that the applicant satisfy the community housing requirement by paying the associated \$466,200 in-lieu fee.

Attachment A

Amendment Request Narrative & Project Plan Set

Limelight Ketchum guest room to condominium conversion narrative

Executive Summary

Thank you for your attention to the following materials detailing a proposed alteration within the Limelight Hotel Ketchum.

This alteration will continue to reinforce the long standing operations of the LLK as a valued community contributor and participant. Continued successful hotel visitor operations, employment, popular restaurant and public services, valued meeting spaces, and desirable residences are significant contributors to our residents, visitors, and local businesses.

The purpose of the proposed alteration is to expand the existing residential and for rent product and to make available the funds to complete a significant planned internal public space remodel projected to occur in 2025.

We look forward to this modification as a basis for further interior guest and resident service improvements and experiences.

Background

The Limelight Ketchum was designed and fully entitled in April 2011. In 2014, the project was sold to the current owner and developer, Aspen Skiing Company, and construction commenced in Spring 2015.

In 2013, prior to the sale, the PUD/CUP was amended and updated. Following the sale, the Development Agreement was amended, and the Community Core Design Review was modified in April 2015. As the program revisions proposed by ASC were consistent with the PUD/CUP, the city determined the PUD/CUP did not need to be further revised. Construction began in Spring of 2015 and was completed and the Certificate of Occupancy issued in December, 2016. As set forth in the final Design Review approval, the project totaled 99 guest rooms and 14 for sale condominiums and totaling 141,547 square feet, of which 78.3% was platted as Hotel square footage.

A stipulation of the Development Agreement/PUD provided that 75% of the building square footage, at minimum, must be utilized as Hotel space (106,160 s.f.) Since inception in 2015, 110,811 square footage has been designated and used as Hotel space.

Submittal

While maintaining designated hotel parameters, and continuing to conform with the Hotel Definition, Development Agreement, and PUD/CUP governing agreements, the project includes 4,650.75 square feet of excess Hotel square footage.

Two areas of the 4th floor (“Main Street” block and “1st Street” block) are platted and recorded as Hotel and are comprised of guest rooms totaling 4,573 square feet. The Main Street block included 5 guest rooms totaling 1,939 square feet. The 1st Street block included 6 guest rooms totaling 2,633 square feet.

This submittal requests the conversion of this excess Hotel square footage to residential use, specifically the Main Street block and the 1st Street block. After this conversion the Residential square footage will be 35,309 s.f. and still less than the 25% maximum allowed. (Please see the area calculation detail and the floor plate indicating the two 4th floor color blocked areas).

Project Design

Interior:

The floor plates of the 4th floor Main Street block and 1st Street block areas mirror existing 5th floor condominium units; the interior floor plans for the 4th floor units will be substantially similar to those upper units.

Exterior:

There will not be any change to the exterior treatments of materials, windows, penetrations or colors. We have included exhibits showing the existing Main Street elevation and the 1st Street elevation for reference. (Please see drawing pages attached)

Code Compliance

The governing authority, including the Development Agreement, the PUD/CUP, and the relevant Code sections have been excerpted and included within the relevant Proposed document Amendments and Forms. (Please see Amendment Application Forms and Exhibits attached)

Parking

The parking code provides for .75 parking space per hotel guest room and 1.5 parking spaces per residential unit. 8 spaces exist already to accommodate the 11 guestrooms. Residential use would require only 3 spaces. Thus the project now includes an excess parking count of 5 spaces.(Please see the updated Parking calculation attached).

Plat Amendment

The Final Plat was completed in 2015. A Plat Amendment will be required to re-organize the 2 Hotel guestroom blocks into 2 condominiums and to transfer the two blocks from the “H”, or Hotel designation, to “R” or Residential designation. (Please see preliminary Lot Line Adjustment Form Application attached).

Housing Mitigation

City code section 17.124.040 calculates an applicable in lieu fee based on “new non-hotel floor area” as follows:

- New Non-Hotel Floor Area: 4,573 square feet
- 20% of New Non-Non-Hotel Floor Area: 915 square feet
- Net Livable (15% Reduction) 777 square feet
- Community Housing In-Lieu Fee (\$600 per s.f.): $777 \text{ s.f.} \times \$600 = \$466,200$

Section 17.08 specifies the definition of “Hotel” and the Applicant stipulates that both prior to and following the application of this proposed use modification, the LLK continues to fully comply with the Hotel definition with no change to the approved FAR or total square footage.

Pursuant to *Title 17.124.040B2g*, “Options for fulfillment of the community housing incentive include, but are not limited to:

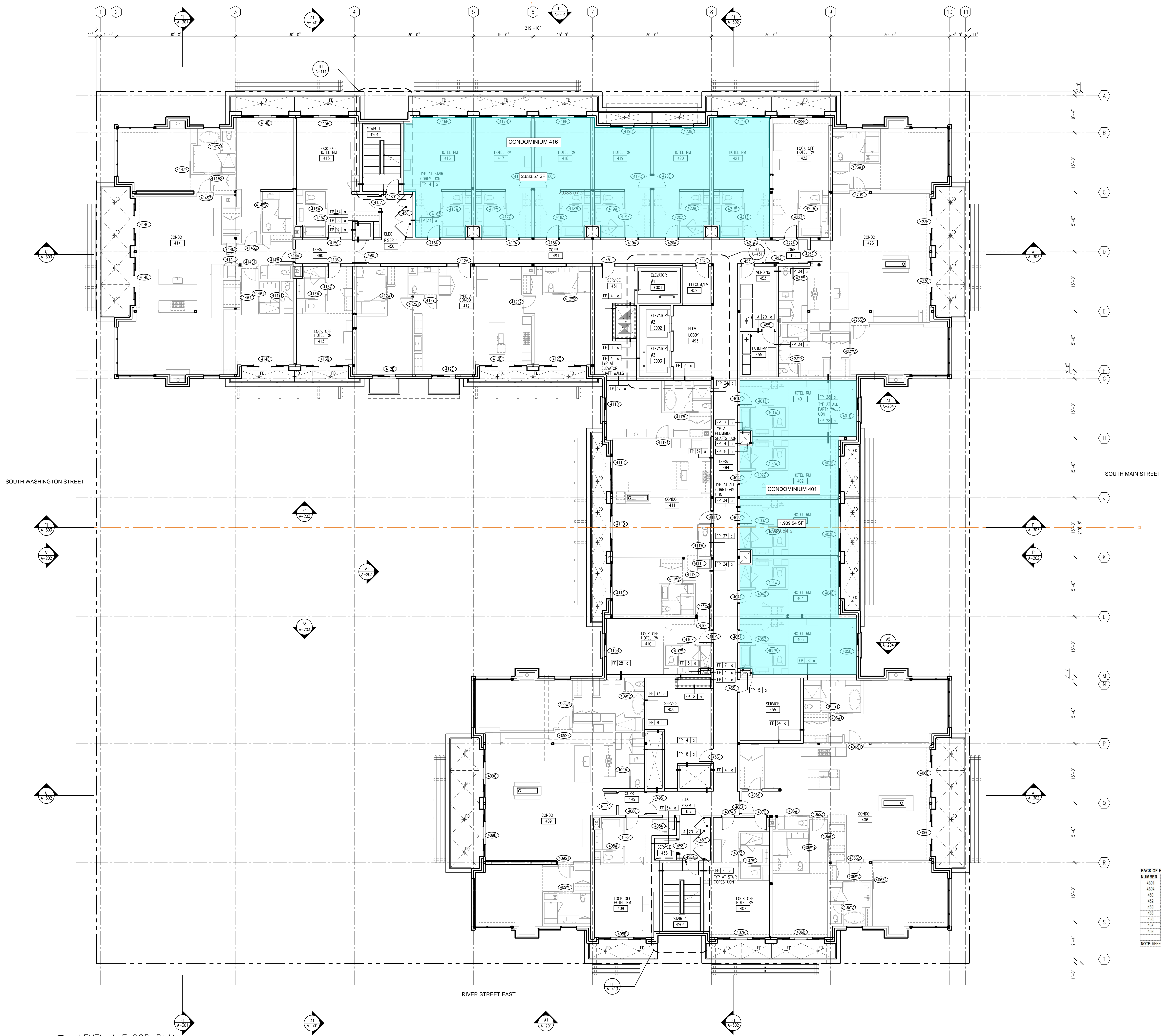
- 1) *Land conveyance to the City;*
- 2) **Existing housing unit buy down or mortgage buy down; or**
- 3) **Other proposals and options as approved by the City Council.”** (Emphasis added)

Additionally, *Title 17.124.050B4* provides: “Alternate means for Housing. The City Council may consider a request by the hotel developer to satisfy any required employee or community housing square footage by alternate means. **Off-site mitigation**, payment of in lieu fees, land in lieu of units, voluntary real estate transfer fees or other considerations may be proposed by the hotel developer.” (Emphasis added).

The LLK has subsidized employee rents for over 7 years. The average rental subsidy is between \$50,000 and \$60,000 per year and totals \$350,000 to date. This practice is integral to the LLK operations and there is no foreseen reason why this employee housing subsidy would be discontinued.

Council has encouraged and continues to encourage such subsidies as an offset to either construction of actual for-rent units or payment of in lieu fees. The Applicant submits that these employee rent subsidies qualify as an appropriate alternative housing contribution offset to the in-lieu fee payment.

FIRST STREET EAST



BACK OF HOUSE FINISH LEGEND- LEVEL 4					
NUMBER	NAME	FLOOR	BASE	WALLS	CEILING
4801	STAIR 1	SC100	B100	PT100	PT100
4804	STAIR 4	SC100	B100	PT100	PT100
480	ELEC RISER 1	SC100	B100	PT100	PT100
482	TELECOM/LV	SC100	B100	PT100	PT100
483	VENDING	RF101	B100	PT100	ACP100
485	LAUNDRY	RF101	B100	PT100	ACP100
486	SERVICE	SC100	B100	PT100	PT100
487	ELEC RISER 1	SC100	B100	PT100	PT100
488	SERVICE	SC100	B100	PT100	PT100

NOTE: REFER TO SHEET A-01 FOR FINISH SCHEDULE.

NOTES:
- FOR TYPICAL HOTEL ROOM WALL TYPES, SEE HOTEL ROOM 401.
- FOR LOCATION OF SHEER WALLS, SEE STRUCTURAL.
- HOTEL ROOM INTERIORS SHOWN FOR REFERENCE ONLY. REFER INTERIORS SHEETS.
- PROVIDE NEGATIVE PRESSURE AND HARD UD CEILING IN LAUNDRY RM 455.

A1 LEVEL 4 FLOOR PLAN
1/8"=1'-0"

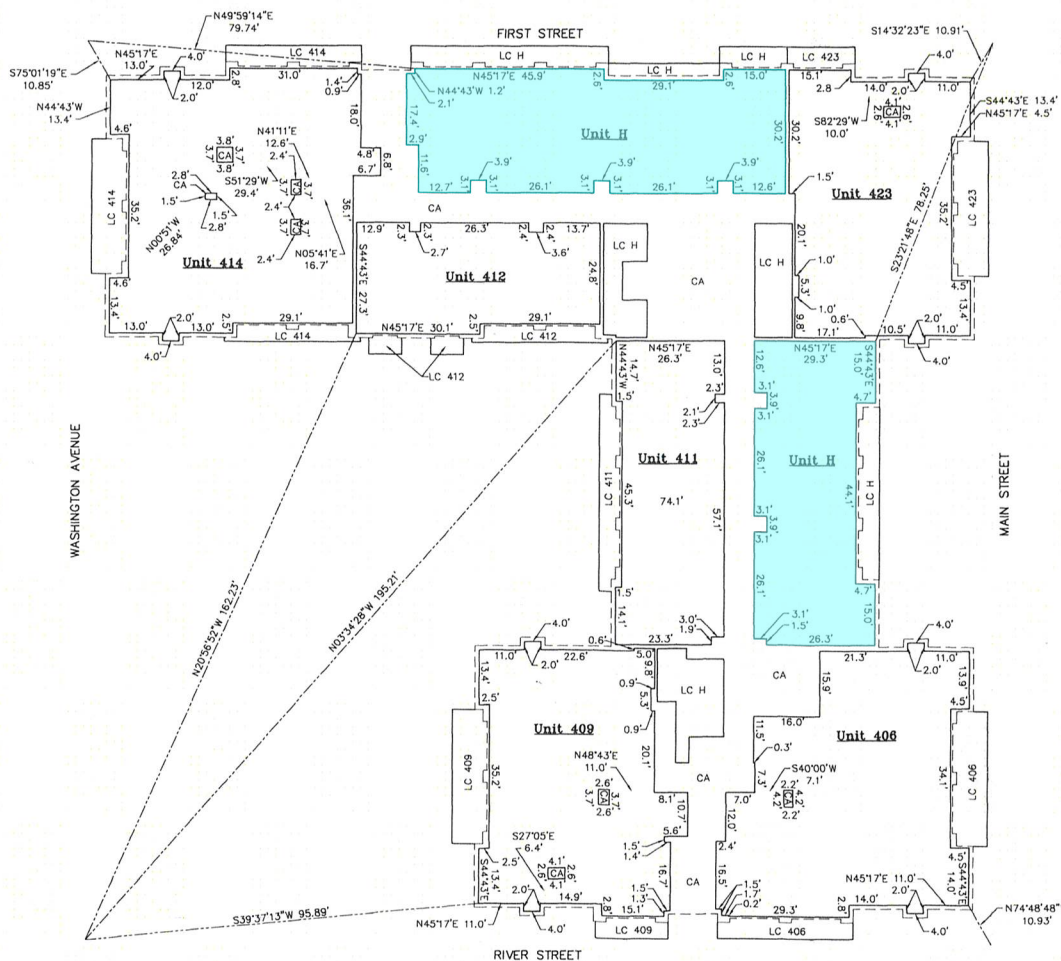
151 SOUTH MAIN HOTEL & RESIDENCES AMENDED

FOURTH FLOOR UNIT LAYOUT

20 10 0 20 40 60

SCALE IN FEET

SCALE: 1" = 20'



LEGEND

- Property Boundary
- Building Outline
- Unit Outline
- Unit Tie
- CA Common Area
- LC Limited Common

NOTES

1. IN INTERPRETING THE DECLARATION, PLAT OR PLATS, AND DEEDS, THE EXISTING PHYSICAL BOUNDARIES OF THE UNIT AS ORIGINALLY CONSTRUCTED, OR RECONSTRUCTED IN LIEU THEREOF, SHALL BE CONCLUSIVELY PRESUMED TO BE ITS BOUNDARIES RATHER THAN THE METES AND BOUNDS EXPRESSED OR DEPICTED IN THE DECLARATION, PLAT OR PLATS, AND/OR DEEDS, REGARDLESS OF SETTLING OR LATERAL MOVEMENT OF THE BUILDING AND REGARDLESS OF MINOR VARIANCES BETWEEN BOUNDARIES SHOWN IN THE DECLARATION, PLAT OR PLATS, AND/OR DEEDS, AND THE ACTUAL BOUNDARIES OF THE UNITS IN THE BUILDINGS.
2. HORIZONTAL OR SLOPING PLANES SHOWN HEREON ARE TOP OF FINISHED SUBFLOOR AND BOTTOM OF FINISHED CEILING. VERTICAL PLANES ARE FINISHED SURFACES OF INTERIOR WALLS. SOME STRUCTURAL MEMBERS EXTEND INTO UNITS, LIMITED COMMON AREAS AND PARKING SPACES.
3. DIMENSIONS SHOWN HEREON WILL BE SUBJECT TO SLIGHT VARIATIONS, OWING TO NORMAL CONSTRUCTION TOLERANCES.
4. CONSULT THE CONDOMINIUM DECLARATIONS FOR THE DEFINITION OF COMMON AND LIMITED COMMON AREA.
5. ALL AREA OUTSIDE OF UNITS THAT IS NOT DESIGNATED AS LIMITED COMMON IS COMMON AREA. AREAS OF "COMMON" OR "LIMITED COMMON" ARE SHOWN BY DIAGRAM.
6. BUILDING TIES ARE TO THE INTERIOR CORNERS OF UNIT WALLS.
7. UTILITY EASEMENTS NECESSARY TO ALLOW FOR ACCESS AND MAINTENANCE OF UTILITIES SERVING UNITS OTHER THAN THE UNIT THEY ARE LOCATED IN ARE HEREBY GRANTED BY THIS PLAT.
8. FOUNDATIONS, COLUMNS, GIRDERS, BEAMS, SUPPORTS, PERIMETER AND SUPPORTING WALLS, CHIMNEYS, CHIMNEY CHASES, ROOFS, BALCONIES, WINDOWS, ENTRANCES AND EXITS, AND THE MECHANICAL INSTALLATIONS CONSISTING OF THE EQUIPMENT AND MATERIALS MAKING UP ANY CENTRAL SERVICES SUCH AS POWER, LIGHT, GAS, HOT AND COLD WATER, SEWER, CABLE TELEVISION, AND HEATING AND CENTRAL AIR CONDITIONING WHICH EXIST FOR USE BY ONE OR MORE OF THE UNITS, INCLUDING PIPES, VENTS, DUCTS, FLUES, CABLE CONDUITS, WIRES, TELEPHONE WIRE, AND OTHER SIMILAR UTILITY INSTALLATIONS USED IN CONNECTION THEREWITH, WHETHER LOCATED EXCLUSIVELY WITHIN THE BOUNDARIES OF ANY UNIT OR UNITS OR NOT, ARE COMMON AREA.
9. THIS PLAT IS BEING RECORDED TO AMEND LIMITED COMMON PARKING AND STORAGE AREAS ON THE BASEMENT LEVEL (SHEET 2) ONLY. SHEETS 1 AND 3-7 ARE BEING SHOWN FOR CLARIFICATION AND REFERENCE ONLY.

FOURTH FLOOR LEVEL

Scale: 1" = 20'

THE FINISHED FLOOR ELEVATION OF THE UNITS ON THE FOURTH FLOOR IS 5871.5'
THE CEILING ELEVATION OF THE UNITS ON THE FOURTH FLOOR IS 5880.0'



MARK E. PHILLIPS, L.S. 16670

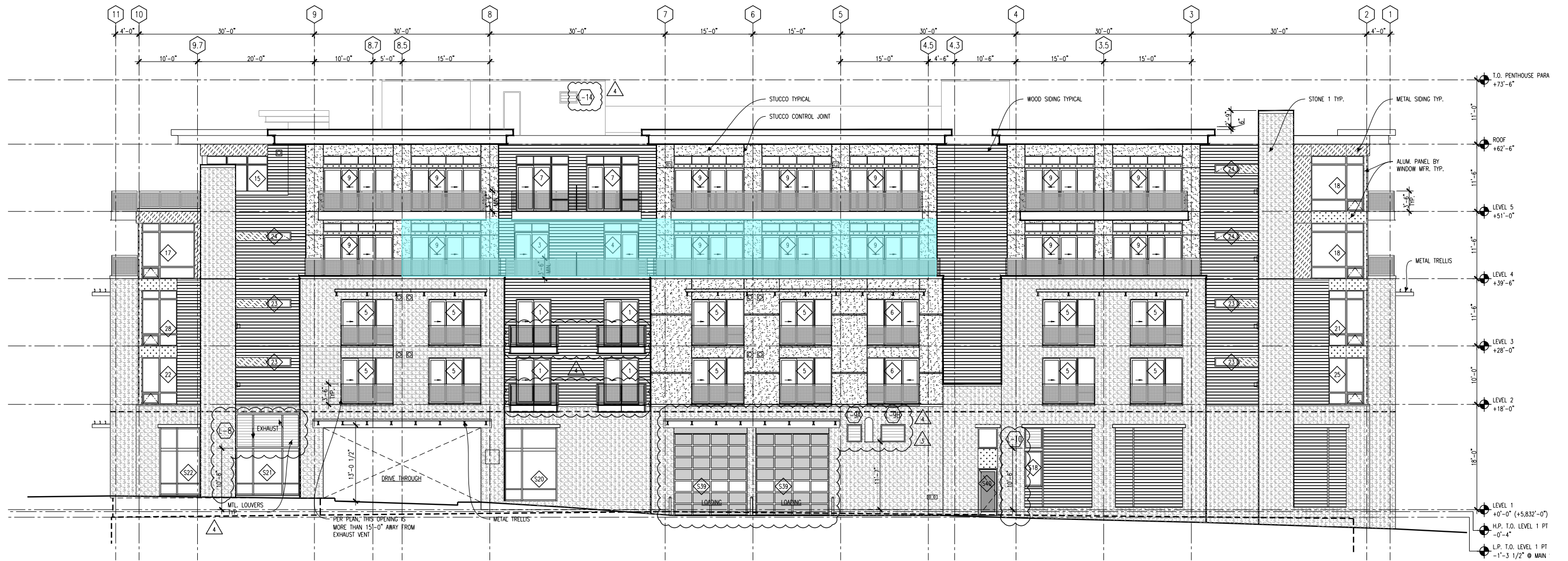
151 SOUTH MAIN HOTEL & RESIDENCES AMENDED

GALENA ENGINEERING, INC.
HAILEY, IDAHO

SHEET 6 OF 8
Job# 5633-06

Limelight Square Footage Calculation				Rounded
A	Existing Total Building Floor Area (S.F.)		141,547.00 Sq. Ft.	
B	Existing Total Hotel Floor Area		110,811.00 Sq. Ft.	
C	Percent of Building Area Required as Hotel		75.0%	
D	Percent of Building Area Defined as Hotel	$B \div A$	78.3%	
E	Permitted Non-Hotel (i.e. Residential) Floor Area	$25\% \times A$	35,386.75 Sq. Ft.	35,387.00 Sq. Ft.
F	Existing Residential Floor Area (excludes lock-off hotel rooms)		30,736.00 Sq. Ft.	
G	Remaining Permitted Residential Floor Area (Method 1)	$E - F$	4,650.75 Sq. Ft.	4,651.00 Sq. Ft.
H	Remaining Permitted Residential Floor Area (Method 2)	$(D - C) \times A$	4,650.75 Sq. Ft.	4,651.00 Sq. Ft.
I	Existing Hotel Rooms Proposed to be Converted into Residential Condo 401	401, 402, 403, 404, 405		
J	Existing Hotel Rooms Proposed to be Converted into Residential Condo 416	416, 417, 418, 419, 420, 421		
K	Proposed Residential Condominium 401 Floor Area		1,939.54 Sq. Ft.	1,940.00 Sq. Ft.
L	Proposed Residential Condominium 416 Floor Area		2,633.57 Sq. Ft.	2,634.00 Sq. Ft.
M	Proposed Residential Floor Area Total	$K + L$	4,573.11 Sq. Ft.	4,573.00 Sq. Ft.

Limelight Parking Requirements				Rounded
A	Existing Commercial Space Floor Area (S.F.)		10,819.00 Sq. Ft.	
B	Commercial Space Parking Requirement (Number of Spaces) - 2 per 1,000 S.F.	$A \div (1,000 \text{ SF} \div 2)$	21.64	22.00
C	Existing Residential Floor Area (net)		30,736.00 Sq. Ft.	
D	Proposed Residential Floor Area (net)		4,573.00 Sq. Ft.	
E	Existing Residential Parking Requirement (Number of Spaces) - 1 per 1,500 S.F.	$C \div 1,500$	20.49	20.50
F	Proposed Residential Parking Requirement (No. of Spaces) - 1 per 1,500 S.F.	$(C+D) \div 1,500$	3.05	
G	Total Residential Parking Requirement (No. of Spaces)	$E + F$	23.54	24.00
H	Existing Number of Hotel Rooms/Lock-Out Units		108.00	
I	Proposed Number of Hotel Rooms/Lock-Out Units	$H - 11$	97.00	
J	Existing Hotel Parking Requirement (No. of Spaces) - .75 per Room	$H \times .75$	81.00	
K	Proposed Hotel Parking Requirement (No. of Spaces) - .75 per Room	$I \times .75$	72.75	73.00
L	Total Existing Parking Spaces* Actual number is 108 + 12=120	$B + E + J$	123.13	124.00
M	Total Parking Space Requirement based on Proposed Changes	$B + G + K$	117.93	118.00
N	Existing Parking Spaces in Excess of Requirement* 120-118=2	$L - M$	5.20	5.00



F1 NORTH ELEVATION - FIRST STREET
1/8"=1'-0"

Attachment B

PUD CUP Amendment Application & Submittal Materials



**City of Ketchum
Planning & Building**

OFFICIAL USE ONLY
File Number: P25-001a
Date Received: 1/9/25
By: NF
Fee Paid: \$6,000.00
Approved Date:
Denied Date:
By:

Amendment to PUD Conditional Use Permit Application

Submit Completed application to planningandbuilding@ketchumidaho.org Or hand deliver to Ketchum City Hall, 191 5th St. W. Ketchum, ID If you have questions, please contact the Planning and Building Department at (208) 726-7801. To view the Development Standards, visit the City website at: www.ketchumidaho.org and click on Municipal Code. You will be contacted and invoiced once your application package is complete.

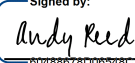
OWNER INFORMATION	
Project Name: Limelight Hotel Condominium Conversion	
Name of Owner of Record: Limelight Ketchum 2, LLC	
Physical Address: 151 South Main Street	
Property Legal Description: 151 So. Main Hotel & Residences Unit H Hotel	
Property Zoning District: CC-1	
Lot Size: 48,332.14 SF	
Contact Phone: Jim Laski: (208) 725-0055	Contact Email: JRL@LawsonLaski.com
PROJECT INFORMATION	
Description of Proposed Conditional Use: Modification of existing Planned Unit Development.	
Description & Specification Sheet of Proposed and Existing Exterior Lighting: N/A	

APPLICANT NARRATIVE OF HOW THEY MEET THE CONDITIONAL USES PERMIT CRITERIA IN MUNICIPAL CODE 17.116.030 A-E
Refer to attached proposed Amendments to Conditional Use Permit for Planned Unit Development.

ADDITIONAL COMMENTS
N/A

ACCOMPANYING SUPPORTING INFORMATION REQUIRED
● Existing Site Plan ● Proposed Site Plan ● Landscape Plan ● Grading and Drainage Plan ● Exterior Lighting Plan and Specifications ● Other plans and studies related to the social, economic, fiscal, environmental, traffic, and other effects of the proposed conditional use, as required by the Administrator

Applicant agrees to observe all City ordinances, laws and conditions imposed. Applicant agrees to defend, hold harmless and indemnify the City of Ketchum, city officials, agents and employees from and for any and all losses, claims, actions, judgments for damages, or injury to persons or property, and losses and expenses caused or incurred by Applicant, its servants, agents, employees, guests and business invitees and not caused by or arising out of the tortuous conduct of city or its officials, agents or employees. Applicant certifies that s/he has read and examined this application and that all information contained herein is true and correct.

Signed by:  <small>60488078D06548C...</small>	12/23/2024
Applicant Signature	Date

**[PROPOSED] AMENDMENT TO CONDITIONAL USE PERMIT
FOR PLANNED UNIT DEVELOPMENT**

FILE NUMBER: 07-015: LIMELIGHT HOTEL

The Following Amendment to the Conditional Use Permit for Planned Unit Development dated May 6, 2023 (“**Amendment**”) is proposed by Limelight Ketchum, LLC, a Delaware limited liability company (“**Owner**”):

RECITALS

A. Owner is a party to that certain Development Agreement with the City dated April 20, 2015 (“**Development Agreement**”), and recorded on July 8, 2015, as Instrument No. 627876, records of the County Recorder, Blaine County, Idaho. The Development Agreement sets forth contractual obligations for a hotel, retail and residential condominium project and related improvements at 151 South Main Street in Ketchum, Idaho, (“**Development**” or “**Project**”).

B. The Development Agreement incorporated the terms and provisions of the approved Conditional Use Permit for Planned Unit Development for the Project dated June 7, 2010 and amended May 6, 2013 (the “**PUD**”) ¹ and the Community Core Design Review dated April 2, 2015 (“**Design Review Approval**”). ²

C. The Project was completed by Owner in accordance with the Development Agreement, PUD and Design Review Approval and the final plat recorded in January of 2017.

D. Owner now desires to convert portions of the hotel consisting of eleven (11) hotel rooms into two (2) residential condominium units (“**Residential Conversion**”).

E. The residential Conversion requires amendments to Tables setting forth Program Overview, Square Footage Calculations and Hotel Definition Calculations to demonstrate continued conformance with the PUD standards.

Based on the foregoing, Owner hereby requests that the following Amendment be incorporated into the PUD:

Amendments: Tables 1 through 4 in paragraphs 5 and [6] of the PUD³ shall be replaced with the following:

¹ Exhibit C to the Development Agreement.

² Exhibit B to the Development Agreement.

³ The most recent calculation Tables are included in the Design Review Approval.

Table 1: History of Programming Changes

	Original Approval 2010	Revised May 2013	Proposed Nov. 2014⁴	Approved 2015 Design Review	Proposed 2025
<u>Project Numbers</u>					
Lot size (sf)	48,351	48,315	48,351	48,351	48,351
Building Height (ft)	68	68	63	63	63
Parking Spaces (#)	125	125	122	124	124
Number of parking levels (#)	2	2	1	1	1
<u>Hotel</u>					
Lobby (sf)	5,660	4,600	12,140	5,532	5,532
Hotel Rooms (total sf)	48,380	70,448	58,142	50,414	45,841
Hotel Rooms/Suites (#)	82	119	105	99	88
Avg Size of Hotel Rooms (sf)	590	592	554	456	456
Lock-off Units (#)	5	0	15	10	10
Conference/Prefunct space (sf)	5,436	8,380	4,310	4,131	4,131
Conference Capacity (#)	200	350	175	170	170
Spa (sf)	5,506	3,600	0	0	0
Restaurant/Lounge/Kitchen (sf)	773,500	6,870	Included in Lobby	Included in Lobby	Included In Lobby
Pool/Hot tubs (#)	1 pool/ 1 hot tub	1 pool/ 1 hot tub	1 pool/ 2 hot tubs	1 pool/ 2 hot tubs	1 pool/ 2 hot tubs
Fitness (sf)	809	1,200	940	930	930
<u>Residential</u>					

⁴ Per Paragraph 2 of the Design Review Approval, on November 24, 2014, the Planning and Zoning Commission determined that the 2013 Development Agreement did NOT need to be amended as the proposed program changes were consistent with the original approval and code requirements. Final Program Calculations were incorporated into the Design Review Approval. Similarly, the current proposed program changes are consistent with the original PUD approval, as amended, and code requirements.

Residential Units (total sf)	40,035	18,600	32,335	30,736	35,309
Residential Units (#)	26	11	18	14	16
Avg. Size of Residential Units (sf)	1,540	1,692	1,796	2,195	2,195
% of Hotel vs Residential	74.4	86.7	81.0	78.3	75.1
Retail					
Total (sf)	2,614	2,550	1,890	2,050	2,050

Table 2: Hotel Definition

HOTEL CONFIGURATION	BML-2010 Approved	BML-2013 Approved	LKH-2015 Approved	Proposed 2025
Guest Rooms	82	119	99	88
Sq Ft	59,422	86,329	50,414	45,841
Dedicated Units – Lock-Out Units	9	N/A	10	10
Sq Ft	3,535	N/A	4,776	4776
Hotel Key Count	91	119	109	98
BOH/Lobbies/Hotel Related Uses Sq Ft (P1,P2,Level 1*)	63,687	60,149	55,621	55,621
TTL “Hotel” Sq Ft (per definition)	126,647	146,478	110,811	106,238
Permitted “Non-Hotel” sq ft (25%)	42,215.5	42,215.5	35,387	35,387
Proposed Residential Units (4 th & 5 th floors minus lock-off units)	26	8	14	16
Sq Ft	42,215	22,384	30,736	35,309
TTL Bldg Sq Ft (includes sub-grade hotel uses, but not parking)	168,862	168,862	141,547	141,547
Pct of Building Area defined as “Hotel”	75.0%	86.7%	78.3%	75.1%

Residential Sq Ft over allowable per definition.	0	0	0	0

Table 3: Required Parking

Parking Requirements:			Proposed 2025
Commercial Space: 10,819 sf**	2 per 1,000 sq. ft = 21.6 spaces		
Residential (net) 30,736 sf	1 per 1,500 sq. ft. = 20.5 spaces		(35,309 sf) 24 spaces
Hotel: 108 units	.75 per Room = 81 spaces		(98 units) 73 spaces
Total Spaces Required:	123.1 spaces		117.9 spaces
Proposed:			
Garage: 109 spaces	Surface: 3 spaces	On Street Credit*: 12 spaces	
Total Spaces Proposed:	124 spaces		No Change

Submitted this ____ day of January, 2025 by:

LIMELIGHT KETCHUM, LLC

By:
Its:

March 11, 2025

By email and hand delivered

Morgan Landers
c/o Abby Rivin
Director, Ketchum Planning & Zoning
191- 5th St. West
Ketchum, Id 83340

Re: Limelight Hotel (LLK), 2/24/25 City Review Comments DA and PUD Amendments requested additional submittal.

Dear Morgan and Abby,

Per the above referenced City Review Comments dated February 24, 2025 we are pleased to provide the attached requested documents and additional narrative for the planned LLK conversion of 4th floor guest rooms to two for-sale condominiums.

All documents and drawings provided are itemized in the Transmittal sheet for your reference.

Please advise if additional forms or documents are required in this application.

Thank you.

Jim Garrison

For Applicant – Aspen Hospitality Group/Ketchum Limelight 2 LLC

Limelight Ketchum guest room to condominium conversion narrative #2

(In Response to City Comment letter dated February 24, 2025)

EXECUTIVE SUMMARY

Thank you for your Review Comment Letter referenced above regarding the Limelight submittal documents dated December 16, 2024 and transmitted from Michael Doty Associates, Architects.

We note 5 discreet City 2/24/25 comments for additional information and have itemized and formatted this response in the order of those Review Comments.

The applicant's additional submitted documents here address the planned modification to the hotel/residence via the applicable regulating documents relative to the Limelight Hotel located at 151 South Main St., Ketchum, ID ("LLK", "Applicant", "Project").

City Comment #1: Required Action: "submit a title report, the owner's recorded deed to the subject property, the CC&Rs, and the condominium declaration as required by KMC 16.08.070.B."

Response: Please find the title report, recorded deed, and CC&Rs attached. (Please note the condominium declaration is included with the CC&Rs.)

City Comment #2: Required Action: "submit a narrative describing how the proposed amendment impacts the applicable evaluation standards for PUDs specified in KMC 16.08.080...."

Response: Please see each of the standards for PUDs listed and addressed below:

16.08.080 - Standards.

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

- 1. Include a minimum of 30 percent of community or employee housing, as defined in section [16.08.030](#) of this chapter;*

2. Guarantee the use, rental prices or maximum resale prices based upon a method proposed by the applicant and approved by the Blaine County Housing Authority and/or the Ketchum City Council; and

3. Are on parcels that are no less than one and one-half acres (65,340 square feet). Application for waiver or deferral of this criteria shall include a description of the proposed community or employee housing and the proposed guarantee for the use, rental cost or resale cost.

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.

Response: The Proposed Amendment does not impact the applicable standards. A waiver to the 3-acre lot size was granted in 2009 and is not impacted by the proposed change. Community and Employee Housing for the Project were waived based on the development schedule (Timeline A) contained in the Third Amendment to the Development Agreement dated November 3, 2014 ("Development Agreement"). There are no changes to that schedule proposed and the development timeframes were met.

The reduction of 11 hotel rooms to create 2 residential condominium units would reduce the employee housing demand generated by the Project. Additionally, the Applicant voluntarily provides employee housing assistance to its employees.

The Project with the proposed amendment continues to meet the definition of Hotel and does not impact any other waivers associated with the original Project.

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

Response: There are no changes proposed to the exterior of the building or to any exterior improvements. The Proposed Amendment will generate a lower parking requirement and will not result in any changes to traffic patterns.

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

Response: The City previously found that this Project was not a subdivision and that this standard is inapplicable. The proposed amendment does not impact that analysis.

D. *The development shall be in harmony with the surrounding area.*

Response: The Amendment request involves no exterior changes to the approved Project.

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 30 percent 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.*

Response: The City previously found that this standard does not apply as no density is being transferred and the proposed density is permitted in the CC zone. The proposed amendment does not impact that finding.

F. *The proposed vehicular and nonmotorized transportation system:*

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

Response: The effect of the proposed amendment will be to reduce traffic associated with the Project.

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

Response: The effect of the proposed amendment will be to reduce traffic associated with the Project.

3. *Is designed to provide automotive and pedestrian safety and convenience.*

Response: There is no change in the design configuration proposed and the revision will minimize impacts.

4. *Is designed to provide adequate removal, storage and deposition of snow.*

Response: There is no change in the design configuration proposed and the revision will minimize impacts.

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.

Response: There is no change in the design configuration proposed and the revision will minimize impacts.

6. Includes the use of buffers or other physical separations to buffer vehicular movement from adjacent uses.

Response: There is no change in the design configuration proposed and the revision will minimize impacts.

7. Is designed so that roads are placed so that disturbance of natural features and existing vegetation is minimized.

Response: There is no change in the design configuration proposed and the revision will minimize impacts.

8. Includes trails and sidewalks that create an internal circulation system and connect to surrounding trails and walkways.

Response: There is no change in the design configuration proposed and the revision will minimize impacts.

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.*

Response: The proposed minor change in the number of hotel rooms has a di minimis impact on the purposes and goals of the comprehensive plan. The Project continues to qualify under the hotel definition. Additionally, those rooms have an occupancy rate of less than 14%. The proposed change is fully in accordance with applicable ordinances and with the public interest.

1. Pursuant to subsection 16.08.070.D 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.

Response: There is no change in the design configuration proposed.

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.

Response: There is no change in the design configuration proposed.

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

Response: There is no change in the design configuration proposed.

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

Response: There is no change in the design configuration proposed.

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

Response: There is no change in the design configuration proposed.

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.

Response: There is no phasing associated with the proposed amendment.

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.

Response: There is no change in the design configuration proposed and the revision will minimize impacts.

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.

Response: There is no change in the design configuration proposed and the revision will minimize impacts.

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.

Response: There is no change in the design configuration proposed and the revision will minimize impacts.

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.

Response: The development objectives and special characteristics justifying the PUD approval included (i) the economic benefit of new hot beds; (ii) economic benefit of conference space; (iii) social benefit of employee housing, although that requirement was waived; (iv) the aesthetic/economic benefit of undergrounding power lines; and (v) the aesthetic/economic benefit of pedestrian improvements in the public right of way.

O. The development will be completed within a reasonable time.

Response: The development is complete.

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

Response: The proposed amendment does not affect public services, facilities or utilities.

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.

Response: The Project was completed in 2016 in accordance with PUD Agreement and a Development Agreement, each amended multiple times, and included various waivers, all of which were approved through the PUD process. No additional waivers are requested for the current proposed amendment. All other ordinances, rules and regulations of the city will be met.

City Comment #3: No action required by the applicant at this time: “Staff recommends the applicant revise the narrative to distinguish between the two different requirements/waivers by providing two distinct analyses addressing how the proposal impacts: (1) the community housing requirement and (2) the employee housing requirement.”

City Comment #4: No action required by the applicant at this time: “Staff recommends the applicant reconsider the community housing requirement and amend the proposal to fulfill the community housing contribution for the proposed 4,573 square feet of new residential use through one of the options outlined in KMC 17.124.040.B2f....”

City Comment #5: No action required by the applicant at this time: “Staff recommends the applicant revise the narrative to describe whether the proposed modification will have an impact on the economic benefits provided by the Limelight Hotel. Staff recommends the applicant provide further analysis to explain how the request to remove 11 hotel rooms will not diminish the public and economic benefits provided by the Limelight Hotel.”

CONCLUSION

This application does not impact and continues to reinforce the long-standing operations of the LLK as a valued community contributor and participant. LLK looks forward to continued successful hotel visitor operations, employment, popular restaurant and public services, valued meeting spaces, and desirable residences are significant contributors to our residents, visitors, and local businesses.

We look forward to this modification as a basis for further interior guest and resident service improvements and experiences.



TitleOne Corporation dba Sun Valley Title
271 1st Ave. N., PO Box 2365
Ketchum, ID 83340
(208)726-9341

SCHEDULE A

1. **Effective Date:** February 26, 2025 at 07:30 AM
2. **Policy or Policies to be issued:**

Preliminary Research Report Report Amount: \$250.00

For the Benefit of:
Jim Garrison
3. **The estate or interest in the land described or referred to in this Report and covered herein is:**
Fee Simple
4. **Title to the estate or interest in said land is at the effective date hereof vested in:**
Limelight Ketchum 2 LLC, a Delaware limited liability company
5. **The land referred to in this Report is described as follows:**
See Attached Schedule C

DISCLAIMER

The information provided in this report is for informational purposes only. This report contains information about real property and interests in real property. This report is based on a search of our tract indexes of the county records. This is not a title or ownership report and no examination of the title to the property described has been made. For this reason, no liability beyond the amount paid for this report is assumed hereunder and the company is not responsible beyond the amount paid for any errors and omissions contained herein. This report in no way creates any obligation by Sun Valley Title or its underwriters to insure any party now or in the future. Any insurance will be separate from this report and subject to usual and customary underwriting standards.

SCHEDULE B-I
Requirements

The following are to be complied with:

1. NOTE: According to the available records, the purported address of the land referenced herein is:

151 S Main St, Unit H, Ketchum, ID 83340 (Hotel)

151 S Main St, Unit R, Ketchum, ID 83340 (Retail)

None at this time, Ketchum, ID 83340 (Common Area)

2. NOTE: The only deed(s) affecting said land, which recorded within 24 months of the date of this report, or the last recorded vesting deed, is (are) as follows:

Document: Special Warranty Deed

Grantor: Aspen Skiing Company, LLC, a Colorado limited liability company

Grantee: Limelight Ketchum 2 LLC, a Delaware limited liability company

Recorded: December 17, 2021

Instrument No.: [689977](#), records of Blaine County, Idaho.

3. NOTE: No existing deed of trust or mortgage appears of record. If this information is in error, please notify your title or escrow officer with information concerning any existing loans.

SCHEDULE B-II
Exceptions From Coverage

Note: This is a Preliminary Research Report and not a title insurance policy. If it were a policy, it would have the following Exceptions unless they are taken care of to our satisfaction. If the Company's requirements are satisfied, Exceptions 1 through 7 would be removed on Enhanced/Extended coverage policies.

Exceptions:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met.
2. Rights or claims of parties in possession not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land, and that is not shown by the Public Records.
4. Easements, or claims of easements, not shown by the Public Records.
5. Any lien, or right to a lien, for services, labor, equipment, or materials heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
6. Taxes or special assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records. Proceedings by a public agency which may result in taxes or assessments, or notices to such proceedings whether or not shown by the records of such agency, or by the Public Records.
7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims to title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
8. Taxes for the year 2024 are paid in full.
Parcel Number: [RPK070300000H0](#)
Original Amount: \$76,688.96
Hotel area
9. Taxes for the year 2024 are paid in full.
Parcel Number: [RPK070300000R0](#)
Original Amount: \$2,682.22
Retail area
10. Taxes for the year 2024 are exempt.
Parcel Number: [RPK07030000000](#)
Original Amount: \$0.00
Common Area
11. Taxes, including any assessments collected therewith, for the year 2025 which are a lien not yet due and payable.
12. The Land described herein is located within the boundaries of the City of Ketchum and is subject to any assessments levied thereby.
13. Liens, levies, and assessments of the 151 South Main Hotel & Residences Owners' Association, Inc.
14. Easements, reservations, restrictions, and dedications as shown on the official plat of Ketchum Townsite and Ketchum: Block 20: Lot 1A.
15. Easements, reservations, restrictions, and dedications as shown on the official plat of [151 South Main Hotel & Residences](#).
16. Easements, reservations, restrictions, and dedications as shown on the official plat of [151 South Main Hotel & Residences Amended](#).
17. Reservations and exceptions in a United States Patent, and in the act authorizing the issuance thereof, recorded June 2, 1891 in Book 1 of Patents, at Page [489](#), records of Blaine County, Idaho.

18. Reservations and exceptions in a United States Patent, and in the act authorizing the issuance thereof, recorded June 2, 1891 in Book 1 of Patents, at Page [490](#), records of Blaine County, Idaho.
19. Reservations and exceptions in a United States Patent, and in the act authorizing the issuance thereof, recorded April 10, 1933 as Instrument No. [69645](#), records of Blaine County, Idaho.
20. Reservations and exceptions in a United States Patent, and in the act authorizing the issuance thereof, recorded September 7, 1933 as Instrument No. [70123](#), [70124](#), [70125](#), [70126](#), records of Blaine County, Idaho.
21. Right of way for ditches, tunnels, telephone, and distribution lines constructed by authority of the United States, as granted to the United States under the provisions of Section 58-604 Idaho Code.
22. Terms and conditions contained in a/an Easement Agreement by and between David E. Waldron and Brian J. Barsotti, an unmarried man and Lorraine Barsotti, a married woman as her sole and separate property.
Recorded: April 4, 1996
Instrument No.: [388808](#), records of Blaine County, Idaho.
23. Exceptions and Reservations as contained in a/an Special Warranty Deed .
Executed by: Bald Mountain LLC, a Washington limited liability company
Purpose: Subject to shown permitted exceptions
Recorded: December 29, 2014
Instrument No.: [623556](#), records of Blaine County, Idaho.
24. Terms and conditions contained in the Limelight Hotel (Formerly Bald Mountain Lodge) Development Agreement by and between the City of Ketchum and Limelight Ketchum, LLC.
Recorded: July 8, 2015
Instrument No.: [627876](#), records of Blaine County, Idaho.
25. Terms and conditions contained in a/an Owner Participation Agreement by and between The Ketchum Urban Renewal Agency and Limelight Ketchum, LLC.
Recorded: December 17, 2015
Instrument No.: [631891](#), records of Blaine County, Idaho.
26. Terms, provisions, covenants, conditions, restrictions and easements provided in a Condominium Declaration but omitting any covenants, conditions or restrictions, if any, to the extent that such violates 42 USC 3604 (c) or any other ordinance, statute or regulation.
Recorded: January 31, 2017
Instrument No.: [641302](#), records of Blaine County, Idaho.

(End of Exceptions)

SCHEDULE C

Legal Description:

Units H and RET and Common Area, according to the Declaration of Covenants, Conditions and Restrictions for 151 SOUTH MAIN HOTEL & RESIDENCES, recorded as Instrument No. 641302, and the Plat recorded as Instrument No. 641301 and Amended Plat recorded as Instrument No. 653930, in the office of the Recorder of Blaine County, Idaho.

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Joseph W. Marzo
Gould & Ratner LLP
222 North LaSalle Street
Suite 300
Chicago, IL 60601

Instrument # 689977

HAILEY, BLAINE, IDAHO
12-17-2021 1:55:58 PM No. of Pages: 2
Recorded for: AMERITITLE - IDAHO FALLS
STEPHEN MCDUGALL GRAHAM Fee: \$15.00
Ex-Officio Recorder Deputy: GWB
Electronically Recorded by Simplifile

(Space Above This Line For Recorder's Use)

SPECIAL WARRANTY DEED

Grantor, Aspen Skiing Company, LLC, a Colorado limited liability company duly qualified to do business in Idaho, whose present address is 117 Aspen Airport Business Center, Aspen, CO 81611, for good and valuable consideration, receipt whereof is hereby acknowledged, does hereby grant and convey, in fee simple, to Limelight Ketchum 2 LLC, a Delaware limited liability company duly qualified to do business in Idaho, whose present address is 117 Aspen Airport Business Center, Aspen, CO 81611, Grantee, its successor and assigns, all of the following described real estate situated in the City of Ketchum, County of Blaine, State of Idaho, to wit:

Units H and Ret according to the Declaration of Covenants, Conditions and Restrictions for 151 South Main Hotel & Residences, recorded January 31, 2017 as instrument No. 641302 and the Plat recorded January 1, 2017, as Instrument No. 641301, in the office of the recorder of Blaine County, Idaho

Parcel Number: RPK070300000H0

Parcel Number: PP1P00000L1820

Parcel Number: RPK070300000R0

Parcel Number: RPK07030000000

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging.

Grantor warrants to the Grantee, and its successors in title, that Grantor has not created or permitted to be created any lien, charge or encumbrance against said real estate which is not shown herein, and Grantor covenants that it will defend said premises to the extent of the warranties made therein against the lawful claims of all persons.

This instrument is being filed as an accommodation only. It has not been examined as to its execution, insurability or affect on title.

[Limelight Ketchum 2 LLC Signature Page to Special Warranty Deed]

Instrument # 641302

HAILEY, BLAINE, IDAHO

1-31-2017 04:43:50 PM No. of Pages: 79

Recorded for : LAWSON LASKI CLARK & POGUE

JOLYNN DRAGE

Fee: 244.00

Ex-Officio Recorder Deputy

Index to: COVENANTS & RESTRICTIONS

G

DECLARATION OF COVENANTS, CONDITIONS AND

RESTRICTIONS

FOR

151 SOUTH MAIN HOTEL & RESIDENCES

LAWSON LASKI CLARK & POGUE, PLLC

675 Sun Valley Road, Suite A

Post Office Box 3310

Ketchum, ID 83340

TABLE OF CONTENTS

	Page
ARTICLE 1. IMPOSITION OF COVENANTS	1
Section 1.1 Purpose	1
Section 1.2 Intention of Declarant.....	1
Section 1.3 Declaration.....	1
Section 1.4 Covenants Running With the Land	2
ARTICLE 2. DEFINITIONS.....	2
Section 2.1 Act	2
Section 2.2 Allocated Interests	2
Section 2.3 Articles of Incorporation	2
Section 2.4 Assessments	2
Section 2.5 Association	2
Section 2.6 Board of Directors.....	2
Section 2.7 Bylaws	2
Section 2.8 Common Area or Common Elements	3
Section 2.9 Common Expenses Liability	3
Section 2.10 Common Expenses.....	4
Section 2.11 Costs of Enforcement.....	4
Section 2.12 Declarant.....	4
Section 2.13 Declaration.....	4
Section 2.14 Deed	4
Section 2.15 Eligible First Mortgagee	5
Section 2.16 First Mortgagee.....	5
Section 2.17 Hotel Unit	5
Section 2.18 Improvement(s)	5
Section 2.19 Limited Common Elements.....	5
Section 2.20 Majority of Owners	6
Section 2.21 Management Agreement.....	6
Section 2.22 Managing Agent.....	6
Section 2.23 Occupant.....	6
Section 2.24 Period of Declarant Control	6
Section 2.25 Person	6
Section 2.26 Plat	6
Section 2.27 Project.....	6
Section 2.28 Project Documents.....	6
Section 2.29 Property	7

Section 2.30	Real Estate.....	7
Section 2.31	Records	7
Section 2.32	Residential Unit.....	7
Section 2.33	Retail Unit	7
Section 2.34	Rules and Regulations.....	7
Section 2.35	Security Interest.....	7
Section 2.36	Special Declarant Rights.....	7
Section 2.37	Unit.....	7
Section 2.38	Unit Owner or Owner	8
ARTICLE 3 - DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP		8
Section 3.1	Division Into Units.....	8
Section 3.2	Delineation of Unit Boundaries	8
Section 3.3	Inseparability of Unit	8
Section 3.4	Non-Partitionability of Common Elements.....	9
Section 3.5	Alterations of Units; Relocation of Boundaries Between Adjoining Units.....	9
ARTICLE 4 - ALLOCATED INTERESTS		9
Section 4.1	Allocation of Interests.....	9
Section 4.2	Formulas for the Allocation of Interests.....	9
Section 4.3	Rounding Convention	10
ARTICLE 5 - PLAT		10
ARTICLE 6 - LEGAL DESCRIPTION AND TAXATION OF UNITS		11
Section 6.1	Contracts to Convey and Conveyances.....	11
Section 6.2	Conveyance Deemed to Describe an Undivided Interest in Common Elements.....	11
Section 6.3	Separate Tax Assessments.....	12
ARTICLE 7 - UNIT OWNERS' PROPERTY RIGHTS IN COMMON ELEMENTS		12
Section 7.1	Common Elements.....	12
Section 7.2	Limited Common Elements.....	12
ARTICLE 8 - MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION		13
Section 8.1	Association Membership	13
Section 8.2	Voting Rights and Meetings.....	13
Section 8.3	Meeting to Approve Annual Budget	14
Section 8.4	Unit Owners' and Association's Addresses for Notices.....	14

Section 8.5	Transfer Information.....	15
Section 8.6	Declarant Control of the Association.....	15
Section 8.7	Required Election of Residential Unit Owners	16
Section 8.8	Removal of Members of the Board of Directors	16
Section 8.9	Requirements for Turnover of Declarant Control	16
Section 8.10	Agent for Service of Process	18
ARTICLE 9 - ASSOCIATION POWERS AND DUTIES.....		18
Section 9.1	Association Management Duties	18
Section 9.2	Association Powers	18
Section 9.3	Actions by Board of Directors	21
Section 9.4	Board of Directors Meetings.....	21
Section 9.5	Right to Notice and Hearing.....	21
ARTICLE 10 - ASSESSMENTS		22
Section 10.1	Commencement of Annual Assessments	22
Section 10.2	Annual Assessments	22
Section 10.3	Apportionment of Annual Assessments	22
Section 10.4	Special Assessments	23
Section 10.5	Due Dates for Assessment Payments	23
Section 10.6	Default Assessments	24
Section 10.7	Covenant of Personal Obligation for Assessments.....	24
Section 10.8	Lien for Assessments; Assignment of Rents	24
Section 10.9	Remedies for Nonpayment of Assessments	25
Section 10.10	Purchaser's Liability for Assessments	25
Section 10.11	Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments.....	26
Section 10.12	Statement of Status of Assessments	27
Section 10.13	Liens	27
Section 10.14	Reserve Funds	28
ARTICLE 11 - MAINTENANCE RESPONSIBILITY.....		28
Section 11.1	Unit Owner's Rights and Duties with Respect to Interiors	28
Section 11.2	Responsibility of the Unit Owner.....	29
Section 11.3	Unit Owner's Negligence	29
Section 11.4	Responsibility of the Association	30
Section 11.5	Utilities and Services	30
ARTICLE 12 - MECHANICS' LIENS		30
Section 12.1	Mechanics' Liens	30

Section 12.2	Enforcement by the Association	31
ARTICLE 13 - USE RESTRICTIONS.....		31
Section 13.1	Use of Units.....	31
Section 13.2	Use of Common Elements	31
Section 13.3	Prohibition of Increases in Insurable Risks and Certain Activities.....	32
Section 13.4	Structural Alterations and Exterior Appearance	32
Section 13.5	Use Restrictions	33
Section 13.6	Use of Hotel Amenities and Hotel Services	33
Section 13.7	Limit on Timesharing.....	34
Section 13.8	Restriction on Signs.....	34
Section 13.9	Restrictions on Use of Parking and Storage Areas.....	34
ARTICLE 14 - EASEMENTS.....		35
Section 14.1	Easement of Enjoyment.....	35
Section 14.2	Delegation of Use.....	35
Section 14.3	Recorded Easements	35
Section 14.4	Easements for Encroachments	35
Section 14.5	Easements over Hotel Unit and Hotel Limited Common Elements	36
Section 14.6	Utility Easements	36
Section 14.7	Emergency Access Easement.....	36
Section 14.8	Maintenance Easement	36
Section 14.9	Easements of Access for Repair, Maintenance, and Emergencies.....	37
Section 14.10	Easements Deemed Created	37
ARTICLE 15 – SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS		37
Section 15.1	Special Declarant Rights.....	37
Section 15.2	Additional Reserved Rights	39
Section 15.3	Limitations on Special Declarant Rights and Additional Reserved Rights.....	40
Section 15.4	Interference with Special Declarant Rights	40
Section 15.5	Rights Transferable	40
Section 15.6	Owner Waivers, Releases and Assumption of Risk Rights Transferable	40
ARTICLE 16 - INSURANCE		42
Section 16.1	Coverage	42

Section 16.2	Required Provisions	43
Section 16.3	Adjustment of Claims.....	44
Section 16.4	Copies of Policies	45
ARTICLE 17 - RESTORATION UPON DAMAGE OR DESTRUCTION.....		45
Section 17.1	Duty to Restore	45
Section 17.2	Cost	45
Section 17.3	Plans	45
Section 17.4	Replacement of Less Than Entire Property.....	45
Section 17.5	Insurance Proceeds.....	46
Section 17.6	Certificates by the Board of Directors	46
Section 17.7	Certificates by Attorneys or Title Insurance Companies	46
ARTICLE 18 - CONDEMNATION		47
Section 18.1	Sale by Unanimous Consent	47
Section 18.2	Distribution of Proceeds of Sale	47
Section 18.3	Distribution of Condemnation Award	47
ARTICLE 19 - MORTGAGEE PROTECTIONS		47
Section 19.1	Introduction	47
Section 19.2	Percentage of First Mortgagees.....	47
Section 19.3	Notice of Actions.....	48
Section 19.4	Consent Required.....	48
Section 19.5	Notice of Objection	49
Section 19.6	First Mortgagees' Rights.	49
Section 19.7	Limitations on First Mortgagee's Rights	49
Section 19.8	Special Declarant Rights.....	50
ARTICLE 20 - DURATION OF COVENANTS; AMENDMENT AND TERMINATION		50
Section 20.1	Term	50
Section 20.2	Amendment of Declaration	50
Section 20.3	Execution of Amendments; Expenses.....	50
Section 20.4	When Modifications Permitted	50
Section 20.5	Recording of Amendments	51
Section 20.6	Rights of Eligible First Mortgagees	51
Section 20.7	Termination of the Project.....	51
ARTICLE 21 – ALLEGED DEFECTS		51
Section 21.1	Intention.....	51
Section 21.2	Declarant's Right to Cure	51

Section 21.3	Notice to Declarant	52
Section 21.4	Right to Enter, Inspect, Cure and/or Replace	52
Section 21.5	Claims.....	52
Section 21.6	No Additional Obligations; Irrevocability and Waiver of Rights.....	52
Section 21.7	Statutory Remedies.....	53
Section 21.8	Arbitration.....	53
Section 21.9	Additional Disclosures; Disclaimers and Releases	54
Section 21.10	Releases	56
ARTICLE 22 - MISCELLANEOUS.....		57
Section 22.1	Enforcement	57
Section 22.2	Notices	57
Section 22.3	Nonwaiver.....	57
Section 22.4	Severability.....	57
Section 22.5	Number and Gender	58
Section 22.6	Captions	58
Section 22.7	Conflicts in Legal Documents.....	58
Section 22.8	Exhibits.....	58
Section 22.9	Choice of Law	58
Section 22.10	Construction.....	58
Section 22.11	Legal Counsel	58

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR 151 SOUTH MAIN HOTEL & RESIDENCES**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "*Declaration*") dated for reference purposes January 20, 2017, shall be effective upon recordation in the office of the Recorder in Blaine County, Idaho. This Declaration is made by Limelight Ketchum, LLC, a Delaware limited liability company (the "*Declarant*"). Declarant is the owner of certain real property in the City of Ketchum, Blaine County, Idaho more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "*Property*"). Declarant hereby makes the following grants, submissions, and declarations:

ARTICLE 1. IMPOSITION OF COVENANTS

Section 1.1 Purpose. The purpose of this Declaration is to create a mixed use hotel/retail/residential condominium project known as 151 South Main Hotel & Residences (the "*Project*") by submitting the Property to the condominium form of ownership and use pursuant to the Idaho Condominium Act, Idaho Code §§ 55-1501 *et seq.*, as amended and supplemented from time to time (the "*Act*"). The Project shall be a combination hotel and residential project consisting of: (a) a commercial hotel unit including ninety-nine (99) hotel rooms and suites, a restaurant and bar, recreational facilities and retail space; (b) a single commercial unit for retail sales; and (c) fourteen (14) residential units, all as determined by Declarant.

Section 1.2 Intention of Declarant. Declarant desires to protect the value and desirability of the Project, to further a plan for the improvement, lease, sale and ownership of the Units in the Project, to create a harmonious and attractive development and to promote and safeguard the health, comfort, safety, convenience, and welfare of the Owners of Units in the Project.

Section 1.3 Declaration. To accomplish the purposes and intentions recited above, Declarant hereby submits the Property, together with all improvements, appurtenances, and facilities relating to or located on the Property now and in the future, to condominium ownership under the Act, and hereby imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions of this Declaration, and Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, rented, occupied, and improved subject to the provisions of this Declaration.

Section 1.4 Covenants Running With the Land. All provisions of this Declaration shall be deemed to be covenants running with the land, or as equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, all Unit Owners, and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

ARTICLE 2. DEFINITIONS

The following words, when used in this Declaration, shall have the meanings designated below unless the context expressly requires otherwise:

Section 2.1 "Act" means the Idaho Condominium Act as defined in Section 1.1 hereof. In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable to this Declaration.

Section 2.2 "Allocated Interests" means the undivided interest in the Common Elements and the Common Expense Liability and the votes in the Association allocated to each of the Units in the Project. The formulas used to establish the Allocated Interests are described in Article 4. The Allocated Interests for each Unit are set forth on Exhibit B.

Section 2.3 "Articles of Incorporation" means the Articles of Incorporation of 151 South Main Hotel & Residences Owners' Association as filed with the Idaho Secretary of State, a copy of which is attached hereto as Exhibit C.

Section 2.4 "Assessments" means the annual, special and default Assessments, if any, levied pursuant to this Declaration.

Section 2.5 "Association" means the 151 South Main Hotel & Residences Owners' Association, Inc., an Idaho nonprofit corporation, and its successors and assigns.

Section 2.6 "Board of Directors" or "Board" means the governing body of the Association, as provided in this Declaration and in the Articles of Incorporation and Bylaws of the Association and in the Act.

Section 2.7 "Bylaws" means any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including the amendments thereto, copies of which are attached hereto as Exhibit D.

Section 2.8 "Common Area" or "Common Elements" means all of the Project, other than the Units, but including, without limiting the generality of the foregoing, the following components:

- (a) the Property; and
- (b) the Improvements (including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, chimneys, chimney chases, roofs, balconies, windows, entrances and exits, and the mechanical installations of the Improvements consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, cable television, and heating and central air conditioning which exist for use by one or more of the Unit Owners, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith), whether located exclusively within the boundaries any Unit or Units or not, except for the Units; and
- (c) corridors, elevators, and stair towers; and
- (d) the yards, sidewalks, walkways, paths, grass, shrubbery, trees, driveways, roadways, plaza, parking garage and parking areas, and related facilities upon the Property; and
- (d) the pumps, tanks, motors, fans, storm drainage structures, compressors, ducts, and, in general, all apparatus, installations, and equipment of the Improvements existing for use of one or more of the Unit Owners; and
- (e) in general, all other parts of the Project designated by Declarant as Common Elements and existing for the use of one or more of the Unit Owners.

The Common Elements shall be owned by the Unit Owners of the separate Units, each Unit Owner of a Unit having an undivided interest in the Common Elements as allocated in Exhibit B.

Section 2.9 "Common Expenses Liability" means the liability for Common Expenses allocated to each Unit pursuant to this Declaration.

Section 2.10 "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves, including, without limiting the generality of the foregoing, the following items:

- (a) expenses of administration, insurance, operation, and management, repair or replacement of the Common Elements except to the extent such repairs and replacements are responsibilities of a Unit Owner as provided in this Declaration;

- (b) expenses declared Common Expenses by the provisions of this Declaration or the Bylaws;

- (c) all sums lawfully assessed against the Units by the Board of Directors;

- (d) expenses agreed upon as Common Expenses by the members of the Association;

- (e) expenses provided to be paid pursuant to any Management Agreement; and

- (f) personal property associated with the Common Area.

Section 2.11 "Costs of Enforcement" means all monetary fees, fines, late charges, interest, expenses, costs, including receiver's and appraiser's fees, and reasonable attorneys' fees and disbursements, including legal assistants' fees, incurred by the Association in connection with the collection of Assessments or in connection with the enforcement of the terms, conditions and obligations of the Project Documents.

Section 2.12 "Declarant" means Limelight Ketchum, LLC, a Delaware limited liability company, its successors and assigns.

Section 2.13 "Declaration" means this Declaration, together with any supplement or amendment to this Declaration, and any other recorded instrument however denominated that exercises a Development Right, executed by Declarant and recorded in the Records. The term Declaration includes all Plats recorded with this Declaration and all amendments to the Declaration and supplements to the Plats without specific reference thereto.

Section 2.14 "Deed" means each initial Special Warranty, Warranty or Grant Deed recorded after the date hereof by which Declarant conveys a Unit.

Section 2.15 "Eligible First Mortgagee" means a First Mortgagee that has notified the Association in writing of its name and address and status as a First Mortgagee and has requested that it receive notices provided for in Article 19 entitled "Mortgagee Protections".

Section 2.16 "First Mortgagee" means a holder of a Security Interest in a Unit that has priority over all other Security Interests in the Unit.

Section 2.17 "Hotel Unit" means Unit H as depicted on the Plat.

Section 2.18 "Improvement(s)" means the building(s) (including all fixtures and improvements contained within it) located on the Property in which Units or Common Elements are located.

Section 2.19 "Limited Common Elements" means those parts of the Common Elements that are limited to and reserved for the use in connection with one or more, but fewer than all, of the Units. Without limiting the foregoing, the Limited Common Elements shall include the common or party wall shared by adjoining Units which are owned by the same Person, any window, patio or deck door, balcony, deck, patio, courtyard or porch appurtenant to and accessible only from a Unit, any shutters, awnings, window boxes, doorsteps, stoops, porch, balcony or patio designated or designed to serve a single Unit but located outside the Unit's boundaries, storage spaces and parking spaces outside Units designated as Limited Common Elements in this Declaration or on the Plat, if any. If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. Limited Common Elements also include any portion of the Common Elements allocated by this Declaration or on the Plat as Limited Common Elements. All Limited Common Elements shall be used in connection with the appurtenant Unit(s) to the exclusion of the use thereof by the other Unit Owners, except by invitation. Subject to the Association's overall responsibility for maintenance of the Limited Common Elements, each Unit Owner shall be responsible for routine care and cleaning of the walls, ceilings and floors of any balcony, patio or of any other Limited Common Elements appurtenant to and accessible only from the Unit Owner's Unit, and for keeping the same in a clean, sanitary, and attractive condition. Extraordinary maintenance and renovations of the Limited Common Elements shall require the prior written approval of the Association or shall be performed by the Association. No reference to Limited Common Elements need be made in any instrument of conveyance or encumbrance in order to convey or encumber the Limited Common Elements appurtenant to a Unit.

Limited Common Elements may be classified as "Hotel Limited Common Elements", "Retail Limited Common Elements" or "Residential Limited Common Elements." The designation as a Residential Limited Common Elements means the area so designated shall be used by all Residential Unit Owners in common, to the exclusion of the Hotel Unit Owner and the Retail Unit Owner. Hotel Limited Common Elements include, without limitation, the porte-cochere and exterior plaza on the ground level of the Project.

Section 2.20 "Majority of Owners" means a majority (or any greater percentage that may be specifically required for a particular action or authorization by the terms of this Declaration) of the total **voting power** of the members of the Association.

Section 2.21 "Management Agreement" means any contract or arrangement entered into for purposes of discharging the responsibilities of the Board of Directors relative to the operation, maintenance, and management of the Project.

Section 2.22 "Managing Agent" means a person, firm, corporation or other entity employed or engaged as an independent contractor pursuant to a Management Agreement to perform management services for the Association.

Section 2.23 "Occupant" means any member of a Residential Unit Owner's family or a Unit Owner's guests, invitees, tenants, employees, or licensees who occupy a Unit or are on the Common Elements for any period of time.

Section 2.24 "Period of Declarant Control" means the maximum period of time defined and limited by Section 8.6 of this Declaration during which the Declarant may, at its option, control the Association.

Section 2.25 "Person" means an individual, association, partnership, limited liability company, corporation, trust, governmental agency, political subdivision or any combination thereof.

Section 2.26 "Plat" means that part of a Declaration that is a land survey plat as set forth in Idaho Code § 50-1301, as amended, depicts all or any portion of the Project in two dimensions, is executed by the Declarant, and is recorded in the Records.

Section 2.27 "Project" means the term as defined in Section 1.1 hereof.

Section 2.28 "Project Documents" means the basic documents creating and governing the Project, including, but not limited to, this Declaration, the Articles of

Incorporation and Bylaws, the Plat, and any procedures, Rules and Regulations included in the 151 South Main Hotel & Residences Rules, and any policies relating to the Project adopted under such documents by the Association or the Board of Directors.

Section 2.29 "Property" means that that term as defined in the introduction to this Declaration and more particularly described on Exhibit A, attached hereto.

Section 2.30 "Real Estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that, by custom, usage or law, pass with the conveyance of land though not described in the contract of sale or instrument of conveyance. Real Estate includes parcels with or without Horizontal Boundaries and spaces that may be filled with air or water.

Section 2.31 "Records" means the Office of the Clerk and Recorder in Blaine County, Idaho, and each other county in which any portion of the Project is located.

Section 2.32 "Residential Unit" means Units 406, 409, 411, 412, 414, 423, 501, 503, 505, 507, 508, 510, 512 and 514 as depicted on the Plat.

Section 2.33 "Retail Unit" means Unit Ret as depicted on the Plat.

Section 2.34 "Rules and Regulations" means the rules and regulations promulgated by the Board of Directors for the management, preservation, safety, control, and orderly operation of the Project in order to effectuate the intent and to enforce the obligations set forth in the Project Documents, as amended and supplemented from time to time. Separate Rules and Regulations may apply to the different classes of Units within the Project.

Section 2.35 "Security Interest" means an interest in Real Estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The terms includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, and any other consensual lien or title retention contract intended as security for an obligation. The holder of a Security Interest includes any insurer or guarantor of a Security Interest.

Section 2.36 "Special Declarant Rights" means those rights reserved by Declarant in Article 15 of this Declaration.

Section 2.37 "Unit" means a physical portion of the Project which is designated for separate ownership and the boundaries of which are described in or determined by

this Declaration. Each Unit shall be designated by a separate number, letter, address or other symbol or combination thereof that identifies only one Unit in the Project as more specifically set forth on Exhibit B. Walls, floors or ceilings designated as boundaries of a Unit in this Declaration, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Unit and all other portions of the walls, floors or ceilings are a part of the Common Elements. Subject to Sections 2.8(b) and 2.20, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are a part of the Unit. A Unit may be either a Hotel Unit, a Retail Unit or a Residential Unit.

Section 2.38 "Unit Owner" or "Owner" means the Declarant or any other person who owns record title to a Unit (including a contract seller, but excluding a contract purchaser) but excluding any person having a Security Interest in a Unit unless such person has acquired record title to the Unit pursuant to foreclosure or any proceedings in lieu of foreclosure.

ARTICLE 3 - DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP

Section 3.1 Division Into Units. The Property is hereby divided into that number of Units described in Exhibit B, as amended from time to time, each consisting of a fee simple interest in a Unit and an undivided fee simple interest in the Common Elements in accordance with the respective undivided interests in the Common Elements as set forth in Exhibit B. Such undivided interests in the Common Elements are hereby declared to be appurtenant to the respective Units. The total of the undivided interests in the Common Elements set forth in Exhibit B, shall be deemed to equal one hundred percent (100%) for purposes of this Declaration.

Section 3.2 Delineation of Unit Boundaries. The boundaries of each Unit are delineated and designated by an identifying number on the Plat, and those numbers are set forth in Exhibit B.

Section 3.3 Inseparability of Unit. Except as provided in Section 3.5 below, and in Article 15: (a) no part of a Unit or of the legal rights comprising ownership of a Unit may be partitioned or separated from any other part thereof during the period of condominium ownership prescribed in this Declaration; (b) each Unit shall always be conveyed, transferred, devised, bequeathed, encumbered, and otherwise affected only as a complete Unit; and (c) every conveyance, transfer, gift, devise, bequest, encumbrance other disposition of a Unit or any part thereof shall be presumed to be a disposition of the entire Unit, together with all appurtenant rights and interests created by law or by this Declaration, including the Unit Owner's membership in the Association.

Section 3.4 Non-Partitionability of Common Elements. The Common Elements shall be owned in common by all of the Unit Owners and shall remain physically undivided, and no Unit Owner shall bring any action for partition or division of the Common Elements. By acceptance of a deed or other instrument of conveyance or assignment to a Unit, each Unit Owner shall be deemed to have specifically waived such Unit Owner's right to institute or maintain a partition action or any other cause of action designed to cause a division of the Common Elements, and this Section may be pleaded as a bar to the maintenance of such an action. Any Unit Owner who shall institute or maintain any such action shall be liable to the Association and hereby agrees to reimburse the Association for the Costs of Enforcement in defending any such action.

Section 3.5 Alterations of Units; Relocation of Boundaries Between Adjoining Units. Subject to receipt of prior written approval of the Declarant during the Period of Declarant Control and, thereafter, the Association, Unit Owner(s) shall have the right to alter their Units, and relocate boundaries between their Unit and an adjoining Unit, combine adjoining Units and alter and improve Limited Common Elements and reallocate Limited Common Elements between or among Units, subject to the provisions and requirements of this Declaration and of the Act and an appropriate reallocation of the share of Common Area Ownership and Common Expense Liability as set forth on Exhibit B. Any costs associated with replatting required to accomplish the foregoing shall be the responsibility of the Owner.

ARTICLE 4 - ALLOCATED INTERESTS

Section 4.1 Allocation of Interests. The Allocated Interests assigned to each Unit are set forth on Exhibit B. These interests have been allocated in accordance with the formulas set out in Section 4.2 below. These formulas are to be used in reallocating interests if Units are added to the Project or if Units are converted to Common Elements or Limited Common Elements.

Section 4.2 Formulas for the Allocation of Interests. The interests allocated to each Unit that are set forth on Exhibit B have been calculated by the Declarant using the following formulas:

(a) Undivided Interest in the Common Elements. The percentage of the undivided interest in the Common Elements allocated to each Unit is based on the square footage of the interior floor area of each Unit in relation to the square footage of the interior of all Units in the Project as a whole as determined by Declarant or, after the period of Declarant Control, the Association. Such percentage is to be used for tax

assessments pursuant to Section 55-1514 of the Act as well as liability pursuant to Section 55-1515 of the Act.

(b) Common Expense Liability. The percentage of Common Expense Liability allocated to each Unit is based on the relative undivided interests in the Common Elements allocated to each Unit, calculated as set forth in Section 4.2(a), above.

(c) Votes. Each Residential Unit shall be allocated one (1) vote. The Retail Unit shall be allocated one (1) vote. The Hotel Unit shall be allocated sixteen (16) votes.

Section 4.3 Rounding Convention. Allocated Interests, stated as a fraction or as a percentage, shall be rounded to the nearest tenth of a percent (.1%) and shall, in total, be deemed to equal one hundred percent (100%) for the purpose of this Declaration.

ARTICLE 5 - PLAT

The Plat shall be filed in the Records. The Plat shall be filed following substantial completion of the Improvement(s) depicted on the Plat and prior to the conveyance of any Unit depicted on the Plat to a purchaser. The Plat shall show the following:

- (a) the name and a general schematic map of the entire Project;
- (b) the location and dimensions of all existing improvements within that Real Estate;
- (c) the extent of any existing encroachments across any Project boundary;
- (d) to the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the Project;
- (e) the location of each Unit and that Unit's identifying number;
- (f) horizontal Unit boundaries, with reference to all established data and that Unit's identifying number;

(g) any Units in which the Declarant has reserved the right to create additional Units or Common Elements, identified appropriately; and

(f) the approximate location and dimensions of all Limited Common Elements.

The Plat shall contain a certificate of a registered and licensed surveyor certifying that it was prepared subsequent to the substantial completion of the improvements and contains all information required by this Declaration and the Act. Each supplement shall set forth a like certificate when appropriate. In interpreting the Plat, the existing physical boundaries of each separate Unit as constructed shall be conclusively presumed to be its boundaries.

ARTICLE 6 - LEGAL DESCRIPTION AND TAXATION OF UNITS

Section 6.1 Contracts to Convey and Conveyances. Subsequent to the recording of the Declaration and Plat, contracts to convey, instruments of conveyance of Units, and every other instrument affecting title to a Unit shall be in substantially the following form with such omissions, insertions, recitals of fact, or other provisions as may be required by the circumstances or appropriate to conform to the requirements of any governmental authority, practice or usage or requirement of law with respect thereto:

Unit ____, according to the Declaration of Covenants, Conditions and Restrictions for 151 South Main Hotel & Residences, recorded 1/31/17, as Instrument No. 641302 and the Plat recorded 1/31/17, as Instrument No. 641301, in the office of the Recorder of Blaine County, Idaho.

Section 6.2 Conveyance Deemed to Describe an Undivided Interest in Common Elements. Every instrument of conveyance, Security Interest, or other instrument affecting the title to a Unit which legally describes the Unit substantially in the manner set forth above shall be construed to describe the Unit, together with the undivided interest in the Common Elements appurtenant to it, and together with all fixtures and improvements contained in it, and to incorporate all the rights incident to ownership to a Unit and all the limitations of ownership as described in the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, including the easement of enjoyment to use the Common Elements.

Section 6.3 Separate Tax Assessments. Upon the filing for record of this Declaration and the Plat in the Records, Declarant shall deliver a copy of this Declaration to the assessor of Blaine County as provided by law. The lien for taxes assessed shall be confined to the Unit(s). No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charge shall divest or in any way affect the title to any other Unit.

ARTICLE 7 - UNIT OWNERS' PROPERTY RIGHTS IN COMMON ELEMENTS

Section 7.1 Common Elements. Every Unit Owner shall have a perpetual right and easement of access over, across, and upon the Common Elements for the purpose of access to and from the Unit from public ways for both pedestrian and vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to such Unit; provided, however, that such right and easement shall be subject to the following:

(a) the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, and the Plat;

(b) the right, without the obligation, of the Association from time to time to assign on an equitable basis portions of the Common Elements such as parking spaces or storage spaces for the exclusive use of the Unit Owner of a particular Unit by an appropriate instrument in writing;

(c) the right, without the obligation, of the Association to adopt, from time to time, any and all rules and regulations concerning vehicular traffic and travel upon, in, under, and across the Project; and

(d) the right, without the obligation, of the Association to adopt, from time to time, any and all rules and regulations concerning the Project as the Association may determine is necessary or prudent for the management, preservation, safety, control, and orderly operation of the Project for the benefit of all Unit Owners, and for facilitating the greatest and most convenient availability and use of the Units and Common Elements by Unit Owners.

Section 7.2 Limited Common Elements. Subject to the provisions of this Declaration, every Unit Owner shall have the right to use and enjoy the Limited Common Elements appurtenant to his Unit.

ARTICLE 8 - MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 8.1 Association Membership. The Association's Articles of Incorporation shall be filed no later than the date the first interest in a Unit in the Project is conveyed to a purchaser. Every Unit Owner shall be a member of the Association and shall remain a member for the period of the Unit Owner's ownership of a Unit. No Unit Owner, whether one or more persons or entity, shall have more than one membership per Unit owned, but all of the persons or entities owning a Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Unit. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. If title to a Unit is held by more than one individual, by a firm, corporation, partnership, association or other legal entity or any combination thereof, such individuals, entity or entities shall appoint and authorize one person or alternate persons to represent the Unit Owners of the Unit. Such representative shall be a natural person who is a Unit Owner, or a designated board member or officer of a corporate Unit Owner, or a general partner of a partnership Unit Owner, or a comparable representative of any other entity, and such representative shall have the power to cast votes on behalf of the Unit Owner as a member of the Association, and serve on the Board of Directors if elected, subject to the provisions of and in accordance with the procedures more fully described in the Bylaws of the Association. Notwithstanding the foregoing, if only one of the multiple Unit Owners of a Unit is present at a meeting of the Association, such Unit Owner is entitled to cast the vote(s) allocated to that Unit. If more than one of the multiple Unit Owners are present and there is no written designation of an authorized representative, the vote allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the Unit Owners, which majority agreement may be assumed for all purposes if any one of the multiple Unit Owners casts the vote allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Unit Owners of the Unit.

Section 8.2 Voting Rights and Meetings. Each Unit in the Project shall have the votes allocated in Section 4.2(c); provided, however, no vote allocated to a Unit owned by the Association may be cast. A meeting of the Association shall be held at least once each year. Special meetings of the Association may be called by the President, by a majority of the Board of Directors, or by Unit Owners having twenty-five percent (25%), or any lower percentage specified in the Bylaws, of the votes in the Association. Not less than ten (10) and no more than fifty (50) days in advance of any meeting, the Secretary or other officer specified in the Bylaws shall cause notice to be hand delivered, sent prepaid by United States Mail to the mailing address of each Unit Owner or sent via e-mail with the Unit Owner's consent to receive notice by such

means. The notice of any meeting must state the time and place of the meeting and the items on the agenda including the general nature of any proposed amendment to this Declaration or Bylaws, any budget changes, and any proposal to remove an officer or member of the Board of Directors. Unless the Bylaws provide for a lower percentage, a quorum is deemed present throughout any meeting of the Association if persons entitled to cast twenty percent (20%) of the votes, in person or by proxy, at the beginning of the meeting. Notwithstanding anything to the contrary contained herein, for a period of ten (10) years from the date of this Declaration, Declarant shall receive notice of and have the right to attend all meetings of the Association and/or its Board.

Section 8.3 Meeting to Approve Annual Budget. At the annual meeting of the Association or at a special meeting of the Association called for such purpose, the Unit Owners shall be afforded the opportunity to ratify a budget of the projected revenues, expenditures (both ordinary and capital) and reserves for the Association's next fiscal year as proposed by the Board of Directors. A summary of the budget proposed by the Board of Directors shall be mailed or sent via e-mail with the Unit Owner's consent to receive notice by such means, to the Unit Owners within thirty (30) days after its adoption by the Board of Directors, along with a notice of a meeting of the Association to be held not less than ten (10) nor more than fifty (50) days after mailing of the summary to the Unit Owners. Unless, at such meeting, a Majority of Owners, rather than a majority of those present and voting in person or by proxy, reject the proposed budget, the budget is ratified, regardless of whether a quorum is present at the meeting. In the event the proposed budget is rejected, the budget last ratified by the Unit Owners continues until such time as the Unit Owners ratify a subsequent budget proposed by the Board of Directors as provided above.

Section 8.4 Unit Owners' and Association's Addresses for Notices. All Unit Owners of each Unit shall have one and the same registered mailing address to be used by the Association or other Unit Owners for notices, demands, and all other communications regarding Association matters. The Unit Owner or the representative of the Unit Owners of a Unit shall furnish such registered address to the secretary of the Association or its' designated agent within ten days after transfer of title to the Unit to such Unit Owner or Unit Owners. Such registration shall be in written form and signed by all of the Unit Owners of the Unit or by such persons as are authorized to represent the interests of all Unit Owners of the Unit. If no address is registered or if all of the Unit Owners cannot agree, then the address of the Unit shall be deemed their registered address until another registered address is furnished as required under this Section 8.4. If the address of the Unit is the registered address of the Unit Owner(s), then any notice shall be deemed duly given if delivered to any person occupying the Unit or, if the Unit is unoccupied, if the notice is held and available for the Unit Owners

at the principal office of the Association. All notices and demands intended to be served upon the Board of Directors shall be sent to the Project or such other address as the Board of Directors may designate from time to time by notice to the Unit Owner(s). For the purposes of meeting Notices, any Unit Owner may consent to receive notice by email by providing the Association a current email address. Such email address shall be deemed valid unless and until a new email address is provided to the Association or consent to receive notice by email is withdrawn by the Unit Owner.

Section 8.5 Transfer Information. All Persons who acquire Unit(s) other than from Declarant shall provide to the Association written notice of the Person's name, address, Unit owned, date of transfer, and name of the former Unit Owner within ten (10) days of the date of transfer. The Person shall also provide a true and correct copy of the recorded instrument conveying or transferring the Unit or such other evidence of the conveyance or transfer as is reasonably acceptable to the Association. In addition, the Association may request such other information as the Association determines is necessary or desirable in connection with obtaining and maintaining information regarding conveyances and transfers of Units. The Association or Managing Agent shall have the right to charge the Person a reasonable administrative fee for processing the transfer in the records of the Association.

Section 8.6 Declarant Control of the Association. There shall be a Period of Declarant Control of the Association, during which a Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Board of Directors, notwithstanding any voting requirements or other procedural requirements set forth herein or in the Bylaws. The Period of Declarant Control shall commence upon filing of the Articles of Incorporation of the Association and shall terminate no later than the last to occur of the following:

(a) sixty (60) days after conveyance of the eleventh (11th) Residential Unit to Unit Owners other than a Declarant; or

(b) prior to the conveyance of the eleventh (11th) Residential Unit, two (2) years after Declarant's last conveyance of a Residential Unit in the ordinary course of business without conveying another Residential Unit.

Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of that period, but in that event the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board of Directors, as described in a recorded

instrument executed by the Declarant, be approved by the Declarant before they become effective.

Section 8.7 Required Election of Residential Unit Owners. The Board of Directors shall consist of five (5) members, all of whom shall initially be appointed by the Declarant. Terms shall be for a period of two (2) years, except that the terms of two of the initial Board members shall be one (1) year. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Residential Units to Unit Owners other than Declarant, one (1) member of the Board of Directors shall be elected by Residential Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of seventy five percent (75%) of the Residential Units to Unit Owners other than Declarant, a second member of the Board of Directors must be elected by Residential Unit Owners other than the Declarant, the Retail Unit Owner shall appoint one (1) member to the Board of Directors and the Hotel Unit Owner shall appoint two (2) members to the Board of Directors. Following the period of Declarant Control, in order to insure representation of Residential Unit Owners, the Retail Unit Owner and the Hotel Unit Owner in the affairs of the Association and to protect the valid interests of the Residential Units, the Retail Unit and the Hotel Unit in the operation of the Project, the Owners of the Residential Units, voting as a class, shall be entitled to elect two (2) members of the Board of Directors, and the Owner of the Retail Unit shall be entitled to appoint one (1) member of the Board of Directors and the Hotel Unit Owner shall be entitled to appoint two (2) members of the Board of Directors. The terms of the two (2) Directors elected by the Residential Unit Owners shall be staggered and the terms of the two (2) Directors appointed by the Hotel Unit Owner shall be staggered. The Board of Directors shall elect the officers. The members of the Board of Directors and officers shall take office upon election.

Section 8.8 Removal of Members of the Board of Directors. Subject to Section 8.6 hereof, following notice and an opportunity to be heard as required by this Declaration and the Act, the Unit Owners, by sixty-seven percent (67%) vote of all votes cast at a meeting of the Unit Owners at which a quorum is present, may remove a member of the Board of Directors with or without cause, other than a member appointed by the Declarant.

Section 8.9 Requirements for Turnover of Declarant Control. Within sixty (60) days after conveyance of seventy five percent (75%) of the Residential Units to Unit Owners other than Declarant, the Declarant shall deliver to the Association all property of the Unit Owners and of the Association held by or controlled by the Declarant, including without limitation the following items:

(a) the original or a certified copy of the recorded Declaration as amended, the Association's articles of incorporation, Bylaws, minute books, other books and records, and any Rules and Regulations which may have been promulgated;

(b) an accounting for Association funds and financial statements, from the date the Association received funds and ending on the date the Period of Declarant Control ends;

(c) the Association funds or control thereof;

(d) all of the Declarant's tangible personal property that has been represented by the Declarant to be the property of the Association or all of the Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Elements, and inventories of these properties;

(e) a copy, for the non-exclusive use of the Association, of any plans and specifications used in the construction or renovation of the Improvements;

(f) all insurance policies then in force, in which the Unit Owners, the Association or its members of the Board of Directors and officers are named as insured persons;

(g) copies of any certificates of occupancy that may have been issued with respect to the Improvements;

(h) any other permits issued by governmental bodies applicable to the Project and which are currently in force or which were issued within one year prior to the date on which Unit Owners other than the Declarant took control of the Association;

(i) written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective;

(j) a roster of Unit Owners and First Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;

(k) employment contracts in which the Association is a contracting party;

(l) any service contract in which the Association is a contracting party or in which the Association or the Unit Owners have any obligation to pay a fee to the persons performing the services;

(m) operation and maintenance documentation of any and all equipment owned by the Association; and

(n) maintenance recommendations for Common Elements including but not limited to furnishings, equipment, elevators and corridor surfaces, spas furniture and garbage receptacles.

Section 8.10 Agent for Service of Process. The Association's initial agent for service of process as contemplated by the Act shall be the person identified as such in the Articles of Incorporation.

ARTICLE 9 - ASSOCIATION POWERS AND DUTIES

Section 9.1 Association Management Duties. Subject to the rights and obligations of Declarant and other Unit Owners as set forth in this Declaration, the Association shall be responsible for the administration and operation of the Project and for the exclusive management, control, maintenance, repair, replacement, and improvement of the Common Elements and the Limited Common Elements, and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair. The expenses, costs, and fees of such management, operation, maintenance, and repair by the Association shall be part of the Assessments, and prior approval of the Unit Owners shall not be required in order for the Association to pay any such expenses, costs, and fees. The Association shall establish and maintain, out of the installments of the annual Assessments, an adequate reserve account for maintenance, repair, or replacement of those Common Elements that must be replaced on a periodic basis. The Association shall adopt and amend budgets for revenues, expenditures, and reserves which will be the basis for collection of Assessments for Common Expenses from Unit Owners. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the requirement that it provide statements of status of Assessments. All financial and other records of the Association shall be made reasonably available for examination by any Unit Owner and such Unit Owner's authorized agents.

Section 9.2 Association Powers. The Association shall have, subject to the limitations contained in this Declaration and the Act, the powers necessary for the

administration of the affairs of the Association and the upkeep of the Project which shall include, but not be limited to, the power to:

- (a) adopt and amend Bylaws and Rules and Regulations;
- (b) adopt and amend budgets for revenues, expenditures and reserves;
- (c) collect assessments for Common Expenses from Owners;
- (d) create and maintain reserve accounts;
- (e) hire and discharge Managing Agents, provided however, that for a period of thirty-six (36) months following the Period of Declarant Control, no Managing Agent that was hired by the Declarant pursuant to a written management agreement shall be discharged by the Association or its Board without approval of each class of Unit Owners.
- (f) hire and discharge employees and agents, other than Managing Agents, and independent contractors;
- (g) institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Declaration, Bylaws or Rules and Regulations in the Association's name on behalf of the Association or two or more Unit Owners on matters affecting the Project;
- (h) make contracts and incur liabilities;
- (i) regulate the use, maintenance, repair, replacement and modification of the Common Elements;
- (j) cause additional improvements to be made as part of the Common Elements;
- (k) acquire, hold, encumber, and convey in the Association's name any right, title or interest to real property or personal property, but Common Elements may be conveyed or subjected to a Security Interest only pursuant to the requirements of the Act;

(l) grant easements, including permanent easements, leases, licenses and concessions, through or over the Common Elements;

(m) impose and receive a payment, fee, or charge for the use, rental or operation of the Common Elements, other than Limited Common Elements, and for services provided to Unit Owners;

(n) impose a reasonable charge for late payment of Assessments, recover Costs of Enforcement for collection of Assessment and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated and, after notice and hearing, levy reasonable fines for violations of this Declaration, Bylaws and Rules and Regulations of the Association;

(o) impose a reasonable charge for the preparation and recordation of amendments to this Declaration or for preparation of statements of unpaid Assessments;

(p) provide for the indemnification of the Association's officers and Board of Directors and maintain Board of Directors' and officers' liability insurance;

(q) assign the Association's right to future income, including the right to receive Assessments;

(r) by resolution, establish committees of the Board of Directors and/or Unit Owners, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee;

(s) exercise any other powers conferred by this Declaration or the Bylaws;

(t) establish policies and procedures for entry into Units under authority granted to the Association in the Project Documents for the purpose of cleaning, maid service, maintenance and repair including emergency repair, and for the purpose of abating a nuisance or a known or suspected dangerous or unlawful activity;

(u) exercise any other power that may be exercised in Idaho by legal entities of the same type as the Association; and

(v) exercise any other power necessary and proper for the governance and operation of the Association.

Section 9.3 Actions by Board of Directors. Except as specifically otherwise provided in this Declaration, the Bylaws or the Act, the Board of Directors may act in all instances on behalf of the Association.

Section 9.4 Board of Directors Meetings. All meetings of the Board of Directors, at which action is to be taken by vote, will be open to the Unit Owners and at the request of any member, agendas for meetings of the Board of Directors shall be made reasonably available for examination by the member of the Association or their representatives, except that meetings of the Board of Directors may be held in executive session(s), without giving notice and without the requirement that they be open to Unit Owners, in the following situations:

(a) matters pertaining to employees of the Association or involving the employment, promotion, discipline or dismissal of an officer, agent, or employee of the Association;

(b) consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;

(c) investigative proceedings concerning possible or actual criminal misconduct;

(d) matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;

(e) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy, including but not limited to violations and collections proceedings.

Section 9.5 Right to Notice and Hearing. Whenever the Project Documents require that an action be taken after "notice and hearing," the following procedure shall be observed: The party proposing to take the action (e.g., the Board of Directors, a committee, an officer, the Managing Agent, etc.) shall give notice of the proposed action to all Unit Owners whose interests the proposing party reasonably determines

would be significantly affected by the proposed action. The notice shall be delivered personally or mailed not less than three (3) days before the proposed action is to be taken. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally and/or in writing, subject to reasonable rules of procedure established by the party conducting the hearing to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the hearing was given. Any Unit Owner having a right to notice and hearing shall have the right to appeal to the Board of Directors from a decision of a proposing party other than the Board of Directors by filing a written notice of appeal with the Board of Directors within ten (10) days after being notified of the decision. The Board of Directors shall conduct a hearing at the next scheduled executive meeting or within forty-five (45) days whichever is shorter, giving the same notice and observing the same procedures as were required for the original hearing.

ARTICLE 10 - ASSESSMENTS

Section 10.1 Commencement of Annual Assessments. Until the Association makes an Assessment for Common Expenses, the Declarant shall pay all Common Expenses. After any Assessment has been made by the Association, Assessments shall be made no less frequently than annually and shall be based on a budget adopted no less frequently than annually by the Association.

Section 10.2 Annual Assessments. The Association shall levy annual Assessments to pay for the Common Expense Liability allocated to each Unit pursuant to this Declaration. The total annual Assessments shall be based upon a budget of the Association's cash requirements for upkeep of the Project including maintenance, repair and replacement of the Common Elements as required by the Act and the Project Documents, the funding of reserve funds created pursuant to Section 10.14 of this Declaration, and the reasonable costs for use of Hotel Amenities and Hotel Services pursuant to Section 13.6. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be allocated to one or more reserve funds for the future financial needs of the Association as determined by the Board of Directors.

Section 10.3 Apportionment of Annual Assessments. The total annual Assessment for any fiscal year of the Association shall be assessed to the Units in proportion to their Percentage of Common Expenses Liability set forth on Exhibit B,

subject to: (a) Common Expenses which are separately metered or assessed to the Units by third parties; (b) Common Expenses associated with the maintenance, repair or replacement of Limited Common Elements which shall be assigned equally or on such other equitable basis as the Board of Directors shall determine to the Units to which the specific Limited Common Elements are appurtenant; (c) Common Expenses or portions thereof benefiting fewer than all of the Units which shall be assessed exclusively against the Units benefited; (d) any increased cost of insurance based upon risk which shall be assessed to Units in proportion to the risk; (e) any Common Expense caused by the misconduct of any Unit Owner(s), which may be assessed exclusively or on such other equitable basis as the Board of Directors shall determine against such Unit Owner(s); and (f) any expenses which are charged equally to the Units. All such allocations of Common Expenses Liability to the Units on a basis other than the Units' Percentage of Common Expenses Liability shall be made by the Board of Directors. In making the allocations, the Board of Directors shall use as a guide the assignment of various Common Expenses to the following categories: utilities (unless separately metered or disproportionately benefiting fewer than all Units), insurance, exterior building maintenance and repairs, and reserves. All Common Expenses associated with maintenance, repair or replacement of areas that serve exclusively Residential Units, the Hotel Unit or the Retail Unit, shall be allocated to only such Units.

Section 10.4 Special Assessments. In addition to the annual Assessments authorized above, the Board of Directors may at any time and from time to time determine, levy, and assess in any fiscal year a special Assessment applicable to that particular fiscal year (and for any such longer period as the Board of Directors may determine) for the purpose of defraying, in whole or in part, the unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolishing, replacement, renovation or maintenance of the Project, specifically including any fixtures and personal property related to it. Any amounts determined, levied, and assessed pursuant to this Declaration shall be assessed to the Units pursuant to the provisions in Section 10.3 entitled "Apportionment of Annual Assessments" set forth above.

Section 10.5 Due Dates for Assessment Payments. Unless otherwise determined by the Board of Directors, the Assessments which are to be paid in installments shall be paid quarterly in advance and shall be due and payable to the Association at its office or as the Board of Directors may otherwise direct in any Management Agreement, without notice (except for the initial notice of any special Assessment), on the first day of each quarter. If any such installment shall not be paid within thirty (30) days after it shall have become due and payable, then the Board of Directors may assess a late charge, default interest charge (not to exceed the rate from time to time allowed by law), fee, or such other charge as the Board of Directors may fix

by rule from time to time to cover the extra expenses involved in handling such delinquent Assessment installment. A Unit Owner's Assessment shall be prorated if the ownership of a Unit commences or terminates on a day other than the first day or last day, respectively, of a month or other applicable payment period. However, if the Common Expenses Liability is re-allocated, any installment(s) of an assessment not yet due shall be recalculated in accordance with the re-allocated Common Expenses Liability.

Section 10.6 Default Assessments. All Costs of Enforcement assessed against a Unit Owner pursuant to the Project Documents, or any expense of the Association which is the obligation of a Unit Owner pursuant to the Project Documents shall become a default Assessment assessed against the Unit Owner's Unit. Notice of the amount and demand for payment of such default Assessment shall be sent to the Unit Owner ten (10) days prior to enforcing any remedies for non-payment hereunder.

Section 10.7 Covenant of Personal Obligation for Assessments. Declarant, by creating the Units pursuant to this Declaration, and all other Unit Owners, by acceptance of the deed or other instrument of transfer of his Unit (whether or not it shall be so expressed in such deed or other instrument of transfer), are deemed to personally covenant and agree, jointly and severally, with all other Unit Owners and with the Association, and hereby do so covenant and agree to pay to the Association the (a) annual Assessments, (b) special Assessments, and (c) default Assessments applicable to the Unit Owner's Unit. No Unit Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in this Declaration by not using the Common Elements or the facilities contained in the Common Elements or by abandoning or leasing his Unit.

Section 10.8 Lien for Assessments; Assignment of Rents. The annual, special, and default Assessments (including installments of the Assessments) arising under the provisions of the Project Documents shall be burdens running with the specific Unit to which such Assessments apply. The Association may impose a lien upon a specific Unit, by preparing a written lien notice setting forth the description of the Unit, the amount of Assessments on the Unit unpaid as of the date of such lien notice, the rate of default interest as set by the Rules and Regulations, the name of the Unit Owner or Unit Owners of the Unit, and any and all other information that the Association may deem proper. The lien notice shall be signed by a member of the Board of Directors, an officer of the Association, or the Managing Agent and shall be recorded in the Records. Upon any default in the payment of annual, special, or default Assessments, the Association shall also have the right to appoint a receiver to collect all rents, profits, or other income from the Unit payable to the Unit Owner and to apply all such rents, profits, and income

to the payment of delinquent Assessments. Each Unit Owner, by ownership of a Unit, agrees to the assignment of such rents, profits and income to the Association effective immediately upon any default in the payment of annual, special, or default Assessments.

Section 10.9 Remedies for Nonpayment of Assessments. If any annual, special, or default Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after the same becomes due and payable, then as often as the same may happen, (a) interest shall accrue at the default rate set by the Rules and Regulations on any amount of the Assessment in default, accruing from the due date until date of payment, (b) the Association may declare due and payable all unpaid installments of the annual Assessment or any special Assessment otherwise due during the fiscal year during which such default occurred, (c) the Association may thereafter bring an action at law or in equity, or both, against any Unit Owner personally obligated to pay the same, (d) the Association may proceed to foreclose its lien against the particular Unit pursuant to the power of sale granted to the Association by this Declaration or in the manner and form provided by Idaho law for foreclosure of real estate mortgages and (e) the Association may suspend the Owner's right to vote in Association matters until the Assessment is paid. An action at law or in equity by the Association (or counterclaims or cross-claims for such relief in any action) against a Unit Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to stop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent default Assessments. The Association shall have the power and right to bid in or purchase any Unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, and to convey, or otherwise deal with the Unit acquired in such proceedings.

Section 10.10 Purchaser's Liability for Assessments. Notwithstanding the personal obligation of each Unit Owner to pay all Assessments on the Unit, all purchasers shall be jointly and severally liable with the prior Unit Owner(s) for any and all unpaid Assessments against such Unit, without prejudice to any such purchaser's right to recover from any prior Unit Owner any amounts paid thereon by such purchaser. A purchaser's obligation to pay Assessments shall commence upon the date the purchaser becomes the Unit Owner of a Unit. For Assessment purposes, the date a purchaser becomes the Unit Owner shall be determined as follows: (a) in the event of a conveyance or transfer by foreclosure, the date a purchaser becomes the Unit Owner

shall be deemed to be upon the expiration of all applicable redemption periods; (b) in the event of a conveyance or transfer by deed in lieu of foreclosure a purchaser shall be deemed to become the Unit Owner of a Unit upon the execution and delivery of the deed or other instruments conveying or transferring title to the Unit, irrespective of the date the deed is recorded; and (c) in the event of conveyance or transfer by deed, a purchaser shall be deemed to become the Unit Owner upon the execution and delivery of the deed or other instruments conveying or transferring title of the Unit, irrespective of the date the deed is recorded. However, such purchaser shall be entitled to rely upon the existence and status of unpaid Assessments as shown upon any certificate issued by or on behalf of the Association to such named purchaser pursuant to the provisions of this Declaration.

Section 10.11 Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments. By acceptance of the deed or other instrument of transfer of a Unit, each Unit Owner irrevocably waives the homestead exemption provided by Idaho Code § 55-1001 et seq., as amended. The Association's lien on a Unit for Assessments shall be superior to all other liens and encumbrances except the following:

- (a) real property ad valorem taxes and special assessment liens duly imposed by an Idaho governmental or political subdivision or special taxing district, or any other liens made superior by statute; and
- (b) the lien of any First Mortgagee except to the extent Idaho law grants priority for Assessments to the Association.

Any First Mortgagee who acquires title to a Unit by virtue of foreclosing a First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of a First Mortgage, will take the Unit free of any claims for unpaid Assessments and Costs of Enforcement against the Unit which accrue prior to the time such party acquires title to the Unit, except to the extent the amount of the extinguished lien may be reallocated and assessed to all Units as a Common Expense and except to the extent the Act grants lien priority for Assessments to the Association. All other persons not holding liens described in this Section and obtaining a lien or encumbrance on any Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's lien for Assessments and Costs of Enforcement as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

Sale or other transfer of any Unit, (a) except as provided above with respect to First Mortgagees, (b) except in the case of foreclosure of any lien enumerated in this Section, and (c) except as provided in the next Section, shall not affect the Association's lien on such Unit for Assessments due and owing prior to the time such purchaser acquired title and shall not affect the personal liability of each Unit Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the purchaser of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

Section 10.12 Statement of Status of Assessments. On or before fourteen (14) calendar days after receipt of written notice to the Managing Agent or, in the absence of a Managing Agent, to the Board of Directors and payment of a reasonable fee set from time to time by the Board of Directors, any Unit Owner, holder of a Security Interest, prospective purchaser of a Unit or their designees shall be furnished a statement of the Unit Owner's account setting forth:

- (a) the amount of any unpaid Assessments then existing against a particular Unit;
- (b) the amount of the current installments of the annual Assessment and the date that the next installment is due and payable;
- (c) the date(s) for payment of any installments of any special Assessments outstanding against the Unit; and
- (d) any other information, deemed proper by the Association, including the amount of any delinquent Assessments created or imposed under the terms of this Declaration.

Upon the issuance of such a certificate signed by a member of the Board of Directors, by an officer of the Association, or by a Managing Agent, the information contained therein shall be conclusive upon the Association as to the person or persons to whom such certificate is addressed and who rely on the certificate in good faith.

Section 10.13 Liens. Except for Assessment liens as provided in this Declaration, mechanics' liens (except as prohibited by this Declaration), tax liens, judgment liens and other liens validly arising by operation of law and liens arising under Security Interests, there shall be no other liens obtainable against the Common Elements or against the interest of any Unit Owner in the Common Elements except a Security Interest in the Common Elements granted by the Association pursuant to the requirements of the Act.

Section 10.14 Reserve Funds. The Association shall maintain (i) a capital reserve fund for the repair, restoration and replacement of the Common Elements; and (ii) a general operating reserve fund. The reserve funds shall be funded as follows:

(a) At the Closing of a sale of a Residential Unit by Declarant to an Owner, the Owner shall pay to the Association an amount equal to the Association's estimate of three (3) months of general operating Assessments to be levied against that Unit for the fiscal year in which that sale occurs, which shall be deposited into the general operating reserve fund. Such payments shall be in addition to, and shall not be credited against, the Owner's obligation to pay regular and special Assessments levied against the Units by the Association. Upon the sale of a Residential Unit by an Owner, the Association shall not be obligated to return to the transferor any funds held in reserve funds.

(b) Prior to Closing of the first sale of a Residential Unit, Declarant shall likewise pay to the Association an amount equal to the Association's estimate of three (3) months of general operating Assessments to be levied against the Hotel and Retail Units for the Association's initial fiscal year, which shall be deposited into the general operating reserve fund.

(c) Thereafter, the Association may increase the reserve funds or replace funds withdrawn from any reserve funds with funds collected through Assessments. The amounts held in such reserve funds shall be set at the discretion of the Board of Directors. All reserve funds shall be maintained in FDIC insured, interest bearing accounts.

ARTICLE 11 - MAINTENANCE RESPONSIBILITY

Section 11.1 Unit Owner's Rights and Duties with Respect to Interiors. Except as may be provided in the purchase and sale agreement or other conveyancing documents executed by Declarant in connection with sales to initial purchasers of the Units, each Owner of a Unit shall have the exclusive right and duty to paint, tile, paper, or otherwise decorate or redecorate and to maintain and repair the interior surfaces of the walls, floors, ceilings, windows and doors forming the boundaries of such Unit Owner's Unit and all walls, floors, ceilings, and doors within such boundaries. Notwithstanding the foregoing, no Residential Unit Owner shall be permitted to install any hardwood floor or other hard surface improvements in his Unit that might affect adjoining Units by increasing noise or vibrations, without the prior written approval of

the Association, which approval may be denied, or conditioned, in the Association's sole discretion. Owners of the Units shall install and maintain window coverings that are consistent with the standards adopted by the Association.

Any decoration, maintenance or repair to the Unit must be performed in such a manner, so that it shall be in compliance with industry standard codes and construction practices.

Section 11.2 Responsibility of the Unit Owner. The Unit Owner of any Unit shall, at the Unit Owner's expense, maintain and keep in repair all fixtures, equipment, and utilities installed and included in a Unit commencing at a point where the fixtures, equipment, and utilities enter the Unit. A Unit Owner shall not allow any action or work that will impair the structural soundness of the improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of the Improvement(s), or impair any easement or hereditament. Subject to the Association's overall responsibility for maintenance of the Limited Common Elements, each Unit Owner shall be responsible for routine maintenance and care of the walls, floors, ceilings, windows and doors of any balcony or patio or of any other Limited Common Elements appurtenant to the Unit Owner's Unit, and for keeping the same in a good, clean, sanitary, and attractive condition. Notwithstanding the foregoing, Unit Owners shall not be responsible for damage to exterior doors and windows except if as a result of a negligent or willful act of said Owner. The Association shall not be responsible for repairs occasioned by casualty due to the act or negligence of the Unit Owner or Occupant of the Unit except as provided in Article 16.

The Association shall not be responsible for damage that occurs due to the Unit Owner's failure to abide by the operation recommendations included in Operation, Maintenance and/or Warranty Manuals for the Unit or for Common Elements.

Section 11.3 Unit Owner's Negligence. In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Elements is caused through or by the negligent or willful act or omission of a Unit Owner or Occupant, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Unit Owner; and, if the Unit Owner fails to repay the expenses incurred by the Association within seven days after notice to the Unit Owner of the amount owed, then the failure to so repay shall be a default by the Unit Owner, and such expenses shall automatically become a default Assessment determined and levied against such Unit, enforceable by the Association in accordance with this Declaration.

Section 11.4 Responsibility of the Association. The Association, without the requirement of approval of the Unit Owners, shall maintain and keep in good repair, replace, and improve, as a Common Expense, all of the Project not required in this Declaration to be maintained and kept in good repair by a Unit Owner or by Declarant.

Section 11.5 Utilities and Services. The Association shall be responsible for obtaining utilities for all Units including, but not limited to, heating, cooling, water, sewer, electric, trash, recycling, telephone, internet service (including wireless internet) and cable. Such Utilities and Services shall be separately metered to each Unit to the extent reasonably feasible.

- a) Heating, Cooling and Domestic Hot Water. Costs associated heating, cooling and domestic hot water for Units located on the fourth and fifth floors will be determined based on flow and BTU meters controlling use of such utilities for all Units on each floor. Costs will be allocated among the Units on each floor based on the square footage of each Unit as it relates to the combined square footage of all Units located on that floor. Only that portion of the Hotel Unit that is located on the fourth floor shall be utilized in determining the allocation of shared utility costs for Units located on the fourth floor.
- b) Natural Gas. Costs associated with natural gas usage for Units located on the fourth and fifth floors will be determined based on meters for the total usage of gas serving all Units on each floor. Such costs will be allocated among the Units on each floor based on the number of gas appliances in each Unit as it relates to the total combined number of gas appliances of all Units located on that floor. Only that portion of the Hotel Unit that is located on the fourth floor shall be utilized in determining the allocation of shared natural gas costs for Units located on the fourth floor.

ARTICLE 12 - MECHANICS' LIENS

Section 12.1 Mechanics' Liens. Subsequent to recording of this Declaration and the filing of the Plat in the Records, no labor performed or materials furnished for use and incorporated in any Unit with the consent of or at the request of the Unit Owner or the Unit Owner's agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Unit of any other Unit Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Unit of the Unit Owner for whom such labor shall have been performed or such materials shall have been furnished. Each Unit Owner shall indemnify and hold harmless each of the other Unit Owners and the

Association from and against any liability or loss arising from the claim of any mechanics' lien or for labor performed or for materials furnished in work on such Unit Owner's Unit, against the Unit of another Unit Owner or against the Common Elements, or any part thereof.

Section 12.2 Enforcement by the Association. At its own initiative or upon the written request of any Unit Owner (if the Association determines that further action by the Association is proper), the Association shall enforce the indemnity provided by the provisions of this Article 12 by collecting from the Unit Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanics' lien, to pay all costs and reasonable attorneys' fees incidental to the lien, and to obtain a release of such lien. If the Unit Owner of the Unit on which the labor was performed or materials furnished refuses or fails to indemnify within five (5) days after the Association shall have given notice to such Unit Owner of the total amount of the claim, then the failure to so indemnify shall be a default by such Unit Owner under the provisions of this Section 12.2, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Unit, and enforceable by the Association pursuant to this Declaration.

ARTICLE 13 - USE RESTRICTIONS

Section 13.1 Use of Units. Except for uses reserved to Declarant in Article 15 entitled "Special Declarant Rights and Additional Reserved Rights", all Residential Units shall be used for single family dwelling and lodging purposes only. Unit Owners of the Residential Units may rent or lease such Units to others for these purposes. The Retail Unit shall be used for commercial, retail sales or restaurant uses. The Hotel Unit shall be used for commercial hotel uses, including but not limited to lobby, reception, recreation facilities, restaurant, bar, banquet, meeting facilities and lodging rooms. All Unit Owners hereby consent to the sale of alcoholic beverages by the Owner of the Hotel Unit and hereby grant to the Owner of the Hotel Unit a license combined with a possessory interest for such purposes.

Section 13.2 Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements by any Residential Unit Owner without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements by any Unit Owner without the prior written approval of the Association. There shall be no rubbish or debris of any kind placed or permitted to accumulate and no odors shall be permitted to arise from the property so as to render any portion of the Project unsanitary, unsightly, offensive or detrimental to any property or person. Trash,

garbage or other waste shall be kept only in sanitary containers. No Unit Owner shall permit or cause any trash or refuse to be kept on any portion of the Project other than in receptacles customarily used for it, which shall be located in places specifically designed for such purpose. No smoking shall be permitted in Common Areas, including Limited Common Areas.

Section 13.3 Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, which would result in the cancellation of the insurance on all or any part of the Project or in an increase in the rate of the insurance on all or any part of the Project over what the Association, but for such activity, would pay, without the prior written approval of the Association. Nothing shall be done or kept in any Unit or in or on the Common Elements which would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body having jurisdiction over the Project. No damage to or waste of the Common Elements shall be committed by any Unit Owner or Occupant, and each Unit Owner shall indemnify and hold the Association and the other Unit Owners harmless against all loss resulting from any such damage or waste caused by him or an Occupant of his Unit. Failure to so indemnify shall be a default by such Unit Owner under this Section. At its own initiative or upon the written request of any Unit Owner (and if the Association determines that further action by the Association is proper), the Association shall enforce the foregoing indemnity as a default Assessment levied against such Unit.

Section 13.4 Structural Alterations and Exterior Appearance. No structural alterations to any Unit, including the construction of any additional skylight, window, door or other alteration visible from the exterior of the Unit or to any Common Element nor any modification of water distribution lines shall be made or caused to be made by any Unit Owner without the prior written approval of the Declarant during the Period of Declarant Control and, thereafter, the Association. No clothes lines, satellite dishes, television antennas, wiring or installation of air conditioning equipment, window coverings or other improvements, alterations or decorations visible from outside a Unit shall be added by a Unit Owner without the prior written approval of the Declarant during the Period of Declarant Control and, thereafter, the Association. Except for interior decorations not visible from outside a Unit and alteration or relocation of walls constituting Limited Common Elements, no alteration or subdivision of Units or relocation of boundaries between adjoining Units shall be made by the Unit Owners without the prior written approval of the Declarant during the Period of Declarant Control and, thereafter, by the Association. The Association shall promulgate Rules and Regulations establishing procedures for the approvals required by this Section 13.4. Such Rules and Regulations shall include, but shall not be limited to, requirements that

the applicant submit (a) plans and specifications showing the nature, kind, shape, height, color, materials, and location of the proposed alterations in sufficient detail for the Association and Declarant to review them; and (b) processing and/or review fees, which may include any professional fees the Association or Declarant might incur in retaining architects or engineers to review the plans and specifications. The Rules and Regulations shall specifically consider the impact of the alteration on the harmony of external design and location in relation to surrounding structures and topography.

Section 13.5 Use Restrictions. No animal pens, sheds, fences or other outbuildings or structures of any kind shall be erected by any Unit Owner. No activity shall be allowed which interferes unduly with the peaceful possession and proper use of the Project by the Unit Owners, nor shall any fire hazard or unsightly accumulation of refuse be allowed. No lights shall be emitted which are unreasonably bright or cause unreasonable glare; no sound shall be emitted which is unreasonably loud or annoying; and no odor shall be emitted which is nauseous or offensive to others. No livestock, animals, poultry or fowl shall be kept in any Unit other than domestic dogs and cats, provided that no such dog or cat which is or becomes an annoyance or nuisance to other Occupants of the Project shall thereafter be kept in any Unit. In the event Rules and Regulations relating to the Use Restrictions are adopted by the Association related to pets, the more stringent restriction on such use shall control.

Section 13.6 Use of Hotel Amenities and Hotel Services. The operator of the Hotel Unit offers various amenities, including, without limitation, a pool and fitness area, hot tub, and fire pit(s), (collectively "Hotel Amenities") and may offer various services including, without limitation, airport shuttle service, town shuttle service and breakfast buffet (collectively, "Hotel Services"). Association Assessments on Residential Units shall include reasonable amounts to offset the proportional maintenance costs for the Hotel Amenities as well as the reasonable costs of providing Hotel Services to Residential Unit Owners. Residential Unit Owners and their guests, including rental occupants of their Unit, shall be entitled to use Hotel Amenities without additional charge. Residential Unit Owners and their accompanied guests shall be entitled to use Hotel Services without additional charge. Unaccompanied guests and rental occupants of a Residential Unit may use Hotel Services by paying a fee set by the operator of the Hotel Unit. Residential Unit Owners, unaccompanied guests and rental occupants of a Residential Unit must inform the Association or its agent of the identity, number of occupants and duration of occupancy prior to commencing occupancy. Residential Unit Owners shall be responsible for any fees for Hotel Services incurred by unaccompanied guests and rental occupants to the extent such fees are not paid directly by the guest or occupant, which fees may be collected in the same manner as Assessments pursuant to Article 10, hereof, and paid to the hotel operator for the Hotel Services rendered.

Section 13.7 Limit on Timesharing. No Unit Owner, excluding Declarant, shall offer or sell any interest in such Unit under a "timesharing" or "interval ownership" plan, or any similar plan without the specific prior written approval of the Declarant during the Period of Declarant Control, and thereafter the Association.

Section 13.8 Restriction on Signs. No signs, billboards, posterboards, or advertising structure of any kind shall be displayed, erected, or maintained for any purpose whatsoever except such signs as have been approved by the Declarant during the Period of Declarant Control and, thereafter, the Association. Any signs which are permitted under the foregoing restrictions shall be erected or maintained on the Project only with the prior written approval of the Declarant during the Period of Declarant Control, and thereafter the Association, which approval shall be given only if such signs are of attractive design and as small a size as reasonably possible and shall be placed or located as directed or approved by the Association.

Section 13.9 Restrictions on Use of Parking and Storage Areas. No parking shall be permitted at any location on the Property unless specifically designated for parking by the Association. All parking spaces shall be used for parking operable vehicles only. No boat, trailer, recreational vehicle, camper or commercial vehicle shall be parked or left within the Project garage. The Association reserves to itself the right to designate, assign and reserve the parking areas of the Project, both above grade and below grade, for use by all of the Owners, tenants and invitees of the Hotel Unit, Retail Unit or Residential Units, other than those parking spaces specifically reserved by this Declaration to be the entitlement of any Residential Unit. No storage is permitted outside of Units except in specifically designated storage areas. No Owner may use any parking or storage space assigned to another. No Owner may use any parking space for storage or use any parking or storage space in any manner that obstructs or interferes with any other Owner's parking or storage rights or that constitutes a safety hazard. Without limiting the generality of the powers of the Association with respect to parking or storage, the Association is specifically authorized, but not obligated, to remove any vehicle parked in any area not designated for parking, or any vehicle parked in any space that is assigned to another person or reserved for a specific use, or any vehicle parked in an obstructing or hazardous manner, or any improperly stored or hazardous materials, in all cases at the expense of the Owner or Occupant that owns such vehicle or materials. Expenses incurred by the Association in connection with such removal (and storage, if necessary) shall be a personal obligation of such Owner and, if the Owner fails to pay such amount within seven (7) days after notice to the Owner of the amount owed, then the failure to pay shall be a default by the Owner and such expenses shall automatically become a default Assessment determined and levied against such Unit enforceable by the Association as provided in this Declaration.

ARTICLE 14 - EASEMENTS

Section 14.1 Easement of Enjoyment. Every Unit Owner shall have a non-exclusive easement for the use and enjoyment of the Common Elements, which shall be appurtenant to and shall pass with the title to every Unit, subject to the easements set forth in this Article 14 and the easements and restrictions set forth in Article 7 entitled "Unit Owners' Property Rights in Common Elements".

Section 14.2 Delegation of Use. Any Unit Owner may delegate, in accordance with the Project Documents, the Unit Owner's right of enjoyment in the Common Elements to an Occupant of the Unit Owner's Unit.

Section 14.3 Recorded Easements. The Property shall be subject to any easements shown on any recorded plat affecting the Property, shown on the recorded Plat or reserved or granted under this Declaration.

Section 14.4 Easements for Encroachments. The Project, and all portions of it, is subject to easements hereby created for encroachments between Units and the Common Elements as follows:

- (a) in favor of all Unit Owners, so that they shall have no legal liability when any part of the Common Elements encroaches upon a Unit;
- (b) in favor of each Unit Owner, so that the Unit Owner shall have no legal liability when any part of his Unit encroaches upon the Common Elements or upon another Unit; and
- (c) in favor of all Unit Owners, the Association, and the Unit Owner of any encroaching Unit for the maintenance and repair of such encroachments.

Encroachments referred to in this Section 14.4 include, but are not limited to, encroachments caused by error or variance from the original plans in the construction of the Improvements or any Unit constructed on the Property, by error in the Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of the Project. Such encroachments shall not be considered to be encumbrances upon any part of the Project; provided, however, that encroachments created by the intentional act of a Unit Owner shall not be deemed to create an easement on the Property and shall be considered an encroachment upon the Project. Such encroachment shall be removed at Unit Owner's expense immediately upon notice from the Association. In the event such encroachment is not timely

removed, the Association may effect removal of the encroachment and the expense thereof shall be a default Assessment to the Unit Owner.

Section 14.5 Easements over Hotel Unit and Hotel Limited Common Elements. All Unit Owners shall have a nonexclusive easement over, through and across the ground floor Hotel Unit Lobby Area for ingress and egress to Common Elements, including but not limited to, rest rooms, elevators, stairs, service/loading docks, garbage receptacles, parking areas and the ski locker room. All Unit Owners shall have a non-exclusive easement for ingress and egress over through and across the following Hotel Limited Common Elements: porte-cochere and exterior plaza on the ground level of the Project, subject to reasonable rules and restrictions related to the operations of the hotel.

Section 14.6 Utility Easements. There is hereby created a general easement upon, across, over, in, and under all of the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electricity, and a cable communication system. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such utilities to erect and maintain the necessary equipment on the Property and to affix and maintain electrical, communications, and telephone wires, circuits, and conduits under the Property. Any utility company using this general easement shall use its best efforts to install and maintain the utilities provided without disturbing the uses of other utilities, the Unit Owners, the Association, and Declarant; shall complete its installation and maintenance activities as promptly as reasonably possible; and shall restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by this general easement request a specific easement by separate recordable document, Declarant during the Period of Declarant Control and, thereafter, the Association, shall have the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof. The easements provided for in this Section 14.6 shall in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

Section 14.7 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

Section 14.8 Maintenance Easement. An easement is hereby granted to the Association and any Managing Agent and their respective officers, agents, employees

and assigns upon, across, over, in, and under the Common Elements and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration.

Section 14.9 Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Elements are or may be located within the Units or may be conveniently accessible only through the Units. The Unit Owners and the Association shall have the irrevocable right, to be exercised by the Association as the Unit Owners' agent, to have access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Common Elements therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit. Unless caused by the negligent or willful act or omission of a Unit Owner or Occupant, damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Elements or as a result of emergency repair within another Unit at the instance of the Association or of the Unit Owners shall be a Common Expense.

Section 14.10 Easements Deemed Created. All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 14, even though no specific reference to such easements or to this Article 14 appears in the instrument for such conveyance.

ARTICLE 15 – SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS

Section 15.1 Special Declarant Rights. Declarant hereby reserves the right, from time to time, to perform the acts and exercise the rights hereinafter specified (the "*Special Declarant Rights*"). Declarant's Special Declarant Rights include the following:

(a) Completion of Improvements. The right to complete improvements indicated on the Plat filed with this Declaration and/or the right to complete construction of the Project as Declarant determines in its sole discretion.

(b) Sales Management and Marketing. The right to locate, relocate and maintain sales offices, management offices, signs advertising the Project, and models within any Unit or Units owned by Declarant and in the Common Elements. Declarant shall have the right to show Units and the Common

Elements to prospective purchasers and to arrange for the use of any recreational facilities within the Common Elements by prospective purchasers.

(c) Construction Easements. The right to create and use easements through the Common Elements for the purpose of making improvements within the Project. Declarant expressly reserves the right to perform warranty work, and repairs and construction work and to store materials in secure areas, in Units and in Common Elements, and the future right to control such work and repairs, and the right of access thereto, until its completion. Declarant may perform all work without the consent or approval of any Unit Owner or First Mortgagee or holder of a Security Interest. Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Property for the purpose of furnishing utility and other services to buildings and improvements to be constructed on any of the Property. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey improvements within those easements anywhere in the Common Elements not occupied by an Improvement containing Units.

(d) Control of Association and Board of Directors. Subject to Section 8.6, the right to appoint or remove any officer of the Association or any member of the Board of Directors.

(e) Amendment of Declaration. The right to amend this Declaration in connection with the exercise of any Development Rights.

(f) Amendment of Plat. The right to amend the Plat and any Development Agreement between Declarant and the City of Ketchum in connection with the exercise of any Development Rights.

(g) Signs. The right to maintain signs on the Common Elements advertising the Project.

(h) Post-Sales. The right to use the Common Elements to maintain customer relations and provide post-sale services to Unit Owners.

(i) Parking/Storage. The right to use and to allow others to use all parking and storage areas, except Limited Common Elements appurtenant to sold Units, in connection with its marketing efforts.

(j) Disputes With Association. The right to require that all disputes with the Association, including but not limited to those arising out of or relating to the purchase and sale of the Units, the construction or management of the Units or Common Elements, or the interpretation of this Declaration, be mediated by the American Arbitration Association under its Commercial Mediation Rules. Thereafter, Declarant shall have the right to require that any unresolved dispute or controversy or claim, including but not limited to the aforementioned, be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

(k) Payment of Common Expenses. The right, but not the obligation, to pay all or part of budgeted Common Expenses in lieu of the Association levying Assessments for the same for any period of time.

Section 15.2 Additional Reserved Rights. In addition to the Special Declarant Rights set forth in Section 15.1 above, Declarant also reserves the following additional rights (the "*Additional Reserved Rights*"):

(a) Dedications. The right to establish, from time to time, by dedication or otherwise, utility and other easements for purposes including but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, driveways, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Unit Owners within the Project.

(b) Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulation of parking and/or recreational facilities, which may or may not be a part of the Project for the benefit of the Unit Owners and/or the Association.

(c) Easement Rights. The rights to an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations arising under this Declaration or the Act.

(d) Unit Rentals. Declarant shall have the right to enact reasonable rules relating to the rental of units, including use of Common Elements, by renters, consistent with the provisions of Section 13.6.

(e) Other Rights. The right to exercise any Additional Reserved Right created by any other provision of this Declaration.

Section 15.3 Limitations on Special Declarant Rights and Additional Reserved Rights. Unless sooner terminated by an amendment to this Declaration executed by the Declarant, any Special Declarant Right or Additional Reserved Rights may be exercised by the Declarant so long as the Declarant (a) is obligated under any warranty or obligation; or (b) owns ten percent (10%) of the total number of Residential Units; provided, however, all Special Declarant Rights and Additional Reserved Rights shall terminate two (2) years after the termination of the Period of Declarant Control. Earlier termination of certain rights may occur pursuant to requirements of the Act.

Section 15.4 Interference with Special Declarant Rights. Neither the Association nor any Unit Owners may take any action or adopt any rule and/or regulation that will interfere with or diminish any Special Declarant Rights or Additional Reserved Rights without the prior written consent of the Declarant.

Section 15.5 Rights Transferable. Any Special Declarant Rights or Additional Reserved Right created or reserved under this Article 15 for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the Records. Such instrument shall be executed by the transferor Declarant and the transferee.

Section 15.6 Owner Waivers, Releases and Assumption of Risk Rights Transferable. Each Owner by accepting a deed to a Unit thereby does agree to assume all responsibility for and all inherent risk of damage or injury that may occur while owning or occupying a Unit or the Common Area, including but not limited to the following:

(a) Damage to land and other real property that is not part of a Unit, or that was not included in the purchase price for the Unit;

(b) Damage to spas and other recreational equipment or facilities driveways, boundary and retaining walls not necessary to the structural integrity of the Unit, fences, landscaping, sprinkler systems, patios, decks, stoops, steps

and porches, or any other appurtenant structure or attachment to a Unit not part of the Unit;

(c) Damage or loss which arises while the Unit is being used for nonresidential purposes;

(d) Damage or loss which arises out of the use of the patio fireplace;

(e) Any condition, which does not result in actual physical damage to the Unit;

(f) Damage to Unit as a result of modifications or improvements to Units. Unit Owner shall restore the Unit to industry standard codes or to the level of construction, whichever is greater.

(g) Any loss or damage that is caused or made worse by any of the following causes, whether acting alone or in concert or in sequence or concurrence with any other cause or causes whatsoever:

(h) Negligence, improper maintenance, defective material or work supplied by, or improper operation by, anyone other than the Declarant or its contractors, including failure to comply with the warranty requirements of manufacturers of appliances, equipment or fixtures;

(i) Failure to give prompt and proper notice to any insurer, including to any Home Buyer's Warranty insurer;

(j) Riot or civil commotion, war, vandalism, hurricane, tornado, fire, explosion, blasting, smoke, water, groundwater, flood, earthquake, hail snow, ice storm, lighting, falling trees or other objects, aircraft, vehicles, mudslide, avalanche, or volcanic eruption;

(k) Abuse or use of a Unit, or any part thereof, beyond the reasonable capacity of such Unit for such use;

(l) Microorganisms, fungus, decay, wet rot, dry rot, mold, mildew, vermin, insects, rodents, wild or domestic animals, plants, corrosion, rust, radon, radiation, asbestos, any solid, liquid or gaseous pollutant, contaminant, toxin, irritant, or carcinogenic substance, and electromagnetic field or emission;

(m) Failure to minimize or mitigate any defect, condition, loss or damage as soon as practicable.

(n) Any damage known prior to acquiring the Unit;

(o) Loss caused, in whole or in part, by any peril or occurrence for which compensation is provided by private insurance, or state or federal funds;

(p) Diminished market value of the Unit;

(q) Any and all consequential loss or damage, including without limitation, any damage to property not covered by insurance, any damage to property not owned by the Owner, any bodily damage or personal injury of any kind, including physical or mental pain and suffering and emotional distress, and any medical or hospital expenses, or lost profits.

Each Owner further (i) releases Declarant and its members, employees, agents and representatives from any claim, loss, liability or cause of action in connection with the risks hereby assumed, (ii) waives and agrees not to sue, make any claim against, maintain an action against or recover from Declarant, its members, employees, agents, or representatives for damages sustained as a result of the risks hereby assumed, and (iii) to indemnify and hold harmless, Declarant and its members, employees, agents or representatives from all claims, judgments, costs, including attorneys' fees, incurred in connection with any action brought as a result of the risks hereby assumed.

ARTICLE 16 - INSURANCE

Section 16.1 Coverage. Commencing not later than the first conveyance of a Unit to a purchaser and to the extent reasonably available, the Association shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Board of Directors determines that any insurance described herein will not be maintained, the Board of Directors shall promptly cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners and Eligible First Mortgagees at their respective last known addresses.

(a) Property Insurance. The Association shall maintain property insurance on the Project for broad form covered causes of loss in amount of insurance not less than the full insurable replacement cost of the insured property less applicable deductibles at the time insurance is purchased and at

each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property insurance policies.

(b) Liability Insurance. The Association shall maintain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Project, insuring the Association. The Board of Directors, the Managing Agent, and their respective employees and agents. The minimum limits of insurance will be \$1,000,000 per occurrence, subject to an annual policy aggregate of \$2,000,000 unless otherwise determined by the Board. The Declarant shall be included as an additional insured in such Declarant's capacity as a Unit Owner. Unit Owners and Eligible First Mortgagees shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, of the Common Elements or membership in the Association.

(c) Fidelity Bond. The Association shall maintain a fidelity bond on all persons who control or disburse funds of the Association. Coverage shall not be less in the aggregate than two months' current Assessments plus reserves, as calculated from the current budget of the Association. Any person employed as an independent contractor by the Association, including the Property Management Company must obtain and maintain fidelity bond in like amount for the benefit of the Association unless the Association names such person as an insured employee in the bond specified above.

(d) Other Insurance. The Board of Directors may also procure insurance against such additional risks of a type normally carried with respect to properties of comparable character and use that the Board of Directors deems reasonable and necessary in order to protect the Project, the Association and the Unit Owners, including but not limited to Community Association Professional (aka Directors and Officers Liability), Company Reimbursement (or Company Indemnification) and Fiduciary Liability policies.

(e) Unit Owners' Policies. Each Unit Owner may obtain additional insurance at his own cost for his own benefit so long as all such policies provide that the liability of the carriers issuing insurance to the Association hereunder shall not be affected or diminished by reason of any such insurance carried by any Unit Owner.

Section 16.2 Required Provisions. All insurance policies carried pursuant to the requirements of this Article 16 must provide that:

(a) each Unit Owner and each Eligible First Mortgagee is an insured person under the policy with respect to liability arising out of such Unit Owner's interest in the Common Elements or membership in the Association;

(b) no act or omission by any Unit Owner or Eligible First Mortgagee, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;

(c) if, at the time of a loss under the Association policy, there is other insurance in the name of a Unit Owner covering the risks covered by the policy, the Association's policy provides primary insurance until the limits are exhausted, the Unit Owner coverage will then be excess;

(d) any loss covered by the policies must be adjusted by the Insurance Carrier with the Association;

(e) the insurance proceeds for any loss shall be payable to an insurance trustee designated for that purpose, or otherwise to the Association and not to any holder of a Security Interest;

(f) the insurer, or authorized representative, shall issue certificates of insurance to the Association and, upon request, to any Unit Owner or holder of a Security Interest; and

(g) the insurer issuing the policy may not cancel or refuse to renew it until forty-five (45) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and any Unit Owner(s) and holder(s) of Security Interests to whom a certificate of insurance has been issued at their respective last known addresses.

Section 16.3 Adjustment of Claims. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submission of claims, responsibility for deductibles, and any other matters of claims adjustment that are required by the insurer. To the extent the Association settles a property insurance claim, it shall have the authority to assess negligent Unit Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event more than one Unit is damaged by a loss, the Association in its reasonable discretion may assess each Unit Owner a pro rata share of any deductible paid by the Association.

Section 16.4 Copies of Policies. A copy of each insurance policy obtained by the Association shall be made available for inspection by any Unit Owner or Eligible First Mortgagee at reasonable times.

ARTICLE 17 - RESTORATION UPON DAMAGE OR DESTRUCTION

Section 17.1 Duty to Restore. Any portion of the Project, for which insurance is required under the Act or for which insurance carried by the Association is in effect, that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) the Project is terminated;
- (b) repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety;
- (c) sixty-seven percent (67%) of the Unit Owners, including every Owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild; or
- (d) prior to the conveyance of any Unit to a purchaser, the holder of a Security Interest on the damaged portion of the Project rightfully demands all or a substantial part of the insurance proceeds.

In the event the Project is not repaired or replaced as allowed by Subparagraphs (a), (b) and (c) above, then the Real Estate in the Project shall be sold and the proceeds distributed pursuant to the procedures provided for in the Act for termination of condominium projects.

Section 17.2 Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 17.3 Plans. The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Board of Directors and a Majority of Owners.

Section 17.4 Replacement of Less Than Entire Property. If the entire Project is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the

remainder of the Project and, except to the extent that other persons will be distributees:

(a) the insurance proceeds attributable to a Unit and Limited Common Elements that are not rebuilt must be distributed to the Unit Owner of the Unit and the Unit Owner of the Unit to which the Limited Common Elements were allocated, or to holders of Security Interests, as their interests may appear;

(b) the remainder of the proceeds must be distributed to each Unit Owner or holders of Security Interests, as their interests may appear, in proportion to the Allocated Interests in the Common Elements of all the Units; and

(c) if the Unit Owners vote not to rebuild a Unit, the Allocated Interests of the Unit are reallocated upon the vote as if the Unit had been condemned, and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting the reallocations.

Section 17.5 Insurance Proceeds. The insurance trustee, or if there is no insurance trustee, then the Board of Directors, acting by the President, shall hold any insurance proceeds in trust for the Association, Unit Owners and holders of Security Interests as their interest may appear. Subject to the provisions of the Sections above, the proceeds shall be disbursed first for the repair or restoration of the damaged Property, and the Association, Unit Owners and holders of Security Interests are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the Project is terminated, in which event the surplus proceeds will be distributed as provided in this Declaration.

Section 17.6 Certificates by the Board of Directors. The insurance trustee, if any, may rely on the following certifications in writing made by the Board of Directors:

(a) whether or not damaged or destroyed Property is to be repaired or restored; and

(b) the amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

Section 17.7 Certificates by Attorneys or Title Insurance Companies. If payments are to be made to Unit Owners or holders of Security Interests, the Board of

Directors, and the insurance trustee, if any, shall obtain and may rely on a title insurance company or attorney's certificate of title or a title insurance policy based on a search of the Records from the date of recording of this Declaration stating the names of the Unit Owners and the holders of Security Interest.

ARTICLE 18 - CONDEMNATION

Section 18.1 Sale by Unanimous Consent. If an action for condemnation of all or a portion of the Project is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all of the Unit Owners and after written notice to all mortgagees, the development, or a portion of it, may be sold by the Board of Directors acting as irrevocable attorney-in-fact of all of the Unit Owners for a price deemed fair and equitable by the Board of Directors, but in no event less than the aggregate unpaid balance of all mortgages encumbering all Units in the development.

Section 18.2 Distribution of Proceeds of Sale. On a sale occurring under Section 18.1, the proceeds shall be distributed to the Unit Owner and the mortgagees of each Unit in proportion to each Units relative interest in the Project as determined by an appraisal commissioned by the Board of Directors.

Section 18.3 Distribution of Condemnation Award. If the Project, or a portion of it, is not sold but is instead taken, the judgment of condemnation shall by its terms apportion the award among the Unit Owners and their respective mortgagees.

ARTICLE 19 - MORTGAGEE PROTECTIONS

Section 19.1 Introduction. This Article 19 establishes certain standards and covenants which are for the benefit of First Mortgagees. This Article 19 is supplemental to, and not in substitution for, any other provisions of this Declaration, but in the case of any conflict, this Article shall control.

Section 19.2 Percentage of First Mortgagees. Unless specifically provided otherwise, wherever in this Declaration the approval or consent of a specified percentage of Eligible First Mortgagees is required, it shall mean the approval or consent of sixty-seven percent (67%) of Eligible First Mortgagees. Each Eligible First Mortgagee shall be entitled to one vote for each Security Interest held by such Eligible First Mortgagee.

Section 19.3 Notice of Actions. If requested in writing to do so, the Association shall give prompt written notice of the following to each Eligible First Mortgagee making such request:

(a) any condemnation loss or any casualty loss which affects a material portion of the Common Elements or any Unit in which an interest is held by the Eligible First Mortgagee;

(b) any delinquency in the payment of Assessments which remains uncured for sixty (60) days by a Unit Owner whose Unit is encumbered by a Security Interest held by such Eligible First Mortgagee;

(c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) any proposed action which would require the consent of Eligible First Mortgagees as set forth in this Article;

(e) any judgment rendered against the Association; and

(f) a copy of any financial statement of the Association.

Section 19.4 Consent Required. The Association may not take any of the following actions, except as such rights have been specifically reserved by Declarant under the provisions of this Declaration, without the consent of sixty-seven percent (67%) of the Eligible First Mortgagees:

(a) sale, conveyance or encumbrance of the Common Elements, separate from any Unit (provided, however, that the granting of easements for public utilities, or for other purposes provided for in this Declaration will not be deemed a transfer within the meaning of this clause);

(b) restoration or repair of the Project (after hazard damage or partial condemnation) in a manner other than that specified in this Declaration;

(c) termination of this Declaration for reasons other than substantial destruction or condemnation, subject to the approval percentages required for such termination;

(d) any action not to repair or to replace the Common Elements except as permitted in this Declaration.

Section 19.5 Notice of Objection. Unless an Eligible First Mortgagee provides the Secretary of the Association with written notice of its objection, if any, to any proposed amendment or action requiring the approval of Eligible First Mortgagees within thirty (30) days following the receipt of notice of such proposed amendment or action, the Eligible First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

Section 19.6 First Mortgagees' Rights.

(a) Advances. First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Elements or improvements thereon, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Elements. First Mortgagees making such payments shall be owed immediate reimbursement from the Association.

(b) Cure Rights. First Mortgagees shall be entitled to cure any delinquency of the Unit Owner encumbered by a First Mortgage in the payment of Assessments. In that event, the First Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

Section 19.7 Limitations on First Mortgagee's Rights. No requirement for approval or consent by a First Mortgagee provided in this Article 19 shall operate to:

(a) deny or delegate control over the general administrative affairs of the Association by the Unit Owners or the Board of Directors;

(b) prevent the Association or Board of Directors from commencing, intervening and/or settling any legal proceeding; or

(c) prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds in accordance with the requirements of Article 18 entitled "Restoration Upon Damage or Destruction".

Section 19.8 Special Declarant Rights. No provision or requirement of this Article 19 entitled "Mortgagee Protections" shall apply to any Special Declarant Rights reserved to Declarant in this Declaration.

ARTICLE 20 - DURATION OF COVENANTS; AMENDMENT AND TERMINATION

Section 20.1 Term. This Declaration and any amendments or supplements to it shall remain in effect from the date of recordation for a period of fifty (50) years. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years each, unless otherwise terminated or modified as provided in this Article.

Section 20.2 Amendment of Declaration. Except to the extent that this Declaration and the Act expressly permit or require amendments that may be executed by the Declarant or by the Association, this Declaration (including the Plat) may be amended only by a vote or agreement of Unit Owners to which more than sixty seven percent (67%) of the votes in the Association are allocated. Notwithstanding the foregoing, no amendment may create or increase Special Declarant Rights, increase the number of Units or change the boundaries of any Unit or the Allocated Interests of a Unit in the absence of a vote or agreement of the Unit Owners to which at least sixty seven percent (67%) of the votes of the Association, including sixty seven percent (67%) of the votes allocated to Units not owned by Declarant, are allocated, except to the extent otherwise permitted or required by this Declaration or the Act. Notwithstanding the foregoing, no amendment may change the uses to which any Unit is restricted in the absence of a vote or agreement of Unit Owners to which at least sixty seven percent (67%) of the votes of the Association are allocated, except to the extent otherwise permitted or required by this Declaration or the Act.

Section 20.3 Execution of Amendments; Expenses. Any amendment shall be prepared, executed and recorded either by the Declarant or by an officer of the Association designated for that purpose or, in the absence of a designation, by the President of the Association. All expenses associated with preparing and recording an amendment to this Declaration shall be the sole responsibility of: (a) any Unit Owners desiring an amendment as provided for in this Declaration or the Act; (b) the Declarant, to the extent the right to amend this Declaration is reserved to the Declarant and exercised by the Declarant; or (c) in all other cases by the Association as a Common Expense.

Section 20.4 When Modifications Permitted. Notwithstanding the provisions of Section 20.2 above, no amendment or termination of this Declaration shall be

effective in any event during the Period of Declarant Control, unless the written approval of Declarant is first obtained.

Section 20.5 Recording of Amendments. Any amendment to this Declaration made in accordance with this Article 20 shall be immediately effective upon the recording of the executed amendment in the Records together with a duly authenticated certificate of the Declarant or the Secretary of the Association stating that the required vote of Unit Owners, if any, and required consents of First Mortgagees (and/or Eligible First Mortgagee, as applicable) were obtained and are on file in the office of the Association. The amendment must be indexed in the grantee's index in the name of the Project and the Association and in the grantor's index in the name of each person or entity executing the Amendment.

Section 20.6 Rights of Eligible First Mortgagees. To the extent allowed by the Act, Eligible First Mortgagees shall have the rights to approve specified action of the Unit Owners or the Association as a condition to the effectiveness of those actions as provided in Article 19 entitled "Mortgagee Protections".

Section 20.7 Termination of the Project. The Project may only be terminated as provided in the Act.

ARTICLE 21 – ALLEGED DEFECTS

Section 21.1 Intention. It is Declarant's intent that all Improvements of every type and kind which may be installed by Declarant as part of the Project, including the fixtures in the Units and Common Elements within the Project (collectively, the "*Declarant Improvements*") be of a quality that is consistent with construction and development practices for a condominium of this type. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and Declarant's responsibility therefor. It is Declarant's intent to resolve all disputes and claims regarding "Alleged Defects" (as defined below) amicably, and without the necessity of time consuming and costly litigation. Accordingly, all Owners and the Association, as well as the Board shall be bound by the claim resolution procedure set forth in this Article 19.

Section 21.2 Declarant's Right to Cure. If the Association, the Board, or any Owner or Owners (collectively, "*Claimant*") claim, contend, or allege that any portion of a Unit and/or any Declarant Improvements are defective or incomplete, or that Declarant or its agents, consultants, contractors or subcontractors were negligent in the planning, design, engineering, grading, construction or other development thereof

(collectively, an "*Alleged Defect*"), Declarant hereby reserves the right to inspect, cure, repair and/or replace such Alleged Defect as set forth herein.

Section 21.3 Notice to Declarant. If a Claimant discovers an Alleged Defect, Claimant shall, within a reasonable time after discovery, notify Declarant, in writing, at: Limelight Ketchum, LLC, c/o: General Counsel, Aspen Skiing Company, PO Box 1248, Aspen, CO 81612, or such other address at which Declarant maintains its principal place of business, of the specific nature of such Alleged Defect ("*Notice of Alleged Defect*").

Section 21.4 Right to Enter, Inspect, Cure and/or Replace. Immediately after the receipt by Declarant of a Notice of Alleged Defect or the independent discovery of an Alleged Defect by Declarant or any governmental agency, and for a reasonable time thereafter, as part of Declarant's reservation of rights, Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, any Unit or the Common Elements, and/or any Declarant Improvements for the purposes of inspecting and, if deemed necessary by Declarant, curing, repairing and/or replacing the Alleged Defect. In conducting such inspection, cure, repairs and/or replacement, Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

Section 21.5 Claims. All Claims arising out of this Article 21 shall be submitted to binding Arbitration as provided in Section 21.8, below. No Claimant shall initiate any arbitration against Declarant alleging damages (a) for the costs of curing, repairing, or replacing any Alleged Defect, (b) for the diminution in value of any real or personal property resulting from such Alleged Defect or (c) for any consequential damages resulting from such Alleged Defect, unless and until Claimant has (i) delivered to Declarant a Notice of Alleged Defect and (ii) Declarant has, within 120 days after its receipt of the Notice of Alleged Defect, either (1) failed to cure, repair or replace the Alleged Defect or (2) if the Alleged Defect cannot reasonably be cured, repaired or replaced within such 120 day period, failed to commence such cure, repair or replacement of the Alleged Defect and, thereafter, failed to pursue diligently such cure, repair or replacement to completion. During any such period while Declarant is diligently pursuing to completion the cure, repair or replacement of the Alleged Defect, Claimant shall not stop, restrict, hinder, interrupt or otherwise interfere with any reasonable action or activity taken by Declarant, its employees, agents, or independent contractors, to inspect, cure, repair or replace the Alleged Defect, whether or not such action or activity is taken, or is proposed to be taken, on property owned by Claimant.

Section 21.6 No Additional Obligations; Irrevocability and Waiver of Rights. Nothing set forth in this Article 21 shall be construed to impose any obligation on Declarant to inspect, cure, repair or replace any item or Alleged Defect for which

Declarant is not otherwise obligated to do under applicable law or any limited warranty provided by Declarant in connection with the sale of the Units and/or the Declarant Improvements constructed thereon, nor shall anything set forth in this Article 21 constitute an express or implied representation, warranty or guarantee by Declarant concerning any Declarant Improvements or the Project. The right of Declarant to enter, inspect, cure, repair and/or replace reserved hereby shall be irrevocable and may not be waived and/or terminated except by a writing, in recordable form, executed and recorded by Declarant in the Records.

Section 21.7 Statutory Remedies. The terms, conditions and procedures set forth in this Article 21 are in addition to the terms, conditions and procedures set forth in Idaho Code §§ 6-2501, et seq., and shall, to the maximum extent permitted by law, be exercised by any Claimant prior to instituting a claim and/or commencing an action under Idaho Code §§ 6-2501, et seq. for “constructional defects”; *provided, however*, the procedures set forth in this Article 21 shall not abrogate any of the requirements of Claimant under Idaho Code §§ 6-2501, et seq. Further, to the extent any provisions of this Article 21 are inconsistent with the provision of Idaho Code §§ 6-2501, et seq., the provisions of this Section 21 shall apply to the maximum extent permitted by law and shall extend all the time periods set forth in Idaho Code §§ 6-2501, et seq. until expiration of the 120 day period set forth in this Article 21. It is the express intent of Declarant to provide, by this Article 21, an initial 120 day period for Declarant to investigate and cure any constructional defects alleged by Claimant before the provisions of Idaho Code §§ 6-2501, et seq. are implemented and initiated by Claimant including, without limitation, the notice of claim, inspection, offer of settlement, and repair provisions of Idaho Code §§ 6-2501, et seq. Each Owner, by acceptance of a deed or otherwise acquiring title to any Unit agrees to be bound by all of the provisions of this Article 21.

Section 21.8 Arbitration. Unless otherwise agreed, the exclusive method of binding dispute resolution for claims made by a Claimant arising out of this Article 21 shall be arbitration administered by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules in effect as of the date of this Declaration. A demand for arbitration shall be made by such Claimant in writing, delivered to Declarant and filed with the entity administering the arbitration. No demand for arbitration shall be made until after the procedures set forth in Sections 21.3 through 21.6 have been fully complied with and the timeframes set forth therein have expired. In no event shall a claim for arbitration be made after the date when the initiation of legal or equitable proceedings based on the claim are barred by the applicable statute of limitations or statute of repose. For purposes of statutes of limitation and statutes of repose, receipt of the written demand for arbitration by the

entity administering the arbitration shall constitute the initiation of legal action or equitable proceedings based on the claim. This agreement to arbitrate shall be specifically enforceable in accordance with applicable law in any court of competent jurisdiction, and any award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. In any such arbitration, the prevailing party shall, in addition to any other relief received, be entitled to an award of its reasonable attorneys' fees and costs arising from such claim.

Section 21.9 Additional Disclosures; Disclaimers and Releases

WITHOUT LIMITING ANY OTHER PROVISION IN THIS DECLARATION, THE ASSOCIATION AND, BY ACCEPTANCE OF A DEED OR ACQUIRING TITLE TO A UNIT, OR BY POSSESSION OR OCCUPANCY OF A UNIT, EACH OWNER FOR ITSELF AND FOR THE OWNER'S TENANTS, EMPLOYEES, FAMILY MEMBERS, GUESTS AND OTHER INVITEES, SHALL CONCLUSIVELY BE DEEMED TO UNDERSTAND, AND TO HAVE ACKNOWLEDGED AND AGREED TO, ALL OF THE FOLLOWING:

(a) Living in a multi-story building with hotel, commercial and residential components entails living in very close proximity to other persons and businesses, with attendant limitations on solitude and privacy. Walls, floors and ceilings have been designed to meet applicable building codes. However, Owners will hear noise from adjacent Units within the Project, including, but not limited to, noise from showers, bathtubs, sinks, toilets or other sources of running water and/or plumbing fixtures. Also, Owners may hear noise from items such as spas, equipment in the recreation amenities located in the Hotel Unit, vacuum cleaners, stereos or televisions, or from people running, walking, exercising and socializing. Finally, Owners can expect to hear sound, music, noise, odors, vibrations, and other nuisances from the Hotel Unit and exterior open spaces or Common Areas in the normal course of hotel and banquet operations as well as from other residential, retail and commercial developments in the vicinity of the Project. Owners may also experience light entering the Units from commercial lighting in the vicinity and from street lights located in close proximity to the windows and doors of the Units.

(b) The Association has no control over the transmission of noise, light or odors within the Project and/or from the adjacent residential, retail and commercial developments, and the potential effect of such noise, light or odors on Units within the Project.

(c) Each Owner acknowledges that (i) there are no protected views in the Project, and no Unit is assured the existence or unobstructed continuation

of any particular view, and (ii) any construction, landscaping or other installation of Improvements by the Declarant, other Owners or owners of other property in the vicinity of the Project may impair the view from any Unit, and each Owner consents to such view impairment.

(d) Certain portions of land (the "*Neighboring Developments*") outside, abutting and/or near the Project have not yet been developed or may be subject to redevelopment, and in the future may or will be developed by Declarant, or third parties over whom Declarant has no control. The Association has no jurisdiction over the future Neighboring Developments, and accordingly, there is no representation as to the nature, use or architecture of any future development or improvements on Neighboring Developments; and such use, development and/or construction on Neighboring Developments may result in noise, dust, or other "nuisance" to the Project or Owners.

(e) Residential and commercial construction is an industry inherently subject to variations and imperfections, and items which do not materially affect safety or structural integrity shall be deemed "*expected minor flaws*" (including, but not limited to: reasonable wear, tear or deterioration; shrinkage, swelling, expansion or settlement; squeaking, peeling, chipping, cracking or fading; touch-up painting; minor flaws or corrective work; and like items) and not constructional defects. Subsequent to the initial Conveyance of each Unit, each Owner hereby releases the Declarant from any and all claims arising from or relating to such expected minor flaws.

(f) The finished construction of each Unit, Common Elements and any Association Property, while within the standards of the industry in the City of Ketchum, Blaine County, Idaho, and while in substantial compliance with the plans and specifications, will be subject to variations and imperfections and expected minor flaws; and each Owner hereby releases the Declarant from any and all claims arising from or relating to such variations, imperfections and flaws.

(g) Indoor air quality of the Units may be affected in a manner and to a degree found in new construction within industry standards, including, without limitation, by particulates or volatiles emanating or evaporating from new carpeting or other building materials, fresh paint or other sealants or finishes, and similar products.

(h) Installation and maintenance of any security or traffic access device, operation, or method, shall not create any presumption or duty whatsoever of the Declarant or the Association (or their respective officers, directors, managers, employees, agents, and/or contractors) with regard to security or protection of persons or property within or adjacent to the Project; and each Owner, by acceptance

of a deed to a Unit, whether or not so stated in the deed, shall be deemed to have agreed to take any and all protective and security measures and precautions which such Owner would have taken if the Project had been located within public areas.

(i) The Units and other portions of the Project from time to time may, but need not necessarily, experience problems with bees, ants, spiders, termites, birds, and/or other insect, rodent or pest problems (collectively, "pests"); and Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to any pest, and each Owner must make its own independent determination regarding the existence or non-existence of any pest(s) which may be associated with the Unit or other portions of the Project.

(j) Even with a "slip sheet" underneath, certain hard surface flooring may still be subject to hairline cracks, and grout may crack and/or deteriorate, and furthermore, cracks in the walls may result from normal settlement and shifting around doors, windows, walls and ceilings; and each Owner shall be solely responsible for any such cracking or deterioration.

(k) "Cutting-out" (for example, but not limited to, for installation of speakers or "can" lights) or alteration of any portion of wall, ceiling, and/or floor by an Owner within a Unit is permitted only when such "cutting-out" is repaired, does not damage or adversely affect sound insulation or other important features of the Unit and complies with the pertinent fire codes.

(l) Other matters, limitations, and restrictions, uniquely applicable to this Project, are set forth in this Declaration, and may be supplemented from time to time by the Rules and Regulations.

(m) Declarant has complied with all Unit maintenance and operation procedures and has performed upgrades, modifications, and/or repairs consistent with or above industry standards. Declarant reserves the right to buy back Units deemed to be defective at the market rate. Should an Owner allege that a Unit is defective, an inspection shall be performed by an independent third party and shall be paid for by the Unit Owner. Should the Unit be deemed defective Declarant will reimburse Unit Owner 50% of the inspection cost.

Section 21.10 Releases. THE ASSOCIATION AND, BY ACCEPTANCE OF A DEED OR OTHERWISE ACQUIRING TITLE TO A UNIT, EACH OWNER, FOR ITSELF AND ALL PERSONS CLAIMING UNDER SUCH OWNER, SHALL CONCLUSIVELY BE DEEMED TO HAVE ACKNOWLEDGED AND AGREED TO RELEASE THE DECLARANT AND ITS AFFILIATES, AND ALL OF THEIR RESPECTIVE OFFICERS, MANAGERS, AGENTS,

EMPLOYEES, SUPPLIERS, AND CONTRACTORS, FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, LOSS, DAMAGE OR LIABILITY (INCLUDING, BUT NOT LIMITED TO, ANY CLAIM FOR NUISANCE OR HEALTH HAZARD, PROPERTY DAMAGE, BODILY INJURY, AND/OR DEATH) ARISING FROM OR RELATED TO ALL AND/OR ANY ONE OR MORE OF THE CONDITIONS, ACTIVITIES, OCCURRENCES, OR OTHER MATTERS DESCRIBED IN THE FOREGOING SECTION 21.

ARTICLE 22 - MISCELLANEOUS

Section 22.1 Enforcement. Except as otherwise provided in this Declaration, enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration and the other Project Documents shall be through any proceedings at law or in equity brought by any aggrieved Unit Owner, the Association, or Declarant against the Association or any Unit Owner. Such actions may seek remedy by injunction or restraint of a violation or attempted violation, or an action for damages, or any of them, without the necessity of making an election.

Section 22.2 Notices. All notices, demands, or other communications required or permitted to be given hereunder shall be in writing, and any and all such items shall be deemed to have been duly delivered upon personal delivery; upon actual receipt, in the case of notices forwarded by certified mail, return receipt requested, postage prepaid; as of 12:00 Noon on the immediately following business day after deposit with Federal Express or a similar overnight courier service; or as of the third business hour (a business hour being one of the hours from 8:00 a.m. to 5:00 p.m. on business days) after transmitting by telecopy.

Section 22.3 Nonwaiver. Failure by Declarant, the Association, or any Unit Owner or Eligible First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in the Project Documents shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 22.4 Severability. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions of it by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which provisions shall remain in full force and effect. Any provision which would violate the rule against perpetuities and the rule prohibiting unlawful restraints on alienation shall be construed in a manner as to make this Declaration valid and enforceable.

Section 22.5 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

Section 22.6 Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

Section 22.7 Conflicts in Legal Documents. In case of conflicts between the provisions in this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of conflicts in the provisions in the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Section 22.8 Exhibits. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

Section 22.9 Choice of Law. This Declaration shall be construed and interpreted in accordance with the laws of the State of Idaho.

Section 22.10 Construction. This Declaration shall be construed and interpreted without the application of any rule of construction based on the Declarant as the drafter of this Declaration.

Section 22.11 Legal Counsel. This Declaration was prepared by attorneys representing only the Declarant.

[Signature Page to Follow]

THIS DECLARATION is made by Ketchum Limelight, LLC, a Delaware limited liability company, as Declarant, and in witness thereof, is has executed this Declaration on the 20th day of January, 2017, to be effective upon recording.

Limelight Ketchum, LLC,
a Delaware limited liability company

By: **Brush Creek Land Company, LLC**, its Member

By: **Bell Mountain Partners Limited Partnership**, its Manager

By: **Bell Highlands Corporation**, its General Partner

By: _____

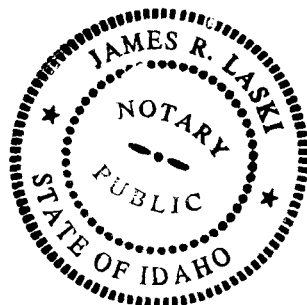
James S. Crown, Vice President

State of Idaho)

) ss.

County of Blaine)

On this 20th day of January, 2017, before me, a Notary Public in and for said State, personally appeared **James S. Crown**, known or identified to me to be the Vice President of Bell Highlands Corporations, the general partner in Bell Mountain Partners Limited Partnership, the manager of Brush Creek Land Company, LLC, which is the member of Limelight Ketchum, LLC, a Delaware limited liability company, who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that such general partnership executed the same in said limited liability company name.



Notary Public for Idaho

Residing at _____

My Commission expires _____

**EXHIBIT A
TO
DECLARATION**

LEGAL DESCRIPTION

**Amended Lot 1A, Block 20, in Section 11, Ketchum Town Site,
City of Ketchum, Blaine County, Idaho.**

EXHIBIT B
TO
DECLARATION
TABLE OF ALLOCATED INTERESTS

Unit Identification	Unit Classification	Unit Area (sq. feet)	Percentage Share of Common Elements	Percentage Share of Common Expense Liability	Number of Votes
H	Hotel	67,553	65.19	65.19	16
Ret	Retail	1,955	1.89	1.89	1
406	Residential	3,152	3.04	3.04	1
409	Residential	2,740	2.64	2.64	1
411	Residential	1,871	1.81	1.81	1
412	Residential	1,529	1.48	1.48	1
414	Residential	3,571	3.45	3.45	1
423	Residential	2,574	2.48	2.48	1
501	Residential	1,952	1.88	1.88	1
503	Residential	2,433	2.35	2.35	1
505	Residential	2,702	2.61	2.61	1
507	Residential	1,871	1.81	1.81	1
508	Residential	1,532	1.48	1.48	1
510	Residential	3,575	3.45	3.45	1
512	Residential	1,789	1.72	1.72	1
514	Residential	2,826	2.73	2.73	1
	TOTAL	103,622	100.00	100. 00	31

EXHIBIT C
TO
DECLARATION

**ASSOCIATION ARTICLES OF
INCORPORATION**



ARTICLES OF INCORPORATION (Non-Profit)

Title 30, Chapters 21 and 30, Idaho Code
Filing fee: \$30 typed, \$50 not typed
Complete and submit the form in duplicate.

FILED EFFECTIVE

2016 SEP 23 AM 8:59

SECRETARY OF STATE
STATE OF IDAHO

Article 1: The name of the corporation shall be:
151 South Main Hotel & Residences Owners' Association, Inc.

Article 2: The purpose for which the corporation is organized is: _____
Condominium Owners' Association

Article 3: Registered agent name and address:
James R. Laski 675 Sun Valley Rd., Suite A, Ketchum, ID 83340
(Name) (Address)

Article 4: The board of directors shall consist of no fewer than three (3) people. The names and addresses of the initial directors are:

Don Schuster PO Box 1248, Aspen CO 81612
(Name) (Address)

Richard Stettner PO Box 1248, Aspen CO 81612
(Name) (Address)

Todd Richmond PO Box 1248, Aspen CO 81612
(Name) (Address)

Article 5: Incorporator name(s) and address(es):
James R. Laski PO Box 3310, Ketchum, ID 83340
(Name) (Address)

(Name) (Address)

(Name) (Address)

Article 6: The mailing address of the corporation shall be:
PO Box 1248, Aspen CO 81612
(Address)

Article 7: The corporation (☒ does ☐ does not) have voting members.

Article 8: Upon dissolution the assets shall be distributed: _____
pro rata to its members

Signatures of all incorporators:

Printed Name: James R. Laski

Signature: _____

Printed Name: _____

Signature: _____

Printed Name: _____

Signature: _____

Revised 08/2015

Secretary of State use only
IDAHO SECRETARY OF STATE

09/23/2016 05:00

CK:3828 CT:159456 BH:1547702
1@ 30.00 = 30.00 INC NONP #2

C211269

EXHIBIT D
TO
DECLARATION

ASSOCIATION BYLAWS

BYLAWS
OF
151 SOUTH MAIN HOTEL & RESIDENCES OWNERS' ASSOCIATION, INC.
an Idaho Non-Profit Corporation

LAWSON LASKI CLARK & POGUE, PLLC
675 Sun Valley Road, Suite A
Post Office Box 3310
Ketchum, Idaho 83340

**Article 1
NAME AND LOCATION**

The name of the association is 151 SOUTH MAIN HOTEL & RESIDENCES OWNERS' ASSOCIATION, INC. (hereinafter referred to as the "Association"). The Association is organized under the Idaho Nonprofit Corporation Act. The principal office of the Association shall be located in the County of Blaine, State of Idaho.

**Article 2
DEFINITIONS**

2.1 Declaration. The "Declaration" shall mean, collectively, the Declaration of Covenants, Conditions and Restrictions for the 151 South Main Hotel & Residences, and any amendments or supplements recorded or to be recorded pursuant thereto, and applicable to the condominium development commonly known and referred to as 151 South Main Hotel & Residences located in Ketchum, Idaho.

2.2 Other Definitions. Each and every definition set forth in Section 2 of the Declaration shall have the same meaning herein as therein, and each and every such definition is incorporated by reference herein and made a part hereof as if once again fully written and set forth at length herein.

**Article 3
MEMBERSHIP; VOTING RIGHTS**

The qualification for membership, the classes of membership and the voting rights of members shall be as set forth in Sections 4 and 8 of the Declaration, all of which are hereby incorporated by reference herein as if set forth in full.

**Article 4
MEETINGS OF MEMBERS**

4.1 Annual Meetings. The organizational meeting and the first annual meeting of the members shall be held within sixty (60) days of the date of the first conveyance of a Unit. Thereafter, annual meetings of members of the Association shall be held each year on a day to be determined by the Board of Directors (hereinafter referred to as the "board"), which day shall not be a legal holiday.

4.2 Special Meetings. Special meetings of the members may be called at any time by the president or by a majority of the board, or upon written request of the members representing at least twenty-five percent (25%) of the votes in the Association.

4.3 Notice of Meetings. Notice of all members meetings, annual or special, shall be hand delivered, sent prepaid United States Mail, or, sent by email if receipt by email is agreed to by a member, and shall be given not less than ten (10) days nor more than fifty (50) days prior to the time of said meeting and shall set forth the place, date and hour of the meeting, and the nature of the business to be undertaken. Notices shall be given by, or at the direction of, the secretary or person authorized to call the meeting, and shall be transmitted to each member

151 SOUTH MAIN HOTEL & RESIDENCES OWNERS' ASSOCIATION, INC.
BYLAWS- 1

entitled to vote there at. Notice shall also be given to any mortgagee who has requested to receive notice of such meeting at mortgagee's address last appearing on the books of the Association for the purpose of notice. Mailed notices shall be deemed received 48 hours after same are mailed; notice by hand delivery shall be deemed received upon delivery; notice delivered by email after consent to receive notice by email by member is deemed received upon delivery to the email address appearing on the books of the Association unless a notice of failure of delivery is received by the sending party. Members are obligated to update addresses for Notice with the Association.

4.4 Quorum. The presence at any meeting in person, by telephone or video conferencing, or by proxy of members entitled to cast at least twenty percent (20%) of the total votes of all members of the Association shall constitute a quorum. If any meeting cannot be held because a quorum is not present, members representing a majority of the votes present, either in person or by proxy, may adjourn the meeting to a time not less than 48 hours nor more than 30 days from the time the original meeting was called, at which adjourned meeting the quorum requirement shall be at least ten percent (10%) of said total votes. Any meeting of members whereat a quorum is present may be adjourned for any reason to a time not less than 48 hours nor more than 30 days from the time of such meeting by members representing a majority of the votes present thereat, either in person or by proxy. Notwithstanding the foregoing, meetings to approve the annual budget are subject to the provisions set forth in Section 8.3 of the Declaration.

4.5 Proxies. At all meetings of members each member may be present in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease when the ownership interest or interests of such member entitling him to membership in the Association ceases.

4.6 Order of Business. Unless otherwise determined by the board, the order of business of all meetings of the members shall be as follows:

- (a) roll call;
- (b) proof of notice of meeting or waiver of notice;
- (c) reading of minutes of preceding meeting;
- (d) reports of board and officers;
- (e) unfinished business;
- (f) new business; and
- (g) election of directors, if any are to be elected.

4.7 Parliamentary Procedure. All questions of parliamentary procedure shall be decided in accordance with Roberts Rules of Order.

4.8 Majority of Owners. Except as otherwise provided herein or in the Declaration, the majority of the total voting power present, in person or by proxy, shall prevail at all meetings.

151 SOUTH MAIN HOTEL & RESIDENCES OWNERS' ASSOCIATION, INC.
BYLAWS- 2

4.9 Action Without Meeting. Any action which may be taken at a meeting of the members may be taken without a meeting if authorized by a writing signed by all of the members who would be entitled to vote at a meeting for such purpose and filed with the secretary.

**Article 5
DIRECTORS**

5.1 Number. Prior to the termination of any Period of Declarant Control, the board shall consist of the number of directors as set forth and determined in accordance with Section 8.6 and 8.7 of the Declaration, who need not be members and elected in accordance with the provisions of Section 8.7 of the Declaration. Not later than the termination of any Period of Declarant Control, the board shall consist of at least five (5) directors, two (2) of whom shall be appointed by the Hotel Unit Owner, one (1) of whom shall be appointed by the Retail Unit Owner, and two (2) of whom shall be elected by the Residential Unit Owners. Not more than one representative member from each Residential Unit may serve on the board at the same time.

5.2 Term of Office. The directors shall hold terms of two (2) years, except that the terms of two (2) of the initial directors have one (1) year terms. All directors shall hold office until their successors are elected or appointed, as the case may be, and qualified, or until he/she resigns or has been removed in the manner provided for herein. Subsequent to the Period of Declarant Control, at each annual election, the Residential Unit Owners may elect one director to replace the director elected by Residential Unit Owners whose term will expire that year to hold office for a term of two years. The intent of this provision is to provide that the two directors elected by Residential Unit Owners have staggered terms.

5.3 Nomination. Subject to the provisions of Section 8.7 of the Declaration, the board may create a nominating committee to make nominations of Residential Owners for election to the board. Nominations may also be made from the floor at each annual meeting.

5.4 Election. Election to the board by Residential Unit Owners shall be by secret ballot. At such election, the Residential members, or their proxies, may cast as many votes as they are entitled to cast under the provisions of the Declaration. The candidate receiving the highest number of votes, as confirmed by the Secretary, shall be deemed elected. Election results may be shared with the members.

5.5 Compensation. No director shall receive any compensation for any service he may render to the Association; provided, however, any director may be reimbursed for actual out-of-pocket expenses incurred by him in the performance of his duties.

5.6 Removal; Vacancies. Removal of directors shall be as provided in Section 8.8 of the Declaration. In the event of the death, resignation or removal of a director, his/her successor shall be selected by the remaining members of the board and shall serve for the unexpired term of his predecessor.

**Article 6
MEETINGS OF DIRECTORS**

6.1 Regular Meetings. Regular meetings of the board shall be held quarterly without notice at such place and hour as may be fixed from time to time by resolution of the

151 SOUTH MAIN HOTEL & RESIDENCES OWNERS' ASSOCIATION, INC.
BYLAWS- 3

board, or at such other intervals as determined by the board. Should any such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday. Notice of the time and place of any such meeting shall be posted at a prominent place or places within the common area.

6.2 Special Meetings. Special meetings of the board shall be held when called by the president of the Association, or by any two (2) directors, after not less than three (3) days prior notice to each director, which notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be posted in the manner prescribed for notice of regular meetings not less than 72 hours prior to the scheduled time of the meeting.

6.3 Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business at a meeting of the board. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the board.

6.4 Conduct of Meetings. Regular and special meetings of the board shall be open to all members of the Association; provided, however, that Association members who are not on the board may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the board. The board may, with the approval of a majority of a quorum of the members of the board, adjourn a meeting and reconvene in executive session to discuss and/or vote upon any situation set forth in Section 9.4 of the Declaration, and any personnel matters, litigation in which the Association is or may become involved and orders of business of a similar or otherwise sensitive nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

6.5 Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the board.

Article 7 POWER AND DUTIES OF THE BOARD

7.1 Powers. The board shall have all powers conferred upon the Association as set forth herein and in the Declaration, excepting only those powers expressly reserved to the members.

7.2 Duties. It shall be the duty of the board:

(a) to cause to be kept a complete record of all of its acts and doings and to present a statement thereof to the members at each annual meeting of the members, or at any special meeting when such statement is requested in writing by members representing one-fourth (1/4) of the members of the Association;

(b) to supervise all officers, agents and employees of the Association, and to see that their duties are properly performed; and

(c) to delegate its powers as provided in the Declaration.

151 SOUTH MAIN HOTEL & RESIDENCES OWNERS' ASSOCIATION, INC.
BYLAWS- 4

Article 8
OFFICERS AND THEIR DUTIES

8.1 Enumeration of Offices. The officers of the Association shall be a president and vice president, who shall at all times be members of the board, a secretary, and a treasurer, and such other officers as the board may from time to time by resolution create.

8.2 Election of Officers. The election of officers shall take place at the organizational meeting of the board and thereafter at each meeting of the board following each annual meeting of the members.

8.3 Term. The officers of this Association shall be elected annually by the board and each officer shall hold office for one year unless he shall sooner resign, or shall be removed, or shall otherwise be or become disqualified to serve.

8.4 Special Appointments. The board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the board may, from time to time, determine.

8.5 Resignation and Removal. Any officer may be removed from office with or without cause by the board. Any officer may resign at any time by giving written notice to the board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

8.6 Vacancies. A vacancy in any office may be filled by appointment by the board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

8.7 Multiple Offices. The offices of the secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 8.4 hereof.

8.8 Duties. The duties of the officers shall be as follows:

(a) **President.** The president shall preside at all meetings of the board, shall see that orders and resolutions of the board are carried out.

(b) **Vice President.** The vice president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the board.

(c) **Secretary.** The secretary, or a designated representative approved by the board, shall record, the votes and keep the minutes of all meetings and proceedings of the board and of the members, shall serve notices of meetings of the board and of the members, shall keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the board.

(d) **Treasurer.** The treasurer, or a designated representative approved by the board, shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the board, shall keep proper books of

151 SOUTH MAIN HOTEL & RESIDENCES OWNERS' ASSOCIATION, INC.
BYLAWS- 5

account, shall cause an annual operating statement reflecting income and expenditures of the Association for its fiscal year to be prepared and shall cause copies of said statement to be distributed to each member within sixty (60) days after the end of such fiscal year, and shall cause an annual budget to be prepared and presented to each member.

8.9 Compensation. No officer shall receive any compensation for any service he may render to the Association; provided, however, any officer may be reimbursed for actual out-of-pocket expenses incurred by him in the performance of his duties.

Article 9 COMMITTEES

Subject to any contrary provisions of the Declaration and these bylaws, if any, the board may appoint a nominating committee as provided in these bylaws. In addition, the board may appoint such other committees, as it deems appropriate in order to carry out its purpose.

Article 10 ASSESSMENTS

As more fully provided in Section 10 of the Declaration, each member is obliged to pay to the Association annual and special assessments to be collected as therein set forth, all of which are hereby incorporated by reference herein as if set forth in full.

Article 11 AMENDMENTS

These bylaws may be altered, amended or repealed by members of the Association in the same manner as set forth for amending the Declaration as set forth in Article 20.2 of the Declaration.

Article 12 GENERAL PROVISIONS

12.1 Conflicting Provisions. In the case of any conflict between any provisions of the Declaration and these bylaws, the conflicting provisions of the Declaration shall control.

12.2 Fiscal Year. The fiscal year of the Association shall be June 1 to May 31, unless and until a different fiscal year is adopted by the members at a duly constituted meeting thereof.

12.3 Proof of Membership. No person shall exercise the rights of membership in the Association until satisfactory proof thereof has been furnished to the secretary. Such proof may consist of either a copy of a duly executed and acknowledged grant deed or title insurance policy showing said person to be the owner of an interest in a condominium entitling him to membership. Such deed of policy shall be deemed conclusive in the absence of a conflicting claim based on a later deed or policy.

12.4 Absentee Ballots. The board may make such provisions as it may consider necessary or desirable for absentee ballots.

12.5 Consent to Waiver of Notice. The transactions at any meeting of the board, however noticed, shall be as valid as though had at a meeting duly held after regular notice if a

151 SOUTH MAIN HOTEL & RESIDENCES OWNERS' ASSOCIATION, INC.
BYLAWS-6

quorum be present and either before or after the meeting each director not present thereat signs a written waiver of notice or a consent to the holding of such meeting or an approval of the true and correct minutes thereof. All such waivers, consents or approvals shall be filed with the records of the board and made a part of its minutes.

12.6 Reserves. Any amounts collected by or paid to the Association in excess of operational needs shall be set aside as reserves for future financial needs in the manner set forth in the Declaration and shall be deposited into insured interest-bearing accounts. These sums may include amounts collected by Declarant from owners through purchase escrows representing capital contribution by such owners to the Association.

CERTIFICATE OF SECRETARY

KNOW ALL MEN BY THESE PRESENTS:

The undersigned, Secretary of 151 South Main Hotel & Residences Owners' Association, Inc., an Idaho nonprofit corporation, does hereby certify that the above and foregoing Bylaws were duly adopted by the Board of Directors of said Association on the ____ day of _____, 2016, and that they now constitute said bylaws.

Secretary

151 SOUTH MAIN HOTEL & RESIDENCES OWNERS' ASSOCIATION, INC.
BYLAWS- 7

Attachment C

DA Amendment Application & Submittal Materials



City of Ketchum
Planning & Building

OFFICIAL USE ONLY

File Number: P25-001

Date Received: 1/9/25

By: NF

Approved Date:

Denied Date:

By:

Payment Total: \$4,000.00

Development Agreement Amendment Application

Submit completed application and documentation to planningandbuilding@ketchumidaho.org Or hand deliver to Ketchum City Hall, 191 5th St. W. Ketchum, ID If you have questions, please contact the Planning and Building Department at (208) 726-7801. To view the Development Standards, visit the City website at: www.ketchumidaho.org and click on Municipal Code. You will be contacted and invoiced once your application package is complete.

ORIGINAL DEVELOPMENT AGREEMENT

Project Name: Limelight Ketchum, LLC

Applicant: Limelight Ketchum, LLC (cc: Aspen Hospitality Group, LLC)

Phone: Patrick Tierney: (970) 300-7157 James D. Garrison: (206) 914-1404 Email: ptierney@aspen.com

Mailing Address: c/o James D. Garrison, P.O. Box 3156, Sun Valley, ID 83353

Representative: James D. Garrison (Patrick Tierney)

Mailing Address: Limelight Ketchum 2, LLC, c/o Patrick Tierney, 117 Aspen Airport Business Center, Aspen, CO 81611
James D. Garrison, P.O. Box 3156, Sun Valley, ID 83353

Phone: Patrick Tierney: (970) 300-7157

Email: Patrick Tierney: (970) 300-7157

PROJECT INFORMATION

Legal Land Description: 151 So. Main Hotel & Residences Unit H Hotel

Street Address: 151 South Main Street

Lot Area: 48,332.14 SF

Zoning District: CC-1

Overlay District: ☐ Flood ☐ Avalanche ☐ Mountain

Anticipated Use: Residential

SECOND AMENDMENT

Date of Agreement: April 20, 2015

Parties Named in Original Agreement: Limelight Ketchum, LLC and City of Ketchum

Summary of Significant Changes: Change of Owner and Planned Unit Development. Refer to attached Amendment to Development Agreement.

THIRD AMENDMENT

Date of Agreement: N/A

Parties Named in Original Agreement: N/A

Summary of Significant Changes: N/A

OTHER AMENDMENTS

Date of Agreement: N/A

Parties Named in Original Agreement: N/A

Summary of Significant Changes: N/A

I, the undersigned, certify that all information submitted with and upon this application form is true and accurate to the best of my knowledge and belief.

Signed by:

Signature of Owner/Representative

12/23/2024

Date

AMENDMENT TO DEVELOPMENT AGREEMENT (LIMELIGHT HOTEL)

This Amendment to Development Agreement ("**Amendment**") is entered into this _____ day of _____, 2025, by and between the City of Ketchum, a municipal corporation ("**City**"); and Limelight Ketchum, LLC, a Delaware limited liability company ("**Owner**")

RECITALS

A. Owner is a party to that certain Development Agreement with the City dated April 20, 2015 ("**Development Agreement**"), and recorded on July 8, 2015, as Instrument No. 627876, records of the County Recorder, Blaine County, Idaho. The Development Agreement sets forth contractual obligations for a hotel, retail and residential condominium project and related improvements at 151 South Main Street in Ketchum, Idaho, ("**Development**" or "**Project**").

B. The Development Agreement incorporated the terms and provisions of the approved Conditional Use Permit for Planned Unit Development for the Project dated June 7, 2010 and amended May 6, 2013 (the "**PUD**")¹ and the Community Core Design Review dated April 2, 2015 ("**Design Review Approval**").²

C. The Project was completed by Owner in accordance with the Development Agreement and the final plat recorded in January of 2017.

D. Owner now desires to convert portions of the hotel consisting of eleven (11) hotel rooms into two (2) residential condominium units ("**Residential Conversion**").

E. Paragraph 14 of the Development Agreement allows for changes to the Development Plan with the mutual consent of the Parties.

F. The City is amenable to the Residential Conversion on the terms and conditions set forth herein which require the Development Agreement to be amended as set forth herein.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the above recitals which are incorporated below, the City and Owner agree to amend and supplement the Development Agreement, as follows:

1. **Amendments:** The following provisions of the Development Agreement shall be amended:

¹ Exhibit C to the Development Agreement.

² Exhibit B to the Development Agreement.

A. A new section 3.1.3 shall be added as follows;

3.1.3. Residential Conversion. Notwithstanding the foregoing, eleven (11) hotel rooms on the fourth floor of the Project may be converted to two (2) residential condominiums.

B. Section 8 CONSTRUCTION TIMELINE AND INCENTIVES.

Owner complied with Timeline A in completing the Project. Accordingly, Section 8.1.1. regarding community housing shall be amended as follows:

8.1.1 Community Housing. ~~The community housing requirement of 7,444 square feet or approximately \$2.36 million in lieu payment is waived in its entirety (based on extension of the Hotel Community Housing Waiver in the Community Core Zoning District).~~ In lieu of community housing, Owner will make a housing payment of \$_____.

C. Project Programming and Hotel Definition Analysis Tables.

The Project Programming and Hotel Definition Analysis is addressed in Tables 1, 3 and 4 of the PUD and further amended by Tables 1, 2 and 3 of the Design Review Approval.³ These Tables are amended to incorporate an additional column showing the proposed revisions associated with the Residential Conversion as follows:

³ The most recent calculation Tables are included in the Design Review Approval.

Table 1: History of Programming Changes

	Original Approval 2010	Revised May 2013	Proposed Nov. 2014⁴	Approved 2015 Design Review	Proposed 2025
Project Numbers					
Lot size (sf)	48,351	48,315	48,351	48,351	48,351
Building Height (ft)	68	68	63	63	63
Parking Spaces (#)	125	125	122	124	124
Number of parking levels (#)	2	2	1	1	1
Hotel					
Lobby (sf)	5,660	4,600	12,140	5,532	5,532
Hotel Rooms (total sf)	48,380	70,448	58,142	50,414	45,841
Hotel Rooms/Suites (#)	82	119	105	99	88
Avg Size of Hotel Rooms (sf)	590	592	554	456	456
Lock-off Units (#)	5	0	15	10	10
Conference/Prefunct space (sf)	5,436	8,380	4,310	4,131	4,131
Conference Capacity (#)	200	350	175	170	170
Spa (sf)	5,506	3,600	0	0	0
Restaurant/Lounge/Kitchen (sf)	773,500	6,870	Included in Lobby	Included in Lobby	Included In Lobby
Pool/Hot tubs (#)	1 pool/ 1 hot tub	1 pool/ 1 hot tub	1 pool/ 2 hot tubs	1 pool/ 2 hot tubs	1 pool/ 2 hot tubs
Fitness (sf)	809	1,200	940	930	930
Residential					
Residential Units (total sf)	40,035	18,600	32,335	30,736	35,309

⁴ Per Paragraph 2 of the Design Review Approval, on November 24, 2014, the Planning and Zoning Commission determined that the 2013 Development Agreement did NOT need to be amended as the proposed changes were consistent with the original approval and code requirements.

Residential Units (#)	26	11	18	14	16
Avg. Size of Residential Units (sf)	1,540	1,692	1,796	2,195	2,195
% of Hotel vs Residential	74.4	86.7	81.0	78.3	75.1
Retail					
Total (sf)	2,614	2,550	1,890	2,050	2,050

Table 2: Hotel Definition

HOTEL CONFIGURATION	BML-2010 Approved	BML-2013 Approved	LKH-2015 Approved	Proposed 2025
Guest Rooms	82	119	99	88
Sq Ft	59,422	86,329	50,414	45,841
Dedicated Units – Lock-Out Units	9	N/A	10	10
Sq Ft	3,535	N/A	4,776	4776
Hotel Key Count	91	119	109	98
BOH/Lobbies/Hotel Related Uses Sq Ft (P1,P2,Level 1*)	63,687	60,149	55,621	55,621
TTL “Hotel” Sq Ft (per definition)	126,647	146,478	110,811	106,238
Permitted “Non-Hotel” sq ft (25%)	42,215.5	42,215.5	35,387	35,387
Proposed Residential Units (4 th & 5 th floors minus lock-off units)	26	8	14	16
Sq Ft	42,215	22,384	30,736	35,309
TTL Bldg Sq Ft (includes sub-grade hotel uses, but not parking)	168,862	168,862	141,547	141,547
Pct of Building Area defined as “Hotel”	75.0%	86.7%	78.3%	75.1%
Residential Sq Ft over allowable per definition.	0	0	0	0

Table 3: Required Parking

Parking Requirements:		Proposed 2025
Commercial Space: 10,819 sf**	2 per 1,000 sq. ft = 21.6 spaces	
Residential (net) 30,736 sf	1 per 1,500 sq. ft. = 20.5 spaces	(35,309 sf) 24 spaces
Hotel: 108 units	.75 per Room = 81 spaces	(98 units) 73 spaces
Total Spaces Required:	123.1 spaces	117.9 spaces
Proposed:		
Garage: 109 spaces	Surface: 3 spaces	On Street Credit*: 12 spaces
Total Spaces Proposed:		No Change

2. Construction. This Amendment and the Development Agreement, constitute one agreement between the City and Owner. In the event of any inconsistency between this Amendment and the Development Agreement, the terms of this Amendment shall govern. All capitalized terms in this Amendment shall have the respective meanings in the Development Agreement when used in this Amendment, unless otherwise defined herein.

3. Ratification. The Development Agreement, as amended by this Amendment, is hereby ratified and affirmed.

4. Counterparts. This Amendment may be executed in counterparts, all of which together shall constitute an agreement binding on all the Parties hereto, notwithstanding that all such Parties are not signatories to the original or the same counterpart.

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

CITY OF KETCHUM:

Attest:

By: _____
Neil Bradshaw
Mayor

_____, City Clerk

By: _____
Its: _____

On this ____ day of _____, 2025, before me, 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, who executed the foregoing instrument, and acknowledged to me that he executed the same.

Name: _____
 Notary Public for Idaho
 Residing at _____
 My commission expires _____

On this _____ day of _____, 2024, before me, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as _____ on behalf of Limelight Ketchum, LLC.

Notary Public for _____
Residing at _____
My commission expires _____

Attachment D

PUD Standards Analysis



LIMELIGHT HOTEL PUD CUP & DA AMENDMENT PUD STANDARDS (KMC 16.08.080) ANALYSIS

The following staff analysis evaluates the Limelight PUD CUP & DA Amendment applications and request to convert 11 hotel rooms on the fourth floor into two residential units for conformance with PUD evaluation standards specified in Ketchum Municipal Code 16.08.080.

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

1. Include a minimum of 30 percent of community or employee housing, as defined in section 16.08.030 of this chapter;
2. Guarantee the use, rental prices or maximum resale prices based upon a method proposed by the applicant and approved by the Blaine County Housing Authority and/or the Ketchum City Council; and
3. Are on parcels that are no less than one and one-half acres (65,340 square feet). Application for waiver or deferral of this criteria shall include a description of the proposed community or employee housing and the proposed guarantee for the use, rental cost or resale cost.
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.

Staff Analysis: N/A. A waiver to the minimum three acre parcel size was granted to the Limelight Hotel with the original 2010 PUD. The subject property is 1.12 acres. The PUD CUP & DA Amendment applications requests to convert 11 hotel rooms on the fourth floor into two residential units. The amendment results in 88 total hotel rooms, 10 lock-off units, and 16 residential units on the fourth and fifth floors. 75.1% of the total building area is dedicated to hotel use. The proposed amendment complies with the hotel definition.

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

Staff Analysis: No changes are proposed to the exterior design, height, bulk, or mass of the existing Limelight Hotel. Improvements will be limited to an interior remodel of the fourth floor to convert the 11 hotel rooms into two residential units. Staff does not believe the proposed amendment will impact present and permitted uses in the surrounding area. For the original 2010 DA, the City Council found that this standard had been met. The City Council findings stated that:

The proposed development will not be detrimental to the current and permitted uses in the area. The proposed hotel is a permitted used within the CC zoning district and

comparable in bulk and mass with the previously approved Hotel Ketchum on the southeast corner of Main and River Streets, although the proposed hotel is substantially larger.

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

Staff Analysis: N/A. This standard is not applicable because the proposed development is not a subdivision. The City Council findings for the 2010 PUD stated that:

This standard is not applicable because the proposed development is not a subdivision.

However, potential benefits include economic development, significant contribution toward the undergrounding of overhead power lines along the Main Street corridor at this gateway area, and an increase in the overall number of "hotbeds" in the City.

D: The development shall be in harmony with the surrounding area.

Staff Analysis: Staff believes the proposal complies with this standard. The amendment proposal will convert 11 hotel rooms into two residential units. Multi-family residential units are permitted in the Retail Core (CC-1 Zone) except for on the ground floor with street frontage. The surrounding neighborhood includes a mix of residential, commercial, and mixed-use developments. The fifth floor of the Limelight Hotel contains 14 residential units. The proposal will increase the total number of residential units in the Limelight Hotel to 16.

The City Council findings for the 2010 PUD stated that:

The City Council has considered this standard and found that it has been met. The surrounding area consists of a mix of commercial uses including a hotel across Main Street. Although the proposed Hotel Ketchum will provide comparable size and scale, the project will be substantially larger than other buildings in the area, but perceived impacts result from height and bulk have been limited through the required design review. The proposed design is sensitive to the adjacent Forest Service Park, and incorporating a connection along Washington Street which includes a new streetscape design, angled parking, redefined park entrance would further enhance this heritage site. The Commission approved the 4th and 5th setback waiver with a 4-1 vote and the City Council unanimously approved the 4th and 5th setback waiver.

E: Densities

- 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 30 percent 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.

Staff Analysis: N/A. This standard does not apply as the PUD is contained within the Retail Core and does not contain multiple zone districts to transfer densities between.

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.

Staff Analysis: The conversion of 11 hotel rooms on the fourth floor into two residential units will not noticeably change the project's traffic impacts. No changes are proposed to the existing vehicular or pedestrian circulation or snow storage. The proposed PUD amendment decreases the total amount of parking required for the project from 123 spaces to 120 parking spaces.

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.

Staff Analysis: The 2014 Comprehensive Plan ("2014 Plan") highlights the tourism industry as an essential component of Ketchum's economy and encourages growing the lodging industry, increasing visitor numbers through marketing, and enhancing tourism services and attractions downtown. Goal E-3 of the 2014 Plan states, "Ketchum depends heavily on tourism to support

the local economy and will continue to support this industry” (page 17). Policy E-3(B) states that the city will, “Continue to support tourism-related land uses and businesses including lodging development and venues” (page 17).

Emphasizing Ketchum’s need for housing that is attainable to the workforce, the 2014 Plan states that, “The Ketchum community wants the majority of people who work in Ketchum to have an opportunity to reside here,” and that, “a diversity of housing is critically linked to a strong economy and year-round population” (page 19). Policy H-1.2 encourages “locally-developed solutions” to provide more attainable housing (page 20). Policy H-3.1 states that, “The City should encourage the private sector, through land-use regulations and incentive programs, to provide a mixture of housing types with varied price ranges and densities that meet a variety of needs.” Policy H-1.2 acknowledges that Ketchum’s attainable housing needs will “likely will not be met solely through private development” and emphasizes that the city will play active role in facilitating affordable housing opportunities (page 20).

The 2014 Plan places the responsibility for providing more attainable housing on both private developers and the city. This issue is central to the Limelight Hotel PUD CUP & DA Amendment request. The Limelight Hotel is the only hotel project in Ketchum that received waivers for 100% of the required employee and community housing. The waivers were granted as an incentive to start construction quickly. The Limelight Hotel received a Certificate of Occupancy on December 22, 2016. The incentive to quickly commence construction is no longer applicable. Staff believes the new residential use proposed with the conversion request is subject to the community housing requirement.

1. *Pursuant to subsection 16.08.070.D 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.*

Staff Analysis: N/A. No changes are proposed to the existing design, height, bulk, or mass of the existing Limelight Hotel.

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.*

Staff Analysis: N/A. No changes are proposed to the existing site design.

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

Staff Analysis: N/A. No changes are proposed to the existing site design.

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

Staff Analysis: N/A. No changes are proposed to the existing site design.

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

Staff Analysis: N/A. No changes are proposed to the existing site design or landscaping.

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.

Staff Analysis: N/A. The Limelight Hotel was issued a Certificate of Occupancy on December 22, 2016. Improvements associated with the request will be limited to an interior remodel of the fourth floor to convert the 11 hotel rooms into two residential units.

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.

Staff Analysis: N/A as no changes are proposed to the existing site design or usable open space area.

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.

Staff Analysis: N/A. No changes are proposed to the site design, height, bulk, and mass of the existing Limelight Hotel.

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.

Staff Analysis: N/A as no change is proposed to the existing recreational facilities in the Limelight Hotel.

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.

Staff Analysis

When the PUD was approved in 2010, the City Council found that, “The City has established that increasing tourist accommodations by encouraging hotel development is a priority,” and, “the economic benefits of such a development have been recognized by the City Council as an important factor in approving the project. The City Council findings for the 2013 PUD amendment (see Attachment G) state:

The current PUD amendment proposes to convert the entire fourth floor from residential to hotel use. This results in an economic benefit of an addition thirty seven (37) hotel rooms in the Community Core. The employee housing requirement has changed from a requirement of twenty-three (23) employee housing units to thirty (30) employee housing units. These are special development objectives that continue to justify the granting of a PUD. The City has established the need for hotels and hotbeds as a priority. The economic benefits of such a project are substantial.

The figure below shows the special development objectives that were summarized in the City Council findings for the original 2013 PUD Amendment. When both the original 2010 PUD and 2013 PUD amendment were approved, The City Council found that the economic benefits of the 4-star hotel justified granting approval of the PUD and associated waivers.

TABLE 10: SPECIAL DEVELOPMENT OBJECTIVES

Special Development Objective, special Characteristics of the Site or Physical Conditions	Type of Objective
4-Star Hotel	Economic (see fiscal impact analysis by Randy Young dated January 31, 2010)
Conference Space (seating for 250-275 persons)	Economic
Employee Housing for 23 employees (waived if construction commences by 2012; partial waiver if construction commences by 2013)	Social and Economic
Proposed contribution towards the undergrounding of overhead power lines (amount to be determined)	Aesthetic; Economic
Pedestrian improvements to public right-of-way to create enhance pedestrian experience, Gateway Architectural Element	Aesthetic; Economic

The Limelight Hotel continues to provide economic benefits to the city through the Local Option Tax (LOT) collected from hotel room, liquor-by-the drink, and retail sales. The LOT money remains in Ketchum and is invested in a wide range of City services and economic

Limelight Hotel PUD CUP Amendment Application File No. P25-001a
PUD Standards Analysis

development initiatives that benefit local residents and businesses in accordance with the allowable uses approved by voters. Those uses include: municipal transportation, open space acquisition and recreation, capital improvements, emergency services, city promotion, visitor information, and special events.

O: The development will be completed within a reasonable time.

Staff Analysis: N/A. The Limelight Hotel was issued a Certificate of Occupancy on December 22, 2016. Improvements associated with the request will be limited to an interior remodel of the fourth floor to convert the 11 hotel rooms into two residential units.

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

Staff Analysis: Public services, facilities, and utilities are adequate to serve the request to convert 11 hotel rooms into two residential units. The PUD CUP & DA Amendment applications were reviewed by city departments, including Fire, Streets, Utilities, and the City Engineer. City departments had no comments or concerns about the amendment request.

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.

Staff Analysis: The proposed development meets the standards of the zoning ordinance with the exception of the waivers that were granted by the city through the original 2010 PUD and 2013 PUD amendment processes provided that the applicant fulfills the community housing contribution required for the new residential use.

Attachment E

2013 Bald Mountain Lodge
PUD CUP Amendment
Approval: City Council
Findings

)
IN RE:)
Bald Mountain Lodge) KETCHUM CITY COUNCIL
Conditional Use Permit) FINDINGS OF FACT, CONCLUSIONS
(PUD) Amendment) OF LAW AND DECISION
)
File Number: 07-015)

BACKGROUND FACTS

PROJECT: Bald Mountain Lodge Planned Unit Development (PUD) Amendment

FILE NUMBER: 07-015

OWNER: Bald Mountain Lodge LLC, verified March 1, 2013

REQUEST: Amendment to Conditional Use Permit for a Planned Unit Development (PUD)

NOTICE: Mailing: All property owners within 300 feet of subject property were mailed on Wednesday, March 27, 2013, a notice of the public hearing to be held on April 15, 2013;
Publish: The public hearing notice was advertised in Idaho Mountain Express on Friday, March 29, 2013; and
Post: The public hearing notice was posted on the subject property on Monday, April 8, 2013.

LOCATION: Ketchum Townsite Amended Lot 1A, Block 20 (151 South Main Street)

COMP PLAN LAND USE DESIGNATION:
Current: Community Core
Proposed: No change proposed.

ZONING: Community Core (CC), Subdistrict A, Retail Core

LOT SIZE: 48,351 sf

PROJECT TOTAL SQUARE FOOTAGE: 231,400 sf (including sub-grade garage) (no change)

OVERLAY: None

REVIEWERS: Rebecca F. Bundy, Associate Planner, and
Lisa Horowitz, Community and Economic Development

GENERAL FINDINGS OF FACT

The Planning and Zoning Commission considered this proposed PUD Amendment at their March 11, 2013 meeting and recommended approval to the Council, with conditions as noted in this staff report. Findings of Fact were signed on March 25, 2013.

On November 5, 2012, the City Council considered a request by Bald Mountain Lodge, LLC for a second extension of their Development Agreement. As a condition of that extension, the developer agreed to change the original fourth floor design from condominium units to hotel guest rooms. This current application is for modification of the approved PUD for the project, to reflect this change. The change from residential to hotel use on the fourth floor results in some minor changes to the following PUD requirements:

- Parking
- Employee housing
- Satisfaction of definition of "hotel"
- Traffic impact.

Staff noted a discrepancy in the number of residential units on the fifth floor between the letter from HMI, the narrative from Jim Garrison, the PUD Findings and the Development Agreement. The applicant addressed this at the meeting and it was determined that the final number is eleven (11). This discrepancy does not affect the fourth floor changes in question and does not have implications on the analysis below. It also does not change the parking analysis, since parking for residential uses is calculated by area, not number of units.

There are no proposed changes to the exterior of the building or to the site improvements, so there is no change to many of the already approved PUD standards. These are noted with N/A on the left margin. Since there are no exterior changes to the project, there are no Design Review modifications to consider at this time.

The Bald Mountain Lodge Planned Unit Development (PUD) was approved by the City Council on June 7, 2010. The PUD was subject to the adoption of a development agreement, which contractually binds the parties to the Conditions of Approval developed by the Council for the project. The Development Agreement is approved only by the Council, and is not subject to Planning Commission review. The Council adopted the Development Agreement on September 17, 2010.

At the October 17, 2011 City Council meeting, Highmark LLC requested an extension to the 2010 Development Agreement to roll all the dates forward by one year. After lengthy discussion, this change was approved by the Council, with the inclusion of language regarding property maintenance.

In November 2012, Highmark LLC, on behalf of Bald Mountain Lodge LLC, requested a second extension to the deadline regarding the application for a building permit outlined in Section 8 of the Amended Development Agreement. Section 8 provides for a full waiver of employee and community housing requirements if the applicant applies for a building permit by December 31, 2012 (along with several other trigger dates). This change would necessitate a change to all of the other deadlines in Section 8; each date would be rolled forward one year. The letter indicates that if the Council is

willing to extend the Amended Development Agreement deadlines for an additional year, the applicant will apply for a modification to the PUD and Development Agreement to convert the fourth floor of the building from condominium units to hotel units. The Council agreed in concept, and directed the applicant to begin the PUD modification process.

1. PLANNED UNIT DEVELOPMENT BACKGROUND:

The Commission and Council reviewed the seventeen evaluation standards found in the City's Planned Unit Development (PUD) Ordinance, Chapter 16.08.080, Ketchum Subdivision Ordinance. The Planning and Zoning Commission is a recommending body to the City Council for PUD's. The PUD Ordinance permits the following:

"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 13 of this Ordinance as the City Council may prescribe to mitigate adverse impact of the proposal, or to further the land use policies of the City, or to ensure that the benefits derived from the project justify a departure from such regulations."

The PUD Ordinance states that waivers may be granted by the Council on a case-by-case basis. Application for waivers or deferrals must be in writing and submitted as part of the PUD application. The PUD Ordinance requires that:

"Such application for waiver or deferral must state with particularity the matters on which the applicant seeks waiver or deferral and the waiver or deferral would not be detrimental to the public welfare, health and safety nor injurious to property owners in the immediate area."

Several Waivers have been requested by the applicant and approved by the City Council. See Item 7, Table 5 below for a detailed table of the waiver requests.

2. STANDARDS OF REVIEW:

The Planned Unit Development Ordinance, Chapter 16.08.080 establishes seventeen (17) standards of evaluation. The Planning and Zoning Staff analyzed the BML PUD application dated September 22, 2009, as well as other supplemental documents, in relation to the City's land use policies and ordinances, the 2001 Comprehensive Plan, 2006 Downtown Master Plan and 2008 Gateway Study (Winter & Associates) in preparing its report for the public hearing conducted April 8-9, 2010, April 19, 2010, May 4, 2010 and May 17, 2010.

3. PROCESS:

The applicant has the following approvals:

Planned Unit Development (PUD) Conditional Use Permit: approved June 7, 2010

Design Review Approval: approved, with Findings of Fact signed March 22, 2010
Development Agreement Approval: September 17, 2010
First Amendment to the Development Agreement: November 7, 2011

The Planning and Zoning Commission makes recommendations on the PUD to the City Council. The City Council approves the Development Agreement. The Planning and Zoning Commission approves Design Review.

4. CONDITIONS OF APPROVAL:

The PUD Ordinance outlines a list of conditions which may be imposed by the Council to mitigate adverse impact of the proposal, or to further the land use policies of the City, or to ensure that the benefits derived from the project justify a departure from standard regulations. Conditions are not limited to those itemized in the PUD Ordinance. Only the City Council is empowered to grant modifications or waivers from standard zoning and subdivision requirements. These findings contain a few small changes to the originally adopted Conditions of Approval, based on this application.

5. BALD MOUNTAIN LODGE PUD OVERVIEW AND SQUARE FOOTAGE BREAKDOWN

The proposed project is described by the applicant as a four-star hotel. The original proposal contained the following "hotel" components: 82 guest suites, 9 Lock-off units, reception and lobby area, full service restaurant and bar, day spa, hotel-related retail space, conference/ballroom facilities, outdoor terrace and swimming pool, activities center and underground parking garage. The proposed conference capacity is 250-275. The conference center, day spa, restaurant and bar will be open to the general public as well as hotel guest. The 4th & 5th floors of the development will house twenty six (26) residential condominium units. Lock-Off units are shown on the 4th floor under Lock-Off Option A which is on record with the City of Ketchum. The following table is a summary of the project's area square footages by level/floor:

The current amended proposal converts the entire fourth floor from residential units to hotel rooms, resulting in a total of one hundred nineteen (119) guest rooms and eleven (11) residential units on the fifth floor.

Table 1: Bald Mountain Lodge Square Footage
Square Footage Summary

Lot Size	219 ft x 219 ft	48,351 sf
Parking Level 2(P-2)	Underground parking/ BOH/Hotel Support Services	48,306 sf
Parking Level 1(P-1)	Underground parking/BOH/ Spa/Ballroom	48,306 sf
First Floor	Retail/Lobbies/Spa/Activity Center	28,461 sf
Second Floor	Hotel Guest Rooms	29,711 sf

Third Floor	Hotel Guest Rooms	29,711 sf
Fourth Floor	Hotel Guest Rooms	25,006 sf
Fifth Floor	Residential condominiums Hotel Related Area (731 sf)	22,384 sf
TOTAL BUILDING AREA		231,885 sf
TOTAL SUB GRADE/PARKING AREA		96,612 sf
TOTAL GROSS FLOOR AREA ABOVE GRADE		134,800 sf

Table 2. Detailed Square Footage and Use Breakdown by Level:

P2 (below grade)

USE	SQUARE FOOTAGE
Hotel Related	17,129
Parking (51 stalls)	31,177
Total	48,306

P1 (below grade)

USE	SQUARE FOOTAGE
Spa	3,621
Ballroom	2,420
Pre-function	2,407
Back of House	4,528
Multi-Use	1,388
Conference	609
Bathrooms	636
Courtyard – 2,916 sf	(Not included in total)
Mechanical	773
Total Hotel Use	16,460
Parking(65 stalls)	31,846
Total	48,306

*96,612 square feet below grade square footage (P1 + P2);

Level 1 (ground)

USE	SQUARE FOOTAGE
Retail	2,614
Restaurant	7,006
Café	735
Activity Room	4,726
Spa	1,885
Fitness	819
Lockers	432
Office	217
Great Room	5,660
Bathrooms	611

Loading	2,530
Circulation	1,427
Total	28,461

*Outdoor Level 1 Pool/Deck area: +/- 5,500 sq.ft.

Level 2

USE	SQUARE FOOTAGE
Hotel (41 keys)	29,711
Total	29,711

Level 3

USE	SQUARE FOOTAGE
Hotel (41 keys)	29,711
Total	29,711

*59,000 gross square footage for hotel use (L2 + L3) and 82 total hot beds/keys

Level 4

USE	SQUARE FOOTAGE
Residential (26 units)	23,369
Hotel Uses (support)	1,637
Hotel Uses (Lock-Offs)	3,538
Total	25,006

Level 5

USE	SQUARE FOOTAGE
Residential (8 units)	22,384
Total	22,384

Floor Area Summary:

Existing: None

Proposed: 231,885 (including sub-grade garage)
168,862 (not including sub-grade parking space)

Lot Area: 48,351 sf

Floor Area Ratio:

Permitted: Community Core regulations do not limit FAR's for 4 and 5 story hotels

Proposed: 2.8

5. HOTEL DEFINITION

Ketchum's hotel "matrix" for Bald Mountain Lodge is shown below (The number for total square footage of Guest Rooms has been revised since the staff report to include the area of the former lock off units, and the lock-off area has been removed from the BOH area. This does not change the total "Hotel" area or the "Hotel" percentage.):

Table 3: BALD MOUNTAIN LODGE MATRIX/HOTEL DEFINITION

HOTEL CONFIGURATION	BML-2010 Approved	BML-2013 Proposed
Guest Rooms	82	119
Sq Ft	59,422	86,329
Dedicated Units –Lock-Out Units	9	N/A
Sq Ft	3,538	N/A
Hotel Key Count	91	119
BOH/Lobbies/Hotel Related Uses Sq Ft (P1,P2,Level 1*)	63,687	60,149
TTL “Hotel” sq ft (per definition)	126,647	146,478
Permitted “Non-Hotel” sq ft (25%)	42,215.5	22,384
Proposed Residential Units (4th & 5th Floors minus lock-off units)	26	8
Sq Ft	42,215	22,384
TTL Bldg Sq Ft (includes sub-grade hotel-uses)	168,862	168,862
Pct of Building Area defined as “Hotel”	75 %	86.7%
Residential sq ft over allowable per definition	0	0

*included Level 4 lock-out units in the 2010 calculations

Table 4: HOTEL DEFINITION

COMPONENT	PZ 4/23/09	PZ 7/13/09	PZ 12/2- 3/09	CC 5/17/10	PZ 3/11/13
Total Gross Floor Area			168,539	168,862	168,862
Hotel Floor Area	122,031	126,931	125,389	126,647	146,478
% of Building Floor Area	71%	73.5%	74.4%	75%	86.7%
Residential Floor Area	50,005	45,608	43,890	42,215	22,384
% of Building Floor Area	29%	26.5%	25.6%	25%	13.3%

Supplemental Analysis: Applicant agreed at the December 3, 2009 Planning and Zoning Public Hearing that the project would comply with Ketchum’s “hotel” definition by adjusting/increasing the final lock-off unit configuration, which was included in the above “hotel” definition calculation. Also included is a hotel-support area on the 4th floor. Such an allowance was permitted, provided non-hotel (residential units) square footage were dedicated/included within the nightly rental pool of units as allowed within Ketchum’s Hotel Definition. The applicant previously committed to dedicated 3,538 square feet on the fourth floor as hotel lock off units, equating to 9 hotel units. The current

proposal reconfigures the entire 4th floor as hotel rooms, for an increase of 19,831 sq. ft. of hotel uses. Lock-offs are no longer part of this proposal.

7. WAIVER REQUESTS WITH FINDINGS:

Modifications or waivers from certain standard zoning and subdivision requirements are permitted within the PUD process. The following table sets forth the applicant's request and the corresponding findings by the Council.

Table 5: Waiver Requests, Bald Mountain Lodge

Code Section Zoning Ord.	Requirement	Waiver	Finding
Subdivision Ordinance: 16.08.080(A)(1)	Minimum lot size of three acres	Lot is 0.92 acres	Waiver specifically permitted for hotels - Approved
Conditional Use Permits: 17.116.080	12 month Term of CUP Approval	4 year term of CUP approval with incentives for accelerated schedule	The size and inherent complexity of the project warrants such a timeline. In addition, this is similar to timelines established for similar projects. - Approved <u>Note: One-year extension of all time lines is being requested at this time.</u>
Community Core: 17.64.010.L: Use Specifications	G. Private outdoor space: All residential uses shall have a private outdoor space (such as a deck, balcony, or private porch). The area of each private outdoor space shall be at least 50 square feet, with no dimension less than 6 feet.	On 4 th and 5 th floor residential units, decks have dimensions less than 6 ft.	Residential units have substantial outdoor spaces and waiver will not diminish their use of appearance. - Approved

Community Core: 17.64.010.L: Site Specifications	D. Building zone: 60 to 100 percent of this area shall be occupied by 1 or more buildings. 1. The minimum building depth shall be 50 feet as measured from the front and rear property line, except a portion of the building may be built anywhere within 30 feet of the front property line.	Rear Building Zone along Washington Avenue – 36% of this zone is building; 60% is required *not including outdoor terrace area as building	This portion of the site is adjacent to the Forest Service park and less building mass is appropriate. In addition, the Gateway Mass and Scale Study recommend receding this corner in order to maximize views of Bald Mountain. - Approved
Community Core: 17.64.010.L: Mass and Height Specifications	D.2. On streets and avenues the fourth floor and fifth floor shall be set back from the property line a minimum of 10 feet with an average of 15 feet. The average setback shall be calculated based on the built portion of the fourth and fifth floor facades and shall be calculated for each street or avenue elevation; the calculation of the average setback is not cumulative. In addition to the minimum and average setback requirement from the property line, the fourth and fifth floors shall be set back a minimum of 5 feet from the wall of the third floor.	4 th and 5 th floors do not meet 10 ft minimum setback on each street elevation. Average setback of 15 ft not met on 1 st Street on 4 th and 5 th floors.	Overall massing of building and large setbacks along Main Street, River Street and Washington Ave reduce overall impacts of 4 th and 5 th floors. Said waiver will have minimal impacts on overall mass of 4 th and 5 th floors. In addition, the project has received design review approval from the Planning and Zoning Commission. - Approved
Community Core: 17.64.010.L: Façade Elements	A. Awnings/marquees may project 3 feet to 6 feet from the facade. At major pedestrian entrances to the hotel, marquees may extend between 6 feet and up to $\frac{2}{3}$ the distance between the front facade and the curb line of the sidewalk. Supporting posts are permitted at these entrances.	Marquees extend 7.5 to 12 feet from all four building facades at multiple locations. Only main entrances to the hotel may extend beyond 6 feet.	Larger marquees are appropriate for a large hotel building. - Approved
Community Core: 17.64.010.L: Mass and Height Specifications	B. Upper floor ceiling heights: 8 feet minimum and up to 80 percent of the height of first floor ceiling.	5 th floor ceiling height exceeds 80% of the height of the first floor ceiling height	Required sloped roof design warrants larger ceiling height on 5 th floor. - Approved

Community Core: 17.64.010.I: Hotels – Employee Housing	3-5. Applicant is required to provide housing for 25% of the total number of employees calculated per hotel room or bedroom.	Full waiver of requirement/Partial Waiver of requirement. See condition #3 of the conditions of approval for complete waiver and timeline incentives	Project incentivized to begin construction with two years. - Approved
---	--	--	--

ATTACHMENTS to the April 15, 2013 Staff Report:

- Attachment A: Letter from HMI, dated January 15, 2013, including fourth floor plans, original and current proposal
- Attachment B: Applicant narrative outlining proposed changes, dated March 11, 2013
- Attachment C: Planning and Zoning Commission, PUD Amendment Findings of Fact, signed March 25, 2013
- Attachment D: Bald Mountain Lodge Traffic Impact Update, LSC Transportation Consultants, Inc., dated March 4, 2013 (Earlier traffic studies available at the Planning Division offices.)
- Attachment E: First Amendment to the Bald Mountain Lodge Development Agreement, dated November 7, 2011
- Attachment F: Original Bald Mountain Lodge Development Agreement, dated September 17, 2010
- Attachment G: City Council PUD Findings of Fact, signed June 7, 2010
- Attachment H: Comments

ZONING CODE REQUIREMENTS

17.64 Community Core Zoning District

PROPOSED SETBACKS: No change in PUD amendment request.

REQUIRED SETBACKS: No change in PUD amendment request.

BUILDING HEIGHT: No change in PUD amendment request.

CURB CUT: No change in PUD amendment request.

PARKING SPACES:

Required parking spaces are pursuant to 17.64.010.E. See table below:

Table 6: Required Parking

Parking Requirements:		
Commercial Space:	13,120 sf	2 per 1,000 sq. ft. = 26 spaces
Residential (net)	<u>16,725 sf</u>	1 per 1,500 sq. ft. = <u>11 spaces</u>
Hotel:	<u>119 units</u>	.75 per Room = <u>89 spaces</u>
Total Spaces Required: <u>126 spaces</u>		
Proposed:		
Garage:	116 spaces	On Street Credit*: 9 spaces
Total Spaces Proposed: 125 spaces		
Net New Parking Spaces Required: 1 space*		

* Section 17.64.010.E.3 of the Community Core District zoning regulations states that: *Four (4) on street parking spaces per five thousand five hundred (5,500) square feet of lot area may be counted toward the required parking demand.*

This would result in an on street parking credit of 35 spaces. However, between Pre-application Design Review and the original Design Review/PUD submittal, Staff and the Applicant negotiated a parking credit of 9 on street spaces, due to vehicular access requirements, desired pedestrian bulb-outs at intersections and other considerations.

Per the original Findings of Fact: "Sidewalk plan and surface parking configuration TBD with City Engineer, planning staff and final City Council approval (see condition #7). A net loss of surface parking spaces is anticipated. Project is credited with additional 9 surface parking spaces for determining parking compliance."

The current project proposal project will require one (1) additional parking space. The Applicant has indicated that, at building permit submittal, the underground parking garage design will be refined to accommodate one (1) or more additional parking spaces. The conversion of the fourth floor from residential to hotel use eliminates the need for a number of storage units on the second level of the parking garage. These may be converted to parking spaces. In addition, some structural refinements may result in additional parking spaces in the garage. This zoning criteria has been satisfied with a new condition that:

- At building permit submittal, plans, showing that the parking requirements of Table 6 have been met, shall be submitted to the Design Review Subcommittee for review and approval. If the requirements of Table 6 cannot be met, prior to the issuance of a building permit, the Applicant shall pay the City the current parking in lieu fee for any parking deficit.

17.64.010.I Hotel Uses

N/A I. Hotel Uses:

1. **Transfer Of Development Rights:** Hotels may build a fourth floor anywhere in designated receiving areas, as may be adopted by the city council, without purchase of transfer of development rights. If a site meets the criteria for five-story hotel site designation, the fifth floor may be built without the purchase of transfer of development rights. Five-story hotels may only be approved via a planned unit development (PUD) as outlined in chapter 16.08 of this code. However, with the exception of limited architectural elements, hotel projects may not request waivers to the height and bulk requirements of subsection L1f of this section, building type 6 hotel.

Findings/Conclusion: There are no changes to the approved hotel of five stories in height and within Sub-District A of the Community Core Zoning District. The site meets the criteria for a Five-Story Hotel Site Designation. The applicant received CUP PUD and Design Review approval. No exceptions to the current height limit for a five story hotel are proposed. No changes to this standard of review.

YES a. **Five-Story Hotel Site Designation Criteria:** A property shall meet all of the following criteria to be designated as a five-story hotel site:

Commission Recommendation:

- (1) Is located in Subdistrict A, retail core. Yes
- (2) Is highly visible to visitors. Yes
- (3) Is convenient to walk to retail center. Yes
- (4) Is near the center town plaza, Main Street and Sun Valley Road. Yes
- (5) Contributes to the retail vibrancy. Yes
- (6) Is not located on Main Street between First Street and Sixth Street. Yes
- (7) Has a minimum lot area of thirty three thousand (33,000) square feet. Yes
- (8) Respects the general parameters of any massing studies which may be applicable in the area. Yes – See Massing Study Analysis

N/A 2. **Designated Sending Areas Restricted:** Without exception, hotels cannot build fourth or fifth floors in designated sending areas, as may be adopted by the city council.

Findings/Conclusion: The proposed hotel project and property is not a designated sending area.

YES 3. **Employee Housing: Hotel developments are required to mitigate employee housing impacts at a ratio of twenty five percent (25%) of the total number of employees calculated by the following formula: One employee per hotel room or bedroom. A development agreement or other similar tool shall be utilized to outline employee housing commitments.**

Findings/Conclusion: The applicant did not submit an Employee Housing Plan in 2010. Employee housing calculations are based on a formula of one employee per hotel room. Based on the increase in the number of hotel rooms, the employee housing requirement increases as follows:

BML-2010 Approved: 23 employees required to be housed

BML-2013 Proposed 30 employees must be housed

The Council approved a waiver to this requirement structured through a construction timeline (see Condition #2 of these Findings of Fact, PUD Conditions of Approval and see Development Agreements). The waiving of the employee housing timed to a timeline was considered to be a major incentive by the Council. The applicant would be required to meet the entirety of this requirement if the construction timelines outlined in the Development Agreements are not met. The applicant has been granted a one-year extension to the timeline, and is requesting an additional year as part of this application.

YES 4. **Employee Housing Plan: The applicant shall provide an employee housing plan which outlines the number of employees, income categories and other pertinent data. The employee housing plan shall be the basis of the applicant's proposal for the mix of employee housing which addresses the range of employees needed to serve the hotel.**

Findings/Conclusion: No detailed employee housing plan was required by the City at the time the PUD and Development Agreements were approved. The Council approved a waiver to this requirement structured through a construction timeline. This is outlined in detail in the Development Agreements. The applicant would be required to meet the entirety of this requirement if the construction timelines are not met.

YES 5. **Alternate Means To Satisfy Square Footage: The city council may consider a request by the hotel developer to satisfy any required employee or community housing square footage by alternate means. Off site mitigation, payment of in lieu fees, land in lieu of units, or other considerations may be proposed by the hotel developer. Larger sites are encouraged to include employee and/or community housing on site. The city council has full discretionary power to deny said request.**

Findings/Conclusion: No employee housing plan was submitted. The Council has approved a waiver to this requirement structured through a construction timeline. Under Timeline A the applicant will receive a full waiver of the employee housing requirement. Under Timeline B the applicant will receive a partial waiver of the employee housing requirement, with the remainder satisfied via real estate transfer means of other means approved by the Council. Under Timeline C the applicant will be required to provide for the full employee housing requirement.

YES 6. Development Agreement: Hotels shall enter into a development agreement with the city as part of the PUD approval process. Said development agreement may address the following subjects: community housing, hotel room uses and restrictions, public access on the property, alternatives and remedies if the hotel use ceases, and any other issue the planning and zoning commission or city council deems appropriate. Said development agreement shall follow the public hearing process as outlined in chapter 16.08 of this code. Said development agreement shall be subject to sections 17.154.060, "Enforcement", and 17.154.070, "Modification And Termination", of this title.

Findings/Conclusion: A Development Agreement was adopted by Council, dated September 17, 2010, and one amendment to the Development Agreement has also been adopted, dated November 7, 2011.

PUD EVALUATION STANDARDS

16.08.080(A) STANDARDS:

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

- a. Include a minimum of thirty (30) percent of community or employee housing, as defined in Section 16.08.030;
- b. Guarantee the use, rental prices, or maximum resale prices thereof based upon a method proposed by the applicant and approved by the Blaine County housing authority and/or the Ketchum city council; and,
- c. Are on parcels that are no less than one and one-half acres (sixty-five thousand three hundred forty [65,340] square feet). Application for waiver or deferral of this criteria shall include a description of the proposed community or employee housing and the proposed guarantee for the use, rental cost, or resale cost thereof; or,
- d. For a hotel which meets the definition of hotel in Chapter 17.08, Definitions, and conforms to all other requirements of Chapter 17.64, Community Core District. Modifications or waivers from the provision of Chapter 17.64 may be granted for hotel uses only as outlined in Chapter 17.64.010(H)(c).

Findings: A waiver to the minimum three acre parcel size was granted in 2009. The existing proposal meets the definition of hotel and will provide employee housing as outlined in the Development Agreement. The PUD amendment request does not change any of the original waiver requests.

Conclusion: This standard does not apply at this time.

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

Findings: There are no changes proposed to the exterior of the building or to any exterior improvements. Any resultant parking or traffic changes will be addressed in the Zoning Code analysis above and Section 6 below.

Conclusion: This standard does not apply at this time.

N/A **3. That the proposed project will have a beneficial effect not normally achieved by standard subdivision development.**

Findings: This standard is not applicable because the proposed development is not a subdivision.

Conclusion: This standard does not apply. No land subdivision is proposed. See Section 14 below for a more detailed list of benefits.

N/A **4. The development shall be in harmony with the surrounding area.**

Findings: The PUD amendment request involves no exterior changes to the approved project.

Conclusion: This standard does not apply at this time.

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

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

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

Findings/Conclusion: This standard does not apply. No densities are being transferred. The proposed density is permitted in the CC Zoning District.

YES **6. That the proposed vehicular and non-motorized transportation system:**

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

Findings: The City Council PUD Findings of Fact stipulated that an updated transportation impact assessment be prepared prior to the City entering into a Development Agreement with the Applicant. This document, *Transportation Impact Assessment*, dated January 2010, was

prepared by Galena Engineering, Inc.. The original Development Agreement, recorded on September 30, 2010 is based on this document and a subsequent review of it by Hales Engineering entitled *Ketchum – Bald Mountain Lodge TIA / 1st Street Review*, dated April 14, 2010.

A revised *Bald Mountain Lodge Traffic Impact Assessment Update* by LSC Transportation Consultants, Inc., dated March 4, 2013, assessed the current proposal's impacts, resulting from the conversion of fourth floor residential units to hotel units, to traffic on Main Street and cross streets River Street and First Street. The revised study was based on the assumptions of the *Transportation Impact Assessment for Bald Mountain Lodge*, prepared by Galena Engineering, dated January 2010.

In summary, the revised assessment found that "The findings of the January 2010 *Bald Mountain Lodge Transportation Impact Assessment*, prepared by Galena Engineering, Inc. with regards to LOS and traffic queue lengths would not be changed noticeably by this change in traffic volumes, and remain appropriate."

More specifically, the revised assessment found that:

- "The change to the proposed land uses of the Bald Mountain Lodge (as indicated in a letter from Michael K. Kirby of HighMark Investments to Lisa Horowitz of the City of Ketchum, dated January 15, 2013) would result in an increase in 101 daily one-way vehicle-trips to/from the project (about a 10% overall increase), including an increase in 3 trips during the AM peak hour and 6 in the PM peak hour. However, this change results in only a 0.2 percent increase in overall traffic volume on Main Street in this vicinity, which is negligible.
- With this change in land use, the Bald Mountain Lodge project would generate an estimated total 1,108 vehicle-trips per day, of which 46 would occur in the AM peak hour and 87 in the PM peak hour."

The Commission considered the above information and expressed concern about the need to update baseline data in the traffic study in light of the timeline extensions currently being granted. The Commission expressed a desire to follow best practices, which, according to Traffic Consultant Gordon Shaw of LSC Consulting, would include updated baseline data approximately every three years. To address this concern, the Commission suggested an added condition to Timeline C that a revised traffic study would be "required, including new traffic baseline data. Said traffic study may result in modifications to approvals related to traffic and circulation."

In addition, LSC Transportation Consultants, Inc. was asked to study the implications of a three-lane configuration of Main Street at the River and First Street intersections. The Main Street intersection approaches were assumed to have one shared thru-right and an exclusive left-turn lane in each direction, while the River and First Street approaches were assumed to retain their existing single-lane approaches. In summary, this limited analysis and simulation found that, in a 2013 scenario:

- Reducing the capacity along Main Street would cause excessive delays at intersections.
- Long traffic queues on Main Street that would persist throughout the AM and PM peak hours were predicted. Of particular concern were that:
 - Southbound queues, formed from the Main Street/1st Avenue intersection, would extend northward through the 2nd, 3rd and 4th Street intersections, creating the potential for “gridlock” conditions;
 - Westbound queues on 1st Avenue would form back through the Leadville Avenue intersection; and
 - Northbound queues on Main Street would extend back to Serenade lane.
- The analysis also mentions that, in reality, the extent of the above mentioned delays and queues would result in “substantial diversion off of Main Street and onto parallel routes, such as 2nd Avenue and Cottonwood Street/3rd Avenue.” It concludes that, “even with those diversions (and associated impacts on the parallel routes) long delays and queues would remain on Main Street.”

In addition, the 2018 scenario assumes a 2% annual growth in traffic volumes on Main Street, which would result in substantially worse conditions than the 2013 study predicts.

In conclusion, the current analysis suggests that a three-lane configuration for Main Street does not appear to be a reasonable future scenario and would certainly require additional study.

The Commission acknowledged that, while the three lane configuration analysis provided interesting information, this analysis had no bearing on the PUD amendment being considered.

Conclusion: The proposed PUD Amendment would not noticeably change the traffic impacts of the project. All conditions of the original PUD approval and Development Agreement pertaining to traffic impact still apply. This standard has been met, subject to Conditions #3-8 on pages 27-28 of this report, and a modification to Condition #2, Timeline C, requiring a traffic study.

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

Findings/Conclusion: See Section a. This standard has been met.

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

Findings: No change is proposed to the proposed configuration of vehicular and pedestrian access. The current traffic study does not find significant increase in vehicular activity due to the proposed use changes. The Commission clarified one condition related to striping of the entrance to the Porte Cochere off of First Street.

Conclusion: This standard has been met.

N/A d. Is designed to provide adequate removal, storage and deposition of snow;

Findings/Conclusion: There is no proposed change to the snow removal plan. This standard does not apply at this time.

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

Findings/Conclusion: This standard has been met. See Section c.

N/A f. Includes the use of buffers or other physical separations to buffer vehicular movement from adjacent uses;

Findings/Conclusion: There is no proposed change to the exterior configuration of the proposed project. This standard does not apply at this time.

N/A g. Is designed so that roads are placed so that disturbance of natural features and existing vegetation is minimized;

Findings/Conclusion: No additional roads are being proposed. This standard does not apply.

N/A h. Includes trails and sidewalks that creates an internal circulation system and connect to surrounding trails and walkways.

Findings/Conclusion: There is no proposed change to the exterior configuration of the proposed project. This standard does not apply at this time.

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

Findings: The proposed minor land use change does not negatively change the project with respect to the Comprehensive Plan, Downtown Master Plan, Zoning Ordinance or Subdivision Ordinance. The additional hotel rooms on the fourth floor bring the project further into compliance with the intent of the Comprehensive Plan and with the definition of "Hotel" in the Zoning Code.

Conclusion: This standard has been met.

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

Findings/Conclusion: There is no proposed change to the exterior configuration of the proposed project. This standard does not apply at this time.

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

Findings/Conclusion: There is no proposed change to the exterior configuration of the proposed project. This standard does not apply at this time.

N/A c. The site design should cluster units on the most developable and least visually sensitive portion of the site.

Findings/Conclusion: There is no proposed change to the exterior configuration of the proposed project. This standard does not apply at this time.

N/A 8. That the development plan incorporates the site's significant natural features.

Findings/Conclusion: There is no proposed change to the exterior configuration of the proposed project. This standard does not apply at this time.

N/A 9. Substantial buffer planting strips or other barriers are provided where no natural buffers exist.

Findings/Conclusion: There is no proposed change to the exterior configuration of the proposed project. This standard does not apply at this time.

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

Findings/Conclusion: No change is proposed to the project phasing.

N/A 11. Adequate and useable open space shall be provided. The applicant shall dedicate to the common use of the homeowners or to the public adequate open space in a configuration useable and convenient to the residents of the project. The amount of useable open space provided shall be greater than that which would be provided under the applicable "aggregate lot coverage" requirements for the zoning district or districts within the proposed project. Provision shall be made for adequate and continuing management of all open spaces and common facilities to ensure proper maintenance thereof.

Findings/Conclusion: There is no proposed change to the exterior configuration of the proposed project. This standard does not apply at this time.

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

Findings/Conclusion: There is no proposed change to the exterior configuration of the proposed project. This standard does not apply at this time.

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

Findings/Conclusion: There is no proposed change to the recreational or daycare facilities of the proposed project. This standard does not apply at this time.

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

Findings: Table 11 summarizes the special development objectives of the proposal:

TABLE 11: SPECIAL DEVELOPMENT OBJECTIVES

Special Development Objective, special Characteristics of the Site or Physical Conditions	Type of Objective
4-Star Hotel of <u>119</u> "hot beds"	Economic
Conference Space (seating for 250-275 persons)	Economic
Employee Housing for <u>30</u> employees (required but no plan has been provided)	Social
Proposed contribution towards the undergrounding of overhead power lines (amount to be determined)	Aesthetic; Economic
Pedestrian improvements to public right-of-way to create enhance pedestrian experience	Aesthetic; Economic

The current PUD amendment proposes to convert the entire fourth floor from residential to hotel use. This results in an economic benefit of an additional thirty-seven (37) hotel rooms in the Community Core. The employee housing requirement has changed from a requirement of twenty-

three (23) employee housing units to thirty (30) employee housing units. These are special development objectives that continue to justify the granting of a PUD. The City has established the need for hotels and hotbeds as a priority. The economic benefits of such a project are substantial.
Conclusion: This standard has been met.

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

Findings: See General Findings section, page 2 of this report. At their meeting on March 11, 2013, the Commission noted their concerns over the extensions to the project timelines, and suggested a condition of approval that would impose an additional fee if any further extensions are requested. The Council discussed these concerns and agreed that, if any further extensions are applied for, a fee should be imposed to recoup costs incurred by the City to process such application. The Commission also noted that the applicant should pay attention to property maintenance and landscape care in the interim period before the site is developed.

Conclusion: This standard has been met with the condition that the project receive approval of a Second Amended Development Agreement, as outlined above, from the City Council prior to the end of the year 2013. In addition, Condition #16 addresses site maintenance and Condition #23 addresses the additional fee.

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

Findings/Conclusion: The proposed PUD amendment does not affect public services, facilities and utilities. The Fire, Street and Utility Departments have had no concerns or comments on the current proposal. This standard does not apply at this time.

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

Findings: At the time of the original PUD hearings, the applicant received several waivers that are outlined in the waiver chart provided earlier in this staff report. No additional waivers have been requested. All other ordinances, rules and regulations of the City of Ketchum are met. The waivers require approval through the PUD process and should be evaluated accordingly.

Conclusion: This standard has been met. Several waivers have been requested and approved, and are outlined previously in this staff report. All other rules and ordinances have been met.

CONCLUSIONS OF LAW

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

3. The Planning and Zoning Commission has authority to hear the applicant's Conditional Use Permit application pursuant to Idaho Code Section 67-6512 of the Local Land Use Planning Act and Chapter 16.08 of Ketchum Subdivision Code Title 16.
4. The Commission's public hearing and consideration of the applicant's Conditional Use Permit application was properly noticed pursuant to the Local Land Use Planning Act, Idaho Code Section 67-6512.
5. The application does comply with Ketchum Zoning Code Title 17 and Ketchum Subdivision Code Title 16 and the Ketchum Comprehensive Plan only if the following conditions of approval are met.

DECISION

THEREFORE, the Ketchum City Council approves of this Conditional Use Permit (CUP) for a Planned Unit Development (PUD) amendment this 15th day of April, 2013 provided the following conditions are met:

AMENDED CONDITIONS OF APPROVAL FOR BALD MOUNTAIN LODGE LLC – BALD MOUNTAIN LODGE PUD:

The following conditions are based on the findings made on each of the standards of evaluation as they have been applied to the submitted plans for the PUD:

Hotel Uses

1. Only residential units may be condominiumized and sold separately. The hotel portion of the building including the hotel guest rooms shall not be condominiumized. Occupancy of residential units shall be addressed in the development agreement to ensure that they are as "occupied" for purposes of Urban Renewal Revenue valuation once certificates of occupancy have been issued.

Timing and Incentives

2. Construction Incentives

Incentive Timeline	Community Housing Waiver	Workforce Housing Waiver	Infrastructure Partnering
Timeline A - Building permit applied for in 2013 with construction commencing by June 2014 and the hotel portion of the building completed by 2017.	7,444 sf requirement or approximately \$2.36 million in lieu payment waived in full.	Waive the employee housing requirement in its entirety.	Applicant will construct and pay for all project infrastructure requirements as outlined in the DA. City of Ketchum agrees to request that the Urban Renewal Agency reimburse applicant for costs of qualified public infrastructure improvements. Said reimbursed costs may equal up to 50% of the annual URA revenue increments generated from the project up to a

			total of \$1.5 million over the life of the URA, whichever is less.
Timeline B - Building permit applied for in 2014 with construction commencing by December 2015 and the hotel portion of the building completed by 2018	7,444 sf requirement or approximately \$2.36 million in lieu payment waived in full (based on extension of June 2010 deadline)	50% waiver of housing requirement. 50% or \$1.38 million paid toward housing requirement via real estate transfer fee or other means approved by the City	Applicant will construct and pay for all project infrastructure requirements as outlined in the DA. City of Ketchum agrees to request that the Urban Renewal Agency reimburse applicant for costs of qualified public infrastructure improvements. Said reimbursed costs may equal up to 50% of the annual URA revenue increments generated from the project up to a total of \$1.5 million over the life of the URA, whichever is less.
Timeline C - Building permit application applied for within 4 years of Amended PUD approval	No waiver to requirement	No waiver to requirement	Applicant will construct and pay for all project infrastructure requirements as outlined in the DA. City of Ketchum does not contribute to said improvements.

*This approval is not binding upon the URA as its independent jurisdiction and discretion are not waived by any conditions mentioning the URA.

- **Timeline A.** The project shall receive the following waivers if a Second Development Agreement is approved by the City Council prior to the end of year 2013 and a building permit is applied for by December 2013 and construction commences by June 30th of 2014. If a building permit is not applied for in 2013, construction does not commence by June 30, 2014 and the certificate of occupancy for the hotel portion of the building is not approved by January 2017 these waivers shall not apply:

- i. Employee Housing: waive the employee housing requirement in its entirety.
- ii. Community Housing: the community housing requirement of 7,444 square feet or approximately \$2.36 million in-lieu payment is waived in its entirety.
- iii. Infrastructure Partnering: Applicant will construct and pay for all project infrastructure requirements including undergrounding of power lines and installation of street improvements. City of Ketchum agrees to request that the Urban Renewal Agency reimburse applicant for costs of qualified public infrastructure improvements. A list of

qualified public infrastructure improvements should be identified in the Development Agreement. Said reimbursed costs may equal up to 50% of the annual URA revenue increments generated from the project up to a total of \$1.5 million over the life of the URA, whichever is less. Said reimbursement will be paid annually via URA revenues generated by the project, and shall be subordinate to existing debt accrued/obligated by the URA. A repayment plan shall be developed at such time as substantial URA revenues are generated from the project, at which time total URA increment revenues associated with this project shall be recalculated. Applicant and City Council acknowledge and agree that any project utilizing URA funds is subject to the sole discretion and decision of the URA and the URA is not bound by this agreement. URA financing and projects are also subject to applicable Idaho and federal law. Accordingly, there is no guarantee that URA funding will be available for this project.

- **Timeline B.** The project shall receive the following waivers if a building permit is applied for by December 2014 and construction commences by December of 2015. If a building permit is not applied for by December 2014, construction does not commence in December 2015 and the certificate of occupancy for the hotel portion of the building is not approved by January 2018 these waivers shall not apply:

- i. Employee Housing: waive 50% of the total employee housing requirement as calculated by the following formula. The remaining 50% employee housing requirement which totals \$1.38 million shall be one of the following:
 - a. Constructed within City limits or the Area of City Impact, including concepts of partnership with the City or other entities;
 - b. Paid via a real estate transfer fee, with transfer fees accruing to the City Housing In Lieu fund at the time of closing of each unit, or
 - c. By another method determined by the applicant and approved by the City.

If housing requirement is to be paid through read estate transfer fee, a minimum of 30% of the total required in-lieu fee shall be paid within one year of issuance of the certificate of occupancy of the hotel portion of the Project. The remaining fee shall be paid at the closing of each residential unit, at the rate of 4% of the remaining fee per unit closed until requirement 100% paid. In the event that the above schedule does not result in 100% of the fees being paid within ten years of Hotel COO, any remaining balance will be due and payable.

- ii. Community Housing: the community housing requirement of 7,444 square feet or approximately \$2.36 million in-lieu payment is waived in its entirety
- iii. Infrastructure Partnering: Applicant will construct and pay for all project infrastructure requirements including undergrounding of power lines and installation of street improvements. City of Ketchum agrees to request that the Urban Renewal Agency reimburse applicant for costs of qualified public infrastructure improvements. A list of qualified public infrastructure improvements should be identified in the Development

Agreement. Said reimbursed costs may equal up to 50% of the annual URA revenue increments generated from the project up to a total of \$1.5 million over the life of the URA, whichever is less. Said reimbursement will be paid annually via URA revenues generated by the project, and shall be subordinate to existing debt accrued/obligated by the URA. A repayment plan shall be developed at such time as substantial URA revenues are generated from the project, at which time total URA increment revenues associated with this project shall be recalculated. Applicant and City Council acknowledge and agree that any project utilizing URA funds is subject to the sole discretion and decision of the URA and the URA is not bound by this agreement. URA financing and projects are also subject to applicable Idaho and federal law. Accordingly, there is no guarantee that URA funding will be available for this project.

- **Timeline C.** In the case that a building permit is not applied for and construction does not commence as outlined in the two alternate timelines, this amended PUD CUP shall be valid for a period of four (4) years from the date of signing of Findings of Fact. Impacts to traffic shall be fully re-evaluated, including new baseline data. An application for building permit shall be submitted within 4 years, unless extended by the City Council upon written request by the applicant prior to the CUP expiring.

- i. In the event that the project falls under Timeline C, the applicant shall provide a detailed Employee Housing Plan, which provides for housing for 30 employees on a site acceptable to the Ketchum City Council, and within Ketchum City limits.

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

- a) Provide salary/hourly wages (current dollars) for the various income categories of employees.
- b) The expected number of each level of employee that is intended to be served by the employee housing units.
- c) Which employee category will be served by which type/size of units.
- d) Provide information on anticipated rental rates (in current dollars) or subsidized and/or free rent to employees; will utilities and homeowner's dues (if any) be included in proposed rates.
- e) Establishment of maximum occupancy per unit type (i.e. 1 person per 1 bedroom unit; 2 persons per 2 bedroom units).
- f) Location of units to be within Ketchum City limits.
- g) Provide a matrix on breakdowns of the different types of units (1BD; square footage; total number of units; anticipated rent, etc.)
- h) Create a priority for occupancy program of these units; (i.e. first availability employees that are full-time, secondly to seasonal employees, and third to persons that are verified to be working in the City of Ketchum.
- i) What units will be available and how will the pool of units available be determined.

- j) What minimum standards will be used to determine employee eligibility to live in the employee housing; is full-time status required for employees to qualify for the employee housing and what constitutes full-time status.
- k) How will overflow of demand of units by employees be handled; will there be a priority system.
- l) Provide information on housing families (with children) and/or married couples.

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

The following information shall be provided to the City:

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

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

All of the required Employee Housing shall be available prior to the issuance of any Certificates of Occupancy for the Hotel, or any other uses in the hotel.

- ii. The applicant shall contribute a proportionate share to the underground relocation of overhead utility lines in the vicinity of the project, as outlined in the Development Agreement for the project. However, if the City and Idaho Power do not complete this work as a city project, the applicant may relocate the power lines directly adjacent to the hotel as an off-site improvement.
- iii. A revised traffic study is required, including new traffic baseline data. Said traffic study may result in modifications to approvals related to traffic and circulation.

Traffic and Circulation

- 3. Delivery vehicles associated with Bald Mountain Lodge, including the residential portion of the building, shall not interfere with the regular flow of traffic surrounding the building. In addition, delivery vehicles shall not block the regular flow of traffic on First Street and delivery vehicles shall not block the sidewalk along First Street.

4. Sidewalks shall be designed according to the approved sidewalk scheme for the site. The approved sidewalk scheme shall be recorded with the approved Development Agreement for Bald Mountain Lodge. The following requirements shall be met with regard to sidewalk designs and on-street parking:

River Street Frontage

- Bulb-out at River and Main St: 18 ft including curb and gutter
- Sidewalk 10 ft not including curb/gutter with angled parking along length of River Street
- Bulb-out with exit/entrance at intersection adjacent to Washington Ave: 18 ft including curb/gutter

Main Street Frontage (Based on two 12 ft southbound travel lanes)

- At 1st St: 16 ft bulb-out including curb and gutter
- Bus pull out 8 ft wide including curb and gutter leaving 8 ft wide sidewalk (subject to Mountain Rides requirements)
- Bulb-out at mid-block: 16 ft including curb/gutter
- 16 ft sidewalk/bulb-out from porte-cochere exit to River St

First Street Frontage

- 10 ft minimum sidewalk
- Parking from loading dock to Washington Ave (2 spaces)
- No bulb-outs permitted

Washington Ave Frontage*

- Two 9.5 ft travel lanes
- Maintain existing angled parking along Forest service Park
- BML portion of sidewalk - Minimum 10 ft sidewalks with portions of sidewalk 18 ft in width
- Barriers needed between parking and sidewalks (planters, bollards...etc)
- Recommend stamped and colored asphalt or pavers
- Recommend curb-less sidewalks allowing for flexibility (events, festivals, vending, etc...)

** Applicant shall present final design/scheme for Washington Avenue to City Council prior to building permit submittal and modifications to aforementioned scheme may be modified.*

5. Washington Avenue between 1st Street and River Street shall be rebuilt by the applicant within the aforementioned parameters. In addition, this section of Washington shall be

designed to serve events and functions taking place at both Bald Mountain Lodge and the Forest Service Park.

6. Snowmelt shall extend to curb-line at entrances and exits of building.
7. The recommendations of the City Engineer and of Ryan Hales of Hales Engineering with regard to traffic circulation in and out of the porte-cochere shall be followed. These recommendations are outlined in the memo from Hales Engineering titled "Ketchum – Bald Mountain Lodge TIA/1st Street Review" dated April 14, 2010.
8. Right-of-way encroachments, right turn lane and curb line alignment, slope and drainage, and sidewalk widths shall be resolved to the satisfaction of the City Engineer, Street Department and Fire Department prior to the issuance of a building permit.

Additional Requirements

9. The project shall, at a minimum, meet the requirements of and receive LEED Certification as outlined by the United States Green Building Council's (USGBC) Leadership in Energy and Environmental Design (LEED) Program. In addition, the project shall meet or exceed the minimum requirements set forth in the currently adopted version of the International Energy Conservation Code (IECC). These requirements shall be outlined in the development agreement for this project.
10. A construction staging and mitigation plan, including at a minimum provisions for off-site employee parking, off-site storage of bulk materials, and required ROW encroachments during construction, shall be submitted and approved by the Ketchum Building Department prior to building permit approval.
11. The proposed encroachments into the public street rights-of-way shall be allowed:
 - All marquees may extend into the public right of way as permitted through design review.
12. All water, sewer and other utility main lines, service lines, manholes and fire hydrants shall be maintained or improved as required by the Ketchum Water and Sewer Department.
13. The proposed development shall be completed substantially as presented in the plans dated April 8, 2010, as altered by relevant conditions of approval, and as set forth in the Planned Unit Development agreement, as amended by this amended PUD approval and any amendments to the Development Agreement. The PUD Development Agreement shall include the conditions herein, and other pertinent details from these Findings of Fact.
14. This PUD CUP approval is contingent upon the approved Community Core Design Review application, findings of fact dated March 22, 2010.
15. Applicant agrees to collaborate and participate financially with the City and other property owners on a gateway design, commissioning, construction and installation (as outlined for

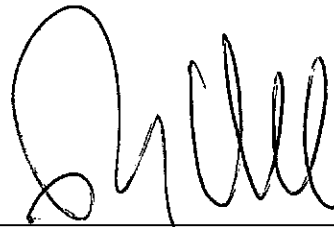
Hotel Ketchum in the development agreement dated November 17, 2008) for the intersection of Main St and River St.

16. The property shall be maintained appropriately per City code until construction commences. This shall include landscaping maintenance, noxious weed mitigation and irrigation of existing landscaping.
17. A Design Review Subcommittee shall be established through the development agreement for the project, as recommended in condition #8 of the design review findings of fact for Bald Mountain Lodge.
18. These conditions and other project details outlined in these findings of fact shall be numerated in the development agreement for this project.
19. Upon issuance of building permit, applicant shall provide financial assurances, in the form of letter of credit, bonds or similar instruments to demonstrate to the City their ability to complete the permitted construction.
20. To reduce the appearance of building bulk, the upper floor steel diagonal columns shall be made vertical, subject to Design Review Subcommittee approval.
21. Applicant to provide a 'comfort letter' from its proposed project lender prior to execution of the development agreement. Such letter should memorialize any existing relationship between applicant and lender, and the lender(s)' interest in financing the project subject to market conditions and lenders' internal credit underwriting policies.

ADDITIONAL CONDITIONS OF APPROVAL PERTAINING TO PUD AMENDMENT

22. The applicant shall submit a revised parking plan showing that project parking requirements have been met, to the Design Review Subcommittee for review and approval prior to issuance of any building permit(s). If the parking requirements cannot be met, a payment of an in-lieu fee, at the current established rate, will be required for space(s) needed to meet requirements. Said fee shall be paid prior to issuance of a building permit.
23. A fee shall be imposed if any additional extensions are requested. The amount of said fee shall be determined by the City Council.
24. No exterior changes to the project are granted by this PUD Amendment.

Findings of Fact **adopted** this 6th day of May, 2013.

A handwritten signature in black ink, appearing to read 'Randy Hall', written over a horizontal line.

Randy Hall, Mayor

Attachment F

2015 Limelight Hotel Design Review Modification Approval: Planning & Zoning Commission Findings

IN RE:)	
)	
Limelight Hotel,)	KETCHUM PLANNING AND ZONING COMMISSION -
(formerly Bald Mountain Lodge))	FINDINGS OF FACT, CONCLUSIONS OF LAW AND
Design Review Modification)	DECISION
)	
)	
)	
File Number: 07-015)	

BACKGROUND FACTS

PROJECT: Limelight Hotel, formerly Bald Mountain Lodge

FILE NUMBER: 07-015

OWNERS: Limelight Ketchum LLC , formerly Bald Mountain Lodge LLC

REPRESENTATIVE: Don Schuster, VP Hospitality, Aspen Skiing Company

REQUEST: Community Core Design Review Modification

LOCATION: Ketchum Townsite Amended Lot 1A, Block 20 (151 South Main Street)

NOTICE: Adjacent property owners were mailed notice on Tuesday, February 10, 2015 and a display ad was run in the Idaho Mountain Express on February 18, 2015.

ZONING: Community Core (CC), Subdistrict A, Retail Core

REVIEWER: Rebecca F. Bundy, Senior Planner / Building and Development Manager

Regulatory Taking Notice: Applicant has the right, pursuant to section 67-8003, Idaho Code, to request a regulatory taking analysis.

GENERAL FINDINGS OF FACT

1. The Bald Mountain Lodge project (land and entitlements) was purchased by the Aspen Skiing Company from Bald Mountain Lodge, LLC in December 2014. The entitlements include a Development Agreement with a preferred Timeline A, which requires submittal of a building permit by May 31, 2015. With the current Design Review application, the developers are seeking approval of a number of design changes, so that they can proceed with the construction documents for building permit submittal on the preferred timeline.
2. On November 24, 2014, the Aspen Skiing Company and the original developers, Bald Mountain Lodge, LLC, conducted a workshop with the Planning and Zoning Commission to get the Commission's feedback on Aspen Skiing Company's proposed modifications to the approved hotel design prior to cementing the sale of the project. At that meeting, it was decided that the proposed programming changes would not necessitate an amendment of the Planned Unit Development (PUD) as approved, since the changes were in keeping with the original approval and code requirements and were minimal

in impact. The Commission decided, however, that the proposed exterior design changes should come before the Commission as a whole for Design Review Modification approval.

3. The Development Agreement calls for creation of a Design Review Subcommittee that will be empowered to approve more minor exterior design changes through the course of the construction project. On December 8, 2014, the Commission nominated Rich Fabiano, former Commissioner, and Erin Smith, current Commissioner, to that subcommittee, along with the Planning and Building Department Director, currently Micah Austin. The nominees were approved by the City Council on January 5, 2015, so the Subcommittee is in place to handle more minor design issues. The original Design Review approval contained conditions of approval authorizing the Design Review Subcommittee to perform final review of a number of Design Review elements, including final landscaping, streetscape design, bicycle parking and signage. Those conditions of approval have been retained in this staff report.

4. The current application is very much in keeping with the changes proposed at the November 24 meeting and also includes elements that reflect the Commission's feedback at that meeting, including removal of the clock tower element at the southwest corner of the building. The current proposal contains the following changes from the original design:

- Building height is reduced five (5) feet with a flat roof configuration to reflect Commission's input;
- The clock tower has been removed from the southeast corner of the building with increased building setbacks above ground level at that corner configuration to reflect Commission's input;
- Ground floor at the corner of Main and River Streets has increased glazing to relate interior lobby space to outdoors;
- Increased upper level setbacks along First and River Streets;
- Fenestration and horizontal relief elements have been increased, including deeper decks and roof overhangs;
- Increased façade articulation on Floor 5, Main Street façade. The residential units have been enlarged within the area of the roof decks to approximately equal the area lost with removal of the clock tower;
- Pedestrian connectivity to Forest Service Park has been enhanced by adding a primary entrance on the west side of the building, a courtyard, steps and bench facing Washington Avenue;
- The green roof at Floor 2 on the Washington Avenue side of the building has been converted to a roof deck, most of it open to the public;
- The First Street vehicular exit from the porte cochere has been eliminated in response to the Commission's concerns about its impact on First Street traffic flows. The porte cochere exit is, therefore, only on to Main Street. However, structure location has not been altered, so the exit could occur on First Street on an as needed basis;
- The applicant has offered to provide signage restricting parking on First Street during morning hours to provide dual use/delivery/garbage truck access;
- Sidewalk and on street parking configurations have been revised with twelve (12) on street parking spaces proposed;
- A substantial amount of hotel back of house has been eliminated. One level of underground structure has been eliminated with pared down back of house, mechanical and parking provided on one (1) underground level; and

- The spa and lower level courtyard have been eliminated, and the pool design has changed to a more rectangular form.

5. The original Bald Mountain Lodge PUD was approved by the City Council on June 7, 2010, and the PUD was amended on May 6, 2014, with no external changes to the building proposed. The following table shows the history of the programming changes since the original PUD approval:

Table 1: History of Programming Changes

	Original Approval	Revised 2013	Proposed Nov 2014	Current Proposal
Project Numbers				
Lot size (sf)	48351	48351	48351	48351
Building height (ft)	68	68	63	63
Parking spaces (#)	125	125	122	124
Number of parking levels	2	2	1	1
Hotel				
Lobby (sf)	5660	4600	12140	5532
Hotel Rooms (total sf)	48380	70448	58142	50414
Hotel Rooms/Suites (#)	82	119	105	98
Avg Size of Hotel Rooms (sf)	590	592	554	456
Lock-off Units (#)	5	0	15	10
Conference/Prefunct space (sf)	5436	8380	4310	4131
Conference Capacity (#)	200	350	175	170
Spa (sf)	5506	3600	0	0
Restaurant/Lounge/Kitchen (sf)	7735	6870	included in lobby	included in lobby
		1 pool	1 pool	1 pool
	1 pool	1 hot	2 hot	2 hot
Pool/Hot tubs	1 hot tub	tub	tubs	tubs
Fitness (sf)	809	1200	940	930
Residential				
Residential Units (total sf)	40035	18600	32335	30736
Residential Units (#)	26	11	18	14
Avg. Size of Residential Units (sf)	1540	1692	1796	2195
% Hotel vs Residential	74.4	86.7	81.0	78.3
Retail				
Total (sf)	2614	2550	1890	2050

6. Hotel Definition: Using the same methodology as in the original PUD approval and the subsequent PUD amendment, the current proposal continues to meet the definition of "hotel" by limiting the residential components to less than 25% of the total "hotel" square footage.

Table 2: Hotel Definition

HOTEL CONFIGURATION	BML-2010 Approved	BML-2013 Approved	LKH-2015 Proposed
Guest Rooms	82	119	98
Sq Ft	59,422	86,329	50,414
Dedicated Units – Lock-Out Units	9	N/A	10
Sq Ft	3,538	N/A	4,776
Hotel Key Count	91	119	108
BOH/Lobbies/Hotel Related Uses Sq Ft (P1,P2,Level 1*)	63,687	60,149	55,621
TTL “Hotel” sq ft (per definition)	126,647	146,478	110,811
Permitted “Non-Hotel” sq ft (25%)	42,215.5	42,215.5	35,387
Proposed Residential Units (4th & 5th Floors minus lock-off units)	26	8	14
Sq Ft	42,215	22,384	30,736
TTL Bldg Sq Ft (includes sub-grade hotel-uses, but not parking)	168,862	168,862	141,547
Pct of Building Area defined as “Hotel”	75.0 %	86.7%	78.3%
Residential sq ft over allowable per definition	0	0	0

7. Parking Requirements: Required parking spaces are pursuant to 17.64.010.E. See table below:

Table 3: Required Parking

Parking Requirements:			
Commercial Space:	10,819 sf**	2 per 1,000 sq. ft. =	21.6 spaces
Residential (net)	30,736 sf	1 per 1,500 sq. ft. =	20.5 spaces
Hotel:	108 units	.75 per Room =	81 spaces
Total Spaces Required: 123.1 spaces			
Proposed:			
Garage: 109 spaces	Surface: 3 spaces	On Street Credit*:	12 spaces
Total Spaces Proposed: 124 spaces			

**Section 17.64.010.E.3 of the Community Core District zoning regulations states that: "Four (4) on street parking spaces per five thousand five hundred (5,500) square feet of lot area may be counted toward the required parking demand."*

This would result in an on street parking credit of 35 spaces. However, between Pre-application Design Review and the original Design Review/PUD submittal, staff and the applicant negotiated a parking credit of nine (9) on street spaces, due to vehicular access requirements, desired pedestrian bulb-outs at intersections and other considerations. The current proposal calls for twelve (12) on street parking spaces and still maintains the desired pedestrian bulb-outs. It also provides enhanced pedestrian access between the hotel and Forest Service Park.

****The applicant's parking calculations for the commercial space include 2 spaces per 1000 square feet for the conference/board rooms, breakfast/bar/lobby and lounge (totaling 8,762 square feet), which are required elements of a hotel and should be satisfied by the .75 parking spaces per room hotel parking requirement. Therefore, the project as proposed has 19 more spaces than required by the code.**

As condition of approval #9, prior to issuance of a building permit, the applicant shall submit civil engineered street and sidewalk design drawings, showing grading, drainage and details, for review and approval by the Public Works Director.

8. **Sidewalk Requirements:** The applicant has stated that sidewalks on Main Street shall be eight (8) feet in width, and that the sidewalks on First and River Streets and Washington Avenue shall be ten (10) feet in width. As condition of approval #9, prior to issuance of a building permit, the applicant shall submit civil engineered street and sidewalk design drawings, showing grading, drainage and details, for review and approval by the Public Works Director.

General Requirements for all Design Review Applications				
Compliant			Standards and Conclusion	
Yes	No	N/A	City Code	City Standards and Conclusion
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.080	Complete Application
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	City Department Comments	Police Department ○ No comments to date.
				Fire Department ○ Condition #1 satisfies Fire Department requirements.
				Public Works Department ○ Condition #9 satisfies Public Works Department requirements.
				Building Department ○ Condition #1 satisfies Building Department requirements.

Compliance with Zoning District and Overlay Requirements				
Compliant			Standards and Conclusion	
Yes	No	N/A	Guideline	City Standards and Conclusion
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.010.E	Parking Spaces
			<i>Conclusion</i>	123.1 required 124 proposed (See item 7 above.) <i>This standard may be met with condition of approval #9.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.010.F	Sidewalks
			<i>Conclusion</i>	See item 8 above. <i>This standard may be met with condition of approval #9.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.010.G	Lot Dimensions
			<i>Conclusion</i>	48,351 sf, 219 ft x 219 ft (no change)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.010.H	Gross Floor Area/FAR
			<i>Conclusion</i>	Original DR approval: 134,800 FAR 2.8 (allowed to exceed 2.25 due to hotel use) Current proposal: 132,411 FAR 2.74

Design Review Requirements				
EVALUATION STANDARDS: 17.64.010				
Compliant			Standards and Conclusion	
Yes	No	N/A	Standard Number	City Standards and Conclusion
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.010(l)(1) Hotel Uses	Number Of Floors: Hotels may build a fourth floor. If a site meets the criteria for five-story hotel site designation, a fifth floor may be built. Five-story hotels may only be approved via a planned unit development (PUD) as outlined in <u>title 16, chapter 16.08</u> of this code. However, with the exception of limited architectural elements, hotel projects may not request waivers to the mass and height specifications of subsection L9c of this section, building type 6 hotel.
			<i>Conclusion</i>	<i>The entitled hotel project has met the requirements for a hotel or received waivers through the PUD process. None of the changes proposed affect the existing approvals.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.010(l)(1)a	Five-Story Hotel Site Designation Criteria: A property shall meet all of the following criteria to be designated as a five-story hotel site:
			<i>Conclusion</i>	<i>The entitled hotel project has met the requirements for a hotel or received waivers through the PUD process. None of the changes proposed affect the existing approvals.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.010(l)(2)	Employee Housing: Hotel developments are required to mitigate employee housing impacts at a ratio of twenty five percent (25%) of the total number of employees calculated by the following formula: One employee per hotel room or bedroom. A development agreement or other similar tool shall be utilized to outline employee housing commitments.
			<i>Conclusion</i>	<i>The entitled hotel project has met the requirements for a hotel or received waivers through the PUD process. The Third Amendment to the Development Agreement waives employee housing requirements if a building permit application is submitted by May 31, 2015.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.010(l)(3)	Employee Housing Plan: The applicant shall provide an employee housing plan which outlines the number of employees, income categories and other pertinent data. The employee housing plan shall be the basis of the applicant's proposal for the mix of employee housing which addresses the range of employees needed to serve the hotel.
			<i>Conclusion</i>	<i>The entitled hotel project has met the requirements for a hotel or received waivers through the PUD process. The Third Amendment to the Development Agreement waives employee housing requirements if a building permit application is submitted by May 31, 2015.</i>

Yes	No	N/A	Standard Number	City Standards and Conclusion
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.010(I)(4)	Alternate Means To Satisfy Square Footage: The city council may consider a request by the hotel developer to satisfy any required employee or community housing square footage by alternate means. Off site mitigation, payment of in lieu fees, land in lieu of units, or other considerations may be proposed by the hotel developer. Larger sites are encouraged to include employee and/or community housing on site. The city council has full discretionary power to deny said request.
			Conclusion	The entitled hotel project has met the requirements for a hotel or received waivers through the PUD process. The Third Amendment to the Development Agreement waives employee housing requirements if a building permit application is submitted by May 31, 2015.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.010(I)(5)	Development Agreement: Hotels shall enter into a development agreement with the city as part of the PUD approval process. Said development agreement may address the following subjects: community housing, hotel room uses and restrictions, public access on the property, alternatives and remedies if the hotel use ceases, and any other issue the planning and zoning commission or city council deems appropriate. Said development agreement shall follow the public hearing process as outlined in <u>title 16, chapter 16.08</u> of this code. Said development agreement shall be subject to sections <u>17.154.060</u> , "Enforcement", and <u>17.154.070</u> , "Modification And Termination", of this title.
			Conclusion	The entitled hotel project has a valid Development Agreement with the City.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.010.L. 9. Building Type 6, Hotel a. Applicable Subdistricts: A, B. b. Building Type 6 Site Specifications	<p>A. Main Street or an avenue.</p> <p>B. Sidewalk.</p> <p>C. Setback line: Minimum average setback of 5 feet from the front property line, except in subdistrict A, where no setback is required. Buildings fronting a 60 foot or narrower right of way shall be set back a minimum of 5 feet from the property line. Cantilevered decks and overhangs 8 feet or greater in height above the finish grade below, measured to the underside of the lowest structural element of the deck or eave, may extend to the property line.</p> <p>D. Building zone: 60 to 100 percent of this area shall be occupied by 1 or more buildings.</p> <ol style="list-style-type: none"> 1. The minimum building depth shall be 50 feet as measured from the front and rear property line, except a portion of the building may be built anywhere within 30 feet of the front property line. 2. Portions of this area not occupied by a building shall be occupied by courtyards, landscaping, hotel entryways, a porte-cochere, or other open space. 3. Storefronts, building entrances, and upper floor balconies may be recessed into the facade. <p>E. Pedestrian entrance: The main pedestrian entrance(s) shall be from Main Street or an avenue.</p> <p>F. All ground floor uses that are intended to serve both hotel guests and the general public (such as a restaurant or retail store) shall have a pedestrian entrance directly from the street.</p> <p>G. Multifunctional zone: This area may be occupied by buildings, usable open space, porte-cochere, loading and unloading zone, valet parking service area, and access to parking facilities. Garbage disposal facilities shall be located in the multifunctional zone.</p> <p>H. Vehicle access points: Access to parking and loading and unloading facilities shall be provided by the alley, except where the development is on a whole city block, then vehicle access, including driveways to a porte-cochere, parking facilities, and loading and unloading zones may be from the side property lines.</p>
			Conclusion	The proposed exterior changes to the building do not include setback changes, orientation of the building to the street or parking and loading access. The portions of the site not occupied by building continue to contain hardscape, landscaping and porte cochere. The current proposal has increased the depth of some balconies, serving to provide greater articulation of the facades. Item D, Building zone was granted a waiver through the PUD process.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.010.L.9.c.	A. First floor ceiling height: 12 feet to 20 feet.

Yes	No	N/A	Standard Number	City Standards and Conclusion
			Building Type 6 Mass And Height Specifications	<p>B. Upper floor ceiling heights: 8 feet minimum and up to 80 percent of the height of first floor ceiling.</p> <p>C. Minimum number of floors: 3.</p> <p>D. Maximum number of floors: 4.</p> <ol style="list-style-type: none"> 1. 5 floors may be allowed in locations as designated by city council. 2. On streets and avenues the fourth floor and fifth floor shall be set back from the property line a minimum of 10 feet with an average of 15 feet. The average setback shall be calculated based on the built portion of the fourth and fifth floor facades and shall be calculated for each street or avenue elevation; the calculation of the average setback is not cumulative. In addition to the minimum and average setback requirement from the property line, the fourth and fifth floors shall be set back a minimum of 5 feet from the wall of the third floor. <p>E. Maximum building height:</p> <ol style="list-style-type: none"> 1. Three-story hotel: 48 feet. 2. Four-story hotel: 58 feet. 3. Five-story hotel: 68 feet. 4. All buildings greater than 48 feet shall require final approval from the city council. 5. A stairway/elevator shaft providing access to a roof garden may exceed the maximum height by up to 10 feet, provided it is stepped back at least 20 feet from the front and rear property line. <p>F. If the building is not set back from the sidewalk, then the entrance shall be at the grade of the sidewalk. If the building is set back from the sidewalk, then the entrance may be elevated above the sidewalk grade by up to 4 feet.</p> <p>G. Third floors may be stepped back.</p> <p>H. Building width: 55 feet minimum.</p>
			Conclusion	<p>The entitled hotel received waivers for Items B and D.2:</p> <p>B. The proposed flat roof eliminates the need for a waiver to the ceiling height limit on the 5th floor.</p> <p>D.2. Waivers to the required 4th and 5th floor setback requirements were granted through the PUD process. The elimination of the clock tower on the 4th and 5th floors resulted in a decrease of about 256 sf per level. That area has been added back in to residential units 9 and 11 on the 5th floor, and the average setbacks on those floors has increased from the original approved design.</p> <p>E.3. Building height has been reduced to 62.5 feet on Main Street and 65.5 feet on Washington Avenue with replacement of the originally proposed pitched roof with a flat roof.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.010.L.9.d. Building Type 6 Roof Forms	<p>A. Flat roof with parapet or cornice.</p> <p>B. Hip roof.</p> <p>C. Gabled roof.</p> <p>D. Full mansard roof.</p> <p>E. Dormers.</p> <p>F. Shed roof: Only allowed where building step backs occur.</p> <p>G. Appropriate combinations of the above roof forms.</p>
			Conclusion	The current proposal replaces the gabled roof with a flat roof with eaves and a low parapet.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.010.L.9.e. Building Type 6 Facade Specifications	<p>A. Building cap: The top of the building shall be defined by a cap, such as a cornice or eaves. The top floor of a four- or five-story hotel shall consist of a sloped roof form with dormer or gable end windows.</p> <p>B. Upper floor facade window fenestration: 30 to 70 percent of each upper floor facade shall be occupied by windows or doors.</p> <p>C. Ground floor facade window fenestration: 60 to 90 percent of each ground floor facade shall be occupied by transparent windows and doors. This specification does not apply to ground floor facades within the multifunctional zone.</p> <p>D. Entry door: At least 1 entry door is required for each business with ground floor street frontage.</p>

Yes	No	N/A	Standard Number	City Standards and Conclusion
			Conclusion	<p>A. The proposed flat roof has eaves and a low parapet and lowers the building height by five (5) feet from the original proposal. At their November 24, 2014 workshop, the Commission indicated to the applicant that they preferred a flat roof over the former pitched roof because it reduced the height of the building and alleviated issues of snow sliding from the roof onto pedestrians. KMC, Section 17.64.010.C allows the Commission to grant waivers to Section 17.64.010.L, provided that:</p> <ol style="list-style-type: none"> 1. The granting of an exception will not be detrimental to the public good. 2. The granting of an exception will not be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use. 3. The granting of the exception will not be detrimental or injurious to property or to the general welfare of the city. 4. The exception is to architectural design elements and is not an exception to other development standards such as building height, setbacks, floor area ratio; to any use requirements or restrictions; or to any life safety requirements. <p>B & C. Façade window fenestration has been modified slightly, but not appreciably; with the exception of additional fenestration at the southeast ground floor corner of the building to provide better visual interaction between the street front and the hotel lobby/dining area.</p> <p>D. The hotel and sports shop continue to each be served by entrance doors. This standard may be met with an exception for a flat roof made by the Commission.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.010.L.9.f. Building Type 6 Façade Elements	<p>A. Awnings/marqueses may project 3 feet to 6 feet from the facade. At major pedestrian entrances to the hotel, marqueses may extend between 6 feet and up to 2/3 the distance between the front facade and the curb line of the sidewalk. Supporting posts are permitted at these entrances.</p> <p>B. Porte cocheres may project up to 32 feet from the facade. They are not allowed to project over the public sidewalk.</p> <p>C. Balconies/decks may project 3 feet to 6 feet from the facade.</p> <p>D. Colonnades (supporting either a shed roof or balcony/deck) may project from 5 feet to 6 feet from the facade. Supporting posts shall have a square width or diameter of 6 inches to 12 inches.</p> <p>E. Vertical clearance: 8 feet minimum.</p> <p>F. Clearance from inside of post/column to facade: 5 feet minimum.</p> <p>G. Prohibited facade elements include external chimneys, external staircases, window security bars, and security roll up doors are prohibited on facades that front a street, avenue, park, and/or plaza.</p>
			Conclusion	<p>A. The depth requirement for marqueses was waived through the original PUD process.</p> <p>B. The current porte cochere has the same dimensions as the original.</p> <p>C – G. Façade elements have not changed.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.010.L.9.g. Building Type 6 Use Specifications	<p>A. Upper floor with street frontage: Accommodation, retail trade and retail service uses as permitted by subsection D, table 1 of this section. Parking is prohibited.</p> <p>B. Ground floor with street frontage: Active uses shall occur on the street frontage of ground floors within the building zone (refer to site specifications). Active uses include, but are not limited to, lobby space, guest registration, restaurants, bars, business center, workout facilities, conference facilities, office space and retail stores. This specification does not apply to ground floor uses within multifunctional zone (refer to site specifications, subsection L9b of this section).</p> <p>C. Floors without street frontage: Accommodation, retail trade and retail service, and residential uses as permitted by subsection D, table 1 of this section. Structured parking is permitted.</p> <p>D. Basement: Parking, storage, and accessory uses associated with ground floor and upper floor principal building uses are permitted. A minimum of 50 square feet of storage space is required for each community housing unit within a</p>

Yes	No	N/A	Standard Number	City Standards and Conclusion
				<p>building.</p> <p>E. Street frontage.</p> <p>F. Depth for street frontage uses: Minimum 20 feet.</p> <p>G. Private outdoor space: All residential uses shall have a private outdoor space (such as a deck, balcony, or private porch). The area of each private outdoor space shall be at least 50 square feet, with no dimension less than 6 feet.</p> <p>H. Roof gardens (private and public) are allowed.</p> <p>I. Utility meters, garbage disposal areas, surface parking lots, and loading and unloading facilities shall be located to the rear of the building. Utility meters are allowed in the setback zone if they are enclosed within a utility box.</p>
			Conclusion	<i>The current proposed uses have not changed from the original design.</i>

DESIGN REGULATIONS: 17.64.020				
Compliant			Standards and Conclusion	
Yes	No	N/A	Standard Number	City Standards and Conclusion
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.020.E.1. All Building Facades	<p>a. Facades shall be designed with both solid surfaces and window openings to avoid the creation of blank walls and glass curtain walls. Blank walls on all facades that front a park, street, avenue, alley, plaza, or other public spaces are prohibited.</p> <p>b. On all facades, a clear visual distinction between each floor shall be provided.</p> <p>c. Stairways shall have a design that is compatible with overall structure. Stairs shall not have a tacked on appearance or look like their design was an addition or afterthought.</p> <p>d. All sides of the facade shall be designed with similar architectural elements, materials, and colors as the front facade. However, the design of side and rear facades may be simpler, more casual, and more utilitarian in nature.</p> <p>e. If a portion of an existing building is modified, it shall use the same building materials, details, and color applications as the rest of the building. For example, if a portion of a brick facade with wood framed windows and doors is modified, the modified portion of the facade shall use bricks, details, and wood frame windows and doors that are compatible with the other parts of the building.</p> <p>f. Additions to existing buildings shall be designed with a style, materials, colors, and details that are compatible with the existing structure.</p>
			Conclusion	<i>The current proposal continues to utilize both solid surfaces and window openings, avoids blank walls and glass curtain walls, provides a clear visual distinction between floors and utilizes similar architectural elements, materials and colors on all facades. No exterior stairways are proposed on the building. There is no existing building on the site, and no addition is proposed.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.020.F.1. Mixed Use/Hotel Building Facades	<p>a. Front building facades, as well as all facades that front a plaza or pedestrian walkway, shall be designed with:</p> <p>(1) Ground floor storefront windows and doors that utilize clear transparent glass in order to provide clear views of storefront displays from the street and/or to allow natural surveillance of the street and adjacent outdoor spaces. Mirror and tinted glass, including solar bronze and interior film, is prohibited.</p> <p>(2) Upper floor window openings that have a vertical orientation and proportion. Mirror and tinted glass is prohibited on upper floor facades.</p> <p>b. Elements of traditional "main street" storefronts shall be used in the facades of traditional mixed use buildings. These elements include recessed entry door(s), display windows, the kickplate or bulkhead, transom windows, cornice and pediment.</p>
			Conclusion	<i>Storefront windows and doors with clear glass are utilized at the ground floor level. Upper floor windows have a vertical orientation. Traditional "main street" elements</i>

Yes	No	N/A	Standard Number	City Standards and Conclusion
				<i>are used, including transom windows, recessed entry doors and display windows.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.64.020.G.1 Multi-Family Home And Urban Residential Building Facades	None.
			<i>Conclusion</i>	<i>None.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.64.020.H. Historic Buildings	None.
			<i>Conclusion</i>	<i>None.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.020.I. 1. Roofs	<p>a. Roofing forms and materials shall be compatible with the overall style and character of the structure. Reflective materials are prohibited.</p> <p>b. A relatively consistent roof design (including overhangs, pitch, fascia, materials and eaves) shall be provided on all sides of the building.</p> <p>c. All roofs shall be designed with snow clips, gutters, and downspouts to prevent water damage and stains on building facades, and to protect pedestrians and adjoining properties from dripping water and sliding snow.</p> <p>d. Mechanical equipment on roofs shall be screened from public view from all sidewalks, plazas, parks, public spaces, and pedestrian walkways.</p> <p>e. Roof overhangs, such as cornices, and eaves, may extend out from the facade of the building. However, roof overhangs shall not extend over a neighboring parcel or more than three feet (3') over a public sidewalk.</p>
			<i>Conclusion</i>	<p><i>The currently proposed flat roof reinforces the horizontal lines of the facades. It will be equipped with internal drains, resulting in no issues from dripping water or sliding snow. Roof overhangs do not extend over neighboring parcels or project more than three (3) feet over the public sidewalk. The current application shows rooftop mechanical screening provided by a screening structure intended to house elevator overruns and rooftop mechanical units. The original Design Review condition of approval #8 addressed this by requiring that a detailed mechanical screening plan shall be submitted for review by the Design Review Subcommittee prior to building permit approval. Staff recommends that condition be made a part of the current approval.</i></p> <p><i>This standard may be met with condition of approval #8.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.020.J.1. Awnings And Marquees	<p>The following standards apply to projecting awnings and marquees:</p> <p>a. The valance, or front face, of an awning shall not exceed eighteen inches (18") in height.</p> <p>b. Awnings and marquees shall not obscure views into storefront display windows or cover architectural expression lines or details.</p> <p>c. Awnings may have signs (refer to sign ordinance).</p> <p>d. High gloss or plastic materials are prohibited.</p>
			<i>Conclusion</i>	<i>The flat roof above the outdoor dining area at the southeast corner of the building does not obscure views into the lobby/restaurant and contributes to the horizontal design of the facades. No awnings are proposed.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.020.K.1. Balconies	<p>The following standards apply to projecting balconies:</p> <p>a. Balconies may be open or covered with a roof or upper story balcony.</p> <p>b. The distance between roof supporting columns, piers, or posts on balconies shall not exceed their height.</p>
			<i>Conclusion</i>	<i>The design contains many balconies, some covered and some not. All are cantilevered, so no posts are proposed.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.64.020.L.1. Colonnades	<p>The following standards apply to projecting colonnades:</p> <p>a. Colonnades may be covered with a roof or a balcony. An enclosed habitable space may occur above the colonnade, as long as it does not occur over the public sidewalk.</p> <p>b. Supporting columns and posts shall be spaced and sized so that they do not block views of storefront windows from the street.</p>
			<i>Conclusion</i>	<i>No colonnades are proposed.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.64.020.M.1. Bay Windows	None.

Yes	No	N/A	Standard Number	City Standards and Conclusion
			<i>Conclusion</i>	<i>None.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.64.020.N.1. Front Porches/Stoops	<p>The following standards apply to front porches and stoops:</p> <p>a. Front porches and stoops may be covered with a roof, a balcony, or an enclosed habitable space. However, an enclosed habitable space may not occur within the setback zone.</p> <p>b. Front porches and stoops shall not be enclosed on the ground floor by permanent or temporary walls, windows, window screens, or plastic or fabric materials.</p> <p>c. The raised platform of a front porch (not including stairways) shall be at least fifty (50) square feet in size with no one dimension less than six feet (6') in length.</p> <p>d. The raised platform of a stoop (not including stairways) shall be at least twenty five (25) square feet in size with no dimension less than five feet (5') in length.</p>
			<i>Conclusion</i>	<i>No front porches or stoops are proposed.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.020.O.1. Public Open Space	<p>a. Public open spaces shall be designed to enhance the site and/or building as a place for pedestrians and shall include the following:</p> <ol style="list-style-type: none"> (1) Trash receptacles. (2) A combination of landscaping and paved surfaces. (3) Pedestrian scaled lighting. (4) Amenities or features that encourage people to gather. Such features include (but are not limited to) outdoor seating, spas/hot tubs, pools, barbecue facilities, outdoor fireplaces, public art, fountains, kiosks, planters, and outdoor dining areas. <p>b. Public open spaces shall be usable throughout the year. These spaces shall either be heated for snow removal or maintained to remove snow during the winter months.</p>
			<i>Conclusion</i>	<i>The current proposal offers public open space facing Washington Avenue in the form of a plaza with two (2) flights of stairs down to the sidewalk, a concrete bench, public art and a mix of hardscape and landscaping. In addition, two (2) fire pit areas are proposed to encourage gatherings.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.020.P.1. Service Areas	<p>a. Trash disposal areas and shipping and receiving areas shall be located within parking garages or to the rear of buildings. Trash disposal areas shall not be located within the public right of way and shall be screened from public views from streets, avenues, alleys, pedestrian walkways, sidewalks, plazas, and public spaces. Trash disposal areas with appropriately designed enclosures or screens may be allowed within rear parking lots, but in no case shall the disposal area be allowed along the street frontage.</p> <p>b. Trash disposal areas shall be screened from public views from all sidewalks, streets, plazas, and public spaces. Trash enclosures shall be used to store outdoor garbage containers or dumpsters.</p> <p>c. Garbage containers or dumpsters shall be kept in enclosures at all times, except when being emptied.</p> <p>d. Trash enclosures shall be maintained and the surrounding area kept free of debris.</p> <p>e. The location of trash enclosures shall not interfere with vehicular and pedestrian access and movement.</p> <p>f. The number of trash receptacles per unit shall be provided based on formulas provided by trash disposal companies.</p>
			<i>Conclusion</i>	<i>The service dock remains in the same location as in the original design with room for two (2) service trucks, dumpsters and recycling bins.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.020.Q.1. Mechanical And Electrical Equipment	<p>1. The following shall not be located within the public right of way and shall be screened from public views from streets, pedestrian walkways, sidewalks, plazas, and public spaces:</p> <ol style="list-style-type: none"> a. Electric and water utility meters. b. Power transformers and sectors. c. Heating/ventilation/cooling equipment. d. Irrigation and pool pumps. e. Satellite dishes greater than eighteen inches (18") in diameter. f. Antennas.

Yes	No	N/A	Standard Number	City Standards and Conclusion
				<p>g. Rooftop mechanical equipment. h. Other mechanical equipment.</p> <p>2. Appropriate methods of screening include fencing, landscaping, roof parapets, and equipment enclosures. The design of screening devices shall be compatible with the main structure and conform to other sections of this code. Noise levels of mechanical equipment shall be minimized. All utility and communication lines serving the site shall be underground.</p>
			Conclusion	<p><i>The current application shows rooftop mechanical screening provided by a screening structure intended to house elevator overruns and rooftop mechanical units. The original Design Review condition of approval #8 addressed this by requiring that a detailed mechanical screening plan shall be submitted for review by the Design Review Subcommittee prior to building permit approval. Staff recommends that condition be made a part of the current approval.</i></p> <p><i>This standard may be met with condition of approval #8.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.020.R.1. Landscaping: The regulations and guidelines in this subsection apply to private property, including parking lots. Regulations and guidelines for the landscaping of streets are provided in subsection X, "Streets And Streetscapes", of this section.	<p>a. The following areas shall be landscaped and regularly maintained to be free of weeds, overgrown vegetation, and litter:</p> <p>(1) Unpaved portions of the site visible from public streets, sidewalks, plazas, parks, and other public spaces. (2) Common outdoor areas within any development. (3) Private and public surface parking lots.</p> <p>b. Landscaping treatments shall include a combination of trees, grasses, shrubs, flowering plants, and flowers.</p> <p>c. All landscaped areas shall be irrigated with automatic drip irrigation systems that do not produce overspray on surfaces outside the planting area.</p> <p>d. All new trees planted in the community core district shall be species that are recommended and approved by the city arborist. All new trees shall have a caliper size of three inches (3") measured twelve inches (12") from the ground. If the species is not available in this size, a caliper of two and one-half inches (2 1/2"), measured twelve inches (12") from the ground, will be acceptable. Evergreen trees shall be at least eight feet (8') tall when planted. All trees shall have a minimum height of fourteen feet (14') when fully grown.</p> <p>e. In order to provide adequate pedestrian clearance, trees shall be pruned regularly so that there is at least seven feet (7') of vertical clearance between the lowest branches of the tree and the grade of the adjacent sidewalk or pedestrian walkway. They shall also be pruned to maintain the health, vigor, and natural shape of the tree, and to maintain vehicular clearance and sight lines.</p> <p>f. All trees shall have an adequately sized planting area. The size of the planting area shall be based on the amount of room needed for tree roots. Root barriers shall be used when trees are planted near pedestrian walkways and sidewalks.</p> <p>g. Shrubs shall have a minimum five (5) gallon container size.</p> <p>h. An exception to a development specification or design regulation (such as the built to line specification) is allowed if the exception will protect and preserve an established, healthy, and mature tree on the site. In cases where such a tree is protected and preserved, the exception to the development specification or design regulations shall be granted with verification of the city arborist and shall not require approval by the planning and zoning commission or city council. When proposed underground parking prohibits the preservation of mature and healthy trees, an assessment of alternatives shall be made by the planning department, city engineer, city arborist and the applicant. Such an assessment will include consideration of a parking demand plan.</p> <p>i. When a healthy and mature tree is removed from a site, it shall be replaced with a new tree. Replacement trees may occur on or off site.</p> <p>j. All landscaping shall be maintained in a healthy and attractive state and shall be watered, weeded, generally maintained, and replaced (if necessary) by the property owner/property manager.</p> <p>k. Trees that are placed within a courtyard, plaza, or pedestrian walkway shall be placed within tree wells that are covered by tree grates.</p> <p>l. The city arborist shall approve all parking lot trees. Trees that do not drop heavy</p>

Yes	No	N/A	Standard Number	City Standards and Conclusion
				<p>cones, sap, fruit, and seedlings shall be selected to minimize potential damage to cars in the parking lot.</p> <p>m. All surface parking lots shall be designed with the following landscaping features:</p> <ol style="list-style-type: none"> (1) The use of porous or pervious surfaces in the parking lot design. These surfaces reduce the volume and rate of storm water runoff and can add to the visual character of the parking lot. (2) Landscaped planters shall be located between public sidewalks and parking lots. Landscaped planters shall be at least five feet (5') wide and shall be planted with a combination of shrubs, trees, and flowering plants. Planter walls shall be limited to a height of twenty four inches (24"). (3) Trees may be planted in landscaped planters, tree wells in pedestrian walkways, and/or diamond shaped planter boxes located between parking rows. Diamond shaped planter boxes and tree wells shall be at least five feet (5') square. Tree gates and root guards shall be required for trees planted within pedestrian walkways. (4) Ground cover, low lying shrubs, and trees shall be planted within the planters and planter boxes. Tree grates or landscaping may be used in tree wells located within pedestrian walkways.
			Conclusion	<p><i>The proposed landscaping includes trees with grates or planters and a mix of hardscape and landscaping. Specific species are not called out, and the plans are not entirely consistent. Staff recommends that original Design Review condition of approval #7 shall continue to apply and that the Design Review Subcommittee shall review and approve the final landscape design with the City Arborist.</i></p> <p><i>This standard may be met with condition of approval #7.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.020.S.1. Fences, Walls And Gates	<p>a. The design of fences and walls shall be compatible with the architecture of the building.</p> <p>b. Entrance arbors are allowed on fences/walls.</p> <p>c. Fences and walls shall have an articulated design. Articulation can be created by having regularly spaced posts, changing the height of the fence/wall, and by using different building materials at the base, posts, or the cap of the fence/wall. Flat walls, chain link fences, and barbed wire fences are prohibited.</p> <p>d. The maximum fence and wall height is four feet (4') within thirty feet (30') of the front property line and six feet (6') beyond thirty feet (30') of the front property line.</p>
			Conclusion	<p><i>Fences and walls are proposed to enclose the swimming pool and fire pit areas on the Washington Avenue and River Street side of the project. The applicant has stated that they will meet the height requirements but that a final design for the fence/wall elements has not been completed. As condition of approval #8, prior to building permit approval, detailed fence and wall designs shall be submitted for review and approval by the Design Review Subcommittee.</i></p> <p><i>This standard may be met with condition of approval #8.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.020.T.1. Site Lighting	<p>a. The following areas shall be illuminated at night to ensure the safety of users and to minimize opportunities for crime. Illumination shall conform to the city of Ketchum dark sky ordinance.</p> <ol style="list-style-type: none"> (1) Intersection of streets. (2) Intersection of alleys and streets. (3) Surface parking lots. (4) Parking structures, including access points, elevators and stairwells. (5) Pedestrian walkways and paths. (6) Plazas. (7) Sidewalks. (8) Automated teller machines (ATMs). (9) All entrances to buildings, including rear and service entrances. (10) Garbage disposal areas. (11) Alleys. (12) Other areas that are routinely used by pedestrians. <p>b. Site, building, and sign lighting shall be located and directed to light the</p>

Yes	No	N/A	Standard Number	City Standards and Conclusion
				intended area of illumination and to prevent off site glare impacts on adjacent buildings or properties.
			<i>Conclusion</i>	<i>The current application does not address exterior lighting. The original Design Review condition of approval #8 addressed this by requiring that a final lighting plan be submitted for review by the Design Review Subcommittee prior to building permit approval. Staff recommends that condition be made a part of the current approval. This standard may be met with condition of approval #8.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.020.U.1. Plazas, Pedestrian Walkways And Courtyards	<p>a. All plazas, pedestrian walkways, and courtyards shall be designed with an ornamental surface that is differentiated from the sidewalk and asphalt streets and parking lots. Appropriate types of ornamental paving include:</p> <ol style="list-style-type: none"> (1) Natural stone. (2) Turf block. (3) Brick. (4) Concrete unit pavers. (5) Concrete with special textures, colors, and patterns. <p>b. At least two (2) sides of a plaza or courtyard shall be defined by building facades with active ground floor uses (such as restaurants, retail stores, cafes, bars, etc.). Edges that are not defined by building facades shall be defined with landscaping features, such as trees, low planters, seating, a pergola with vines, or sculptures.</p> <p>c. All plazas and courtyards shall be designed with pedestrian amenities, such as seating, outdoor dining tables with umbrellas, winter ice rinks, planters, trees, vine covered pergolas, pedestrian scaled lighting, public artwork, outdoor fireplaces, and fountains.</p> <p>d. Plazas shall be illuminated from dusk to dawn. A combination of overhead lighting and lighted bollards shall be used.</p> <p>e. Plazas, pedestrian walkways, and courtyards that are paved shall be kept clear of snow and ice to ensure that the space is usable throughout the year.</p>
			<i>Conclusion</i>	<i>The proposed plaza at the rear of the building contains hardscape and landscaping elements, seating, fire pit areas and public art and is contained on two (2) sides by the hotel building. As noted in item R above, the landscape design is not fully developed. Staff recommends that original Design Review condition of approval #7 shall continue to apply and that the Design Review Subcommittee shall review and approve the final landscape design with the City Arborist. This standard may be met with condition of approval #7.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.64.020.V. 1. Parks	<p>a. Park improvements shall be designed to preserve mature trees, natural topographic features, rock outcroppings, and riparian and floodplain features.</p> <p>b. All parks shall be designed with pedestrian amenities, such as shaded trails and paths, seating areas, picnic tables, barbecue areas, planters, trees, vine covered pergolas, gazebos, drinking fountains, pedestrian scaled lighting, public artwork, and fountains.</p> <p>c. Parks shall be visible from streets, sidewalks, and adjacent uses to facilitate informal surveillance of the park and to increase safety and security. Edge treatments such as landscaping and fencing shall not block public views into the park. Parks shall not be isolated or walled off from the surrounding community.</p> <p>d. Lighting shall be provided for pedestrian paths, parking lots, restrooms, picnic areas, gazebos, and other structures within parks. Lighting shall be located and directed to control off site glare.</p> <p>e. Parks shall be designed with a combination of shaded areas to create cool areas during warm summer months and open space for solar access during the colder months. Canopy trees, trellises, gazebos, and/or other structures shall be provided to shade pedestrian paths, picnic areas, outdoor seating areas, and playgrounds.</p>
			<i>Conclusion</i>	<i>No parks are proposed within the project.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.020.W.1. Bicycle Parking	<p>a.</p> <p>(1) All developments within downtown are required to have bicycle parking. The minimum number of bicycle racks shall be determined by whichever of the following is greater:</p> <p>(A) Two (2) bicycle racks per use or business.</p>

Yes	No	N/A	Standard Number	City Standards and Conclusion
				<p>(B) A number of bicycle racks that equals twenty percent (20%) of the required auto parking.</p> <p>(C) Two (2) bicycle racks per lot.</p> <p>(2) Schools are required to provide a minimum of one bicycle rack per ten (10) students or ten percent (10%) of required auto parking, whichever is greater. Recreation uses are required to provide a minimum of five (5) bicycle racks or ten percent (10%) of required auto parking, whichever is greater.</p> <p>b. A single bicycle rack shall meet the following criteria:</p> <p>(1) Support the bicycle upright by its frame in two (2) places.</p> <p>(2) Prevent the wheel of the bicycle from tipping over.</p> <p>(3) A U-lock should be able to lock the front wheel and the down tube of an upright bicycle or lock the rear wheel and seat tube of the bicycle.</p> <p>c. Two (2) or more single racks may be mounted in a row on a common base or attached in a row to a frame.</p> <p>d. Inverted "U" racks mounted in a row should be placed thirty inches (30") apart (on center) allowing enough room for two (2) bicycles to be secured to each rack and providing easy access to each bicycle.</p> <p>e. The rack should be anchored so that it cannot be stolen with the bikes attached. Racks that are large and heavy enough such that the rack cannot be easily moved or lifted with the bicycles attached do not have to be anchored.</p> <p>f. Bicycle racks may be placed on private property and public sidewalks. In both cases, the racks shall not be placed so that they block the entrance or inhibit pedestrian flow in or out of the building. If placed on a sidewalk or pedestrian walkway, they should be placed so that at least five feet (5') of sidewalk width is maintained.</p> <p>g. Where multiple racks are installed in rows with aisles separating the rows, the following dimensions apply:</p> <p>(1) Minimum aisle width should be forty eight inches (48"). The aisle is measured from tip to tip of bike tires across the space between racks.</p> <p>(2) Minimum depth should be seventy two inches (72") for each row of parked bicycles.</p> <p>(3) Areas with a high turnover rate should have a minimum aisle width of seventy two inches (72") and should have more than one entrance.</p> <p>h. Racks shall be mounted within fifty feet (50') of the entrance it serves, or as close as the nearest car parking space, whichever is closer.</p> <p>i. Racks shall be clearly visible from the entrance it serves.</p>
			Conclusion	<p><i>The current design contains a 680 sf room dedicated to ski and bicycle storage, but does not indicate bicycle rack locations. In the original Design Review approval, it was noted that a total of 23 bicycle racks would be required based on the total parking requirement. However, locations of those racks had not been determined, and, per condition of approval #8, it was required that a final detailed bicycle rack plan shall be reviewed and approved by the Design Review Subcommittee prior to building permit approval. Staff recommends that original condition of approval #8 shall continue to apply.</i></p> <p><i>This standard may be met with condition of approval #8.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.020.X.1. Streets And Streetscapes	<p>a. Streetscape improvements shall be designed in compliance with the city approved cross sections for downtown streets.</p> <p>b. On street parallel parking spaces shall have a dimension of eight feet by twenty feet (8' x 20') (for non-ADA accessible spaces). On street angled parking spaces shall be provided at a forty five (45) to sixty degree (60°) angle. Angled parking spaces shall have a depth of eighteen feet (18') (as measured perpendicular from the curb face), and a width of nine feet (9') (as measured perpendicular to the stripes of the parking stall). A minimum distance of twenty feet (20') is required from the crosswalk or stop sign line to the first parking space.</p> <p>c. The sidewalk radius at street intersections shall be minimized to shorten the length of pedestrian crossings and to prevent vehicles from making turns at high speeds. The city of Ketchum streets department and fire department shall determine the minimum sidewalk radius when designing streetscape</p>

Yes	No	N/A	Standard Number	City Standards and Conclusion
				<p>improvement plans.</p> <p>d. All streetlight fixtures, traffic signals, traffic and directional signs, pedestrian wayfinding signs, parking signs, bicycle racks, parking meters, and fire hydrants shall be located within one to three feet (3') of the curb face.</p> <p>e. All streets shall be designed with streetlights. Streetlights shall be provided along all sidewalks at spacing intervals not to exceed sixty feet (60').</p> <p>f. Streetscape furniture and amenities shall be located to maintain a clear pedestrian path of at least five feet (5') in width.</p> <p>g. If permitted, tables, chairs, and other obstructions used for sidewalk dining shall be located to maintain at least five feet (5') of unobstructed sidewalk width.</p> <p>h. All streetlights, streetscape furniture, and amenities shall be consistent with a city approved list of approved furniture.</p> <p>i. Streetlights shall be scaled to pedestrians and shall be no taller than fourteen feet (14').</p> <p>j. Streetlights shall be equipped with hardware to allow flowerpots and banners to hang from the streetlight. At least seven feet (7') of vertical clearance shall be provided from the sidewalk to the bottom of the flowerpot or banner.</p> <p>k. Community organizations are allowed to hang banners from public streetlights with the approval of a sidewalk use permit. The planning director shall approve all banners that are hung from public streetlights. The Ketchum streets department shall be responsible for hanging all streetlight banners. The city reserves the right to charge a fee for the banners.</p> <p>l. All new public sidewalks shall be heated to facilitate the removal of snow.</p> <p>m. All sidewalks shall be constructed of concrete pavers. Special paving features may be allowed on the sidewalks of unique streets within the downtown, such as Fourth Street and First Avenue.</p> <p>n. The project applicant shall be required to pay for new sidewalk, curbs, and gutters within the public right of way adjacent to the project site when the value of construction exceeds twenty thousand dollars (\$20,000.00).</p> <p>o. Root guards shall be installed for each street tree to minimize damage to the sidewalk.</p> <p>p. All street trees shall be irrigated with automatic drip irrigation systems that do not produce overspray on the sidewalk.</p> <p>q. All new trees shall have a caliper size of three inches (3") measured twelve inches (12") from the ground. If the species is not available in this size, a caliper of two and one-half inches (2 1/2"), measured twelve inches (12") from the ground, will be acceptable. Evergreen trees shall be at least eight feet (8') tall when planted. All trees shall have a minimum height of fourteen feet (14') when fully grown.</p> <p>r. In order to provide adequate pedestrian clearance, trees shall be pruned regularly so that there is at least seven feet (7') of vertical clearance between the lowest branches of the tree and the grade of the adjacent sidewalk or pedestrian walkway. They shall also be pruned to maintain the health, vigor, and natural shape of the tree, and to maintain vehicular clearance and sight lines.</p> <p>s. All trees shall have an adequately sized planting area. The size of the planting area shall be based on the amount of room needed for tree roots. Root barriers shall be used when trees are planted near pedestrian walkways and sidewalks.</p> <p>t. All street trees planted in the community core district shall be species that are recommended and approved by the city arborist.</p>
			Conclusion	<p>Twelve (12) on street parallel parking spaces are currently proposed. The proposed street landscaping includes trees with grates. Specific species are not called out, and the plans are not entirely consistent. Staff recommends that original Design Review condition of approval #7 shall continue to apply and that the Design Review Subcommittee shall review and approve the final landscape design with the City Arborist.</p> <p><i>This standard may be met with condition of approval #7.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.64.020.Y.1. Signage Plans	<p>a. Exposed support structures for signs, including, but not limited to, posts, poles and sign sides or edges, must be faced or covered with wood, stone or metal</p>

Yes	No	N/A	Standard Number	City Standards and <i>Conclusion</i>
				<p>which is corrosion resistant, painted or anodized, or such other material as may be approved by the city as a reasonable, natural textured substitute.</p> <p>b. All freestanding signs shall have landscaping around the base of the support structure in order to provide a transition from the ground to the sign.</p> <p>c. All materials should prevent reflective glare.</p> <p>d. Simple and easy to read typefaces should be used on signs. Hard to read and overly intricate typefaces should be avoided.</p> <p>e. Signs that have symbols, characters, or graphics are encouraged. The symbol, character, or graphic should relate to the products sold in the business or to the name of the business.</p> <p>f. Signs that show depth and cast shadows are encouraged. Depth and shadows can be created by mounting individually cut letters and symbols on the sign base or carving letters and symbols into the base of the sign.</p> <p>g. Projecting signs are preferred over portable or sandwich board signs. Projecting signs generally are more effective for increasing visibility to both pedestrians and motorists.</p> <p>h. Sign materials and colors should complement the building facade. Basic and simple color applications are encouraged and vibrant colors should be avoided.</p> <p>i. The color of letters and symbols should contrast the base or background color of the sign to maximize readability.</p> <p>j. Signs shall not cover or obscure windows, doors, storefronts, building entrances, eaves, cornices, columns, horizontal expression lines, or other architectural elements or details.</p> <p>k. Signage on buildings with multiple tenants shall be limited to prevent sign clutter. Individual signs for tenants with ground floor storefront entrances are permitted. A directory sign with the names and suite numbers of all tenants without a ground floor storefront entrance may be provided at the lobby entrance for those tenants.</p> <p>l. An address marker shall be provided at the main entrance to all buildings.</p>
			<i>Conclusion</i>	<p><i>The original Design Review condition of approval #8 contained a provision that, prior to building permit approval, a Master Sign Plan, including circulation, shall be submitted for review and approval by the Design Review Subcommittee. Staff recommends that original condition of approval #8 shall continue to apply.</i></p> <p><i>This standard may be met with condition of approval #8.</i></p>

CONCLUSIONS OF LAW

1. The City of Ketchum is a municipal corporation organized under Article XII of the Idaho Constitution and the laws of the State of Idaho, Title 50, Idaho Code.
2. Under Chapter 65, Title 67 of the Idaho Code, the City has passed a land use and zoning code, Title 17.
3. The Commission has authority to hear the applicant's Design Review Modification Application pursuant to Chapter 17.64 and 17.96 of Ketchum Code Title 17.
4. The City of Ketchum Planning Department provided adequate notice for the review of this application.
5. The project meets the standards of approval under Chapter 17.64 and 17.96 of Zoning Code Title 17.

DECISION

THEREFORE, the Ketchum Planning and Zoning Commission **approves** this Design Review Modification application this Monday, February 23, 2015, subject to the following conditions:

1. Ketchum City Engineer, Utilities, Street, Fire and Building Department requirements shall be met through the building permit approval;
2. Design Review approval shall expire according to the requirements set forth in the PUD Development Agreement, Third Amendment dated November 3, 2014 for the project;
3. All Design Review elements as depicted in the Design Review Modification plans dated February 9, 2015, and as required through the conditions of approval shall be completed prior to final inspection/occupancy;
4. This Design Review approval is based on the plans dated February 9, 2015, and information presented and approved at the meeting on the date noted herein. Building Permit plans must conform to the approved Design Review plans unless otherwise approved in writing by the Commission or the Director of the Planning and Building Department or subject to Condition 7 below. Any building or site discrepancies which do not conform to the approved plans or conditions of approval may be subject to removal;
5. This Design Review approval is subject to the Planned Unit Development and Development Agreement approvals for Bald Mountain Lodge, LLC, most recently amended by the Third Amendment to the Bald Mountain Lodge Development Agreement dated November 3, 2014 and recorded as Instrument #623125 with the Blaine County Recorder;
6. Prior to issuance of a building permit the applicant shall receive a right of way encroachment agreement from the City for all right of way encroachments associated with the project;
7. A Design Review Subcommittee consisting of two Commissioners and the Director of the Planning and Building Department shall review and approve certain building and site planning elements including, but not limited to:
 - a) Final composition of all finish materials including, but not limited to, placement of stucco, cor-ten steel and wood siding;
 - b) Final lighting plan - All proposed outdoor lighting, including all balcony, façade and terrace lighting shall be detailed in the building permit plans and shall be dark sky compliant;
 - c) Final bicycle rack plan - Bicycle racks shall meet all requirements of Chapter 17.64 of the Ketchum Zoning Code and shall be installed prior to certificate of occupancy. The final number of required bike racks shall be determined by the Subcommittee. Washington Avenue shall be prioritized with regard to bike rack placement;
 - d) Location and screening of utility meters, transformers, pedestals and traffic light equipment. Plans will need to illustrate how this equipment is screened from public view;
 - e) A detailed plan illustrating how rooftop mechanical equipment will be screened and how rooftop snow retention and drainage will be achieved to ensure protection of

- public pathways, sidewalks and other public areas. Height of mechanical screening shall be limited to minimum necessary to provide adequate screening;
- f) Detailed fence and wall designs shall be submitted for review and approval by the Design Review Subcommittee; and
 - g) Complete Master Sign Plan of the entire building and grounds including circulation;
8. The Design Review Subcommittee and the City Arborist shall review and approve all landscaping within the public Right of Way and within the resort prior to building permit approval. This shall include review and approval of tree grates, guards, species and caliper sizes;
 9. The Design Review Subcommittee and the City Arborist and Public Works Director shall review and approve stamped civil engineered drawings for street and sidewalk improvements, showing grading;
 10. The Commission approves the proposed flat roof design and grants an exception to Ketchum municipal Code (KMC) Section 17.64.010.L.9.e.
 11. The Commission approves the proposed single roof access and grants an exception to KMC Section 17.64.010.L.9.c.
 12. Prior to issuance of a building permit, the applicant shall submit civil engineered on-site drainage plans for review and approval by the Design Review Subcommittee.

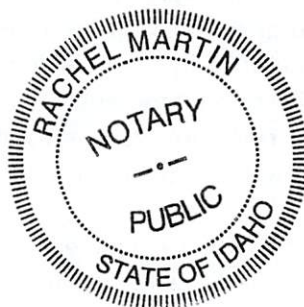
Findings of Fact **adopted** this 2nd day of April, 2015.


 Steve Cook, Vice Chair
 Planning and Zoning Commission

STATE OF IDAHO)
) ss.
 County of Blaine)

On this 2nd day of April, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared Steve Cook, known or identified to me to be the person whose name is subscribed to the within instrument.

WITNESS my hand and seal the day and year in this certificate first above written.




 Notary Public for Idaho
 Residing at: Blaine County
 Commission Expires: November 5, 2019

Attachment G

Limelight Hotel Development
Agreement (April 20, 2015)

**LIMELIGHT HOTEL
(FORMERLY BALD MOUNTAIN LODGE)
DEVELOPMENT AGREEMENT**

THIS LIMELIGHT HOTEL (FORMERLY BALD MOUNTAIN LODGE) DEVELOPMENT AGREEMENT ("Agreement") supersedes and replaces the original Development Agreement dated September 17, 2010, and all amendments entered thereafter and is entered into this 20 day of April, 2015 ("Effective Date"), by and between the CITY OF KETCHUM, IDAHO, a municipal corporation, ("Ketchum") and LIMELIGHT KETCHUM LLC (FORMERLY BALD MOUNTAIN, LLC), a Delaware limited liability company authorized to do business in the state of Idaho ("Owner"), and together with Ketchum the "Parties".

RECITALS

WHEREAS, Owner owns a parcel of land located at 151 South Main Street, Ketchum, Idaho, and more particularly described in Exhibit A attached hereto and incorporated herein by reference ("the Property"), currently zoned Community Core (CC);

WHEREAS, on September 23, 2009, Owner filed the following applications (collectively referred to as the "Original Applications") with Ketchum for development of the Property: (1) an application for a Planned Unit Development ("PUD") for the Bald Mountain Lodge Hotel to be developed on the Property; (2) an application for a conditional use permit ("CUP") for the PUD; and (3) an application for Community Core Design Review. This enables Ketchum to review all of the applications affecting the use and development of the Property in an integrated manner consistent with its comprehensive plan, as adopted and in effect on the Application Date, and other applicable ordinances and regulations of Ketchum;

WHEREAS, Owner supplemented the Original Applications on September 30, 2009 with a letter, revised hotel application certification of completeness, additional design drawings, and other addenda, again on October 27, 2009 with an updated height analysis, and again on April 8, 2010 with additional design drawings (referred to as the "Supplemental Applications," and together with the original Applications, the "Land Use Applications");

WHEREAS, Owner, as the owner of the Property, agrees to submit the Property to a development agreement pursuant to Idaho Code § 67-6511A and Ketchum City Code Section 17.154;

WHEREAS, Ketchum is a municipal corporation having all of the powers and authority granted municipalities under the laws of the state of Idaho, including, without limitation, the authority to contract (Idaho Code § 50-301), to approve planned unit developments (Idaho Code § 67-6515), to approve special use permits (Idaho Code § 67-6512), and to enter into development agreements (Idaho Code § 67-6511A);

WHEREAS, Ketchum, having held all required public hearings and public meetings for consideration of said PUD and this Agreement; approving said PUD and this Agreement;

WHEREAS, Owner has agreed to the use restrictions and other limitations set forth herein and in the PUD Findings, Design Review Findings, and the Findings, defined in Section 1 below for the use and development of the Property;

JB

WHEREAS, the Owner and Ketchum entered into the original Development Agreement on September 17, 2010, and such Agreement was amended on November 7, 2011; May 6, 2013; and November 3, 2014; and the Parties desire to further amend the Agreement and incorporate previous amendments into one document;

WHEREAS, this Agreement will replace and supersede the Development Agreement entered into on September 17, 2010 and the amendments thereafter;

WHEREAS, Ketchum and Owner enter this Agreement for the purpose of establishing certain rights and obligations of the Parties with regard to the development of the Property, including limitations as to the use, development, design, phasing, construction of necessary improvements (on-site and off-site) and mitigating the impacts directly attributable to the Project.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, Ketchum and Owner hereby mutually covenant and agree as follows:

1. **DEFINITIONS.** Throughout this Agreement, the following terms will be defined as follows:

1.1 "Application Date" means September 23, 2009.

1.2 "Commission" shall mean the City of Ketchum's Planning and Zoning Commission.

1.3 "Council" shall mean the City Council of the City of Ketchum.

1.4 "Design Review" shall mean and include the procedures, criteria and standards established by Ketchum City Code 17.96, as adopted and in effect on the Application Date.

1.5 "Design Review Findings" shall mean the findings of fact, conclusions of law and decision approving the Design Review application, adopted by the Commission on the 22nd day of March, 2010, as amended. The Design Review Findings are attached hereto as Exhibit B and incorporated by reference herein.

1.6 "Effective Date" means the date this Agreement is fully executed by the Parties or the date on which the approvals described in the Findings are final, whichever occurs later.

1.7 "Gross Square Footage" means gross floor area as defined in the Ketchum Zoning Ordinance.

1.8 "Ketchum PUD Ordinance" shall mean Title 16, Chapter 16.08 of the Ketchum City Code, as adopted and in effect on the Application Date.

1.9 "Ketchum Subdivision Ordinance" shall mean Title 16, Chapter 16.04 of the Ketchum City Code, as adopted and in effect on the Application Date.

1.10 "Ketchum Zoning Ordinance" shall mean Title 17 of the Ketchum City Code, as adopted and in effect on the Application Date.

1.11 "Ketchum Comprehensive Plan" shall mean the Comprehensive Plan adopted on March 1, 2001 by Ketchum by Resolution No. 756.

1.12 "Ketchum" shall mean the City of Ketchum, Idaho, a municipal corporation, acting by and through its duly elected City Council, Mayor, and all of its agencies and departments.

1.13 "Land Use Applications" shall mean collectively the PUD Application, the CUP application and the Design Review Application, dated October 8, 2009; and any subsequent applications or amendments in effect as of the date of this Agreement.

1.14 "Owner" shall mean Limelight Ketchum LLC, a Delaware limited liability company, authorized to business in the State of Idaho, and its successors and assigns.

1.15 "Project" shall mean the development of the Property contemplated by this Agreement and described in the Site Plan.

1.16 "PUD Findings" shall mean the findings of fact, conclusions of law and decision approving the PUD application, adopted by the Council and signed by the Mayor on the 7th day of June, 2010, as amended. The PUD Findings are attached hereto as Exhibit C and incorporated by reference herein.

1.17 "Site Plan" shall mean the master plan for the Bald Mountain Lodge as depicted on the plans submitted to Ketchum dated April 8, 2010 and as amended by the owner and approved by the City, on file with the Ketchum Planning and Building Department.

2. LEGAL AUTHORITY. This Agreement is made pursuant to and in accordance with the provisions of Idaho Code §§ 50-301, 67-6511A, 67-6512, and Ketchum City Code Chapters 16.08, 17.64 010 (I) (6), and 17.154.

3. CONDITIONS ON DEVELOPMENT. The Project shall be completed substantially as presented in the Site Plan and consistent with this Agreement.

3.1 Hotel. The hotel shall operate at industry-acknowledged four-star standards or higher and shall contain the components approved by the City through the PUD process.

3.1.1 Compliance with Hotel Definition. In order to meet the hotel definition as outlined in Chapters 17.64 010 (I) (6), and 17.08 of the Ketchum Zoning Code, lock-off hotel units shall be provided to meet the hotel definition, provided that such lesser amount shall be agreed to by Owner and the Design Review Subcommittee referenced in Section 3.3.7 below. The PUD Findings made by the City Council with regards to the definition of Hotel are particular to this Project, based on specific facts as outlined in the PUD Findings.

3.1.2 Residential Units. Only residential units may be condominiumized and sold separately. The hotel guest rooms shall not be condominiumized.

3.2 Parking. On-site parking will consist of an underground parking garage, which shall contain parking spaces adequate to meet City Code. The parking garage will also be available to the general public while using the conference center, day spa, restaurant and bar, subject to availability.

3.3 Design. The Project shall be completed substantially as presented in the plans dated April 8, 2010, and as altered by the PUD Findings, Design Review Findings and this Agreement. Building permit plans must conform to the approved Design Review plans unless otherwise approved in writing by the Commission or the Planning and Zoning Administrator. Any development of any portion of the Property substantially inconsistent with this Agreement or the Design Review Findings that is not approved by the Commission or the Zoning Administrator or without modification of the Design Review Findings, shall constitute a breach of this Agreement by the Owner. All Design Review elements as depicted in the Design Review plans dated September 22, 2009, as amended by the revised plans dated April 8, 2010 and by the Design Review Modification approved by the Planning Commission, signed on March 13, 2015, and required through the PUD Findings shall be completed prior to final inspection/occupancy. The Design Review Findings shall be valid per the terms of approval as outlined in Ketchum Zoning Code, Section 17.96.130.A.

3.3.1 Building Type and Bulk. The ceiling heights and marquees along all facades of the building shall be approved by the Design Review Subcommittee as defined in Section 3.3.7 below and meet the standards of a Building Type 6, hotel, except as otherwise approved through the approved waivers outlined in the PUD Findings. Compliance shall be reviewed and approved as set forth in the Design Review Findings. Any signs erected in connection with marquees shall be subject to separate sign permit approval.

3.3.2 Terrace Walls. Terrace walls along Washington Avenue and River Street shall be constructed as approved by the Design Review Findings.

3.3.3 Rooftop and Marquee Plans. Prior to building permit approval, Owner shall submit a detailed plan illustrating how rooftop mechanical equipment will be screened and how rooftop and marquee snow retention and drainage will be achieved. The snow retention and drainage plan shall be reviewed and approved as set forth in the Design Review Findings by the Design Review Subcommittee.

3.3.4 Marquees. All marquees may extend into the public right of way as described in the Waiver Requests set forth in Table 5 of the Findings as supplemented through Design Review.

3.3.5 Setbacks. The proposed 4th and 5th floor setbacks shall be as described in the Waiver Requests set forth in Item 7, Table 5 of the Findings as supplemented through Design Review.

3.3.6 Zoning Waiver Requests. Ketchum acknowledges the zoning and subdivision waivers set forth in Item 7 Table 5 of the PUD Findings, which are hereby incorporated by reference as though fully set forth in this Agreement.

3.3.7 Design Review Subcommittee. For purposes of Design Review and this Section 3.3.7, a Design Review Subcommittee of the Commission is hereby established and shall have the power and authority to approve, disapprove or conditionally approve the following: (i) those matters delegated to it by the Commission that are not contrary to or inconsistent with the Findings, and (ii) any Owner-requested non-material changes to the Design Review approval(s), or the construction elements required of this Agreement. The Design Review Subcommittee shall consist of three (3) persons, one of whom shall be the current director of the Planning and Building Department, one of whom shall be a current or former member of the Commission that approved the original Design Review approval(s),

and one of whom is a current member of the Commission as may be appointed by the Mayor and confirmed by the Council in the normal course. The members of the Design Review Subcommittee appointed by the Mayor and approved by the Council shall serve until they are replaced or the Project is completed. In the event that a member of the Design Review Subcommittee is unable or unwilling to serve, the Mayor shall appoint and the Council shall approve a replacement. The vote or written assent of any two members of the Design Review Subcommittee shall constitute action of the Design Review Subcommittee. The Design Review Subcommittee shall periodically report in writing all actions taken by it to the Commission. Any action by the Design Review Subcommittee adverse to the Owner is appealable by the Owner pursuant Chapter 17.144 of the City of Ketchum Zoning Code, entitled "Appeals".

3.4 Deliveries. Delivery vehicles associated with the Project, including the residential portion of the building, shall not interfere with the regular flow of traffic surrounding the building. Delivery vehicles shall not block the regular flow of traffic on First Street and shall not block the sidewalk along First Street.

3.5 Emergency Services. All fire code requirements of the Ketchum Fire Department shall be satisfied as outlined in the PUD Findings and/or Design Review Findings prior to the issuance of a building permit.

3.6 Bike Racks. The final number of bicycle racks required shall be determined by the Design Review Subcommittee and shall meet all requirements of the Ketchum Zoning Code, Chapter 17.64, prior to issuance of a certificate of occupancy. A significant number of such racks shall be installed along Washington Avenue. A detailed bicycle rack plan shall be reviewed and approved by the Design Review Subcommittee

3.7 Utilities. All water, sewer and other utility main lines, service lines, manholes and fire hydrants shall be as depicted in the preliminary civil drawings for the Project, prepared by Galena Engineering, dated September 30, 2009 and subsequent amendments, and maintained or improved as required by the Ketchum Water and Sewer Department.

3.8 CC&Rs. Owner agrees to record a declaration of covenants, conditions and restrictions ("CC&Rs") and a separate Condominium Declaration ("**Declaration**") against the Property. Owner shall form a condominium association ("**Association**") to address allocation of responsibility for maintenance of common areas associated with the condominiums. The Declaration shall include the following provisions:

- (a) The Association shall be required to maintain at its expense all of the common area associated with the condominiums.
- (b) No person or entity acquiring any portion of the Property shall be permitted to develop, construct, erect, or install any building, utility, improvement or landscaping which does not conform in all respects to this Agreement and the Site Plan.

3.9 Property Maintenance. Owner shall take reasonable steps to maintain the Property as may be required pursuant to Ketchum City Code until construction commences, including, but not limited to, landscape maintenance, irrigation of existing landscaping and noxious weed control.

4. STREETS, PARKING AND CIRCULATION. Right-of-way encroachments, right turn lane and curb line alignment, slope and drainage, and sidewalk widths shall be in accordance with this Section 4, to be reviewed and approved by the City Engineer, Street Department and Fire Department prior to issuance of a building permit. Prior to issuance of a building permit Owner shall apply for and obtain a right-of-way encroachment permit from Ketchum for all right-of-way encroachments associated with the Project.

4.1 Sidewalks. All sidewalks shall be approved by the City Engineer.

4.1.1 Washington Avenue Frontage. Owner shall present a final design scheme for Washington Avenue to City Council prior to building permit submittal.

4.2 Lighting. All lighting shall comply with the Ketchum Dark Sky Standards, Chapter 17, Ketchum Zoning Code. The use of Ketchum Streetscape Lighting Standards is required. Minimum lighting mitigation measures shall include: recessed, shielded and downward facing light fixtures.

4.3 Streets and Bridges Assurances. Owner shall enter into a Road Security Agreement with Ketchum establishing when Owner will be required to deposit funds, a letter of credit, bond, a set-aside letter, or other form of financial assurance acceptable to Ketchum, in an amount to be established to mitigate all material impacts to roads in Ketchum caused by construction traffic during the Project build-out. The Road Security Agreement shall reflect the City Engineer's methodology for determining the material damage to Ketchum's roads including reasonable evidence that would be used to determine the damage caused by construction traffic and the estimated cost of repair. Owner's engineer shall meet and confer with Ketchum's engineer to determine the required mitigation and associated cost based on the methodology. In the event that the engineers are unable to agree, they shall select a third engineer who shall determine the final cost, which shall be binding on the Parties. Prior to commencement of construction, Owner may choose to document current road conditions. Such documentation will be provided to the City Engineer and shall be utilized along with any other relevant documentation from Ketchum to determine if damage was caused by construction traffic as opposed to normal non-construction traffic.

4.4 Parking. Owner shall provide parking as set forth in Section 3.2 herein.

4.5 Washington Avenue. Owner shall make improvements to Washington Avenue between First Street and River Street pursuant to the final design scheme referenced in Section 4.1.4 herein. This section of Washington Avenue shall be designed to serve events and functions taking place at both Bald Mountain Lodge and the Forest Service Park.

4.6 Traffic Impact Analysis and Mitigation. The recommendations of the City Engineer and of Ryan Hales of Hales Engineering with regard to traffic circulation in and out of the porte-cochere shall be followed. These recommendations are outlined in the memo from Hales Engineering entitled "Ketchum-Bald Mountain Lodge TIA/1st Street Review" dated April 14, 2010, attached hereto as Exhibit D and incorporated herein by this reference.

4.7 Ketchum Gateway (Main Street / River Street Intersection). Owner shall plant street trees along Main Street consistent with the approved landscape drawings submitted during the Land Use Application Process. Owner agrees to participate financially and to work with Ketchum's Planning and Building staff and other entities to design the intersection of Main Street and River Street, including public/pedestrian amenities. Owner shall be responsible for the construction costs of one (1) of the

four (4) corners of said intersection.

5. **INFRASTRUCTURE IMPROVEMENTS.** Owner shall engineer, construct, and otherwise provide, at its sole expense, improvements, facilities and services (public and private) as provided in the PUD Findings and this Agreement.

5.1 **Water and Sewer Service.** Owner requests water and sewer service from Ketchum to the Property and Ketchum hereby agrees to provide such water and sewer service at the same fees as charged to equivalent users of Ketchum.

5.2 **Utilities and Warranty.** All 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 new above-ground utility lines are permitted. Detailed engineered construction drawings and specifications for construction of such improvements shall be prepared by Owner and approved by Ketchum prior to construction. Prior to acceptance of any such improvements to be dedicated to Ketchum, Ketchum shall inspect and approve same and Owner shall provide Ketchum with "as built" drawings thereof. Owner hereby warrants that to the best of its knowledge the "as built drawings" are substantially correct and Owner shall, for a period of one (1) year from Ketchum's receipt of said drawings, be liable and hold Ketchum harmless for any damage which may result from material efforts in said drawings after acceptance by Ketchum of said utilities unless such damage is caused directly or indirectly by the acts or omissions of Ketchum, or its agents or contractors.

5.3 **Transfer of Warranties.** 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 Ketchum, subject to all applicable state and federal laws.

6. **GREEN BUILDING PRACTICES.** The Project shall, at a minimum, meet the Requirements of and receive LEED "Certified" Certification as outlined by the United States Green Building Council's Leadership in Energy and Environmental Design ("LEED") Program. In addition, the Project shall meet or exceed the minimum requirements set forth in the currently adopted version of the International Energy Conservation Code ("IECC").

7. **LOCAL OPTION TAXES.** The Project shall be subject to the provisions of Ketchum Municipal Code Chapter 3.12, relating to local option taxes ("LOT"), as follows:

7.1 **Housing Unit Rentals.** As of the Effective Date, Ketchum Municipal Code Section 3.12.030(B) imposes an additional one percent (1%) hotel-motel room occupancy sales tax on receipts from all short term (30 days or less) rental charges for hotel rooms, motel rooms, condominium units, tourist homes and the like. So long as the Ordinance is in effect, the owner of the hotel resort, as to completed hotel units only, and each condominium unit owner, as to his or her condominium unit(s) only, shall comply with the subject tax. Nothing herein shall be deemed or construed to require the owner of a housing unit within the Project to pay any local option tax to occupy their own unit. Further, the obligation to pay local option tax shall not apply to the rental of workforce housing units. Nothing herein creates an independent tax obligation to the Owner unless the Owner is also the owner of the hotel resort, or the owner of one or more of the condominium milts at the resort at the time the tax accrues.

7.2 Building Materials. As of the Effective Date, Ketchum Municipal Code Section 3.12.030(A) imposes a one percent (1%) sales tax upon each sale at retail within the City of Ketchum. So long as the Ordinance is in effect, Owner shall comply with the subject tax.

7.3 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 7 to the extent of such amendment(s) and/or repeal.

8. CONSTRUCTION TIMELINE AND INCENTIVES. Owner acknowledges Ketchum's desire for a construction commencement date at the earliest possible time. Ketchum, having exercised its discretion in approving this Agreement, the PUD Findings and Design Review Findings, shall act reasonably and in good faith when processing the approval or issuance of such applications, permits, plans, specifications, plats, and/or entitlements for the Project as may be necessary or prudent in order to implement the Project, and consistent with the Ketchum City Code and applicable State and / or federal laws, so that Owner will have the benefit of the incentives provided Section 8.1, 8.2 and 8.3 below. In regards to the obligations in this Section 8, time is of the essence. In consideration of Owner's option to commence construction as soon as possible, Ketchum agrees to the following construction incentives:

8.1 Timeline A. The Project shall receive the following waivers if a building permit is applied for by May 31, 2015 and construction commences by November 30, 2015. If a building permit is not applied for by May 31, 2015, construction does not commence in November 30, 2015 and the certificate of occupancy for the hotel portion of the Project is not approved by June 30, 2018, these waivers shall not apply.

8.1.1 Community Housing. The community housing requirement of 7,444 square feet or approximately \$2.36 million in-lieu payment is waived in its entirety (based on extension of the Hotel Community Housing Waiver in the Community Core Zoning District).

8.1.2 Employee/Workforce Housing. The employee housing requirement is waived in its entirety.

8.1.3 Infrastructure Partnering. Owner will construct and pay for all Project infrastructure requirements including undergrounding of power lines and installation of street improvements. The Urban Renewal Agency ("URA") is an agency of Ketchum whose purpose is to encourage and provide financial support to the redevelopment and revitalization of Ketchum. Ketchum agrees to recommend to the URA that the URA reimburse Owner for costs of qualified public infrastructure improvements. Qualified public infrastructure improvements may include: power line undergrounding and design, curb gutter and sidewalks, street improvements, water and sewer utility improvements, and design, storm water improvements and design and other improvements so designated as general public improvements. Said reimbursed costs may equal up to fifty percent (50%) of the annual URA tax increment revenue generated from the Project up to a total of \$1.5 million over the life of the URA, whichever is less. If approved, said reimbursement will be paid annually via URA tax increment revenues generated by the Project. A repayment plan may be developed at such time as substantial URA tax increment revenues are generated from the Project, at which time total URA tax increment revenues associated with this Project shall be recalculated. Ketchum agrees to cooperate with Owner in coordinating the appropriate formal URA applications and use its best efforts to propose reimbursements for the above defined improvements. URA financing and projects are also subject to

applicable Idaho and federal law. Owner hereby acknowledges and agrees that there is no guarantee that URA funding will be available for this Project.

8.2 Timeline B. The Project shall receive the following waivers if a building permit is applied for by May 31, 2016 and construction commences by November 30, 2016. If a building permit is not applied for by May 31, 2016, construction does not commence by November 30, 2016 and the certificate of occupancy for the hotel portion of the Project is not approved by June 30, 2019, these waivers shall not apply.

8.2.1 Community Housing. The community housing requirement of 7,444 square feet or approximately \$2.36 million in-lieu payment is waived in its entirety (based on extension of the Hotel Community Housing Waiver in the Community Core Zoning District).

8.2.2 Employee/Workforce Housing.

- (a) Ketchum will waive fifty percent (50%) of the total employee housing requirement. The remaining fifty percent (50%) of the employee housing fee (\$1.38 million) shall be paid via one of the following options:
 - (i) Construction of employee housing units within the city limits or the Area of City Impact (as defined in the Ketchum Municipal Code), which construction can include concepts of partnership with Ketchum or other entities;
 - (ii) Payment via a real estate transfer fee, with the transfer fees accruing to the Ketchum Housing In Lieu Fund at the time of closing of each unit; or
 - (iii) By another method determined by Owner and approved by Ketchum.
- (b) If the remaining employee housing requirement is to be paid through real estate transfer fees, a minimum of thirty percent (30%) of the total required in-lieu fee shall be paid within one (1) year of issuance of the certificate of occupancy for the hotel portion of the Project. The remaining fee shall be paid at the closing of each residential unit, at the rate of four percent (4%) of the remaining fee per unit closed until paid in full. In the event the foregoing schedule does not result in one hundred percent (100%) of the fees being paid within ten (10) years of the issuance of the certificate of occupancy for the hotel portion of the Project, any remaining balance will be due and payable at the end of such ten (10) year period.

8.2.3 Infrastructure Partnering. Owner will construct and pay for all Project infrastructure requirements including undergrounding of power lines and installation of street improvements. The URA is an agency of Ketchum whose purpose is to encourage and provide financial support to the redevelopment and revitalization of the City. Ketchum agrees to recommend to the URA that the URA reimburse Owner for costs of qualified public infrastructure improvements. Qualified public infrastructure improvements may include: power line undergrounding and design, curb gutter and sidewalks, street improvements, water and sewer utility improvements, and design, storm water improvements and design and other improvements so designated as general public improvements. Said reimbursed costs may equal up to fifty percent (50%) of the annual URA tax increment revenue

generated from the Project up to a total of \$1.5 million over the life of the URA, whichever is less. If approved, said reimbursement will be paid annually via URA tax increment revenues generated by the Project. A repayment plan may be developed at such time as substantial URA tax increment revenues are generated from the Project, at which time total URA tax increment revenues associated with this Project shall be recalculated. Ketchum agrees to cooperate with Owner in coordinating the appropriate formal URA applications and use its best efforts to propose reimbursements for the above defined improvements. URA financing and projects are also subject to applicable Idaho and federal law. Owner hereby acknowledges and agrees that there is no guarantee that URA funding will be available for this Project.

8.3 Timeline C. In the event a building permit is not applied for and construction does not commence as outlined in Timelines A or B, the PUD CUP shall be valid for a period of four (4) years from the Amended PUD Findings of Fact (May 6, 2013) to May 6, 2017. An application for building permit shall be submitted by May 6, 2017, unless extended by Council upon written request by Owner prior to the CUP expiration. A written request for extension of the CUP must be received by Ketchum within sixty (60) days of the expiration of the CUP. Waivers to the community housing and employee housing requirements shall not apply under this timeline.

8.3.1 Community Housing. Owner shall fulfill the workforce housing requirement prior to building permit approval for the hotel. Fulfillment of the requirement shall include development of a workforce housing plan to be approved by the City Council prior to building permit approval. The following is a list of several options that may be pursued in developing the work force housing plan:

- (a) Provide housing via new construction within the City of Ketchum;
- (b) Fulfill the requirement via master leasing of existing units within the City of Ketchum;
- (c) Agree to a real estate transfer fee wherein all fees would be dedicated to the development, construction or maintenance of work force housing in the City of Ketchum;
- (d) Agree to a revenue-based fee based on the profits derived from the hotel;
or
- (e) Develop a workforce housing plan that incorporates several of these options.

8.3.2 Employee/Workforce Housing. Owner shall be required to provide a detailed Employee Housing Plan, which provides for housing for thirty (30) employees on a site acceptable to Council and within Ketchum city limits.

- (a) The Employee Housing Plan shall contain the following elements:
 - (i) Salary/hourly wages (current dollars) for the various income categories of employees;
 - (ii) The expected number of each level of employee that is intended to be served by the employee housing units;
 - (iii) Which employee category will be served by which type/size of units;
 - (iv) Information on anticipated rental rates (in current dollars) or subsidized and/or free rent to employees, including whether

- utilities and homeowner' s dues (if any) will be included in the proposed rates;
 - (v) Establishment of maximum occupancy per unit type (i.e. one person per one bedroom unit; two persons per two bedroom units);
 - (vi) Location of units to be within Ketchum city limits;
 - (vii) A matrix on the breakdowns of the different types of units (1 BD; square footage; total number of units; anticipated rent, etc.);
 - (viii) The priority system for occupancy of these units (i.e. first availability to full-time employees, second to seasonal employees, and third to persons that are verified to be working in the City of Ketchum);
 - (ix) What units will be available and how the pool of units available will be determined;
 - (x) What minimum standards will be used to determine employee eligibility to live in the employee housing (i.e. whether full-time status is required and what constitutes full-time status);
 - (xi) How the overflow of demand of units by employees will be handled (i.e. priority system); and
 - (xii) Information on housing families with children and/or married couples.
- (b) The proposed Employee Housing Plan shall meet minimum size thresholds and income categories established by BCHA and/or Ketchum.
- (c) Owner shall submit the following information to Ketchum in connection with the Employee Housing Plan:
 - (i) Wage/salary range and a breakdown of the number of employees within each classification (full-time, part-time, seasonal, etc.);
 - (ii) Information on the type of housing provided per employee classification;
 - (iii) Costs incurred in rent (and utilities) and transportation/parking by employees;
 - (iv) Details on anticipated lease terms/rental agreements for employees housed on-site; and
 - (v) Anticipated transportation and parking scenarios for both on-site and commuting employees.
- (d) The Employee Housing Plan shall be submitted and approved by Council as an amendment to this Agreement and shall be recorded prior to issuance of a building permit.

- (e) All of the required employee housing shall be available prior to the issuance of any certificates of occupancy for the hotel, or any other uses in the hotel.

8.3.3 Infrastructure Partnering. Owner shall contribute a proportionate share to the underground relocation of overhead utility lines as more particularly set forth in Section 10 herein.

8.3.4 Additional Traffic Study. If the Owner does not comply with timelines A or B, Owner agrees to complete a revised traffic study, which includes new traffic baseline data. Said traffic study may result in modifications to approvals related to traffic and circulation.

9. CONSTRUCTION STAGING AND MITIGATION. A detailed Construction Staging and Mitigation Plan, including at a minimum provisions for off-site employee parking, off-site storage of bulk materials, and required right-of-way encroachments during construction, shall be submitted and approved by the Ketchum Building Department prior to building permit approval. Owner is encouraged to use local contractors wherever possible.

10. ELECTRIC POWER. Owner acknowledges the Franchise Agreement between Ketchum and Idaho Power Company prohibits above ground installation of new electric transmission lines. Owner shall pay its proportionate share for underground relocation of overhead utility lines based on the frontage of the subject property along River Street. Said contribution shall be utilized by Ketchum solely for the relocation of power lines from overhead to underground for the Project. Ketchum and Owner agree that other businesses and property owners, as well as the general public will benefit from the above. In regards to such underground relocation, Ketchum and Owner shall, in good faith, attempt to negotiate an agreement to the effect that the portion of the costs in connection with such development of the electric power lines benefitting properties other than the Property shall be paid by the following, in order of preference: (1) the franchise agreement fund; (2) a local improvement district ("LID") formed by Ketchum for that purpose; (3) by URA funds; (4) Ketchum general funds; and (5) reimbursement to Owner from the service connection charges collected from such other benefited property owners who otherwise have not paid or contributed their proportionate share toward upgrading and undergrounding the electric power lines. In all instances, the Agreement referred to in this Section shall be made in accordance with local and State law. In the event Ketchum and Idaho Power do not complete undergrounding of electric power lines as a city project, Owner may relocate the power lines directly adjacent to the Project as an off-site improvement.

11. FINANCIAL ASSURANCE AND ASSISTANCE.

11.1 Hold Harmless. Owner is responsible for all costs associated with the construction and maintenance of the Project as approved in the Findings and described herein, and hereby holds Ketchum harmless for any financial obligations related thereto.

11.2 Performance, Payment and Reclamation Bonds. Upon issuance of the building permit for the Project, Owner shall provide financial assurances to Ketchum, in the form of letter(s) of credit, bonds or other similar instrument to demonstrate to Ketchum Owner's ability to complete the permitted construction.

11.3 Public Funding Opportunities. Ketchum agrees to reasonably cooperate with Owner in exploring public funding opportunities for financial assistance with any of Owner's obligations under

this Agreement.

11.4 Lender Letter of Assurance. Owner agrees to provide a "comfort letter" from its proposed Project Lender(s) prior to execution of this Agreement. Such letter should memorialize any existing relationship between Owner and Lender(s), and the Lender(s)' interest in financing the Project subject to market conditions and Lender(s)' internal credit underwriting policies.

11.5 Right of Entry. Owner hereby grants Ketchum a license to enter upon the Property, during business hours and upon reasonable advance written notice, with Owner or Owner's representatives having the right to be present during such times, to (a) inspect the same, (b) determine if Owner is complying with this Agreement, and (c) to undertake the cure of any default of Owner; provided, however, all such cures shall be performed as promptly as possible and so as to cause the least interference to guests, invitees and other occupants of property in the Project. Ketchum agrees to indemnify, defend and hold harmless Owner from any and all liability, claims, damages, expenses, judgments, proceedings and causes of action of any kind whatsoever, arising out of Ketchum's exercise of the license granted herein, including injuries to Ketchum employees, or Ketchum's agents or representatives while on the Property.

12. AGREEMENT TO COOPERATE; JOINT DEFENSE AND CONFLICT WAIVER. The Parties agree at all times to cooperate and exercise good faith to achieve the purposes of this Agreement. In the event any legal or equitable action or other proceeding is instituted by a third-party or other governmental entity or official challenging the validity of any provision of Ketchum's approval and/or implementation of the PUD Findings, the Design Review Findings or this Agreement, the Parties hereby agree to cooperate in defending such action or proceeding. Ketchum and Owner 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 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 shall retain the right to pursue its own independent legal defense.

13. SALE OR TRANSFER OF THE PROPERTY.

13.1 This Agreement shall run with the land comprising the Property, and shall be binding upon and benefit Owner, its assigns, and any successor in interest to any portion of the Property, as provided in this Agreement. All duties, rights, covenants and obligations of Owner

under this Agreement, are freely assignable in whole or part, at Owner's discretion to a third party or parties, who either invest in all or part of the Project by purchase of a majority or minority interest in the Owner's company or by joint venture or other type of arrangements, or by purchase the Property in fee title. In the event that Owner or a successor in interest to Owner, sells or transfers the Property, or any portion thereof, written notice of said transaction shall be given to Ketchum no less than thirty (30) days prior to closing.

13.2 The purchasers of condominium units therein for which final occupancy permits have been issued by Ketchum shall be subject to those portions of this Development Agreement regarding the CCRs, transfer fees, adherence with building standards and Ketchum City Code requirements regarding their use of their property. Owner agrees for itself, its successors and assigns that the CC&Rs recorded for the Project shall contain the covenants set forth in Section 3.8 herein, to be observed by Owner, its successors and assigns. The CC&Rs relating to the continuing obligation of all subsequent

purchasers of any interest in the Property to abide by the requirements of Ketchum approvals therefore cannot be amended absent Council's prior written approval. Upon conveyance of a condominium unit to a third party, except as otherwise provided in this Agreement, the lien and encumbrance of this Agreement shall be automatically released from said unit.

14. AMENDMENT OF AGREEMENT AND CHANGES TO DEVELOPMENT PLAN. This Agreement shall be amended or terminated, in whole or in part, only by the mutual consent of the Parties, executed in writing after proper notice and public hearing before the Council. Ketchum agrees that Owner has the right to undertake and complete the development of the Property in the manner and to the extent set forth and pursuant to this Agreement, the PUD Findings, the Design Review Findings, and all approvals by Ketchum as referenced in this Agreement, including, without limitation, the Site Plan, the Conditional Use Permit, and the approved Land Use Applications (collectively, the "Approvals").

15. DEFAULT AND ENFORCEMENT. In the event either party, their respective heirs, successors, assigns or any other person acquiring an interest in the Property, fails to faithfully comply with all of the terms and conditions included herein resulting in a material violation of this Agreement or the PUD Conditional Use Permit, the PUD Findings, the Design Review Findings, or any material violation of any condition thereof, and following the cure period provided in Section 15.4 below, the same shall constitute an "Event of Default" entitling the non-defaulting party to all legal and equitable remedies available, as described in Section 15.3 below.

15.1 Events of Default. A petition filed by Owner under any bankruptcy, reorganization, arrangement, insolvency, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, that is not dismissed within ninety (90) days after such filing (a "Bankruptcy Filing") shall also constitute an Event of Default of this Agreement and shall entitle Ketchum to seek all available legal and equitable remedies as described in Section 15.3 below. Notwithstanding the foregoing, however, or any contrary provision herein, Ketchum shall not have the right to place a moratorium as described in Section 15.3 below on the basis of a Bankruptcy Filing alone without the existence of an Event of Default as described in the first paragraph of this Section 16 above.

15.2 Waiver. A waiver by a party of any default by the other party of any one or more of the covenants or conditions hereof shall apply solely to the breach or breaches so waived and shall not bar any other rights or remedies or apply to any subsequent breach of any such or other covenants and conditions.

15.3 Remedies and Specific Performance. In the event of a material violation of this Agreement or the PUD Conditional Use Permit, or any material violation of any condition thereof, or the PUD Findings or Design Review Findings, the Parties shall have the right, without prejudice, to specific performance, or any other rights or remedies available under the Ketchum City Code or Idaho law, including but not limited to the right to demand the non-defaulting party to cure such default or enjoin violation and otherwise enforce the requirements contained in this Agreement. Ketchum shall also have the right to place a moratorium on further approvals under the PUD Conditional Use Permit issued pursuant to this Agreement and the PUD Findings in the event of and during the continuance of an Event of Default which is not cured, by motion of the Council after notice and an opportunity to cure, followed by a due process hearing upon at least sixty (60) days written notice to Owner.

15.4 Right to Cure. In the event of a material breach of this Agreement or a material breach of the Findings, the Parties agree that Ketchum and Owner shall have sixty (60) days after delivery of

notice of said breach to cure and correct the same prior to the non-breaching party seeking any remedy provided for herein; provided, however, in the event that the default or breach cannot with diligence be cured within such 60-day period, if the defaulting party shall commence to cure the same within such 60-day period, and thereafter prosecute the cure of same with diligence, then the time within which such breach may be cured shall be extended for such period as necessary to complete the cure.

16. **NO PRECEDENT.** The issuance of this PUD, Development Agreement and Conditional Use Permit shall not be considered a binding precedent for the issuance of other conditional use permits. This permit is not transferable from one parcel of land to another.

17. **POLICE POWERS.** Nothing contained herein is intended to limit the police powers of Ketchum or its discretion in reviewing subsequent applications regarding development and construction of the Property. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation, including without limitation, applicable building codes, fire codes, zoning ordinances, subdivision ordinances, or comprehensive plan provisions, unless expressly provided herein.

18. **TIMELINES.** Time and timely performance are of the essence of this Agreement.

19. **RELATIONSHIP OF PARTIES.** It is understood the contractual relationship between Ketchum and Owner is such that Owner is not the agent, partner, or joint venturer of Ketchum.

20. **FORCE MAJEURE.** If either party hereto is delayed in the performance of any of its obligations hereunder because of inclement weather; material shortages; labor shortages; unavailability of gas, electric or other utilities through no fault of Owner; dispute or strike; civil strife; acts beyond the control of the delayed party including, ^, acts of God; and actions by the United States of America or the State of Idaho, or Ketchum or any of their agencies, the time of performance for completion of such amenity or improvement shall be extended for the same time as lost by the cause hereinabove set forth.

21. **ATTORNEY FEES AND COSTS.** If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorney fees and costs incurred with regard to such action including, without limitation, any appeals.

22. **NOTICES.** All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notices required to be given to Ketchum shall be addressed as follows:

City of Ketchum
P.O. Box 2315
Ketchum, Idaho 83340

Notices required to be given to Owner shall be addressed as follows:

Aspen Skiing Company
c/o Don Schuster and Mark Vogeles
PO Box 1248
Aspen, CO 81612

c/o James D. Garrison
PO Box 3156
Sun Valley, ID 83353

With a copy to:

Rana Dershowitz
Vice President and General Council
Aspen Skiing Company
PO Box 1248
Aspen, CO 81612

A party may change the address by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

23. **NO WAIVER.** In the event Ketchum or Owner do not strictly comply with any of their obligations or duties herein, thereby causing a default of this Agreement, or any forbearance of any kind that may be granted or allowed by Ketchum or Owner to the other under this Agreement shall not in any manner nor in any way be deemed or construed or considered as waiving or surrendering any of the conditions or covenants of this Agreement or any subsequent default.

24. **RECORDATION.** This Agreement, including subsequent amendments thereto, shall be recorded in the Office of the Blaine County Recorder, Hailey, Idaho.

25. **PARTIAL INVALIDITY.** In the event any portion of this Agreement or part thereof shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions hereunder, or parts thereof, shall remain in full force and effect.

26. **ENTIRE AGREEMENT.** This Agreement constitutes the full and complete Agreement of and between the parties hereto. No representations or warranties made by the Parties, or their officers, employees or agents shall be binding unless contained in this Agreement or subsequent written amendments thereto.

27. **NO PRESUMPTION.** No presumption shall exist in favor or against any party to this Agreement as a result of the drafting and preparation of this Agreement.

28. **NO THIRD PARTY BENEFICIARIES.** Nothing contained herein shall be deemed or construed to create any third party beneficiaries or third party rights.

29. **RULES OF CONSTRUCTION.** The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive. The captions to paragraphs of this Agreement are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs. Where there is a conflict between the terms of the PUD Findings or Design Review Findings and this Agreement, including any amendments thereto, the terms of this Agreement shall control, followed by the PUD Findings, the Design Review Findings, and any subsequently adopted findings.

30. **CHOICE OF LAWS.** This Agreement shall be construed in accordance with the laws of the state of

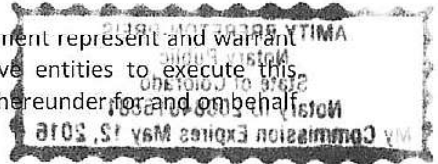
Idaho in effect at the time of the execution of this Agreement.

31. **EXHIBITS.** Attached to this Agreement and made a part of this Agreement by reference are the following Exhibits:

- A- Legal Description
- B - Design Review Findings
- C - PUD Findings
- D -Traffic Impact Analysis

33. **RECITALS INCORPORATED.** The recitals set forth in this Agreement are hereby incorporated herein by reference.


34. **AUTHORITY TO EXECUTE.** Each of the persons executing this Agreement represent and warrant that he has the lawful authority and authorization from their respective entities to execute this Agreement, as well as all applications, plats and other documents required hereunder for and on behalf of the entity executing this Agreement.



35. **RELIANCE BY KETCHUM.** This Agreement is intended by Owner to be considered by Ketchum as part of the Land Use Applications. Owner acknowledges and intends for Ketchum to consider and rely upon this Agreement in Ketchum's review and consideration of said Land Use Applications.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in accordance with the laws of the state of Idaho, the date and year first written above.

LIMELIGHT KETCHUM LLC, a Delaware limited liability company

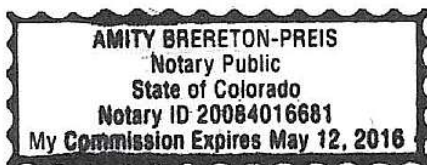
By: 
Name: Mr. R. M. [unclear]
Title: V.P., [unclear]

CITY OF KETCHUM, IDAHO

By: 
MAYOR

STATE OF ~~WASHINGTON~~ COLORADO)
County of ~~King~~ PITKIN) SS

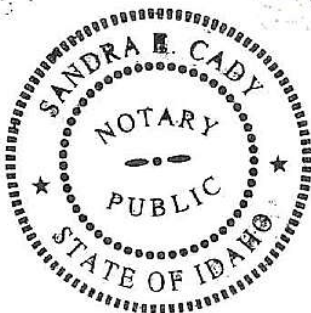
On this 2 day of July, 2015, before me, a Notary Public in and for said State, personally appeared Matthew Jones, known or identified to me to be a Managing Member of LIMELIGHT KETCHM LLC, the limited liability company that executed the within instrument or the person who executed the instrument on behalf of said limited liability company and acknowledged to me that such limited liability company executed the same.



[Signature]
NOTARY PUBLIC FOR ~~DELAWARE~~ COLORADO
Residing at ASPEN, COLORADO, PITKIN COUNTY
Commission expires 5/12/16

STATE OF IDAHO,)
County of Blaine) SS

On this 18th day of May, 2015, before me, a Notary Public in and for said State, personally appeared Nina Jones, Mayor of the City of Ketchum, Idaho, known or identified to me to be the person whose name is subscribed to the within instrument as the Mayor of the City of Ketchum, Idaho, and acknowledged to me that he executed the same as Mayor of the City of Ketchum, Idaho.



[Signature]
NOTARY PUBLIC FOR IDAHO
Residing at in Blaine County
Commission expires 11-20-2019