



CITY COUNCIL MEETING AGENDA MEMO

Meeting Date:	October 20, 2025	Staff Member/Dept:	Abby Rivin, Senior Planner Planning and Building Department
Agenda Item:	Recommendation to review and approve the Limelight Hotel Planned Unit Development (PUD) Conditional Use Permit (CUP) Amendment Findings of Fact, Conclusions of Law and Decision and the Development Agreement (DA) Amendment.		

Recommended Motions:

Motion 1: "I move to approve the Limelight Hotel Planned Unit Development (PUD) Conditional Use Permit (CUP) Amendment Findings of Fact, Conclusions of Law and Decision."

Motion 2: "I move to approve and authorize the Mayor to sign the Limelight Hotel Development Agreement (DA) Amendment."

Reasons for Recommendation:

At their regular meeting on July 7, 2025, the Council conducted their first public hearing and reviewed the Limelight Hotel PUD CUP Amendment and DA Amendment Applications. At the July 7 public hearing, Council requested an analysis of the economic impact of the residential conversion request. The Council reviewed staff's economic impact analysis and conducted their second public hearing during their meeting on August 18, 2025.

On August 18, 2025, the Council approved (3 to 1) the Limelight Hotel PUD CUP Amendment and DA Amendment Applications subject to the condition that the applicant fulfill the community housing contribution required for the new residential use through one of the outright options specified in Ketchum Municipal Code (KMC) §17.124.040.B.2f. The Council directed staff to return with draft PUD CUP Amendment findings and the draft DA Amendment reflecting their decision for final review and approval.

The draft PUD CUP findings are included as Attachment 1 and the draft DA amendment is included as Attachment 2. The applicant has reviewed the draft DA Amendment included as Attachment 2 and agrees with the terms and conditions.

Policy Analysis and Background:

Introduction

On August 18, 2025 the City Council approved (3 to 1) the Limelight Hotel PUD CUP Amendment and Development Agreement Amendment Applications subject to the condition that the applicant fulfill the community housing contribution required for the new residential use through one of the outright options specified in KMC §17.124.040.B.2f. The Council directed staff to return with the draft PUD CUP Amendment findings and the DA amendment reflecting their decision for final review and approval. The draft Limelight Hotel PUD CUP findings are included as Attachment 1 and the draft DA amendment is included as Attachment 2. The applicant has reviewed the draft DA Amendment and agrees with the terms and conditions. The 2015 Limelight Hotel Development Agreement is included Attachment 3.

Process Overview

Commission Recommendation

The Ketchum Planning and Zoning Commission (“Commission”) conducted a public hearing to consider the proposed amendments to the Limelight Hotel PUD CUP and DA on May 7, 2025. The Commission recommended approval of the proposed amendments to the City Council subject to conditions with a vote of 4-1 subject to the condition that the applicant fulfill the community housing contribution required for the new residential use through one of the outright options specified in KMC §17.124.040.B.2f. The May 7 staff report provides an overview of the Limelight Hotel’s entitlement history, an analysis of the residential conversion request, and conformance with the PUD standards (KMC §16.08.080), the zoning code, and the 2014 Comprehensive Plan. The May 7 staff report may be viewed by clicking the link [HERE](#).

City Council Public Hearings

At their regular meeting on July 7, 2025, the Council conducted their first public hearing and reviewed the PUD CUP Amendment and DA Amendment Applications. The July 7 staff report may be viewed by clicking the link [HERE](#). The recording of the July 7 public hearing may be viewed by clicking the link [HERE](#). At the July 7 public hearing, Council requested an analysis of the economic impact of the residential conversion request.

The Council reviewed staff’s economic impact analysis and conducted their second public hearing during their meeting on August 18, 2025. The August 18 staff report may be viewed by clicking the link [HERE](#). The recording of the August 18 public hearing may be viewed by clicking the link [HERE](#). After reviewing staff analysis, the applicant’s presentation, and public comment, the Council approved with a vote of 3 to 1 the Limelight Hotel PUD CUP and DA Amendment Applications subject to the condition that the applicant fulfill the community housing contribution required for the new residential use through one of the outright options specified in KMC §17.124.040.B.2f. The Council directed staff to return with draft PUD CUP Amendment findings and the draft DA Amendment reflecting their decision for final review and approval.

Amendment to Limelight Hotel Development Agreement

The DA Amendment reflects the programming changes approved through the PUD CUP Amendment to convert 11 hotel rooms on the fourth floor into two multi-family residential units. The proposed residential conversion would result in 88 hotel rooms 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 residential conversion request will result in 4,573 square feet of new non-hotel floor area. The DA Amendment allows the 11 hotel rooms to be converted to residential units and condominiumized for individual sale. Section 3 of the draft DA Amendment specifies different requirements for the three different options to satisfy the community housing requirement.

Community Housing Requirement

Pursuant to the floor area ratio (FAR) and community housing standards specified in KMC §17.124.040.B3, the community housing contribution required for the proposed 4,573 square feet of new residential use in the Limelight Hotel is calculated as follows:

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

The Council approved the residential conversion request subject to the condition that the applicant fulfill the community housing requirement required for the proposed new residential use through one of the following outright options specified in KMC §17.124.040.B.2f:

1. Housing constructed by the applicant on or off site, within the City of Ketchum;
2. Payment of an in lieu fee; or

3. Acquisition of existing housing stock that meets with the governing housing authority's requirements and approval.

The draft DA Amendment memorializes this condition by outlining the three options available to the applicant to fulfill the community housing obligation.

Satisfaction of Requirement through Acquisition of Existing Housing

During the previous Council meeting, there was discussion of the affordability risks for community homeowners when an existing market-rate unit in a development is purchased and subsequently restricted to satisfy the community housing requirement. In these situations, the City and the applicant do not have the authority to adjust the homeowners association costs for the unit to be proportionate to the new, restricted value of the home and income of the household, as is required by BCHA policies for new community housing construction. With HOA costs continuing to rise in Ketchum condominium developments due to building age, increasing insurance premiums, inflation and other factors, restricting an existing home for ownership by a Category 4 household does not set up that homeowner for lasting housing affordability and stability.

BCHA has found that only a Category Local restriction, which allows for higher income local households, can sufficiently de-risk the HOA costs to community homeowners in market developments, and staff recommended the use of a Category Local restriction for for-sale community housing, similar to the Ownership and Preservation Program. Council subsequently moved to approve use of a Category Local restriction for ownership units.

The subsidy required to deliver a Category 4 home is significantly more than the subsidy required for a Category Local, and staff continue to recommend use of a Category 4 restriction for rental units in existing developments, consistent with code standards. This ensures that the HOA costs would be borne by the owner, whether that is the original applicant or a subsequent landlord, and the rent and other costs for the Category 4 household would be limited to the maximum housing costs for a Category 4 unit, which are updated annually by BCHA based on income.

Existing housing stock acquired to meet the community housing contribution must be located within the Ketchum city limits unless an alternative proposal is approved by the City Council.

Satisfaction of Requirement through Construction of New Housing

If the applicant elects to construct and sell new housing to meet the requirement, the applicant and City can control the HOA costs, via the Covenants, Conditions and Restrictions, that will be borne by the eventual owner. Under this option, the CC&Rs must adjust HOA cost obligations for the community home(s) in accordance with BCHA's policies for Homeowners Associations Assessments, Dues and CC&Rs ([Section 5.B. of the Community Housing Administrative Policies Adopted July 16, 2025](#)). The revised Development Agreement reflects Council's direction to allow ownership units to be deed-restricted for Category Local.

Staff Recommendation

Staff recommends the Council review and approve the Limelight Hotel PUD CUP Amendment Findings of Fact, Conclusions of Law, and Decision (Attachment 1) and the Amendment to the Limelight Hotel Development Agreement (Attachment 2).

Sustainability Impact:

Pursuant to Section 6—Green Building Practices in the 2015 Limelight Hotel Development Agreement, "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’).”

Financial Impact:

None OR Adequate funds exist in account:	If the applicant chooses to fulfill their community housing obligation by paying the in-lieu fee, then the city would receive \$466,200 for community housing.
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Attachments:

1. Limelight Hotel PUD CUP Amendment: Findings of Fact, Conclusions of Law, and Decision
2. Amendment to Limelight Hotel Development Agreement
3. 2015 Limelight Hotel Development Agreement

Attachment 1

Limelight Hotel PUD CUP Amendment:
Findings of Fact, Conclusions of Law, and
Decision



City of Ketchum
Planning & Building

IN RE:)	
)	
Limelight Hotel)	KETCHUM CITY COUNCIL
PUD CUP & DA Amendment Applications)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
Date: October 20, 2025)	DECISION
)	
File Numbers: P25-001 & P25-001A)	

PROJECT:	Limelight Hotel PUD CUP & DA Amendment
APPLICATION TYPES:	Planned Unit Development Conditional Use Permit Amendment & Development Agreement Amendment
FILE NUMBERS:	P25-001 & P25-001A
OWNER:	Limelight Ketchum 2 LLC
REPRESENTATIVE:	Jim Garrison
LOCATION:	151 S Main Street (151 South Main Hotel & Residences)
ZONING:	Retail Core of the Community Core (CC-1 Zone)
OVERLAY:	None

RECORD OF PROCEEDINGS

A public hearing notice for the Limelight Hotel Planned Unit Development (“PUD”) Conditional Use Permit (“CUP”) Amendment and Development Agreement (“DA”) Amendment Applications 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 public hearing notice was posted on the project site and the city’s website on April 22, 2025.

The amendment applications were considered by the Planning and Zoning Commission (“Commission”) during their special meeting on May 7, 2025. After considering staff analysis, the applicant’s presentation, and public comment, the Commission recommended approval of the Limelight Hotel PUD CUP & DA Amendment Applications to the City Council subject to conditions with a vote of 4-1.

The City Council conducted public hearings on the Limelight Hotel PUD CUP Amendment and DA Amendment Applications during their regular meetings on July 7 and August 18, 2025. After

reviewing staff analysis, the applicant's presentation, and public comment, the Council approved the Limelight Hotel PUD CUP and DA Amendment Applications with a vote of 3 to 1.

FINDINGS OF FACT

The Ketchum City Council, having reviewed the entire project record, provided notice, and conducted the required public hearing, does hereby make and set forth these Findings of Fact, Conclusions of Law, and Decision as follows:

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, and the 2015 Design Review Modification, the Limelight Hotel currently provides 99 hotel rooms 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 88 hotel rooms 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 an amendment to the Limelight Hotel DA. Table 1 provides a history of programming changes and the proposed programming. Table 2 provides an analysis of the Limelight Hotel's compliance with the hotel definition. Table 3 provides a summary of current parking requirements and the parking required for the proposed amendment.

Table 1: History of Programming Changes					
	Original Approval 2010	Revised May 2013	Proposed Nov. 2014 ¹	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

¹ 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.

<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>					
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
1/2 pool/ 1 hot tub	1/2 pool/ 1 hot tub	1/2 pool/ 1 hot tub	1/2 pool/ 1 hot tub	1/2 pool/ 1 hot tub	1/2 pool/ 1 hot tub
<u>Retail</u>					
Total (sf)	2,614	2,550	1,890	2,050	2,050

Table 2: Hotel Definition				
<u>HOTEL CONFIGURATION</u>	BML-2010 Approved	BML-2013 Approved	LKH-2015 Approved	Proposed 2025
<u>Guest Rooms</u>	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	4,776
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
Provided:		
Garage: 109 spaces Surface: 3 spaces On Street Credit*: 12 spaces		
Total Spaces Provided: 124 spaces		No Change

The following City Council findings evaluate the Limelight PUD CUP & DA Amendment Applications requesting to convert 11 hotel rooms on the fourth floor into two residential units for conformance with the PUD evaluation standards specified in KMC §16.08.080. Many of the standards are not applicable to the Limelight Hotel PUD CUP & DA Amendment Applications as no changes are proposed to the siting, design, height, bulk, or mass of the existing Limelight Hotel.

Findings Regarding Hotel PUD CUP Standards of Evaluation (KMC §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 Council and the council may consider lands that include intervening streets on a case by case basis. The Council 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.*

Council Findings: 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.

Council Findings: N/A. 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. The Council 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.

Council Findings: N/A. This standard is not applicable because the proposed development is a hotel and not a new land 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.

Council Findings: The Council 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:

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 Council 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 Council 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.*

Council Findings: 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.*

Council Findings: 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 118 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.

Council Findings: 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. The Council believes the conversion request complies with this standard provided the applicant fulfills the community housing contribution for the new residential use through one of the outright options specified in Ketchum Municipal Code §17.124.040.B.2f.

G1: 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.

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

G2: 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.

Council Findings: N/A. No changes are proposed to the existing site design.

G3: The site design should cluster units on the most developable and least visually sensitive portion of the site.

Council Findings: N/A. No changes are proposed to the existing site design.

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

Council Findings: 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.

Council Findings: 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.

Council Findings: 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.

Council Findings: 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.

Council Findings: 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.

Council Findings: 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.

Council Findings

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 1 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 1: 2013 PUD Amendment Special Development Objectives

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

Council Findings: 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.

Council Findings: 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.

Council Findings: 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.

CONCLUSIONS OF LAW

1. The City of Ketchum is a municipal corporation established in accordance with Article XII of the Constitution of the State of Idaho and Title 50 Idaho Code and is required and has exercised its authority pursuant to the Local Land Use Planning Act codified at Chapter 65 of Title 67 Idaho Code and pursuant to Chapters 3, 9 and 13 of Title 50 Idaho Code to enact the ordinances and regulations, which ordinances are codified in the Ketchum Municipal Code ("KMC") and are identified in the Findings of Fact and which are herein restated as Conclusions of Law by this reference and which City Ordinances govern the applicant's PUD CUP Amendment & DA Amendment Applications for the development and use of the project site.
2. The Limelight Hotel PUD CUP Amendment & DA Amendment Applications are governed under Chapter 16.08—Planned Unit Developments and §17.124.050—Hotels of Ketchum Municipal Code.
3. The Council has authority to hear the Limelight Hotel PUD CUP & DA Amendment Applications pursuant to Ketchum Municipal Code §16.08.110 and §17.124.050.B5.
4. The City of Ketchum Planning Department provided notice for the Planning and Zoning Council public hearing on these applications in accordance with Ketchum Municipal Code §16.08.110.
5. As conditioned, the Limelight Hotel PUD CUP Amendment & DA Amendment Applications meet all applicable standards specified for hotel developments and hotel PUDs specified in Chapter 16.08—Subdivisions and Title 17—Zoning Regulations of the Ketchum Municipal Code.

DECISION

THEREFORE, the Ketchum City Council **approves** of the Limelight Hotel PUD CUP & DA Amendment applications to the City Council this Monday, October 20, 2025, subject to the following condition of approval.

CONDITIONS OF APPROVAL

1. The applicant shall fulfill the community housing contribution for the proposed new residential use through one of the following outright options specified in Ketchum Municipal Code §17.124.040.B.2f.
1. The PUD CUP Amendment approval is subject to all terms and conditions specified in the Amendment to the Limelight Hotel Development Agreement.

Findings of Fact **adopted** this 20th day of October 2025.

Neil Bradshaw
Mayor
City of Ketchum

Attest:

Trent Donat
City Clerk

Attachment 2

Amendment to Limelight Hotel
Development Agreement

AMENDMENT TO LIMELIGHT HOTEL DEVELOPMENT AGREEMENT

This Amendment to the Development Agreement ("**Amendment**") is entered into this _____ day of _____, 2025, by and between the City of Ketchum, Idaho, 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, legally described as 151 South Main Hotel & Residences, according to the official plat thereof recorded as Instrument No. 641301 ("**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 Exhibit A to the Development Agreement.

² Exhibit B to the Development Agreement.

1. Incorporation of Related PUD CUP Amendment Approvals. The Findings of Fact, Conclusions of Law, and Decision for Planned Unit Development Conditional Use Permit ("PUD CUP") Amendment Application File No. P25-001a, adopted by City Council on _____, is hereby incorporated into and made an integral part of this Agreement. The term approval for the PUD CUP Amendment approval shall be subject to Ketchum Municipal Code §17.96.090A as amended with extensions pursuant to Ketchum Municipal Code §17.96.090B as amended.

2. Residential Conversion. Subject to the requirements of this Agreement, the Owner shall have the right to convert eleven (11) hotel rooms on the fourth floor of the Limelight Hotel into two residential units as shown in the project plans included as Exhibit C to the Development Agreement. Owner shall submit a complete building permit application for the Residential Conversion project within the twelve (12) month term of the PUD CUP Amendment.

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

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 TIMELINES AND INCENTIVES

Owner complied with Timeline A in completing the Project. A new section 8.1.1.A regarding the community housing requirement for the Residential Conversion shall be added as follows:

8.1.1.a Residential Conversion Community Housing Requirement. The Residential Conversion will result in 4,573 square feet of new residential use. The associated community housing contribution for the new residential use based on the calculation specified in Ketchum Municipal Code §17.124.040 is 777 net livable square feet of community housing.

(a) **Contribution.** The Owner shall fulfill the community housing contribution for the Residential Conversion through one of the following options prior to issuance of a Certificate of Occupancy for the Residential Conversion improvements:

- i. **In-Lieu Fee.** Payment of a community housing in-lieu fee at a rate of \$600 per net square foot for a total fee of \$466,200.
- ii. **Acquisition.** Acquisition of one or more unit(s) of existing housing stock that has a minimum floor area of 777 net livable square feet. Unit(s) outside of city limits shall not be purchased for the purposes of fulfilling the community housing contribution without approval by the Ketchum City Council.

- iii. **Construction.** Housing unit(s) constructed by the Owner on the subject property or off site, within the City of Ketchum city limits, that has a minimum floor area of 777 net livable square feet.
 - iv. **Combination.** The Owner may pursue a combination of options i) through iii). If acquisition or construction results in one or more units totaling less than 777 net livable square feet, an in-lieu fee payment of \$600 per square foot for the remaining square footage shall be required.
- (b) **Income Category.** Any rental unit provided shall be restricted to income Category 4 (80% - 100% AMI) as defined by Blaine County Housing Authority, with income limits and maximum housing costs published at bcoha.org. Any ownership unit shall be restricted to Category Local (no income limit) as defined by Blaine County Housing Authority at bcoha.org.
- (c) **Deed Covenant.** The unit(s) must be restricted with the applicable City of Ketchum deed covenant and comply with all City of Ketchum Housing Department and BCHA requirements for community housing units. Sample ownership and rental deed covenants are incorporated into and made part of this agreement and referenced as “Exhibit D” and “Exhibit E” respectively.
- (d) **Performance.** No later than eight months following issuance of a building permit for the Residential Conversion, Owner shall transmit written documentation outlining which contribution option the Owner has chosen, whether the unit will be offered for rental or ownership, and the requirements outlined in subsection e below.
- (e) **Specification of Contribution Option.** Owner shall submit the following information:
- i. If acquisition of a unit is proposed, the Owner shall provide BCHA with property details including address, number of bedrooms, number of bathrooms, square footage, parking, storage, inspection report, governing Covenants, Conditions, and Restrictions (CC&Rs), homeowners association (HOA) costs and reserves, and any other information that BCHA may request to effectively evaluate the appropriateness of the unit. Unit(s) may be required to meet minimum standards for quality and life safety and must be approved by BCHA prior to acquisition and restriction. If unit(s) is not restricted at the time of purchase, the deed covenant must be recorded prior to certificate of occupancy of the Residential Conversion.
 - ii. If construction of a unit is proposed, the Owner shall provide BCHA with a timeline for delivery of the unit, as well as property details including address, number of bedrooms, number of bathrooms, square footage, parking, and storage, the draft CC&Rs outlining financial obligations of the unit(s), and any other information BCHA may request for review and approval. The draft CC&Rs shall adjust HOA cost obligations

for ownership unit(s) in accordance with BCHA's policies for Homeowners Associations Assessments, Dues and CC&Rs (Section 5.B. of the Community Housing Administrative Policies Adopted July 16, 2025).

4. 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:

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

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

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.

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>					
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
<u>Retail</u>					
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
Provided:			
Garage: 109 spaces	Surface: 3 spaces	On Street Credit*: 12 spaces	
Total Spaces Provided:		124 spaces	No Change

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

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. Owner complied with construction incentive Timeline A specified in section 8.1 of the Development Agreement. The Certificate of Occupancy for the hotel portion of the Project was issued on December

22, 2016. Section 8 (Construction Timeline and Incentives) is deleted in its entirety.

6. 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.

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

8. 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:

By: _____
Neil Bradshaw
Mayor

Attest:

Trent Donat
City Clerk

LIMELIGHT KETCHUM, LLC

By:

Its:

STATE OF _____)
) ss.
County of _____)

On this _____ day of _____, 2025, 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.

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

Notary Public for _____
Residing at _____
My commission expires _____

Exhibit A

Conditional Use Permit for Planned Unit Development dated May 6, 2013

)	
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	<p>D. Building zone: 60 to 100 percent of this area shall be occupied by 1 or more buildings.</p> <p>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.</p>	<p>Rear Building Zone along Washington Avenue – 36% of this zone is building; 60% is required</p> <p>*not including outdoor terrace area as building</p>	<p>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.</p> <p>- Approved</p>
Community Core: 17.64.010.L: Mass and Height Specifications	<p>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.</p>	<p>4th and 5th floors do not meet 10 ft minimum setback on each street elevation. Average setback of 15 ft not met on 1st Street on 4th and 5th floors.</p>	<p>Overall massing of building and large setbacks along Main Street, River Street and Washington Ave reduce overall impacts of 4th and 5th floors. Said waiver will have minimal impacts on overall mass of 4th and 5th floors. In addition, the project has received design review approval from the Planning and Zoning Commission.</p> <p>- Approved</p>
Community Core: 17.64.010.L: Façade Elements	<p>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.</p>	<p>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.</p>	<p>Larger marquees are appropriate for a large hotel building.</p> <p>- Approved</p>
Community Core: 17.64.010.L: 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>5th floor ceiling height exceeds 80% of the height of the first floor ceiling height</p>	<p>Required sloped roof design warrants larger ceiling height on 5th floor.</p> <p>- Approved</p>

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
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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

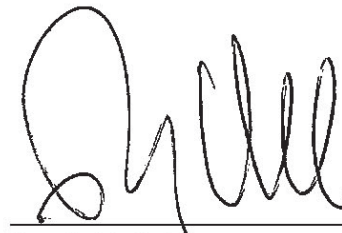
Hotel Ketchum in the development agreement dated November 17, 2008) for the intersection of Main St and River St.

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

Exhibit B

Community Core Design Review dated April 2, 2015

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 programing 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 I	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
			Conclusion	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
			Conclusion	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
			Conclusion	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
			Conclusion	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.
			Conclusion	<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:
			Conclusion	<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.
			Conclusion	<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.
			Conclusion	<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>
			<i>Conclusion</i>	<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>
			<i>Conclusion</i>	<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>
			<i>Conclusion</i>	<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> <ol style="list-style-type: none"> (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: <ol style="list-style-type: none"> (A) Two (2) bicycle racks per use or business.

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.

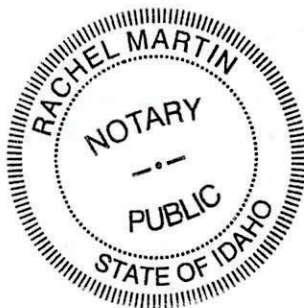
Findings of Fact **adopted** this 2nd day of April, 2015.


 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.

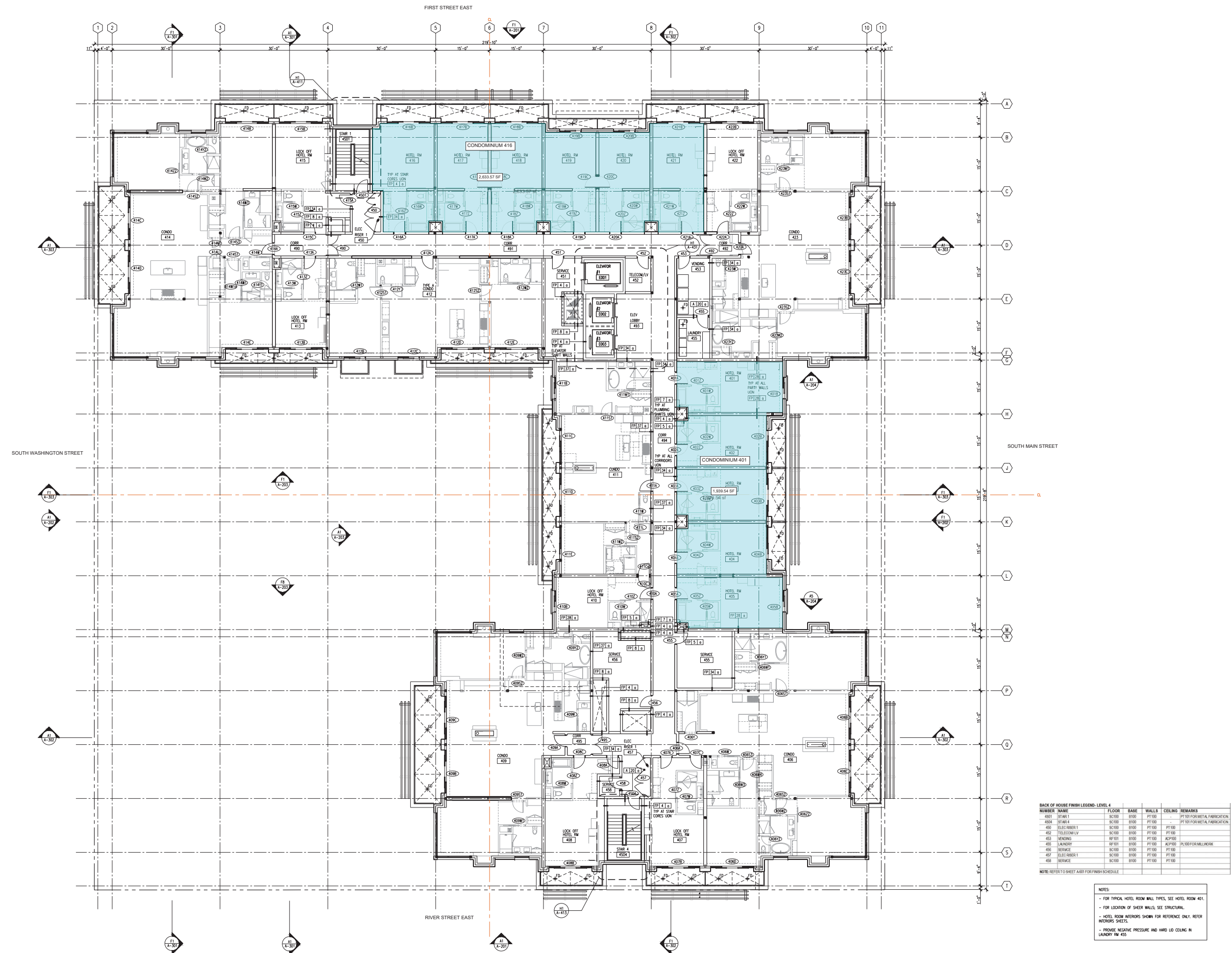



 Notary Public for Idaho
 Residing at: Blaine County
 Commission Expires: November 5, 2019

Exhibit C

Residential Conversion Project Plans

1 2 3 4 5 6 7 8 9 10 11 12 13 14



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

NUMBER	NAME	FLOOR	BASE	WALLS	CEILING	REMARKS
401	STAIR 1	SC100	B100	PT 100	-	PT 100 FOR METAL FABRICATION
404	STAIR 4	SC100	B100	PT 100	-	PT 100 FOR METAL FABRICATION
450	ELEC RISER 1	SC100	B100	PT 100	PT 100	
452	TELECOM LV	SC100	B100	PT 100	PT 100	
453	VENDING	RF101	B100	PT 100	ACF100	
455	LAUNDRY	RF101	B100	PT 100	ACF100	PL 100 FOR MILLWORK
456	SERVICE	SC100	B100	PT 100	PT 100	
457	ELEC RISER 1	SC100	B100	PT 100	PT 100	
458	SERVICE	SC100	B100	PT 100	PT 100	

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 LD CEILING IN LAUNDRY RM 455

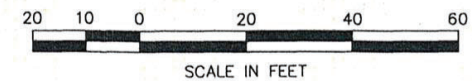
TRUE NORTH PLAN NORTH
SCALE: 1/8"=1'-0"

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.

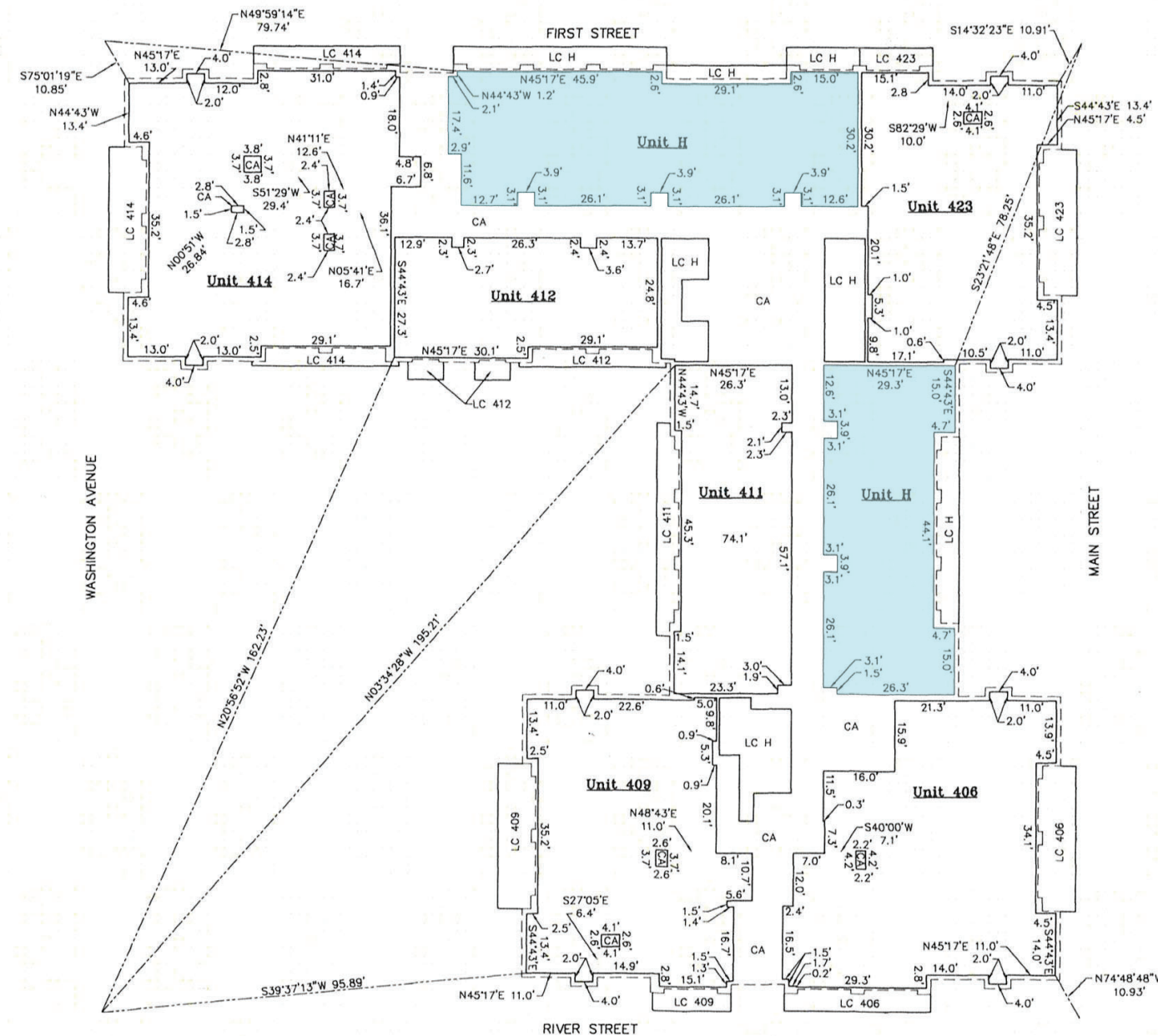
Limelight Parking Requirements					Rounded
A		Existing Commercial Space Floor Area (S.F.)		10,819.00 Sq. Ft.	
B		Commercial Space Parking Requirement (Number of Spaces) - 2 per 1,000 S.F.	$A \div (1,000 \text{ SF} \div 2)$	21.64	22.00
C		Existing Residential Floor Area (net)		30,736.00 Sq. Ft.	
D		Proposed 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

151 SOUTH MAIN HOTEL & RESIDENCES AMENDED

FOURTH FLOOR UNIT LAYOUT



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'

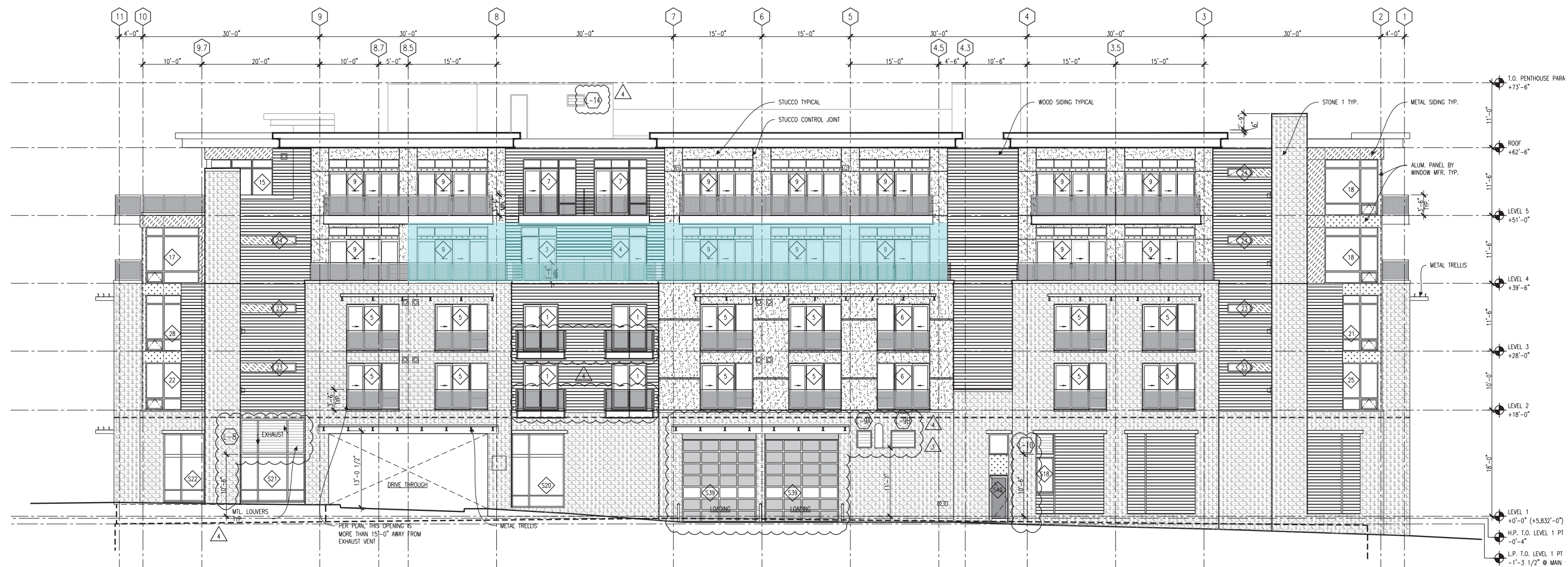
THE FINISHED FLOOR ELEVATION OF THE UNITS ON THE FOURTH FLOOR IS 5871.5'
THE CEILING ELEVATION OF THE UNITS ON THE FOURTH FLOOR IS 5880.0'

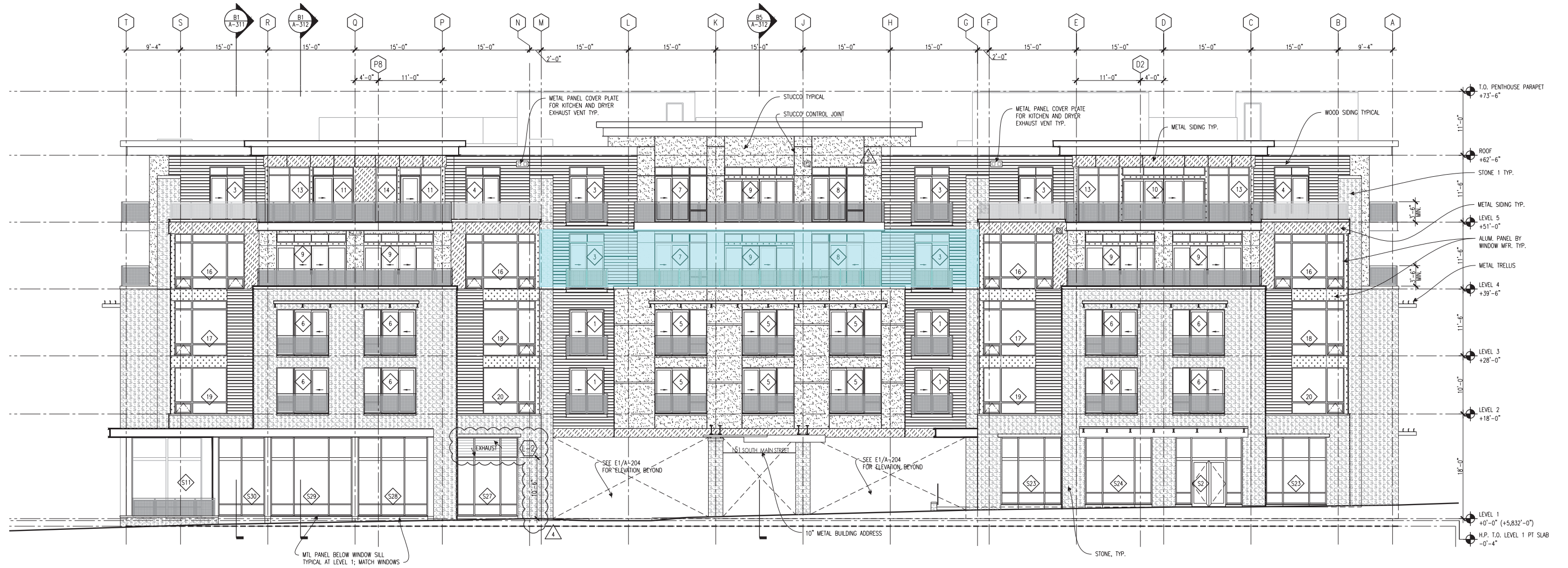


MARK E. PHILLIPS, L.S. 16670

151 SOUTH MAIN HOTEL &
RESIDENCES AMENDED
GALENA ENGINEERING, INC.
HAILEY, IDAHO

SHEET 6 OF 8
Job# 5633-06


$$1/8'' = 1' - 0''$$



F1 EAST ELEVATION - MAIN STREET
1/8"=1'-0"

Exhibit D

Sample Community Housing Ownership Deed Covenant

Recording Requested By and
When Recorded Return to:

City of Ketchum
In-person pickup preferred (208-726-7801)
P.O. Box 2315
Ketchum, ID 83340

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

COMMUNITY HOUSING OWNERSHIP COVENANT

[development title]
[address]

This Agreement for Community Housing Ownership Covenant Running with the Land, herein after the "Declaration" is made and is effective as of the first day of recording of this Covenant ("**Effective Date**"), by and between _____, an Idaho Limited Liability Company ("**Declarant**"), and the City of Ketchum, a municipal corporation of the State of Idaho, including successors and assigns (**the "City"**).

Section 1: Background.

1.1 To satisfy a condition of approval, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant and the City are entering into Covenant.

1.2 Pursuant to the terms and conditions of Covenant, Declarant hereby grants to the City an interest in the Property. This interest shall allow the City to administer the terms and conditions of this Covenant and of the Policies but shall not be construed to impair the ability of a mortgagee to remedy a default or foreclose under the terms of a mortgage and/or deed of trust. Notwithstanding the City's interest in the Property, the Declarant is the sole owner of a fee simple estate in the Property.

1.3 Declarant and the City hereby agree the Property shall be exclusively and permanently dedicated for use and occupancy by an **Income Category** _____ **Owner** as outlined in the Policies and in this Covenant.

1.4 Capitalized terms not otherwise defined in this Covenant shall have the meaning ascribed to such terms in Section 2.

1.5 This Declaration will remain in effect for sixty-five (65) years after the Effective Date (the "Term"), unless terminated earlier by recordation of a new Declaration upon transfer of the Property to a new Owner in accordance with Section 3; or (ii)

foreclosure of a Permitted Mortgage and expiration of the Purchase Option under Section 8.

Section 2: Definitions.

2.1 "BCHA" is the Blaine County Housing Authority, an Idaho independent public body corporate and politic, and its successors and assigns. The City may designate BCHA as a Program Administrator to administer and manage compliance with this Covenant.

2.2 The "Policies" are the Community Housing Policies adopted by the City or its Program Administrator and such Policies as may be amended and recorded in City's discretion from time to time. In the event of any conflict between Policies and this deed covenant, the deed covenant will prevail. Without limiting the foregoing, the most current Policies were adopted by the Blaine County Housing Authority on July 16, 2025. By signing this Declaration, Owner acknowledges and agrees that they have notice of the existence of the current Policies, as well as the possibility of adoption of future Policies by the City or its Program Administrator, and that they agree to comply with these Policies and any amendments thereto.

2.3 An "Owner" is either Declarant during Declarant's initial ownership of the Property or a Qualified Buyer who acquires fee simple absolute title to the Property.

2.4 "Permitted Capital Improvements" are those certain capital improvements described in the Policies made to the Property for which written approval of the City had been obtained prior to installation of such improvements on the Property. Permitted Capital Improvements do not include the initial construction costs incurred by Declarant. Permitted Capital Improvements shall not include any changes or additions to the Property made after a casualty pursuant to Section 7.2. Permitted Capital Improvements do not include improvements made to the Property without City approval prior to their installation on the Property.

2.5 The "Property" is that certain real property described in Exhibit "A" attached hereto and incorporated herein. For purposes of this Covenant, the Property shall include, without limitation, all estates, rights, title and interest in and to the Property, at law and in equity, and all buildings, structures, appurtenances, improvements and fixtures associated therewith or attached thereto from time to time.

2.6 A "Qualified Buyer" is a person or group of people meeting and in full compliance with the qualifications and conditions set forth in the Policies in effect at the date a contract between an Owner and a Qualified Buyer is entered into for the Sale of the Property, including, without limitation, the income requirements applicable to the Property, and who has a complete and current application on file with BCHA at the time a contract for the Sale of the Property is entered into between an Owner and the Qualified Buyer.

2.7 A "Qualified Occupant" is a person or group of people who at the time a lease

or rental agreement is entered into between the Owner and Qualified Occupant meet and is in full compliance with the qualifications and conditions set forth in the Policies and who is deemed eligible by BCHA. Renting or leasing is only permitted per the Policies.

2.8 The terms "Sale," "Sale of" or "to Sell" the Property shall include, without limitation, any transfer, purchase, sale, conveyance, grant, gift, bequest or devise, by merger, consolidation, dissolution, operation of law or otherwise, of the Property or any interest therein, in whole or in part. The terms Sale, Sale of or to Sell the Property shall not include any grant of easement or partial conveyance for utility or public right-of-way purposes. The terms Sale, Sale of or to Sell the Property shall not include any grant of a security interest in the Property either by mortgage, deed of trust or otherwise, but shall include a Sale due to foreclosure or acceptance of a deed in-lieu of foreclosure.

Section 3: Transfer.

3.1 Except as expressly set forth in this Covenant, Owner may only Sell the Property to a Qualified Buyer. Any Sale of the Property must comply with this Covenant. Any Sale of the Property not in compliance with this Covenant is void.

3.2 At such time as an Owner seeks to sell the Property, Owner shall complete, execute and deliver to the City a Notice of Intent to Sell as set forth in the Policies. Upon receipt of the Notice of Intent to Sell and Owner's compliance with the terms of the Notice of Intent to Sell, the City shall notify Owner of the Maximum Sales Price, as determined in accordance with Sections 5, 9, 12, and provide Owner with Qualified Buyers in accordance with the Policies. Owner shall then, in accordance with the Policies, offer the Property for Sale for not more than the Maximum Sales Price to the Qualified Buyers provided by the City, until an agreement is reached with a Qualified Buyer for the Sale of the Property. Such agreement must comply with the Policies. The selling Owner shall not accept or otherwise receive any consideration in excess of the Maximum Sales Price except as otherwise permitted in this Covenant or in the Policies.

3.3 In the event Owner, in good faith compliance with the procedures set forth in the Policies, exhausts the pool of Qualified Buyers provided by the City without entering into an agreement for the Sale of the Property, Owner shall notify the City of such occurrence. The Policies describe selection process of Qualified Buyers.

3.4 In the event the City determines the Property has reached its functional obsolescence or other just reasons exist, at such time as an Owner seeks to Sell the Property, the City may, to the exclusion of a Qualified Buyer, purchase the Property for the Maximum Sales Price plus any increase for Permitted Capital Improvements, in accordance with the Policies.

3.5 In the event the City becomes the fee owner of the Property, such conveyance of the fee interest to the City shall not work a merger of the interests of the City as to the Property and this Covenant shall continue to be in full force and effect unless an express written agreement to the contrary signed and acknowledged by the City is recorded in the official records of Blaine County, Idaho.

3.6 Owner is advised to seek professional assistance from a lawyer, accountant, licensed real estate salesperson or broker and/or other professionals with regard to the Sale or rental of the Property. The City does not represent and is not acting on behalf of Owner, the Qualified Buyer or the Qualified Occupant in the Sale or rental of the Property. The City is acting on its own account as to its interest in the Property pursuant to this Covenant and any assistance, forms or directions provided by the City or as set forth in the Policies are to further the City's interest in the Property.

3.7 Death of an Owner. Upon the death of an Owner, the City will require the sale of the Property to a Qualified Buyer with the proceeds issuing to the decedents' estate, less the City's Administrative Fee and other transactional costs. Upon the death of an Owner who is a Joint Tenant with a right of survivorship, his or her interest shall pass to the joint tenant(s) who shall then become the owners of the Property. Upon the death of an Owner is a Tenant in Common, his or her interest shall pass to the surviving Tenant(s) in Common; or, the decedent, by testamentary instrument, may require the sale of his or her interest in the Property to the surviving Tenants in Common. If sale is required, the City will require a 3% Administrative Fee to be calculated on the pro-rated share of the interest sold. In the absence of a testamentary instrument, the City will assume that a Property owned by more than one Owner shall operate as a Joint Tenancy with a Right of Survivorship. In no event may the Property be devised to a person who is not a full time, permanent member of the household nor a Qualified Buyer.

3.8 At transfer or sale of the Property, new Owner is subject to the same terms. Any new Owner must be a Qualified Buyer and will take title subject to all the terms and conditions of this Declaration, including the Term, and must execute and record such documents as the City may require and/or approve. Before proceeding with a sale, the Owner must give the City at least 30 days prior written notice and must promptly provide the City with related documentation requested by the City.

3.9 The Owner is required to allow an inspection and make necessary repairs beyond normal wear and tear before turnover of the Property, as per Policies.

3.10 The proceeds of any sale conducted in accordance with this covenant shall be distributed as follows: First to satisfy mortgages in order of priority, second to pay the City's Unpaid Amounts, third to pay taxes, Owner association assessments, and any statutory or municipal fees currently due and payable, fourth to pay amounts owed to any other secured lien holders, and fifth to the Owner, who may retain the remaining proceeds of sale. Notwithstanding the foregoing, any Excess Proceeds shall be paid to the City.

3.11 Nothing in this Declaration constitutes a promise, commitment or guarantee by the City to sell or purchase the Property or that upon resale the Owner shall actually receive the Maximum Resale Price for the Property or any other price for the Property.

Section 4: Use, Occupancy, Maintenance and Repair Requirements.

4.1 Owner shall use the Property as the Owner's primary place of residence. For purposes of the preceding sentence, the Property shall be deemed the Owner's primary

place of residence if the Owner (a) occupies more than thirty percent (30%) of the interior floor space (85% if the Property is financed by the Idaho Housing and Finance Association), (b) is physically present on and residing in the Property for not less than nine (9) months in every twelve (12) month period, (c) has not accepted employment outside of Blaine County (distinct and isolated projects outside of Blaine County not exceeding ninety (90) days in duration shall not constitute a violation of this section), and (d) does not own other residential property, per Policies. For purposes of the preceding sentence, an Owner is deemed to own other residential property if the Owner controls, directs or appoints or has the ability to control, direct or appoint the occupancy of the residential property or owns, either directly or indirectly, more than a thirty percent (30%) interest in the residential property.

4.2 Owner shall not use or allow the Property to be used for any business or commercial operation without first obtaining a home occupation permit or otherwise complying with all laws, rules, regulations and permits pertaining to such activities. Owner shall not seek consent to change the zoning designation of the Property without the prior written consent of the City, which consent may be granted, conditioned or withheld in the City's sole and absolute discretion. Furthermore, no business or commercial operation shall be conducted on the Property which materially interferes with or precludes the Property's use and occupancy as a residence. The property shall not be used as a short-term rental, "recreational" or "second home".

4.3 Owner Must Maintain the Property Responsibly and in Compliance with the Law and Other Recorded Documents. The Owner must maintain all parts of the Property in good working order, in a safe, sound and habitable condition, and in full compliance with all laws and regulations. Owner must comply, and cause the Property and all occupants to comply, with all declarations, easements, and other documentation recorded against the Property in the local real estate records. If the requirements of any recorded documents are inconsistent with the requirements of this Declaration, the Owner must comply and must cause the Property and all occupants to comply, with the stricter requirement. Qualified Buyers have the right to inspect the Property before executing an agreement.

4.4 Owner shall make or cause to be made all repairs to the Property and perform or cause to be performed all work thereon so as not to permit any waste or deterioration of the Property. Upon the Sale of the Property, Owner shall remove all of Owner's belongings not sold to the Qualified Buyer and leave the Property in a good and clean condition, reasonable wear and tear excepted.

4.5 Owner shall comply with all laws, rules, regulations, and ordinances pertaining to the Property or the use or occupancy of the Property. Owner shall comply with any covenants, restrictions, rules or regulations encumbering the Property, including, without limitation, any covenants, conditions or restrictions imposed by any homeowner's association of which the Property is a part.

4.6 Any post-purchase construction on, alteration of, or change to the existing state of the Property, including the addition of a new structure, expansion of an existing structure, or the substantial alteration of existing interior or exterior improvements, including landscaping, is subject to the following conditions: (a) all costs shall be borne

and paid for by the Owner: (b) all work shall be performed in a manner consistent with the highest construction standards and shall comply with all applicable laws and regulations; (c) all work shall be consistent with the permitted uses set forth in this section; (d) Owner shall furnish to the City a copy of the plans for such work and all building permits for such construction at least thirty (30) days prior to such work and, upon completion, certificates of completion and evidence of lien free completion; and (e) such work shall not commence without the prior written consent of the City. Such consent may be reasonably withheld if the City determines that the value will not be increased proportionate to the amount of the proposed expenditure, or that the expenditure will make the Property unaffordable for a Qualified Buyer.

4.6 City Has a Right to Inspect the Property. The City or its agent may inspect any exterior part of the Property on an annual basis at any reasonable time, after notifying the Owner at least three (3) day[s] before the planned inspection. In addition, if the City has received a Notice of Intent-to-Sell, then the City or its agent has the right to inspect the interior and exterior of the Property to determine its condition prior to the sale. City must notify the Owner at least three (3) day[s] before carrying out such inspection. In either case (an annual inspection or an inspection after an Intent-to-Sell Notice), the Owner will cooperate with the City's efforts to schedule and conduct the inspection, and if negative property conditions are identified, the City or its agent has the right to re-inspect until they are resolved.

Section 5: Maximum Sales Price & Maximum Rental Amount.

5.1 Except in the case of the Declarant, the "Previous Sales Price" is the amount paid, including any debt assumed, by the Owner towards the purchase price for the Property at the time the Owner purchased the Property. The Previous Sales Price shall not include any fees, interest, points, origination costs, or premiums associated with or arising from any loan on the Property; title insurance premiums, recording fees, or escrow fees; taxes or assessments; utilities; courier, delivery or wire transfer fees; brokerage or real estate sales person commissions; appraisal fees; inspection fees; legal or accounting costs or fees; document preparation fees; or moving costs. For purposes of Declarant, the Previous Sales Price is the amount determined by the City that Declarant may sell the Property for, in accordance with the Policies, upon completion and issuance of a certificate of occupancy for the Property. The price agreed to by Declarant and the City shall not be subject to increase according to Sections 5.2 or 5.3.

5.2 Except as otherwise set forth in Sections 6.1, 8.4 and 8.5, in no event shall the Property be sold for an amount ("Maximum Sales Price") in excess of the LESSER of:

The Previous Sales Price plus three percent (3%) interest per annum from the date the selling Owner purchased the Property to the date the selling Owner delivers the Notice of Intent to Sell to the City (prorated at the rate of 0.25 percent for each whole calendar month in any partial year); or

The Previous Sales Price plus an amount equal to any increase in the cost

of living during Owner's ownership of the Property as determined by the Consumer Price Index, Wage Earners and Clerical Workers, United States City Average, All Items (1982-84 = 100) published by the Bureau of Labor Statistics, United States Department of Labor ("Index"). The Previous Sales Price shall be increased by the CPI Increase. The Maximum Sales Price shall be determined according to the following formula:

CPI^1 = Index for the month in which the Owner purchased the Property

CPI^2 = Most Recent Index published in or prior to the month such Owner delivers the Notice of Intent to sell to the City

C = Number of whole calendar months between the date the Owner purchased the Property and the date the Owner delivers the Notice of Intent to sell to the City

P = Previous Sale Price

Maximum Sales Price = $P + (P / (CPI^1/CPI^2) - P) \times ((C + 1) / C)$

In no event shall the Maximum Sales Price ever decrease below the Previous Sales Price due to this calculation. In the event the Bureau of Labor Statistics shall cease to publish the Index, then there shall be substituted for the Index another index published by a nationally recognized financial authority which most accurately approximates the Index as determined in the sole discretion of the City. In the event the Index shall be converted to a different standard reference base or otherwise revised, the determination of the Percentage Increase shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of labor Statistics or, if the Bureau shall not publish the same, then with the use of a conversion factor, formula or table as may be published by any other governmental agency of the United States or nationally recognized publisher of comparable statistical information.

Any debt or other obligation of the Owner assumed by the Qualified Buyer shall be credited against the Maximum Sales Price.

5.3 Notwithstanding Section 5.2 to the contrary, the Maximum Sales Price may be increased by the selling Owner's out-of-pocket cost of Permitted Capital Improvements made during the selling Owner's ownership of the Property, provided that the improvements were approved in advance of installation by the City. The selling Owner's out-of-pocket cost of Permitted Capital Improvements is a fixed amount, and the selling Owner shall not receive a percentage increase on such amount pursuant to Section 5.2. Upon Sale of the Property, the out-of-pocket cost of Permitted Capital Improvements less depreciation shall be incorporated into the Maximum Sales Price for purposes of determining the next Owner's Previous Sales Price. City shall calculate the depreciated value of the Permitted Capital Improvements in accordance with the BCHA document, "BCHA Estimated Life Expectancy Chart for Homes", incorporating the median life expectancy as published by the International Association of Certified Home Inspectors or equivalent organization and using the latest dates listed on the invoices provided as the installation date for calculation of depreciation.

5.4 In calculating the costs incurred for Permitted Capital Improvements, only the Owner's actual out-of-pocket costs and expenses for materials and labor applied to the Property shall be eligible for inclusion. Such amount shall not include costs attributable to the Owner's or occupant's personal labor, loan fees, interest, closing costs, fines, penalties, alternative or temporary housing costs or rent, tools, depreciation, consumables, utilities, and other similar costs and expenses.

5.5 To substantiate the cost of qualifying Permitted Capital Improvements, the Owner must, upon completion of the Permitted Capital Improvements, furnish to the City original or duplicate receipts, invoices or statements verifying the out-of-pocket costs and expenses, true and correct copies of any building permit or certificate of occupancy, if required, to be issued by the appropriate building department or governmental agency having jurisdiction over the Property with respect to the Permitted Capital Improvements and the written approval of the City obtained prior to the installation of the Permitted Capital Improvements.

5.6 In no event shall all or any portion of the Property be rented for a monthly rental amount ("Maximum Rental Amount") in excess of the lesser of (a) the sum of the Owner's monthly mortgage payment (including principal, interest and insurance), ad valorem taxes (prorated on a monthly basis), insurance premiums in accordance with section 7.1 (prorated on a monthly basis), homeowner or condominium association dues or fees (prorated on a monthly basis), and the administration rental fee set forth in the Policies or (b) the Maximum Monthly Housing Cost – including utilities – associated with the income category. In the event only a portion of the Property will be rented, the Maximum Rental Amount will be multiplied by the percentage derived from the number of bedrooms rented by the Qualified Occupant divided by the number of bedrooms on the Property and the result shall be the Maximum Rental Amount payable by the Qualified Occupant. The terms and conditions of the rental, lease or occupancy agreement must comply with the Policies. If the Property is financed through the Idaho Housing and Finance Association, further and more restrictive requirements with respect to rental of the Property to non-owner Occupants may be required.

5.7 There shall be no refinancing of the purchase money loan nor the use of any secondary or home equity financing without the prior written approval of the City, which approval will not be unreasonably withheld, provided that any such refinancing or the total of any primary financing plus any secondary financing does not exceed a one-hundred percent (100%) loan-to-value ratio where the value is based on the maximum price for which the property may be sold pursuant to Section 5 of this covenant.

Section 6: Closing.

6.1 Except in the event of a foreclosure sale, at the closing of any Sale of the Property, the Owner and the Qualified Buyer shall each pay one-half of all escrow fees. Ad valorem taxes and assessments, homeowner association assessments and fees, rents, and utilities shall be prorated as of the date of closing. Owner shall pay the cost to release any monetary liens or encumbrances granted or caused by Owner and all premiums for a standard owner's policy of title insurance in the amount of the purchase

price. In the event the Owner agrees to pay the closing costs to be paid by the Qualified Buyer pursuant to this Section 6.1 or any other closing costs to be incurred by the Qualified Buyer as permitted by the Policies, the price at which the property sale occurs may be increased to cover the actual expenses paid by the Owner on behalf of the Qualified Buyer provided that such amount shall not exceed three percent (3%) of the Maximum Sales Price.

6.2 The selling Owner shall, at closing, pay an administrative fee to the City in an amount equal to three percent (3%) of the actual sales price. Any debt assumed by the Qualified Buyer and the cash value of any services performed or goods delivered shall be included in determining the administrative fee payable to the City. This fee is independent of any fees required to be paid to licensed real estate brokers or attorneys who may be engaged by Owner or the Qualified Buyer in the Sale of the Property. The City may instruct the escrow company to pay the administrative fee directly to the City from the selling Owner's proceeds. The amount of the administrative fee to be paid by the subsequent Owner shall be as set forth in the then current Policies and will be distributed to the City for its operating account.

6.3 At Closing, the Qualified Buyer shall execute and deliver to the City an Acknowledgment of Covenant in accordance with the Policies indicating Owner has read and is aware of the terms of this Covenant and the Policies and agrees to be bound thereby. A Qualified Buyer's failure to execute or deliver to the City an Acknowledgment of Covenant shall not compromise, minimize or in any way affect the terms, covenants or conditions of this Covenant or the City's interest herein and the Qualified Buyer shall nonetheless be bound by and subject to this Covenant.

Section 7: Insurance & Casualty.

7.1 Owner shall at all times during Owner's ownership of the Property cause the Property to be insured with Causes of Loss – Special Form (formerly known as "All Risk") property insurance in an amount not less than the full replacement cost of all improvements on the Property at the time of loss with like kind and quality (such amount may exceed the Previous Sales Price or Maximum Sales Price of the Property). Such insurance shall be provided by a carrier admitted to engage in the business of insurance in the state of Idaho. No policy will contain a deductible or self-insured retention in excess of three percent (3%) of the Previous Sales Price unless otherwise approved by the City. If requested by the City, Owner shall cause the City to be named as an additional insured as its interests may appear by endorsement acceptable to the City and shall promptly deliver to the City a copy of Owner's insurance policy in conformance with this section. If the forms of policies required by this section are superseded or no longer available, the City will have the right to require other equivalent or better forms.

7.2 If the Property is damaged or destroyed, Owner shall promptly notify the City in writing. Owner shall thereafter promptly make a claim on any insurance policy covering such damage or destruction. The mortgagee shall have first claim on such proceeds to the extent necessary to pay mortgage principal and any accrued interest. Owner shall thereafter have the option to either a) utilize the remaining proceeds of any insurance

settlement, together with a new mortgage not to exceed the balance (except with written approval of the City) of any mortgages paid from said settlement to repair or restore the Property to its condition prior to such damage or destruction, unless Owner obtains the City's prior written approval to repair or restore the Property to some other condition or state, or b) to take such proceeds from the insurance settlement as would have been generated from a Sale per the terms of Section 5 of this Covenant (net of mortgages or other obligations paid from the proceeds from the insurance settlement), and assign the balance of the insurance proceeds, together with title to the Property, to the City.

Section 8: Encumbrances.

8.1 Owner shall promptly pay when due all monetary liens, taxes, assessments, and encumbrances on the Property and otherwise comply with the terms and provisions of any deed of trust, mortgage or other loan documents pertaining to the Property. Owner shall instruct all lenders and their assigns to copy the City on all communications relating to any loan on the Property and within five (5) days after Owner's receipt, Owner shall provide the City with copies of any written communications from any lender not delivered to the City. In the event that the City initiates any enforcement or default action against the Owner, the the City shall, within five (5) days after commencement of such action, notify the mortgage holder of such action.

8.2 After any default, late payment, or missed payment on any loan or encumbrance on the Property, or if a nonconsensual lien is filed upon the Property, Owner shall, upon the request of the City, participate in loan counseling, budgeting, financing or distressed loan services, classes or programs.

8.3 Any breach of this Covenant shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but, except as otherwise provided in Sections 8.4 and 8.5, this Covenant shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

(a) In the event of any foreclosure of a purchase money mortgage or deed of trust in a first priority position on the Property (but subject to this Covenant), such foreclosing party ("Foreclosing Party") may sell the Property through a duly called and noticed foreclosure sale to any person or entity for more than the Maximum Sales Price provided that the foreclosing party strictly adheres to the provisions of this Section 8.4 and Section 8.5. The Foreclosing Party shall notify the City in writing of any pending foreclosure concurrent with the date the trustee or beneficiary files for record the notice of default as required by Idaho Code Section 45- 1505, as may be amended, or the mortgagee serves upon the mortgagor an action for foreclosure and thereafter the Foreclosing Party shall send a copy of all notices sent to the Owner to the City; and

(b) Within 90 days of receiving notification of the borrower default or the property foreclosure, and upon request of the City, the Foreclosing Party

shall agree to sell, transfer and convey to the City the entire debt obligation owed to the Foreclosing Party and take full assignment of the debt obligation, promissory note, and other loan documentation, including foreclosure rights, for the lesser of the Foreclosing Party's gross investment or the estimated net recovery value of the security property "Purchase Option". Notwithstanding the aforesaid, and in order to safeguard the Community Housing program, the Owner, and the the City from predatory lending practices, no obligation of mortgage principal which exceeded 103% of the Maximum Sales Price of the property at the date said principal obligation was incurred shall be recoverable by any foreclosing party.¹ The City may, but shall not be obligated to, purchase the debt obligation for less than the amount calculated if the City and the Foreclosing Party so agree.

8.4 In the event the City does not elect to purchase the debt obligation pursuant to Section 8.4(b) and the Foreclosing Party has strictly adhered to Section 8.4, or in the event the City has taken assignment of the debt obligation and is the Foreclosing Party, the Foreclosing Party may proceed with the foreclosure action and the Property may be sold for more than the Maximum Sales Price to a person other than a Qualified Buyer. Proceeds, if any, from the foreclosure sale shall be distributed in accordance with this paragraph. Costs of foreclosure, including trustee services, sheriff's fees, and similar costs, and all amounts due the Foreclosing Party shall have first priority to the sale proceeds. Next, Owner shall be entitled to any amount in excess of the amounts paid in the preceding sentence up to the Maximum Sales Price less the administrative fee due to the City pursuant to Section 6.2. Provided that the Foreclosing Party has strictly adhered to the requirements of Sections 8.4 and 8.5 and all rights of redemption or challenges to the validity or enforceability of the foreclosure sale have expired, this Covenant, and the rights of the City hereunder, shall terminate.

8.5 Any deed in lieu of foreclosure shall be subject to the requirements of paragraphs 8.4 and 8.5 with respect to notice to the City, option and rights of the City to purchase or take assignment of the debt obligation, and limitation of the recoverable mortgage principal amount. Provided that party acquiring title through a deed in lieu of foreclosure has strictly adhered to the requirements of Sections 8.4 and 8.5 and all rights of redemption or challenges to the validity or enforceability of said action have expired, this Covenant, and the rights of the City hereunder, shall terminate.

8.7 If the Property is financed under the Mortgage Revenue Bond program administered by the Idaho Housing and Finance Association, the parties to this Covenant understand that various requirements of that program may be more stringent than those set forth in this Covenant and, in such case; the parties agree that those more stringent requirements shall prevail.

¹ In the event that the Buyer purchased or refinanced the property using certified United States Department of Agriculture—Rural Development (hereinafter cited as USDA RD) funds, subsidies, vouchers or other mortgage assistance products created by USDA RD, that constitute an addition to the principal amount of the original loan, then the foreclosing party may recover up to 100% of the original loan and also the additions of principal created by said USDA-RD products.

8.8 Any encumbrance other than a First Mortgage must have the prior written approval of the City. The Owner may only grant a lien or security interest, including a mortgage or deed of trust (either at the time of purchase of the Property or subsequent to the purchase of the Property to refinance an existing Permitted Mortgage or to finance home repairs or to facilitate a Home Equity Line of Credit ("HELOC") or for any other purpose), on the Property or encumber the Property in any other way after first obtaining the written permission of the City. Any Permitted Mortgage or other lien, security interest, or other encumbrance shall be subject to the terms of this Declaration, including without limitation this Section.

Section 9: Condemnation.

9.1 Within ten (10) days after Owner receives any notice that all or any portion of the Property is sought by condemnation, Owner shall notify the City. If all or any portion of the Property is taken by eminent domain or conveyed by Owner under threat of condemnation, the Maximum Sales Price, determined as of the date all or any portion of the Property is conveyed to the condemning authority or the valuation date for purposes of the condemnation proceeding, whichever is earlier ("Valuation Date"), shall be decreased by the assessment of damages paid to Owner for the value of or damages to the Property. Thereafter, the adjusted Maximum Sales Price, for purposes of Section 5.2, shall accrue appreciation from the Valuation Date.

9.2 Any assessment of damages paid by the condemning authority for the value of or damages to the Property shall be first utilized to pay the full amount of any existing mortgages, together with any accrued interest thereon. The balance of damage payment proceeds shall be shared between Owner (and secured mortgagees) and the City. The amount of the assessment payable to Owner shall be that percentage of the assessment of damages determined by dividing the Maximum Sales Price as of the Valuation Date by the market value of the Property as of the Valuation Date less the product of that same percentage and three percent (3%) of the Maximum Sales Price as of the Valuation Date.² The remainder of the assessment shall be payable to the City. In the event the City and Owner are unable to agree on the fair market value of the Property, within thirty (30) days after receipt of a request by either the City or Owner, City and Owner shall each appoint an appraiser who shall be a member of the Appraisal Institute (or substitute organization which certifies and trains appraisers) with at least three (3) years experience in appraising residential real property in the county in which the Property is located. The appointed appraisers shall diligently proceed to appraise the fair market value of the Property, without regard to this Covenant, as of the Valuation Date. In the event there is a difference between the two appraisals, the amount obtained by averaging the respective appraisals shall constitute the fair market value. Each party agrees to pay its respective appraiser's fee plus one-half of the third appraiser's fee. For purposes of this Section, "fair market value" shall mean the amount at which the Property would change hands between a willing buyer and a willing seller without the deed restriction, neither being under a compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

² Amount Payable to Owner = Assessment x (MSP – (0.03 x MSP) / FMV) minus balance(s) payable to mortgagee(s).

Section 10: Indemnity, Waiver and Release.

10.1 Owner acknowledges and agrees that the City, its agents, employees and contractors, are not making, have not made and expressly disclaim any representations or warranties, express or implied, with respect to any qualified buyer or qualified occupant and/or with respect to any aspect, feature or condition of the property including, without limitation, the existence of hazardous waste, the suitability of the property for owner's intended use, owner's ability to sell the property for the maximum sales price or in a timely fashion or to rent the property to a qualified occupant at the maximum rental amount, for any length of time or in a timely fashion. Owner, qualified buyer and qualified occupant shall independently verify all information and reports regarding any aspect or feature of the property, an owner, a qualified buyer or a qualified occupant provided by the City. The City does not guarantee the accuracy of any information or reports provided by the City, its agents, employees or contractors. To the fullest extent permitted by law, owner and qualified buyer release the City from any and all liability relating to any aspect or condition of the property, known or unknown, foreseeable or unforeseeable, actual or contingent, arising by statute, common law or otherwise. As used herein "hazardous waste" shall mean any hazardous waste or pollutants, contaminants or hazardous waste as defined by the federal water pollution control act, the comprehensive environmental response, compensation and liability act of 1990 and any amendments thereto, the resource conservation and recovery act and any amendments thereto or any similar state, local or federal law, rule or regulation, including, without limitation, asbestos or asbestos containing materials, PCB's, petroleum and petroleum products and urea-formaldehyde.

10.2 Owner hereby releases and shall indemnify, defend and hold harmless the City, its Commission, and employees from and against any and all claims, damages, liability, causes of action, judgments, expenses (including attorney fees and attorney fees on any appeal) (collectively "claims") arising from owner's use or occupancy of the property, and shall further indemnify, defend and hold the City, its Commission and employees harmless from and against any and all claims arising from any breach or default in the performance of any obligation on owner's part to be performed under the terms of this covenant, or arising from any act, omission or negligence of owner, or any of its agents, contractors, tenants, occupants or invitees, and from and against all claims or any action or proceeding brought thereon; and in case any action or proceeding be brought against the City by reason of any such claim, owner, upon notice from the City, shall defend the same at owner's expense by counsel reasonably satisfactory to the City. Owner, as a material part of the consideration to the City, hereby assumes all risk of damage to property or injury to persons in, upon or about the property from any cause and owner hereby waives all claims in respect thereof against the City, its Commission and employees except those claims solely caused by the City's negligence or willful misconduct.

10.3 The City shall not be liable for injury or damage which may be sustained by the person, goods, wares, merchandise or property of owner, or any occupants or invitees to the property, or any other person in or about the property caused by or resulting from fire, steam, electricity, gas, water or rain, freezing, or leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air condition, lighting fixtures or other

aspect or features of the property.

Section 11: Default.

11.1 Upon the expiration of thirty (30) days' (ten [10] days' for the failure to pay money) written notice from any party bound or benefited by this Covenant stating the other party has failed to perform its obligations hereunder, such party shall be deemed to be in default unless such failure to perform is cured within the thirty (30) days (ten [10] days' for the failure to pay money) period, in which case no default shall be deemed to have occurred. Notwithstanding the foregoing sentence, if such default (other than the failure to pay money) cannot be cured within the thirty (30) day period and the defaulting party is diligently working to remedy the default, the cure period shall be extended for such time as is reasonably necessary to cure the default.

11.2 In order to ensure compliance with the provisions of this Covenant, the City, by its authorized representative, may inspect the Property between the hours of 8:00 AM and 5:00 PM, Monday through Friday, or at such other time as may be agreed to by Owner and the City, after providing the Owner with not less than twenty-four (24) hours' prior written notice.

11.3 Upon receipt of a notice of default and prior to the expiration of the applicable cure period, an Owner may request in writing a hearing before the BCHA Board of Commissioners to determine the merits of the allegations. Upon the City's receipt of a hearing request, the remainder of the applicable cure period shall be tolled pending the outcome of the hearing, and a hearing shall be held at the next regularly scheduled meeting of the BCHA Board of Commissioners. If no hearing is requested in writing during such time period and the violation is not cured within the applicable period, the Owner shall be in default of this Covenant. If a hearing is held before the BCHA Board of Commissioners, the decision of the BCHA Board of Commissioners shall be final for purposes of determining if a violation has occurred.

11.4 It is expressly agreed that no breach of this Covenant shall entitle any Owner, Qualified Buyer, Qualified Occupant, the City or any other party affected by this Covenant to terminate this Covenant, but such limitation shall not affect in any manner any other rights or remedies which such persons or entities may have hereunder by reason of any breach of this Covenant.

Section 12: Fees & Remedies.

12.1 Fees owed to the City. For the avoidance of doubt, Owner's obligation to pay the City any amounts under this Declaration, including the Fees provided in this Section 12, shall be subordinate in all respects to any Permitted Mortgagee's right to receive payment of all amounts secured by a Permitted Mortgage. The Owner and the City agree that they will execute such other and further documents as are useful for a Permitted Mortgagee to prioritize payment of the amounts owed to it and they will not execute any document that contradicts such priority.

12.2 Owner Must Pay a Fee for Unoccupied Property. Owners must sell vacated

unit (a) within 90 days of vacation or (b) if Owner is absent more than 90 days per year to a Qualified Buyer, if such buyer exists and is capable of completing the purchase. If the City provided owner with Qualified Buyer(s) in a timely manner and determines that the Owner is not, in good faith, proceeding with closing on a sale, the City may determine that the Owner is in violation of Article II. Any owner in violation of Section 4 must pay monetary damages to the City that equal "Market Rent" (determined by BCHA, Median Advertised Rent per bedroom size and location), for the duration of the known violation. Property vacant for more than six months or one hundred and twenty (120) days constitutes default.

12.3 Owner Must Pay a Fee for Renting to anyone other than a Qualified Occupant. If the City is notified that the Owner may be leasing without City approval of the use of the property or the occupant, the City will notify the Owner and request documentation and clarification. If the City confirms occupation by anyone who isn't a Qualified Occupant, monetary damages must be paid to the City that equal the difference between the Maximum Rental Amount and (i) the monthly rent charged, confirmed by bank statements, a signed lease, a signed tenant statement, or other documentation accepted by the City for the duration of the violation or (ii), if (i) is unavailable, then Market Rent, for the number of months in violation. Upon that determination, the Owner must work with the City on transitioning out the current renter and selling to a Qualified Buyer. In addition,

- a) Owner must provide renter at least a ninety (90) day eviction notice;
- b) Owner must pay renter relocation expenses in an amount equal to four times the tenant's monthly rent paid by the Owner.

12.4 Owner Is Responsible for Paying all Fees, Insurance, Taxes and Assessments. Owner must pay directly, when due, all fees, taxes, governmental and Owner association assessments that relate to the Property, unless such taxes and assessments are to be escrowed and paid by an Owner, in which case payment must be made as directed by that Owner.

12.5 If Owner Fails to Pay Taxes, City may Pay Taxes. If the Owner or its Permitted Mortgagee fails to pay the taxes or assessments, the City shall have the right to pay such taxes or assessments on the Owner's behalf from time to time at the sole and absolute discretion of the City. Owner shall reimburse the City for any amounts paid by the City to cover such taxes or assessments promptly upon demand by the City.

12.6 The City Can Collect Unpaid Amounts When Property Is Sold. In the event that any amounts due under this Declaration remain unpaid when the Property is sold, including without limitation amounts due to City under this Section 12 and any enforcement fees, the outstanding amount, including any interest (the "Unpaid Amounts"), must be paid to the City out of any proceeds from the sale that would otherwise be due to the Owner. Any amounts paid pursuant to this Section may be paid to the City only after amounts owed under the Permitted Mortgage have been disbursed to the Permitted Mortgagee. In addition to the lien of the Declaration, the City shall have, and the Owner hereby grants and consents to, a lien upon the Property for such Unpaid Amounts. Such

lien shall be prior to all other liens and encumbrances on the Property except (a) liens and encumbrances recorded before the recording of this Declaration, (b) Permitted Mortgages; and (c) liens for real property taxes and other governmental assessments or charges against the Property. For the avoidance of doubt, the City's right to enforce collection of Unpaid Amounts through foreclosure of its lien shall be subordinate in all respects to the lien of any Permitted Mortgagee under a Permitted Mortgage.

12.7 What Happens if Owner Fails to Make Payments to the City. That are required by the Declaration. It shall be an event of default if the Owner fails to pay any amounts when due under this Declaration and such failure is not cured by the Owner or a Permitted Mortgagee within 30 days after notice of such failure is given by the City to Owner and Permitted Mortgagee.

12.8 What Happens if Owner Violates Other (Nonmonetary) Terms of the Declaration. It will be an event of default if the Owner fails to abide by any other requirement or restriction stated in this Declaration and/or any other document of record encumbering the Property, and such failure is not cured by the Owner or a Mortgagee within 60 days after notice of such failure is given by the City to the Owner and any Mortgagee. The City will be entitled to exercise the rights and remedies under Section 12 for any such violation immediately upon notice of such violation being given by the City to the Owner and any Mortgagee.

12.9 Default (Uncured Violation) Gives the City the Right to Exercise Rights and Remedies. Upon the occurrence of an event of default that continues beyond any applicable cure period, the City will have, in addition to all other rights and remedies provided at law or in equity, the right, at the City's option, without further notice or demand of any kind, to take any one or more of the following actions:

- a) The right to enforce this Declaration independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief on account of any violations including without limitation relief requiring restoration of the Property to the condition or occupancy which existed prior to the violation impacting such condition or occupancy (it being agreed that there must be no adequate remedy at law for such violation), and will be in addition to, and not in limitation of, any other rights and remedies available to the City.
- b) In the case of a default under 3.1 including without limitation the institution of foreclosure by judicial proceeding or private sale;
- c) Without limitation of any other rights or remedies of the City, or its successors and assigns, in the event of any rent, conveyance, financing, refinancing, or other transfer or occupancy of the Property in violation of the provisions of this Declaration, the following rights and remedies, which will be cumulative and not mutually exclusive:
 - 1. specific performance of the provisions of this Declaration;

2. money damages for Unpaid Amounts, if applicable;
3. if the violation is a sale or other conveyance of the Property to an Ineligible Buyer except as permitted herein, the option to locate a Qualified Buyer to purchase or itself purchase the Property from the Ineligible Buyer on the terms and conditions provided herein; the purchase price shall be a price which complies with the provisions of this Declaration; specific performance of the requirement that an Ineligible Buyer shall sell, as herein provided, may be judicially ordered;
4. the right to void any contract for lease, conveyance or other transfer of the Property in violation of the provisions of this Declaration, by an action in equity to enforce this Declaration; and
5. money damages for the cost of acquiring a comparable dwelling unit for a Qualified Buyer, as determined by the unrestricted value in an Appraisal paid for by the Owner.
6. Require the immediate Sale of the Property to a Qualified Buyer in accordance with Section 3.2.

12.10 In addition to the foregoing, the Owner hereby agrees and will be obligated to pay all fees and expenses (including legal fees) of the City in the event successful enforcement action is taken against the Owner or Owner's successors or assigns.

12.11 The Owner for themselves and their successors and assigns, hereby grants to the City the right to take all actions with respect to the Property which the City may determine to be necessary or appropriate pursuant to applicable law, court order, or the consent of the Owner to prevent, remedy or abate any violation of this Declaration.

12.12 Without limiting any other remedy available to the City, in the event an Owner shall accept or otherwise receive consideration in excess of the Maximum Sales Price or Maximum Rental Amount in violation of this Covenant or the Policies, such Owner shall immediately pay such amount or the cash equivalent of such amount to the City. Such amount shall accrue interest from the date such consideration was received by the Owner to the date paid to the City at the rate of eighteen percent (18%) per annum, compounded on an annual basis. Furthermore, Section 14.2 shall apply to any recovery or enforcement action commenced pursuant to this Section.

12.13 In the event of a default by Owner, the Maximum Sales Price shall, upon the date such default first occurred, automatically cease to increase as set out in Section 5.1, and shall remain fixed until the date Owner cures the default.

12.14 In the event that significant damage or reduction in the utility of the Property has occurred during the term of Owner's ownership (other than ordinary wear and tear and functional obsolescence due only to the passage of time), the City may reduce the Maximum Sale Price by an amount sufficient to repair the damage or restore the Property's utility as a residence as determined necessary by the City in its sole and absolute

discretion.

12.1 All rights and remedies set forth in this Section 12 are subordinate to the rights of Permitted Mortgagees as set forth in Section 9 of this Declaration.

12.15 In the event the City pays any amount payable by Owner or incurs any expense due to the default of Owner, such amount shall be immediately due and payable by Owner upon receipt of an invoice from the City. Interest shall accrue from the date the invoice is received by Owner to and including the date the City receives payment in full at a rate equal to the lesser of (i) the highest rate allowed by law, and (ii) twelve percent (12%) per annum. Furthermore, in the event the Owner does not pay the invoice in full within ten (10) days after receipt, the City may file a lien on the Property for the amount of said expenses plus accrued interest as set forth above and such lien shall be effective upon recording in the county in which the Property is located. Upon any Sale of the Property, if the Owner has not previously paid all amounts due the City, the City shall be paid the amounts it is due from the sale proceeds and any escrow company or closing agent handling the transaction shall be bound to pay such amounts due as though specifically instructed by Owner and Owner agrees to and acknowledges the same. Notwithstanding the foregoing sentence, the City's right to the sale proceeds shall not have priority over any lien on the Property recorded prior to any lien filed by the City. In the event the City does not file a lien for the amounts it is due, the City's claim shall be subordinate to any recorded lien on the Property.

Section 13: Notices.

13.1 All notices given pursuant to this Covenant shall be in writing and shall be given by personal service, by United States certified mail or by United States express mail or other established express delivery service (such as Federal Express) with signature confirmation required, postage or delivery charge prepaid, addressed to the appropriate party at the address set forth below. If a notice is delivered to Owner by personal service or by United States express mail or other established express delivery service (such as Federal Express), such notice may be delivered to the Property. If a notice must be given to a person other than one designated below or otherwise sent to Owner, such notice shall be sent to the person and address shown on the then current real property tax rolls of the county in which the Property is located. All notices given to the appropriate party shall be sent to the address set forth below:

To Declarant:

To the City:

City of Ketchum
P.O. Box 2315
Ketchum, ID 83340
Attention: Housing

The person and address to which notices are to be given may be changed at any time by

such party upon written notice to the other party. All notices given pursuant to this Covenant shall be deemed given upon receipt.

13.2 For the purpose of this Covenant , the term “receipt” shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to Section 13.1 as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to 13.1, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (a) the date of the attempted delivery or refusal to accept delivery, (b) the date of the postmark on the return receipt, or (c) the date of receipt of notice of refusal or notice of non-delivery by the sending party.

Section 14: General Provisions.

14.1 Runs with the Land; Termination. The Owner intends, declares, and covenants (a) that this Declaration, including all restrictions, rights and covenants contained herein, are covenants running with the land for the Term, encumbering the Property for the Term, and are binding upon the Owner and the Owner’s successors in title and assigns for the Term, (b) are not merely personal covenants of the Owner, and (c) inure to the benefit of and be enforceable by the City, successors and assigns, for the Term. Because the Declaration runs with the land, it encumbers the Property for the Term and is binding upon the Owner’s successors in title and assigns regardless of whether such successors in title and assigns agree in writing to be bound by the Declaration or execute a new Declaration at the time of resale, as provided in Section 3.

14.2 Upon expiration of the full Term, the Owner will have the option either to (i) record an amendment to this Declaration encumbering the Property for an additional term; or (ii) pay to the City the Excess Proceeds that would be received by the Owner if the Owner, upon expiration of the Term, were to sell the Property unencumbered by this Declaration to a third party in a bona fide arm’s length transaction. If the Owner does not elect option (i) by recording an amendment before expiration of the Term, the Owner will be deemed to have elected option (ii). Excess Proceeds will be calculated and paid under option (ii) as follows:

- a) The City, at its sole cost and expense, will obtain an Appraisal of the Home to include the Maximum Resale Price (as-is restricted and encumbered value of the property) and the market, unencumbered value;
- b) The City will calculate Excess Proceeds by subtracting the Maximum Resale Price from the Market Value of the Home, as determined by the Appraisal; and
 1. If the calculation in this subparagraph (ii) results in a negative number (in other words, if the Maximum Resale Price is higher than the Market Value), the Owner will not owe any Excess Proceeds, and the City will promptly record a release of this Declaration; or
 2. If the calculation in this subparagraph (ii) results in a positive number (in other words, if the Maximum Resale Price is lower than the Market Value), the Owner must pay the Excess Proceeds to the City within 90 days after Close of Escrow and

the City will then promptly record a release of this Declaration.

14.3 In the event any party bound or affected by this Covenant initiates or defends any legal action or proceeding in any way connected with this Covenant, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action its reasonable costs and attorneys' fees (including, without limitation, its reasonable costs and attorneys' fees on any appeal). All such costs and attorneys' fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

14.4 Whenever possible, each provision of this Covenant and any other related document shall be interpreted in such a manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of this Covenant or related document.

14.5 The laws of Idaho, without giving effect to its choice of law principles, govern all matters with respect to this Covenant, including all tort claims.

14.6 This Covenant shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, successors and assigns, and upon any person or entity acquiring the Property, or any portion thereof, or any interest therein, whether by merger, consolidation, dissolution, operation of law or otherwise; provided, however, that if any Owner Sells all or any portion of the Property in accordance with this Covenant, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the Property arising under this Covenant after the Sale but shall remain liable for all obligations arising under this Covenant prior to the Sale. The new Owner of the Property or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Covenant with respect to the Property or portion thereof after the date of Sale.

14.7 This Covenant may only be amended by a written agreement signed by Owner and City that identifies itself as an amendment to this Covenant.

14.8 Paragraph or section headings within this Covenant are inserted solely for convenience of reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

14.9 The parties to this Covenant, and Owners, agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Covenant or any agreement or document relating hereto or entered into in connection herewith.

14.10 The City may amend or adopt the Policies at any time in its sole and exclusive discretion.

14.11 The failure of the City to insist upon strict performance of any terms, covenants or conditions of this Covenant shall not be deemed a waiver of any rights or remedies the City may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any terms, covenants or conditions of this Covenant by the same or any other person or entity. A party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition.

IN WITNESS WHEREOF, the parties have caused this Declaration to be executed as of the Effective Date.

DECLARANT

By: _____
Title:

CITY OF KETCHUM

By: _____

State of Idaho
County of Blaine

This record was acknowledged before me on the _____, day of _____ 202__, by
_____, Declarant.

Notary Public
Commission Expires: _____

State of Idaho
County of Blaine

This record was acknowledged before me on the _____, day of _____ 202__, by
_____, as _____ of the City of Ketchum.

Notary Public
Commission Expires: _____

Exhibit A

Exhibit E

Sample Community Housing Rental Deed Covenant

Recording Requested By and
When Recorded Return to:

City of Ketchum
In-person pickup preferred (208-726-7801)
P.O. Box 2315
Ketchum, ID 83340

DEED COVENANT

DECLARATION OF RENTAL AFFORDABILITY COVENANT

[development title]
[address]

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This Deed Covenant is entered into between [FULL NAMES OF OWNERS], [each] an [individual, business, LLC] ([together, and] with permitted heirs, successors, and assigns the “**Owner**”) having a mailing address of [ADDRESS OF DEVELOPER/OWNER] and the City of Ketchum, a municipal corporation of the State of Idaho, including successors and assigns (“**City**”). The Parties make this Declaration of Affordability Covenant (this “**Declaration**”) as of [Month Date], 20[Year] (the “**Effective Date**”), for the purpose of encumbering the improved real estate described on attached Exhibit A (the “**Home**”), having an address of [Street Address, Ketchum, Idaho, 83340].

RECITALS

1. To satisfy a condition of approval, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and the City are entering into this Covenant and Declaration.
2. The City operates a program to preserve community housing opportunities through the stewardship of homes whose owners, at the time of permitting, have agreed to accept certain covenants, conditions, and restrictions in exchange for an exceedance of development standards or other incentives (the “Program”).
3. The purpose of this Declaration is to [continue] to include the Home[s] in the Program, as per [DESCRIBE MECHANISM: former Deed Covenant # or plat Exceedance Agreement] dated [Month Date], 20[Year]. Consistent with the Program, this Declaration includes terms that affect the use and rental price of the Home and are designed to ensure that the Home continues to be affordable to low- and moderate-income households over an extended period and through a succession of owners.

4. Pursuant to the terms and conditions of this Deed Covenant, Owner hereby grants to the City an interest in the Property, as more specifically set forth herein. This interest must allow the City to administer the terms and conditions of this Deed Covenant and of the Guidelines, defined below, but is not to be construed to impair the ability of a mortgagee to remedy a default or foreclose under the terms of a mortgage and/or deed of trust. Notwithstanding the City's interest in the Property set forth herein, the Owner is the sole owner of a fee simple estate in the Property.
5. Owner and the City hereby agree that the Property must be exclusively and permanently dedicated for use and occupancy by a "Qualified Renter," defined below, as outlined in the Program Policies and in this Deed Covenant.
6. The Property has [REDACTED] restricted unit(s) and, pursuant to the terms of this covenant, is restricted for Income Category [REDACTED]. See Exhibit B for details.

Article I. Submission of Real Estate, Defined Terms

1. Submission of Real Estate. By signing this Declaration, the Owner submits the Home to the covenants, conditions, and restrictions of this Declaration for the benefit of the City. The City, including through any Program Administrator the City may appoint from time to time, will have the right to enforce this Declaration.
2. Consideration; Value Exchanged. The Owner recognizes that the Home would otherwise be market rate but the Owner is voluntarily building in exceedance of existing code requirements or receiving other detailed incentive in exchange for the inclusion of deed-restricted units in the development.
3. Any Excess Proceeds of Transfer Go to City.
 - A. The Owner recognizes that it would be contrary to the purposes of this Declaration if the Owner could receive more than the as-is restricted and encumbered value of the property ("Maximum Sale Price") as the result of an eminent domain proceeding or foreclosure. It would also be contrary to the purposes of this Declaration if the Owner could receive financial benefit by violating Article II.2 ("Home may not be leased, Short-term Rented, Encumbered, Sold, or Transferred"). Therefore, the Owner hereby irrevocably assigns to City any net proceeds of eminent domain proceeding or foreclosure, that would otherwise have been payable to the Owner after satisfaction of all Mortgages, if applicable, and that exceed the amount of proceeds that the Owner would have received if the property had been sold only for the Maximum Sale Price or used only in accordance with this Article (I.3 "Any Excess Proceeds of Transfer Go To City"). For the avoidance of doubt, the Owner authorizes and instructs any party

conducting any eminent domain proceeding or foreclosure to pay such Excess Proceeds directly to City. If, for any other reason, Excess Proceeds are paid to Owner, Owner hereby agrees to promptly pay such amount to City.

- B. The City must have, and the Owner hereby grants and consents to, a lien upon the Home for any Excess Proceeds. Such lien will be prior to all other liens and encumbrances on the Home except (i) liens and encumbrances recorded before the recording of this Declaration and (ii) liens for real property taxes and other governmental assessments or charges against the Home.

4. Term of Declaration.

- A. This Declaration will remain in effect for seventy (70) years after the Effective Date (the "Term"), unless terminated earlier by recordation of a new Declaration upon transfer of the Home to a new Owner in accordance with Article VII; or (ii) foreclosure and expiration of the Purchase Option under Article VI.
- B. Upon expiration of the full Term, the Owner will have the option either to (i) record an amendment to this Declaration encumbering the Home for an additional term; or (ii) pay to the City the Excess Proceeds that would be received by the Owner if the Owner, upon expiration of the Term, were to sell the Home unencumbered by this Declaration to a third party in a bona fide arm's length transaction. If the Owner does not elect option (i) by recording an amendment before expiration of the Term, the Owner will be deemed to have elected option (ii). Excess Proceeds will be calculated and paid under option (ii) as follows:
 - i. The City, at its sole cost and expense, will obtain an Appraisal of the Home to include the Maximum Sale Price (as-is restricted and encumbered value of the property) and the fair market, unencumbered value;
 - ii. The City will calculate Excess Proceeds by subtracting the Maximum Sale Price from the fair market value of the Home, as determined by the Appraisal; and
 - 1) If the calculation in this subparagraph (ii) results in a negative number (in other words, if the Maximum Sale Price is higher than the fair market value), the Owner will not owe any Excess Proceeds, and the City will promptly record a release of this Declaration; or
 - 2) If the calculation in this subparagraph (ii) results in a positive number (in other words, if the Maximum Sale Price is lower than the fair market value), the Owner must pay the Excess Proceeds to the City within 90 days after receiving the City's calculation, and the City will then promptly record a release of this Declaration.

- 5. Covenants to Run with the Land. The Owner intends, declares, and covenants (a) that this Declaration, including all restrictions, rights and covenants contained herein, are covenants running with the land, encumbering the Home for the Term, and are binding upon the Owner and the Owner's successors in title and assigns, (b) are not merely personal

covenants of the Owner, and (c) inure to the benefit of and be enforceable by the City and its Program Administrator, successors and assigns, for the Term. Because the Declaration runs with the land, it encumbers the Home for the Term and is binding upon the Owner's successors in title and assigns regardless of whether such successors in title and assigns agree in writing to be bound by the Declaration or execute a new Declaration at the time of resale, as provided in Article VIII.

6. Local Laws Applicable to Program Apply. This Declaration, including all restrictions, rights and covenants contained herein, and implements the Program Policies, as administered by the BCHA, including any amendments thereto if the amendments do not have a materially adverse effect on the interests of the Owner.
7. Defined Terms. Owner and City agree on the following definitions of key terms used in this Declaration.
 - A. **"Appraisal"**: Fair market valuations of the Home performed by a duly licensed appraiser, conducted by analysis and comparison of comparable properties, (a) disregarding all of the restrictions of this Declaration and (b) the as-is, restricted value based on restrictions in this Declaration.
 - C. **"BCHA"**: Blaine County Housing Authority, its successors and assigns, is an Idaho independent public body corporate and politic.
 - D. **"Maximum Housing Cost"**: The Maximum Housing Cost is determined annually by BCHA and corresponds with the Income Category of the designated unit(s) (see Exhibit B.) and accounts for rent plus the estimated cost of essential utilities (electricity, gas, water, sewer, trash, and any other fees including HOA fees).
 - E. **"Qualified Renter"**: A person or group of persons who at the time of signing a lease agreement is in full compliance with the qualifications and conditions set forth in the Program Policies in effect and who has a complete and current application on file with the BCHA, and is prioritized on BCHA's waitlist or renting the unit with BCHA's approval, which has been delivered in written or electronic mail form to Owner by City. Owner reserves the exclusive right to conduct its own interviews and other relevant authentication into each Qualified Renter. Owner must also follow Program Policies process requirements with regards to rejecting Qualified Renters.
 - F. **"Event of Default"**: Any violation of the terms of this Declaration unless the violation has been corrected ("**cured**") by the Owner in the period of time specified in a written Notice of Default has been given by the City. See Article VIII. Enforcement.
 - G. **"Ineligible Renter"**: A person or group of persons, or a person and their spouse, not meeting the requirements to be eligible as a Qualified Renter and not approved by the City at lease-up.
 - H. **"Intent-to-Sell Notice"**: Owner's notification to the City and BCHA that the Owner wishes to sell the Home with Owner's current phone and email information.

- I. **“Mortgage”**: A loan secured by a lien or security interest in the Home, together with any modifications, which may be made from time to time, by agreement between the Owner and the Mortgagee.
- J. **“Mortgagee”**: The lender shown on the security instrument securing a Mortgage, its assignees and the owner of such Mortgage.
- K. **“Out of Compliance Owner”** An owner who does not adhere to the Program Guidelines and has not cured being out of compliance, per the BCHA’s requirements and Program Policies.
- L. **“Out of Compliance Renter”** A renter who does not adhere to the Program Guidelines and has not cured being out of compliance, per the BCHA’s requirements and Program Policies.
- M. **“Program Administrator”**: Any entity designated by the City to administer and manage compliance with this deed covenant. Program Administrator has the same enforcement rights as the City.
- N. **“Purchase Option”**: As described more fully in Article VII, City’s option to purchase the Site at the Mortgage obligation, which is triggered by (i) City’s receipt of notice of a Foreclosure Action under Article VI, (ii) any sale or transfer resulting from a Foreclosure Action under Article VI, and/or (ii) an Event of Default under Article VIII (any of the foregoing, an **“Option Trigger Event”**).
- O. **“Program Policies”** are the Community Housing Guidelines or future Policies adopted by BCHA and such Guidelines as may be amended and recorded in BCHA’s discretion from time to time. In the event of any conflict between guidelines and this deed covenant, the deed covenant will prevail. Without limiting the foregoing, the most current Guidelines or Policies were adopted by the Blaine County Housing Authority on [REDACTED]. By signing this Declaration, Owner acknowledges and agrees that they have notice of the existence of the current Program Policies, as well as the possibility of adoption of future Policies by the BCHA, and that they agree to comply with these Policies and any amendments thereto.

Article II. Use of Home

- 1. Owner must use Lease Addendum supplied by BCHA in the Program Policies. If BCHA has a current lease addendum in the Program Policies, it must be used for each lease.
- 2. Owner must rent the Home for use as a primary residence to a Qualified Renter.
 - A. The Qualified Renter may use the Home only for residential purposes and any activities related to residential use that are permitted by local zoning law, except for short-term rental. Additional criteria are in Program Policies. A lease is required for a minimum of a twelve (12) month term.

- B. If the Home remains unoccupied by a Qualified Renter for more than two months and the City has fulfilled their role outlined in Article III, then the City reserves the right to charge a fee as specified in Article VII and, without cure, default as described in Article VIII.3.
3. Home May Not be Leased, Short-term Rented, Encumbered, Sold, or Transferred Except as Provided in Articles VI and VII. No interest in the Home, including without limitation a fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entirety, life estate, limited estate, leasehold estate, tenancy, easement, mortgage, deed, lien, security interest, or other encumbrance, whether voluntary or involuntary, may be granted, sold, assigned, conveyed, or transferred except in accordance with Articles VI (“Financing and Foreclosure”) and VIII (“Transfer and Turnover of Home”) of this Declaration.
 4. Owner cannot charge above the Maximum Housing Cost. Owner is obligated to ensure that no more than the Maximum Housing Cost is charged, accounting for the estimated cost of essential utilities. City may, in the event of an over-income Qualified Renter, charge the Qualified Renter the difference between the Maximum Housing Cost associated with the unit’s income designation and the Maximum Housing Cost of the Qualified Renter’s new income level.
 5. Owner Rent Increases are Limited. For any given Qualified Renter, the Owner cannot increase the rent by more than the greater of 4% of current rent every twelve (12) months at lease renewal, without pre-approval of the City. The Owner is obligated to first give the City thirty (30) days written notice of intent to raise above the allowable amount and respond in a timely manner to the City’s requests for documentation that justifies such an increase. Then, if approved, the Owner must give the Qualified Renter at least ninety (90) days written notice.
 6. Owner Must Work with City to Lease-Up. Owner must notify the City (i) simultaneously with sending Qualified Renter a notice of default, noncompliance, eviction, or lease renewal (which adheres to Lease Addendum, if available in the Program Policies); and (ii) within five (5) days of receipt of notice from Qualified Renter of intent to vacate or not renew lease.
 7. Owner Must Maintain the Home Responsibly and in Compliance with the Law and Other Recorded Documents. The Owner must maintain all parts of the Home in good working order, in a safe, sound and habitable condition, and in full compliance with all laws and regulations. Owner must comply, and cause the Home and all occupants to comply, with all declarations, easements, and other documentation recorded against the Home in the local real estate records. If the requirements of any recorded documents are inconsistent with the requirements of this Declaration, the Owner must comply and must cause the Home and all occupants to comply, with the stricter requirement. Qualified Renters have the right to inspect the home before executing a lease.

Article III. Role of City

1. City Has a Right to Conduct Annual Meetings with the Owner and Qualified Renter. The City may conduct annual meetings with the Owner in the offices of the City or in the Home or some other mutually convenient location (or via mutually convenient electronic means) for purposes of obtaining occupancy certifications and addressing any other Program requirements. Meetings with Owner and Tenant may be conducted separately. The Owner will cooperate with the City in scheduling and attending these meetings and will provide City with the requested information. The City may opt to request such information from the Owner by phone, mail, email, or some other method instead of conducting an in-person (or electronically facilitated) meeting, and the Owner will then promptly provide the City with the requested information using the alternative method.
2. City Has a Right to Inspect the Home. The City may inspect any part of the Home on an annual basis at any reasonable time, to be scheduled with the Qualified Renter or, if vacant, the Owner. If occupied, the City must notify the Owner at least three (3) days before carrying out such inspection. The Owner will cooperate with the City's efforts to schedule and conduct the inspection, and if negative property conditions are identified, the City has the right to re-inspect until they are resolved. The inspection will include a review that the Home is decent, safe, and sanitary and in good repair and in conformance with local code.
3. City has Right to Review Lease. The City has the right to review the lease at lease-up before execution and at any point thereafter. City may also discuss lease terms with the Qualified Tenant.
4. City Will Identify Prospective Qualified Renters. At initial and any subsequent lease-ups, the City will refer Qualified Renters to the Owner. The City will work with the Owner as provided in Article II and VIII, as applicable.
5. City's Administrator, Successors, and Assigns. The City may designate a Program Administrator, a successor or assign to its rights and obligations under this Declaration, provided that such Program Administrator, successor or assign is a governmental body, governmental agency, or entity (non-profit or for-profit) with a purpose consistent with the Program.
6. Nonliability of City for Negligence, Loss or Damage. The Owner understands and agrees that the relationship between the Owner and City is solely that of an Owner and a program administrator. The City does not owe a duty of care to protect the Owner against negligent, faulty, inadequate, or defective building or construction or any condition of the Home. Owner agrees that neither Owner nor Owner's heirs, successors or assigns must ever claim, have, or assert any right or action against the City for any loss, damage, or other matter arising out of or resulting from any condition of the Home and will hold the City harmless from any liability, loss, or damage for these things.

Article IV. Fees, Taxes, and Assessments

1. Fees owed to City. For the avoidance of doubt, Owner's obligation to pay City any amounts under this Declaration, including the Fees provided in this Article IV, shall be subordinate in all respects to any Mortgagee's right to receive payment of all amounts secured by a Mortgage. The Owner and the City agree that they will execute such other and further documents as are useful for a Mortgagee to prioritize payment of the amounts owed to it and they will not execute any document that contradicts such priority.
2. Owner Is Responsible for Paying all Fees, Taxes and Assessments. Owner must pay directly, when due, all fees, taxes, governmental and Owner association assessments that relate to the Home, unless such taxes and assessments are to be escrowed and paid by an Owner, in which case payment must be made as directed by that Owner.
3. If Payment Is Late, Interest Can Be Charged. If the City has not received any amounts due under this Declaration on or before the required date (the "Due Date"), the City can require the Owner to pay interest on the unpaid amount from the Due Date through and including the date such payment or installment is received by the City, at a rate not to exceed 5% per annum or the maximum amount permitted by law, whichever is less. Such interest shall be deemed additional Program Fee and shall be paid by the Owner to the City upon demand.
4. City Can Collect Unpaid Amounts When Home Is Sold. In the event that any amounts due under this Declaration remain unpaid when the Home is sold, including without limitation amounts due to City under this Article IV and any enforcement fees under Article VIII, the outstanding amount, including any interest (the "Unpaid Amounts"), must be paid to the City out of any proceeds from the sale that would otherwise be due to the Owner. Any amounts paid pursuant to this Article may be paid to the City only after amounts owed under the Mortgage have been disbursed to the Mortgagee. The City shall have, and the Owner hereby grants and consents to, a lien upon the Home for such Unpaid Amounts. Such lien shall be prior to all other liens and encumbrances on the Home except (a) liens and encumbrances recorded before the recording of this Declaration, (b) Mortgages; (c) liens for real property taxes and other governmental assessments or charges against the Home; and (d) the lien for Excess Proceeds under Section 1.03. For the avoidance of doubt, the City's right to enforce collection of Unpaid Amounts through foreclosure of its lien and this Section 4.04 shall be subordinate in all respects to the lien of any Mortgagee under a Mortgage.

Article V. Insurance, Damage or Destruction, Taking for Public Use

1. Owner Must Insure the Home Against Loss. The Owner must, at the Owner's expense, keep the Home continuously insured against accidental direct physical loss with a coverage limit equal to the estimated full replacement cost of the Home, that is, the amount necessary to rebuild the Home as opposed to the Home's market value. The insurance policy must satisfy

all requirements of any Mortgage of record, and certificates of insurance must be delivered to City upon request.

2. What Happens if Home Is Damaged or Destroyed. In the event of fire or other damage to the Home, the Owner must take all steps necessary to assure the repair of such damage and the restoration of the Home to its condition immediately prior to the damage. All such repairs and restoration must be completed as promptly as possible. Owner must also promptly take all steps necessary to assure that the damaged Home does not constitute a danger to persons or property. For clarity, the obligations of the Owner to repair and restore the Home are the same in a case of insufficient insurance proceeds as in a case of excess insurance proceeds; in either case the Owner must still repair and restore the Home, obtaining additional funds (in the case of insufficient insurance proceeds) or, if permitted by the terms of the policy and the terms of any Mortgage, retaining excess funds (in the case of excess insurance proceeds). In a case where repair and restoration are not feasible (for example, in the case of sinkhole or other condition that materially adversely impacts and precludes restoration of the structure of the Home), the Owner must provide reasonably acceptable documentation of such circumstance to City, and in such case will be excused from repairing and restoring the Home, provided that the Owner uses available insurance proceeds to pay off any lien on the Home and the Owner provides the City with Excess Proceeds as applicable.
 - a) Liability. The City is not liable, by way of being a Party to this Declaration, for any damage to the Home that is not the result of any negligent, reckless, or intentional act or omission of the City, the City's agents, or employees.
3. What Happens if Some or All of the Home Is Taken for Public Use.
 - A. If all of the Home is taken by eminent domain or otherwise for public purposes, or if so much of the Home is taken that the Home is lost or damaged beyond repair, this Declaration will terminate as of the date when Owner is required to give up possession of the Home, provided, however, that any Excess Proceeds (defined in Article I) arising from eminent domain or other public use proceedings will be paid to City.
 - B. In the event of a taking of a portion of the Home that results in damage to the Home that can reasonably be restored to a residential use consistent with this Declaration, then this Declaration will remain in full force and effect and the damage must be treated as damage is treated in Article V.2 above.

Article VI. Financing and Foreclosure

1. By Signing Declaration, City Gives Permission for Original Mortgage. By signing this Declaration, the City gives written permission for the first and second priority mortgage or deed of trust signed by the Owner and financing the Owner's purchase and development of the residential portion of the site ("the **Site**").

2. Survival of Declaration Upon Exercise of Remedies by Mortgagees.

- A. If the Mortgagee, deed of trust, or other encumbrance on the Site conducts a foreclosure sale, accepts a deed in lieu of foreclosure, or exercises any other right or remedy that results in the Owner no longer having title to the Site (any such right or remedy, a “**Foreclosure Action**”), this Declaration must run with the land pursuant to Article I.4 above and will continue to encumber the Home as follows:
 - i. With respect to any Mortgagee, this Declaration shall survive until expiration of the City’s Purchase Option under Article VI.3 below, specifically 60 days to exercise the Purchase Option and 90 days to complete the purchase. If the City exercises the Purchase Option, completes purchase of the Home, and satisfies the amounts owed under the Mortgage, this Declaration shall continue in full force and effect. If the City fails to exercise the Purchase Option, or exercises the Purchase Option but fails to complete the purchase within the 90-day period allowed by Article VI.3, or fails to satisfy the amounts owed under the Mortgage, then this Declaration shall terminate and be of no further force and effect, and the City shall cooperate with the Mortgagee or transferee at the Foreclosure Action to record a termination and release.
- B. The Owner expressly authorizes any Mortgagee to provide City with any information requested by City with respect to the obligations secured by a mortgage, deed of trust, or other security instrument encumbering the Site, including without limitation, the original or maximum principal amount of the loan, the interest rate and other terms governing repayment, payment history, including any history of delinquent payments, current payments of principal, interest, and late fees due or delinquent, and the amount of total obligations currently secured by the Mortgage.
- C. The Owner understands and agrees that nothing in this Declaration (i) in any way constitutes a promise or guarantee by the City that the Mortgagee will actually receive the Mortgage Satisfaction Amount or any other price for the Site, or (ii) impairs the rights and remedies of the Mortgagee in the event of a deficiency.

3. If Potential Foreclosure, the City Has an Option to Purchase the Site.

- A. At least 60 days prior to any potential Foreclosure Action, the Owner must notify the City of (i) the name of the lender on the note triggering the potential foreclosure activity; (ii) the original amount and date of the note, the existing balance, and the annual debt cost; (iii) the position of the note relative to other liabilities on the property; (iv) a detailed description of the circumstances that have prevented timely payment of interest on the note; (v) a detailed description of efforts between the owner and the holder of the note to reach an agreement to modify the terms of the note to prevent foreclosure; and (vi) any relationship between the holder of the note and the owner of the property by familial relationships, common principals, owners or employees.
- B. Upon (i) City’s receipt of notice of a Foreclosure Action under Article VI; (ii) any sale or

transfer resulting from a Foreclosure Action under Article VI; and/or (iii) an Event of Default under Article VIII (any of the foregoing, an “Option Trigger Event”), the City will have the option to purchase the Site at the amount of such total obligations under the Mortgage (the “Purchase Option”). For purposes of subparagraph (iii), (A) the amount of total obligations owed to the Mortgagee must be calculated as of the date the sale to the City closes, and (B) no Option Trigger Event occurring after a sale or transfer resulting from a Foreclosure Action must trigger an additional Purchase Option (rather, the City must be limited to the single Purchase Option initially triggered by the sale or transfer resulting from the Foreclosure Action). The Purchase Option is designed to further the purpose of preserving the affordability of the Home for succeeding Qualified Renters while taking fair account of the investment by the Owner.

- C. If the City elects to purchase the Home, the City will exercise the Purchase Option by notifying the current Owner and any Mortgagee in writing of such election (the “Notice of Exercise of Option”) within 180 days after the Option Trigger Event, or the Option may expire. Having given such notice, the City may (i) proceed to purchase the Site directly or (ii) assign the Purchase Option to another entity that would maintain a similar deed restriction program.
 - D. The purchase (by City or City’s assignee) will be completed within 90 days after the City’s Notice of Exercise of Option, or the Purchase Option will be of no further force and effect with respect to such Option Trigger Event. Except in the case of a Foreclosure Action, the Purchase Option will remain in effect with respect to Option Trigger Events occurring after the subject Option Trigger Event. The time permitted for the completion of the purchase may be extended by mutual agreement of the City or its assignee and the Owner and, if applicable, the Mortgagee undertaking the Foreclosure Action.
4. Distribution of Sales Proceeds. In the event that the City does not exercise the Purchase Option, the proceeds of any sale conducted in accordance with this Article VI must be distributed as follows: first to satisfy Mortgages in order of priority, second to pay the City’s Unpaid Amounts and Excess Proceeds, third to pay taxes, Owner association assessments, and any statutory or municipal fees currently due and payable, fourth to pay amounts owed to any other secured lien holders.

Article VII. Transfer and Turnover of the Home

- 1. At transfer or sale of the Home, new Owner is subject to the same terms. Any new Owner will take title subject to all the terms and conditions of this Declaration, including the Term, unless a new Declaration is recorded and must execute and record such documents as the City may require and/or approve.
 - A. In the event of transfer or sale, the City shall record an additional covenant confirming and commensurate with City’s interest in preserving the Community Housing portion of the property as deed-restricted.

- B. Before proceeding with a sale, the Owner must give the City at least 30 days prior written notice that Owner has received a bona fide offer from a third party to purchase the property (hereinafter "Transfer Notice"). A copy of said third party offer shall be attached to the Transfer Notice. City shall have thirty (30) days after receipt of such Transfer Notice within which to agree to purchase the Site or interest therein, upon the terms and conditions set forth in the third-party offer. Such agreement to purchase shall be evidenced by recording City's Notice of Acceptance. If City does not agree to purchase the Property within said thirty (30)-day period, Owner shall thereafter have the absolute right to sell or transfer the Property to the third party, so long as such sale or transfer is at a price not less than and on terms not more favorable than the price and terms stated in the third party offer attached to the Transfer Notice.
 - C. If such sale is not in fact consummated by the closing date specified in the third-party offer attached to the Transfer Notice, or if any of the terms or conditions of the proposed sale are materially modified, then compliance with this paragraph shall again be required prior to sale of the premises.
 - D. If such sale is proceeding, the Owner must provide the City with the buyer's contact information a minimum of ten (10) business days before closing, and any other related documentation requested by the City.
 - E. In the event the Owner transfers ownership of the Community Housing portion of the Property to a third-party buyer that is not the City, the Owner shall, at closing, pay an administrative fee to the City in an amount equal to one percent (1%) of that portion's sales price, calculated using City's sales price for new development that is restricted to the designated unit's Income Category.
2. Repairs and Turnover Procedures. The Owner is required to make necessary repairs when the Home is turned over as follows:
- A. The Owner will provide an Inspection Checklist in the lease that the Qualified Renter must, prior to signing the lease, use (i) with an inspector at their sole expense or (ii) to self-inspect and the City has the option of inspecting. The inspection is to ensure that the Home is in decent, safe, and sanitary condition and identify any additional needed repairs. The Owner must cooperate fully with the inspection.
 - B. The Owner will repair specific reported defects or conditions necessary to bring the Home into full compliance with the checklist and deed restriction prior to transferring the Home.
 - C. The Owner will bear the full cost of the necessary repairs and replacements.

Article VIII. Enforcement

1. What Happens if Owner Violates Other (Nonmonetary) Terms of the Declaration. It will be an event of default if the Owner fails to abide by any other requirement or restriction stated in this Declaration and/or any other document of record encumbering the Home, and such

failure is not cured by the Owner or a Mortgagee within 60 days after notice of such failure is given by the City to the Owner and any Mortgagee. Notwithstanding the foregoing, the Owner will not be entitled to a cure period for any violation of the construction or statutory lien provisions in Article V, the financing provisions in Article VI, the transfer provisions in Article VII and Article II, or the provisions of Article VIII below, and the City will be entitled to exercise the rights and remedies under Article VIII.4 for any such violation immediately upon notice of such violation being given by the City to the Owner and any Mortgagee.

2. What Happens if Owner Defaults as a Result of Judicial Process. It is an event of default if the Home is taken on execution or by other process of law, or if any assignment is made of the Home for the benefit of creditors, or if a receiver, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of any substantial part of the Home by a court of competent jurisdiction, or if a petition is filed for the reorganization of Owner under any provisions of the Bankruptcy Act now or hereafter enacted, or if Owner files a petition for such reorganization, or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for payment of debts.
3. Owner Must Pay a Fee for Unoccupied Home. Owners must lease vacated unit within 30 days of vacation to a Qualified Renter. If City determines that the Owner is not, in good faith, proceeding with signing a lease and moving in new tenants, the City may determine that the Owner is in violation of Article II. Any owner in violation Article II must pay monetary damages to the City that equal the Maximum Housing Cost for the duration of the known violation. Property vacant for more than three months or ninety (90) days constitutes default.
4. Owner Must Pay a Fee for Renting to Ineligible Renter. If City is notified that the Owner may be leasing to an Ineligible Renter, the City will notify the Owner and request documentation and clarification. If the City confirms occupation by an Ineligible Renter, monetary damages must be paid to the City that equal the difference between the Maximum Housing Cost and (i) the monthly rent charged, confirmed by bank statements, a signed lease, a signed tenant statement, or other documentation accepted by the City for the duration of the violation or (ii), if (i) is unavailable, then Market Rent, as determined by City (Median Advertised Rent per bedroom size and location), for the number of months in violation. Upon that determination, the Owner must work with the City on transitioning out the current Ineligible Renter to a Qualified Renter. In addition,
 - A. Owner must provide Ineligible Renter at least a ninety (90) day eviction notice, during which the Ineligible Renter will continue to pay rent to the Owner;
 - B. Owner must pay Ineligible Renter relocation expenses in an amount equal to six (6) times the tenant's monthly rent paid by the Owner.
5. City-approved correction of Out of Compliance Renter. Owner may be required to lease to a new tenant, either through a thirty (30) day notice or lease non-renewal, if the City

determines that the current lease is with an Out of Compliance Renter.

6. Default (Uncured Violation) Gives City the Right to Exercise Rights and Remedies. Upon the occurrence of an event of default that continues beyond any applicable cure period, the City will have, in addition to all other rights and remedies provided at law or in equity, the right, at the City's option, without further notice or demand of any kind, to take any one or more of the following actions:
 - A. The right to enforce this Declaration independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief on account of any violations including without limitation relief requiring restoration of the Home to the condition, affordability or occupancy which existed prior to the violation impacting such condition, affordability or occupancy (it being agreed that there must be no adequate remedy at law for such violation), and will be in addition to, and not in limitation of, any other rights and remedies available to the City.
 - B. In the case of a default under Article VIII.1 or VIII.2, including without limitation the institution of foreclosure by judicial proceeding or private sale;
 - C. Without limitation of any other rights or remedies of the City, or its successors and assigns, in the event of any rent, conveyance, financing, refinancing, or other transfer or occupancy of the Home in violation of the provisions of this Declaration, the following rights and remedies, which will be cumulative and not mutually exclusive:
 - a. Specific performance of the provisions of this Declaration;
 - b. Money damages for Excess Proceeds and Unpaid Amounts, if applicable;
 - c. The right to void any contract for lease, conveyance or other transfer of the Home in violation of the provisions of this Declaration, by an action in equity to enforce this Declaration; and
 - d. Money damages for the cost of acquiring a comparable dwelling unit for a Qualified Renter, as determined by the unrestricted value in an Appraisal paid for by the Owner.
 - D. In addition to the foregoing, the Owner hereby agrees and will be obligated to pay all fees and expenses (including legal fees) of the City in the event successful enforcement action is taken against the Owner or Owner's successors or assigns.
 - E. The Owner for themselves and their successors and assigns, hereby grants to the City the right to take all actions with respect to the Home which the City may determine to be necessary or appropriate pursuant to applicable law, court order, or the consent of the Owner to prevent, remedy or abate any violation of this Declaration.

- F. All rights and remedies set forth in this Section 9.04 are subordinate to the rights of Mortgagees as set forth in Article I and Article IV of this Declaration.

Article IX. Mediation

1. Mediation. Nothing in this Declaration will be construed as preventing the parties from utilizing any process of mediation in which the parties agree to engage for the purpose of resolving a dispute.

Article X. Notices and Other Provisions

1. Notices. Whenever this Declaration requires either party to give notice to the other, the notice must be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by like written notice:

If to City:

City of Ketchum
P.O. Box 2315
Ketchum, ID 83340
Attn: Housing

If to Owner:

Attn: _____

All notices, demands and requests will be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

2. Severability. If any part of this Declaration is unenforceable or invalid, such material will be read out of this Declaration and will not affect the validity of any other part of this Declaration or give rise to any cause of action of Owner or City against the other, and the remainder of this Declaration will be valid and enforced to the fullest extent permitted by law.
3. Waiver.
 - A. The waiver by City at any time of any requirement or restriction in this Declaration, or the failure of City to take action with respect to any breach of any such requirement or restriction, will not be deemed to be a waiver of such requirement or restriction with

regard to any subsequent breach of such requirement or restriction, or of any other requirement or restriction in the Declaration. City may grant waivers in the terms of this Declaration, but such waivers must be in writing and signed by City before being effective. Notwithstanding the foregoing, the City may not waive the provisions of Article I.3.B. and Article VI.2.B. of this Declaration. THIS PROVISION DOES NOT WAIVE ANY OTHER AGREEMENTS, LAND USE ENTITLEMENTS, OR EXCEEDANCE AGREEMENTS FOR THE PROPERTY.

- B. The subsequent acceptance by City of any late payments will not be deemed to be a waiver of any preceding breach by Owner of any requirement or restriction in this Declaration, other than the failure of the Owner to make the particular payment so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such payment.
4. Headings and Table of Contents. The headings, subheadings and table of contents appearing in this Declaration are for convenience only and do not in any way limit or amplify the terms or conditions of this Declaration.
5. Parties Bound. This Declaration sets forth the entire agreement between City and Owner with respect to the subject matter of this Declaration. This Declaration is binding upon and inures to the benefit of these parties and, in accordance with the provisions of this Declaration, their respective successors in interest. This Declaration may be altered or amended only by written notice executed by City and Owner or their legal representatives or, in accordance with the provisions of this Declaration, their successors in interest.
6. Governing Law. This Declaration will be interpreted in accordance with and governed by the laws of the State of Idaho. The language in all parts of this Declaration will be, in all cases, construed according to its fair meaning and not strictly for or against City or Owner.
7. Revocation of Prior Declarations. In addition to the terms stated in Section 11.05, the Parties agree that the execution of this Declaration shall also evidence an agreement by the Parties to revoke, terminate, and/or replace any and all prior Declarations and Deed Covenants by and between the City or the Program Administrator and their predecessors in interest, and Owner and its predecessors in interest, including the _____, recorded _____ as Instrument No. _____, in the records of Blaine County, regardless of whether such prior Declarations and Deed Covenants have separately been terminated or released in writing or otherwise, and that this Declaration restates and supersedes in every respect any such prior Declarations and Deed Covenants, as applicable.

IN WITNESS WHEREOF, the parties have caused this Declaration to be executed as of the Effective Date.

CITY OF KETCHUM

By:

Title:

OWNER

By:

State of Idaho

County of Blaine

This record was acknowledged before me on the _____, day of _____ 202____,
by _____, Owner.

Notary Public

Commission Expires: _____

Exhibit A. Legal Description
of the Home(s) with unit #s

Exhibit B. Income Restrictions

Owner developed property addressed as _____, Idaho 833____ for a _____square foot retail/service/office/residential/etc. building. This development generated the obligation to provide Community Housing in accordance with _____ Approval. Owner is restricting:

- Unit _____, with _____ number of bedrooms with Income Range _____, Category____.
- Unit _____, with _____ number of bedrooms with Income Range _____, Category____.
- Unit _____, with _____ number of bedrooms with Income Range _____, Category____.

Attachment 3

2015 Limelight Hotel
Development Agreement

**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;

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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 units 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

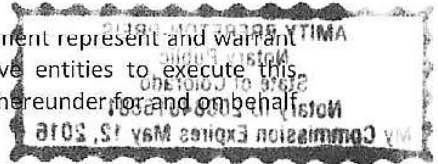
Idaho in effect at the time of the execution of this Agreement.

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.


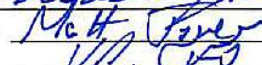
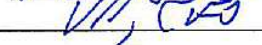
34. **AUTHORITY TO EXECUTE.** Each of the persons executing this Agreement represent and warrant that he has the lawful authority and authorization from their respective entities to execute this Agreement, as well as all applications, plats and other documents required hereunder for and on behalf of 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

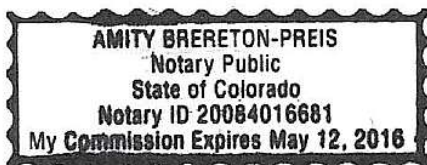
By: 
Name: 
Title: 

CITY OF KETCHUM, IDAHO

By: 
MAYOR

STATE OF ~~WASHINGTON~~ COLORADO)
County of ~~King~~ PITKIN) SS

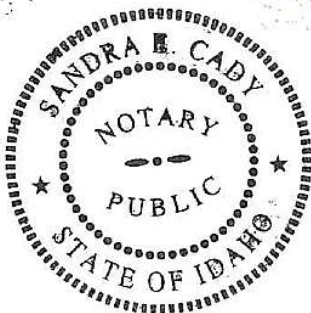
On this 2 day of July, 2015, before me, a Notary Public in and for said State, personally appeared Matthew Jones, known or identified to me to be a Managing Member of LIMELIGHT KETCHM LLC, the limited liability company that executed the within instrument or the person who executed the instrument on behalf 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