



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: Staff Member/Dept:

Agenda Item:

Recommended Motion:

Motion 1: I move to approve Permits Conditions Acceptance Development Agreement 22847 (subject to any proposed modifications) and direct staff to return with findings of fact and conclusions of law.

Motion 2: I move to approve the first amendment to PUD/CUP P19-063 and direct staff to return with findings of fact and conclusions of law.

Reasons for Recommendation:

- The final action for the project is City Council approval of the Permits Conditions Acceptance Agreement.
- The proposed Permits Conditions Acceptance Agreement triggers an amendment to the Council approved PUD/CUP 19-063 and the amendment is before the Council for consideration.
- The Planning and Zoning Commission reviewed and recommended Council approval of the Agreement and amendment to PUD/CUP P19-063

Policy Analysis and Background (non-consent items only):

A history of the project and approvals up to March 28, 2023 is contained in Attachment A, the March 28, Planning and Zoning Commission staff report.

Two items are before the City Council for action:

- Review and approval of the Permits Conditions Acceptance Agreement
- Review and approval of the first amendment to PUD/CUP P19-063 approved by the City Council in February 2021.

Permits Conditions Acceptance Development Agreement

Attachment B is the proposed Permit Conditions Acceptance Development Agreement.

The Permit Conditions Acceptance Development Agreement sets forth the development conditions related to the project. The Agreement identifies all the permits that have been approved, or that need to be approved, before the project begins construction. The Agreement also sets forth the conditions required before a certificate of occupancy is issued. Key elements of the Agreement are requirements to provide assurances of the financial commitments to complete the project, and an irrevocable completion site

restoration guaranty. The details of the proposed agreement is outlined in Attachment A, the March 28, 2023 Planning and Zoning Commission report.

The Planning and Zoning Commission reviewed the Agreement and recommended the City Council approve the Agreement with three amendments as reflected in the April 11, 2023 Findings of Fact, Conclusions of Law, and Recommendation to the City Council (Attachment C). The proposed revisions consist of:

- Revise the definition of “Institutional Lender” in Section 1.31
- Allow a two-month extension to obtain the building permit in Section 13.1.2.1
- Clarify that the owner must complete all required improvements related to a certificate of occupancy in a timely manner in Section 13.3.1.

All the recommended Planning and Zoning Commission revisions are reflected in the Agreement presented for Council approval.

First Amendment to PUD/CUP P19-063

Attachment D provides the proposed amendment to PUD/CUP P19-063. The amendment is on Page 29, Condition No. 5, 1.5.3 of the Attachment. The City Council approved PUD/CUP P19-063 on February 16, 2021. Section IV of the Order of Decision sets forth specific conditions of approval for the project. Order 1.5, Condition No. 5 sets forth time limits for the project. Paragraph 1.5.3 requires the certificate of occupancy be issued for the project no later than 18 months after issuance of the building permit.

The applicant requested a change to the 18-month timeframe. Instead of 18 months, the applicant is requesting a certificate of occupancy be issued within 30 months after the building permit is issued. This is reflected in Section 13, 13.3 of the Agreement. To align the Agreement with the PUD/CUP P19-063, it is necessary to amend Condition No. 5 of the PUD/CUP. The Planning and Zoning Commission reviewed and recommended approval of the amendment as reflected in Attachment E, Findings of Fact, Conclusions of Law, and Recommendation to the City Council on Amendment to PUD/CUP P19-063.

After City Council action on the two items, staff will return to the Council for adoption of Findings of Fact, Conclusions of Law reflecting the decision of the City Council. In addition, staff will return for Council adoption of the Project Record, and document reflecting all the actions taken to date on the project.

Sustainability Impact:

Per Section 11.14 and 14.1.3 of the proposed Agreement, and Condition No.6 of PUD/CUP P19-063, all occupancies of the project shall meet LEED Silver or equivalent standards as verified by a third party.

Financial Impact:

None OR Adequate funds exist in account:

There is no financial impact resulting from, approval of the Agreement and PUD/CUP Amendment. The project, once completed, will contribute LOT funds to the City.

Attachments:

A. March 28, 2023 Planning and Zoning Commission Staff Report

B. Proposed Permit Conditions Acceptance Development Agreement 22847

C. April 11, 2023 Planning and Zoning Commission Findings and Recommendation on Permit Conditions Acceptance Agreement 22847

D. Proposed First Amendment to PUD/CUP P19-063

E. April 11, 2023 Planning and Zoning Commission Findings and Recommendation on First Amendment to PUD/CUP P19-063

Attachment A



City of Ketchum
Planning & Building

**STAFF REPORT KETCHUM PLANNING AND ZONING COMMISSION MEETING
OF MARCH 28, 2023**

PROJECT: PEG Ketchum Hotel, LLC or Ketchum Tribute Hotel or Ketchum Gateway Hotel

APPLICATION TYPE: Adoption of Findings of Fact, Conclusions of Law and Conditions of Approval for Design Review Permit P22-028
Review and recommendation on Permits Conditions Acceptance Development Agreement
Review and recommendation on amendment to PUD/CUP P19-063

REPRESENTATIVE: Matt Hansen, PEG Companies, Justin Heppler, AJC Architects

OWNER: PEG Ketchum Hotel, LLC

REQUEST: Adoption of Findings of Fact, Conclusions of Law, and Conditions of Approval for Design Review Permit P22-028
Review and recommendation on Permits Conditions Acceptance Development Agreement
Review and recommendation on amendment to PUD/CUP P19-063

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

ZONING: Tourist (T) Zoning District

OVERLAY: Floodplain & Waterways Design Review Subdistricts

NOTICE: Notice was published March 8, 2023, for the March 28, 2023 public hearing in the *Idaho Mountain Express*, the official newspaper, On March 8, 2023. Notice of the hearing was mailed to the property owners within 300 feet of the subject real property and affected agencies.

RECOMMENDATION

Staff recommends the Planning and Zoning Commission take three actions on the PEG Ketchum Hotel:

1. Review and approve the Findings of Fact, Conclusions of Law and Conditions of Approval for Design Review Permit P22-028. The Design Review approval occurred June 14, 2022.
2. Review and make a recommendation to the City Council on the proposed Permits Conditions Acceptance Development Agreement.
3. Review and make a recommendation to the City Council on the amendment to PUD/CUP P19-063 to align the PUD/CUP to the Permits, Conditions Acceptance Development Agreement.

Once the Commission has acted, the Permit Conditions Acceptance Development Agreement and PUD/CUP amendment will be scheduled for public hearing before the City Council for review and action.

RECOMMENDED MOTIONS

1. Review and approve the Findings of Fact, Conclusions of Law and Conditions of Approval for Design Review Permit P22-028. Staff recommends the Commission approve Attachment A with the following motion:
“I move to approve the Findings of Fact, Conclusions of Law and Conditions of Approval for Design Review Permit P22-028.”
2. Review and recommendation to the City Council on the proposed Permits Conditions Acceptance Development Agreement. The Commission recommendation will be forwarded to the City Council for consideration during their review and action on the Agreement. Staff recommends the following motion:
“I move to recommend the City Council approve the Agreement, or amend the Agreement according to the changes identified by the Commission.”
3. Review and make a recommendation to the City Council on the amendment to PUD/CUP P19-063 to align the PUD/CUP to the Permits, Conditions Acceptance Development Agreement. Staff recommends the following motion:
“I move to approve the amendment or modify the proposed amendment to PUD/CUP P19-063 and forward the recommendation to the City Council.”

BACKGROUND

A history of the project and approvals up to June 14, 2022 is contained in Attachment A, the June 14, 2022 staff report for Design Review Permit P22-028.

On June 14, 2022 the Planning and Zoning Commission conducted a public hearing on Design Review Permit P22-028. The Commission approved the design review permit and continued the public hearing to July 6, 2022 for the Commission to approve the Findings of Fact for the design review and consider the proposed Permit Conditions Acceptance Development Agreement.

After Commission approval of the design review permit on June 14, 2022 and before the findings returned at a subsequent public hearing for approval, the applicant informed staff that elements of the previously agreed upon Permits Conditions Acceptance Development Agreement were problematic and significant revisions were necessary. Specifically, PEG objected to the financial performance guarantees for the project, completion milestones and the format of the Agreement. Staff and the City Attorney

met with PEG representatives numerous times between July 2022 and February 2023 to resolve all the outstanding issues. The city's legal team engaged the services of a financial consultant to ensure the financial performance guarantees were feasible for both the city and PEG. The revised Agreement was accepted by PEG February 27th. A public hearing was scheduled for March 28, 2023 for action on all the remaining Planning and Zoning Commission decisions.

PLANNING AND ZONING COMMISSION ACTIONS

The following describes the actions before the Commission at this time.

Adoption of Findings of Fact, Conclusions of Law, and Conditions of Approval for Design Review Permit P22-028.

Attachment B reflects the June 14, 2022 action taken by the Planning and Zoning Commission for the approval of Design Review Permit P22-028. The design review permit is not officially approved until the adoption of the Findings of Fact, Conclusions of Law and Conditions of Approval. No changes have been made to the project design since the June 14, 2022 Commission hearing. Once the Commission acts on the findings, the design review approval is final.

Review and recommendation on Permits Conditions Acceptance Development Agreement

Attachment C is the proposed Permit Conditions Acceptance Development Agreement.

The Permit Conditions Acceptance Development Agreement sets forth the development conditions related to the project. The Agreement identifies all the permits that have been approved, or that need to be approved, before the project begins construction. The Agreement also sets forth the conditions required before a certificate of occupancy is issued. Key elements of the Agreement are requirements to provide assurances of the financial commitments to complete the project, and an irrevocable completion site restoration guaranty. The Agreement is before the Commission for review and recommendation to the City Council on any proposed changes. The following outlines the contents of the Agreement. Details on these requirements are contained within the Agreement.

- Section 1: Definitions used in the Agreement.
- Section 2: Recitals outlining the facts about the approval process.
- Section 3: Lot Line Shift Permit Conditions. This section identifies the permit granted for Lot Line Shift P19-064.
- Section 4: Floodplain Development Permit Conditions. This section identifies the permit granted for Floodplain Development Permit P19-062.
- Section 5: Planned Unit Development and Conditional Use Permit Conditions. This section identifies the permit granted for PUD/CUP P19-063.
- Section 6: Design Review Permit Conditions. This section identifies the permit granted for Design Review Permit P22-028.
- Section 7: Street and Alley Dig Permit. This section requires the project to submit for a Street and Alley Dig Permit for the project.
- Section 8: This Section requires a letter of credit for right of way improvements. The letter of credit ensures the right of way improvements will be complete. If the applicant does not complete the improvements, the city may draw on the letter of credit to complete the improvements.
- Section 9: Parking and Traffic Letter of Credit. To assure that the Developer/Owner and/or Hotel Operator provides guest shuttle, employee shuttle, car share program, transit passes, carpool program, and alternative transportation (such as bike

storage for employees), the Developer/Owner and/or Hotel Operator shall include a Parking and Traffic Irrevocable Letter of Credit to secure these conditions to lower parking demand and traffic impacts in accordance with the Agreement in the amount of fifty thousand dollars (\$50,000)

Section 10: Water, Sewer, and Utility Conditions. This section outlines the requirements for connections and improvements to public utilities.

Section 11: Conditions Precedent to the Issuance of a Building Permit. Prior to issuance of a building permit, multiple requirements must be met including financial assurances from the developer that project financing commitments have been obtained.

Section 12: Project Development Plan Modifications Subsequent to Building Permit Issuance. If there are changes to the project plans, that are not deemed to be minor, this section outlines the process for project modifications.

Section 13: Permit Time Limits. This section sets forth the time periods for obtaining a building permit and a certificate of occupancy for the project. The section also sets forth what occurs if the project does not meet the time limits and the process for changing the time limits.

Section 14: Conditions Precedent to Issuance of an Occupancy Permit. Prior to issuance of the Certificate of Occupancy, several conditions must be met such as approval of the parking plan, completion of all right of way improvements and the completion of the employee housing.

Section 15: Project Operations Conditions. The project that has been approved is a four-star hotel with employee housing units. This section ensures the projects continues to operate in the manner approved by the city and as represented by the owner/developer.

Section 16: Default. This section defines a default and the process for curing a default.

Section 17: Shared Legal Defense of This Agreement. In the event any legal or equitable action or other proceeding is instituted by a third-party challenging the validity of any provision of the Agreement, the Parties will cooperate in defense of such action or proceeding.

Section 18: Notices and Filings. This identifies the parties and addresses for notices.

Section 19: Developer/Owner Assignment of Agreement Rights. The assignment of any of the Developer/Owner's rights and obligations of the Agreement shall be in accordance with the following:

Assignment must obtain written consent of the city council which approval cannot be unreasonably withheld, conditioned or delayed subject to conditions:

- Assignee must provide written acceptance of all the permits, conditions, and approvals for the project.
- If the project is assigned to another entity, the financial obligations for constructing and completing the project continue by the Guarantor's Guaranty.

The Developer/Owner may assign all or part of the Developer's or Owner's rights and duties under the Agreement as collateral to any financial institution from which the Developer/Owner has borrowed funds for use in Development of the Project. Such an assignment shall not relieve the Developer/Owner from any subsequent obligations of the Agreement.

Section 20: Miscellaneous. This section contains a variety of legal and procedural requirements that apply to each party of the Agreement.

The Commission action is to review the Agreement, suggest any revisions and provide a recommendation to the City Council. The City Council will make the final decision on the Agreement.

Review and recommendation on amendment to PUD/CUP P19-063

Attachment D provides the proposed amendment to PUD/CUP 19-063. The amendment is on Page 29, Condition No. 5, 1.5.3 of the Attachment. The City Council approved PUD/CUP P19-063 on February 16, 2021. Section IV of the Order of Decision sets forth specific conditions of approval for the project. Order 1.5, Condition No. 5 sets forth time limits for the project. Paragraph 1.5.3 requires the certificate of occupancy be issued for the project no later than 18 months after issuance of the building permit.

The applicant requested a change to the 18-month timeframe. Instead of 18 months, the applicant is requesting a certificate of occupancy be issued within 30 months after the building permit is issued. This is reflected in Section 13, 13.3 of the Agreement. To align the Agreement with the PUD/CUP P19-063, it is necessary to amend Condition No. 5 of the PUD/CUP. The Commission review and recommendation on the amendment is required.

NEXT STEPS

Three items are before the Commission for action. The following outlines the process related to each action item.

1. Review and approve the Findings of Fact, Conclusions of Law, and Conditions of Approval for Design Review Permit P22-028. The Commission action will be final, no City Council approval is required.
2. Review and make a recommendation to the City Council on the proposed Permits Conditions Acceptance Development Agreement. The Commission recommendation will be forwarded to the City Council for consideration during their review and action on the Agreement.
3. Review and make a recommendation to the City Council on the amendment to PUD/CUP P19-063 to align the PUD/CUP to the Permits, Conditions Acceptance Development Agreement. The Commission recommendation will be forwarded to the City Council for consideration as part of their review and action on the Agreement.

Staff will return to the Commission with findings reflecting the Commission's action on items 2 and 3. After approval of those findings, the Commission recommendations will be scheduled for a City Council public hearing.

Attachments:

- | | |
|---------------|--------------------------------------------------------------------------------------------------------------------------|
| Attachment A: | June 14, 2022 staff report for Design Review Permit P22-028. |
| Attachment B: | Findings of Fact, Conclusions of Law and Conditions of Approval for Design Review Permit P22-028 approved June 14, 2022. |
| Attachment C: | 3-2-23 Permit Conditions Acceptance Development Agreement. |
| Attachment D: | Proposed amendment to PUD/CUP P19-63. |



City of Ketchum
Planning & Building

**STAFF REPORT KETCHUM PLANNING AND ZONING COMMISSION MEETING OF
JUNE 14, 2022**

PROJECT: PEG Ketchum Hotel, LLC or Ketchum Tribute Hotel or Ketchum Gateway Hotel

FILE NUMBER: P22-028 Design Review Permit

APPLICATION TYPE: Design Review Permit and Permit Conditions Acceptance Development Agreement

REPRESENTATIVE: Nick Blayton, PEG Companies, Justin Heppler, AJC Architects

OWNER: PEG Ketchum Hotel, LLC

REQUEST: Design Review and Permit Conditions Acceptance Development Agreement

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

ZONING: Tourist (T) Zoning District

OVERLAY: Floodplain & Waterways Design Review Subdistricts

NOTICE: Notice was published for the June 14, 2022, public hearing in the *Idaho Mountain Express*, the official newspaper, on Wednesday May 25, 2022. On May 25, 2022, notice of the hearing was mailed to the property owners within 300 feet of the subject real property and affected agencies.

RECOMMENDATION

The Permit Conditions Acceptance Development Agreement is still undergoing review and discussions between the city and applicant. Therefore, staff is recommending the Planning and Zoning Commission conduct a public hearing on the design review application, identify any revisions or conditions of approval related to the design review permit, and if the Commission is ready to approve the project, continue the hearing to a date certain with direction to return with the Findings of Fact, Conclusions of law and Decision of the Planning and Zoning Commission and the proposed Permit Conditions Acceptance Development Agreement. The recommended motion would be:

“I move to approve Design Review Application P22-028 with the recommended conditions of approval and continue the public hearing to (identify a date) for approval of the Findings of Fact, Conclusions of law and Decision of the Planning and Zoning Commission and review and recommendations of the Permit Conditions Acceptance Development Agreement.”

BACKGROUND

Background Information Summary

As a result of a noticing error, on April 6, 2020, the City Council vacated the Findings of Fact, Conclusions of law, and Decision of the Planning and Zoning Commission and City Council for the following applications:

- Application for Floodplain Development Permit File No. P19-062
- Application for Lot Line Adjustment File No. P19-064
- Application for Planned Unit Development Conditional Use Permit File No. P19-063
- Design Review File No. P20-019

The Council adopted Orders remanding the applications to the Planning and Zoning Commission for further proceedings and hearings.

In Compliance with the Orders, the Planning and Zoning Commission conducted public hearings on September 28, 2020, and October 23, 2020, recessed the proceedings to December 15, 2020, and again tabled and continued the proceeding to December 22, 2020, and adopted Joint Hearings Record of Proceedings Findings of Fact together with the Findings of Fact, Conclusions of Law and Order of Recommendation to the City Council for each of the following applications:

- Application for Floodplain Development Permit File No. P19-062
- Application for Lot Line Adjustment File No. P19-064
- Application for Planned Unit Development Conditional Use Permit File No. P19-063
- Application for Waiver File No. P20-069

City Council conducted a joint public hearing on February 1, 2021 and adopted the Joint Hearings Record of Proceedings Findings of Fact together with the Findings of Fact, Conclusions of Law and Order of for the applications listed above on February 16, 2021.

On November 30, 2021, the Planning and Zoning Commission reviewed Pre-Application Design Review Permit 20-019 approving the project to advance to Design Review. Since that time, the applicant has secured ITD approval of the proposed SR 75 right of way improvements along with revisions to the project to address the Planning and Zoning Commission recommendations. In addition, the applicant and staff have concluded revisions to the Permit Conditions Acceptance Development Agreement.

Three actions remain before the project is approved. The first is Planning and Zoning Commission review and recommendation to approve Design Review Permit P22-028, Planning and Zoning Commission recommendations on the proposed Permit Conditions Acceptance Development Agreement, and City Council review and approval of the Permit Conditions Acceptance Agreement.

The matter before the Planning and Zoning Commission at this June 14, 2022, meeting is review of the Design Review Permit.

Actions Prior to December 2020 and February 2021

On July 29th, 2019, the Ketchum Planning and Zoning Commission held its first public hearings regarding the concurrent land use applications for a new Marriott hotel, proposed by PEG Ketchum Hotel, LLC, for a 1.08-acre site, consisting of three parcels, located at the southwest corner of State Highway 75 and River Street (260/280 E. River and 251 S. Main Street). The Commission held a second hearing July 30th, 2019.

The Commission recommended approval of the Lot Line Shift, Floodplain Development/Waterways Design Review, PUD-CUP applications during the July 30th meeting and motioned to advance the Pre-Application Design Review application to full Design Review. The Commission continued the hearing on the proposed Development Agreement to their August 12th, 2019, meeting and recommended approval to Council during that meeting.

After taking public comment on the proposal on September 16th, 2019 (but not reviewing or deliberating on the project) Ketchum City Council held its first public hearings on the concurrent applications on October 7th, 2019, and held subsequent hearings on December 2nd, 2019, and January 21st, 2020. Council took action to adopt Findings of Fact, Conclusions of Law, and Decisions related to the PUD-CUP, Lot Line Shift, and Floodplain Development application on February 3rd, 2020. The Council then rescinded (vacated) these Findings on April 6th, 2020 and entered the Orders remanding all applications except for File No. P20-069 back to the Planning and Zoning Commission. Application for Waiver File No. P20-069 was filed by the Applicant subsequent to the entry of the Orders and consists of waiver for:

- Minimum lot size for PUDs from 3 acres to approximately 1.05 acres.
- Side yard setbacks from 32 feet to 18 feet 5 inches on the highway/east side, and from 24 feet to 11 feet 8 inches on the interior/west side.
- Floor area ratio (FAR) from 0.5 to 1.57.
- Building height from 35 feet to 72 feet (72 feet is the maximum height from finished grade if measured from the lower sloped portion of the site; 48 feet is the height from grade at River Street).
- Number of floors from 4 floors to 6 floors (6 floors is number of floors if counted from the lower sloped portion of the site; 4 floors is the number of floors above grade at River Street).

The applicant team responded to Council and community input during the Proceedings and revised the physical form of the building (square footage, location on site, bulk, scale, mass, and so forth) over the course of these meetings. These changes to the form of the building and its relation to the site impacted the waiver requests associated with the PUD-CUP application.

Approved Project

Project Characteristic	February 16, 2021, Approvals
Total gross square feet	128,436 gross square feet
Floor Area Ratio	1.57 exclusive of basement areas and underground parking
Open site area	21,362 square feet
Building height, total	72'
Building height, measured from River St.	48'
Building height measured from Trail Creek	28'
Rear (South/Trail Creek) Setback, Minimum	25' + 10' (sewer easement)
Front (North/River Street), Minimum	15'
Side-East (Highway), Minimum	20' with an average side setback along the highway of 31.3
Side-West (Interior lot line), Minimum	16'
Employee housing beds on site	23 beds one (1) 4BR unit w/ 7 beds two (2) 2BR units 12 studios
Number of hotel rooms	92

The project includes 84 underground parking spaces (53 spaces are dedicated to hotel operations, 18 spaces are dedicated to employee housing, and 13 spaces are devoted to public use), as set forth in Project the Permit Conditions Acceptance Development Agreement.

As approved by Council, direct project ingress/egress to State Highway 75 (SH75) for anything other than fire emergency staging is not allowed. Conditions of approval require installation of north bound left turn lane at River Street and SR 75 to be constructed by the applicant as a condition of certificate of occupancy for the project.

Analysis

The applicant proposed minimal changes to the project previously approved by the Planning and Zoning Commission and City Council on January 21, 2020. Some changes did occur based on Planning and Zoning Commission and City Council direction. The changes that occurred between January 21, 2020, and February 16, 2021 consist of:

- The project setbacks have been modified to reflect requested increase to 16 feet along the west property line, and a minimum of 20 feet along the east property line with an average setback of no more than 31 feet from edge of SH75 ROW.
- Revisions have been made to the River Street encroachment design. The curb bulb out into River Street has been revised to conform to City standards.
- Exterior patios and terrace walls have been slightly modified to fit built structures within the updated setbacks along SH75. These walls were revised to minimize concentration of height in any one location.
- To address the concerns related to mechanical equipment and utilities located on the west side of the project, the following changes have been made:
 - The west setback increased to 17 feet at ground level, and 16 feet on upper levels.

- The Emergency power / back-up generator has been relocated inside the parking garage on level -01.
- Visual impact of Idaho Power electrical equipment will be minimized by screening with a slatted wooden fence
- Vents that are planned to occur along the west property line include the commercial dryer ventilation. The commercial dryer ventilation system proposed will feature a series of filters and lint traps that effectively catch lint adjacent to the dryers. In addition to the filters, the vents will be 17 feet from adjacent property line, and the ducting will be designed with velocity that will not cross the property line.

Pre-Application Design Review.

On November 20, 2021, the Planning and Zoning Commission was presented with the revised plans for pre-application design review. The Planning and Zoning Commission approved the project to move forward to design review with the following revisions:

- Provide details on the wall/building design along SR 75: Show how the walls/building will look when there is no tree foliage. Provide material details and design details.
- Address the treatment at the corner of River and SR 75: Redesign the corner treatment so that space can be used by the general public year-round and not used by just hotel guests. Look at eliminating the fire pit.
- Identify the mix of employees and managers that would be employed.
- Look at River Street side to address pedestrian safety in light of all the activities that are proposed on that frontage (deliveries, trash, drop-off, and pickup).
- Provide details on mechanical screening for all the equipment.
- Address the design of creek access trail from the highway – look at the materials, make more natural and inviting.
- Address the SR 75 elevation in the middle of the project: is there some way to break up the mass with a change in materials or step backs.

In response to the Commission’s comments that applicant has responded as outlined in Attachment A. The plans dated May 27, 2022, Attachment B address each of the issues noted by the Commission.

DESIGN REVIEW ANALYSIS

Attachment C is a copy of the Council adopted Planned Unit Development CUP Findings for the project.

Pursuant to KMC §17.96.020, the purpose of Design Review is to maintain and enhance the appearance, character, beauty, and function of the city, to ensure that new development is complementary to the design of existing City neighborhoods, and to protect and enhance the economic base of the City of Ketchum.

As further identified in the 2014 Ketchum Comprehensive Plan, Design Review criteria and standards are intended to encourage new development to align with the community’s vision for Ketchum as an authentic mountain community with a world-class character, yet small town feel (p. 7).

Staff analysis of the application consistent with the aforementioned purpose and intent follows in Table 1 and Table 2. Specifically, staff comments and recommended findings are organized within two tables. Table 1 analyzes how the March 27, 2022, plans (Attachment B) complies with the City's Design Review Improvements and Standards Analysis and Considerations. Table 2 analyzes how the May 27, 2022, plans comply with the City's PUD Project Waiver Consideration and Analysis / Tourist Zoning District Dimensional Standards.

PUBLIC COMMENT

Two written comments were received prior to the distribution of the Planning and Zoning Commission packet. Those comments are provided in Attachment D.

Table 1: Design Review Improvements and Standards Analysis and Considerations

Design Review Improvements and Standards Analysis and Considerations KMC § 16.08.080 G 1 IMPROVEMENTS AND STANDARDS: 17.96.060				
Yes	No	N/A	Ketchum Municipal Code §	City Standards and Staff Comment / Draft Findings
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.050.A.1 Criteria	The project does not jeopardize the health, safety or welfare of the public.
			Staff Comment / Draft Finding	<i>As conditioned through the PUD/CUP and Design Review Permit, controls on design, inclusion of employee housing, pedestrian circulation and improvements within public rights-of-way, among other provisions set forth in the PUD/CUP Findings adopted by Council, the Commission finds the project will not jeopardize the health, safety of welfare of the public.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.08.080 G 1 & 17.96.050.A.2, Criteria	The plan is in conformance with and promotes the purposes and goals of the comprehensive plan, zoning ordinance, and other applicable ordinances of the city, and not in conflict with the public interest: Pursuant to subsection 16.08.070D of this chapter, all of the design review standards in chapter 17.96 of this code shall be carefully analyzed and considered. This includes detailed analysis of building bulk, undulation and other design elements. The site plan should be sensitive to the architecture and scale of the surrounding neighborhood. The project conforms to all applicable standards and criteria as set forth in this chapter, this title, and any other standards as adopted or amended by the City of Ketchum from time to time.
			Staff Comment / Draft Finding	<i>The Commission carefully analyzed and considered the standards of these sections and finds the project plans to be sensitive to the architecture and scale of the surrounding neighborhood and is in harmony with the surrounding area. The Commission also finds that the Project conforms with applicable standards and criteria as set forth in KMC Chapter 96 and Title 17, and the CUP/PUD standards and waivers and not in conflict with the provisions of KMC Chapter 08 of Title 16 [the Planned Unit Development Ordinance].</i>

Yes	No	N/A	Ketchum Municipal Code §	City Standards and Staff Comment / Draft Findings
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(A)(1) Streets	The applicant shall be responsible for all costs associated with providing a connection from an existing city street to their development.
			Staff Comment / Draft Finding	<i>The property is located at 260-280 E. River Street with approximately 334 linear feet (LF) of frontage along State Highway 75 (SH75) and approximately 170 feet of linear frontage adjacent along River Street. As stipulated by the Ketchum City Council approval of the associated Planned Unit Development application for the property, the project will not have direct access onto SH75 for anything other than emergency access staging. The applicant is responsible for all costs associated with connecting the project to River Street, including access to the parking garage, pick-up/drop-off, hybrid delivery/public parking, and various sidewalk and plaza improvement. The project is designed consistent with the recommendation of the city's 3rd party traffic consultant (AECOM) and subject to an encroachment permit by the city. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(A)(2) Streets	All street designs shall be approved by the City Engineer.
			Staff Comment / Draft Finding	<i>The final street design, including snowmelt, delivery parking, pick-up/drop off areas, plaza amenities, sidewalk width/locations, ADA ramps, and bulb out are subject to city engineer approval, as well as an encroachment permit by Council. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(B)(1)	All projects under 17.96.010(A) that qualify as a “Substantial Improvement” shall install sidewalks as required by the Public Works Department.
			Staff Comment / Draft Finding	<i>The project qualifies as a substantial improvement and 8’ sidewalks along River Street and SH75 are required, totaling approximately 504 LF. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060 (B)(2)c	Sidewalk width shall conform to the City’s right-of-way standards; however the City Engineer may reduce or increase the sidewalk width and design standard requirements at their discretion.
			Staff Comment / Draft Finding	<i>The project qualifies as a substantial improvement and 8’ sidewalks along River Street and SH75 are required. The city ROW standards also require on-street parking, which is being mitigated with 13 public parking spaces within the Applicant’s parking garage. As conditioned, the Project complies with this standard.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060 (B)(3)	Sidewalks may be waived if one of the following criteria is met:
				<ul style="list-style-type: none"> a. The project comprises an addition of less than 250 square feet of conditioned space. b. The City Engineer finds that sidewalks are not necessary because of existing geographic limitations, pedestrian traffic on the street does not warrant a sidewalk, or if a sidewalk would not be beneficial to the general welfare and safety of the public.
			Staff Comment / Draft Finding	<i>N/A</i>

Yes	No	N/A	Ketchum Municipal Code §	City Standards and Staff Comment / Draft Findings
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060 (B)(4)	The length of sidewalk improvements constructed shall be equal to the length of the subject property line(s) adjacent to any public street or private street.
			Staff Comment / Draft Finding	<i>The applicant proposes to install a new 8' wide sidewalk along the north and east perimeter of the property. The new sidewalk will be approximately 504 total linear feet (LF) as follows: 170 LF along River Street and 334 LF along SH75. The River Street sidewalk will be snow melted by the applicant. The exact location of the sidewalk will be noted within the ITD and River Street Encroachment Permits. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060 (B)(4)	The length of sidewalk improvements constructed shall be equal to the length of the subject property line(s) adjacent to any public street or private street.
			Staff Comment / Draft Finding	<i>The applicant proposes to install a new 8' wide sidewalk along the north and east perimeter of the property. The new sidewalk will be approximately 504 total linear feet (LF) as follows: 170 LF along River Street and 334 LF along SH75. The River Street sidewalk will be snow melted by the applicant. The exact location of the sidewalk will be noted within the ITD and River Street Encroachment Permits. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060 (B)(5)	New sidewalks shall be planned to provide pedestrian connections to any existing or future sidewalks adjacent to the site. In addition, sidewalks shall be constructed to provide safe pedestrian access to and around a building.
			Staff Comment / Draft Finding	<i>The new sidewalk along the applicant's property connects to existing and future city sidewalk infrastructure. As conditioned, the Project complies with this standard.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060 (B)(6)	The City may approve and accept voluntary cash contributions in-lieu of the above described improvements, which contributions must be segregated by the City and not used for any purpose other than the provision of these improvements. The contribution amount shall be one hundred ten percent (110%) of the estimated costs of concrete sidewalk and drainage improvements provided by a qualified contractor, plus associated engineering costs, as approved by the City Engineer. Any approved in-lieu contribution shall be paid before the City issues a certificate of occupancy.
			Staff Comment / Draft Finding	<i>N/A. The project does not propose making a voluntary cash contribution in-lieu of improvements for this project.</i>

Yes	No	N/A	Ketchum Municipal Code §	City Standards and Staff Comment / Draft Findings
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(C)(1)	All storm water shall be retained on site.
			Staff Comment / Draft Finding	<i>All storm water shall be retained on site including water from roof drains. The applicant has submitted Storm Water Pollution Plan (Civil Drawing Sheet C2.0 from Galena Engineering), as well as a preliminary utility plan with drainage details on Civil Drawing Sheet C4.0 of the Design Review submittal. The proposed drainage plan includes a system of drywells. Prior to issuance of a Building Permit for the project, the applicant shall submit a final drainage plan indicating grading, catch basins, piping, and drywells (KMC §17.96.040.C.2b & KMC §17.96.060.C.1-4) prepared by a civil engineer licensed in the state to be submitted for review and approval by the City Engineer and Streets Department. See Attachment for City Department comments including City Engineer and Streets Department conditions. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(C)(2)	Drainage improvements constructed shall be equal to the length of the subject property lines adjacent to any public street or private street.
			Staff Comment / Draft Finding	<i>See above Staff Comment / Draft Finding for Ketchum Municipal Code §17.96.060(C)(1). All drainage improvements are required to meet City standards. All drainage improvements shall be indicated on civil plans stamped and Idaho licensed engineer and require review approval from the City Engineer & Streets Department prior to issuance of a Building Permit for the project. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(C)(3)	The City Engineer may require additional drainage improvements as necessary, depending on the unique characteristics of a site.
			Staff Comment / Draft Finding	<i>A final drainage plan prepared by a civil engineer licensed in the state of Idaho shall be submitted with the Building Permit application to be reviewed and approved by the City Engineer. The City Engineer may require additional drainage improvements as necessary. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(C)(4)	Drainage facilities shall be constructed per City standards.
			Staff Comment / Draft Finding	<i>All drainage facilities on both private property and the City owned right-of-way shall meet City standards. Final drainage specifications shall be included with the civil drawings submitted with the Building Permit application to be reviewed and approved by the City Engineer & Streets Department. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(D)(1)	All utilities necessary for the development shall be improved and installed at the sole expense of the applicant.
			Staff Comment / Draft Finding	<i>The applicant is aware of this requirement and the preliminary plans indicated in the Galena Engineering set of Civil Drawings show utility connections and locations. Also, will serve letters have been received from all the major utility service providers for the project, including IMG, Idaho Power, City Water and Sewer, Cox, and Clear Creek. See Attached Public Works Department comments and other will serve letters. As conditioned, the Project complies with this standard.</i>

Yes	No	N/A	Ketchum Municipal Code §	City Standards and Staff Comment / Draft Findings
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(D)(2)	Utilities shall be located underground and utility, power, and communication lines within the development site shall be concealed from public view.
			Staff Comment / Draft Finding	<i>All utilities within the development site shall be underground and concealed from public view. The transformer for the Project is proposed in the Northwest Portion of the site with landscape screening. See above Staff Comment / Draft Findings for Ketchum Municipal Code §17.96.060(D)(1). The plans show the transformer will be screened and as proposed, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(D)(3)	When extension of utilities is necessary all developers will be required to pay for and install two (2”) inch SDR11 fiber optical conduit. The placement and construction of the fiber optical conduit shall be done in accordance with city of Ketchum standards and at the discretion of the City Engineer.
			Staff Comment / Draft Finding	<i>The applicant is aware of this requirement and will comply with these standards. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(E)(1)	The project's materials, colors and signing shall be complementary with the townscape, surrounding neighborhoods and adjoining structures.
			Staff Comment / Draft Finding	<p><i>The Applicant notes the following about how the materials and colors selected for the project complement Ketchum’s townscape, surrounding neighborhood, and adjoining structures:</i></p> <p><i>STONE – Located primarily along the base volume of the restaurant and lobby along River Street. Our stone selection is a dry-stack stone with natural buff / light gray tones and horizontal directionality. Natural stone tones intended to reflect the prevalent stone formations around Wood River Valley, and rustic residential architecture of the area.</i></p> <p><i>BOARD FORMED CONCRETE – The grounding base element of this building, as the site drops, the board formed concrete foundation walls and site terraces with the landscape. Horizontal board formed texture gives a more natural textured finish vs. a traditional smooth face concrete. This material is seen throughout the valley on residential and commercial projects.</i></p> <p><i>STOREFRONT GLAZING – All windows, doors, and storefront glazing will be a simple dark bronze / black frame with high performance clear glazing. Dark frames tend to visually disappear from the architecture as other textures pop. Dark frames historically relate to old steel framed windows found though-out Western vernacular architecture and are seen on most commercial and residential buildings in Ketchum.</i></p>

				<p>CHARWOOD VERTICAL SIDING – This highly sustainable material is a low maintenance, fire resistant, textured gray wood to contrast / compliment the clear cedar siding throughout the project. Historically grey wood is achieved through staining or natural aging (see adjacent Korb property) but requires regular maintenance and sealing. Charred wood produces a natural gray wood aesthetic that doesn't require future staining or sealing. Gray finished wood is seen throughout Wood River Valley on historic structures, commercial structures, and all grades of residential projects.</p> <p>STEEL GUARDRAIL / STEEL PLATE FASCIA – Similar to the dark bronze storefront, clean horizontal steel railings and perimeter roof detailing provides a subtle contemporary touch that ideally disappears from the overall project to let other elements pop. The black flat bar railings are visually lighter than a heavy wood railing or panel railing and require less maintenance / upkeep than a clear glass railing would. Exposed steel details are common on much of the local architecture and relates back to historic mining and ski tower structure.</p> <p>CEDAR WOOD HORIZONTAL SIDING – Wood siding is probably the most commonly seen exterior material in the Wood River Valley and Ketchum. Its natural texture provides visual connection to surroundings as opposed to more commercial materials like flat metal panel or stucco. 'Clear' wood defines the grade of wood to have minimal knots or variation in the grain, so just denotes a higher finish grade of wood. This material will be sealed to maintain a more consistent finish, but color will change over time with exposure to the elements.</p> <p>VERTICAL WOOD SLAT W/ METAL PANEL BEHIND – The wood slat siding will use the same clear cedar material as the building siding, but in a lighter slatted application to provide a more vertical structural appearance on a few select locations of the building. The intent of this material is to act as a lighter accent to the mass of the building itself. Dark bronze or black metal panel behind will contrast the clear cedar and make the wood stand out from its background. Again, wood is one of the most common building materials in the area, and this is a creative use of a common material.</p> <p><i>Furthermore, the applicant has provided details of materials to be used on each elevation of the building.</i></p>
--	--	--	--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

				<p>The site is eligible for 56 square feet of wall signage on River Street and 60 square feet along its SH75 frontage. The applicant will be required to submit and obtain a sign permit for Project signage prior to installation.</p> <p>As conditioned, the Project complies with this standard. The project materials, colors are found to be complementary with the townscape, surrounding neighborhoods and adjoining structures.</p>
Yes	No	N/A	Ketchum Municipal Code §	City Standards and Staff Comment / Draft Findings
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060(E)(2)	<p>Preservation of significant landmarks shall be encouraged and protected, where applicable. A significant landmark is one which gives historical and/or cultural importance to the neighborhood and/or community.</p> <p><i>Staff Comment / Draft Finding</i> N/A. There are no identified landmarks on the property.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060(E)(3)	<p>Additions to existing buildings, built prior to 1940, shall be complementary in design and use similar material and finishes of the building being added to.</p> <p><i>Staff Comment / Draft Finding</i> N/A as the existing buildings on site will be demolished and the project will be new construction.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(F)(1)	<p>Building(s) shall provide unobstructed pedestrian access to the nearest sidewalk and the entryway shall be clearly defined.</p> <p><i>Staff Comment / Draft Finding</i> The proposed sidewalks will connect as required. The subject property is a corner lot with street frontage along River Street and State Highway 75/Main Street. As a substantial improvement, the hotel project is required to install sidewalks equal to the length of the subject property lines adjacent to River and Main Streets. All sidewalks shall be constructed to City standards contained in KMC §12.04.030.M as well as all applicable City right-of-way standards. The main entryway to the hotel lobby is from River Street. The pedestrian ways along River Street will include a snowmelt system, which serves to further activate the corner of River and Main Streets by enhancing the pedestrian streetscape. The proposed front façade has been designed with ground floor windows and glass doors, which invites the public and hotel guests into the hotel. As conditioned, the Project complies with this standard.</p>

Yes	No	N/A	Ketchum Municipal Code §	City Standards and Staff Comment / Draft Findings
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(F)(2)	The building character shall be clearly defined by use of architectural features.
			Staff Comment / Draft Finding	<p><i>Congruous with the natural topography of the development parcel, the mass of the building steps up the sloping grade from the south corner of the parcel adjacent to Trail Creek to the front property line at River Street. The vertical mass at the east elevation fronting Main Street is broken up by variation in roof heights, material differentiation, and a combination of horizontal and vertical elements. Projecting balconies and canopy elements serve to articulate breaks within the vertical plane. The circulation corridor design at the center of building serves as a prominent architectural feature anchoring the hotel to the site. Characterized with window openings at the east elevation fronting Main Street, the fenestration proposed with the circulation corridor serves as a visual invitation welcoming the public inside the hotel in order to enjoy the rooftop bar, restaurant, and lounge. The rooftop bar overhang element echoes the overhangs proposed at the entry and the corner of Main & River Streets linking the public amenities proposed with the project including the restaurant, dining area, and lounge.</i></p> <p><i>Public space adjoins the hotel entry as well as a canopy covered bar patio on Level 01 that is retained by a board formed concrete adjacent a new 8' wide sidewalk along SH75 and landscape screened from SH75 (toward southeast). The architecture in this corner is tiered from the SH75 street level by a retaining wall, the top of first floor plate level roof overhang canopy above the public outdoor dining, and then three floors of patios that provide terraced outdoor living areas for certain suites.</i></p> <p><i>Fixtures shielded underneath canopies must be flush mounted or side shielded. KMC §9.08.040.8 enumerates standards for noise levels permitted in the nighttime, daytime, and evening.</i></p> <p><i>The building character is clearly defined by the combined use of vertical elements, such as char wood vertical siding and wood slats with sheet metal behind panels, and horizontal elements, such as cedar wood horizontal siding. Also characterizing the building is its transparency, including thermally broken windows and accessible balconies with steel guardrails for the hotel rooms, as well as canopies and steel plate knife edge fascia to offset architectural elements.</i></p> <p><i>As conditioned, the Project complies with this standard.</i></p>

Yes	No	N/A	Ketchum Municipal Code §	City Standards and Staff Comment / Draft Findings
☒	☐	☐	17.96.060(F)(3)	There shall be continuity of materials, colors and signing within the project.
			Staff Comment / Draft Finding	<p><i>Applicant has provided a materials board consisting of Clear Cedar Screen, Clear Cedar T&G, Shou-sugi Ban Wood, Board-formed Concrete, Dry-stacked Stone, Black Steel Trim, Sand-Blasted Concrete and Flat-Bar Railing. Subject material board is characterized by natural materials including stone, steel, and wood with fenestration to celebrate the outside environment within interior common areas and living space.</i></p> <p><i>Notably, each of the 92 hotel rooms has access to outdoors with either a Juliet or full walk-out balcony. The materials are carried around the periphery of the building to create design continuity. Additionally, a sign master plan has been submitted by the applicant and will be subject to future administrative approval. As conditioned, the Project complies with this standard.</i></p>
☒	☐	☐	17.96.060(F)(4)	Accessory structures, fences, walls and landscape features within the project shall match or complement the principal building.
			Staff Comment / Draft Finding	<p><i>The applicant has proposed a landscape buffer southward of the front plaza bar patio characterized by a mix of landscaping, planter beds, and board-formed concrete and/or stone retaining walls. These improvements create a tiered, low to high, stepped back design complementary of the principal building. The Applicant has provided a more detailed landscape plan that softens the building façade, mitigates SH75 noise, and gives vitality to the 45% project open space. As conditioned, the Project complies with this standard.</i></p>

Yes	No	N/A	Ketchum Municipal Code §	City Standards and Staff Comment / Draft Findings
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(F)(5)	Building walls shall provide undulation/relief, thus reducing the appearance of bulk and flatness.
Yes	No	N/A	Ketchum Municipal Code §	City Standards and Staff Comment / Draft Findings
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(F)(6)	Building(s) shall orient towards their primary street frontage.
			Staff Comment / Draft Finding	<i>River Street has been analyzed by the design team, AECOM, city staff and the Council and determined to be the preferred solution for project access in terms of level of service, traffic flow, circulation, deliveries, parking, snow removal, and pedestrian access. Additionally, as determined by Council, direct access to the project from SH75 shall be limited to fire emergency staging only. The hotel is oriented towards River Street as the primary street frontage. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(F)(7)	Garbage storage areas and satellite receivers shall be screened from public view and located off alleys.
			Staff Comment / Draft Finding	<i>The project has no access to any public alleyway and, as such, this portion of the DR standard (F)(7) is not applicable. However, garbage storage for the project will be screened from public view. As set forth on the Level 01 Floor Plan, a trash / loading area is located just inside the parking garage off the garage vestibule. The applicant has obtained a will serve letter from Clear Creek Disposal for the project. Furthermore, any satellite receivers for the project or on the property shall be screened from public view. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(F)(8)	Building design shall include weather protection which prevents water to drip or snow to slide on areas where pedestrians gather and circulate or onto adjacent properties.
			Staff Comment / Draft Finding	<i>The building design includes at the entrance to the hotel lobby a cantilevered canopy that terminates at the applicant's property line along River Street. The restaurant bar patio also is covered. Both features will prevent water from dripping or snow from sliding on areas where pedestrians gather and circulate. Furthermore, the applicant proposes to snow melt the front drop off, plaza, public sidewalk areas as part of its River Street Encroachment Permit with the City. As conditioned, the Project complies with this standard.</i>

Yes	No	N/A	Ketchum Municipal Code §	City Standards and Staff Comment / Draft Findings
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(G)(1)	Pedestrian, equestrian and bicycle access shall be located to connect with existing and anticipated easements and pathways.
			Staff Comment / Draft Finding	<i>Approximately 500 linear feet of new sidewalk will be built within the River Street and SH75 public ROW abutting the property. The sidewalks will be 8' in width to comply with city standards. The sidewalk along the north-side of the hotel is proposed to be snow melted. Additional pathways are proposed on the applicant's property that wrap the southwest, southern and southeast parts of the building. These are internal walkways that connect to hotel ingress/egress points, various public entries, the dedicated fisherman's easement noted on the subdivision plat for Trail Creek, required hotel emergency evacuation routes, and the aforementioned public ROW sidewalks. Bike racks are also proposed consistent with hotel requirements. As conditioned, the Project complies with this standard.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060(G)(2)	Awnings extending over public sidewalks shall extend five (5') feet or more across the public sidewalk but shall not extend within two (2') feet of parking or travel lanes within the right of way.
			Staff Comment / Draft Finding	<i>N/A as the applicant has not proposed any awnings that project over a public sidewalk. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(G)(1)	Pedestrian, equestrian and bicycle access shall be located to connect with existing and anticipated easements and pathways.
			Staff Comment / Draft Finding	<i>Approximately 500 linear feet of new sidewalk will be built within the River Street and SH75 public ROW abutting the property. The sidewalks will be 8' in width to comply with city standards. The sidewalk along the north-side of the hotel is proposed to be snow melted. Additional pathways are proposed on the applicant's property that wrap the southwest, southern and southeast parts of the building. These are internal walkways that connect to hotel ingress/egress points, various public entries, the dedicated fisherman's easement noted on the subdivision plat for Trail Creek, required hotel emergency evacuation routes, and the aforementioned public ROW sidewalks. Bike racks are also proposed consistent with hotel requirements. As conditioned, the Project complies with this standard.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060(G)(2)	Awnings extending over public sidewalks shall extend five (5') feet or more across the public sidewalk but shall not extend within two (2') feet of parking or travel lanes within the right of way.
			Staff Comment / Draft Finding	<i>N/A as the applicant has not proposed any awnings that project over a public sidewalk. As conditioned, the Project complies with this standard.</i>

Yes	No	N/A	Ketchum Municipal Code §	City Standards and Staff Comment / Draft Findings
☒	☐	☐	17.96.060(G)(3)	<p>Traffic shall flow safely within the project and onto adjacent streets. Traffic includes vehicle, bicycle, pedestrian and equestrian use. Consideration shall be given to adequate sight distances and proper signage.</p>
			Staff Comment / Draft Finding	<p><i>As noted in the February 16, 2021 City Council-adopted PUD Findings including in part §17.116.030(C), the City finds the Project will be adequately served by necessary vehicular and nonmotorized transportation systems. This finding was made after reviewing the detailed traffic impact study (TIS) prepared by Hales Engineering, which AECOM (on behalf of the city) provided a peer analysis. As conditioned herein, the Commission finds that traffic shall flow safely within the project and onto adjacent streets. Traffic includes vehicle, bicycle, pedestrian and equestrian use. In making this finding, consideration was given to assuring adequate sight distances and proper signage.</i></p>
☒	☐	☐	17.96.060(G)(4)	<p>Curb cuts and driveway entrances shall be no closer than twenty (20') feet to the nearest intersection of two or more streets, as measured along the property line adjacent to the right of way. Due to site conditions or current/projected traffic levels or speed, the City Engineer may increase the minimum distance requirements.</p>
			Staff Comment / Draft Finding	<p><i>No curb cuts or driveway entrances are proposed that are closer than twenty (20') feet to an intersection of two or more streets, as measured along the property line adjacent to the right of way. Improvements to River Street are subject to a city encroachment permit. As conditioned, the Project complies with this standard.</i></p>
☒	☐	☐	17.96.060(G)(5)	<p>Unobstructed access shall be provided for emergency vehicles, snowplows, garbage trucks and similar service vehicles to all necessary locations within the proposed project.</p>
			Staff Comment / Draft Finding	<p><i>Significant attention has been given to the project by the city engineer, fire, streets and planning departments to assure that unobstructed emergency access, snow plowing needs, and other city design considerations are properly addressed with the project. Furthermore, the applicant has received a will serve letter from Clear Creek Disposal for the project. As conditioned, the Project complies with this standard.</i></p>

Yes	No	N/A	Ketchum Municipal Code §	City Standards and Staff Comment / Draft Findings
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(H)(1)	Snow storage areas shall not be less than thirty percent (30%) of the improved parking and pedestrian circulation areas.
			Staff Comment / Draft Finding	<i>This standard applies to on-site parking and circulation areas, not pedestrian and parking circulation areas within the public right-of-way. All on-site parking is located within the parking garage and the entrance to the parking garage is within the boundary the applicant plans to snowmelt. An extensive sidewalk network is proposed on-site for the public and guests. Portions of this sidewalk network need to remain free of snow for hotel evacuation purposes. As a result, the applicant walkways along the southwest and south portions of the project that are associated with hotel ingress/egress points will be snow melted. With 45% open space on-site and a network of snowmelt sidewalks, the applicant's pedestrian circulation area is greater than 30%. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(H)(2)	Snow storage areas shall be provided on-site.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Staff Comment / Draft Finding	<i>See above Staff comment for Ketchum City Code §17.96.060(H)(1).</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(H)(3)	A designated snow storage area shall not have any dimension less than five (5') feet and shall be a minimum of twenty five (25) square feet.
			Staff Comment / Draft Finding	<i>See above Staff comment for Ketchum City Code §17.96.060(H)(1).</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(H)(4)	In lieu of providing snow storage areas, snow melt and hauling of snow may be allowed.
			Staff Comment / Draft Finding	<i>The applicant proposes a snowmelt system for the project. As conditioned, the Project complies with this standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(I)(1)	Landscaping is required for all projects.
			Staff Comment / Draft Finding	<i>Pursuant to KMC §17.96.060.I, landscaping shall serve to enhance and complement the neighborhood and townscape as well as provide a buffer between land uses. The landscape plan incorporates a landscape buffer separating the hotel from Main Street. The landscape plan is comprised of a mixtures of trees, bushes, grasses and flowers appropriate to the environment. Street trees are proposed to be incorporated into the streetscape design adjacent to River Street. All proposed street trees will require electrical outlets and irrigation and must maintain a minimum of 6 ft of clearance within the public sidewalk. Materials and vegetation types are required to be readily adaptable to the site's microclimate, soil conditions, and orientation. All trees, grasses, and perennials must be drought tolerant and native species are recommended.</i> <i>Due to the requested waiver to reduce the west side setback, the Commission requested the applicant enhance the landscape design in order to provide a buffer between the hotel and the adjacent office buildings located at 220 E River Streets. A 16' building setback and landscape buffer have been provided.</i> <i>The Commission called for the proposed landscape design to include a comprehensive strategy for the riparian area including a point of access for the public to access Trail Creek. This has been provided, inclusive of public access.</i>

				<p><i>A landscape plan is included in the Design Review submittal. The landscape plan includes Aspen Trees, understory shrubs and wildflowers, native trees, shrubs, and grasses, as well as planters comprised of ornamental grasses and perennial flowers.</i></p> <p><i>As conditioned, the Project complies with this standard.</i></p>
Yes	No	N/A	Ketchum Municipal Code §	City Standards and Staff Comment / Draft Findings
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(I)(2)	<p>Landscape materials and vegetation types specified shall be readily adaptable to a site's microclimate, soil conditions, orientation and aspect, and shall serve to enhance and complement the neighborhood and townscape.</p>
			Staff Comment / Draft Finding	<p><i>The landscape materials and vegetation types shall be readily adaptable to the site's microclimate, soil conditions, orientation, and aspect. The proposed landscaping will soften the mass of the building and complement the neighborhood and entry into town. The planters integrated within the front façade enhance the building design and facilitate the creation of inviting outdoor gathering areas.</i></p> <p><i>As conditioned, the Project complies with this standard.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(I)(3)	<p>All trees, shrubs, grasses and perennials shall be drought tolerant. Native species are recommended but not required.</p>
			Staff Comment / Draft Finding	<p><i>The landscaping plan indicates native trees, shrubs, and grasses to conserve water will be installed.</i></p> <p><i>As conditioned, the Project complies with this standard.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(I)(4)	<p>Landscaping shall provide a substantial buffer between land uses, including, but not limited to, structures, streets and parking lots. The development of landscaped public courtyards, including trees and shrubs where appropriate, shall be encouraged.</p>
			Staff Comment / Draft Finding	<p><i>The proposed landscaping will provide a buffer between office building to the west and SH75 to the east. The natural riparian landscaping along Trail Creek is retained. As conditioned, the Project complies with this standard.</i></p>

Yes	No	N/A	Ketchum Municipal Code §	City Standards and <i>Staff Comment / Draft Findings</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060(J)(1)	<p>Where sidewalks are required, pedestrian amenities shall be installed. Amenities may include, but are not limited to, benches and other seating, kiosks, bus shelters, trash receptacles, restrooms, fountains, art, etc. All public amenities shall receive approval from the Public Works Department prior to design review approval from the Commission.</p>
			<p>Staff Comment / Draft Finding</p>	<p><i>Public amenities are required to be provided wherever sidewalks are installed. Amenities may include, but are not limited to, benches and other seating, kiosks, bus shelters, trash receptacles, or art. The applicant proposes these amenities along River Street. All public amenities proposed to be installed shall meet all applicable City right-of-way standards and receive approval from the City Engineer and Streets Department.</i></p> <p><i>As conditioned, the Project complies with this standard.</i></p>

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

For purposes of consistency Staff has reviewed the standards set forth in Table 2 (herein below), as well as the February 16, 2021 PUD/CUP Findings and finds the Project in compliance with the Tourist Zoning District findings as follows.

Tourist Zoning Standards				
Compliant			City Standard & Staff Comment / Draft Staff Comment / Draft Findings	
Yes	No	N/A	KMC Section	City Standard & Staff Comment / Draft Findings
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.12.030	Minimum Lot Area: 9,000 square feet minimum.
			Staff Comment / Draft Finding	<i>The property is 47,249 square feet in size and has a lot width with the one-lot subdivision application that exceeds the minimum lot size and widths required in the Tourist Zone. The City finds that this standard has been met.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.12.030	Building Coverage
			Staff Finding	<i>Approximately 21,362 square feet of the property will remain open space, which is approximately 45% of the 47,249 square foot site. The Project has greater than the required thirty-five percent (35%) minimum open space set forth in the KMC for the Tourist Zoning District. The City finds that this standard has been met.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.124.040	Setbacks Front: 15' Riparian: 25' SH75: 25' / 32' Side: the greater of 1' for every 3' in building height, or 5'
			Staff Comment / Draft Finding	<i>Front & Riparian Setbacks: The project as set forth in the attached Design Review Drawings complies with the city's 25' riparian and 15' front setback requirements. In accordance with KMC 17.88.050.E.3 the proposed pathway through the riparian zone and providing access to Trail Creek is approvable. Side Yard Setbacks: The Design Review drawings comply with the waivers approved as part of the PUD process by the City. Notably, the DR drawings show that the average setback of the proposed hotel along SH75 is an average of 31'.3" The project drawings also show that the building sixteen (16') from the west side property line consistent with KCC approval of the PUD. The City finds that this standard has been met.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.124.040	Permitted Gross Floor Area Ratio: 0.5 or greater for hotels
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.12.040	Building Height Maximum Permitted: 35' or greater for hotels
			Staff Comment	<i>Street. The hotel is proposed as a four-story structure on River Street, and step / terrace down to three and then two stories nearest Trail Creek. (B) The KMC does not specify the maximum height of a four-story building. Historic references in the KMC, as well as the top floor plate of the adjoining Limelight Hotel show the hotel fourth floor to equal approximately forty-eight feet (48') while the top of the Limelight hotel penthouse parapet is 73.5' (C) Maximum height of the building shall not exceed 48' when the building is measured from the highest elevation of the property (along River Street) or 72' when building height is measured from the lowest elevation of the property (along Trail Creek). (D) During the transition where the four-story building along River Street steps down approximately thirty feet (30') toward Trail Creek, the forty-</i>

			<p><i>eight foot (48') high 4-story building reads like 6-stories at seventy-two feet (72') high. This is permissible consistent with KMC §16.08.020.B and desirable as follows: first, the height of the building at subject central location is below the forty-eight (48') 4-story horizontal plane established by precedent and with the top of the fourth floor at the adjacent Limelight; second, the City recognizes that in this central location of the structure, that the 4-stories of hotel use are sandwiched between two public amenities (employee housing and a roof top bar for the public). The unique characteristics of the site at this location, where the existing grade drops quickly in the center of the site, result in a portion of the building having a taller element of seventy-two feet (72') as measured from existing grade. The City finds this consistent with KMC §16.08.020.B, "[i]n the event of conflict between this PUD chapter and any other ordinance of the city, this PUD chapter shall control." (E) In comparison to both the Limelight and approved Bariteau hotels on opposing corners, the height of the proposed Hotel is lower and more closely aligned to the fourth floor of each building. (F) The Gateway Study and Subarea Analysis indicate that the proposed hotel is both by design and use consistent with envisioned plans for the corner of SH75 and River Street. and, (G) Further, the proposed hotel project is consistent with current Tourist Zoning District zoning allowances for hotels. Each of the attendant uses, including restaurant/bar, meeting rooms, and employee housing are also permitted in the Tourist Zoning District.</i></p> <p><i>As conditioned, the Project complies with this standard.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>17.125.030.H Curb Cut Permitted: <i>A total of 35% of the linear footage of any street frontage can be devoted to access off street parking.</i></p> <p>Staff Comment / Draft Finding <i>There are no curb cuts proposed along State Highway 75. The new configuration results in less than thirty-five percent (< 35%) of the linear footage of street frontage devoted to access the off street parking within the parking garage. The City finds that this standard has been met.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>17.125.020.A.2 & 17.125.050 Parking Spaces <i>Off-street parking standards of this chapter apply to any new development and to any new established uses.</i></p> <p>Staff Comment / Draft Finding <i>As analyzed by staff and consistent with KMC §17.125, the Project has adequate parking for the proposed uses on the property. The project is parked with 84 on-site garage parking spaces. Of the 84 spaces provided for the Project not less than 13 spaces are reserved for public use, 18 spaces are reserved for employee housing use, and the remaining 53 spaces are needed for hotel operations. As conditioned, the Project complies with this standard.</i></p>

RECOMMENDED CONDITIONS

1. This Design Review approval is subject to the PUD Findings adopted by the KCC on 2/16/21 for the PEG Ketchum.
2. This Design Review approval is subject to the conditions as set forth in Tables 1 and 2.
3. The applicant shall submit final civil drawings prepared by an engineer registered in the State of Idaho including the utilities and drainage plans to be reviewed and approved by the City Engineer, Streets, and Utilities departments prior to issuance of a Building Permit for the project.
4. This Design Review approval is based on the May 27, 2022 plans and information presented and approved at the meeting on the date noted herein. Building Permit plans for all on-site improvements must conform to the approved Design Review plans unless otherwise approved in writing by the Planning and Zoning Commission or Administrator. Any building or site discrepancies which do not conform to the approved plans will be subject to removal.
5. All governing ordinances, requirements, and regulations of the Fire Department (2018 International Fire Code), Building Department (2018 International Building Code, the 2018 International Residential Code, and Title 15 of Ketchum Municipal Code), Utilities Department, Street Department (Title 12 of Ketchum Municipal Code), and the City Engineer shall be met prior to issuance of Building Permit and Certificate of Occupancy.
6. The term of Design Review approval shall be twelve (12) months from the date that the Findings of Fact, Conclusions of Law, and Decision are adopted by the Commission or upon appeal, the date the approval is granted by the Council (KMC §17.96.090).
7. All Design Review elements shall be completed prior to issuance of a Certificate of Occupancy for the building.
8. All exterior lighting on the property shall be in compliance with Ketchum Municipal Code, Chapter 17.132, Dark Skies, and shall be inspected by Planning Staff and approved prior the issuance of a Certificate of Occupancy for the building.
9. Any satellite receivers located on the hotel property shall be subject to a separate review and permit approval.
10. The hotel project is required to install 8' wide sidewalks equal to the length of the subject property lines adjacent to River and Main Streets or 504 linear feet, whichever is greatest. All sidewalks shall be constructed to City standards
11. Lighting and noise related to the rooftop bar shall be in compliance with the following city code requirements: KMC §17.132 requires all exterior lighting be full cutoff fixtures with the light source fully shielded. Fixtures shielded underneath canopies must be flush mounted or side shielded. KMC §9.08.040.8 enumerates standards for noise levels permitted in the nighttime, daytime, and evening.
12. Any modification to the existing Floodplain Waterways Design Review permit is subject to review and approval.
13. Prior to installation of signage, a sign permit shall be submitted and approved.
14. Sidewalks that are required for the hotel evacuation plan shall be part of the hotel snowmelt system and kept free of snow. A snow melt diagram shall be incorporated into the drawing set approved at the time of building permit issuance to assure areas proposed for snowmelt are constructed as such and found operational as a condition of certificate of occupancy.

ATTACHMENTS

- Attachment A:** May 5, 2022 Memo Outlining Design Changes in Response to November 20, 2021 Pre-Application Design Review Meeting
- Attachment B:** May 27, 2022 Design Review Plans
- Attachment C:** February 16, 2021 PUD/CUP Findings of Fact and Conditions of Approval
- Attachment D:** Public Comments

Attachment B

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

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

City of Ketchum / PEG Ketchum Hotel, LLC

Permits Conditions Acceptance Development Agreement 22847

Parties to the Agreement:

City of Ketchum	“City”	City Hall P.O. Box 2315 480 East Ave. N. Ketchum, Idaho 83340
PEG Ketchum Hotel, LLC	“Developer/Owner”	Attn: Cameron Gunter 145 West 200 North Provo, Utah 84601

TABLE OF CONTENTS

SECTION 1 DEFINITIONS4

SECTION 2 RECITALS9

SECTION 3 LOT LINE SHIFT PERMIT CONDITIONS10

SECTION 4 FLOODPLAIN DEVELOPMENT PERMIT CONDITIONS ..11

**SECTION 5 PLANNED UNIT DEVELOPMENT AND CONDITIONAL
USE PERMIT CONDITIONS11**

SECTION 6 DESIGN REVIEW PERMIT CONDITIONS11

SECTION 7 STREET AND ALLEY DIG PERMIT.....11

SECTION 8 PUBLIC ROW CONDITIONS AND LETTER OF CREDIT ..11

SECTION 9 PARKING AND TRAFFIC LETTER OF CREDIT.....12

SECTION 10 WATER, SEWER AND UTILITY CONDITIONS13

**SECTION 11 CONDITIONS PRECEDENT TO THE ISSUANCE OF A
BUILDING PERMIT.....14**

**SECTION 12 PROJECT DEVELOPMENT PLAN MODIFICATIONS
SUBSEQUENT TO BUILDING PERMIT ISSUANCE18**

SECTION 13 PERMIT TIME LIMITS18

**SECTION 14 CONDITIONS PRECEDENT TO ISSUANCE OF AN
OCCUPANCY PERMIT20**

SECTION 15 PROJECT OPERATIONS CONDITIONS21

SECTION 16 DEFAULT23

SECTION 17 SHARED LEGAL DEFENSE OF THIS AGREEMENT.....25

SECTION 18 NOTICES AND FILINGS25

**SECTION 19 DEVELOPER/OWNER ASSIGNMENT OF AGREEMENT
RIGHTS26**

SECTION 20 MISCELLANEOUS27

LIST OF EXHIBITS

EXHIBIT A SUBJECT REAL PROPERTY LEGAL DESCRIPTION33
**EXHIBIT B FORM OF IRREVOCABLE COMPLETION-SITE
RESTORATION GUARANTY AGREEMENT.....34**

Permits Conditions Acceptance Development Agreement

City of Ketchum/PEG Ketchum Hotel, LLC

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

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

SECTION 1 DEFINITIONS

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

- 1.1 **Act:** Means and refers to the Local Land Use Planning Act as codified in Chapter 65 of Title 67, Idaho Code.
- 1.2 **Administrator:** Means and refers to the person appointed by the Mayor and City Council to interpret and administer Title 17 of the KMC also designated as the Director of Planning and Building.
- 1.3 **Agreement:** Means and refers to this “*Permits Conditions Acceptance Development Agreement.*”
- 1.4 **Applications:** Means and refers collectively to all of Owner’s applications to the City regarding the Development of the Subject Real Property in accordance with the Project Development Plan inclusive of: Pre-Application Design Review, Demolition Permit Application [pending], Building Permit Application (Pending) Lot Line Shift Application, Floodplain Development Application, Planned Unit Development/Conditional Use Application, Design Review Application and Right of Way Encroachment Permit [pending].
- 1.5 **Building Official:** Means and refers to the City Building Official.
- 1.6 **Building Permit:** Means and refers to the Building Permit/s issued by the Building Official for the construction of the Developed Project of the Project Development Plan pursuant to the standards, and codes in effect at the time the Building Permit Application is filed with the City.

- 1.7 City:** Means and refers to the City of Ketchum, an Idaho Municipal Corporation and Party to this Agreement.
- 1.8 City Administrative Review Fees:** Means and refers to the Administrative Review Fee, inclusive of use of outside consultants for plan checking, 3rd party verifications, and/or inspections for the City Services provided to the Developer/Owner for the City's administration of the Developer/Owner's Permits compliance as conditioned herein.
- 1.9 City Council:** Means and refers to the City Council of the City.
- 1.10 Completion-Site Restoration Guaranty:** Means and refers to that certain Completion-Site Restoration Guaranty, issued by the Guarantor, the terms and conditions of which are in compliance with and in the form attached hereto as **Exhibit B**
- 1.11 Construction Plans:** Means and refers to the approved Building Permit plans for the construction of the Developed Project as approved by the Building Official.
- 1.12 Default Cure Remedy:** Means and refers to any Default remedy inclusive of any of the following as is relevant to the Default:
- **Specific Performance:** specific performance of the full completion of the construction of the Project; or
 - **Permits termination, Site Restoration:** In the event of a Default, prior to completion of the Project foundation, Site Restoration, permit revocation and subsequent termination of this Agreement; or
 - **Draw on Letter of Credit:** Draw upon either letter of credit.
- 1.13 Demolition Permit:** Means and refers to that certain approved Permit issued to Developer/Owner by the Building Official subject to conditions pursuant to the Demolition Application.
- 1.14 Demolition Permit Application:** Means and refers to the Developer/Owner's application to the City for a demolition permit for buildings upon the Subject Real Property.
- 1.15 Design Review Application:** Means and refers to the Developer/Owner's application to the City for design review approval of the proposed construction and Development by the Developer/Owner on the Subject Real Property.
- 1.16 Design Review Permit P22-028:** Means and refers to that certain approved Permit issued to Developer by the City Planning and Zoning Commission subject to conditions pursuant to the City approved Design Review Application.
- 1.17 Developed Project:** Means and refers to the completion of the construction of the Project in accordance with the Permits, and in accordance with the provisions of this Agreement.

- 1.18 Developer/Owner:** Means and refers to PEG Ketchum Hotel LLC, a Delaware limited liability company, authorized to do business in the state of Idaho as a foreign limited liability company, who is developing the Project, is the Project Owner, the owner of the Subject Real Property, and Party to this Agreement. After the Effective Date of this Agreement the Developer/Owner shall refer to the owner or owners of the Subject Real Property. The words “Owner” and “Developer”, as they appear individually in this Agreement, have the same definition as “Developer/Owner”.
- 1.19 Developer/Owner’s Representative:** Means and refers to the representatives for the Developer/Owner, which are Cameron Gunter and PEG Development, and is inclusive of any designee appointed by Developer as provided herein.
- 1.20 Developer’s Financial Assurances:** Means and refers to the Developer’s, Project Financing Commitments, the Developer’s readily available funds as a condition of the Developer’s Financial Assurances, and the Guarantor’s Completion- Site Restoration Guaranty.
- 1.21 Development Process:** Means and refers to the process of the performance by the Parties of the terms and conditions of this Agreement.
- 1.22 Effective Date:** Means and refers to the _____ day of _____, 2023.
- 1.23 Encroachment Permit City:** Means and refers to encroachment permit issued by the City Council for improvements in the City Right of Way.
- 1.24 Encroachment Permit ITD:** Means and refers to encroachment permit issued by the ITD for improvements in ITD Right of Way.
- 1.25 FCO:** Means and refers to Permit Findings of Fact, Conclusions of Law, and Order of Decision.
- 1.26 Four-Star Hotel Operations Standard:** Means and refers to the operation of the Developed Project as an upscale hotel providing guests with a luxury experience in a distinctive setting, including expanded amenities and exceptional service which includes the following characteristics:
- An impressive, well integrated and excellent architectural design; and
 - A lobby area located away from main traffic areas with multiple conversation groupings and recognizable guest services; and
 - A full-service restaurant, separate lounge and bar area; and
 - An onsite fitness center and hot tubs; and
 - Conference rooms; and
 - Onsite housing for 23 employees; and
 - Turn down service, valet parking, baggage service, laundry service, newspaper service, room service, computer access, fitness center service, ice service, and concierge service; and

3-28-23 P&Z Recommendations

- Staff preparation and training to ensure integrated services from initial reservation call to departure.
- 1.27 Floodplain Development/Waterways Design Review Permit No. P19-062:** Means and refers to that certain City approved Permit and conditions issued to Developer/Owner approved February 16, 2021.
- 1.28 Guarantor:** Means and refers to the issuer of the Completion-Site Restoration Guaranty.
- 1.29 Hotel Operations:** Means and refers to the occupation and use of the Developed Project in compliance with a Four-Star Hotel Operations Standard.
- 1.30 Hotel Operator:** Means and refers to the person and or entity that is in possession of the Developed Project and using and occupying the same as a Four-Star Hotel Operations Standard.
- 1.31 Institutional Lender:** Means and refers to a national bank, savings association, state-chartered commercial and savings bank which is in good standing, and meets or exceeds all capital and liquidity requirements of the governing financial regulatory body, including passage of its most recent Stress Test, if applicable.
- 1.32 International Codes:** Means and refers to any Building, Residential, Energy, Mechanical, Rules of Building Safety, Plumbing Code, National Electrical Code, Fire Code or other codes and amendments to those codes adopted by the City of Ketchum and the International Fire Code as adopted by the State Fire Marshal and enforced by the City Fire Department Fire Marshal which govern the Development.
- 1.33 ITD:** Means and refers to the Idaho Transportation Department, an administrative department of the state of Idaho.
- 1.34 KMC:** Means and refers to the Ketchum Municipal Code, which is the codified ordinances of the City.
- 1.35 Level of Service:** Means and refers to an identified standard by which service is provided in the context of the term's appearance in this Agreement.
- 1.36 Lot Line Shift Permit No. P19-064:** Means and refers to that certain Lot Line Shift, subject to the conditions of approval granted to Developer by the City Council.
- 1.37 Master Plan:** Means and refers to the Master Plan filed by the Developer/Owner in support of their Project Development Plan, including the Planned Unit Development/Conditional Use Permit Application which depicts the Project proposed for construction.
- 1.38 Party or Parties:** Means and refers to the City and/or the Developer/Owner, as the Parties to this Agreement, depending upon the context of the term as used in this Agreement.

- 1.39 Peak Travel Season:** Means and refers to that period in each calendar year that commences on June 15th and continues to September 15th and then resumes on December 15th and ends on the following President’s Day holiday.
- 1.40 Permits:** Means and collectively refers to the following permits approved and issued by the City [inclusive of ITD issued encroachment permit] to the Developer/Owner for the Development of the Project as part and parcel of the Project Development Plan are inclusive of the following:¹
- River Street ROW Encroachment Permit City ____; and (pending)
 - State Highway 75 ROW Encroachment Permit ITD; and (pending)
 - Temporary Use of Right-of-Way Permit.(pending)
 - Demolition Permit No. ____; and (pending)
 - Dig Permit (pending)
 - Lot Line Shift Permit No. P19-064; and
 - Floodplain Development/Waterways Design Review Permit No. P19-062; and
 - Planned Unit Development/Conditional Use Permit No. P19-063; and
 - Design Review Permit No. P22-028; and (pending)
 - Waiver Applications granted by the City in conjunction with the above stated Permits; and
 - Building Permit(s). [pending]
- 1.41 Planned Unit Development/Conditional Use Permit No. P19-063:** Means and refers to that certain Planned Unit Development/Conditional Use Permit issued to Developer/Owner approved by the City Council subject to conditions pursuant to the Planned Unit Development/Conditional Use Permit Development Application.
- 1.42 Project:** Means and refers to the intended development of the Subject Real Property in accordance with the Project Development Plan and subsequent occupation and use conduction Hotel Operations in accordance with a Four-Star Hotel Operations Standard and as governed by this Agreement.
- 1.43 Project Construction Cost Estimate:** Means and refers to the Developer/Owner’s engineer’s and/or architect’s and/or contractor’s cost estimate of the timely completion of construction of the Developed Project in accordance with the approved Construction Plans based upon completion occurring within the maximum time allowed by this Agreement.
- 1.44 Project Development Plan:** Means and refers to and is all-inclusive of all City approved Developer/Owner Permits and the terms of Permits Conditions and Acceptance Development Agreement for the Developed Project.

¹ Those [pending] permit items listed below are issued subsequent to the effective date of this Agreement pursuant to the terms and conditions of this Agreement.

- 1.45 Project Financing Commitments:** Means and refers to the financial lending commitments of the Developer's Institutional Lender to enable the Developer to timely complete construction of the Developed Project.
- 1.46 ROW:** Means and refers to public right-of-way for streets and utilities either owned by the City or ITD.
- 1.47 ROW Improvements:** Means and refers to ROW improvements as required by Encroachment Permit City and Encroachment Permit ITD and by this Agreement.
- 1.48 SH75:** Means and refers to State Highway 75 as it lies within the City under the ownership and jurisdiction of ITD.
- 1.49 Site Restoration:** Means and refers to the restoration of the Subject Real Property including the disassembly and removal of the Project foundation, leveling the Subject Real Property to its natural contours, and planted with ground cover which is in compliance with the KMC.
- 1.50 Subject Real Property:** Means and refers to 1.048 acres more or less located within the City and Blaine County, Idaho, legally described and depicted in *Exhibit A*.
- This definition is inclusive of the real property described in the Preliminary Plat prepared by Galena Engineering for the purpose of removing the lot line that bisects the Subject Real Property and will revise pursuant to this Agreement the legal description of record in Blaine County.
- 1.51 Term:** Means and refers to the duration of this Agreement which is perpetual as is set forth herein unless the word "term" is not capitalized.
- 1.52 Waiver Applications:** Means and refers to four (4) waiver Developer/Owner's applications to the City for approval of the following requirements:
- Floor Area Ratio; and
 - Height/Stories; and
 - Minimum Lot Size; and
 - Setback

SECTION 2 RECITALS

The Parties recite and declare:

- 2.1** The Developer/Owner is the owner of the Subject Real Property which is within the City limits of the City; and

3-28-23 P&Z Recommendations

- 2.2 The Developer/Owner intends to develop its Project upon the Subject Real Property in accordance with the Applications and Permits and thereafter occupy and possess the same in the conduct of Hotel Operations. In order to accomplish its intentions, the Developer/Owner must obtain the City's approval of the Permits which include terms and conditions of compliance by the Developer/Owner; and
- 2.3 The City is a municipal corporation established in accordance with Article XII of the Constitution of the State of Idaho and Title 50 Idaho Code and is required and has exercised its authority pursuant to the Local Land Use Planning Act codified at Chapter 65 of Title 67 Idaho Code and pursuant to Chapters 3, 9 and 13 of Title 50 Idaho Code to enact the Ordinances and regulations which govern the Developer/Owner's intentions for the Developed Project and use of the Subject Real Property; and
- 2.4 In the event of Developer/Owner permit default prior to the timely completion of construction of the Developed Project; given the Project's location, type, and size: it is necessary to protect the community health, enjoyment of life and property and prevent offense to the senses and to minimize adverse impact upon neighboring existing development, it is necessary that this Agreement include conditions that assure the Developed Project is either timely constructed or there is Site Restoration of the unfinished Project construction . KMC § § 17.04.010 , 17.116.050 A and I.C. § 50-334; and
- 2.5 A special consideration for the City to issue the Permits to the Developer/Owner for the Project Development Plan is, the Developer Owner's assurance of financial performance of the timely completion of the Developed Project in accordance with the terms and conditions of this Agreement; and
- 2.6 KMC section 16.08.120 C provides that prior to final approval of a PUD conditional use permit, the City Council may require a written agreement executed by the Developer/Owner to secure performance of any requirement or condition to be imposed as part of the approval, including, but not limited to Development and may also require recordation of documents establishing and guaranteeing the operation and maintenance of the Project; and
- 2.7 The City's approval of the Permits and granting to the Developer/Owner's Development Rights is conditioned upon and is in consideration of the Developer/Owner's acceptance of the terms and conditions of the Permits and this Agreement.

SECTION 3 LOT LINE SHIFT PERMIT CONDITIONS

- 3.1 **Lot Line Shift Permit Conditions:** The Lot Line Shift No. P19-064 was approved February 16, 2021 by the City Council. Prior to recording the Final Plat, the Developer/Owner shall comply with the conditions identified in FCO Lot Line Adjust Permit P19-064.

**SECTION 4
FLOODPLAIN DEVELOPMENT PERMIT CONDITIONS**

- 4.1 Floodplain.** The Developer/Owner shall adhere to all conditions and staff comments contained in the FCO Floodplain Development/Waterways Design Review Permit No. P19-062 . Any amendments or modifications of any of the above referenced permits shall be in accordance with the relevant permit provisions of KMC.

**SECTION 5
PLANNED UNIT DEVELOPMENT AND
CONDITIONAL USE PERMIT CONDITIONS**

- 5.1: Planned Unit Development and CUP:** The Developer/Owner shall adhere to all conditions and staff comments identified in the FCO of Planned Unit Development and Conditional Use Permit P19-063. Any amendments or modifications of any section of this permit shall be in accordance with the relevant permit provisions of KMC.

**SECTION 6
DESIGN REVIEW PERMIT CONDITIONS**

- 6.1: Design Review Permit:** The Developer/Owner shall adhere to all conditions and staff comments identified in the FCO of Design Review Permit P22-028. Any amendments or modifications of any terms of this permit shall be in accordance with the relevant permit provisions of KMC.

**SECTION 7
STREET AND ALLEY DIG PERMIT**

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

**SECTION 8
PUBLIC ROW CONDITIONS AND LETTER OF CREDIT**

- 8.1 ROW Improvements Letter of Credit:** Prior to the issuance of the Building Permit, the Developer must cause an irrevocable standby letter of credit, in a form acceptable to the Administrator, to be issued from a bank to City (the “**ROW Improvements LOC**”). The ROW Improvements LOC must (a) designate City as the beneficiary thereof; (b) be in an amount not less than 150% of the ROW Improvements Cost Estimate; and (c) have an expiration that is not less than one (1) year from the date of issuance. Developer must renew the letter of credit prior to expiration thereof, unless the letter of credit is released by City as provided herein, and City may draw on the entire letter of credit prior to the expiration thereof if not timely renewed.

- 8.1.1 Release of ROW Improvements LOC:** Developer may request that City release the ROW Improvements LOC after (a) City approval of the River Street ROW

Improvements; (b) completion and approval of the SH-75 ROW Improvements adjacent to the Property; and (c) installation of the northbound left hand turn lane at River Street and SH-75. Upon receipt of Developer's request for a release of the ROW Improvements LOC, the Administrator will then have ten (10) business days to review and conduct a reasonable inspection and provide a written report to Developer either approving or denying the request for release. The approval or denial will be based upon whether or not Developer has satisfied the conditions of a release.

SECTION 9 PARKING AND TRAFFIC LETTER OF CREDIT

9.1 Parking and Traffic Letter of Credit: To assure that the Developer/Owner and/or Hotel Operator provides guest shuttle, employee shuttle, car share program, transit passes, carpool program, and alternative transportation (such as bike storage for employees), the Developer/Owner and/or Hotel Operator shall include a Parking and Traffic Irrevocable Letter of Credit to secure these conditions to lower parking demand and traffic impacts in accordance with Sub-Section 9.1.1 of this Agreement in the amount of fifty thousand dollars (\$50,000)

9.1.1 Issuance and Amount: Prior to the issuance of a Building Permit, the Developer must cause an irrevocable standby letter of credit, in a form acceptable to the City, to be issued from a bank to City (the "**Parking and Traffic LOC**"). The Parking and Traffic LOC must (a) designate City as the beneficiary thereof; (b) be in an amount of Fifty Thousand Dollars (\$50,000); and (c) have an expiration that is not less than one (1) year from the date of issuance. Developer must renew the letter of credit prior to expiration thereof, unless the letter of credit is released by City as provided herein, and City may draw on the entire letter of credit prior to the expiration thereof if not timely renewed.

9.1.2 Release of Parking and Traffic LOC: The Developer may request that the City release the Parking and Traffic LOC if Developer complies the conditions in section 1.6.6 of the FCO Planned Unit Development/Conditional Use Permit No. P19-063 for a period of one (1) year after the Commencement Date thereof (as defined therein). Upon receipt of Developer's request for a release of the Parking and Traffic LOC, the Administrator will then have ten (10) business days to review and conduct a reasonable investigation and provide a written report to Developer either approving or denying the request for the release. The approval or denial will be based upon whether or not Developer has satisfied the conditions of a release.

9.1.3 Draws on Parking and Traffic LOC. If Developer breaches its obligations under the Parking and Traffic Covenants, then City may draw on the Parking and Traffic LOC in accordance with the terms thereof; provided, however, prior to drawing on the Parking and Traffic LOC, the City Council must find that the Developer is in material default of its obligations with respect to the Parking and Traffic Covenants, and the City Council must direct the Administrator to draw a specific amount on the Parking and Traffic LOC to fund reasonable measures to be undertaken by City

to cure Developer's default. In the event City draws on the letter of credit, the funds drawn must be deposited in City's custodial holding fund for expenditure in accordance with City Council's directives to undertake reasonable measures to cure Developer's default. Any funds remaining after completion of the curative measures must be returned to Developer with reasonable promptness.

SECTION 10 WATER, SEWER AND UTILITY CONDITIONS

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

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

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

10.1.3 As-built Drawings. All Construction Plans shall be approved by the City and as-built drawings provided to the City upon acceptance of the Project improvements by the City.

10.1.4 Compliance Water & Sewer Department Conditions: The Project shall comply with all the terms and conditions set forth in the Utilities / Water & Sewer Department Conditions set forth in the Design Review Findings of Fact, Conclusions of Law, Order of Decision.

10.2 Utilities and Warranty. All Project Development Plan utilities, including water, sewer, gas, cable, phone and electric shall be installed underground within the street rights-of-way. This includes on-site and off-site utilities: no above-ground utility lines are permitted on the Subject Real Property. Detailed engineered construction drawings and specifications for construction of such improvements shall be prepared by Developer/Owner and approved by the City prior to construction. Prior to acceptance of any such improvements to be dedicated to City, the City shall inspect and approve the same, and Developer/Owner shall provide the City with "as built" drawings thereof. The Developer/Owner warrants to the best of its knowledge the "as built drawings" are substantially correct and Developer/Owner shall, for a period of one (1) year from the date of the City's receipt of said drawings, be liable and hold the City harmless for any damage proximately caused by reason of a material error in said drawings.

10.2.1 Transfer of Warranties. Developer/Owner agrees to assign any warranties accruing to it and arising out of construction of the improvements described in this Section remaining in effect at the time such improvements are transferred and/or dedicated to and accepted by the City.

**SECTION 11
CONDITIONS PRECEDENT TO THE
ISSUANCE OF A BUILDING PERMIT**

- 11.1 Conditions Precedent to Issuance of a Building Permit.** In addition to the conditions of FCO approvals for PUD/CUP P19-063, Floodplain Development/Waterways Design Review P19-062, Lot Line Adjustments P19-064 and Design Review Permit P22-028 this section sets forth the conditions precedent to the issuance of the Building Permit for the construction of the Developed Project:
- 11.2 Demolition Permit:** The Developer/Owner right to proceed to demolish all or any portion of the existing structures on the Subject Real Property pursuant to the Demolition Permit and shall comply with all codes, standards and ordinances that are in effect at the time the Demolition Permit application is filed.
- 11.3 Center Turn Lane for SH 75/River Street Intersection:** The City has determined that a center turn lane with adequate queuing of approximately fifty to one hundred feet (50' – 100') is necessary for the SH75/River Street intersection to retain its current Level of Service (“LOS”) for vehicular car movement. Prior to approval of the Building Permit, the Developer/Owner shall obtain written verification that ITD intends to incorporate the center turn lane into the SH75 improvements to be implemented by ITD. The Developer/Owner shall pay for engineering, traffic control and construction costs for subject SH75 improvements adjacent the Project.
- 11.4 Temporary Use of Right-of-Way Permit:** The use of City right-of-way for Project Development Plan construction, which includes the closure of adjacent streets or sidewalks, requires a Temporary Use of Right-of-Way Permit (“TURP”). The TURP shall be obtained prior to issuance of a Building Permit.
- 11.5 Evacuation Route/Snowmelt Plan.** Sidewalks, that are required for the hotel evacuation plan, shall be part of the hotel snowmelt system and kept free of snow. Prior to issuance of a Building Permit a snow melt diagram shall be approved to assure areas proposed for snowmelt are constructed as such and found operational as a condition of certificate of occupancy.
- 11.6 Public ROW Encroachments Permits.** Abutting the Subject Real Property are two public rights of way (“ROW”). To the east is State Highway 75 (“SH75”), which is owned and maintained by the Idaho Transportation Department (“ITD”). To the north is River Street, which is owned and maintained by the City. This Project qualifies as a substantial improvement; therefore, the Project Development Plan must include the installation of sidewalks equal to the length of the subject Real Property boundary line adjacent to any public street (KMC §17.96.060). Prior to issuance of a Building Permit, the

Developer/Owner shall obtain approval of all ROW encroachments within the ROW pursuant to a separate ROW encroachment agreement approved by the City Council.

- 11.7 SH75 Encroachment Permits.** Prior to issuance of a Building Permit, Developer/Owner shall obtain an Encroachment Permit from ITD to install a six (6) foot sidewalk along the eastern edge of the property adjacent to the SR 75. Sidewalk shall be installed prior to issuance of a Certificate of Occupancy for the Project.
- 11.8 Encroachment Permits:** An encroachment permit from ITD and an encroachment permit from the City will be required for all improvements to public right of ways which are within their respective highway jurisdictions.
- 11.9 Signage & Striping:** To avoid excessive delays for east bound traffic on River Street, subject to review and approval by ITD and the City, the Developer/Owner shall fund and install appropriate signage and improvements to allow only a right turn onto southbound SH75 at the intersection of SH75 and River Street. ITD approvals of such signage shall be provided to the City prior to issuance of a Building Permit.
- 11.10 Drawing Approvals:** Subject construction drawings shall be consistent in concept with approved Design Review approval, Encroachment Permit, and related drawings.
- 11.11 Project Development Plan Approval.** The Project Development Plan, including Final Design Review approval and the recordation of this Agreement, shall have been approved by the City.
- 11.12 Permits:** The Permits shall have been issued and the final Project Construction plans and specifications comply with the terms and conditions of the Permits.
- 11.13 Idaho Power Will Serve Letter:** The Developer/Owner has secured a will serve letter from Idaho Power for the Project and the project generator and other equipment shall be located consistent with the City Design Review approval.
- 11.14 Project Sustainability:** Prior to issuance of a Building Permit for the Project, a third party (qualified to do LEED accreditation) shall provide the City with verification the Project meets or exceeds LEED Silver standards.
- 11.15 Developer's Financial Assurances:** Prior to issuance of a Building Permit, the Developer/Owner shall submit, and the City Council must approve, the Developer's Financial Assurances. The Developer shall provide to the Administrator the Developer's Financial Assurances of Project Financing Commitments which shall include and comply with the following:
 - 11.15.1 Construction Loan:** The construction loan commitment from an Institutional Lender which includes the following information and conditions:

3-28-23 P&Z Recommendations

- The name and branch of the Institutional Lender with loan officer contact information; and
- A copy of the Institutional Lender's construction loan commitment with conditions of approval; and the Institutional Lender's Construction contract conditions requirements; and
 - If those requirements include a performance bond, the city shall be included as an additional obligee.
- A copy of the developer's construction budget; and
- Confirmation of the Institutional Lender's, Construction Plan review; and
- Project Construction costs estimates Institutional Lender and Guarantor relied upon; and
- A copy of the approved contractor Project construction budget; and
- Copy of the Project constructions contract between the Developer/Owner and the contractor; and
- Conditions and process for controlling construction cost disbursements and title endorsement for loan draws; and
- Description of the process the Institutional Lender will use for Project construction inspections, monitor the Project's budget, schedule, and quality of construction; and
- The financial contingencies both included with the loan and those outside of the loan; and
- Whether the Developer will be going to the market at stabilization, or if there is a long-term take-out loan included as part of the preliminary construction loan commitment, and if so a copy of the take-out loan component conditions.

11.15.2 Guarantor: The name of the Guarantor together with the Guarantor's current financial statement showing proof of the Guarantor's capital adequacy to honor the Completion-Site Restoration Guaranty.

11.15.3 Developer's Readily Available Funds: The amount of the developer/owner's readily available funds to cover cost overruns and contingencies ensuring timely Project Completion.

11.15.4 Additional Information Requests and Compliance: Developer shall, upon the Administrator's advanced written request:

11.15.4.1 Provide to the Administrator and the Administrator's designee with any additional supporting Developer's Financial Assurances Financial documents and information as reasonably requested by the Administrator.

11.15.4.1.1 The Administrator's designee will be an expert in commercial construction loans for developments that are of a similar level or standard as the Project.

11.15.4.2 Allow the Administrator and the Administrator's designee to confer with the Developer's Institutional Lender to clarify and confirm the construction loan commitment:

- The processes for controlling disbursements, title endorsements for each loan draw; and the Institutional Lender's frequency of project inspections; and
- The process for Project construction inspections; and
- The financial contingencies both included with the loan and those outside of the loan.

11.15.5 Confidential Financial Information: The documents and information supplied to the Administrator, regarding the Developer's Financial Assurances, may be designated by Developer as trade secrets or confidential business or personal information included in any report or other writing delivered to the Administrator pursuant to or in connection with this Section by any method intended to clearly set apart the specific material that Developer claims to be either its trade secrets or confidential business or personal information that, if released, would give an advantage to competitors or result in unfair competitive injury to Developer or is otherwise confidential financial information of the Developer or the Guarantor.

11.16 Administrator and City Council Review: The Administrator will review and report to the City Council for the City Council's consideration of approval of the Developer's Financial Assurances. The standards for the City Council's approval include:

- 11.16.1** The Project Construction Cost Estimate adequately defines the time, resources and costs required for the Developer to timely and successfully construct the Developed Project; and
- 11.16.2** The ordinary adequacy of the Project Financing Commitments for the timely completion of the construction of the Developed Project based upon the Project Construction Cost Estimate (but subject to customary conditions and limitations consistent with good underwriting practices); and
- 11.16.3** The reasonable adequacy of the amount of the Developer's readily available funds component of the Developer's Financial Assurances; and
- 11.16.4** The adequacy of the Guarantor's capital adequacy to honor the Completion-Site Restoration Guaranty.
- 11.16.5** If the City Council conditionally approves or denies, any of the Developer's Financial Assurances, the City Council will identify any additional Project Financing Assurances that are required for their unconditional approval.

11.17 Process Following City Approval of Developer’s Financial Assurances: When the Developer’s Financial Assurances have all been unconditionally approved by the City Council, the Administrator shall notify the Developer. The Developer shall then provide to the Administrator proof that the approved Project Financing is in effect, the original Completion-Site Restoration Guaranty signed by the Guarantor, the ROW Improvements LOC and the Parking and Traffic LOC. The Administrator will then notify the Building Official that Developer’s Financial Assurances have been approved and completed.

11.18 No Material Amendments to Approved Developer’s Financial Assurances: Developer agrees that it will not amend any of the terms of the approved Developer’s Financial Assurances, or any loan amendments unless the amendment has been previously reviewed by the Administrator and approved by the City Council.

**SECTION 12
PROJECT DEVELOPMENT PLAN MODIFICATIONS
SUBSEQUENT TO BUILDING PERMIT ISSUANCE**

12.1 The construction of the Project pursuant to the Building Permit issued shall comply with the Construction Plans, Project Development Plan and comply with any other applicable KMC and approved plan submittals required and relied upon for the issuance of the Building Permit.

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

12.3 Any material changes to the Project Development Plan, after the Building Permit has been issued, must be applied to the Developer/Owner in accordance with the following process and authorization:

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

12.3.2 A written description shall be included which identifies all proposed modifications and all changes which are clearly indicated on the associated drawings; and

12.4 Administrator shall review the proposed change and determine if the requested modification is a minor modification. If determined to be a minor modification, the Administrator shall issue a written determination on the proposed modification. If the Administrator determines the change is not a minor modification, the modification request shall be processed as an amendment to the applicable Project Permit and/or this Agreement.

**SECTION 13
PERMIT TIME LIMITS**

13.1 Construction and Occupancy Time Limits: The following are the time limits that govern construction and occupancy of this Project:

13.1.1 Design Review Permit: The Design Review Permit is valid for twelve (12) months from the date the design review Findings of Fact, Conclusions of Law, and Decision. are adopted by the Planning and Zoning Commission or upon appeal. Any extension shall be filed pursuant to KMC 17.96.090 B.

13.1.2 Building Permit: The Developer/Owner must apply for a Building Permit within twelve (12) months from the date the design review approval of Findings of Fact, Conclusions of Law and Decision are adopted by the Planning and Zoning Commission or upon appeal. Any extension shall be filed pursuant to KMC 17.96.090 B.

13.1.2.1 A Building Permit shall be obtained by the Developer/Owner within four (4) months of the date the Building Permit Application is filed with the City. The Building Official may administratively grant a two (2) month extension if the Building Official determines additional time is required to complete the Building Permit review.

13.1.2.2 Construction on the project shall commence and the first inspection must occur within six (6) months of the Building Official's issuance of the Building Permit.

13.1.2.3 Time Limits: A certificate of occupancy shall be obtained from the Building Official by the Developer/Owner for the constructed Developed Project no later than thirty (30) months after the Building Permit is issued, unless the time for completion is extended by the City Council prior to the thirty (30) months has elapsed.

13.2 Agreement Termination: In the event the Developer/Owner fails to apply for a Building Permit and perform in accordance with Section 13.1.2 of this Agreement, the Developer/Owner is in Default of this Agreement and the City Council may terminate the Project Development Plan approvals and Permits and this Agreement shall then immediately terminate and be null and void.

13.3 Certificate of Occupancy Time Limits: A certificate of occupancy shall be obtained from the Building Official by the Developer/Owner for the constructed Developed Project no later than thirty (30) months after the Building Permit is issued, unless the time for completion is extended by the City Council prior to the thirty (30) months has elapsed.

13.3.1 Owner shall complete all requirements in Section 14 and submit timely requests for inspections and verification of compliance in sufficient time to obtain the certificate of occupancy no later than thirty (30) months after the building permit is issued.

13.3.2In the event the Developer/Owner fails to perform in accordance with Section 13.3 of this Agreement, the Permit and Project Development Plan approvals and Permits

shall terminate and be null and void and prior to building occupancy, Developer/Owner shall obtain all necessary new Project approvals and permits.

13.4 Process Required to Change Time Limits: In the event the Developer/Owner, for some unforeseen reason not within their reasonable control, will not be able to comply with a Permit time limit; the Developer/Owner, before the time limit expires, must apply for the relevant permit's time extension amendments, which time extensions periods must be within the time limits of the then current relevant KMC provisions, or for new permits and an amendment of this Agreement.

13.4.1 Time extension applications shall be processed in accordance with applicable City ordinance.

13.4.2 The granting of time extension applications will not be unreasonably withheld, when the Developer/Owner has timely filed time extension application/s supported by substantial and competent proof of the reason for the application/s in compliance with section 13.4 of this Agreement, and the requested time extension period is in compliance with the then current relevant KMC provisions.

SECTION 14

CONDITIONS PRECEDENT TO ISSUANCE OF AN OCCUPANCY PERMIT

14.1 Certificate of Occupancy: No Certificate of Occupancy shall be issued for the use and occupancy of this Project until the Developer/Owner has complied with all applicable Permit conditions and the following items are complete:

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

14.1.2 All Design Review elements, consistent with the Approved Permits, are complete to the satisfaction of the Planning & Building Department, including in part, (A) Lighting and noise related to the rooftop bar shall be in compliance with the following city code requirements: KMC §17.132 requires all exterior lighting be full cutoff fixtures with the light source fully shielded. Fixtures shielded underneath canopies must be flush mounted or side shielded. KMC §9.08.040.8 enumerates standards for noise levels permitted in the nighttime, daytime, and evening. (B) Any satellite receivers located on the hotel property shall comply with KMC Chapter 17.140 and be screened from public view. (C) A sign permit shall be obtained and approved by the Planning and Building Department. (D) Compliance with the PUD Findings and Conditions. (E) All Design Review elements shall be completed prior to issuance of a Certificate of Occupancy for the building. (F) Any modification to the existing Floodplain Waterways Design Review Permit for purposes of public access, as set forth in the Design Review Approvals or otherwise, is subject to

review and approval of the Zoning Administrator or Planning and Zoning Commission.

- 14.1.3** All occupancies in the Project (residential, commercial, etc.) shall meet the Leadership in Energy and Environmental Design's (LEED) Silver rating standards. Prior to issuance of a Certificate of Occupancy for the Project, a third party (qualified to do LEED accreditation) shall provide the City with verification the Project meets or exceeds LEED Silver standards.
- 14.1.4** All River Street and SH75 ROW Improvements, including the dedicated turn lane on SH75, shall be completed in accordance with approved encroachment permit approvals to the satisfaction of the City Engineer and the ITD Engineer, respectively.
- 14.1.5** Sidewalk and Lighting: Sidewalk and street lighting improvements, in compliance with city standards, shall be installed prior to issuance of a Certificate of Occupancy for the Project.
- 14.1.6** Public Parking Access. Prior to issuance of a Certificate of Occupancy, a Parking and Access Plan shall be submitted to the City and approved by the City Council that implements free public parking use and access to (13) public parking spaces in the Project Parking Garage and other details at the discretion of the City.
- 14.1.7** Employee Housing: Prior to issuance of a certificate of occupancy, the Administrator shall verify the applicant is in conformance with the employee housing conditions of approval as contained in FCO PUD/CUP P19-063.

SECTION 15 PROJECT OPERATIONS CONDITIONS

- 15.1 Hotel Operations.** The core intended feature of the Developed Project is a hotel building being used for Hotel Operations at an industry acknowledged Four-Star Hotel Operations Standard. Adherence to a Four-Star Hotel Operations Standard, particularly during Peak Travel Season, affects the sufficiency of on-site parking and traffic circulation in the immediate vicinity of the Project and is a requirement of the Hotel Operator's occupancy and use of the Developed Project.
 - 15.1.1** The "Peak Travel Seasons" means the period in each calendar year that commences on June 15th and continues to September 15th and then resumes on December 15th and ends on the following President's Day holiday.
 - 15.1.2** The "Four-Star Hotel Operations Standard" means operation of an upscale hotel that generally provides guests with a luxury experience, a distinctive setting, expanded amenities and exceptional service, all relative to the experience, setting, amenities and service available at three-star hotels. City acknowledges that the Four-Star Hotel Operations Standard is a dynamic standard that changes over time, and the Four-Star Hotel Operations Standard will automatically adjust to reflect

then prevailing standards for hotel operations receiving a “Four-Star” rating from nationally recognized rating services. Not all features, amenities and services will be available at all times or in all seasons. Some features and amenities may be temporarily unavailable during periods of maintenance, repair or refresh thereof, and some features and amenities may be replaced with equivalent (or better) features or amenities then consistent with the operations of other Four-Star Hotels. The Level of Service (and the number of hotel staff providing services) will increase and decrease with seasons, events and other customary factors. As of the Effective Date, Developer and City agree that the Four-Star Hotel Operations Standard generally includes the following characteristics:

- 15.1.2.1 A hotel building of Four-Star architectural design (which the City agrees that the Design Review Permit requirements meet); and
- 15.1.2.2 A lobby area of Four-Star architecture that is architecturally sheltered from outside traffic areas (other than Hotel Operations use) and has multiple conversation groupings and recognizable guest services (which characteristic City agrees that the Project meets); and
- 15.1.2.3 A full-service restaurant, with an architecturally (but not operationally) separate lounge and bar area; and
- 15.1.2.4 An on-site fitness center; and
- 15.1.2.5 At least one hot tub available for common guest use; and
- 15.1.2.6 At least one conference room (that may be divisible into smaller rooms); and
- 15.1.2.7 Seasonal valet parking and
- 15.1.2.8 Customary Four-Star guest services, such as baggage service, laundry service, room service, concierge service and other similar services; provided, however, the exact nature and availability of the services will vary by season, guest and other factors customary to the Four-Star hotel industry.

15.2 Suspension or Modification of Hotel Operations: In the event the Developer/Owner intends to suspend and/or modify Hotel Operations for any period (not involving Developed Project maintenance, repair and/or renovation), the Developer/Owner shall first apply for an amendment and/or a new permit and an amendment of this Agreement.

15.3 Employee Housing Units. The Developer/Owner shall use and maintain the Subject Real Property for Hotel Operations and shall either maintain or enter into a master lease with the Hotel Operator for employee housing units within the Developed Project containing twenty-three (23) beds, as set forth in the employee housing plan design update approved by KCC with the PUD, and thereby fulfill and satisfy the employee housing obligation of this Project consistent with KMC §17.124.050.

15.3.1 Notwithstanding, consistent with the recommendations of the Blaine County Housing Authority (BCHA) and the Planning and Zoning Commission, the Applicant may, as part of the Design Review process, seek to amend the employee housing plan configurations to have fewer shared bedroom configurations,

improved bathroom to bed ratio, and more individual or couple employee housing suites; and

- 15.3.2** All employee housing units must be subleased, assigned, or otherwise occupied by employees of the Hotel Operator on terms and conditions that emphasize the retention of a local workforce consistent with BCHA community housing guidelines, and providing employee housing at a price point that is commensurate with its employees' ability to pay. The Applicant may enter into a master lease with the Hotel Operator for employee housing units containing twenty-three (23) beds and thereby fulfill and satisfy the employee housing obligation of this Conditionally Granted Project consistent with KMC §17.124.050.
- 15.3.3** All leased employee housing units must be subleased, assigned or otherwise be occupied by employees of the Hotel Operator on terms and conditions determined by it, and in the exercise of its discretion, consistent with the goals of retaining a local workforce and adhering to the BCHA community housing guidelines.
- 15.3.4** Employee Housing Units. Leases are subject to annual recertification audits by the City and / or its designee. A fee established by resolution of the City may be charged for this service and associated compliance and monitoring activities.
- 15.4 Local Option Tax.** Hotel Operations shall be subject to and comply with the local option tax conditions and staff comments identified in the FCO of Planned Unit Development and Conditional Use Permit P19-063.

SECTION 16 DEFAULT

- 16.1 Enforcement of Terms and Conditions of the Agreement.** The enforcement of the terms and conditions of this Agreement and the Permits and approvals issued by the City, excepting any terms and conditions which are based upon International Codes under the jurisdiction of the Building Official or the Fire Marshall, are as follows:
- 16.1.1 International Code Defaults:** The failure of the Developer/Owner, or the failure of the City to comply or perform, in accordance with the terms and conditions of this Agreement which involve conditions of Permits governed under International Codes shall be prosecuted and processed by the Building Official or the Fire Marshall in accordance with the provisions of the applicable International Code involved.
- 16.1.2 All Other Defaults:** Otherwise, the failure of the Developer/Owner, or the failure of the City to comply or perform, in accordance with the terms and conditions of this Agreement or the terms and conditions of any Permit or approvals which are the subject of this Agreement, shall be a Default of this Agreement ("Default") and processed as follows:

16.1.2.1 City Default Claims. A claim of a Developer/Owner Default may be made by the Administrator.

16.1.2.2 Developer, Owner Default Claims: A claim of a City Default may be made by the Developer/Owner's Representative.

16.1.3 Claimant and Accused. For purposes of this Section of the Agreement, a claim of Default is made by a ("**Claimant**") against an ("**Accused**").

16.1.4 Written Default Notice of Intent. The Claimant shall serve the Accused with a Written Default Notice of Intent ("**Notice of Intent**"). If the Accused is the Developer/Owner, then the Written Default Notice of Intent shall also be sent to the Institutional Lender and the Guarantor.

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

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

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

- **Developer:** by U.S. Mail or electronic mail to the address herein designated by Developer to the attention of the Developer/Owner's Representative; and
- **Owner:** by U.S. Mail or electronic mail to the address of its registered agent; and
- **City:** by U.S. Mail or electronic mail to the address herein designated by the City to the attention of the Administrator.

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

- 16.1.5.1** The written notice of the hearing to show cause shall be served upon the Claimant and the Accused at least fifteen (15) days in advance of the hearing.
 - 16.1.5.2** At the hearing to show cause, the Accused may present evidence as to why they are or they are not in Default.
 - 16.1.5.3** Following any presentation of evidence by the Accused and any rebuttal by the Claimant and any other interested persons, the City Council shall determine the matter and issue Findings of Fact, Conclusions of Law and an Order of Decision in accordance with the evidence presented at the Show Cause hearing.
 - 16.1.5.4** The Findings of Fact, Conclusions of Law and Order of Decision issued by the City Council shall be the final administrative remedy of any claim of Default under this Agreement and the Parties may thereafter seek legal action in a court of competent jurisdiction for any legal or equitable remedy, including, without limitation, declaratory relief and/or specific performance of the Development Process which includes Site Restoration or completion of the construction of the Developed Project and/or termination of this Agreement as the case may be, and may include an extension of time limits as are applicable to the claimed default. The Parties shall not be entitled to consequential damages in any such action.
- 16.1.6 Prevailing Party.** In the event any Party shall file suit or action at law or equity to interpret or enforce this Agreement, the provisions of Idaho Code Section 12-117, or any subsequent amendment or recodification of the same, shall apply to the determination of the prevailing Party and the award of reasonable attorney's fees, witness fees and other reasonable expenses.

SECTION 17 SHARED LEGAL DEFENSE OF THIS AGREEMENT

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

SECTION 18 NOTICES AND FILINGS

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

City:

Planning and Building Director
P.O. Box 2315
480 East Ave. N.
Ketchum, Idaho 83340

Developer:

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

With a copy to:

Matthew Johnson
WHITE PETERSON
5700 E. Franklin Rd., Suite 200
Nampa, ID 83687

Owner:

PEG Ketchum Hotel, LLC
Attn: Cameron Gunter
145 West 200 North
Provo, Utah 84601

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

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

**SECTION 19
DEVELOPER/OWNER ASSIGNMENT OF AGREEMENT RIGHTS**

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

19.1.1 Complete Assignment of Developer/Owner's rights. Other than an assignment by operation of law, the Developer/Owner may assign the Developer/Owner's rights and obligations under this Agreement subject to written consent of the City Council which shall not be unreasonably withheld, conditioned or delayed subject only to the following conditions:

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

19.1.1.2 In the event of such total assignment of the Developer's Owner's rights and obligations hereunder, the Developer/Owner's liability under this Agreement shall then terminate, but the Guarantor's Guaranty shall remain in full force and effect.

19.1.2 Successors and Assigns. Notwithstanding any other provisions of this Agreement, the Developer/Owner may assign all or part of the Developer's or Owner's rights and duties under this Agreement as collateral to any financial institution from which the Developer/Owner has borrowed funds for use in Development of the Project. Such an assignment shall not relieve the Developer/Owner from any subsequent obligations of this Agreement.

SECTION 20 MISCELLANEOUS

20.1 Agreement Runs with the Subject Real Property. The burdens of this Agreement for the Term of this Agreement are binding upon, and the benefits inure to, all successors in interest of the Parties to this Agreement and constitute covenants that run with the Subject Real Property. Each commitment and restriction of this Agreement on the Subject Real Property shall be a burden on the Subject Real Property and shall be appurtenant to and for the benefit of the Subject Real Property and shall run with the land.

20.1.1 This Agreement shall be binding on the Developer and the Owner, and their respective heirs, administrators, executors, agents, legal representatives, successors, and assigns.

20.2 Agreement Amendment. This Agreement may only be amended in accordance with the following process:

20.2.1 An amendment may be proposed by a Party; and

20.2.2 A proposed amendment must be in writing and include this entire Agreement as then existing and shall therein include a strikethrough of any language to be deleted and underline of any new language of the proposed amendment; and

20.2.3 A proposed Amendment shall contain Statement of Purpose (which shall include a statement of how the Parties will be affected by the amendment); the Party to contact for information; the amended Agreement text; and

20.2.4 City approval of a proposed Amendment must be processed in the same manner as the affected provision(s) of the Agreement that was/were originally approved subject to final approval of the City Council.

20.3 Choice of Law. This Agreement shall be construed in accordance with the laws of the state of Idaho in effect on the Effective Date. Any action brought in connection with this

Agreement shall be brought in a court of competent jurisdiction located in Blaine County, Idaho.

- 20.4 Construction.** All Parties hereto have either been represented by separate legal counsel or have had the opportunity to be so represented. Thus, in all cases, the language herein shall be constructed simply in accord with its fair meaning and not strictly for or against a Party, regardless of whether such Party prepared or caused the preparation of this Agreement.
- 20.5 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single document so that the signatures of all Parties may be physically attached to a single document.
- 20.6 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties, except for the Permits and or approvals issued pursuant to this Agreement, pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are hereby superseded and merged herein. No modification or amendment to this Agreement of any kind whatsoever shall be made or claimed by Developer/Owner or City and shall have any force or effect whatsoever unless the same shall be endorsed in writing and signed by the Party against which the enforcement of such modification or amendment is sought, and then only to the extent set forth in such instrument. Such approved amendment shall be recorded in the Official Records of Blaine County, Idaho.
- 20.7 Exhibits and Recitals.** Any exhibit attached hereto shall be deemed to have been incorporated herein with the same force and effect as if fully set forth in the body hereof. The Recitals set forth at the beginning of this Agreement are hereby acknowledged and incorporated herein and the Parties hereby confirm the accuracy thereof. The Definitions set forth prior to the Recitals are hereby acknowledged and incorporated herein.
- 20.8 Further Acts.** Each of the Parties shall promptly execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.
- 20.9 Good Standing; Authority.** Each of the Parties represents to the other as follows:
- 20.9.1 Developer/Owner.** Developer/Owner represents that it is a Delaware limited liability company duly qualified to do business in Idaho; and
 - 20.9.2 City.** City represents that it is an Idaho municipal corporation in the state of Idaho; and
 - 20.9.3 Authority.** Each Party represents to the other that the individual(s) executing this Agreement on behalf of the Parties are authorized and empowered to bind the Party on whose behalf each such individual is signing.

- 20.10 Headings.** This Agreement shall be construed according to its fair meaning and as if prepared by both Parties hereto. Table of Contents, titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.
- 20.11 Names and Plans.** Developer/Owner shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature at any time developed, formulated or prepared by or at the request of the Developer/Owner in connection with the Project Development Plan and the Project; provided, however, that in connection with any conveyance of portions of the Subject Real Property to the City, such rights pertaining to the portions of the Subject Real Property so conveyed shall be assigned to the City to the extent that such rights are assignable.
- 20.12 No Partnership; Third-Parties.** It is hereby specifically understood, acknowledged and agreed that neither the City nor the Developer/Owner shall be deemed to be an agent of the other for any purpose whatsoever. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Developer/Owner and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any third-party, person, firm, organization or legal entity not a Party hereto, and no such other third-party, person, firm, organization or legal entity shall have any right to cause of action hereunder.
- 20.13 Obligation to Complete Development.** The obligation of the Developer/Owner to complete any part or all of the Development of the Project within a specific timeline, phasing schedule or other schedules and plans, are provided in this Agreement as required as a condition of the Permits.
- 20.14 City Administrative Review Fees:** The Developer/Owner shall be charged and shall pay the City Administrative Review Fees for the administration of the Developer/Owner's and the City's performance of this Agreement.
- 20.15 Parties' Intent.** It is the Parties' express intention that the terms and conditions be construed and applied as provided herein, to the fullest extent possible. It is the Parties' further intention that, to the extent any such term or condition is found to constitute an impermissible restriction of the police power of the City, such term or condition shall be construed and applied in such lesser fashion as may be necessary to not restrict the police power of the City.
- 20.16 Recordation.** After its execution, this Agreement shall be recorded in the real property records of Blaine County, Idaho by the City.
- 20.17 Severability.** If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

20.18 Time of Essence. Time is of the essence in implementing the terms of this Agreement.

20.19 Waiver. No delay in exercising any right or remedy shall constitute a waiver by either Party thereof, and no waiver by the City or the Developer of the breach of any covenant or condition of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

20.20 Agreement Term. The Term of this Agreement is effective upon the Effective Date and is thereafter perpetual unless terminated pursuant to provisions of this Agreement.

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

CITY:

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

By: _____
Neil Bradshaw, Mayor

Attest:

By: _____
Trent Donat, City Clerk

CITY ATTORNEY APPROVAL AS TO FORM AND AUTHORITY:

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

Wm. F. Gigray, III, City Attorney

DEVELOPER:

PEG Ketchum Hotel, LLC

By: The PEG Ketchum Hotel, L.L.C., a Delaware limited liability company,

PEG Capital Partners I GP, LLC
its Manager

PEG Capital Partners, LLC
its Manager

By: _____
Cameron Gunter, Manager

OWNER:

PEG Ketchum Hotel, LLC, a Delaware limited liability company

By: _____
Cameron Gunter, Manager

3-28-23 P&Z Recommendations

STATE OF IDAHO)
) ss.
COUNTY OF BLAINE)

On this ____ day of _____, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared **Neil Bradshaw**, known or identified to me to be the Mayor of the City of Ketchum, the municipal corporation that executed the instrument or the person who executed the instrument on behalf of said municipal corporation, and acknowledged to me that such municipal corporation executed the same.

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

[seal]

Notary Public for Idaho
My Commission expires: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared **Cameron Gunter**, Manager of PEG Capital Partners, LLC, which in turn manages PEG Capital Partners I GP, LLC, the manager of PEG Ketchum Hotel, LLC., a Delaware limited liability company, the limited liability company that executed the instrument, or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

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

[seal]

Notary Public for _____
My Commission expires: _____

EXHIBIT A
Subject Real Property Legal Description

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

The Property is inclusive of the real property described in the Preliminary Plat prepared by Galena Engineering for the purpose of removing the lot line that bisects the Property, which plat will revise the legal description in the real property records of Blaine County, Idaho.

EXHIBIT B
FORM OF IRREVOCABLE COMPLETION-SITE RESTORATION GUARANTY
AGREEMENT

This Irrevocable Completion-Site Restoration Guaranty Agreement (this “**Agreement**”) is made as of _____, 2023, by [Guarantor], a Utah limited liability company (“**Guarantor**”), to and for the benefit of City of Ketchum, an Idaho municipal corporation (“**City**”)

RECITALS

PEG Ketchum Hotel, LLC, a Delaware limited liability company (“**Developer**”) is the owner of certain real property with improvements existing and/or to be built thereon, located in Ketchum, Idaho (the “**Property**”).

City and Developer entered into the Permits Conditions Acceptance Development Agreement (the “**Development Agreement**”) for the development of the Project (as defined in the Development Agreement) on the Property;

As the date hereof, City is issuing a Building Permit (as defined in the Development Agreement) for the Project in accordance with the **Development Agreement**;

As a condition to issuing the Permits, City requires Guarantor to execute and deliver this Agreement to protect City against certain events relating to the construction of the Project.

Guarantor is an Affiliate of Developer, and will derive a substantial financial benefit from the Project.

NOW, THEREFORE, in consideration of the foregoing recitals, which recitals are incorporated herein and made a part hereof, and City’s agreement to issue permits for the construction of the Project, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

Guaranteed Obligations. The following are the Guarantor’s irrevocable guaranteed obligations:

1. **The Completion Guaranty:** Guarantor hereby, jointly and severally with Developer pursuant to the terms of the Development Agreement, unconditionally guarantees the prompt commencement and diligent, continuous and full completion of the construction of the Project in conformance with the Construction Schedule, so that Substantial Completion will occur on or before the Completion Date in accordance with the terms of the Development Agreement. The construction of the Project in substantial conformance and compliance with all permit approved Plans and Specifications and the Laws governing the construction of the Project. Guarantor hereby, jointly and severally with Developer pursuant to the terms of the Development Agreement, unconditionally guarantees the punctual observance, performance and satisfaction of all of the obligations, duties, covenants and agreements of Developer under the Development Agreement and the other Loan Documents with respect to the construction of the Project.

2. **The Site Restoration Guaranty:** Guarantor hereby, jointly and severally with Developer pursuant to the terms of the Development Agreement, unconditionally guarantees the prompt commencement and diligent, continuous and full completion of the Site Restoration of the Project in event of a default of the Development Agreement wherein the City Council’s Findings of Fact,

Conclusions of Law and Order of Decision imposes the same as the Default Cure Remedy.

Net Worth; Financial Statements. At all times while this Agreement remains in effect, Guarantor will maintain an aggregate minimum net worth of _____ Million Dollars (\$__0,000,000) with liquid assets of not less than _____ Million Dollars (\$__,000,000). Guarantor will annually (commencing on the effective date of this Guaranty) provide to the City the Guarantor's current financial statement.

Costs; Expenses. If this Agreement is placed in the hands of attorneys for collection or enforcement or is otherwise collected or enforced through any legal proceeding, then, Guarantor will pay to City upon demand all reasonable attorneys' fees, out-of-pocket costs and expenses, including, without limitation, court costs, filing fees and all other costs and expenses incurred in connection therewith in addition to all other amounts due hereunder.

Survival. This Agreement will be continuing, irrevocable and binding upon Guarantor and its successors and assigns, and will survive, notwithstanding any other Person's acquisition of any interest in the Property, whether as successor-in-interest to Developer by virtue of foreclosure or sale or acceptance of a deed in lieu of foreclosure, but will terminate and be of no further force and effect upon the Substantial Completion of the Project.

Waivers. Guarantor waives:

All statutes of limitations as a defense to any action or proceeding brought against Guarantor by City under this Agreement, to the fullest extent permitted by law;

Any right it may have to require City to proceed against Developer, proceed against or exhaust any security held from Developer, or pursue any other remedy in City's power to pursue;

Any defense based on any legal disability of Developer; any discharge or limitation of the liability of Developer to City, whether consensual or arising by operation of law or any bankruptcy, reorganization, receivership, insolvency, or debtor-relief proceeding under any federal or state law, whether now existing or hereafter enacted ("Insolvency Proceeding"), or from any other cause; or any rejection or disaffirmation of the Project, or any part thereof, or any security held for the Project, in any Insolvency Proceeding; or any claim that Guarantor's obligations exceed or are more burdensome than those of Developer;

Any defense based on any action taken or omitted by City in any Insolvency Proceeding involving Developer, including any election to have City's claim allowed as being secured, partially secured or unsecured, any extension of credit by City to Developer in any Insolvency Proceeding, and the taking and holding by City of any security for any such extension of credit;

All presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Agreement and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind except as otherwise specifically set forth in the Project Documents or this Agreement;

Any defense based on or arising out of any defense that Developer may have to the making of any payment or the performance of the Project or any part of it; and
In connection with the foregoing waivers, Guarantor acknowledges that City's recourse against Developer may be limited by certain provisions in the Note and Security Instrument. Guarantor agrees that any act which tolls any statute of limitations applicable to the Indebtedness will operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

Subordination. Guarantor hereby postpones and subordinates, to and in favor of full payment of the obligations set forth herein and performance of any and all other obligations described herein, any and all present and future debts and obligations owed or to become owing to Guarantor by Developer or by any other guarantors, indemnitors or obligors of all or any part of the Project or any indemnification or guaranty provided in connection therewith.

Notices. Any notice, report, demand, request or other instrument or communication authorized or required under this Agreement to be given or delivered to Guarantor or City will be given or delivered in the manner and to the address(es) set forth in the Development Agreement, and with respect to Guarantor, to the address(es) set forth below (unless the same will be changed in the manner provided in the Development Agreement):

If to Guarantor: [Guarantor]
c/o PEG Companies
145 West 200 North, Suite 100
Provo, Utah 84601
Attention: General Counsel

With a copy to: PEG Capital Partners
145 West 200 North, Suite 100
Provo, Utah 84601
Attention: Cameron Gunter

Joint and Several Obligations. If this Agreement is now, or hereafter will be, signed by more than one Person, it will be the joint and several obligations of all such Persons (including all makers, endorsers, sureties and guarantors, if any) and will be binding on all such persons and their respective heirs, personal representatives, successors and assigns.

Bind Effect. This Agreement will inure to the benefit of, and will be binding upon, the parties hereto and their respective successors and permitted assigns.

No Oral Amendment. This Agreement may not be modified or terminated orally, but only by a written instrument signed by each party thereto. City will not be deemed by any act of its omission or commission to have waived any of its rights, powers or remedies hereunder unless such waiver is in writing and signed by an authorized officer or employee of City, and then only to the extent specifically set forth in such writing. A waiver of one event will not be construed as continuing or as a bar or waiver of any right, power or remedy as to a subsequent event.

Severability. In the event any one or more of the provisions of this Agreement will for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event that any one or more of the provisions of this Agreement will operate, or would prospectively operate, to invalidate this Agreement, then, in any such event, such provision or provisions only will be deemed to be null and void and of no force or effect and will not affect any other provision of this Agreement, and the remaining provisions of this Agreement will remain operative and in full force and effect, will be valid, legal and enforceable, and will in no way be affected, prejudiced or disturbed thereby.

Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto on separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts will together constitute one and the same agreement.

Governing Law. This Agreement and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement and the transactions contemplated hereby will be governed by, and construed in accordance with,

3-28-23 P&Z Recommendations

the laws of the State of Idaho, without regard to principles of conflicts of law. **Waiver of Jury Trial.** Guarantor hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement.

[end of text; signature page follows]

W:\Work\K\Ketchum, City of 24892\Gateway Hotel .015\Permit Acceptance Agreement\WFG Drafts using the 6.29.22 draft as base\WFG Clean with Table of contents link 3.03.23.docx

Attachment C

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

IN RE:)	AGREEMENT NO. 22847
)	
PEG KETCHUM HOTEL, LLC)	FINDINGS OF FACT, CONCLUSIONS
Permit Conditions Acceptance)	OF LAW, AND RECOMMENDATION
Development Agreement)	TO THE CITY COUNCIL
)	
)	

THE ABOVE ENTITLED MATTER coming before the Planning and Zoning Commission of the City of Ketchum (the "Commission"), on the 28th day of March, 2023, pursuant to the Applicant's and the City Staff's renegotiated 3-02-2023 draft Permit Conditions Acceptance Development Agreement (the "Renegotiated Development Agreement") which companions with the Applicant's Planned Unit Development/ Conditional Use Permit No. P19-063 (the "PUD/CUP Permit"). The Commission having reviewed the Renegotiated Development Agreement, and the information provided at the hearing on this matter, and the information provided at that hearing, does hereby make and set forth the Record of Proceedings, Findings of Fact, Conclusions of Law, and Recommendation to the City Council as follows:

SECTION 1

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

Notice of Hearing: Notice of this hearing was:

- Published March 8, 2023 in the Idaho Mountain Express, the City's official newspaper of general circulation; and
- Mailed on the March 8, 2023 to the property owners within 300 feet of the subject real property and affected agencies; and
- Posted on the subject real property on March 21, 2023; and
- Posted on the City's website on the March 13, 2023.

Exhibits

	<i>DESCRIPTION OF EVIDENCE</i>	<i>Withdrawn</i>	<i>Refused</i>	<i>Admitted</i>
1	<p>Staff Report dated March 28, 2023 with Attachments A-H and the following additional attachments:</p> <p>Attachments:</p> <p>A: June 14, 2022 staff report for Design Review Permit P22-028</p> <p>B: Findings of Fact, Conclusions of Law and Conditions of Approval for Design Review Permit P22-028 (the "Findings") approved June 14, 2022 together with Findings Attachment A: May 11, 2022 Memo Outlining Design Changes in Response to November 20, 2021 Pre-Application Design Review Meeting; and Findings; Attachment B: May 27, 2022 Design Review Plans.</p> <p>C: 3-2-23 Permit Conditions Acceptance Development Agreement.</p> <p>D: Proposed amendment to PUD/CUP P19-63</p>			X
2	Noticing Checklist/Certification			X

PERSONS TESTIFYING and COMMENT:

Staff Report: Suzanne Frick, presented and gave the City staff report with explanation and stood for questions from the Planning and Zoning Commissioners.

Public Comment: Scott Levy had questions about traffic issues related to Highway 75.

Written Comment Received: Two written comments were received prior to the distribution of the Planning and Zoning Commission packet. Those comments are provided in Attachment D of the Staff Report.

DECISION and RECOMMENDATION

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

II.

FINDINGS OF FACT and CONCLUSIONS OF LAW

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

2.1 Findings Regarding Notice:

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

2.2 Findings Regarding Applications Filed:

2.2.1 The City Staff presented to the Commission the Renegotiated Development Agreement together with information that the renegotiation process began between June 14, 2022 and July 6, 2022 which various drafts of the agreement were negotiated concluding with PEG Ketchum Hotel LLC (the "Applicant") agreement with a redlined draft of the Renegotiated Development Agreement on February 27, 2023 that formed the clean 03.02.23 draft Renegotiated Development Agreement. The Renegotiated Development Agreement required that the Applicant file an application for an amendment of the Applicant's Planned Unit Development/ Conditional Use Permit No. P19-063 (the "PUD/CUP Permit") at page 29, Condition No. 5 paragraph 1.5.3 by an increase of the time period for a certificate of the occupancy to be issued for their hotel project after the issuance of a building permit from 18 months to 30 months. The Applicant's Requested Amendment is a part of a renegotiated Permit Conditions Acceptance Development Agreement which was also heard with this matter simultaneously by the Commission.

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

The Commission having reviewed the written comments and having listened to the Staff Report and comments and the comments presented by the public summarizes the same as follows:

- There was no objection to the Renegotiated Development Agreement; and
- The Staff recommended approval of the Renegotiated Development Agreement; and
- The Commissioners had three concerns with the Renegotiated Development Agreement which included the following:

- that section 1.31 Institutional Lender did not adequately define what “good standing” meant; and
 - that section 13.1.2.1 should provide that the Building Official may administratively grant a two (2) month extension if the Building Official determines that additional time is required to complete the Building Permit review; and
 - that section 13.3 Certificate of Occupancy Time Limits should include an additional subsection requiring the Owner (the Applicant) to complete all conditions precedent to issuance of an occupancy permit and submit timely requests for inspections and verification of compliance in sufficient time to obtain a certificate of occupancy no later than thirty (30) months after the building permit is issued.
- The Commission is recommending approval of the Renegotiated Development Agreement to the City Council subject to three concerns above referenced.

2.4 PUD/Conditional Use Ordinance Standards and Planning and Zoning Commission Evaluation Compliance Analysis and Findings:

KMC § 16.08.120 C

- The City of Ketchum is an Idaho municipal corporation and is required by I.C. § 67-6503 to exercise the powers conferred by the Local Land Use Planning Act codified at Chapter 65 of Title 67 Idaho Code; and
- PEG Hotel, LLC (the “Applicant”) has filed with the City the following applications for the development of a hotel within the City:
 - Building Demolition Development Application; and
 - Floodplain Development Permit Application; and
 - Lot Line Shift Development Application; and
 - Planned Unit Development/Conditional Use Permit Application; and
 - Design Review Development Application; and
 - Related PUD/CUP applications for the hotel development.
- The City has processed the Applications and has approved the same subject to numerous conditions; and
- The Ketchum City Code (“KMC”) provides at KMC § 16.08.120 C:

C. Prior to final approval of a PUD conditional use permit, the city council may require, but not limited to, the following:

1. *Such written agreements executed by the developer to secure performance of any requirement or condition to be imposed as part of the approval, including, but not limited to, development, services and/or annexation agreements.*
- In the process of staffing the Applications the City Planning and Building Department staff, in order to assure the Applicant will timely and in compliance with the Applications Permits conditions, has drafted the Renegotiated Development Agreement; and
 - The Renegotiated Development Agreement provides for the timely performance by the Applicant of the conditions of the Applications permits granted by the City for the Applicant's hotel development and is in the best interests of the City to which the PEG Ketchum Hotel LLC is agreeable.

III. CONCLUSIONS OF LAW

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

- 3.1 The City is a municipal corporation established in accordance with Article XII of the Constitution of the State of Idaho and Title 50 Idaho Code and is required and has exercised its authority pursuant to the Local Land Use Planning Act codified at Chapter 65 of Title 67 Idaho Code; and
- 3.2 The City pursuant to Idaho Code Section 67-6515 has the authority, which it has exercised by ordinance, codified at Chapter .08 of Title 16 of the KMC, which is separate from its zoning ordinance for the processing of applications for planned unit development permits.
- 3.3 KMC section 16.08.120 C provides that prior to final approval of a PUD conditional use permit, the City Council may require a written agreement executed by the Applicant to secure performance of any requirement or condition to be imposed as part of the approval, including, but not limited to Development and may also require recordation of documents establishing and guaranteeing the operation and maintenance of the Project; and

IV. DECISION AND RECOMMENDATION TO THE CITY COUNCIL

Based upon the above and foregoing Findings of Fact/Conclusions of Law and good cause appearing from the record, IT IS HEREBY RECOMMENDED TO THE CITY COUNCIL THAT:

Recommendation No. 1: That the Renegotiated Development Agreement be approved and entered into by the City Council subject to and contingent upon the following terms and conditions:

Condition No. 1 Section 1.31 revision: That the definition of “institutional Lender” in section 1.31 be revised to read:

1.31 Institutional Lender: Means and refers to a national bank, savings association, state-chartered commercial and savings bank which is in good standing, and meets or exceeds all capital and liquidity requirements of the governing financial regulatory body, including passage of its most recent Stress Test, if applicable.

Condition No. 2 Sub-Sub Section 13.1.2.1 revision: That sub-sub section 13.1.2.1 be revised to read:

13.1.2.1 A Building Permit shall be obtained by the Developer/Owner within four (4) months of the date the Building Permit Application is filed with the City. The Building Official may administratively grant a two (2) month extension if the Building Official determines additional time is required to complete the Building Permit review.

Condition No. 3 Section 13.3 revision: That section 13.3 include a subsection 13.3.1 to read:

13.3.1 Owner shall complete all requirements in Section 14 and submit timely requests for inspections and verification of compliance in sufficient time to obtain the certificate of occupancy no later than thirty (30) months after the building permit is issued.

Findings of Fact **adopted** this 11 day of April, 2023.



Neil Morrow, *Chairman*
City of Ketchum Planning and Zoning
Commission

Attachment D

February 3 submitted Master Plan Version 4 as part of its PUD Application.

The City Council having reviewed the entire record and provided notice and held a joint public hearing does hereby make and set forth these Findings of Fact, Conclusions of Law, and Order of Decision which is inclusive of the Waiver Application File No. P20-069 as follows:

I. RECORD OF PROCEEDINGS

The above-entitled matter has been heard by the City Council in conjunction with the accompanying PEG Ketchum Hotel, LLC PUD Project Master Plan together with the other following accompanying Applicant Applications:

- Floodplain Development Permit File No. P19-062
- Lot Line Adjustment File No. P19-064
- Waiver File No. P20-069

The City Council has approved together with these Findings of Fact, Conclusions of Law, and Order of Decision that certain **Master Joint Hearings Compiled Record of Proceedings On Remand** for Files Nos. P 19-062, P19-063, P19-064, P20-069 and P20-019 (the “Master Joint Hearings Record of Proceedings”) which is herein included by reference as if set forth at length.

PUBLIC NOTICES FOR HEARINGS ON REMAND:

Legal notice of the hearing before the City Council was published in the City’s newspaper of record and notice was mailed to adjoining landowners within 300’ was in compliance with the 15-day and 10-day notice requirements. Notice to neighbors and political subdivisions and publication in the *Idaho Mountain Express* occurred on January 13, 2021 with on-site posting on the subject premises on January 25, 2021, mailed to property owners and government subdivisions on January 13, 2021 and posted on the City’s website on January 25, 2021.

II. FINDINGS OF FACT

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

2.1 Findings Regarding Notice:

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

2.1.2 **Notice Provided:**

2.1.2.1 Notice was published for the February 1, 2021 joint public hearing in the Idaho Mountain Express, the official newspaper, which has general circulation within the boundaries of the City of Ketchum.

Newspaper	Date Published
Idaho Mountain Express	January 13, 2021

2.1.2.2 Notice of the February 1, 2021 hearing was mailed on January 13, 2021 to the property owners within 300 feet of the subject real property and affected Agencies and was posted on the subject property on January 25, 2021.

2.2 Findings Regarding Applications Filed:

2.2.1 PEG Ketchum Hotel, LLC has submitted and completed an Application for a Planned Unit Development of a Master Plan inclusive of Waiver Applications File No. P20-019 for a hotel development on a 1.09-acre site located at the southwest corner of the State Highway 75 and River Street intersection at 280 E. River, (the "Project Site") inclusive of a request for waivers to minimum lot size, setback (side yards), height, and floor area ratio (FAR) limitations.

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

2.2.3 KMC §16.08.020 provides:

A. *This chapter is adopted pursuant to authority granted by Idaho Code section 67-6501 et seq., and article 12, section 2 of the Idaho constitution. It is enacted for the purpose of protecting and promoting the public health, safety and welfare; to secure the most appropriate use of lands, to encourage flexibility and creativity in the development of land in order to improve the design, character and quality of new development, and to*

provide usable open space; to preserve the scenic and aesthetic qualities of lands; to protect property rights and enhance property values; to ensure that adequate public facilities and services are provided; to ensure that the local economy is protected and enhanced; to encourage and promote the development of affordable housing; to ensure that the important environmental features are protected and enhanced; to avoid undue concentration of population and overcrowding of land; to ensure that the development on land is commensurate with the physical characteristics of the land; to protect life and property in areas subject to natural hazards; to protect fish, wildlife and recreation resources; to avoid undue water and air pollution; and to protect the quality of life offered by the city and surrounding resources enjoyed by residents and visitors alike.

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

- 2.2.4 **Applicant Master Plan Submittals:** Applicant originally submitted a Master Plan and subsequently on December 2, 2019 submitted Master Plan Version 2 and subsequently on January 21, 2020 submitted Master Plan Version 3 as part of its PUD Application and subsequently on February 3 submitted Master Plan Version 4 as part of its PUD Application, File No. P20-069, is pursuant to Title 16, Chapter 16.08. KMC Subject Master Plan (also herein referred to as the “Project”) includes a request for waiver or deferral of requirements pursuant to (KMC §16.08. 070.F).
- 2.2.5 **Waiver Requests:** As set forth in the Applicant’s PUD Application and Master Plan, Master Plan Version 2 dated December 2, 2019 and Master Plan Version 3 dated January 21, 2020 and Master Plan Version 4 dated February 24 & March 9, 2020 waivers are requested to the following dimensional standards: Floor Area Ratio (FAR), side yard setbacks, and height requirements. Additionally, a waiver is requested for the PUD to occur on a Project Site with a minimum lot size of less than three (3) acres, which is permissible subject to stipulations set forth in KMC §16.08.080. A.
- 2.2.6 **Minimum Lot Size:** The Council may waive the three (3) acre minimum lot size requirement consistent with KMC §16.08.080. A.4 as allowed for hotels. To do so, the Council must find the Project meets the definition of hotel as set forth in KMC §17.08.020 and complies with the purpose of the Tourist zone as set forth in KMC §17.180 by providing the opportunity for tourist use. Additional relevant analysis is consistency of the Project with the Subarea Analysis and Gateway Study Excerpts.
- 2.2.7 **Waivers Part of PUD Ordinance:** Title 16, Chapter 16.04.020 defines Waiver as a:

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

Similarly stated relevant standards for the analysis of waiver requests are set forth in KMC §16.08. 070.L and KMC §16.04.120.

- 2.2.8. **Four (4) waivers are submitted for the Project:** These include waivers to minimum lot size, setback (side yards), height, and floor area ratio (FAR) limitations. These waivers were requested by the Applicant consistent with KMC §16.04.120, §16.08.080 and §17.124.050, in part, as the literal enforcement of city code in the context of the special physical characteristics and conditions affecting the property would result in undue hardship. In particular, the Hotel site has a large slope with a grade differential of approximately thirty-seven feet (37') from Trail Creek at the south end of the lot to the north end along River Street. The site is constrained by the river to the south and the City desires to setback structures from riparian and flood areas. The City also desires to setback structures from State Highway 75 (SH75) in this location to help preserve the entry to town and minimize shading of the highway during winter months. Further, the grade along SH75, future Idaho Transportation Department (ITD) bridge and highway expansion plans, and a desire for no access onto SH75 in this location create unique conditions for development.
- 2.2.9 **Floor Area Ratio:** KMC §17.124. 050.A states: "Hotels may exceed the maximum floor area [0.5] ... requirements of this title subject to ... [a] Planned Unit Development ... which specifically outlines the waivers to bulk regulations requested." A subarea analysis is also required in the review process (KMC §17.124.050. A.2). The total developed gross floor area of the Project, as defined in KMC §17.08.020, is proposed to not exceed a FAR of 1.57 exclusive of basement areas and underground parking. Total building area when each of the three (3) basement and parking garage levels and four (4) hotel stories are calculated in aggregate, total approximately 131,881 square feet for the Project.
- 2.2.10 **Height:** KMC§17.124.050.A states: "Hotels may exceed the ... height ... requirements of this title subject to ... [a] Planned Unit Development ... which specifically outlines the waivers to bulk regulations requested." A subarea analysis is also required in the review process (KMC §17.124.050.A.2). As noted, the Project Site has a large slope from Trail Creek at the south end of the lot to the north end along River Street. The hotel is proposed as a four-story structure on River Street that then stair steps and terraces down to three floors near Trail Creek. Height Analysis, the maximum height of the building along River Street does not exceed forty-eight feet (48') and the building scales down to approximately twenty-eight (28') closer to the river on the south end of the property. The exception to this height analysis is in the center of the structure where 4-stories of hotel use are sandwiched between two public amenities (employee housing and a roof top bar for the public). At this more central site location, the existing grade drops at a fairly acute angle resulting in a portion of the building having a maximum height of seventy-two feet (72') as measured from existing grade. In comparison to both the built Limelight hotel and approved Bariteau / Harriman Hotel on

opposing corners, the height of the proposed Project will be lower and more closely align to the fourth-floor elevation of each of these buildings.

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

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

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

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

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

- Concerns with parking, loading and vehicular access when the Project is operational; and
- Concerns regarding the look of the Gateway entrance to the City; and
- Concern about the character of the City
- Benefit of increase in tourism
- Benefit of additional employment opportunities and on-site employee housing
- Benefit of increased tax revenue
- Benefit of the addition to this tourist community of well-designed and landscaped hotel facility with natural area enhancements and public use availability features.

City Council Findings Regarding Standards and Findings for the Planned Unit Development Conditional Use Permit:

The City Council findings having reviewed the Project Master Plan Version 3 and 4, as well as public comment, staff analyses, and agency/peer review/department inputs supports the findings as set forth in Sections 2.4, 2.5 and 2.6 below regarding the Planned Unit Development Conditional Use Permit standards:

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

Planned Unit Development (PUD)
<p style="text-align: center; margin: 0;">EVALUATION STANDARDS: 16.08.080</p> <p style="margin: 0;"><i>The standards set forth in this section shall apply to review of all PUD conditional use permit applications. The standards shall be used to review and evaluate the proposal in comparison to the manner of development and effects of permitted uses and standard development allowed on the property in question. Modification or waiver from certain standard zoning and subdivision requirements may be permitted subject to such conditions, limitations and/or additional development standards, pursuant to section 16.08.130 of this chapter, as the city council may prescribe to mitigate adverse impact at the proposed planned unit development, or to further the land use policies of the city, or to ensure that the benefits derived from the development justify a departure from such regulations. Where the city council determines that conditions cannot be devised to achieve the objectives, and/or the standards contained in this chapter are not met, applications for conditional use permits shall be denied. The city council shall make findings that each of the following evaluation standards have been met. The evaluation standards are as follows:</i></p>

KMC § 16.08.080.A

Minimum lot size of three (3) acres. All land within the development shall be contiguous except for intervening waterways. Parcels that are not contiguous due to intervening streets are discouraged. However, the commission and the council may consider lands that include intervening streets on a case by case basis. The commission may recommend waiver or deferral of the minimum lot size, and the council may grant such waiver or deferral only for projects which: ...4. For a hotel which meets the definition of "hotel" in section 17.08.020, "Terms Defined", of this code, and conforms to all other requirements of section 17.18.130, "Community Core District (CC)", or section 17.18.100, "Tourist District (T)", of this code. Waivers from the provisions of section 17.18.130 of this code may be granted for hotel uses only as outlined in section 17.124.040 of this code. Waivers from the provisions of section 17.18.100 of this code may be granted for hotel uses only as outlined in section 17.124.040 of this code.

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

- (A) Meets the definition of hotel as set forth in KMC §17.08.020. The Project consists of ninety-two (92) rooms, includes on site food and beverage service with kitchen facilities, common reservation and cleaning services, meeting room space, combined utilities, on site management and reception services, access to all sleeping rooms through an inside lobby supervised by a person in charge no less than eighteen (18) hours per day, and adequate on site recreational facilities. There are no other residential uses proposed in connection with the hotel operation, other than the proposed 23 beds of employee housing.
- (B) Complies with the purpose of the Tourist zone as set forth in KMC §17.180 by providing the opportunity for tourist use. Consistent with the sub-area analysis and Gateway Study Excerpts, as set forth in Exhibit A, the Project is compatible both in design and use with the surrounding uses and development.
- (C) Allows the granting of waivers for hotel-related Tourist District Floor Area Ratio (FAR), setback, and height dimensional standards as outlined in KMC §17.124.040. The Project proposes to exceed the 0.5 Tourist Zone permitted Gross FAR as set forth in KMC §17.124.040.A and may exceed its FAR maximum in accordance with the pertinent code provisions allowing for fourth floor hotel uses, as set forth in KMC §17.124.040.B.3 and by reference KMC §17.124.050. In accordance with the aforementioned and also precedent (e.g., entitled Bariteau / Harriman Hotel site at 300 E. River Street across SH75 was also approved as a PUD on an approximately 0.9-acre site and the Limelight was approved as a PUD on an approximately 1.09-acre site), the City finds this evaluation standard to have been met.

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

KMC § 16.08.080.B and KMC § 16.08.080.D

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

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

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

KMC § 16.08.080.C

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

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

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

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

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

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

KMC § 16.08.080.D

The development shall be in harmony with the surrounding area.

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

KMC § 16.08.080.E

1. *Densities and uses may be transferred between zoning districts within a PUD as permitted under this chapter, provided, the aggregate overall allowable density of units and uses shall be no greater than that allowed in the zoning district or districts in which the development is located. Notwithstanding the above, the commission may recommend waiver or deferral of the maximum density and the council may grant additional density above the aggregate overall allowable density only for projects which construct community or employee housing and which:
 - a. *Include a minimum of thirty percent (30%) of community or employee housing, as defined in section 16.08.030 of this chapter; and*
 - b. *Guarantee the use, rental prices or maximum resale prices thereof based upon a method proposed by the applicant and approved by the Blaine County housing authority and/or the Ketchum city council.**
2. *Application for waiver or deferral of this criteria shall include a description of the proposed community or employee housing and the proposed guarantee for the use, rental cost or resale cost.*

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

KMC § 16.08.080.F

The proposed vehicular and nonmotorized transportation system:

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

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

KMC § 16.08.080.G

The plan is in conformance with and promotes the purposes and goals of the comprehensive plan, zoning ordinance, and other applicable ordinances of the city, and not in conflict with the public interest:

1. Pursuant to subsection 16.08.070D of this chapter, all of the design review standards in chapter 17.96 of this code shall be carefully analyzed and considered. This includes detailed analysis of building bulk, undulation and other design elements. The site plan should be sensitive to the architecture and scale of the surrounding neighborhood.
2. The influence of the site design on the surrounding neighborhood, including relationship of the site plan with existing structures, streets, traffic flow and adjacent open spaces, shall be considered.
3. The site design should cluster units on the most developable and least visually sensitive portion of the site.

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

KMC § 16.08.080.H

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

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

KMC § 16.08.080.I

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

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

KMC § 16.08.080.J

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

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

KMC § 16.08.080.K

Adequate and usable open space shall be provided. The applicant shall dedicate to the common use of the homeowners or to the public adequate open space in a configuration usable and convenient to the residents of the project. The amount of usable open space provided shall be greater than that which would be provided under the applicable aggregate lot coverage requirements for the zoning district or districts within the proposed project. Provision shall be made for adequate and continuing management of all open spaces and common facilities to ensure proper maintenance.

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

KMC § 16.08.080.L

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

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

KMC § 16.08.080.M

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

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

KMC § 16.08.080.N

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

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

KMC § 16.08.080.O

The development will be completed within a reasonable time.

City Council Findings: Regarding KMC §16.08. 080.J, it is found that this standard is met; provided that a project completion assurance agreement is entered into between the Applicant and City for the Project prior to the issuance of any Building Permit for the construction of the Project.

KMC § 16.08.080.P

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

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

KMC § 16.08.080.Q

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

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

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

KMC § 17.12.030

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

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

KMC § 17.12.030

Minimum Open Space

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

KMC § 17.12.030

Setbacks

Front: 15’

Riparian: 25’

SH75: 25’ / 32’

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

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

KMC § 17.12.030

Permitted Gross Floor Area Ratio: 0.5 or greater for hotels.

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

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

KMC § 17.12.030

Building Height

Maximum Permitted: 35' or greater for hotels

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

- (A) The Project site has a large slope from Trail Creek at the south end of the lot to the north end along River Street. The hotel is proposed as a four-story structure on River Street, and step / terrace down to three and then two stories nearest Trail Creek.
- (B) The KMC does not specify the maximum height of a four-story building. Historic references in the KMC, as well as the top floor plate of the adjoining Limelight Hotel show the hotel fourth floor to equal approximately forty-eight feet (48') while the top of the Limelight hotel penthouse parapet is 73.5'.
- (C) Maximum height of the building shall not exceed 48' when the building is measured from the highest elevation of the property (along River Street) or 72' when building height is measured from the lowest elevation of the property (along Trail Creek), Height Analysis.
- (D) During the transition where the four-story building along River Street steps down approximately thirty feet (30') toward Trail Creek, the forty-eight foot (48') high 4-story building reads like 6-stories at seventy-two feet (72') high. This is permissible consistent with KMC §16.08.020.B and desirable as follows: first, the height of the building at subject central location is below the forty-eight (48') 4-story horizontal plane established by precedent and with the top of the fourth floor at the adjacent Limelight; second, the City recognizes that in this central location of the structure, that the 4-stories of hotel use are sandwiched between two public amenities (employee housing and a roof top bar for the public). The unique characteristics of the site at this location, where the existing grade drops quickly in the center of the site, result in a portion of the building having a taller element of seventy-two feet (72') as measured from existing grade. The City finds this consistent with general finding 2.2.3 herein and KMC §16.08.020.B, "[i]n the event of conflict between this PUD chapter and any other ordinance of the city, this PUD chapter shall control."
- (E) In comparison to both the Limelight and approved Harriman Hotels on opposing corners, the height of the proposed Boutique Hotel is lower and more closely aligned to the fourth floor of each building.
- (F) The Gateway Study and Subarea Analysis indicate that the proposed hotel is both by design and use consistent with envisioned plans for the corner of SH75 and River Street.

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

KMC § 17.125.030.H

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

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

KMC § 17.125.020.A.2 and KMC § 17.125.050

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

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

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

KMC § 17.116.030 (A)

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

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

KMC § 17.116.030 (B)

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

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

KMC § 17.116.030 (C)

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

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

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

KMC § 17.116.030 (D)

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

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

KMC § 17.116.030 (E)

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

City Council Findings: The proposed conditional use is supported by the following goals and policies of the 2014 Comprehensive Plan. As noted herein, the proposed conditional use does not conflict with the policies of the Comprehensive Plan or the basic purposes of Chapter 17.116 Conditional Uses.

2.7 City Council Findings Regarding Applicant’s PUD Bulk Area Waivers:

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

**III.
CONCLUSIONS OF LAW**

The following are the legal principles that provide the basis for the Planning and Zoning Commission’s decision which the Commissioners have applied to the facts presented at the hearing of the above entitled matter:

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

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

IV. ORDER OF DECISION

Based upon the above and foregoing Findings of Fact/Conclusions of Law and good cause appearing from the record, IT IS HEREBY DECIDED THAT THE FOLLOWING ORDERS BE ISSUED:

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

- 1.1 **Condition No. 1 Revised Master Plan West Side Set Back:** Applicant shall revise the Version 4 Master Plan with a redesign of the subject Hotel structure within the same locations on the north, east and south with an additional setback on the west side of four feet four inches (4’-4”) from the property line than is shown in Version 3 Master Plan; and
- 1.2 **Condition No. 2 Emergency Services Conditions:** The following are emergency services and safety terms and conditions:
 - 1.2.1 **Completion of Fire Improvements:** The City Building Official or the City Fire Marshal may withhold building and/or fire inspection approval for any phase of construction until all necessary components of the water and/or fire alarm system sufficient to provide protection for that portion of the Conditionally Granted Project are complete.
 - 1.2.2 **Fire Access During Construction:** Vehicle parking and material storage during Conditionally Granted Project construction shall not restrict or obstruct public streets or access to any building. Emergency vehicle access shall be maintained as required by the Fire Chief. Once construction begins on the second floor and above, 26-foot aerial

ladder truck access is required along one entire side of the building, in a location approved by the Fire Marshal, for evacuation of injured persons from upper floors. All required Fire Lanes, including within 15 feet of fire hydrants, shall be maintained clear and unobstructed at all times.

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

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

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

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

1.3.3 **River Street Encroachment Permit Improvements:** KMC §17.96.030.C states: “The City Council shall approval all permanent encroachments within the City-owned ROW associated with a development Conditionally Granted Project.” Applicant has made application as a part of the Conditionally Granted Project to the City for a license to encroach into the River Street Public Right of Way (“River Street ROW”) with a preference for Civil Plan Option 1, as set forth in the 1/21/20 design update which includes the following improvements: guest pick-up/drop-off, underground utilities, landscaping, street trees with decorative tree grates, public art, bike racks, sidewalks, pedestrian walkway lighting, and street lighting, and related improvements along River Street, pursuant to KMC §12.08.040. Further, the Applicant proposes that all walkway and driving surfaces within this encroachment area be hooked into its private boiler or similar snowmelt system within the Conditionally Granted Project mechanical room. The snow melt system is proposed to be operational every winter after the Hotel Operations begins operations. Final approval of the River Street ROW improvement plans is required and is subject to review and approval by the Ketchum City Council through a separate encroachment agreement. If approved via separate City encroachment process, such order or decision on encroachment,

including any and all conditions thereon, is hereby incorporated by reference and made a part of these findings.

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

1.3.4.1 Given the Applicant’s timeframe for construction and Certificate of Occupancy, subject SH75 work will not be conducted by ITD prior to the Developed Conditionally Granted Project and the commencement of Hotel Operations opening. Given that the City finds that a center turn lane with adequate queuing of approximately fifty to one hundred feet (50’ – 100’) is necessary for the SH75/River Street intersection to retain its current Level of Service (“LOS”) for vehicular car movement, therefore the Applicant shall file with ITD an application for an encroachment permit. The Applicant and City shall work together to attain approval from ITD for the construction and striping of a partial center turn near the River Street intersection north of the Trail Creek bridge. This condition includes the City’s retaining of authority to modify the traffic patterns on State Highway 75, specifically the left turn lane traffic flow, in the event the initial traffic patter instituted by the Idaho Department of Transportation is inadequate. The Applicant shall pay for engineering, traffic control and construction costs for subject SH75 improvements adjacent to the Conditionally Granted Project.

1.3.4.2 Further, to avoid excessive delays for East Bound traffic on River Street, the Applicant shall work with the City and ITD to install appropriate signage and improvements to allow only a right turn onto southbound SH75 at this intersection.

1.3.4.3 **Pedestrian Safety:** To help assure pedestrian safety and consistent with KMC, at the discretion of the Ketchum City Council upon the recommendation of the Ketchum Transportation Authority and the city’s peer review engineering firm (AECOM), the Applicant shall work with the

City and ITD to upgrade the unsignalized SH75 and River Street crossing (on north-side) to include a HAWK system. The circulation design shall meet all standards as specified in KMC §17.96.060.G. Further, as recommended by AECOM, “Before constructing a HAWK signal at River Street, an engineering study should be performed using the guidance provided in section 4F.01 of the MUTCD.”

- 1.3.5 **Letter of Credit:** The Applicant shall provide an irrevocable letter of credit to the City for the aforementioned ROW Improvements affecting both the SH75 and River Street ROWs.
- 1.4 **Condition No. 4 Terrace Walls:** Construction of terrace walls or features of the outdoor dining patio with landscaping and architectural features adjacent to SH75 may be subject to future design review at the time the application is filed for approval at the discretion of the Administrator.
- 1.5 **Condition No. 5 Time Limits:** The following are the time limits that govern this Conditionally Granted Project:
 - 1.5.1 Pursuant to KMC §17.96.090, a design review permit is valid for twelve (12) months from the date of final decision on the associated Findings of Fact, Conclusions of Law, and Decision. The Application for the Conditionally Granted Project building permit must be filed within the time as specified in KMC §17.96.090(A)(2). Any extension shall only be as allowed and specified in KMC §17.96.090.
 - 1.5.2 Unless extended by the Ketchum City Council, a building permit shall be issued within twelve (12) months from the date of the last issued Permit.
 - 1.5.3 A certificate of occupancy shall be issued for the Conditionally Granted Project no later than ~~18~~ 30 months after the building permit is issued unless the time for completion of the Conditionally Granted Project is extended by the City Council.
- 1.6 **Condition No. 6 Certificate of Occupancy:** No Certificate of Occupancy shall be issued for the use and occupancy of this Conditionally Granted Project until the following items are complete:
 - 1.6.1 All Design Review elements of the Conditionally Granted Project have been completed and approved by the Planning & Building Department; and
 - 1.6.2 All occupancies in the Conditionally Granted Project (residential, commercial, etc.) shall meet the Leadership in Energy and Environmental Design (LEED) Silver or equivalent standards consistent with (A) representations of the Applicant and its 1/21/20

design update Sustainability Integration representations (building system / geothermal, high performance building and site, material and product sustainability assessment) and (B) provisions of the City of Ketchum Green Building Code as set forth in KMC §15.20, inclusive of additional recommendations of the Planning & Zoning Commission during Conditionally Granted Project Design Review; and

- 1.6.3 All proposed encroachments within the City's River Street right-of-way have been installed in accordance with the Conditionally Granted Project Master Plan and approved by the City Engineer; and
- 1.6.4 All rooftop mechanical and electrical equipment is fully screened from public vantage points and approved by the Planning & Building Department; and
- 1.6.5 The City's Fire, Utilities, Building, Arborist, Streets, and Planning Departments have conducted final inspections and authorized issuance of Certificate of Occupancy; and
- 1.6.6 Prior to Certificate of Occupancy, a Parking Plan verifying free public use, the thirteen (13) displaced public parking spaces, and other details at the discretion of the City, shall be provided and approved by Ketchum City Council for the Conditionally Granted Project Parking Garage.

- 1.7 **Condition No. 7 City Permit Performance Fees:** The Applicant shall be charged and shall pay the City Permit Performance Fees for the administration of the City's performance of the Permit Conditions Acceptance Development Agreement.
- 1.8 **Condition No. 8 Conditions to Applicant's Obligations:** The Applicant's obligations hereunder are conditioned upon (1) receiving all the referenced approvals from the City and (2) securing financing as provided in the Permit Conditions Acceptance Development Agreement.
- 1.9 **Condition No. 9 Drainage:** Conditionally Granted Project Drainage system plans shall be submitted to the City Engineer for review and approval. Pursuant to KMC §17.96.060.C, all storm water shall be retained on site, drainage improvements constructed shall be equal to the length of the Subject Real Property boundary lines, and all drainage facilities shall be constructed per City standards. All drainage improvements shall meet the applicable design criteria as specified in KMC §12.04.030.
- 1.10 **Condition No. 10 Utilities Plan:** The Applicant shall submit a Conditionally Granted Project Utility Plan indicating the location and size of water and sewer mains as well as gas, electric, TV and phone services (KMC §17.96.040.C.2c & KMC §17.96.060.D.1-3). Per KMC §17.96.060.D.2, utilities shall be located

underground and utility, power, and communications lines within the Conditionally Granted Project Site should be concealed from public view.

- 1.11 **Condition No. 11 Employee Housing Units:** The Applicant shall either maintain or enter into a master lease with the Hotel Operator for apartment units within the Developed Conditionally Granted Project containing not less than 23 beds, as materially set forth in the 1/21/21 employee housing plan design update, and thereby fulfill and satisfy the employee housing obligation of this Conditionally Granted Project consistent with the KMC.
- 1.11.1 Notwithstanding, consistent with the recommendations of the BCHA and the Commission, the Applicant may as part of the Design Review process seek to amend the employee housing plan configurations to have fewer shared bedroom configurations, improved bathroom to bed ratio, and more individual or couple employee housing suites; and
- 1.11.2 All leased apartment units must be subleased, assigned or otherwise made available to employees of the Hotel Operator on terms and conditions that emphasize the retention of a local workforce consistent with Blaine County Housing Authority (BCHA) community housing guidelines, and providing employee housing at a price point that is commensurate with its employees' ability to pay. The Applicant may enter into a master lease with the Hotel Operator for apartment units containing twenty-three (23) beds and thereby fulfill and satisfy the employee housing obligation of this Conditionally Granted Project consistent with KMC §17.124.050.
- 1.11.3 All leased apartment units must be subleased, assigned or otherwise made available to employees of the Hotel Operator on terms and conditions determined by it in the exercise of its discretion consistent with the goals of retaining a local workforce and adhering to the BCHA community housing guidelines.
- 1.11.4 Apartment leases and the management of this covenant of the developer to provide employee housing in the hotel are subject to annual recertification audits by the City and / or its designee. A fee established by resolution of the City may be charged for this service and associated compliance and monitoring activities.
- 1.12 **Condition No. 12 Hotel Operations:** The core feature of the Conditionally Granted Project is a hotel building operated at an industry acknowledged Four Star Hotel Operations Standard. Adherence to a Four-Star Hotel Operations Standard, particularly during Peak Travel Season, affects the sufficiency of on-site parking and traffic circulation in the immediate vicinity of the Conditionally Granted Project and is a requirement of the occupancy and use of the Developed Conditionally Granted Project.

- 1.13 **Condition No. 13 Lower Parking Demand and Traffic Impacts:** To assure that the Applicant and/or Hotel Operator provides guest shuttle, employee shuttle, car share program, transit passes, carpool program, alternative transportation (such as bike storage for employees), and strict monitoring and management of deliveries and garbage pick-up, as set forth in §4.13, the Applicant and/or Hotel Operator shall include in the irrevocable letter of credit a Lower Parking Demand and Traffic Impacts amount of fifty thousand dollars (\$50,000) for a period of not greater than five (5) years upon which the City Council may request a draw to cover the City's costs in the mitigation of lowering traffic impacts and/or parking demands associated with the Applicant and/or Hotel Operator's failure to comply.
- 1.14 **Condition No. 14 Parking & Loading:** The Applicant shall present a Conditionally Granted Project Parking Plan for review and consideration by the Commission as part of its full Design Review Submittal. Prior to Certificate of Occupancy, a Conditionally Granted Project Parking Plan verifying public use, validation processes for determining parking charges (if any) for the public and the thirteen (13) displaced public parking spaces, and other details at the discretion of the City, shall be provided and approved by Ketchum City Council for the Conditionally Granted Project Parking Garage. The Conditionally Granted Project is required to have a minimum of eighty-four (84) parking spaces in the underground parking garage. Of these spaces, 53 spaces are required for the Four-Star Hotel Operations Standard, 18 spaces are required for employee housing, and 13 are required for the public to mitigate displaced public parking spaces from River Street. Of this total, not less than:
- 1.14.1 Eighteen (18) stalls shall be allocated for employee housing, inclusive of at least one (1) car share vehicle; and
 - 1.14.2 Thirteen (13) underground parking stalls will be available to the general public at no charge to the public while visiting the property or using the conference center, spa, restaurant and bar. Subject to city final approval, a validation system may be employed by the Applicant and/or Hotel Operator with regard to the monitoring of public use of the thirteen, free-of-charge, underground public spaces located in the Conditionally Granted Project Parking Garage; and
 - 1.14.3 Guest shuttle, employee shuttle, car share program, transit passes, and bike storage shall be provided as a part of the Four-Star Hotel Operations Standard.
 - 1.14.4 During and upon completion of the construction of the Conditionally Granted Project, delivery vehicles associated with the Conditionally Granted Project shall not interfere with the regular flow of traffic surrounding the Conditionally Granted Project Site. Delivery vehicles

shall not block the regular flow of traffic along River Street. Accordingly, deliveries will be made (a) preferably with single-unit trucks, not large tractor-trailer trucks; (b) during off-peak hours; and, (c) with hand trucks from the designated on-street loading zone. The Applicant shall strictly monitor and manage deliveries and garbage pick-up to ensure these activities do not occur during peak traffic periods, and that they do not occur simultaneously.

- 1.15 **Condition No. 15 Local Option Tax:** The Conditionally Granted Project shall be subject to the provisions of KMC Section 3.12, relating to local option taxes.
- 1.15.1 **Beverage, Food & Retail Sales:** All retail, food and beverage sales on the Conditionally Granted Project Site and in the Conditionally Granted Project shall be subject to the local option tax.
 - 1.15.2 **Building Materials:** The Conditionally Granted Project and Conditionally Granted Project Site shall be subject to the local option tax on building materials.
 - 1.15.3 **Employee Housing:** The obligation to pay local option tax shall not apply to the rental of employee housing units.
 - 1.15.4 **Future Amendments to LOT Ordinance:** Any amendments to or repeal of Ketchum's Local Option Tax Ordinance and/or Idaho law relating to such local option taxes shall also apply to and modify this Section to the extent of such amendment(s) and/or repeal.
 - 1.15.5 **Hotel Rooms:** All hotel rentals in the Conditionally Granted Project Four-Star Hotel Operations Standard shall be subject to the local option tax, regardless of who makes the reservation, including independent third-party travel agencies or other independent parties.
 - 1.15.6 **Short-term rentals:** All non-hotel rentals, if any, shall be subject to the local option tax on short-term rentals.
 - 1.15.7 **Marriott Rewards:** Reward stay bookings for any evening shall be assigned a room rate in accordance with the Idaho Administrative Procedures Act (IDAPA) and similar Idaho State Tax Commission rules and regulations. In all cases, subject reward stay booking shall be tracked as room revenue and charged the applicable local option tax rate. Local option taxes shall be remitted for all stays.
- 1.16 **Condition No. 16 Waivers:** Setbacks, FAR, and height for the Conditionally Granted Project shall comply with final Design Review for the Conditionally Granted Project as approved by the City. The final plans once approved and integrated into the Permit Conditions Acceptance Development Agreement by the Ketchum City Council illustrate areas where buildings may exceed height

and bulk limitations. As conditioned herein above, Ketchum acknowledges the zoning and subdivision waivers set forth in the PUD Findings.

- 1.17 **Condition No. 17 City Department Requirements:** All requirements of the Fire, Utility, Building, Planning and Public Works departments of the City of Ketchum shall be met. All public improvements shall meet the requirements of the Public Works Department.
- 1.18 **Condition No. 18 Compliance with the Applicable Laws and Ordinances:** All other provisions of Ketchum Municipal Code, Chapters 16 and 17 and all applicable ordinances rules and regulations of the City and other governmental entities having jurisdiction shall be complied with by the Conditionally Granted Project.
- 1.19 **Condition No. 19 Building Permit Requirements:** The building permit for the Conditionally Granted Project shall not be issued until:
 - 1.19.1 The Conditionally Granted Project is subject to completion assurances and a letter of credit, which shall be detailed by the City Attorney and Finance Director and approved by the Ketchum City Council as provided in the Permit Conditions Acceptance Development Agreement governing this Conditionally Granted Project; and
 - 1.19.2 The Conditionally Granted Project shall pay the plan check and building permit fees that are in effect at the time of plan check and building permit submittal and all fees required by law prior to and for the issuance of a building permit.
 - 1.19.3 Storm Water Management Pollution Prevention Plan (“SWPPP”) in accordance with local, state and federal laws and regulations is in place for the Conditionally Granted Project; and
 - 1.19.4 A detailed Conditionally Granted Project Construction Staging and Mitigation Plan which is consistent with the standards specified in Chapter 15.06 of KMC, including provisions for off-site parking for contractors, sub-contractors, and other trades associated with the construction of the Conditionally Granted Project, off-site storage of bulk materials, and required right of way encroachments during construction, shall be submitted and approved by the City Planning and Building Administrator prior to building permit approval.
 - 1.19.5 The Applicant has secured a will serve letter from Idaho, Clear Creek Disposal and other applicable public and private utility providers prior to issuance of a Building Permit.
 - 1.19.6 The River Street Encroachment Permit encroachment agreement shall be obtained.

1.19.7 The Applicant shall cause to be issued in irrevocable letter of credit for the aforementioned Public ROW Improvements affecting both the SH75 and River Street ROWs. The amount of the financial guarantee shall be at 150% of engineering estimates for the guaranteed improvements. Partial and/or full release(s) of the letter of credit may be made upon: (i) Acceptance of subject River Street ROW improvements by the City; (ii) formal commencement of work by ITD of the SH75 ROW improvements adjacent the Subject Real Property and/or upon complete installation of the SH75 ROW improvements adjacent the Property.

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

1.21 **Condition No. 21 Design Review:** At the time of Design Review the applicant shall be required to address venting of mechanicals that vent toward the western property line. Applicant shall be required to provide detail related to how they are preventing impact to the adjacent property owner.

Order No. 2 Not a Final Action: These Findings of Fact, Conclusions of Law and Order of Decision are not a final action of the City Council on this Planned Unit Development Conditional Use Permit and Waiver Application until the following conditions subsequent have occurred:

- 2.1 There is a final action by the City upon the Design Review of the PUDCUP; and
- 2.2 The City Council has taken final action upon the Permit Acceptance Agreement.

Adopted this 16TH day of February, 2021.

City Council of the City of Ketchum

By: _____
Neil Bradshaw, Mayor

Notice to Applicant

The subject Planned Unit Development/Conditional Use Permit and Waiver Application concerns a site-specific land use request and therefore this notice is provided to the applicant pursuant to I.C. § 67-6535 (3) of the applicant's right to request a regulatory taking analysis pursuant to section 67-8003, Idaho Code.

W:\Work\K\Ketchum, City of 24892\Gateway Hotel .015\AGENCY RECORD\FCO On Remand Drafts\2021-02-16 19-063 FCO by KCC PUD Findings on remand - lh 2-05-2021.docx

Attachment E

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

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

THE ABOVE ENTITLED MATTER coming before the Planning and Zoning Commission of the City of Ketchum (the "Commission"), on the 28th day of March, 2023, pursuant to the Applicant's request for an amendment of the Applicant's Planned Unit Development/ Conditional Use Permit No. P19-063 (the "PUD/CUP Permit") at page 29, Condition No. 5 paragraph 1.5.3 by an increase of the time period for a certificate of the occupancy to be issued for the Project after the issuance of a building permit from 18 months to 30 months (the "Requested Amendment"). The Applicant's Requested Amendment is a part of a renegotiated Permit Conditions Acceptance Development Agreement which is also being heard simultaneously by the Commission. The Commission having reviewed the Requested Amendment, and the information provided at the hearing on this matter; and having reviewed the renegotiated Permit Conditions Acceptance Development Agreement, and the information provided at that hearing, does hereby make and set forth the Record of Proceedings, Findings of Fact, Conclusions of Law, and Recommendation to the City Council as follows:

SECTION 1

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

Notice of Hearing: Notice of this hearing was:

- Published March 8, 2023 in the Idaho Mountain Express, the City's official newspaper of general circulation; and
- Mailed on March 8, 2023 to the property owners within 300 feet of the subject real property and affected agencies; and
- Posted on the subject real property on March 21, 2023; and
- Posted on the City's website on the March 13, 2023.

Exhibits

	<i>DESCRIPTION OF EVIDENCE</i>	<i>Withdrawn</i>	<i>Refused</i>	<i>Admitted</i>
1	<p>Staff Report dated March 28, 2023 with Attachments A-H the following additional attachments:</p> <p>Attachments:</p> <p>A: June 14, 2022 staff report for Design Review Permit P22-028</p> <p>B: Findings of Fact, Conclusions of Law and Conditions of Approval for Design Review Permit P22-028 (the "Findings") approved June 14, 2022 together with Findings Attachment A: May 11, 2022 Memo Outlining Design Changes in Response to November 20, 2021 Pre-Application Design Review Meeting; and Findings; Attachment B: May 27, 2022 Design Review Plans.</p> <p>C: 3-2-23 Permit Conditions Acceptance Development Agreement.</p> <p>D: Proposed amendment to PUD/CUP P19-63</p>			X
2	Noticing Checklist/Certification			X

PERSONS TESTIFYING and COMMENT:

Staff Report: Suzanne Frick, presented and gave the City staff report with explanation and stood for questions from the Planning and Zoning Commissioners.

Public Comment: Scott Levy had questions about traffic issues related to Highway 75.

Written Comment Received: Two written comments were received prior to the distribution of the Planning and Zoning Commission packet. Those comments are provided in Attachment D of the Staff Report.

DECISION and RECOMMENDATION

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

II.

FINDINGS OF FACT and CONCLUSIONS OF LAW

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

2.1 Findings Regarding Notice:

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

2.2 Findings Regarding Applications Filed:

2.2.1 PEG Ketchum Hotel, LLC has submitted and completed an application for an amendment of the Applicant's Planned Unit Development/ Conditional Use Permit No. P19-063 (the "PUD/CUP Permit") at page 29, Condition No. 5 paragraph 1.5.3 by an increase of the time period for a certificate of the occupancy to be issued for their hotel project after the issuance of a building permit from 18 months to 30 months.

2.2.2 The Applicant's Requested Amendment is a part of a renegotiated Permit Conditions Acceptance Development Agreement which was also heard simultaneously by the Commission.

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

The Commission having reviewed the written comment and having listened to the Staff Report and comments and the comments presented by the public summarizes the same as follows:

- There was no objection to the Amendment Request; and
- The Staff recommended approval of the Amendment Request to this Permit would align with the renegotiated Permits Conditions Acceptance Development Agreement which this Commission is recommending approval to the City Council subject to three modifications unrelated to this Amendment Request.

2.4 PUD Ordinance Standards and Planning and Zoning Commission Evaluation Compliance Analysis and Findings:

KMC § 16.08.080.0

The development will be completed within a reasonable time.

The Commission finds this standard is met; provided that the Permit Conditions Acceptance Development Agreement is entered into between the Applicant and City Council for the Project prior to the issuance of any Building Permit for the construction of the Project.

III. CONCLUSIONS OF LAW

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

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

- 3.5.3 Any person wishing to develop a planned unit development shall comply with the requirements of chapter 8 of Title 16 KMC in addition to the zoning, subdivision and other applicable laws, ordinances, regulations and rules, subject to any modification or waiver granted as part of the planned unit development (PUD) conditional use permit; and
- 3.5.4 The Planning and Zoning Commission can make recommendations and the City Council has authority to grant waivers or deferrals of any of the requirements of sections 16.08.070 and 16.08.080 KMC on a case-by-case basis when the waiver or deferral will not be detrimental to the public welfare, health and safety nor injurious to property owners in the immediate area; and
- 3.5.5 The Amendment Request of the Planned Unit Development and Conditional Use Permit meets the standards of approval under Title 16 and Title 17 KMC, subject to conditions of approval.

IV. DECISION AND RECOMMENDATION TO THE CITY COUNCIL

Based upon the above and foregoing Findings of Fact/Conclusions of Law and good cause appearing from the record, IT IS HEREBY RECOMMENDED TO THE CITY COUNCIL THAT:

Recommendation No. 1: PEG Ketchum Hotel, LLC's Application for an amendment of the Applicant's Planned Unit Development/ Conditional Use Permit No. P19-063 (the "PUD/CUP Permit") at page 29, Condition No. 5 paragraph 1.5.3, by an increase of the time period for a certificate of the occupancy to be issued for the Project after the issuance of a building permit from 18 months to 30 months, be granted subject to and contingent upon the following terms and conditions:

Condition No. 1 Permits Conditions Acceptance Development Agreement: That the Permit Conditions Acceptance Development Agreement (with the Commission's recommended modifications) has been entered into between the Applicant and City Council for the hotel project prior to the issuance of any Building Permit for the construction of the hotel project.

Findings of Fact **adopted** this 11th day of April, 2023.



Neil Morrow, *Chairman*
City of Ketchum Planning and Zoning
Commission