

RESOLUTION NO. 22-URA03

BY THE BOARD OF COMMISSIONERS OF THE URBAN RENEWAL AGENCY OF KETCHUM, IDAHO:

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE URBAN RENEWAL AGENCY OF KETCHUM, IDAHO, AUTHORIZING AGENCY TO TERMINATE THE OWNER PARTICIPATION AGREEMENT WITH TRAIL CREEK FUND, LLC, THE REIMBURSEMENT PARTICIPATION AGREEMENT WITH DOUG WEBB, THE REIMBURSEMENT PARTICIPATION AGREEMENT WITH KETCHUM & MUSTARD LLC, AND THE GRANT PARTICIPATION AGREEMENT WITH KETCHUM PDX LLC; AUTHORIZING THE EXECUTIVE DIRECTOR TO ADVISE EACH DEVELOPER OF THE TERMINATION OF THE AGREEMENTS; AND PROVIDING FOR THIS RESOLUTION TO BE EFFECTIVE UPON ITS PASSAGE AND APPROVAL.

THIS RESOLUTION, made on the date hereinafter set forth by the Urban Renewal Agency of Ketchum, Idaho, also known as the Ketchum Urban Renewal Agency, an independent public body, corporate and politic, authorized under the authority of the Idaho Urban Renewal Law of 1965, Chapter 20, Title 50, Idaho Code, as amended (hereinafter the "Law") and the Local Economic Development Act, Chapter 29, Title 50, Idaho Code, as amended (hereinafter the "Act"), a duly created and functioning urban renewal agency for Ketchum, Idaho, hereinafter referred to as the "Agency."

WHEREAS, the City Council ("City Council") of the City of Ketchum (the "City") by adoption of Ordinance No. 992 on November 15, 2006, duly adopted the Ketchum Urban Renewal Plan (the "2006 Plan") to be administered by the Agency;

WHEREAS, upon the approval of Ordinance No. 1077 adopted by the City Council on November 15, 2010, and deemed effective on November 24, 2010, the Agency began implementation of the amended Ketchum Urban Renewal Plan (the "Amended Plan");

WHEREAS, Trail Creek Fund, LLC ("Trail Creek") owned or controlled the real property located at 300 River Street East at Main Street (hereinafter referred to as the "Site");

WHEREAS, Trail Creek was to construct improvements on the Site and adjacent public rights of way in conjunction with the development of a new hotel and residential condominium project on the Site (the "Project");

WHEREAS, Agency and Trail Creek entered into an Owner Participation Agreement ("Trail Creek OPA") on February 21, 2017, attached hereto as Exhibit A, which set forth the obligations of

Agency and Trail Creek, concerning the reimbursement by Agency to Trail Creek for construction of the Project;

WHEREAS, Trail Creek never initiated construction of the Project and the property has been conveyed to another owner, and therefore Trail Creek is in default under the terms of the Trail Creek OPA;

WHEREAS, Doug Webb (“Webb”) owned or controlled certain real property located at 191 E. 8th Street, Ketchum, Idaho (the “Project Site”) The Project Site was to undergo redevelopment including construction of a mixed use residential and commercial building (the “Participant’s Project”);

WHEREAS, as part of the Participant’s Project, Webb intended to remediate certain Project Site conditions and redevelop the Project Site (the “Improvement Project”);

WHEREAS, the Improvement Project was to include improvements of public infrastructure to replace 100 feet of sidewalk along 8th Street adjacent to the Project Site;

WHEREAS, Agency and Webb entered into a Reimbursement Participation Agreement (“Webb Agreement”) on September 26, 2017, attached hereto as Exhibit B, which set forth the obligations of Agency and Webb, concerning the reimbursement by Agency to Webb for construction of the Improvement Project;

WHEREAS, the Improvement Project to date has not been completed and therefore Webb did not complete the obligations of the Webb Agreement within the twelve (12) month period as required by the Webb Agreement;

WHEREAS, pursuant to motion, the Agency revoked the Webb Agreement;

WHEREAS, Ketchum & Mustard LLC (“Ketchum & Mustard”) owned or controlled certain real property located at 620 N. Main Street, Ketchum, Idaho (the “Project Site”). The Project Site was to undergo redevelopment including construction of the Hotel Ketchum Coffee Shop (the “Participant’s Project”);

WHEREAS, as part of the Participant’s Project, Ketchum & Mustard intended to remediate certain Project Site conditions and redevelop the Project Site (the “Ketchum & Mustard Improvement Project”);

WHEREAS, the Ketchum & Mustard Improvement Project was to include improvements of public infrastructure within the right-of-way, including curb, gutter, and sidewalk;

WHEREAS, Agency and Ketchum & Mustard entered into a Reimbursement Participation Agreement (“Ketchum & Mustard Agreement”) on September 26, 2017, attached hereto as Exhibit C, which set forth the obligations of Agency and Ketchum & Mustard, concerning the reimbursement by Agency to Ketchum & Mustard for construction of the Ketchum & Mustard

Improvement Project;

WHEREAS, the Ketchum & Mustard Improvement Project has not been completed to date and therefore Ketchum & Mustard did not complete the obligations of the Ketchum & Mustard Agreement within the twelve (12) month period as required by the Ketchum & Mustard Agreement;

WHEREAS, Ketchum PDX LLC (“Ketchum PDX”) owned or controlled certain real property located at 560 N. 1st Avenue, Ketchum, Idaho (the “Project Site”). The Project Site is undergoing redevelopment including construction of a residential project of eighteen (18) rental housing units and three (3) affordable units (the “Project”);

WHEREAS, as part of the Project, Ketchum PDX intended to remediate certain Project Site conditions and redevelop the Project Site (the “PDX Improvement Project”);

WHEREAS, the Improvement Project was to include public infrastructure improvements for an eight foot (8’) wide sidewalk, drainage, and street improvements along North First Avenue adjacent to the Project Site;

WHEREAS, Agency and Ketchum PDX entered into a Grant Participation Agreement (“Ketchum PDX Agreement”) on January 30, 2019, attached hereto as Exhibit D, which set forth the obligations of Agency and Ketchum PDX, concerning the reimbursement by Agency to Ketchum PDX for construction of the PDX Improvement Project;

WHEREAS, the PDX Improvement Project to date has not been completed and therefore Ketchum PDX did not complete the obligations of the Ketchum & Mustard Agreement within the twelve (12) month period as required by the Ketchum & Mustard Agreement ;

WHEREAS, the Board of Commissioners finds it in the best public interest to terminate the Trail Creek OPA, the Webb Agreement, the Ketchum & Mustard Agreement, and the Ketchum PDX Agreement (“Agreements”) and to authorize the Executive Director to notify each of the above developers of the termination of their respective agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE BOARD OF COMMISSIONERS OF THE KETCHUM URBAN RENEWAL AGENCY OF THE CITY OF KETCHUM, IDAHO, AS FOLLOWS:

Section 1: That the above statements are true and correct.

Section 2: That the Agreements, attached hereto as Exhibits A, B, C, and D, are hereby terminated.

Section 3. That the Executive Director is hereby authorized to notify Trail Creek, Webb, Ketchum & Mustard, and Ketchum PDX of the termination of their respective agreements.

Section 4: That this Resolution shall be in full force and effect immediately upon its adoption and approval.

PASSED By the Urban Renewal Agency of Ketchum, Idaho, on February 22, 2022. Signed by the Chair of the Board of Commissioners, and attested by the Secretary to the Board of Commissioners, on February 22, 2022.

URBAN RENEWAL AGENCY OF KETCHUM

By Susan Scovell CHAIR
Susan Scovell, Chair

ATTEST:

By [Signature]
Secretary

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Index to: AGREEMENT/CORRECTION

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OWNER PARTICIPATION AGREEMENT

By And Between

The Ketchum Urban Renewal Agency

And

Trail Creek Fund, LLC

For

AUBERGE PROJECT

OWNER PARTICIPATION AGREEMENT

THIS OWNER PARTICIPATION AGREEMENT (hereinafter "Agreement") is entered into by and between the Ketchum Urban Renewal Agency, a public body, corporate and politic (hereinafter "Agency"), organized pursuant to the Idaho Urban Renewal Law, Title 50, Chapter 20, Idaho Code, as amended (hereinafter the "Law"), and undertaking projects under the authority of the Local Economic Development Act of 1988 as amended (hereinafter the "Act"), and Trail Creek Fund, LLC, a California limited liability company authorized to do business in the State of Idaho (hereinafter "Participant"), collectively referred to as the "Parties" and each individually as "Party," on the terms and provisions set forth below.

RECITALS

WHEREAS, Agency, an independent public body, corporate and politic, is an urban renewal agency created by and existing under the authority of the Law and the Act;

WHEREAS, the Ketchum City Council adopted its Ordinance No. 1077 on November 15, 2010, approving the Ketchum Urban Renewal Plan (hereinafter the "Urban Renewal Plan");

WHEREAS, Participant owns and controls the real property located at 300 River Street East at Main Street (hereinafter referred to as the "Site" as defined below);

WHEREAS, Participant is in the process of constructing improvements on the Site and adjacent public rights of way in conjunction with the development of a new hotel and residential condominium project on the Site (the "Project");

WHEREAS, the Urban Renewal Plan authorizes Agency to use revenue allocation financing to fund specific projects and improvements to implement the Urban Renewal Plan;

WHEREAS, Agency and Participant have negotiated the major terms of Agency's participation in the funding of certain improvements to the public right of way and other eligible expenses (collectively the "Agency Funded Public Improvements");

WHEREAS, said Agency Funded Public Improvements implement several objectives outlined in the Urban Renewal Plan;

WHEREAS, the Urban Renewal Plan authorizes Agency to enter into owner participation agreements to implement the Urban Renewal Plan;

WHEREAS, as a result of Participant's agreement to construct the Agency Funded Public Improvements, Participant's commitment to comply with the terms of the Urban Renewal Plan, and Agency's commitment to reimburse Participant in compliance with the Urban Renewal Plan, the Parties deem it necessary to enter into this Owner Participation Agreement to define their respective obligations;

NOW, THEREFORE, in consideration of the above recitals, which are incorporated into this Agreement; the mutual covenants contained herein; and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

I. EFFECTIVE DATE

The Effective Date of this Agreement shall be the date when this Agreement has been signed by the Parties (last date signed) and shall continue until all obligations of each Party are complete.

II. SUBJECT OF AGREEMENT

A. Recitals, Purpose of This Agreement, and Interest

The Parties agree that the foregoing recitals are not mere recitations but are covenants of the Parties, binding upon them as may be appropriate and a portion of the consideration for the agreements contained herein. The mutual consideration and covenants contained herein are intended to achieve the objectives and obligations of both Parties. The Agency's commitment herein is intended to comply with the Agency's authority under the Law and the Urban Renewal Plan and is not a gift or donation of public funds.

The purpose of this Agreement is to effectuate the Urban Renewal Plan by providing for the construction of public improvements on or adjacent to the Site.

The construction of said public improvements on the Site and the fulfillment generally of this Agreement are in the vital and best interests of the City of Ketchum (the "City") and the health, safety, and welfare of its residents and are in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements. Implementation of this Agreement will further the goals and objectives of the Urban Renewal Plan.

B. The Plan

This Agreement is subject to the provisions of the Ketchum Urban Renewal Plan as adopted by the Ketchum City Council through its Ordinance No. 1077 on November 15, 2010.

C. The Project Area

The Urban Renewal Project Area ("Project Area") is located in the City of Ketchum, and the exact boundaries of the Project Area are more specifically described in the Urban Renewal Plan.

D. The Site

The Site is that portion of the Project Area shown on the "Map of the Site," attached to this Agreement as Attachment 1 which is incorporated herein by reference, and as more particularly described in the "Legal Description" of the Site, attached hereto as Attachment 2 which is incorporated herein by reference.

E. The City

The term City as used herein shall be the City of Ketchum, Idaho.

F. Agency Participation Policy

Generally, the Agency will agree to financially participate with a private developer when such participation achieves the objectives of the Urban Renewal Plan, is not duplicative of other public entity funding, and does not replace or substitute for the obligations imposed by other governmental agencies on the Participant. The specific participation by the Agency for this particular site is as set forth herein.

G. Parties to This Agreement

1. Agency

The Agency is an independent public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Idaho Urban Renewal Law of the State of Idaho, Title 50, Chapter 20, Idaho Code, and the Local Economic Development Act, Title 50, Chapter 29, Idaho Code. The office of the Agency is located at 480 East Ave. N, PO Box 2315, Ketchum, ID 83340. "Agency," as used in this Agreement, includes the Urban Renewal Agency and any assignee of or successor to its rights, powers, and responsibilities.

2. Participant

The Participant is Trail Creek Fund, a California limited liability company. The principal address of the Participant is PO 84, Sun Valley, 83353.

Whenever the term "Participant" is used herein, such term shall include any permitted nominee, assignee, or successor in interest approved or consented to as provided herein. The Participant qualifies as an "owner participant" as that term is used in the Urban Renewal Plan.

H. The Private Development and City Agreements

1. The Private Development

The Private Development shall mean the development undertaken by Participant or the approved successors or assigns upon the Site. The Private Development consists of the construction of a Hotel consisting of 65 hotel rooms and suites and residential condominium units. The Private Development and any further development upon the Site or any portion of the Site shall comply with all the provisions of the Urban Renewal Plan and all applicable City building and zoning ordinances.

2. City Agreements and Approvals

"City Agreements and Approvals" shall mean those certain agreements between Participant and City, concerning, among other things, any required building permits and other approvals by City for the development of the Project Site, including the Amended and Restated Development Agreement dated October 5, 2015 and recorded as Instrument No. 630816 in the records of Blaine County, Idaho as amended by the Corrected Amendment to the Amended and Restated Development Agreement dated June 21, 2016 and recorded as Instrument No. 635897 in the records of Blaine County, Idaho (collectively, the "Development Agreement"), attached hereto as Attachment 3, as the same may be subsequently amended.

Any default by Participant of the City Agreements and Approvals, including but not limited to any and all applicable City ordinances, not cured within any applicable cure period shall constitute a default under this Agreement, with the Agency reserving any of its rights and remedies under this Agreement concerning default.

III. IMPROVEMENT OF THE SITE AND AGENCY'S PARTICIPATION

A. Development Design

Participant agrees that the Development will be in full compliance with the Plan.

B. Cost of Construction

The cost of the Private Development and the Agency Funded Improvements, defined below, shall be borne by the Participant, except as otherwise set forth herein.

C. Agency, City, and Other Governmental Agency Permits

Participant has or shall, at Participant's own expense, secure or cause to be secured any and all permits or approvals which may be required by Agency, City, or any other governmental agency relative to Project construction and operation.

D. Agency Funded Public Improvements

The Agency Funded Public Improvements are directly related to public facilities and are: (a) critical to the redevelopment of the Site; and (b) provide a higher quality of development that should assist Agency in achieving redevelopment of other properties adjacent to the Site and meeting the objectives of the Urban Renewal Plan. Because of the Private Development, which achieves several of the objectives contained within the Urban Renewal Plan, Agency finds that a portion of the public improvements may be reimbursed by the Agency. Agency finds that the Agency Funded Public Improvements are in the best public interest and provide for enhanced development of the Site within the Project Area.

In consideration of the terms of this Agreement and subject to certain conditions as contained in this Agreement, Agency agrees to pay the costs of certain approved Agency Funded Public Improvements, inclusive of design and engineering costs, as verified by the Agency. Approved Agency Funded Public Improvements shall include those improvements listed on Attachment 4, and any other public improvement that may be approved by the Agency Board for reimbursement in the future.

E. Reimbursement Obligation

1. Amount of Reimbursement

In consideration of Participant's construction of the Agency Funded Public Improvements, Agency, subject to the terms of this Agreement, agrees to reimburse Participant an amount equal to the Actual Eligible Costs, as defined below, of the Agency Funded Public Improvements, not to exceed Two Million Thirty Nine Thousand Three Hundred Twenty Five and 00/100 dollars (\$2,039,325.00), with no interest.

2. Notification; Inspection; Approval

Upon completion of construction of any category of the Agency Funded Public Improvements associated with the Project and on not less than a quarterly basis during construction, Participant shall notify Agency in writing to request a meeting with the Agency Director to determine if the completed Agency Funded Public Improvements meet the requirements of this Agreement. Agency shall provide Participant with written confirmation that the completed Public Improvements are eligible for reimbursement as follows:

- (a) With respect to each Notification of Completion, Participant is responsible for submitting invoices or receipts for work performed as part of the Project (the "Cost Documentation") which will permit Agency to determine the Actual Eligible Costs, which shall be the actual costs to construct the Agency Funded Public Improvements as approved by the Agency Director. Cost Documentation shall include the following:
 - i. An accounting of the costs associated with the completed Agency Funded Public Improvements and evidence of payment of such costs by Participant. Participant shall include invoices from Participant's design professionals, general contractor, subcontractor(s), and material suppliers for each type of eligible cost item, which shall specify quantities and unit costs of installed materials.
 - ii. Explanation of any significant deviation between the initial cost estimates in **Attachment 4** and the actual costs in the Cost Documentation.
- (b) The Agency Director shall have the right to review the Cost Documentation, to inspect the completed Agency Funded Public Improvements, and to obtain independent verification that the quantities of work claimed and the costs associated therewith are accurate and appropriate for the Agency Funded Public Improvements completed.
- (c) Within thirty (30) days of Agency's receipt of the Cost Documentation, the Agency Director shall notify Participant in writing of Agency's acceptance of the Cost Documentation and Agency's determination of the Actual Eligible Costs. Agency shall notify Participant of any disputes with the Cost Documentation and provide Participant a reasonable time to explain any discrepancy. If the Agency Director and the Participant cannot agree on any disputed costs, the Parties

agree to submit the dispute to the Agency Board of Commissioners for final determination.

3. Reimbursement.

Participant shall initially pay for all of the costs of construction for the Agency Funded Public Improvements associated with the Project. By approval of this Agreement by Agency's Board of Commissioners, Agency has authorized reimbursement for the Actual Eligible Costs of the Agency Funded Public Improvements (the "Reimbursement Obligation") as set forth in Section F, below, and the other provisions of this Agreement.

F. Reimbursement Procedure

1. Agency's Reimbursement Obligation shall not commence until a Certificate of Occupancy, or the equivalent thereof, is issued for the Private Development and Agency receives written confirmation from City that Participant has completed all development obligations set forth in the Development Agreement. Provided, if Participant fails to construct the employee housing in accordance with the Development Agreement within six (6) months of the issuance of a Certificate of Occupancy for the Project, Agency shall suspend all reimbursement payments until such time as Participant constructs the employee housing in compliance with the Employee Housing Plan previously approved by the City and incorporated into the Development Agreement. Notwithstanding the foregoing, in the event any delay is caused by the City's failure to approve properly submitted design review and/or construction plans for said employee housing in a timely manner, said reimbursement payments shall not be suspended.

2. In conjunction with its receipt of revenue allocation proceeds on a biannual basis, the Agency agrees to make payment to Participant of fifty percent (50%) of the tax increment revenue allocation proceeds arising from the Site, inclusive of all condominium units constructed on the Site as part of the Project, commencing from the first date the Agency receives tax increment monies arising from the Site subsequent to the issuance of a Certificate of Occupancy or equivalent for the Private Development until such time as the Reimbursement Obligation has been paid in full, or the termination of the Urban Renewal Plan, whichever occurs first. **PARTICIPANT ACKNOWLEDGES THE TAX REVENUE ALLOCATION PROCEEDS MAY NOT BE SUFFICIENT TO PAY OFF THE REIMBURSEMENT OBLIGATION ON OR BEFORE THE TERMINATION OF THE URBAN RENEWAL PLAN, AND ASSUMES THAT RISK.**

3. The Bi-annual Payments are due to Participant within thirty (30) days of receipt of revenue allocation proceeds from the Site by Agency.
4. Agency shall have no obligation to make payments to the Participant for taxes collected and paid to Agency beyond the term described herein.
5. Agency may redeem, at any time, in whole or in part, without penalty, the then remaining outstanding balance of the Reimbursement Obligation.
6. All payment due hereunder shall be paid to the Participant, and future owners of condominium units created on the Site as part of the Project shall have no claim or entitlement to such payments as a result such ownership.
7. Non-general Obligation. As provided by Idaho Code Section 50-2910, the obligations of Agency hereunder shall not constitute a general obligation or debt of the Agency, the State of Idaho, or any of its political subdivisions or give rise to a charge against their general credit or taxing powers to be payable out of any funds or properties other than the monies deposited in the special fund or funds provided for herein and pledged hereby to the payment of principal and interest on this Reimbursement Obligation.

G. Taxes

The Act, as amended, provides that Agency will be paid tax increment funds contingent on the amount of assessed value as determined by the Blaine County Assessor each year and the rate of tax levy or the percentage of assessment levied by each of the taxing agencies. Agency is not a guarantor of the assessment determination made by Blaine County Assessor or guarantor of collection of taxes by the Blaine County Treasurer.

Participant shall pay when due all real estate and personal property taxes and assessments assessed and levied on Participant's ownership interest of the Site. This provision or covenant shall run with the land and be binding upon Participant's successors. Except as set forth herein, nothing herein contained shall be deemed to prohibit Participant from contesting the validity or amounts of any tax, assessment, encumbrance, or lien or to limit the remedies available to Participant with respect thereto; provided, such contest does not subject the Site or any portion thereof to forfeiture or sale.

The Increment Tax Revenues on the Site by Participant (as determined from the assessment records of the Blaine County Assessor and the payment records of the Blaine County Treasurer) shall be paid to Participant if and only as they are paid to Agency by Blaine County, the entity which has the legal responsibility to collect property taxes.

Participant recognizes Agency has no authority or involvement in the assessment, tax, or collection process for ad valorem taxes, including real property and personal property taxes. Participant also recognizes the ability of Agency to reimburse Participant for the Reimbursement Obligation is dependent on the ad valorem assessment and collection process. Therefore, in the event insufficient taxes are received by Agency because of reduction of the tax levy rate or assessed values less than assumed by Agency and Participant or in the event of any tax delinquency by any owner of parcels within the Site or by any tenant related to personal property, Participant must elect to either pay the delinquent taxes or in-lieu-of taxes reflecting higher assessments or levy rate on behalf of those taxpayers or receive less reimbursement from Agency to pay the Reimbursement Obligation.

Participant shall not apply for or otherwise request any exemption or reduction in property taxes on the Site pursuant to Title 63, Chapter 44 of the Idaho Code, The Idaho Small Employer Incentive Act of 2005, Idaho Code § 63-602NN, or Idaho Code Section 63-606A. Notwithstanding the foregoing, it is agreed that Participant may apply for or otherwise request tax reimbursement under any of the above referenced statutory provisions without violating the terms of this Agreement.

H. Subordination of Reimbursement Obligations

The Parties agree this Agreement does not provide Participant with a security interest in any Agency revenues for the Project Area or any other urban renewal plan area, including but not limited to revenue from any "Revenue Allocation Area" (as defined in Title 50, Chapter 29 of the Idaho Code). Notwithstanding anything to the contrary in this Agreement, the obligation of Agency to make the payments as specified in this Agreement shall be subordinate to all Agency obligations that have committed or in the future commit available Agency revenues, including but not limited to revenue from any Revenue Allocation Area and may be subject to consent and approval by Agency lenders.

I. Liens/Payment of General Contractor

Participant hereby certifies that as of the Effective Date no mechanic's or materialman's liens have been placed on the Site, as defined above, and that the general contractor and all subcontractors have been or will be paid in full for all work performed on the Private Development. In the event any materialman's liens

are placed on the Site Participant agrees Agency may suspend any payments required under this Agreement until any liens or claims related to the Project and made by any contractor, subcontractor or material supplier that performed work on the Private Development have been satisfied.

J. Agency Contribution Assignable

Agency and Participant agree that Agency's obligations run only to Participant or its assignee and that Agency is under no obligation to grant any additional consideration or greater participation than set forth herein. Participant shall have the absolute right to assign its right to receive any payments to its lender, its successor, or other entity designated by Participant.

K. Indemnification

Participant shall indemnify and hold Agency, City, and their respective officers, agents, and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable architect and attorney fees (collectively referred to in this Section as "claim"), which may be imposed upon or incurred by or asserted against Agency, City, or their respective officers, agents, and employees by reason of any of the following occurrences, provided Participant shall have no obligation to indemnify and hold Agency or City, respectively, and their respective officers, agents, and employees harmless from and against any matter to the extent it arises from the negligence or willful act of Agency or City, respectively, or their respective officers, agents, or employees:

1. Any work done in, on, or about the Site, including the Agency Funded Public Improvements, or work related to the Agency Funded Public Improvements; or
2. Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of the Site or any part thereof; or
3. Any negligent or intentional act or omission on the part of Participant or any of its agents, contractors, servants, employees, subtenants, operators, licensees, or invitees; or
4. Any accident, injury, or damage to any person or property occurring in, on, or about the Site or any part thereof, during construction; or

5. Any failure on the part of Participant to perform or comply with any of the terms, provisions, covenants, and conditions contained in this Agreement to be performed or complied with on its part.

In case any claim, action or proceeding is brought against Agency, City, or their respective officers, agents, and employees by reason of any such claim, Participant, upon written notice from Agency or City, shall, at Participant's expense, resist or defend such claim, action or proceeding.

L. Warranty

Participant warrants that the materials and workmanship employed in the construction of the Agency Funded Public Improvements are of good quality and conform to generally accepted standards within the construction industry and agrees to repair any non-conforming improvements during the warranty period upon receipt of notice from Agency of such non-conforming improvements. Such warranty and repair obligation shall extend for a period of one (1) year after a Certificate of Occupancy has been issued for the Private Development. Provided, nothing herein shall limit the time within which Agency may bring an action against Participant on account of Participant's failure to otherwise construct such improvements in accordance with this Agreement.

M. Maintenance

The Participant recognizes Agency has no specific authority to accept maintenance responsibility of the Agency Funded Public Improvements. Participant anticipates that the City and or various public utilities may accept ownership and maintenance obligations of some or all of the Agency Funded Public Improvements, however such acceptance is not a condition precedent to the obligations of the Parties hereto.

IV. USE AND MAINTENANCE OF THE SITE AND ADJACENT AREA

A. Use of the Site

Participant agrees and covenants to comply with all other provisions and conditions of the Urban Renewal Plan for the period of time the Urban Renewal Plan is in force and effect, which for purposes of this Agreement is deemed through December 31, 2034.

B. Obligation to Refrain From Discrimination

Participant covenants and agrees for itself, its successors and assigns, that there shall be no discrimination against or segregation of any person or group of persons on account of race, age, color, creed, religion, sex, marital status, handicap,

ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, nor shall the Participant or any person claiming under or through the Participant establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Site. The foregoing covenants shall run with the land and shall remain in effect in perpetuity.

C. Nondiscrimination and Nonsegregation

The Participant shall not restrict the rental, sale, or lease of the Site on the basis of race, color, creed, religion, age, sex, handicap, marital status, ancestry, or national origin of any person.

D. Effect and Duration of Covenants

The covenants against discrimination contained herein shall remain in effect in perpetuity. Remaining covenants contained in this Agreement shall remain in effect until sooner of December 31, 2034, or the date on which the Urban Renewal Plan terminates, whichever is sooner. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on the part of the Participant and any successors and assigns to the Site or any part thereof, and the tenants, lessees, sublessees, and occupants of the Site, for the benefit of and in favor of Agency, its successors and assigns, City, and any successor in interest thereto.

E. Local, State and Federal Laws

Participant covenants that it carried out the construction of the improvements in conformity with all applicable laws, including all applicable federal and state labor standards.

V. **DISPUTE RESOLUTION, REMEDIES, AND TERMINATION**

A. Dispute Resolution

In the event that a dispute arises between Agency and Participant regarding the application or interpretation of any provision of this Agreement, the aggrieved party shall promptly notify the other party to this Agreement of the dispute within ten (10) days after such dispute arises. If the Parties shall have failed to resolve the dispute within thirty (30) days after delivery of such notice, the Parties agree to first endeavor to settle the dispute in an amicable manner by mediation or other process of structured negotiation under the auspices of a nationally or regionally recognized organization providing such services in the Northwestern States or

otherwise, as the Parties may mutually agree before resorting to litigation. Should the Parties be unable to resolve the dispute to their mutual satisfaction within thirty (30) days after such completion of mediation or other process of structured negotiation, each Party shall have the right to pursue any rights or remedies it may have at law or in equity.

B. Legal Actions

In addition to any other rights or remedies, any Party may institute legal action to cure, correct, or remedy any default; to recover damages for any default; or to obtain any other remedy consistent with the purpose of this Agreement. The nondefaulting Party may also, at its option, cure the default and sue to collect reasonable attorney's fees and costs incurred by virtue of curing or correcting the Party's breach.

The laws of the State of Idaho shall govern the interpretation and enforcement of this Agreement.

C. Rights and Remedies Are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other Party.

Agency reserves the right to withhold reimbursement to Participant for any Participant default.

VI. GENERAL PROVISIONS

A. Notices, Demands, and Communications between the Parties

Formal notices, demands, and communications between Agency and Participant shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of Agency and Participant as set forth in this Agreement. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail.

B. Conflicts of Interest

No member, official, or employee of Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee

participate in any decision relating to this Agreement which affects his/her personal interests or the interests of any corporation, Partnership, or association in which he/she is directly or indirectly interested.

Participant warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

C. Non-liability of Agency Officials and Employees

No member, official, or employee of Agency shall be personally liable to Participant in the event of any default or breach by Agency or for any amount which may become due to Participant or on any obligations under the terms of this Agreement.

D. Successors and Assigns

This Agreement shall, except as otherwise provided herein, be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

E. Attorney Fees and Costs

In the event that either party to this Agreement shall enforce any of the provisions hereof in any action at law or in equity, the unsuccessful party to such litigation agrees to pay to the prevailing party all costs and expenses, including reasonable attorney fees incurred therein by the prevailing party, and such may be included to the judgment entered in such action.

F. Severability

If any provisions of this Agreement shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Agreement, and this Agreement shall be construed and enforced as if such illegal or invalid provisions had not been contained herein.

G. Headings

The section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

H. Counterparts

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

I. Forced Delay; Extension of Times of Performance

In addition to the specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; acts of another party; environmental analysis, or removal of hazardous or toxic substances; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of Agency shall not excuse performance by Agency); or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the forced delay, which period shall commence to run from the time of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by Agency and Participant.

J. Inspection of Books and Records

Agency has the right, upon not less than seventy-two (72) hours' notice, at all reasonable times, to inspect the books and records of Participant pertaining to the Agency Funded Public Improvements.

K. Attachments and Exhibits Made a Part

All attachments and exhibits which are attached to this Owner Participation Agreement are made a part hereof by this reference.

VII. AMENDMENTS TO THIS AGREEMENT

Agency and Participant agree to mutually consider reasonable requests for amendments to this Agreement and any attachments hereto which may be made by any of the Parties hereto, lending institutions, bond counsel, financial consultants, or underwriters to Agency, provided said requests are consistent with this Agreement and would not alter the basic business purposes included herein or therein. Any such amendments shall be in writing and agreed to by the Parties.

VIII. ENTIRE AGREEMENT, WAIVERS, AND AMENDMENTS

This Agreement, including Attachments 1 through 4, inclusive, incorporated herein by reference, constitutes the entire understanding and agreement of the Parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter thereof.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Agency and Participant, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and Participant.

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement the day and year below written to be effective the day and year above written.

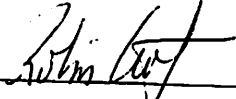
KETCHUM URBAN RENEWAL AGENCY

By: 

DAVID GOVEAUX, KURA Chair

Date: 2/21/17

ATTEST:

By: 

Robert Crotty
KURA Secretary

PARTICIPANT

Trail Creek Fund, LLC

By: 

Jack E. Bariteau, Jr., Managing Member

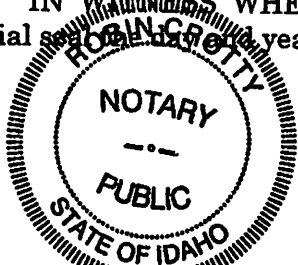
Date: 2/12/2017

ACKNOWLEDGMENTS

STATE OF IDAHO)
) ss.
County of Blaine_)

On this 21st day of February, 2017, before me, Robin Greer, the undersigned notary public in and for said county and state, personally appeared Paul Courlay, known or identified to me to be the Chair of the Ketchum Urban Renewal Agency, the public body corporate and politic, that executed the within instrument, and known to me to be the person that executed the within instrument on behalf of said Agency and acknowledged to me that such Agency executed the same for the purposes herein contained.

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



Residing at Ketchum City Hall
Commission Expires 12/22/2020

STATE OF IDAHO)
) ss.
County of Blaine_)

On this 12th day of February, 2017, before me, James R. Laszki, the undersigned notary public in and for said county and state, personally appeared Jack E. Bariteau, Jr., known or identified to me to be the managing member of Trail Creek Fund, LLC, and the person who signed the within instrument, and acknowledged to me that he has authority to execute and executed the foregoing instrument for the purposes therein contained on behalf of Trail Creek Fund, LLC.

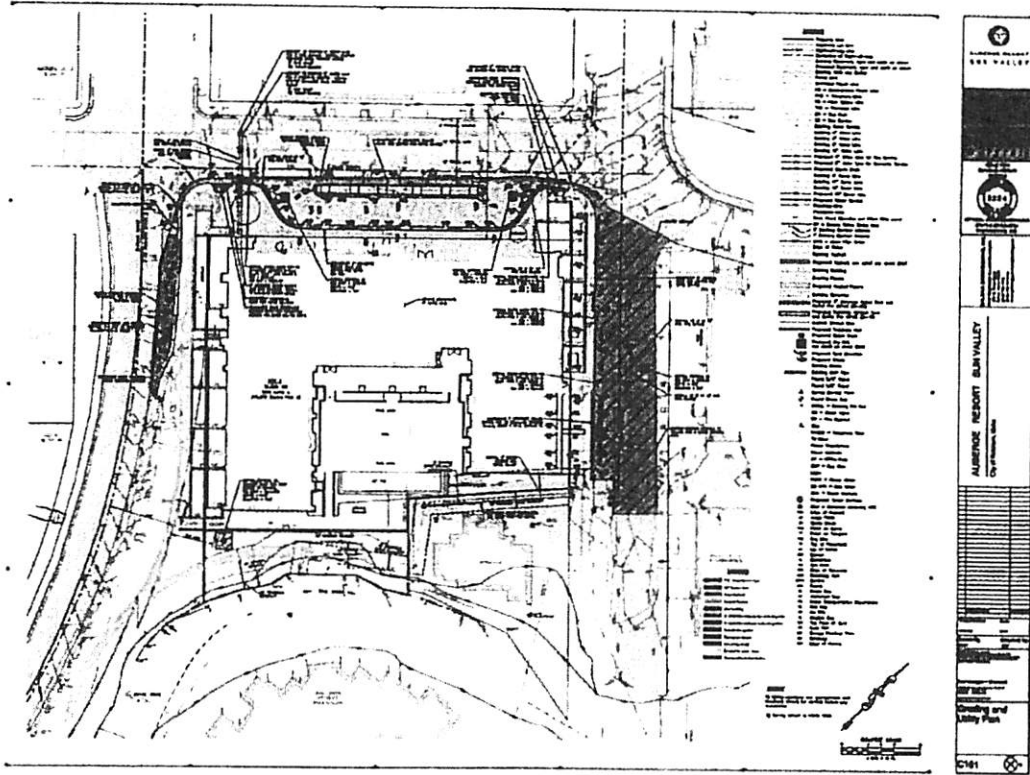
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Residing at Blaine County
Commission Expires August 3, 2017

Attachment 1

Map of the Site



Attachment 2

Legal Description

Lot 2 of Block 83 of the City of Ketchum, according to the official plat thereof

Attachment 3

**Amended and Restated Development Agreement
Including Employee Housing Plan**

AMENDED AND RESTATED DEVELOPMENT AGREEMENT
(City of Ketchum/Trail Creek Fund, LLC, et al.

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of the 5th day of October, 2015, 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 ("Project") currently referred to as the "Auberge Resort Hotel" 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 and 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, the original agreement between the City of Ketchum and Trail Creek Fund LLC was first amended on April 15, 2010 for the purpose of extending the entitlement expiration dates; and

WHEREAS, the original agreement between the City of Ketchum and Trail Creek Fund LLC was amended for a second time on July 16, 2012 for the purpose of extending the entitlement expiration dates; and

WHEREAS, the original agreement between the City of Ketchum and Trail Creek Fund LLC was amended for a third time on November 5, 2013 for the purpose of extending the entitlement expiration dates; and

WHEREAS, Trail Creek Fund LLC requested a fourth amendment to the Development Agreement in July 2015 for the purpose of extending the entitlement expiration dates by seven (7) months; and

WHEREAS, on September 3, 2015 the Ketchum City Council approved the request from Trail Creek Fund LLC to extend the entitlement expiration dates by seven (7) months from October 6, 2015 to May 6, 2016; and

WHEREAS, the Ketchum City Council approved the fourth extension with the understanding that this would be the last and final amendment to the Development Agreement as to time extensions; 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, or as amended from time to time. Conditions of approval are excerpted in Exhibit A.
 - PUD CUP No. 08-007 dated November 17, 2008, or as amended from time to time.
 - PUD Development Plans referenced in the PUD CUP Findings of Fact, Conclusions of Law and Decision, or as amended from time to time.
 - Design Review Findings of Fact, Conclusions of Law and Decision, including all conditions of approval, dated September 8, 2008, or as amended from time to time.
 - 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, or as amended from time to time.

Any material 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.

In the event of any inconsistency between the terms and conditions of this Agreement and the agreements, approvals, plans, permits and other documents listed above, the terms and conditions of this Agreement shall govern.

Except as provided otherwise in this Agreement, development of the Project shall be vested and governed by policies, procedures, guidelines, ordinances, codes and regulations of the City governing land use in effect as of the Effective Date of this Agreement. Any amendments or additions made during the term of this Agreement to City policies, procedures, guidelines, ordinances, codes or regulations shall not apply to or affect the conditions of development of the Project; provided, however, the following are exempt from vesting under this Agreement:

- i) plan review fees and inspection fees;**
- ii) amendments to building, plumbing, fire and other construction codes;**
- iii) City enactments that are adopted pursuant to State or federal mandates that preempt the City's authority to vest regulations.**

Owner may request to be bound by future amendments to the Ketchum Municipal Code, or other regulations, policies or guidelines affecting development, and such request may be approved administratively provided no new land use not allowed under this Agreement and no increase in total square footage of structures to be developed is proposed. In all other instances, the request to be bound by future amendment(s) shall be approved by the Council as an amendment to this Agreement.

Any application for a building permit submitted by Owner shall substantially comply with the requirements of the above-referenced applicable codes, agreements, approvals, plans, permits and other documents as such requirements exist on the day the building permit application is submitted. A complete Building Permit Application and applicable fees shall be submitted to the City no later than May 6, 2016. A Certificate of Occupancy shall be issued for the Project no later than 30 months after the Building Permit is issued.

A building permit application that does not substantially comply with the requirements contained in applicable codes, agreements, approvals, plans, permits and other project documents may be rejected by the City within a reasonable time after completing review of the application by providing written notice to Owner describing the non-compliance in detail unless the non-compliance is cured by Owner within thirty days. If a building permit application contains material changes to the above-referenced applicable codes, agreements, approvals, plans, permits and other documents an amendment to this agreement must be applied for by Owner and considered by the City Council. If such amendment is approved by City Council, all approvals referenced in Section 2 may be subject to amendment. A new building permit may be required to reflect the changes made to the approvals in Section 2.

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 unless otherwise amended by the City of Ketchum. 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 areas within the hotel, fitness facilities, 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 permitted by law. Any substantial 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 exist as of the date on which Owner applies for a building permit. 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 exist on the date on which Owner applies for a building permit. 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 revocable 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, screen 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 and all ingress and egress improvements that are essential for access to the hotel entries and underground parking garage and loading dock areas of the Project.
6. **Plaza Area.** The size and location of the planned Gateway “plaza” area for the Property, shall be approved by the City Engineer and the City Council prior to issuance of a building permit and installed prior to the issuance of any Certificate of Occupancy.
7. **Construction and Completion Schedule.** Improvements shall be constructed and substantially completed pursuant to a schedule set forth in the Revised Construction Mitigation Plan, which shall be submitted by the Owner and approved by the City no later than March 6, 2016. A Certificate of Occupancy shall be issued for the Project no later than 30 months after the Building Permit is issued.
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 the Ketchum Engineer prior to construction. Prior to acceptance of any such improvements to be dedicated to Ketchum, the Ketchum Engineer 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 the Ketchum Engineer 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 unless otherwise amended by the City of Ketchum. 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 Ketchum Municipal Code and as set forth in an Employee Housing Plan, which shall be submitted by the Owner and approved by the City Council no later than April 6, 2016. Such plan shall include items set forth in Exhibit A. The approved Employee Housing Plan shall be added to this Agreement by addendum and recorded prior to issuance of a building permit. All required employee housing shall be available no later than six months after the issuance of any certificate of occupancy for the PUD property. Security for the employee housing shall be provided in the form of either a letter of credit issued by a bank, a set-aside agreement with the lender, or a lien on the property in favor of the City sufficient to cover the Employee Housing requirement.
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. The individual condominium units and the commercial and/or common area units shall be use restricted through a recorded declaration of covenants and restrictions.
14. **Relocation of Overhead Distribution Power Lines.** Owner 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 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. **Conditions of Approval.** Owner agrees to comply with all conditions incorporated into the PUD Conditional Use Permit. Any and all approvals as adopted or amended as listed in Section 2, shall be valid until May 6, 2016. These approvals may be retained by Owner and the validity date extended past May 6, 2016 by Owner submitting a building permit application by May 6, 2016, provided the requirements of Section 7 have been met.

In the event Owner has need to revise the approvals listed in Section 2, the following schedule shall be observed to provide Owner the best opportunity to submit a complete building permit by May 6, 2016:

- If necessary, a preliminary plat must be submitted to the City no later than December 15, 2015.

- Application for Conditional Use Permit (CUP) to amend the Planned Unit Development (PUD) approval of 2008 shall be submitted no later than January 15, 2016.
- Application to amend the Design Review approval of 2008 shall be submitted no later than January 15, 2016.
- Revised Construction Mitigation Plan shall be submitted to the City no later than March 6, 2016.
- Complete Building Permit Application and applicable fees shall be submitted to the City no later than May 6, 2016.
- A Certificate of Occupancy shall be issued for the Project no later than 30 months after the Building Permit is issued.

Owner acknowledges the public processes required to amend the approvals listed in Section 2 provide no guarantees of timelines for approval and even by observing the schedule above, Owner may not be in a position to submit a complete building permit application by May 6, 2016.

16. **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.
17. **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.
18. **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.
19. **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 after reasonable written notice to Owner, Ketchum may, without further notice to Owner, exercise any or all of the following remedies until the default is cured:
- 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.

In the event that City fails to comply with the terms and conditions hereof in any material respect, and such default is not cured after reasonable written notice to City, Owner may, without further notice to City, exercise any and all remedies available under law or in equity.

20. Miscellaneous Provisions.

- a. 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.
- b. 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 God (such as but not limited to fires, explosions, earthquakes, drought and floods); war, hostilities, invasion, act of foreign enemies; acts of civil disobedience, rebellion, revolution, insurrection or

civil war; contamination by radioactivity; riot, commotion, lock-outs or disorder, strikes; discontinuance of electrical supply; 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; acts of terrorism; or similar causes, the time for such performance shall be extended by the amount of time of such delay.

- c. 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.
- d. 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 E. Bariteau, Jr.
Trail Creek Fund, LLC
Post Office Box 84
Sun Valley, Idaho 83353
(650) 906-5636 Phone
(208) 727-1091 Fax

With a copy to: Lawson Laski Clark & Pogue, 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.

- e. 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.

- f. **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.
- g. **Effective Date of Agreement.** This Agreement shall be effective as of the date approved by the City Council.
- h. **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.
- i. **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.
- j. **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.
- k. **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.
- l. **No Presumptions.** There shall be no presumptions for or against either party hereto as a result of the preparation of this Agreement.
- m. **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.
- n. **Choice of Law.** This Agreement shall be governed by the laws and decisions of the state of Idaho.

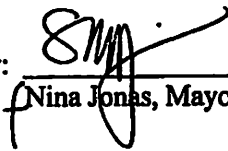
IN WITNESS WHEREOF, the parties, having been duly authorized, have hereunder caused this Agreement to be executed on the day and year first-above written, the same being done after public hearing, notice and statutory requirements having been fulfilled.

“CITY”:

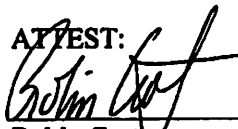
“OWNER”:

CITY OF KETCHUM,
an Idaho municipal corporation


TRAIL CREEK FUND, LLC,
a California limited liability company

By: 
Nina Jonas, Mayor

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

ATTEST:

Robin Crotty
Interim City Clerk

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


Susan Buxton, City Attorney

ACKNOWLEDGEMENT FOR CITY

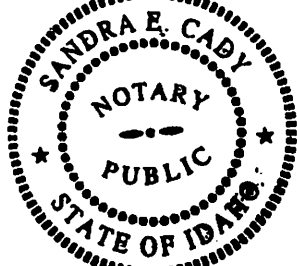
STATE OF IDAHO)
) ss.
COUNTY OF BLAINE)

SUZANNE FRICK

City Administrator

On this 6th day of October, 2015, before me, the undersigned Notary Public in and for said State, personally appeared ~~Nina Jones~~, 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.



Sandra E. Cady
Notary Public for the State of ID.
Residing at Blaine County
My Commission Expires 11-20-2019

ACKNOWLEDGEMENT FOR OWNER

STATE OF IDAHO)
) ss.
COUNTY OF BLAINE)

On this 28 day of OCTOBER, 2015, 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.



Lily Opale
Notary Public for the State of IDAHO
Residing at KETCHUM, ID
My Commission Expires 01/27/2018

Exhibit A

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 Engineer and the Director of Planning and Building, prior to issuance of a building permit.
2. Right-of-way encroachments including retaining walls and landscape beds, and curblin 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.
3. 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.
4. 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.
5. 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 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 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.

- 6. A privacy wall or landscaping buffer shall be developed as a buffer for the 200 South Leadville Townhomes.
- 7. Operational hours for the observatory shall be developed that provides for access for the public, schools and other interest groups.
- 8. This PUD CUP approval is contingent upon the approval of the Design Review/Waterways Design Review application.
- 9. 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.

10. **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.**
11. **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.**
12. **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.**
13. **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 RETURN TO:**

Micah Austin
City of Ketchum
Post Office Box 2315
Ketchum, Idaho 83340

Instrument # 635897

HAILEY, BLAINE, IDAHO
06-22-2016 9:49:37 AM No. of Pages: 11
Recorded for: BLAINE COUNTY TITLE
JOLYNN DRAGE Fee: \$40.00
Ex-Officio Recorder Deputy: JB
Electronically Recorded by Simplifile

**CORRECTED AMENDMENT TO THE AMENDED
AND RESTATED DEVELOPMENT AGREEMENT
(City of Ketchum/Trail Creek Fund, LLC, et al.)**

This Corrected Amendment to the Amended and Restated Development Agreement ("Corrected Amendment") is made as of June 21, 2016, by the City of Ketchum, Idaho ("Ketchum"), a municipal corporation.

1. **Recitals.** This Corrected Amendment is made in contemplation of the following facts and purposes:

1.1 The City entered into that certain Amended and Restated Development Agreement as of October 5, 2015, and recorded in the records of Blaine County, Idaho as Instrument No. 630816 (the "Amended Agreement") with Trail Creek Fund, LLC, a California limited liability company ("Owner"). The Amended Agreement related to certain approvals by the City for development of Owner's 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").

1.2 Pursuant to Section 12 of the Amended Agreement, Owner was required to obtain approval by the City Council of an Employee Housing Plan no later than April 6, 2016, which approved plan was required to be added to the Amended Agreement "by addendum and recorded prior to issuance of a building permit." (Amended Agreement, §12).

1.3 The Employee Housing Plan was submitted by letter to the City on April 5, 2016 and was approved by the City Council on April 4, 2016. The approved Employee Housing Plan and amendment to the Amended Agreement was executed by the Parties and recorded on April 22, 2016 in the records of Blaine County as Instrument No. 634489 (the "Housing Amendment").

1.4 The Housing Amendment included a reference to properties located at 100 East 6th Street and North 1st Avenue, Ketchum, Lots 5 & 6 of Block 35, respectively, which properties were not owned by Owner at the time the Housing Amendment was recorded. The Parties agree that the Housing Amendment was intended to be recorded in connection with, and as an amendment/addendum to, the Amended Agreement, and that the properties identified in the Housing Amendment were not intended to be encumbered, and are not encumbered, by the Housing Amendment.

2. **Corrected Amendment.** In view of the foregoing recitals, the Parties have agreed to correct the Amended Agreement as follows:

2.1 The approved Employee Housing Plan is hereby added as Exhibit B to the Amended Agreement.

3. Construction. This Corrected Amendment and the Amended Agreement constitute one agreement between the Parties.

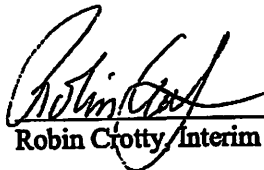
4. Ratification. The Amended Agreement, as corrected by this Corrected Amendment, is hereby ratified and affirmed. This Corrected Amendment is executed by the Parties as of the date first above written.

IN WITNESS WHEREOF, the City, having been duly authorized, has hereunder caused this Corrected Amendment to be executed on the day and year first above written, and hereby requests recording of the Corrected Amendment as an amendment to the Amended Agreement.

CITY OF KETCHUM
an Idaho municipal corporation

By: 
Suzanne Frick, City Administrator

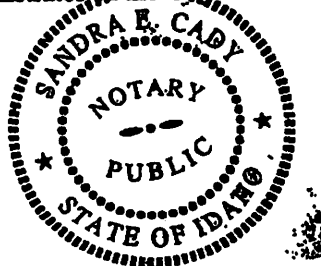
Attest:


Robin Crotty, Interim City Clerk

ACKNOWLEDGMENT FOR CITY

STATE OF IDAHO)
) ss.
County of Blaine)

On this 21st day of June, 2016, before me, a Notary Public in and for said State, personally appeared Suzanne Frick, City Administrator of the City of Ketchum, Idaho, known or identified to me to the person whose name is subscribed to the within instrument as the City Administrator of the City of Ketchum, Idaho, and acknowledged to me that she executed the same as City Administrator of the City of Ketchum, Idaho.



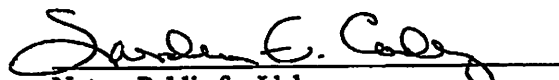

Notary Public for Idaho
Residing at Blaine County
Commission expires 11-22-2019

EXHIBIT "B"

April 5, 2016

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

**Micah Austin, AICP
City of Ketchum Planning and Building Director
480 East Avenue North, P.O. Box 2315
Ketchum, Idaho 83340**

AUBERGE RESORT SUN VALLEY – EMPLOYEE HOUSING PLAN

Dear Micah:

Trail Creek Fund LLC is pleased to provide the City of Ketchum with our draft Employee Housing Plan, a requirement of the Amended and Restated Development Agreement between Trail Creek Fund LLC, owner and developer of the Auberge Resort Sun Valley hotel and residence development project and the City of Ketchum that was approved on October 5, 2015. The requirements set forth in the Agreement are here reprinted in a lesser font than our response for your ease of reference.

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.

Our approach to providing the employee bed requirement as originally contained in the Development Agreement approved for the development in 2008 is based on delivering in Ketchum living to our employees. We will provide separate living arrangements for all of the required employee beds to reflect the number of employees we need to provide for under the City's employee housing formula. We have also met with David Patrie, Director of the Blaine County Housing Authority, for his input and guidance on the employee housing plan we intend to implement if approved by the City Council. As the only lodging development (Limelight Hotel is exempt) or other commercial development to date ever to be required to provide employee housing, we see the mission of providing

Trail Creek LLC – Employee Housing Plan – 05 April 2016

this housing as one which must be innovative in design and developed by entirely different financial model and method. The housing must be highly suitable and attractive living units for our future employees as we see this housing being provided as part of the overall salary package for qualified employees who elect to occupy the housing to be constructed in a separate development project that our ownership or an affiliated ownership will bring forward to the City after we have received the City Council's blessing on our approach to creating this housing stock. The highlights of this approach are as follows:

- 1. The City's formula for providing employee housing was originally calculated at a ratio of 25% of total employees assuming a 1 to 1 ratio of employees to hotel rooms. For a 73 room hotel this resulted in the 18 employees to be housed per the Development Agreement. If recalculated for the revised 65 hotel room count, the revised requirement would be 16, but we will agree to hold to the 18 requirement. A classic and traditional approach to creating this housing would be to build a dormitory style level of living with common kitchen, restroom and storage components. Our most readily accessible example of this housing is the employee housing built to serve the Sun Valley Lodge and Inn properties. In our view this model is unsuitable for the labor pool. To attract the level of employee that the Auberge hotel will require whether recruiting within or without the Wood River Valley market, the employee living unit must provide a sense of well thought architectural design that provides for ease of accessibility, privacy and convenience. Our conclusion is that we must find a way to build an apartment component as part of a larger mixed residential project as the economics of developing this project on a stand-alone basis and supported solely by the hotel do not work.**
- 2. The only feasible way that the hotel can support the development of the employee housing is for it to be built as part of another residential project containing market rate for sale housing located above the employee housing. As you are aware our development is also obligated to pay an in lieu fee against the non-hotel room component of the project so allocating more precious project dollars away from the hotel construction and operations to produce employee housing is a non-starter. Market rate housing will in effect subsidize the development of the employee housing and make the project financeable to build as a separate project with a master lease and lump sum annual rental of the employee housing units by the hotel developer for a minimum of 20 years. This burden has been factored into the hotel annual operating budget for the hotel and will permit the hotel operator maximum flexibility to place approximately 19% of its projected first year of operation 85 employee work force into this housing. Hotel operations intends to offer this housing to full time employees across the spectrum of mid and lower**

tiers of the fulltime job workforce (as delineated on the attached TRI Project Salary Schedule prepared by Auberge Resorts for the Idaho Commerce Department) as they are hired. It is not anticipated that upper tier employees earning in excess of \$80,000 per year will locate in employee housing given the anticipated level of experience, financial net worth and larger housing preferences of these individuals.

3. The site we have identified for the Employee Housing is at the corner of 1st Avenue and 6th Street in downtown Ketchum. It is comprised of two adjacent 55' x 100' sites identified as 100 East 6th Street and 560 North 1st Avenue, Ketchum Lots 5 & 6 of Block 35 respectively. The site is zoned for this use and we have planning studies in progress that show it to be well suited for this project.

As you are aware, the applicant, Trail Creek Fund LLC, shall provide a detailed Employee Housing Plan (which originally provided for housing for employee housing equal to 18 beds for 73 rooms in the original hotel room layout) in the hotel project as approved by the City of Ketchum on a site acceptable to the Ketchum City Council, and within City of Ketchum City limits. The project plan has now evolved into a 65 room hotel, but as stated above we will hold to the 18 employee bed requirement. The applicant, Trail Creek Fund LLC, intends to entitle and construct a separate three story real estate project within the City Limits at one of two possible locations that will create this employee housing and that is specifically designed for use by the hotel employees as part of their employee compensation plan. The development envisioned is unique in its goal to create on grade, street present walk up apartment housing in smaller configurations from 400 to 750 square feet versus providing a dormitory style level of living. The upper two levels of the three story structure would consist of three market rate flats on the second floor and two penthouses on the third floor. In plan, the building would be located on two 5,500 square foot lots combined into an 11,000 square foot lots. Our preliminary plans indicate that 12 apartments could be developed over underground parking and storage with two levels of market rate housing above. The 18 employees would be accommodated in the ground floor developed as a single condominium unit that will be master leased by Trail Creek Fund LLC, the developer and owner of the completed hotel project for the exclusive use Auberge Resorts employees. The apartment units would be provided to qualifying employees as part of their salary package with no rent charged to the employee. The employees selected would be responsible for payment of utilities and personal communications services including internet and cable and phone. Each apartment would be designed and fitted out to provide front door street entry, window line to the street, full kitchens and private bathroom and closet spaces with adequate storage provided for bicycles, ski and snow equipment and general storage needs in the underground garage. One parking space per apartment would be provided in the underground garage.

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

- a) **Provide salary/hourly wages for the various income categories of employees.**

The hotel operated and managed by Auberge Resorts Collection under a long term management contract with our ownership, Trail Creek Fund LLC, is projected to employ 85 employees and workforce positions per the attached TRI Project Salary Schedule prepared by Auberge Resorts Collection. Please refer to this schedule for annual salary projections.

- b) **The expected number of each level of employee that is intended to be served by the employee housing units.**

The job descriptions and salaries on the Project Salary Schedule range significantly between upper senior management and the lowest entry position. The intention of Trail Creek Fund LLC and Auberge Resorts is to recruit and find the right combination of employees in all categories. We see the middle and lower tier employees of the Salary Schedule as ideally qualified to apply for this employee housing.

- c) **Which employee category will be served by which type/size of units.**

It is anticipated that all but the top level of management and pay grade would be eligible for the apartments or a pool of over 70 employees.

- d) **Provide information on anticipated rental rates or subsidized and/or free rent to employees; will utilities and homeowners dues (if any) be included in proposed rates.**

There are no rental rates proposed as the apartments will be offered to the employees at no charge other than payment of utilities and prorated homeowner dues reimbursed to the master lessee. Property taxes will be paid by Trail Creek Fund LLC under its master lease obligations.

- e) **Establishment of maximum occupancy per unit type (i.e. 1 person per 1 bedroom unit; 2 persons per 2 bedroom units).**

All apartments as planned in the development will be a combination of single and double occupancy units as best fits the plan to provide for the total 18 employee required occupancy.

- f) **Location of units to be within Ketchum City limits.**

The apartments will be located within the City of Ketchum on one of two preferred sites under consideration, one within walking distance of the hotel project and the other a short ride to the city center readily accessible via public transportation, bicycle or car.

- g) Provide a matrix on breakdowns of the different types of units (1BD; square footage; total number of units; anticipated rent, etc.)

The units will be a combination of studios, one-bedroom, and two-bedroom apartments ranging from 400 SF to 750 SF as is necessary to meet the 18 employee housing requirement. All units will be provided rent free to the employees.

- 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.

All units will be needed for fulltime employees and spouses if married.

- i) What units will be available and how will the pool of units available be determined.

All apartment units will be available within 6 months of Certificate of Occupancy for the hotel as agreed in the last Amendment of the Development Agreement and upon completion of the employee housing portion of the project. The employee apartments are all on the ground floor of the proposed building.

- 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.

The minimum standard for employee eligibility will be execution of an employment contract for full time work for at least one calendar year. Fulltime work is a 40 hour work week five days a week or a flexible schedule of longer hours and fewer days as to be determined by Auberge Resorts management.

- k) How will overflow of demand of units by employees be handled; will there be a priority system.

We will not be able to provide for overflow employee housing beyond the 18 bed requirement as the hotel project is incapable of financially supporting this subsidy to be successful in the long term. It is anticipated that employees recruited and located within our employee housing will experience the benefits of living in the City of Ketchum and eventually matriculate to more traditional and larger forms of housing. The normal pattern of life may lead to the establishment of families needing larger types of housing creating a turnover of employee housing for those individuals who find employment with Auberge in future years as employees accommodated in the employee housing project relocate.

- l) Provide information on housing families (with children) and/or married couples.

We do not see the employee housing in the apartments as suitable for families but do anticipate double occupancy by married couples as a possibility in a number of the apartments.

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

See attached employee and salary schedule.

- Information on type of housing provided per employee classification

At this juncture, the apartment portion of the building will consist of studios, one-bedroom, and two-bedroom units, some appropriate for possible double occupancy.

- Costs incurred in rent (and utilities) and transportation/parking by employees

No costs for rent other than utilities, homeowner dues, and personal communication services are forecast. These exact costs are all unknown at this time. Underground parking for one car per apartment is provided. Transportation costs are not calculated given the short walking distance from the preferred employee housing site to the hotel.

- Details on anticipated lease terms/rental agreements for employees housed on-site

There are no hotel employees that will be housed within or on the hotel premises. Employment by the hotel company will dictate the employee qualifying for the employee housing to be provided by hotel ownership.

- Anticipated transport and parking scenarios for both on-site and commuting employees.

No onsite parking will be available for the entire work force in the hotel garage although a valet managed parking system may provide for potential employee parking opportunities for those employees other than the employees housed in the apartment units provided by Trail Creek Fund LLC.

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.

This completes our Employee Housing Plan for Auberge Resort Sun Valley as provided by Trail Creek Fund LLC. Our ownership looks forward to working with you and the City of Ketchum to implement this plan. We are always available to discuss any additional questions you may have.

Best Regards,

Trail Creek Fund LLC

A handwritten signature in black ink, appearing to read "Jack Bariteau, Jr.", is written over two horizontal lines. The signature is cursive and includes a long horizontal stroke at the end.

**Jack Bariteau, Jr.
Managing Member**

Attachment 4

Agency Funded Public Improvements

**Auberge Resort San Valley
Off-Site Improvements w/ Power Line Options**



Revised 12/11/2016	Estimated Costs										Previous	Current	Total	Notes
	Qty.	13% W	Unit	Unit \$	Material	Labor	Subs	Others	Total					
Division 1 - General Conditions														
01000 Survey							\$ 3,200.00	\$	\$ 3,200.00					Current to Date expense \$
01040 Project Manager							\$ 2,900.00	\$	\$ 2,900.00					Current to Date Expense \$
01041 Civil Engineering							\$ 7,500.00	\$	\$ 7,500.00					
Landscape Design							\$ 7,500.00	\$	\$ 7,500.00					
02045 Mechanical Engineering							\$ 1,800.00	\$	\$ 1,800.00					
02054 General Liability Insurance - <u>Actual Cost</u>							\$ 7,800.00	\$	\$ 7,800.00		\$ 4,851.00			ROW Schematics Pre Rata Allocation
Permits and Fees							\$ 4,407.00	\$	\$ 4,407.00		\$ 4,407.00			Current to Date Expense \$ 4,851.00
IPCO Engineering Service - <u>Actual Cost</u>							\$ 6,214.00	\$	\$ 6,214.00		\$ 6,214.00			Pre rata allocation for Water, Sewer, Gas
IDOT Permit- <u>Actual Cost</u>							\$ 30.00	\$	\$ 30.00		\$ 30.00			IPCO Service
Total							\$ 18,800.00	\$ 23,971.80	\$ 42,771.80					
Division 2 - Sitework within the Public ROW														
02025 Idaho Power West Side Undergrounding							\$ 519,279.00	\$	\$ 519,279.00					IPCO Overhead/Underground from River to # 20, To Gsm \$ 680,684
02025 Idaho Power East Side Undergrounding							\$ 43,342.00	\$	\$ 43,342.00					IPCO Overhead/Underground East
02200 Excavation & Grading	11824		SF	\$ 2.25			\$ 26,194.00	\$	\$ 26,194.00					
02519 Asphalt Base Work	7805	8975.75	SF	\$ 0.95			\$ 8,524.96	\$	\$ 8,524.96					4" of 3/4" gravel
02519 Asphalt	7805	8975.75	SF	\$ 2.85			\$ 21,093.01	\$	\$ 21,093.01					3" compacted asphalt on leadwells and hwy.
Drums & Disposal of Asphalt road							\$ 3,200.00	\$	\$ 3,200.00					Leadwell Ave. asphalt removal
Saw Cut	450		LF	\$ 3.00			\$ 1,350.00	\$	\$ 1,350.00					Assuming 2.5' cut @ \$3 ft.
Tree Removal in State ROW - <u>Actual Cost</u>							\$ 2,000.00	\$	\$ 2,000.00					West side
02200 Sewer Line Relocation - <u>Actual Cost</u>	106		LF	LS			\$ 69,940.00	\$	\$ 69,940.00		\$ 69,940.00			18" Sewer relocation south end of building Labor & Materials
Demo Old Line							\$ -	\$	\$ -					demo and dispose old line
Relocation Sewer Line Install	106	121.9	LF	\$ 120.00			\$ -	\$	\$ -					18" Main with shoring box
Slurry Mix. Sewer Line	6	6.9	LF	\$ 50.00			\$ -	\$	\$ -					Slurry mixture
Manhole Covers	3		CITY	\$ 3,740.00			\$ -	\$	\$ -					60", 48"
Bypass Line							\$ 7,087.00	\$	\$ 7,087.00		\$ 7,087.00			IPCO
Relocate Power Pole - <u>Actual Cost</u>							\$ -	\$	\$ -					12" PVC Location: North end of building connecting catch basin, sand and
Catch Basin Pipe	120	138	LF	\$ 11.34	\$ 1,564.92		\$ -	\$	\$ 1,564.92					grasses trap, and drywells.
Catch Basins	4		CITY	\$ 2,950.00			\$ 11,800.00	\$	\$ 11,800.00					Installed
Drywell 5' Diameter	2		CITY				\$ 4,200.00	\$	\$ 4,200.00					
Drywell 10' Diameter	1		CITY				\$ 12,560.00	\$	\$ 12,560.00					
02200 Water Line							\$ 15,600.00	\$	\$ 15,600.00		\$ 15,600.00			Labor, Material, Asphalt repairs on River St
8" Water Line - <u>Actual Cost</u>	1		CITY				\$ 4,950.00	\$	\$ 4,950.00		\$ 4,950.00			
Terminate old 7" - <u>Actual Cost</u>	1		CITY				\$ -	\$	\$ -					
02515 Pavers	10765	12979.75	SF	\$ 12.00	\$ 148,557.00		\$ 27,854.44	\$	\$ 176,411.44					Includes sidewalk pathways, North entrance, West Sidewalks, East
Night Turn Lane Paint					\$ 20.00		\$ 300.00	\$	\$ 300.00					sidewalks and garage entrance
02800 Landscaping Allowance Balance							\$ 58,900.00	\$	\$ 58,900.00					Balance of Landscaping
02850 Irrigation	2575	2961.25	SF		\$ 14,560.00		\$ 14,560.00	\$	\$ 14,560.00					
Total					\$ 150,161.92	\$ -	\$ 857,686.81	\$ -	\$ 1,007,848.73					
Division 3 - Concrete Sidewalks, Curb & Gutter														
1" Curb and Gutter	418	480.7	LF	\$ 47.00			\$ 19,644.00	\$	\$ 19,644.00					Location: North entrance of building
6" Reverse Lip Vertical Curb & Gutter	225	235.75	LF	\$ 47.00			\$ 11,080.25	\$	\$ 11,080.25					Location: Northwest corner of building
6" Vertical Curb and Gutter	73	83.95	LF	\$ 47.00			\$ 3,943.65	\$	\$ 3,943.65					Location: West and East side of building
5" Concrete Valley Gutter	57	63.55	LF	\$ 47.00			\$ -	\$	\$ -					T&E
Truncated Dome	55	63.25	SF	\$ 47.00	\$ 170.00	\$ 200.00	\$ 370.00	\$	\$ 370.00					\$25 each w/ shipping, North corners of building
Total					\$ 170.00	\$ 200.00	\$ 34,871.90	\$ -	\$ 35,041.90					
Division 4 - Masonry														
Fountains	2		LS				\$ 150,000.00	\$	\$ 150,000.00					2 fountains - allowance
Retaining Wall	6000	8900	SF	\$ 40.00			\$ 278,000.00	\$	\$ 278,000.00					Used 3" average for depth of wall
Total					\$ -	\$ -	\$ 278,000.00	\$ -	\$ 278,000.00					
Division 15- Mechanical														
Heated Section for asphalt	5827	6701.05	SF	\$ 12.00			\$ 80,412.60	\$	\$ 80,412.60					Only includes the asphalt on Leadwell Ave East of the building
Heated Section for pavers	10765	12979.75	SF	\$ 12.00			\$ 148,557.00	\$	\$ 148,557.00					All pavers west, north and south of building, including entrance, driveway, and sidewalks
Total					\$ -	\$ -	\$ 228,969.60	\$ -	\$ 228,969.60					
Subtotal					\$ 150,311.92	\$ 200.00	\$ 1,409,137.91	\$ 23,971.00	\$ 1,733,620.83					6%
Fees									\$ 104,017.25					
Contingency									\$ 40,280.00					
Total Estimate					\$ 150,311.92	\$ 200.00	\$ 1,409,137.91	\$ 23,971.00	\$ 1,677,818.03					\$ 150,311.92 for 10% to Sum to Total \$ 2,000,000.00



Auberge Resort Sun Valley
Off-Site Improvements Scope of Work
Revised 12/12/2016

Off-Site Improvements Scope of Work

West Side of Building

- Idaho Power Co. overhead power on the Auberge Site
- Retaining Walls
- On Main St. construct a right turn lane that will include: new asphalt, saw cutting to provide a clean vertical edge, and painted lines
- 6" concrete reverse lip vertical curb and gutter for 77 Feet
- 6" Concrete Vertical Curb and Gutter for 74 Feet

North Side of Building

- Heated pavers for drive-in and the entrance
- 12" PVC to connect the Catch Basin, Grease and Sand trap, and the Drywell units placed underground
- 1" Curb and gutters to be placed at the front entrance of the hotel
- New Asphalt and saw cutting will continue through the whole north side of the building
- Truncated Domes
- Landscape
- Art/Fountains

East Side of Building

- Idaho Power Co. overhead power on the Auberge Site
- 5827 sf of New Heated asphalt on Leadville avenue
- 6" concrete reverse lip vertical curb and gutter for 129 Feet
- Retaining walls that also includes the planter boxes
- Saw cutting will be applied on Leadville Ave. to provide a clean vertical edge
- Landscape

South Side of Building

- 106' of 18" Sewer Line for sewer relocation
- Landscape
- Heated Pavers

REIMBURSEMENT PARTICIPATION AGREEMENT

THIS REIMBURSEMENT PARTICIPATION AGREEMENT ("Agreement") is entered into by and between the Ketchum Urban Renewal Agency, also known as the KURA, an independent public body, corporate and politic, organized and existing under the laws of the State of Idaho and known as the urban renewal agency of the City of Ketchum, Idaho ("Agency") and Doug Webb ("Participant"). Agency and Participant may be collectively referred to as the "Parties" and individually referred to as a "Party."

RECITALS

A. Participant owns or controls certain real property located at 191 E. 8th Street, Ketchum, Idaho (the "Project Site") which is more accurately described as Eighth and Washington Building Condo. The Project Site is undergoing redevelopment including construction of a mixed use residential and commercial building (the "Participant's Project").

B. As part of the Participant's Project, Participant intends to remediate certain Project Site conditions and redevelop the Project Site (the "Improvement Project"). The Improvement Project is more accurately depicted on attached **Exhibit A**.

C. The Participant's Project and the Improvement Project are located in the Ketchum Urban Renewal Plan (the "Plan") area, which consists of the Ketchum Urban Renewal Plan approved by the City Council on November 15, 2006, and the Amended Ketchum Urban Renewal Plan approved by the City Council on November 15, 2010 ("Ketchum Urban Renewal District"). The Plan includes various measures to mitigate and remediate the Ketchum Urban Renewal District. The Agency also adopted a Participation Policy on July 17, 2017.

D. The Improvement Project includes improvements of public infrastructure to replace over 200 feet of sidewalk along 8th Street and Washington Avenue, adjacent to the Project Site that are consistent with the objectives of the Plan. The Improvement Project will contribute to enhancing and revitalizing the Ketchum Urban Renewal District.

E. Agency deems it appropriate to assist the development of the Improvement Project to achieve the objectives set forth in the Plan.

AGREEMENTS

NOW, THEREFORE, in consideration of the above recitals, which are incorporated into this Agreement; the mutual covenants contained herein; and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

- 1. Effective Date.** The effective date ("Effective Date") of this Agreement shall be the date when this Agreement has been signed by the Participant and Agency (last date signed) and shall continue until: (1) the completion of all obligations of each Party; or (2) twelve (12) months from the Effective Date, whichever comes first. At Agency's sole discretion an extension may be granted for a period not to exceed one year.
- 2. Construction of the Improvement Project.** Participant agrees to construct the Improvement Project consistent with the following:

 - a. Remove and remediate certain Project Site conditions and backfill in order to enhance development of the Project Site.
 - b. The Parties agree that the Improvement Project is depicted on **Exhibit A**, with cost estimates for eligible items described in the Schedule of Eligible Costs in **Exhibit B** ("Estimated Eligible Costs"). Any other public improvements that are constructed by the Participant as part of the Participant's Project are not eligible for reimbursement pursuant to this Agreement. Additionally, Agency's reimbursement obligation is limited to the amount set forth in Section 6 of this Agreement.
- 3. Initial Construction Funding.** Participant shall pay for all of the costs of construction for the Improvement Project. Agency acknowledges that the Schedule of Costs attached as **Exhibit B** is an estimate by Participant's contractor and that actual costs for the Improvement Project, as well as each line item of cost, may be more or less than is shown on **Exhibit B**.
- 4. Notification of Completion; Inspection.** Upon completion of construction, Participant shall notify Agency in writing and request a final construction inspection and/ or a meeting with Agency to determine if the Improvement Project meets the requirements of this Agreement. Agency shall provide Participant with written confirmation that the Improvement Project has been completed in compliance with this Agreement.
- 5. Determining Actual Payment after Completion of Construction.** Participant shall provide appropriate documentation ("Cost Documentation") to Agency that Participant has expended funds for eligible costs in order to receive payment per

the terms of this Agreement. Any Cost Documentation shall be submitted within thirty (30) days of Participant's notification to Agency that construction of the Improvement Project is complete and shall include:

- a. Schedule of values that includes line items for the Improvement Project improvements approved by Agency for reimbursement so they are identifiable separate from other line items ("Schedule of Values").
- b. Invoices from Participant's general contractor, subcontractor(s) and material suppliers for each type of eligible cost item (e.g. excavation, material fill, pavement, etc.). Invoices shall specify quantities and unit costs of materials, and a percentage estimate of how much material was used for the Improvement Project in comparison to the amount used for the remainder of Participant's project ("Invoices").
- c. Explanation of any significant deviation between the initial cost estimates in **Exhibit B** and the actual costs in the Cost Documentation as requested by Agency.
- d. Additional documentation or clarifications may be required and requested by Agency.

Agency shall have the right to review the Cost Documentation and to obtain independent verification that the quantities of work claimed, the unit costs and the total costs for eligible costs are commercially reasonable and consistent with the cost estimates provided by Participant to Agency prior to construction. In the event Participant fails to timely deliver the Cost Documentation, Agency may, in its discretion, elect to terminate its payment obligations under this Agreement by providing Participant with written notice of such default. Participant shall have thirty (30) days from such written notice to cure the default. In the event Participant fails to cure such a default, Agency's payment obligations under this Agreement may be terminated in Agency's sole discretion.

Within fifteen (15) calendar days of Agency's receipt of the Cost Documentation, Agency will notify Participant in writing of Agency's acceptance or rejection of the Cost Documentation and Agency's determination of the Actual Eligible Costs to be reimbursed. Agency shall, in its discretion, determine the Actual Eligible Costs following its review of the Cost Documentation, verification of the commercial reasonableness of the costs and expenses contained in such Cost Documentation, and comparison of the amounts in the Cost Documentation to the amounts in **Exhibit B**. **In no event shall the total for the Actual Eligible Costs exceed the amount allowed by Section 6.**

If Participant disagrees with Agency's calculation of the Actual Eligible Costs, Participant must respond to Agency in writing within three (3) business days explaining why Participant believes Agency's calculation was in error and providing any evidence to support any such contentions Participant wants Agency to consider. Agency shall

respond to Participant within three (3) business days with a revised amount for the Actual Eligible Costs or notifying Participant Agency will not revise the initial amount calculated. At that point, the determination of the Actual Eligible Costs will be final.

Agency's determination of the Actual Eligible Costs is within its sole discretion.

6. Agency's Reimbursement Payment Amount. In accordance with the Participation Program, Agency agrees to reimburse Participant as follows:

Actual Eligible Costs not to exceed \$16,830. Actual Eligible Costs do not include soft costs (e.g. architectural and engineering design, permits, traffic control, mobilization, and overhead).

7. Conditions Precedent to Agency's Payment Obligation. Agency shall not approve reimbursement prior to issuance of a Certificate of Occupancy for the building by the City of Ketchum. Agency agrees to reimburse Participant in the amount as determined in compliance with Sections 2.b., 5, and 6 no later than forty five (45) days after submission by Participant of a copy of the Certificate of Occupancy for the building.

Participant's failure to comply with all Agreement provisions shall be a basis for termination of Agency's reimbursement obligation.

8. Subordination of Reimbursement Obligations. The Parties agree this Agreement does not provide Participant with a security interest in any Agency revenues for the Ketchum Urban Renewal District or any other urban renewal plan area, including but not limited to revenue from any "Revenue Allocation Area" (as defined in Title 50, Chapter 29 of the Idaho Code). Notwithstanding anything to the contrary in this Agreement, the obligation of Agency to make the payments as specified in this Agreement shall be subordinate to all Agency obligations that have committed or in the future commit available Agency revenues, including but not limited to revenue from any Revenue Allocation Area and may be subject to consent and approval by Agency lenders.

9. Default. Neither Party shall be deemed to be in default of this Agreement except upon the expiration of forty-five (45) days [ten (10) days in the event of failure to pay money] from receipt of written notice from the other Party specifying the particulars in which such Party has failed to perform its obligations under this Agreement unless such Party, prior to expiration of said 45-day period [ten (10) days in the event of failure to pay money], has rectified the particulars specified in said notice of default. In the event of a default, the nondefaulting Party may do the following:

- a. The nondefaulting Party may terminate this Agreement upon written notice to the defaulting Party and recover from the defaulting Party all direct damages incurred by the nondefaulting Party.

- b. The nondefaulting Party may seek specific performance of those elements of this Agreement which can be specifically performed, in addition, recover all damages incurred by the nondefaulting Party. The Parties declare it to be their intent that elements of this Agreement requiring certain actions be taken for which there are not adequate legal remedies may be specifically enforced.
- c. The nondefaulting Party may perform or pay any obligation or encumbrance necessary to cure the default and offset the cost thereof from monies otherwise due the defaulting Party or recover said monies from the defaulting Party.
- d. The nondefaulting Party may pursue all other remedies available at law, it being the intent of the Parties that remedies be cumulative and liberally enforced so as to adequately and completely compensate the nondefaulting Party.
- e. In the event Participant defaults under this Agreement, Agency (the nondefaulting Party) shall have the right to suspend or terminate its payment under this Agreement, as more specifically defined in this Agreement, for so long as the default continues and if not cured, Agency's obligation for payment shall be deemed extinguished. In addition, if Agency funds shall have been paid, Participant shall reimburse Agency for any such funds Participant received.

10. **Captions and Headings.** The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions, or agreements contained herein.

11. **No Joint Venture or Partnership.** Agency and Participant agree that nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making Agency and Participant a joint venture or partners.

12. **Successors and Assignment.** This Agreement is not assignable except that the Participant may assign Participant's rights or obligations under this Agreement to a third party only with the written approval of Agency, at Agency's sole discretion and cannot be reasonably denied.

13. **Notices and Receipt.** All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail, or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, or by electronic mail (e-mail) addressed to the appropriate Party at the address set forth below:

If to Participant: Doug Webb
Eighth and Washington Building Condo
219 S 1st Avenue Suite 101
Hailey, Idaho 83333-0000
dougwebb@webbland.com

If to Agency: Suzanne Frick, Executive Director
Ketchum Urban Renewal Agency
P.O. Box 2315
Ketchum, Idaho 83340
208-726-7801
sfrick@ketchumidaho.org

14. Applicable Law/Attorney Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Idaho. Should any legal action be brought by either Party because of breach of this Agreement or to enforce any provision of this Agreement, the prevailing Party shall be entitled to reasonable attorney fees, court costs, and such other costs as may be found by the court.

15. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties. Exhibits to this Agreement are as follows:

Exhibit A	Improvement Project Plan
Exhibit B	Schedule of Eligible Costs

16. Indemnification. Participant shall indemnify and hold Agency and its respective officers, agents, and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable architect and attorney fees (collectively referred to in this section as "Claim"), which may be imposed upon or incurred by or asserted against Agency or its respective officers, agents, and employees relating to the construction or design of the Improvement Project or otherwise arising out of Participant's actions or inactions. In the event an action or proceeding is brought against Agency or its respective officers, agents, and employees by reason of any such Claim, Participant, upon written notice from Agency shall, at Participant's expense, resist or defend such action or proceeding. Notwithstanding the foregoing, Participant shall have no obligation to indemnify, defend, or hold Agency and its respective officers, agents, and employees harmless from and against any matter to the extent it arises from the active negligence or willful act of Agency or its respective officers, agents, or employees.

17. Antidiscrimination During Construction. Participant, for itself and its successors and assigns, agrees that in the rehabilitation and/or construction of improvements on the Project Site provided for in this Agreement, the Participant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity/expression, national origin or ancestry, marital status, age, or physical disability.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement the day and year below written to be effective the day and year above written.

Agency:

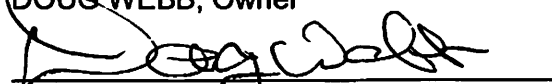
Agency: the urban renewal agency of the City of Ketchum, a public body, corporate and politic



Baird Gourlay, Chair

Date 9/26/17

PARTICIPANT:

DOUG WEBB, Owner


Doug Webb, Owner

Date 9/27/17

Exhibits

- A: Improvement Project
- B: Schedule of Eligible Costs

EXHIBIT B
SCHEDULES OF ELIGIBLE COSTS

SITE REVISIONS			
CSI	Description	Adjustment	Net Amount
	No change to retaining wall at SE corner of property. 100' of new sidewalk, curb and gutter to tie into existing at utility box location.		
31 10	Excavating existing curb & gutter	\$	6,000.00
03 00	New curb and gutter--100 ln. ft. + -	\$	8,500.00
03 05	New poured sidewalk--5' x 100'--(500 sq. ft.) + -	\$	3,500.00
		Subtotal	\$ 18,000.00
0.1		Builder's Fee	\$ 1,800.00
		Total Amount	\$ 19,800.00

REIMBURSEMENT PARTICIPATION AGREEMENT

THIS REIMBURSEMENT PARTICIPATION AGREEMENT ("Agreement") is entered into by and between the Ketchum Urban Renewal Agency, also known as the KURA, an independent public body, corporate and politic, organized and existing under the laws of the State of Idaho and known as the urban renewal agency of the City of Ketchum, Idaho ("Agency") and Ketchum ~~and~~ Mustard LLC ("Participant"). Agency and Participant may be collectively referred to as the "Parties" and individually referred to as a "Party."

RECITALS

A. Participant owns or controls certain real property located at 620 N. Main Street, Ketchum, Idaho (the "Project Site") which is more accurately described as Lot 2 and the south 2' OF Lot 3 of Block 7, Ketchum Townsite. The Project Site is undergoing redevelopment including construction of a commercial building (the "Participant's Project").

B. As part of the Participant's Project, Participant intends to remediate certain Project Site conditions and redevelop the Project Site (the "Improvement Project"). The Improvement Project is more accurately depicted on attached **Exhibit A**.

C. The Participant's Project and the Improvement Project are located in the Ketchum Urban Renewal Plan (the "Plan") area, which consists of the Ketchum Urban Renewal Plan approved by the City Council on November 15, 2006, and the Amended Ketchum Urban Renewal Plan approved by the City Council on November 15, 2010 ("Ketchum Urban Renewal District"). The Plan includes various measures to mitigate and remediate the Ketchum Urban Renewal District. The Agency also adopted a Participation Policy on July 17, 2017.

D. The Improvement Project includes improvements of public infrastructure to replace over 50 feet of sidewalk along Main Street, adjacent to the Project Site that are consistent with the objectives of the Plan. The Improvement Project will contribute to enhancing and revitalizing the Ketchum Urban Renewal District.

E. Agency deems it appropriate to assist the development of the Improvement Project to achieve the objectives set forth in the Plan.

AGREEMENTS

NOW, THEREFORE, in consideration of the above recitals, which are incorporated into this Agreement; the mutual covenants contained herein; and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

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2. **Construction of the Improvement Project.** Participant agrees to construct the Improvement Project consistent with the following:

- a. Remove and remediate certain Project Site conditions and backfill in order to enhance development of the Project Site.
- b. The Parties agree that the Improvement Project is depicted on **Exhibit A**, with cost estimates for eligible items described in the Schedule of Eligible Costs in **Exhibit B** ("Estimated Eligible Costs"). Any other public improvements that are constructed by the Participant as part of the Participant's Project are not eligible for reimbursement pursuant to this Agreement. Additionally, Agency's reimbursement obligation is limited to the amount set forth in Section 6 of this Agreement.

3. **Initial Construction Funding.** Participant shall pay for all of the costs of construction for the Improvement Project. Agency acknowledges that the Schedule of Costs attached as **Exhibit B** is an estimate by Participant's contractor and that actual costs for the Improvement Project, as well as each line item of cost, may be more or less than is shown on **Exhibit B**.

4. **Notification of Completion; Inspection.** Upon completion of construction, Participant shall notify Agency in writing and request a final construction inspection and/ or a meeting with Agency to determine if the Improvement Project meets the requirements of this Agreement. Agency shall provide Participant with written confirmation that the Improvement Project has been completed in compliance with this Agreement.

5. **Determining Actual Payment after Completion of Construction.** Participant shall provide appropriate documentation ("Cost Documentation") to Agency that Participant has expended funds for eligible costs in order to receive payment per

the terms of this Agreement. Any Cost Documentation shall be submitted within thirty (30) days of Participant's notification to Agency that construction of the Improvement Project is complete and shall include:

- a. Schedule of values that includes line items for the Improvement Project improvements approved by Agency for reimbursement so they are identifiable separate from other line items ("Schedule of Values").
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Agency's determination of the Actual Eligible Costs is within its sole discretion.

6. Agency's Reimbursement Payment Amount. In accordance with the Participation Program, Agency agrees to reimburse Participant as follows:

Actual Eligible Costs not to exceed \$17,000. Actual Eligible Costs do not include soft costs (e.g. architectural and engineering design, permits, traffic control, mobilization, and overhead).

7. Conditions Precedent to Agency's Payment Obligation. Agency shall not approve reimbursement prior to issuance of a Certificate of Occupancy for the building by the City of Ketchum. Agency agrees to reimburse Participant in the amount as determined in compliance with Sections 2.b., 5, and 6 no later than forty five (45) days after submission by Participant of a copy of the Certificate of Occupancy for the building.

Participant's failure to comply with all Agreement provisions shall be a basis for termination of Agency's reimbursement obligation.

8. Subordination of Reimbursement Obligations. The Parties agree this Agreement does not provide Participant with a security interest in any Agency revenues for the Ketchum Urban Renewal District or any other urban renewal plan area, including but not limited to revenue from any "Revenue Allocation Area" (as defined in Title 50, Chapter 29 of the Idaho Code). Notwithstanding anything to the contrary in this Agreement, the obligation of Agency to make the payments as specified in this Agreement shall be subordinate to all Agency obligations that have committed or in the future commit available Agency revenues, including but not limited to revenue from any Revenue Allocation Area and may be subject to consent and approval by Agency lenders.

9. Default. Neither Party shall be deemed to be in default of this Agreement except upon the expiration of forty-five (45) days [ten (10) days in the event of failure to pay money] from receipt of written notice from the other Party specifying the particulars in which such Party has failed to perform its obligations under this Agreement unless such Party, prior to expiration of said 45-day period [ten (10) days in the event of failure to pay money], has rectified the particulars specified in said notice of default. In the event of a default, the nondefaulting Party may do the following:

- a. The nondefaulting Party may terminate this Agreement upon written notice to the defaulting Party and recover from the defaulting Party all direct damages incurred by the nondefaulting Party.

- b. The nondefaulting Party may seek specific performance of those elements of this Agreement which can be specifically performed, in addition, recover all damages incurred by the nondefaulting Party. The Parties declare it to be their intent that elements of this Agreement requiring certain actions be taken for which there are not adequate legal remedies may be specifically enforced.
- c. The nondefaulting Party may perform or pay any obligation or encumbrance necessary to cure the default and offset the cost thereof from monies otherwise due the defaulting Party or recover said monies from the defaulting Party.
- d. The nondefaulting Party may pursue all other remedies available at law, it being the intent of the Parties that remedies be cumulative and liberally enforced so as to adequately and completely compensate the nondefaulting Party.
- e. In the event Participant defaults under this Agreement, Agency (the nondefaulting Party) shall have the right to suspend or terminate its payment under this Agreement, as more specifically defined in this Agreement, for so long as the default continues and if not cured, Agency's obligation for payment shall be deemed extinguished. In addition, if Agency funds shall have been paid, Participant shall reimburse Agency for any such funds Participant received.

10. **Captions and Headings.** The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions, or agreements contained herein.

11. **No Joint Venture or Partnership.** Agency and Participant agree that nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making Agency and Participant a joint venture or partners.

12. **Successors and Assignment.** This Agreement is not assignable except that the Participant may assign Participant's rights or obligations under this Agreement to a third party only with the written approval of Agency, at Agency's sole discretion and cannot be reasonably denied.

13. **Notices and Receipt.** All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail, or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, or by electronic mail (e-mail) addressed to the appropriate Party at the address set forth below:

If to Participant: [&] Ketchum ~~and~~ Mustard LLC
605 W Main St Suite 2
Aspen, CO 81611-0000

C/O Shannon Allen
General Manager, Hotel Ketchum
208-481-4001
600 N Main St. Ketchum, Idaho 83340
Shannon@hotelketchum.com

If to Agency: Suzanne Frick, Executive Director
Ketchum Urban Renewal Agency
P.O. Box 2315
Ketchum, Idaho 83340
208-726-7801
sfrick@ketchumidaho.org

14. Applicable Law/Attorney Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Idaho. Should any legal action be brought by either Party because of breach of this Agreement or to enforce any provision of this Agreement, the prevailing Party shall be entitled to reasonable attorney fees, court costs, and such other costs as may be found by the court.

15. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties. Exhibits to this Agreement are as follows:

Exhibit A Improvement Project Plan
Exhibit B Schedule of Eligible Costs

16. Indemnification. Participant shall indemnify and hold Agency and its respective officers, agents, and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable architect and attorney fees (collectively referred to in this section as "Claim"), which may be imposed upon or incurred by or asserted against Agency or its respective officers, agents, and employees relating to the construction or design of the Improvement Project or otherwise arising out of Participant's actions or inactions. In the event an action or proceeding is brought against Agency or its respective officers, agents, and employees by reason of any such Claim, Participant, upon written notice from Agency shall, at Participant's expense, resist or defend such action or proceeding. Notwithstanding the foregoing, Participant shall have no obligation to indemnify, defend, or hold Agency and its respective officers, agents, and employees harmless from and against any matter to the extent it arises from the active negligence or willful act of Agency or its respective officers, agents, or employees.

17. Antidiscrimination During Construction. Participant, for itself and its successors and assigns, agrees that in the rehabilitation and/or construction of improvements on the Project Site provided for in this Agreement, the Participant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity/expression, national origin or ancestry, marital status, age, or physical disability.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement the day and year below written to be effective the day and year above written.

Agency:

Agency: the urban renewal agency of the City of Ketchum, a public body, corporate and politic


Baird Gourlay, Chair

Date 9/26/17

PARTICIPANT:

[&]
KETCHUM ~~AND~~ MUSTARD LLC, Owner


Shannon Allen, Manager

Date 9/29/2017

Exhibits

- A: Improvement Project
- B: Schedule of Eligible Costs

EXHIBIT A IMPROVEMENT PROJECT

Project Site work consisting of site work excavation and improvements within the right-of-way, curb, gutter, and sidewalk along 8th Street.

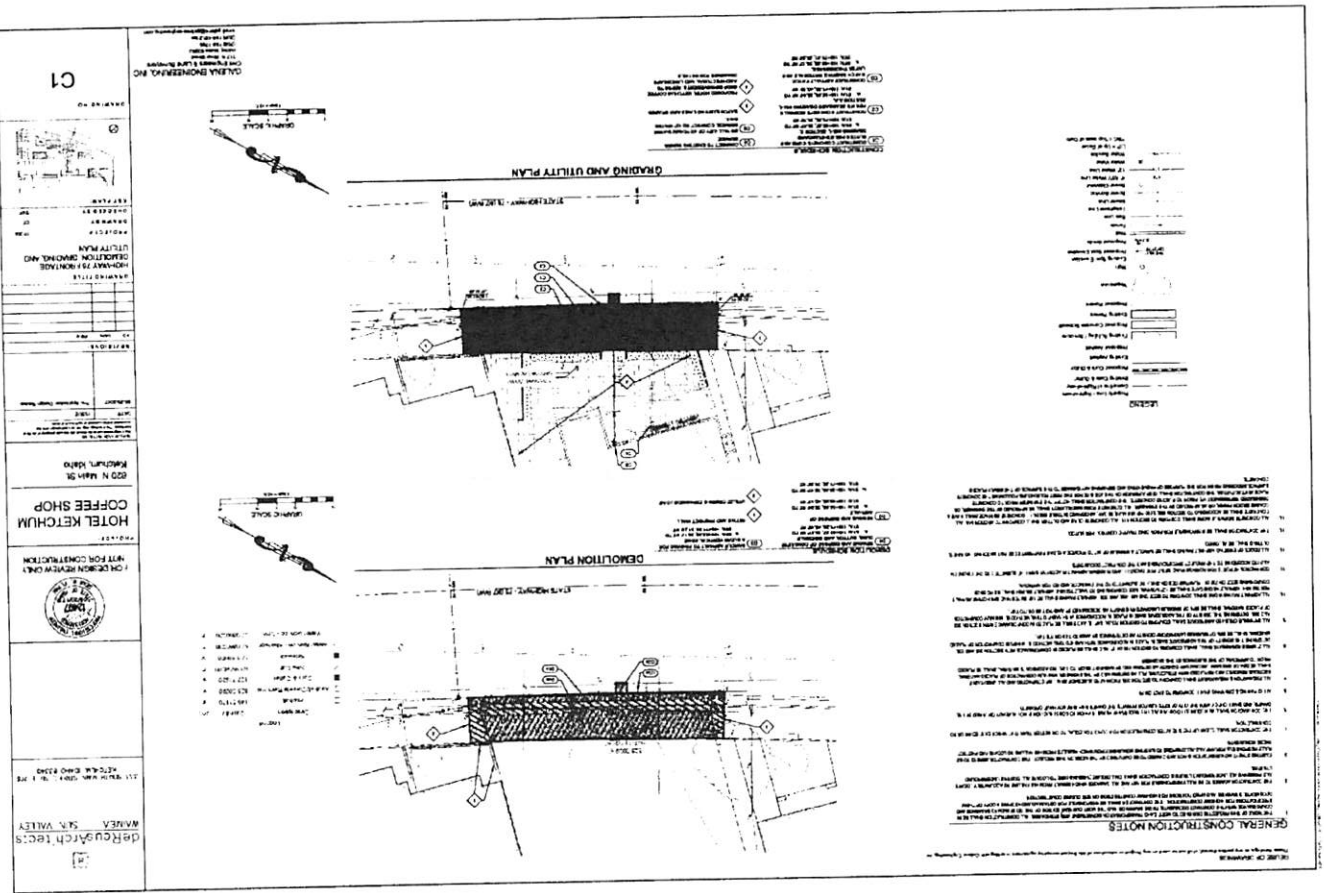


EXHIBIT B SCHEDULES OF ELIGIBLE COSTS

Hotel Kensington Coffee Shop
On-Site Improvements
7/7/2014



Division	Description	QTY	15% W	Unit	Unit \$	Material	Labor	Subs	Others	Total	Notes
Division 1 - General Conditions											
01000	Survey									\$ 1,200.00	\$ 1,200.00
01040	Project Manager									\$ -	\$ -
	Water Service Fee									\$ -	\$ -
	OOI Permit									\$ -	\$ -
	Total									\$ 1,200.00	\$ 1,200.00
Division 2 - Structure											
	Dumped	824		947.6 SF	\$ 2.00					\$ 1,668.00	\$ 1,668.00
02100	Excavation & Grading	824		947.6 SF	\$ 2.15					\$ 1,772.40	\$ 1,772.40
02513	Asphalt Bed Work	146		1679.9 SF	\$ 0.95					\$ 1,589.51	\$ 1,589.51
02513	Asphalt	146		1679.9 SF	\$ 2.35					\$ 3,948.57	\$ 3,948.57
	Saw Cut	146		LF	\$ 3.00					\$ 437.16	\$ 437.16
	Abandon Water Service	28		437.16	\$ 120.00					\$ 33,600.00	\$ 33,600.00
	New Water Service Install	28		437.16	\$ 120.00					\$ 3,360.00	\$ 3,360.00
	Total					\$ 1,677.24	\$ 3,800.00	\$ 10,312.27	\$ -	\$ 15,789.51	\$ 15,789.51
Division 3 - Concrete											
	7" Conc and Grout	68		782.16	\$ 47.00					\$ 31,966.40	\$ 31,966.40
	Sidewalk	532		634.8 SF	\$ 8.00					\$ 4,278.40	\$ 4,278.40
	Total					\$ 1,677.13	\$ 1,800.00	\$ 18,591.77	\$ 1,200.00	\$ 23,169.13	\$ 23,169.13
01056	General Utility Improvements									\$ 2,126.01	\$ 2,126.01
	Contingency									\$ 209.00	\$ 209.00
	Total Estimate					\$ 1,677.13	\$ 1,800.00	\$ 18,591.77	\$ 1,200.00	\$ 24,315.95	\$ 24,315.95

On-Site Improvements scope of work

Demolition Plan

Remove and dispose of concrete curb, gutter, and sidewalks

Remove and dispose of asphalt

Sawcut asphalt to provide for clean vertical edge

Rebar and protect wall

Install existing expansion joint

Grading and utility plan

Construct concrete curb and gutter

Construct concrete sidewalk

Construct asphalt path

Abandon existing water service to suit new

Install new water service to building south of abandoned line

Hotel Kensington Coffee Shop

On-Site Improvements scope of work

7/7/2014

GRANT PARTICIPATION AGREEMENT

THIS GRANT PARTICIPATION AGREEMENT ("Agreement") is entered into by and between the Urban Renewal Agency of the City of Ketchum, also known as the Ketchum Redevelopment Agency, an independent public body, corporate and politic, organized and existing under the laws of the State of Idaho and known as the urban renewal agency of the City of Ketchum, Idaho ("Agency") and Ketchum PDX LLC, an Oregon limited liability company ("Participant"). Agency and Participant may be collectively referred to as the "Parties" and individually referred to as a "Party."

RECITALS

A. Participant owns or controls certain real property located at 560 N. 1st Avenue, Ketchum, Idaho (the "Project Site") which is more accurately depicted on attached **Exhibit A**. The Project Site is undergoing redevelopment including construction of a residential project of eighteen (18) rental housing units and three (3) affordable units (the "Participant's Project").

B. As part of the Participant's Project, Participant intends to remediate certain Project Site conditions and redevelop the Project Site (the "Improvement Project"). The Improvement Project is more accurately depicted on attached **Exhibit B**.

C. The Participant's Project and the Improvement Project are located in the Ketchum Urban Renewal Plan (the "Plan") area, which consists of the Ketchum Urban Renewal Plan approved by the City Council on November 15, 2006, and the Amended Ketchum Urban Renewal Plan approved by the City Council on November 15, 2010 ("Ketchum Urban Renewal District"). The Plan includes various measures to mitigate and remediate the Ketchum Urban Renewal District. The Agency has also adopted a Participation Policy concerning Agency participation in redevelopment projects.

D. The Improvement Project includes public infrastructure improvements for an eight foot (8') wide sidewalk, drainage, and street improvements along North First Avenue adjacent to the Project Site that are consistent with the objectives of the Plan. The Improvement Project will contribute to enhancing and revitalizing the Ketchum Urban Renewal District.

E. Agency deems it appropriate to assist the development of the Improvement Project to achieve the objectives set forth in the Plan.

AGREEMENTS

NOW, THEREFORE, in consideration of the above recitals, which are incorporated into this Agreement; the mutual covenants contained herein; and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Effective Date.** The effective date (“Effective Date”) of this Agreement shall be the date when this Agreement has been signed by the Participant and Agency (last date signed) and shall continue until: (1) the completion of all obligations of each Party; or (2) twelve (12) months from the Effective Date, whichever comes first. At Agency’s sole discretion an extension may be granted for a period not to exceed one year.

2. **Construction of the Improvement Project.** Participant agrees to construct the Improvement Project consistent with the following:

- a. Remove and remediate certain Project Site conditions and backfill in order to enhance development of the Project Site and redevelop the Project Site for the Participant’s Project.
- b. The Parties agree that the Improvement Project is depicted on **Exhibit B**, with cost estimates for eligible items described in the Schedule of Eligible Costs in **Exhibit C** (“Estimated Eligible Costs”). Any other public improvements that are constructed by the Participant as part of the Participant’s Project are not eligible for reimbursement pursuant to this Agreement. Additionally, Agency’s reimbursement obligation is limited to the amount set forth in Section 6 of this Agreement.

3. **Initial Construction Funding.** Participant shall pay for all of the costs of construction for the Improvement Project. Agency acknowledges that the Schedule of Costs attached as **Exhibit C** is an estimate by Participant’s contractor and that actual costs for the Improvement Project, as well as each line item of cost, may be more or less than is shown on **Exhibit C**.

4. **Notification of Completion; Inspection.** Upon completion of construction, Participant shall notify Agency in writing and request a final construction inspection and/ or a meeting with Agency to determine if the Improvement Project meets the requirements of this Agreement. Agency shall provide Participant with written confirmation that the Improvement Project has been completed in compliance with this Agreement.

5. **Determining Actual Payment after Completion of Construction.** Participant shall provide appropriate documentation (“Cost Documentation”) to Agency

that Participant has expended funds for eligible costs in order to receive payment per the terms of this Agreement. Any Cost Documentation shall be submitted within thirty (30) days of Participant's notification to Agency that construction of the Improvement Project is complete and shall include:

- a. Schedule of values that includes line items for the Improvement Project improvements approved by Agency for reimbursement so they are identifiable separate from other line items ("Schedule of Values").
- b. Invoices from Participant's general contractor, subcontractor(s) and material suppliers for each type of eligible cost item (e.g. excavation, material fill, pavement, etc.). Invoices shall specify quantities and unit costs of materials, and a percentage estimate of how much material was used for the Improvement Project in comparison to the amount used for the remainder of Participant's project ("Invoices").
- c. Explanation of any significant deviation between the initial cost estimates in **Exhibit C** and the actual costs in the Cost Documentation as requested by Agency.
- d. Additional documentation or clarifications may be required and requested by Agency.

Agency shall have the right to review the Cost Documentation and to obtain independent verification that the quantities of work claimed, the unit costs and the total costs for eligible costs are commercially reasonable and consistent with the cost estimates provided by Participant to Agency prior to construction. In the event Participant fails to timely deliver the Cost Documentation, Agency may, in its discretion, elect to terminate its payment obligations under this Agreement by providing Participant with written notice of such default. Participant shall have thirty (30) days from such written notice to cure the default. In the event Participant fails to cure such a default, Agency's payment obligations under this Agreement may be terminated in Agency's sole discretion.

Within fifteen (15) calendar days of Agency's receipt of the Cost Documentation, Agency will notify Participant in writing of Agency's acceptance or rejection of the Cost Documentation and Agency's determination of the Actual Eligible Costs to be reimbursed. Agency shall, in its discretion, determine the Actual Eligible Costs following its review of the Cost Documentation, verification of the commercial reasonableness of the costs and expenses contained in such Cost Documentation, and comparison of the amounts in the Cost Documentation to the amounts in **Exhibit C**. **In no event shall the total for the Actual Eligible Costs exceed the amount allowed by Section 6.**

If Participant disagrees with Agency's calculation of the Actual Eligible Costs, Participant must respond to Agency in writing within three (3) business days explaining why Participant believes Agency's calculation was in error and providing any evidence

to support any such contentions Participant wants Agency to consider. Agency shall respond to Participant within three (3) business days with a revised amount for the Actual Eligible Costs or notifying Participant Agency will not revise the initial amount calculated. At that point, the determination of the Actual Eligible Costs will be final.

Agency's determination of the Actual Eligible Costs is within its sole discretion.

6. Agency's Reimbursement Payment Amount. In accordance with the Participation Program, Agency agrees to reimburse Participant as follows:

Actual Eligible Costs not to exceed \$9,200. Actual Eligible Costs do not include soft costs (e.g. architectural and engineering design, permits, traffic control, mobilization, and overhead).

7. Conditions Precedent to Agency's Payment Obligation. Agency agrees to reimburse Participant in the amount as determined in compliance with Sections 2.b., 5, and 6 no later than forty five (45) days after submission by Participant of a copy of the Certificate of Occupancy for the Participant's Project.

Participant's failure to comply with all Agreement provisions shall be a basis for termination of Agency's reimbursement obligation.

8. Subordination of Reimbursement Obligations. The Parties agree this Agreement does not provide Participant with a security interest in any Agency revenues for the Ketchum Urban Renewal District or any other urban renewal plan area, including but not limited to revenue from any "Revenue Allocation Area" (as defined in Title 50, Chapter 29 of the Idaho Code). Notwithstanding anything to the contrary in this Agreement, the obligation of Agency to make the payments as specified in this Agreement shall be subordinate to all Agency obligations that have committed or in the future commit available Agency revenues, including but not limited to revenue from any Revenue Allocation Area and may be subject to consent and approval by Agency lenders.

9. Default. Neither Party shall be deemed to be in default of this Agreement except upon the expiration of forty-five (45) days [ten (10) days in the event of failure to pay money] from receipt of written notice from the other Party specifying the particulars in which such Party has failed to perform its obligations under this Agreement unless such Party, prior to expiration of said 45-day period [ten (10) days in the event of failure to pay money], has rectified the particulars specified in said notice of default. In the event of a default, the nondefaulting Party may do the following:

- a. The nondefaulting Party may terminate this Agreement upon written notice to the defaulting Party and recover from the defaulting Party all direct damages incurred by the nondefaulting Party.

- b. The nondefaulting Party may seek specific performance of those elements of this Agreement which can be specifically performed, in addition, recover all damages incurred by the nondefaulting Party. The Parties declare it to be their intent that elements of this Agreement requiring certain actions be taken for which there are not adequate legal remedies may be specifically enforced.
- c. The nondefaulting Party may perform or pay any obligation or encumbrance necessary to cure the default and offset the cost thereof from monies otherwise due the defaulting Party or recover said monies from the defaulting Party.
- d. The nondefaulting Party may pursue all other remedies available at law, it being the intent of the Parties that remedies be cumulative and liberally enforced so as to adequately and completely compensate the nondefaulting Party.
- e. In the event Participant defaults under this Agreement, Agency (the nondefaulting Party) shall have the right to suspend or terminate its payment under this Agreement, as more specifically defined in this Agreement, for so long as the default continues and if not cured, Agency's obligation for payment shall be deemed extinguished. In addition, if Agency funds shall have been paid, Participant shall reimburse Agency for any such funds Participant received.

10. Captions and Headings. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions, or agreements contained herein.

11. No Joint Venture or Partnership. Agency and Participant agree that nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making Agency and Participant a joint venture or partners.

12. Successors and Assignment. This Agreement is not assignable except that the Participant may assign Participant's rights or obligations under this Agreement to a third party only with the written approval of Agency, at Agency's sole discretion and cannot be reasonably denied.

13. Notices and Receipt. All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail, or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, or by electronic mail (e-mail) addressed to the appropriate Party at the address set forth below:

If to Participant: Ketchum PDX LLC
Attn: Mark Madden
2330 NW 31st Avenue
Portland, OR 97210
(503) 221-2900
madden@wdcproperties.com

If to Agency: Suzanne Frick, Executive Director
Ketchum Urban Renewal Agency
P.O. Box 2315
Ketchum, Idaho 83340
208-726-7803
sfrick@ketchumidaho.org

14. Applicable Law/Attorney Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Idaho. Should any legal action be brought by either Party because of breach of this Agreement or to enforce any provision of this Agreement, the prevailing Party shall be entitled to reasonable attorney fees, court costs, and such other costs as may be found by the court.

15. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties. Exhibits to this Agreement are as follows:

Exhibit A	Project Site Map
Exhibit B	Improvement Project Plan
Exhibit C	Schedule of Eligible Costs

16. Indemnification. Participant shall indemnify and hold Agency and its respective officers, agents, and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable architect and attorney fees (collectively referred to in this section as "Claim"), which may be imposed upon or incurred by or asserted against Agency or its respective officers, agents, and employees relating to the construction or design of the Improvement Project or otherwise arising out of Participant's actions or inactions. In the event an action or proceeding is brought against Agency or its respective officers, agents, and employees by reason of any such Claim, Participant, upon written notice from Agency shall, at Participant's expense, resist or defend such action or proceeding. Notwithstanding the foregoing, Participant shall have no obligation to indemnify, defend, or hold Agency and its respective officers, agents, and employees harmless from and against any matter to the extent it arises from the active negligence or willful act of Agency or its respective officers, agents, or employees.

17. Antidiscrimination During Construction. Participant, for itself and its successors and assigns, agrees that in the rehabilitation and/or construction of improvements on the Project Site provided for in this Agreement, the Participant will not discriminate against any employee or applicant for employment because of race, color,

religion, sex, sexual orientation, gender identity/expression, national origin or ancestry, marital status, age, or physical disability.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement the day and year below written to be effective the day and year above written.

Agency:

Agency: the urban renewal agency of the City of Ketchum, a public body, corporate and politic

Susan Scovel
Chair

Date Robert Wolf 1-30-19

PARTICIPANT:

KETCHUM PDX, LLC

[Signature]

Date 1-30-19

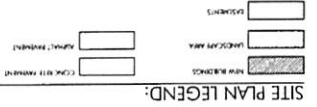
Exhibits

- A: Project Site
- B: Improvement Project
- C: Schedule of Eligible Costs

**EXHIBIT A
PROJECT SITE**



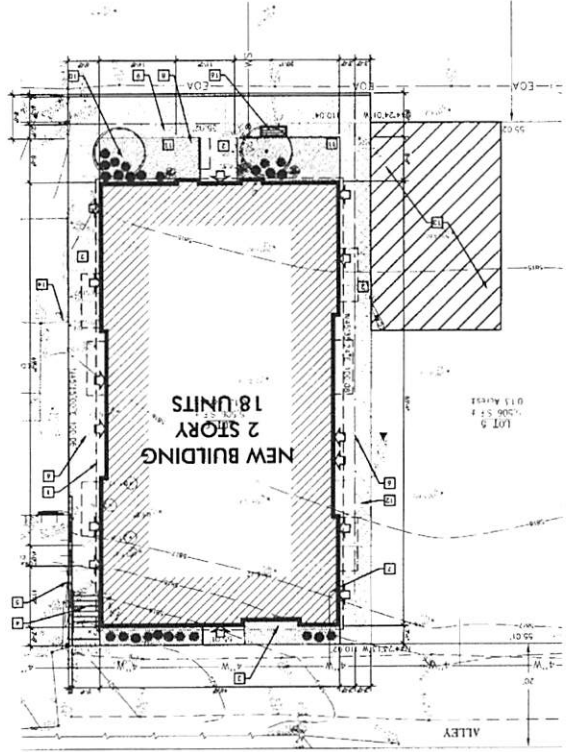
- SITE PLAN KEY NOTES:**
- 1 DATE OF MARKET MARKET
 - 2 NEW SEWERAGE SYSTEM START TO MARKET
 - 3 CROSS SLOPE IN
 - 4 ELECTRIC METER LOCATION SEE CME
 - 5 NEW CONCRETE STPS AND MANHOLE, SEE CME
 - 6 RETAINING WALL, SEE CME
 - 7 PART OF EXISTING ADJAC. TR
 - 8 TRAYS/RECYCLING AREA WITHIN BUILDING
 - 9 GRADING MOUNT BEHIND HOOP
 - 10 GRADING MOUNT BEHIND HOOP
 - 11 NEW FINISH FLOORING TO ALLOW FOR PUBLIC
 - 12 NEW FINISH FLOORING TO ALLOW FOR SHARED
 - 13 SHOW STAIRS LOCATION, SEE CME
 - 14 NEW FINISH FLOORING TO ALLOW FOR SHARED
 - 15 CONSTRUCTION STAGING AREA
 - 16 EXISTING BUILDING
 - 17 PART OF EXISTING
 - 18 PART OF EXISTING



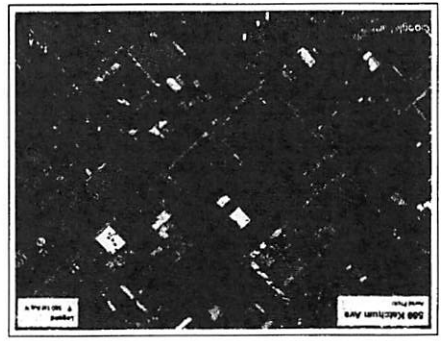
- SITE GENERAL NOTES:**
1. JOBS IN CONCRETE SHALL NOT BE
 2. EMBLEMED AND CURB AND GUTTER
 3. NOT BE SET IN PLACE UNTIL ALL
 4. CONCRETE WORK IS COMPLETE
 5. ALL EXISTING UTILITIES SHALL
 6. BE LOCATED AND MARKED
 7. PRIOR TO CONSTRUCTION
 8. ALL EXISTING UTILITIES SHALL
 9. BE PROTECTED AND NOT
 10. BE CUT OR DAMAGED
 11. UNLESS OTHERWISE
 12. SPECIFIED
 13. ALL EXISTING UTILITIES SHALL
 14. BE PROTECTED AND NOT
 15. BE CUT OR DAMAGED
 16. UNLESS OTHERWISE
 17. SPECIFIED
 18. ALL EXISTING UTILITIES SHALL
 19. BE PROTECTED AND NOT
 20. BE CUT OR DAMAGED
 21. UNLESS OTHERWISE
 22. SPECIFIED

SITE SUMMARY:

PARCELS	RETHINKING OF BLOCKS
MARKET ZONE	CC, SUB ZONE C
SITE AREA	2,500
1 BUILDING	18 UNITS
BUILDING FOOTPRINT	2,700 SF
TOTAL BUILDING AREA	7,200 SF
APPROXIMATE AREA	1.4 ACRES
LANDSCAPE AREA	200 SF
PAVED ASPHALT	0.2 ACRES
RECEIVED	1 SHEET PROVIDED



1 SITE PLAN



A AERIAL PHOTO

**EXHIBIT B
IMPROVEMENT PROJECT**

Project Site work consisting of site work excavation and improvements within the right-of-way, curb, gutter, and sidewalk along North 1st Avenue.

**EXHIBIT C
SCHEDULES OF ELIGIBLE COSTS**

Phase 1 Site Work, including excavation and utilities (see application).
Phase 3 Site Work, including 1st Ave N. sidewalks (see application).

TOTAL PAYABLE KURA AMOUNT:
16.7% of above Phase 1 & 3 site work or \$9,200, whichever is less.