

City of Ketchum, Idaho

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September 11, 2013

Mayor Hall and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Hall and City Councilors:

Hotel Ketchum Development Agreement Extension Request

Attachments:

- Attachment 1: October 6, 2008 Hotel Ketchum Findings of Fact
- Attachment 2: November 17, 2008 Hotel Ketchum Development Agreement
- Attachment 3: March 15, 2010 Amended Development Agreement
- Attachment 4: 2012 Second Amended Development Agreement
- Attachment 5: Extension Request Letter dated August 19, 2013 and letter dated September 10, 2013 from Jack Bariteau, Hotel Ketchum
- Attachment 6: Presentation from Scott Fuller, EB-5 United
- Attachment 7: "Jay Peak Ski Resort in Vermont Attracts Foreign Investors Through EB-5 Funding."

Introduction/History

The Hotel Ketchum PUD was originally approved on November 17, 2008. The project consists of a 73-room hotel, 6 residential condominiums, conference facilities, spa facilities and retail space. The project is located at 200 S. Main Street and is subject to both the conditions of the PUD approval and a Development Agreement. Included with the original PUD conditions was an approval period of 24 months (Attachment 1). An extension process for this expiration date was built into the adopted Development Agreement (Attachment 2).

An extension to the approval timeline for the Hotel Ketchum PUD was granted by the City Council in February 2010 (executed March 15, 2010). The Council granted an additional two (2) years, placing the expiration date for the PUD on October 6, 2012. This extension allowed for an additional one-year request, as outlined in Section 16 of the Amendment to the Hotel Ketchum Development Agreement (Attachment 3), based on several criteria outlined in the document. This request was granted by the Council on July 2, 2012.

Current Report

The project owner and developer, Jack Bariteau, is proposing a different approach to funding and developing Hotel Ketchum. This concept involves a federal program called EB-5. The EB-5 program was created by the federal government 25 years ago as a way of creating jobs in the United States. The basic tenant of the program is that foreign nationals may obtain green cards in exchange for investing money in projects in the United States. The state of Vermont is an example of EB-5 being used in resort areas. More information on the Vermont program is found at : <http://eb5vermont.com/>, and in Attachment 7, "Jay Peak Ski Resort in Vermont Attracts Foreign Investors through EB-5 Funding."

The concept of EB-5 has been discussed here in Ketchum with regards to a variety of projects in years past, but is the program is extremely complicated, and the conversations were never fully developed. Scott Fuller is an EB-5 professional, and would be partnering with Jack Bariteau to use EB-5 funding for Hotel Ketchum.

Mr. Fuller has developed four hotels under the EB-5 model, with a fifth in the works. Two of these five hotels are described in the presentation materials found in Attachment 6 of this report.

Due to the complexity of the EB-5 program, it is anticipated that one full year is needed to develop the program, and another year to secure all of the funding for the hotel. Therefore the team of Jack Bariteau and Scott Fuller are requesting a two-year extension for Hotel Ketchum, as explained in the two letters found in Attachment 5.

Financial Requirement/Impact

The Fiscal Analysis for the Hotel Ketchum prepared by Caplan and Associates in June 2008 estimated annual net revenue at full build-out associated with this project of \$416,442, which is a combination of municipal and urban renewal taxes, Local Option Tax revenue, franchise fees and state shared revenues. One-time revenues associated with building permit, development impact fees and Local Option Tax on building materials was estimated at \$750,500. These revenues could be delayed by the change in the estimated date of construction. However, these delays are due to the outside economic and lending climate, not the dates established in the Development Agreement.

The EB-5 program will create additional economic opportunities for the City of Ketchum. Mr. Fuller will be prepared to address some of these opportunities if the Council so desires.

Recommendations

I respectfully recommend the City Council move to direct staff to prepare a third amendment to the Hotel Ketchum Development Agreement to modify the PUD

approval timeline for two additional years, until October 6, 2015 based on the EB-5 program requirements.

Recommended Motion: “I move to direct staff to prepare a third amendment to the Hotel Ketchum Development Agreement to modify the PUD approval timeline for two additional years, until October 6, 2015.”

Sincerely,

Lisa Horowitz
Community and Economic Development Director

BEFORE THE KETCHUM CITY COUNCIL

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

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

FINDINGS OF FACT

A. APPLICATION SUMMARY.

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

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

LEGAL DESCRIPTION: Lot 2, Block 83, Ketchum Townsite

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

ZONING: Tourist (T)

OVERLAY DISTRICT: Floodplain Management Overlay (FP)

COMP PLAN
LAND USE

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

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

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

PUD FILE: CUP 08-007

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

B. NOTICE OF PUBLIC HEARING OF THE CITY COUNCIL.

August 12, 2008 – Public hearing and site visit.

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

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

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

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

C. COMPANION APPLICATIONS

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

D. STUDIES SUBMITTED

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

E. RELATED STUDIES

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

F. PROJECT DESCRIPTION

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

Table 1: Proposed Hotel Ketchum Square Footage

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

Table 2: Hotel Matrix

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

Table 3: Waiver Requests, Hotel Ketchum

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

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

Table 4: Required Parking, Hotel Ketchum

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

Table 4.1 Proposed Parking

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

Table 5: Miscellaneous Code Requirements

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

G. STAFF REPORT ATTACHMENTS

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

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

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

H. KETCHUM CITY CODE STANDARDS

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

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

Title 17, Chapter 17.52 (Tourist District)

17.52.010. H.3.

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

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

Finding:

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

Conclusion:

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

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

Finding:

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

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

Conclusion:

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

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

Finding:

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

Conclusion:

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

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

Finding:

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

Conclusion:

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

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

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

Finding:

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

Table 6: City of Ketchum Workforce Housing Requirements

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

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

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

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

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

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

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

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

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

Table 7: Minimum Livable Square Footage for Each Employee Housing

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

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

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

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

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

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

Conclusion:

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

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

Finding:

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

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

Conclusion:

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

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

Finding:

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

Conclusion:

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

Title 16, Chapter 16.08 (Planned Unit Developments)

16.08.080(A) STANDARDS:

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

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

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

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

Waiver to three acre minimum lot size is requested.

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

Conclusion:

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

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

Finding:

The present uses of the surrounding area include:

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

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

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

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

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

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

Conclusion:

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

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

Finding:

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

Conclusion:

This standard is not applicable.

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

Finding:

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

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

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

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

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

Table 8: Approximate Surrounding Area Floor Area Ratios:

Density	Tourist (T)	General Residential	Community Core
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Allowed		(GR-L)	(CC)
Density allowed per zoning district	0.5 FAR per lot (approx. 21 units per 1 acre site)	10.89 units per acre	1.0 FAR; 2.25 FAR w/CH
Current Density of surrounding area	Trail Creek Crossings: 0.8 FAR La Residence Condos: 0.49 FAR Sotheby's: 0.28 FAR	200 S. Leadville Townhomes: approx 8 units/acre (.59 FAR)	Kentwood Lodge: 1.14 FAR Leadville Residences: 1.19 FAR

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

Table 9: Chart of Surrounding Projects

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

*Note: Figures shown are approximate.

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

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

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

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

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

Conclusion:

The proposed development is in harmony with the surrounding area.

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

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

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

Finding:

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

Conclusion:

This standard is not applicable.

- 6. That the proposed vehicular and nonmotorized transportation system:**
- a. **Is adequate to carry anticipated traffic consistent with existing and future development of surrounding properties;**

Finding:

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

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

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

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

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

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

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

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

All street slope and drainage issues must be resolved.

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

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

Finding:

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

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

Finding:

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

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

Civil sheet C3 shows the proposed motor court and sidewalks.

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

Finding:

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

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

Finding:

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

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

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

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

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

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

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

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

Finding:

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

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

These physical separation buffers are shown on Civil Sheet C3.

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

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

Finding:

N/A – no new roadways are proposed.

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

Finding:

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

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

Conclusion:

Upon compliance with conditions of approval, the proposed project:

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

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

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

Finding:

Comprehensive Plan:

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

Zoning Ordinance:

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

Subdivision Ordinance:

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

Demolition Ordinance:

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

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

Finding:

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

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

Finding:

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

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

Finding:

N/A – a single building is proposed.

Conclusion:

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

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

Finding:

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

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

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

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

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

Conclusion:

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

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

Finding:

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

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

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

These buffer features are shown on Sheets L1 and L3.

Conclusion:

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

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

Finding:

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

Conclusion:

This standard is not applicable.

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

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

Finding:

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

Conclusion:

Adequate and useable open space is provided.

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

Finding:

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

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

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

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

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

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

Summer (June 21)

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

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

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

Winter (December 21)

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

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

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

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

Conclusion:

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

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

Finding:

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

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

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

No day care is proposed.

Conclusion:

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

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

Finding:

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

TABLE 10: Special Development Objectives

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

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

One time sources:

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

On-going sources:

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

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

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

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

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

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

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

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

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

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

Conclusion:

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

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

Finding:

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

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

17.116.080 Term of Permits.

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

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

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

Conclusion:

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

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

Finding:

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

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

Conclusion:

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

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

Finding:

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

Demolition Ordinance:

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

Subdivision Ordinance:

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

Zoning Ordinance:

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

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

Conclusion:

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

CONCLUSIONS OF LAW

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

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

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

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

DECISION

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

1. A construction staging and mitigation plan, including at a minimum provisions for off-site employee parking, off-site storage of bulk materials, and required right-of-way encroachments during construction, shall be submitted and approved by the City Council within 8 months from date of final PUD approval. This plan shall be an exhibit to an amendment to the PUD agreement and recorded prior to issuance of a building permit.
2. The applicant shall contribute a pro rata share based on total linear feet to the underground relocation of overhead utility lines in the vicinity of the project. The pro rata share shall be based on the frontage of the subject property along Main Street, Leadville Avenue, and River Street. The applicant agrees to collaborate with the City and with Idaho Power on the timing and the budget for undergrounding, and these items will be incorporated into the Development Agreement, with a specific payment solution brought back to the City Council prior to construction.
3. The proposed encroachments into the public street rights-of-way shall be allowed up to but not exceeding the widths presented on Sheet C3 dated April 8, 2008.
4. Sidewalks shall be a minimum width of:
 - 6 feet on Main Street
 - as shown on Sheet C3 dated April 8, 2008, but not less than 5 feet on River Street
 - 5 feet on Leadville Avenue

5. Right-of-way encroachments including retaining walls and landscape beds, and curblines alignment, slope and drainage, and ADA design issues shall be resolved to the satisfaction of the City Engineer and ITD prior to the issuance of a building permit. Final designs shall be approved by the City Council upon recommendation by the P&Z Commission. Encroachment permits and/or licenses shall be obtained from the City as required.
6. The heated asphalt shall be extended to include the entire River Street/Leadville Avenue intersection and shall be extended to the south on Leadville Avenue as required to accommodate drainage and vehicular traction. This and related drainage issues shall be resolved to the satisfaction of the City Engineer and City Street Superintendent.
7. All water, sewer and other utility main lines, service lines, manholes and fire hydrants shall be maintained or improved as required by the Ketchum Water and Sewer Department.
8. The proposed development shall be completed as set forth in the design review and CUP approvals and the Planned Unit Development agreement. The PUD Development Agreement shall include, but not be limited to, provisions for the following:
 - Community/workforce housing- as required in condition #9, below.
 - Contribution to underground relocation of overhead utility lines.
 - Public pedestrian amenities to be included within adjacent street rights-of-way.
 - Development of a Construction Mitigation Plan
 - Minimum access for the public to the observatory.
9. The applicant shall provide a detailed Employee Housing Plan, which provides for housing for 18 employees on a site acceptable to the Ketchum City Council, and within Ketchum City limits.

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

- a) Provide salary/hourly wages (2008 dollars) for the various income categories of employees.
- b) The expected number of each level of employee that is intended to be served by the employee housing units.
- c) Which employee category will be served by which type/size of units.
- d) Provide information on anticipated rental rates (in 2008 dollars) or subsidized and/or free rent to employees; will utilities and homeowners dues (if any) be included in proposed rates.
- e) Establishment of maximum occupancy per unit type (i.e. 1 person per 1 bedroom unit; 2 persons per 2 bedroom units).
- f) Location of units to be within Ketchum City limits.

- g) Provide a matrix on breakdowns of the different types of units (1BD; square footage; total number of units; anticipated rent, etc.)
- h) Create a priority for occupancy program of these units; (i.e. first availability employees that are full-time, secondly to seasonal employees, and third to persons that are verified to be working in the City of Ketchum.
- i) What units will be available and how will the pool of units available be determined.
- j) What minimum standards will be used to determine employee eligibility to live in the employee housing; is full-time status required for employees to qualify for the employee housing and what constitutes full-time status.
- k) How will overflow of demand of units by employees be handled; will there be a priority system.
- l) Provide information on housing families (with children) and/or married couples.

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

The following information shall be provided to the City:

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

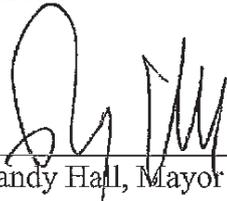
The Employee Housing Plan shall be submitted and approved by the City Council prior to issuance of a building permit. This plan shall be an exhibit to an amendment to the PUD agreement and recorded prior to issuance of a building permit.

All of the required Employee Housing shall be available prior to the issuance of any Certificates of Occupancy for the Hotel, or any other uses in the hotel.

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

13. This PUD CUP shall be valid for a period of two (2) years from the date of approval of Findings of Fact, Conclusions of Law and Decision by the City Council. An application for building permit shall be submitted within 2 years, unless extended by the City Council upon written request by the applicant.
14. The setback for the southernmost penthouse condominium unit adjacent to Leadville Avenue shall be increased to ten feet (10') either by reducing overhangs or other means.
15. Prior to issuance of any building permits, a plan shall be brought back to the City Council showing a third lane (through lane) instead of a dedicated right turn lane on Highway 75/Main Street, including consultation with the Idaho Transportation Department.
16. A PUD - Conditional Use Permit shall be issued in writing. The issuance thereof shall not be considered a binding precedent for the issuance of other conditional use permits. A conditional use permit is not transferable from one parcel of land to another.
17. Failure to comply with any condition or term of said permit shall cause said permit to be void ab initio. A PUD - Conditional Use Permit may be revoked at any time for violation of the permit or any condition thereof by motion of the City Council after a due process hearing upon ten (10) days written notice to the holder of the PUD - Conditional Use Permit.
18. All projects receiving a PUD - Conditional Use Permit, as a condition of said permit, shall be required to submit and receive design review approval for each structure to be constructed within the project prior to making application for a building permit irrespective of what zoning district or districts within which the project is located.

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



Randy Hall, Mayor

EXHIBIT "A"

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

Architectural:

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

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

Landscape:

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

Civil:

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

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Edward A. Lawson
Lawson & Laski, PLLC
675 Sun Valley Road, Suite A
Post Office Box 3310
Ketchum, ID 83340

(Space above for recorder's stamp)

DEVELOPMENT AGREEMENT

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

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of the 17th day of November, 2008, by and between the CITY OF KETCHUM, an Idaho municipal corporation ("City") and TRAIL CREEK FUND, LLC, a California limited liability company ("Owner").

RECITALS

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

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

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

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

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

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

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

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

AGREEMENT

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

1. Incorporation of Recitals. The Recitals set forth above are hereby incorporated into and made an integral part of this Agreement.
2. Incorporation of Related Agreements, Approvals, Plans, Permits and other documents. The following agreements, approvals, plans, permits and other documents are hereby incorporated into and made an integral part of this Agreement by reference as if restated herein in full:
 - PUD CUP Findings of Fact, Conclusions of Law and Decision, including all conditions of approval, dated November 17, 2008. Conditions of approval are excerpted in Exhibit A.
 - PUD CUP No. 08-007 dated November 17, 2008.
 - PUD Development Plans referenced in the PUD CUP Findings of Fact, Conclusions of Law and Decision.
 - Design Review Findings of Fact, Conclusions of Law and Decision, including all conditions of approval, dated September 8, 2008
 - Site Plan No. L-1 dated January 10, showing both on-site and off-site improvements, which off-site improvements may be amended to meet final right-of-way improvement design approvals.

Any failure to comply with the terms and conditions of any of the above-referenced agreements, approvals, plans, permits and other documents shall constitute a breach of this Agreement.

3. List of Uses to be Allowed (Hotel Uses and Restrictions). Owner may use the Property as a "Hotel" as defined in KMC 17.08.020 as that section existed at the time of PUD application and for private residential uses. The following units and any storage, parking or limited common area associated with such units may be used as either private residential units or as a "Hotel": Units 1 through 6, located on the fourth floor. All other units and space on the Property and in the improvements constructed thereon shall be used exclusively as a "Hotel". The following are acknowledged as allowable accessory uses of the Property: conference facilities, restaurant and bar, retail and spa/salon uses, and an observatory on the fifth floor. Owner agrees that this Agreement specifically allows only the uses set forth above and no

others. Owner may not change the uses of the Property and improvements thereon specified in this Agreement without the prior written approval of City which may be withheld for any reason whatsoever, or no reason. Any changes or expansions in the uses permitted by this Agreement without such prior written consent and formal modification of this Agreement as allowed by applicable law shall constitute a breach of this Agreement.

4. Permitted Square Footage and Building Location. Owner shall construct improvements on the Property in the locations depicted in the Design Review Approval. The gross square footage of the improvements shall not be greater than 149,325 square feet distributed as set forth in the Design Review Approval.
5. Identification of Development Standards & Right-of-Way Improvements. Owner shall develop the Property pursuant to the standards set forth in Title 15 of the Ketchum Municipal Code “Buildings and Construction” as such standards may be modified from time to time. Owner shall develop the public rights-of-way adjacent to the Property pursuant to the Site Plan and pursuant to the standards set forth in Title 12 of the Ketchum Municipal Code “Streets, Sidewalks, Public Utility Easements and Public Places” as such standards may be modified from time to time. Improvements within the public rights-of-way that shall be dedicated to the public include:
 - Pedestrian amenities such as bike racks, benches and other amenities provided within the Gateway Plaza area at the intersection of Main Street and River Street.
 - Public art.
 - Trees.
 - Street lights.

Improvements within the public rights-of-way that shall remain in the ownership of the Owner and be subject to a Right-of-Way Encroachment License include:

- Heated sidewalks within the Main Street, River Street and Leadville Avenue rights-of-way.
 - Heated asphalt or other paving within the River Street and Leadville Avenue rights-of-way.
 - Retaining walls.
 - Planter beds and contents within Main Street, River Street and Leadville Avenue rights-of-way.
 - Porte cochere and any other structural elements of the hotel building that project into or over the public right-of-way.
 - Curb and gutter.
6. The size and location of the planned Gateway “plaza” area for the property, within the extended sidewalk within the Main Street/River Street intersection rights-of-way, as shown on Civil Sheet C3, are acceptable. The applicant shall work with City Community and Economic Development staff and other entities as determined by the Community and Economic Development staff to design the entire intersection, including public/pedestrian amenities. Said design shall be completed and approved by the City Council prior to issuance of building permit and installed prior to the issuance of any Certificate of Occupancy.

7. Construction and Completion Schedule. The improvements shall be constructed and completed pursuant to the schedule set forth in the Construction Mitigation Plan, which shall be submitted by the Owner and approved by the City no later than June 27, 2009. The approved Construction Mitigation Plan shall be recorded as an amendment to this Agreement prior to issuance of a building permit.
8. Infrastructure Improvements. Owner shall engineer, construct, and otherwise provide, at its sole expense, improvements, facilities and services (public and private) as provided in the PUD Conditional Use Permit and this Agreement:
- 8.1 Owner requests water and sewer service from Ketchum to the PUD Property and Ketchum hereby agrees to provide such water and sewer service at the same fees as charged to equivalent users of Ketchum.
- 8.2 All utilities, including water, sewer, gas, cable, phone and electric shall be installed underground within the street rights-of-way. Detailed engineered construction drawings and specifications for construction of such improvements shall be prepared by Owner and approved by Ketchum prior to construction. Prior to acceptance of any such improvements to be dedicated to Ketchum, Ketchum shall inspect and approve same and Owner shall provide Ketchum with "as built" drawings thereof. Owner hereby warrants that to the best of its knowledge the "as built drawings" are substantially correct and Owner shall, for a period of one year from Ketchum's receipt of said drawings, be liable and hold Ketchum harmless for any damage which may result from material errors in said drawings after acceptance by Ketchum of said utilities unless such damage is caused directly or indirectly by the acts or omissions of Ketchum, or its agents or contractors.
9. Design Review. The improvements on the Property shall be built exclusively as permitted under the Design Review Approval. Any development of any portion of the Property substantially inconsistent with this Agreement or the Design Review Approval, as determined by the Planning and Zoning Administrator, without modification of the Design Review Approval, shall constitute a breach of this Agreement by Owner.
10. Phasing. Owner shall not phase the development of the Property; therefore, no security agreement shall be required for any such phasing.
11. Public Access to the Observatory. The observatory has been accepted as a public amenity and as such shall be open to the public a reasonable number of hours. The applicant shall make a proposal to the City Council regarding the operation of the observatory, to be approved by the City Council prior to issuance of any Certificate of Occupancy. The operation of the observatory is subject to approval and adjustment periodically as determined by Owner and the City Council.
12. Employee Housing. The Owner agrees to provide Employee Housing as provided by KMC 17.52.010.H.3 and as set forth in the Employee Housing Plan, which shall be submitted by the Owner and approved by the City prior to issuance of a building permit. The Employee

Housing Plan shall be recorded as an amendment to this Agreement prior to issuance of a building permit. All required employee housing shall be available prior to the issuance of any certificate of occupancy for the PUD property.

13. Condominium Plat. A condominium plat shall be submitted by the Owner and recorded, pursuant to KMC 16.04.060, to allow for financing of the improvements and individual sale of private residential units. The condominium plat and an operations management plan must be approved by the City prior to recording. Each condominium unit shall be designated as one of three separate types:

- a) individual residential unit
- b) individual condominium unit
- c) commercial and/or common area unit

The individual condominium units and the commercial and/or common area units shall be use restricted through a deed restriction and/or a plat note to ensure conformance with Section 3 of this Agreement.

14. Relocation of Overhead Power Lines. The applicant shall contribute a pro rata share based on total linear feet to the underground relocation of overhead utility lines in the vicinity of the project. The pro rata share shall be based on the frontage of the subject property along Main Street, Leadville Avenue, and River Street. Said contribution shall be utilized by the City solely for the relocation of power lines from overhead to underground in the vicinity of the Property. Staff shall bring alternatives to the Council regarding the payment method within six (6) months of the Effective Date of this Agreement.

15. Agreements with Adjacent Property Owners: Owner has entered into separate agreements with one or more adjacent property owners.

16. Conditions of Approval. Owner agrees to comply with all conditions incorporated into the PUD Conditional Use Permit.

17. Amendment of Agreement. This Agreement shall be amended or cancelled, in whole or in part, only by the mutual consent of the parties, executed in writing. In the event the Council approves the pending request for amendments to KMC 16.08.130.C, such amendments shall be incorporated into this Agreement.

18. Remedies. This Agreement shall be enforceable in any Court of competent jurisdiction by either City or Owner or by any successor or successors in title or interest or by the assigns of the parties hereto, unless otherwise expressly provided in paragraph 21, below. Enforcement may be sought by an appropriate action at law or in equity to secure the performance of the covenants, agreements, conditions, and obligations contained herein. In the event of a material breach of this Agreement, the parties agree that the City and Owner shall have sixty (60) days after delivery of notice of said breach to correct the same prior to the non-breaching party's seeking of any remedy provided for herein, provided, however, that in case of any such default which cannot with diligence be cured within such sixty (60) day period, if

the defaulting party shall commence to cure the same within such sixty (60) day period and thereafter shall prosecute the curing of the same with diligence and continuity, then the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity.

19. Mediation. Prior to either party filing suit, the parties shall participate in a minimum of one mediation session to determine if a resolution can be reached. The mediator shall be agreed to by both parties and the cost of mediation shall be split between the parties.
20. Default. In the event the Owner fails to comply with the terms and conditions hereof in any material respect, and such default is not cured, Ketchum may, without further notice to Owner, exercise any or all of the following remedies:
- a. Withhold the issuance of a certificate of occupancy of any structure or unit located within the PUD;
 - b. Withhold the connection of water or sewer to any structure or unit located within the PUD;
 - c. Refuse to accept public ownership and maintenance of public improvements within the PUD and record a notice of such action with the Blaine County Recorder's office;
 - d. Issue a stop work order for any building or unit under construction within the PUD;
 - e. Bring an action for damages, injunctive relief, specific performance or any other remedy available at law or in equity;

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

21. Miscellaneous Provisions.

Covenant Running with the Land/Successors and Assigns. Unless this Agreement is modified by mutual written agreement of the Parties or terminated by City, this Agreement and all conditions, terms, duties and obligations included in this Agreement shall be binding upon Owner, each subsequent owner of the Property and every person or entity acquiring any interest in the Property. This Agreement shall constitute a covenant running with the land burdening the Property in favor of City and shall be binding upon Owner, its successors in interest, personal representatives, heirs, vendees and assigns. Nothing herein shall in any way prevent sale or alienation of the Property, or portions thereof, except that any sale or alienation shall be subject to the provisions hereof, except as provided below, and any successor owner or Owner shall be both benefited and bound by the conditions and restrictions herein expressed. The words "successors" and "assigns" as used in this Agreement shall include all successors, assigns, personal representatives, administrators, trustees and holders of a security interest in the PUD Property or any portion thereof or interest therein except for purchasers of condominiums as designated in Section 13 (a) and 13 (b) of this Agreement. Nothing contained herein shall be deemed or construed to create any third party beneficiaries or third party rights. Upon conveyance of a condominium unit as designated in Section 13 (a) and 13 (b) of this Agreement to a third party, the lien and

encumbrance of this Agreement shall be automatically released from said unit and a prospective third party purchaser, lender and all title insurers are entitled to rely upon said release.

- a. Force Majeure. In the event the performance of any covenant to be performed hereunder by either Owner or the City is delayed for causes which are beyond reasonable control of the party responsible for such performance, which shall include without limitation, acts of civil disobedience, strikes, any litigation which directly or indirectly prevents or interrupts construction or would cause a reasonably prudent person to delay the commencement or continuation of construction pending the final resolution of such litigation, or similar causes, the time for such performance shall be extended by the amount of time of such delay.
- b. Waiver. Any waiver of any of the terms or conditions of this Agreement by City or Owner must be in writing to be effective and shall apply solely to the breach and breaches waived and shall not bar any other rights or remedies of City or Owner of applying to any subsequent breach of any such or other covenants and conditions.
- c. Notices. Any and all notices, demands, requests, and other communications required to be given hereunder by either of the parties hereto shall be in writing and be deemed properly served or delivered if delivered by hand to the party to whose attention it is directed, or when sent, seven (7) days after deposit in the U.S. Mail, postage pre-paid, or upon the sending of a facsimile, followed by a copy sent by U.S. Mail as provided herein, addressed as follows:

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

Owner: Jack Bariteau
Trail Creek Fund, LLC
700 Emerson Street
Palo Alto, California 94301
650-614-6245 Phone
650-326-2920 Fax

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

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

- d. Attorney Fees. In the event either party to this Agreement is required to retain the services of an attorney to enforce its rights hereunder, the defaulting party shall pay to the non-defaulting party reasonable attorney fees and costs incurred as a result of such default whether or not litigation is commenced and including reasonable attorney fees and costs on appeal.
- e. Time is of the Essence. The parties hereto acknowledge and agree that time is hereby made expressly of the essence with respect to each and every term, condition, and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of and a default under this Agreement by the party so failing to perform.
- f. Effective Date of Agreement. This Agreement shall be effective as of the date first written above.
- g. Requirement for Recordation. Owner shall record this document, including all of the Exhibits, and submit proof of such recording to the City. Failure to comply with this section shall be deemed a default of this Agreement by Owner.
- h. No Precedent. The issuance of the PUD Conditional Use Permit shall not be considered a binding precedent for the issuance of other PUD conditional use permits. The permit is not transferable from one parcel of land to another.
- i. Police Powers. Nothing contained herein is intended to limit the police powers of the City. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation, including without limitation, applicable building codes, fire codes, zoning ordinances, subdivision ordinances, or comprehensive plan provisions, unless expressly provided herein.
- j. Final Agreement. This Agreement sets forth all promises, inducements, agreements, conditions, and understandings between Owner and the City relative to the subject matter hereof, and there are no promises, conditions, or understandings, either oral or written, express or implied, between Owner and the City, other than as stated herein. Except as herein otherwise provided, no subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by them or their successors in interest or their assigns, and pursuant, with respect to the City, to a duly adopted ordinance or resolution of the City.
- k. No Presumptions. There shall be no presumptions for or against either party hereto as a result of the preparation of this Agreement.

- l. Invalid Provisions. If any provision of this Agreement is held not valid, such provision shall be deemed to be excised there from and the invalidity thereof shall not affect any of the other provisions contained herein.
- m. Choice of Law. This Agreement shall be governed by the laws and decisions of the state of Idaho.

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

“CITY”:

CITY OF KETCHUM,
an Idaho municipal corporation
a California limited liability company

By: _____

Randy Hall, Mayor

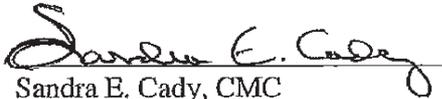
“OWNER”:

TRAIL CREEK FUND, LLC,

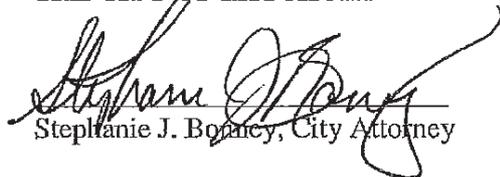
By: _____

Jack E. Bariteau, Jr., Managing
Member

ATTEST:


Sandra E. Cady, CMC
City Clerk/Treasurer

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


Stephanie J. Bonney, City Attorney

ACKNOWLEDGEMENT FOR CITY

STATE OF IDAHO)
) ss.
COUNTY OF BLAINE)

On this 5th day of January, 2008, before me, the undersigned Notary Public in and for said State, personally appeared RANDY HALL, known or identified by me to be the Mayor of the City of Ketchum, Idaho, and the person who executed the foregoing instrument and acknowledged to me that he executed the same on behalf of such city.

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



Marta R. Thompson
Notary Public for the State of Idaho
Residing at Ketchum
My Commission Expires 5/21/09

ACKNOWLEDGEMENT FOR OWNER

STATE OF Idaho)
) ss.
COUNTY OF Blaine)

On this 9th day of January, 2008, before me, a Notary Public in and for said State, personally appeared JACK E. BARITEAU, JR., known to me to be the Managing Member of Trail Creek Fund, LLC, a California limited liability company, and known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of said limited liability company.

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



Marta R. Thompson
Notary Public for the State of Idaho
Residing at Ketchum
My Commission Expires 5/21/09

Exhibit A

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

1. A construction staging and mitigation plan, including at a minimum provisions for off-site employee parking, off-site storage of bulk materials, and required right-of-way encroachments during construction, shall be submitted and approved by the City Council within 8 months from date of final PUD approval. This plan shall be an exhibit to an amendment to the PUD agreement and recorded prior to issuance of a building permit.
2. The applicant shall contribute a pro rata share based on total linear feet to the underground relocation of overhead utility lines in the vicinity of the project. The pro rata share shall be based on the frontage of the subject property along Main Street, Leadville Avenue, and River Street. The applicant agrees to collaborate with the City and with Idaho Power on the timing and the budget for undergrounding, and these items will be incorporated into the Development Agreement, with a specific payment solution brought back to the City Council prior to construction.
3. The proposed encroachments into the public street rights-of-way shall be allowed up to but not exceeding the widths presented on Sheet C3 dated April 8, 2008.
4. Sidewalks shall be a minimum width of:
 - 6 feet on Main Street
 - as shown on Sheet C3 dated April 8, 2008, but not less than 5 feet on River Street
 - 5 feet on Leadville Avenue
5. Right-of-way encroachments including retaining walls and landscape beds, and curblines alignment, slope and drainage, and ADA design issues shall be resolved to the satisfaction of the City Engineer and ITD prior to the issuance of a building permit. Final designs shall be approved by the City Council upon recommendation by the P&Z Commission. Encroachment permits and/or licenses shall be obtained from the City as required.
6. The heated asphalt shall be extended to include the entire River Street/Leadville Avenue intersection and shall be extended to the south on Leadville Avenue as required to accommodate drainage and vehicular traction. This and related drainage issues shall be resolved to the satisfaction of the City Engineer and City Street Superintendent.
7. All water, sewer and other utility main lines, service lines, manholes and fire hydrants shall be maintained or improved as required by the Ketchum Water and Sewer Department.

8. The proposed development shall be completed as set forth in the design review and CUP approvals and the Planned Unit Development agreement. The PUD Development Agreement shall include, but not be limited to, provisions for the following:
- Community/workforce housing- as required in condition #9, below.
 - Contribution to underground relocation of overhead utility lines.
 - Public pedestrian amenities to be included within adjacent street rights-of-way.
 - Development of a Construction Activity Standards Plan
 - Minimum access for the public to the observatory.
9. The applicant shall provide a detailed Employee Housing Plan, which provides for housing for 18 employees on a site acceptable to the Ketchum City Council, and within Ketchum City limits.

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

- a) Provide salary/hourly wages (2008 dollars) for the various income categories of employees.
- b) The expected number of each level of employee that is intended to be served by the employee housing units.
- c) Which employee category will be served by which type/size of units.
- d) Provide information on anticipated rental rates (in 2008 dollars) or subsidized and/or free rent to employees; will utilities and homeowners dues (if any) be included in proposed rates.
- e) Establishment of maximum occupancy per unit type (i.e. 1 person per 1 bedroom unit; 2 persons per 2 bedroom units).
- f) Location of units to be within Ketchum City limits.
- g) Provide a matrix on breakdowns of the different types of units (IBD; square footage; total number of units; anticipated rent, etc.)
- h) Create a priority for occupancy program of these units; (i.e. first availability employees that are full-time, secondly to seasonal employees, and third to persons that are verified to be working in the City of Ketchum.
- i) What units will be available and how will the pool of units available be determined.
- j) What minimum standards will be used to determine employee eligibility to live in the employee housing; is full-time status required for employees to qualify for the employee housing and what constitutes full-time status.
- k) How will overflow of demand of units by employees be handled; will there be a priority system.
- l) Provide information on housing families (with children) and/or married couples.

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

The following information shall be provided to the City:

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

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

All of the required Employee Housing shall be available prior to the issuance of any Certificates of Occupancy for the Hotel, or any other uses in the hotel.

10. A privacy wall or landscaping buffer shall be developed as a buffer for the 200 South Leadville Townhomes.
11. Operational hours for the observatory shall be developed that provides for access for the public, schools and other interest groups.
12. This PUD CUP approval is contingent upon the approval of the Design Review/Waterways Design Review application.
13. This PUD CUP shall be valid for a period of two (2) years from the date of approval of Findings of Fact, Conclusions of Law and Decision by the City Council. An application for building permit shall be submitted within 2 years, unless extended by the City Council upon written request by the applicant.
14. The setback for the southernmost penthouse condominium unit adjacent to Leadville Avenue shall be increased to ten feet (10') either by reducing overhangs or other means.
15. Prior to issuance of any building permits, a plan shall be brought back to the City Council showing a third lane (through lane) instead of a dedicated right turn lane on Highway 75/Main Street, including consultation with the Idaho Transportation Department.
16. A PUD - Conditional Use Permit shall be issued in writing. The issuance thereof shall not be considered a binding precedent for the issuance of other conditional use permits. A conditional use permit is not transferable from one parcel of land to another.
17. Failure to comply with any condition or term of said permit shall cause said permit to be void ab initio. A PUD - Conditional Use Permit may be revoked at any time for violation of the permit or any condition thereof by motion of the City Council after a due process

hearing upon ten (10) days written notice to the holder of the PUD - Conditional Use Permit.

18. All projects receiving a PUD - Conditional Use Permit, as a condition of said permit, shall be required to submit and receive design review approval for each structure to be constructed within the project prior to making application for a building permit irrespective of what zoning district or districts within which the project is located.

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Instrument # 576788

HAILEY, BLAINE, IDAHO

4-15-2010 03:27:38 No. of Pages: 3

Recorded for : CITY OF KETCHUM

JOLYNN DRAGE

Fee: 0.00

Ex-Officio Recorder Deputy

Index to: AGREEMENT/CORRECTION

AMENDMENT TO DEVELOPMENT AGREEMENT
("Hotel Ketchum")

WHEREAS, the City of Ketchum ("City") and Trail Creek Fund, LLC, ("Developer") entered into a development agreement ("Agreement") on November 17, 2008, and

WHEREAS, such Agreement provided for conditions of development for the property located at 200 South Main Street, Ketchum, Idaho, legally described as Lot 2 of Block 83 of the City of Ketchum, according to the official plat thereof, on file in the office of the County Recorder of Blaine County, Idaho (the "Property"), and

WHEREAS, the City and the Developer desire to make amendments to the Agreement and the Agreement provides for such written amendments, executed in writing, and

WHEREAS, the City and the Developer agree to revise the Agreement to provide for such an amendments.

NOW, THEREFORE, the City and the Developer (collectively "the parties"), hereto covenant and agree as follows:

Paragraph 7 of the Agreement shall be modified as follows:

7. Construction and Completion Schedule. The improvements shall be constructed and completed pursuant to the schedule set forth in the Construction Mitigation Plan, which shall be submitted by the Owner and approved by the City no later than April 6, ~~2009~~ 2012. An additional one year extension may be granted at the discretion of the City Council. The approved Construction Mitigation Plan shall be recorded as an amendment to this Agreement prior to issuance of a building permit.

Paragraph 16 of the Agreement shall be modified as follows:

16. Conditions of Approval. Owner agrees to comply with all conditions incorporated into the PUD Conditional Use Permit, subject to the following modification of Condition 15. The CUP and Design Review permits shall be valid for a period of four years from the date of adoption of the Findings of Fact (October 6, 2008). An additional one year extension may be granted at the discretion of the City Council based on the following factors: whether there have been significant amendments to the city's Comprehensive Plan, Downtown Master Plan or ordinances which will apply to the subject design review approval; whether significant land use

AMENDMENT TO DEVELOPMENT AGREEMENT ("HOTEL KETCHUM")

Page 1 of 3

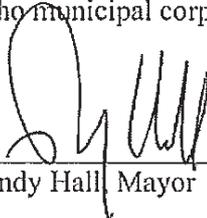
564265 564339

changes have occurred in the project vicinity which would adversely impact the project or be adversely impacted by the project; whether hazardous situations have developed or have been discovered in the project area; or whether community facilities and services required for the project are now inadequate.

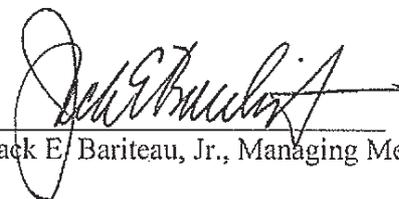
All other provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto caused this Agreement to be executed on the 15th day of March, 2010.

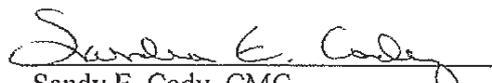
THE CITY OF KETCHUM
An Idaho municipal corporation

By: 
Randy Hall, Mayor

TRAIL CREEK FUND, LLC
a California limited liability company

By: 
Jack E. Bariteau, Jr., Managing Member

ATTEST:

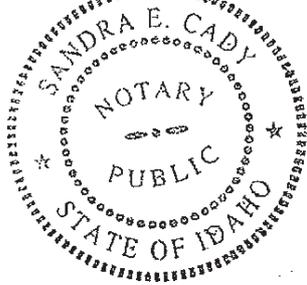

Sandy E. Cady, CMC
City Treasurer/Clerk

ACKNOWLEDGEMENT FOR CITY

STATE OF IDAHO)
) ss.
County of Blaine)

On this 15th day of March, 2010, before me, a Notary Public in and for the State of Idaho, personally appeared RANDY HALL, known to me to be the Mayor of the City of Ketchum, Idaho, and the person who executed the foregoing instrument and acknowledged to me that he executed the same on behalf of such city

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



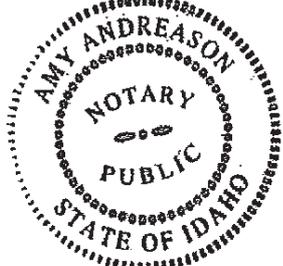
Sandra E. Cady
Notary Public for Idaho
Residing in: Hailey ID
My Commission Expires: 11-22-2013

ACKNOWLEDGEMENT FOR OWNER

STATE OF Idaho)
) ss.
County of Blaine)

On this 14th day of April, 2010, before me, a Notary Public in and for said state, personally appeared JACK E. BARITEAU, JR., known to me to be the Managing Member of Trail Creek Fund, LLC, and known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of Trail Creek Fund, LLC.

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



Amy Andreason
Notary Public for Idaho
Residing in: Hailey
My Commission Expires: 5-18-2013

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT
("Hotel Ketchum")

WHEREAS, the City of Ketchum ("City") and Trail Creek Fund, LLC, ("Developer") entered into a development agreement ("Agreement") on November 17, 2008, and

WHEREAS, such Agreement provided for conditions of development for the property located at 200 South Main Street, Ketchum, Idaho, legally described as Lot 2 of Block 83 of the City of Ketchum, according to the official plat thereof, on file in the office of the County Recorder of Blaine County, Idaho (the "Property"), and

WHEREAS, the City and the Developer desire to make amendments to the Agreement and the Agreement provides for such written amendments, executed in writing, and

WHEREAS, the Parties revised the Agreement in March 2010 by the "Amendment to Development Agreement", extending project timelines, which Amended Agreement was recorded in the records of Blaine County on April 15, 2010 as Instrument No. 576788;

WHEREAS, the City and the Developer agree to revise the Amended Agreement for one (1) additional year of PUD/Design Review approval for a total of five (5) years;

NOW, THEREFORE, the City and the Developer (collectively "the parties"), hereto covenant and agree as follows:

Paragraph 7 of the Agreement shall be modified as follows:

7. Construction and Completion Schedule. The improvements shall be constructed and completed pursuant to the schedule set forth in the Construction Mitigation Plan, which shall be submitted by the Owner and approved by the City no later than ~~April 6, 2102~~ April 6, 2013. An additional one year extension may be granted at the discretion of the City Council. The approved Construction Mitigation Plan shall be recorded as an amendment to this Agreement prior to issuance of a building permit.

Paragraph 16 of the Agreement shall be modified as follows:

9. 16. Conditions of Approval. Owner agrees to comply with all conditions incorporated into the PUD Conditional Use Permit, subject to the following modification of Condition 15. The CUP and Design Review permits shall be valid for a period of ~~four~~ five years from the date

of adoption of the Findings of Fact October 6, 2008. The applicant agrees to address property maintenance in terms of noxious weed mitigation, pruning, mowing and upkeep of site landscaping, pavement patching as necessary and removal of the tent associated with the southwesterly building formerly containing a restaurant.

~~An additional one year extension may be granted at the discretion of the City Council based on the following factors: whether there have been significant amendments to the city's Comprehensive Plan, Downtown Master Plan or ordinances which will apply to the subject design review approval; whether significant land use changes have occurred in the project vicinity which would adversely impact the project or be adversely impacted by the project; whether hazardous situations have developed or have been discovered in the project area; or whether community facilities and services required for the project are now inadequate.~~

All other provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto caused this Agreement to be executed on the _____ day of _____, 2012.

THE CITY OF KETCHUM
An Idaho municipal corporation

TRAIL CREEK FUND, LLC
a California limited liability company

By: _____
Randy Hall, Mayor

By: _____
Jack E. Bariteau, Jr., Managing Member

ATTEST:

Sandy E. Cady, CMC
City Treasurer/Clerk

ACKNOWLEDGEMENT FOR CITY

STATE OF IDAHO)
) ss.
County of Blaine)

On this ____ day of _____, 2010, before me, a Notary Public in and for the State of Idaho, personally appeared RANDY HALL, known to me to be the Mayor of the City of Ketchum, Idaho, and the person who executed the foregoing instrument and acknowledged to me that he executed the same on behalf of such city

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

Notary Public for Idaho
Residing in: _____
My Commission Expires: _____

ACKNOWLEDGEMENT FOR OWNER

STATE OF _____)
) ss.
County of _____)

On this ____ day of _____, 2010, before me, a Notary Public in and for said state, personally appeared JACK E. BARITEAU, JR., known to me to be the Managing Member of Trail Creek Fund, LLC, and known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of Trail Creek Fund, LLC.

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

Notary Public for Idaho
Residing in: _____
My Commission Expires: _____

received 9/11/13

September 11, 2013

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

Lisa Horowitz
Community & Economic Development Director
City of Ketchum
480 East Avenue North
Ketchum, Idaho 83340

RE: Hotel Ketchum

Dear Lisa:

Per our telephone conversation last week, this letter will serve to supersede my original letter to dated August 15, 2013 as the formal written request to the City of Ketchum for an grant of an extension of two (2) additional years of our current granted entitlements for the development of Hotel Ketchum by Trail Creek Fund LLC, owner of the property located at the southeast corner of Highway 75 and River Street in downtown Ketchum. Despite my best efforts to secure the necessary capital investment to start the development in 2012 and 2013, we still find significant impairment in attracting the necessary capital to the project due to the sluggish national economy. As was stated in my letter request to you in mid 2012, "debt and equity markets which have traditionally been the source for equity investment and construction financing for commercial projects, continue to remain constrained. Only the most prominent urban development projects are attracting capital and debt and in most circumstances the equity requirements to obtain these funds are prohibitive". The good news is that equity and debt investment into the hospitality sector nationally has been steadily increasing but 80% of this investment capital is only focused on the top 25 Metropolitan Statistical Areas ("MSA") at this time and not on resort or secondary markets. The other 20% of capital providers are active too and it is from this pool that we are seeing significant interest in our Hotel Ketchum project. I have multiple conversations each week with various interested parties in this sector and feel strongly that we will be able to source and fund the Hotel with a commitment within within the next 15 to 18 month time frame. I have attached for your review and distribution to the City Council a report published and issued by HVS founder and principal, Steve Rushmore, dated July 1, 2013 and

titled "Hotel Value Fundamentals Signal Positive Trend in Transactions and Developments in the United States". I encourage you and the members of the City Council to read the article in its entirety. Its conclusions with the support of Smith Travel Research ("STR Global") are that:

1. Supply growth will accelerate over the next five years.
2. Transaction volume will increase significantly in 2013 and 2014.
3. Today is the best opportunity to buy, sell or develop a hotel since 1991.

The entitlement extension granted by the City Council for the Hotel Ketchum is set to expire on October 6th. Per the pending expiration of our last extension granted by the Council in 2012, I respectfully request that the City Council extend this entitlement for two (2) additional years to October 6, 2015. Our recent introduction to Scott Fuller and EB-5 United and its success in sourcing hotel capital funding through the innovative USCIS ("United States Citizenship and Immigration Service") investment program is the most promising funding source we have seen in over five years for Hotel Ketchum. Recent discussions about this program and its application for funding of Hotel Ketchum have now included your office and Damien Bard of the Idaho International Business Division of the Idaho Department of Commerce. There is much work to do, however, and it is essential that our project be granted the necessary time to fully vet the USCIS process which Scott Fuller will outline and describe to the City Council on September 16th. The approval process as Scott will explain can take up to one year to complete from the date we have received the preliminary EB-5 jobs analysis that will provide the support for EB-5 eligible direct, indirect and induced jobs Hotel Ketchum will create during construction and operations of the completed hotel.

We appreciate the Council's consideration of our extension request. While we have been unable to meet our intended goal of having the Hotel Ketchum built and serving the community, we are confident for the first time in many years that we are on the path to success with such promising programs as that offered by EB-5 United.

Sincerely,

Trail Creek Fund LLC

Jack Bariteau Jr.
Managing Member