

# Pocatello Development Authority

Board of Commissioners Meeting  
January 16, 2019 – 11:00 a.m.  
Paradise Conference Room – Pocatello City Hall

City of Pocatello  
911 North 7th Avenue  
Pocatello, Idaho 83205

## Call to Order and Acknowledgment of Guests

*An urban renewal agency for the City of Pocatello, Idaho*

**Agenda Item No. 1:** Disclosure of Conflicts of Interest

**Agenda Item No. 2:** Minutes – [ACTION ITEM]

Motion to approve and/or amend the Regular Meeting Minutes of December 19, 2018.

**Agenda Item No. 3:** Financial Report – [ACTION ITEM]

Motion to approve and/or amend the December 2018 Income and Expense Report.

**Agenda Item No. 4:** Payment Requests/Reimbursements – [ACTION ITEM]

- a. Elam & Burke in the amount of \$3,474.50 for December services on Northgate TIF (general fund)
- b. Elam & Burke in the amount of \$1,046.22 for December services on Philbin Road/Hoku property (North Portneuf District)

**Agenda Item No. 5:** Request for Funding – Snyder [ACTION ITEM]

**Agenda Item No. 6:** Request for Funding – Simmons [ACTION ITEM]

**Agenda Item No. 7:** Project 17-18 – [EXECUTIVE SESSION - Matters may exist for discussion in an executive session as per I.C. §74-206(1)(e) to consider preliminary negotiations involving matters of trade or commerce in which the PDA may be in competition with other jurisdictions.]

**Agenda Item No. 8:** Discussion of Celtic Life Complaint – [EXECUTIVE SESSION - Matters may exist for discussion in an executive session as per I.C. §74-206(1)(f) to communicate with legal counsel for the PDA to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated.]

**Agenda Item No. 9:** Hoku Property Disposition – Selection of Development Proposal [ACTION ITEM]

**Agenda Item No. 10:** Northgate TIF Plan – Update

**Agenda Item No. 11:** Retention of Counsel - North Yellowstone TIF Closure [ACTION ITEM]

**Agenda Item No. 12:** Reports and Updates

- a. United Senior Project – Due Diligence Update
- b.

## Executive Session:

Matters may exist for discussion in an executive session as per I.C. §74-206(1)(e) to consider preliminary negotiations involving matters of trade or commerce in which the PDA may be in competition with other jurisdictions and I.C. §74-206(1)(d & f) to communicate with legal counsel for the PDA to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated and to consider records that are exempt from disclosure.

**Upcoming Events/Information:** Study Session with City Council, 2/13/19

## Adjourn.

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**AGENDA ITEM  
NO. 2**

**POCATELLO DEVELOPMENT AUTHORITY  
MEETING MINUTES  
December 19, 2018**

**Chairman Scott Smith** called the meeting to order at 11:07 a.m.

**Members present:** Mayor Brian Blad, Chad Carr (by phone from approximately 1:10-1:45 p.m.), Jim Johnston, Scott Smith, Terrel Tovey, and Scott Turner.

**Members excused/absent:** Matt Bloxham, Rob Lion, and Thomas Ottaway

**Others present:** Melanie Gygli, Interim Executive Director; Joyce Stroschein, Treasurer; Jared Johnson, City Attorney; Merrill Quayle, Public Works Development Engineer; John Regetz, Bannock Development Corporation (ex officio); Tiffany Olsen, Bannock County; Barbara Wischerath, Gateway West; Stephanie Palagi; Dane Simmons; Jennifer Simmons; Michael Snyder; Robert Polecki; Sharon Manning; Jerry Myers; Phil Joslin; Carol Burnett; Alfreda Vann; Matt Parks and Meghan Conrad, Elam & Burke (by phone approximately 1:10-1:30).

**Agenda Item No. 1: Conflicts of Interest.** Johnston disclosed a conflict of interest on matters related to the Northgate TIF (item 9).

**Agenda Item No. 2: Minutes.** The minutes of the Regular Session of November 21, 2018 were considered. It was then **MSC (J. Johnston, B. Blad)** to approve the minutes as presented.

**Agenda Item No. 3: Financial Report.** **J. Stroschein** presented the financial report for the month of November 2018. At the end of the reporting period, the Authority had cash on hand of \$6,474,631.65. The checking account balance was \$3,129,719.19, the savings account was \$25.00, and cash held by Zions Trust amounted to \$3,344,887.46. The Authority recognized financial activity during the month of November as follows: revenue totaled \$104,069.04, of which \$15,418.34 was interest earnings on cash invested and property tax interest, \$750.00 was rental income from the Positron facility, and property tax for the North Yellowstone District totaled \$87,900.70. Expenses totaled \$313,253.11, including \$126.05 for the November lunch meeting, publishing costs for the Hoku RFP of \$84.31, RAI dues and legislative contribution of \$1,350.00, economic development support to the Northgate interchange of \$300,000.00, and legal services related to the Northgate TIF, North Portneuf property, and general legal support of \$11,692.75.

Stroschein presented information on the funds available in the general fund, less what has been committed. Not including the anticipated administrative fee transfer from each district, there is \$651,355 in uncommitted funds. Following discussion, it was then **MSC (B. Blad, J. Johnston)** to approve the November 2018 financial reports as presented.

**Agenda Item No. 4: Payment Requests/Reimbursements.** The following invoices were reviewed for payment: 1) Elam & Burke in the amount of \$6,918.30 for November services on the Northgate TIF project; 2) Elam & Burke in the amount of \$3,930.50 for November services on the Hoku property; 3) Idaho State Publishing in the amount of \$194.10 for publication of the RFP for the North Portneuf district. It was then **MSC (B. Blad, J. Johnston)** to approve the payment requests.

**Agenda Item No. 5: Request for Funding – Snyder.** Gygli introduced a request by Michael Snyder for funds to replace the roof and renovate the façade. **Michael Snyder** provided an outline of his plans for the building, which could include a variety of vendors and businesses and business incubation. His request is for a total of \$149,000 in grant funds, in order to preserve and rehab the building. The roof leaks and has caused water damage to the interior. He has already made repairs to the plumbing and HVAC systems. **Stephanie Palagi**, representing Old Town Pocatello, stated this building is important to the fabric of the downtown and the planned improvements could help create a business epicenter. Further, Snyder has a proven record on the properties he has purchased and improved.

In response to questions from Board members, Snyder explains he owns the building and has begun making needed repairs. According to Jerry Myers (his architect) and Wilson Roofing, the building is structurally sound.

**Johnston moved** to approve the request. After discussion, it was decided to listen to all three funding requests before taking any action. Johnston withdrew his motion.

**Agenda Item No. 6: Request for Funding – United Seniors Project.** Gygli introduced a request by United Seniors Project (USP) for funding for building purchase and rehabilitation to house the various groups within the USP. **Sharon Manning** began the presentation, explaining they originally approached the PDA for funding in March of 2017, where it was suggested they needed a more complete proposal, including a business plan. She reviewed their current proposal, which includes acquiring the Bonneville Elementary building through the School District's bidding process. This building would meet their needs over the long term. **Jerry Myers** explained the building is structurally sound and expressed his opinion that this reuse would be good for the neighborhood and community.

**Alfreda Vann**, representative of the Bonneville Neighborhood Association, described the neighborhood and its heritage. She believes this project would be good for the neighborhood, becoming a destination place and a reason for people to purchase homes in the area. She referenced purpose from the Board's Bylaws, stating that this project is in line with that purpose.

**Carol Burnett** described the financial needs, including anticipated purchase price and needed repairs and rehab. For long-term operation, they will be looking for donations from various groups and potentially assistance from government agencies.

In response to questions from Board members, Burnett stated they have no financial commitments to date. The request to the PDA is for \$617,800, which will cover the purchase and first phase of repairs and rehab. Board members noted this amount exceeds the total available to the PDA for any funding requests and operational expenses. In response to further questions, **Burnett** and **Phil Joslin** explained the USP groups individually renting space for their functions; likely they will approach the Portneuf Health Trust for funds.

**Joslin**, New Knowledge Adventures president, reviewed the groups that are involved with this project, all of which are non-profits. This project will benefit persons of all ages. The PDA's endorsement will assist them in obtaining additional funds. In response to questions, he noted the Senior Center is not one of the groups involved, but they are talking with them; they are looking into other grant opportunities. He believes that the School District determined to sell the property based on USP's inquiries. **Manning** explained there are other grant options, but the PDA's involvement would help kick-start requests. They will maintain the building but may approach local governments for assistance—either financial or in-kind—for operational costs.

Board members discussed the project, noting that it is not the usual type of project for which funds are provided. PDA members expressed their support for the concept. No decision can be made today, but they will look into whether this is a project allowable under the standards of State urban renewal law.

**Agenda Item No. 7: Request for Funding – Simmons.** Gygli introduced a request from Dane Simmons for funding to improve the interior and exterior of the building at 312 West Center Street. **Simmons** presented his request for \$75,000 in grant funds for interior renovations and a loan of \$250,000 to build Simmons Surgical skills lab and luxury suites in the building. He described his existing business, Par 5, and the history of Old Town. It is his intent to restore the building as closely to the original as possible. This business would offset the seasonality of Par 5 and bring Air BnB type units to the downtown. Start-up businesses will be housed in the renovated area, as well, including the washie toilet Robert Polecki created.

In response to questions from Board members, Simmons explained he has invested \$1 million in Old Town, has owned this building for eight months, and has been in business in Old Town for five years. In the past, the building was connected to the Main Street frontage, though now only the utilities are connected. He has talked with banks but cannot get as good terms as the PDA has made available.

**Robert Polecki** urged the Board to give positive consideration to the proposal. He believes the funds will be used wisely and there are businesses waiting to use this building. He explained that, for his business, the executive positions would be in this building, with assembly elsewhere.

Board members discussed all three funding requests. Consideration was given to other options for funding and concern about competing with banks for loan dollars; whether the USP project would be an eligible urban renewal-type project; concern about reducing the general fund too dramatically; giving smaller amounts or only grants vs. larger loans; tying awarded funds to benchmarks, such as a certain number of employees, as has been done on other awards. Recent PDA awards in the downtown area have been toward the south end, and this area needs attention as well. Lately, loan terms have been 0 percent interest for the first year, with interest at prime plus 1 percent and quarterly payments for years 2-5.

After consideration, it was **MSC (J. Johnston, B. Blad)** to grant \$75,000 to Snyder for roof repair or replacement and \$75,000 to Simmons for interior remodel including hardwood floors, skylight, ceiling, and façade and storefront restoration.

Further discussion regarding additional funding for these two projects, as well as whether to fund part of the USP project, will take place at the January meeting.

After a five-minute break, **Smith** moved ahead to item no. 9.

**Agenda Item No. 9: Consider Resolution No. 2018-3 – Approval of the Urban Renewal Plan for the Northgate Urban Renewal Project.** **Johnston** recused himself from participation on this item. **Meghan Conrad** and **Matt Parks** joined the meeting by phone. **Conrad** updated the Board on the status of the Northgate plan preparation. She described recent edits made to include an intergovernmental agreement with Chubbuck needed because of a recent annexation on the east side of the freeway. Action needed now is approval of the plan and its forwarding to the City Council for formal action. After discussion, it was **MSC (T. Tovey, S. Turner)** to adopt Resolution No. 2018-3, approving the Northgate TIF plan, and forwarding it to the City Council for formal processing.

**B. Blad** said the City Council has asked the PDA consider funding a study to determine the cost of providing services to the proposed TIF area, to determine the potential impact to current taxpayers. **Conrad** said such a study would need to be defined by the City. Likely it would delay processing of the plan, but there is some space built into the timeline to allow for County and Chubbuck intergovernmental agreements. She does not know what the cost of such a study might be.

Board members discussed the utility of such a study. While there may be some impact, much will be offset by the districts that will return to the tax rolls in the next year or two and the tax abatements that expire. After discussion, it was **MSC (T. Tovey, S. Turner)** to deny the request to fund this study, due to lack of available funds and the delay it would cause in processing the plan.

**Agenda Item No. 8: Hoku Property Update.** **Smith** reported that a lawsuit has been filed against the PDA. With this currently pending litigation, **Smith** called for an executive session to discuss the legal ramifications of and legal options for pending litigation. At approximately 1:25 p.m., **it was moved and seconded (S. Turner, T. Tovey)** to adjourn to executive session pursuant to Idaho Code §74-206(1)(f). **The motion passed by roll call vote (Ayes: Turner, Tovey, Blad, Carr, Johnston, Smith. Nays: None).** Upon **MSC (B. Blad, J. Johnston)** the Board reconvened to regular session at approximately 1:35 p.m.

No action was taken on this item.

**Agenda Item No. 10: Authorization to Call North Yellowstone TIF Bonds.** **Stroschein** explained that the next tax payment likely will provide sufficient funds to pay off the bonded debt in the North Yellowstone district. Zions Bank requires action

by the PDA granting permission to call the bonds prior to taking any action. After brief discussion, it was **MSC (T. Tovey, B. Blad)** to grant permission to call the bonds on the North Yellowstone TIF district.

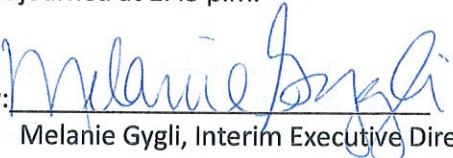
It was noted that with the closure of this district, the annual administrative fee transfer will be reduced significantly.

**Agenda Item No. 11: Authorize Administrative Fee Transfer.** After discussion, it was **MSC (J. Johnston, T. Tovey)** to authorize transfer of the 10 percent annual administrative fee from each active district to the general fund.

**Agenda Item No. 12: Reports and Updates.** No reports were made.

**Adjournment:**

There being no further business, the meeting adjourned at 1:45 p.m.

By:   
Melanie Gygli, Interim Executive Director/Secretary

**POCATELLO DEVELOPMENT AUTHORITY MEETING MINUTES**  
**EXECUTIVE SESSION**  
**December 19, 2018**

**Members present:** Mayor Brian Blad, Chad Carr (by phone), James Johnston, Scott Smith, Terrel Tovey, and Scott Turner.

**Members absent/excused:** Matt Bloxham, Rob Lion, Thomas Ottaway.

**Others present:** Melanie Gygli, Interim Executive Director; Joyce Stroschein, Treasurer; Matt Parks and Meghan Conrad of Elam & Burke (by phone).

The Board of Commissioners adjourned from regular session into executive session pursuant to I.C. §74-206(1)(f) to communicate with legal counsel for the PDA to discuss the legal ramifications of and legal options for pending litigation. At approximately 1:25 p.m., **it was moved and seconded (S. Turner, T. Tovey)** to adjourn to executive session pursuant to Idaho Code §74-206(1)(f). **The motion passed by roll call vote (Ayes: Turner, Tovey, Blad, Carr, Johnston, Smith. Nays: None).** Upon **MSC (B. Blad, J. Johnston)** the Board reconvened to regular session at approximately 1:35 p.m.

By:   
Melanie Gygli  
Interim Executive Director/Secretary



**AGENDA ITEM**

**NO. 3**

**(to be supplemented)**



**AGENDA ITEM  
NO. 4**

**ELAM & BURKE**  
ATTORNEYS AT LAW

251 East Front Street, Suite 300  
Post Office Box 1539  
Boise, Idaho 83701  
Telephone 208 343-5454  
Fax 208 384-5844

Tax Id No. 82-0451327

Pocatello Development Authority  
Attn: Melanie Gygli  
City of Pocatello  
P.O. Box 4169  
Pocatello, ID 83205

DECEMBER 31, 2018

Invoice # 177189

Billing Atty - RPA

RE: Northgate Plan

CLIENT/MATTER: 09212-00001

DECEMBER 31, 2018

Invoice # 177189

\*\*\* INVOICE SUMMARY PAGE \*\*\*

PROFESSIONAL FEES	3,460.00
COSTS ADVANCED	14.50
TOTAL INVOICE	3,474.50

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**ELAM & BURKE**

ATTORNEYS AT LAW

251 East Front Street, Suite 300  
Post Office Box 1539  
Boise, Idaho 83701  
Telephone 208 343-5454  
Fax 208 384-5844

Tax Id No. 82-0451327

Pocatello Development Authority  
Attn: Melanie Gygli  
City of Pocatello  
P.O. Box 4169  
Pocatello, ID 83205

DECEMBER 31, 2018

Invoice # 177190

Billing Atty - RPA

RE: Hoku Property Disposition

CLIENT/MATTER: 09212-00002

DECEMBER 31, 2018

Invoice # 177190

\*\*\* INVOICE SUMMARY PAGE \*\*\*

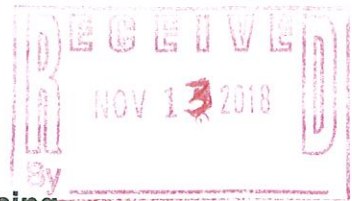
PROFESSIONAL FEES	1,030.50
COSTS ADVANCED	15.72
TOTAL INVOICE	1,046.22

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**AGENDA ITEM  
NO. 5**

POCATELLO DEVELOPMENT AUTHORITY (PDA)  
Preliminary Application for use of Tax Increment Financing



Application:

Name: Michael G. Snyder Date: 11-7-18

Mailing Address: 123 N. Hayes Pocatello, ID 83204

Work Phone: 478-2426 Cell Phone: 356-6124 E-Mail: Michael Snyder 242 @ outlook.com

Project Description: Restoring of Historic Woolworth Bldg. by repairing roof and updating Facade.

Project Location: 141 N. Main St. Pocatello

Is this project currently in an urban renewal area? Yes  No  
Is the project currently in a revenue allocation area? Yes  No

If you answered 'no' to both questions above, please describe the "deteriorated or deteriorating" conditions associated with this location:

Building has been vacant for approximately 5 years; roof leaks, hvac units inoperable, water leaks, water damage, electrical service needs updating.

Current Assessed Value of Project Location: listed at \$225,000.00

Estimated Construction Value of Project: \$39K for new roof / \$70K for facade update.

Number of jobs created by this project: 50-75 Wage range of jobs: 7.25 - 15

Employee Benefits? Yes  No If yes, please describe: \_\_\_\_\_

Time frame for job creation: 1 Employee, 1 vendor already in place. Full operation in 1 year.

Construction start date for project: 10-9-18 Anticipated completion date: 3-31-19

Briefly describe other public benefit(s) associated with this project: The historic Woolworth Bldg. will be the cornerstone to an active and viable business zone. My business Cottonwood Junction will engage over 60 local Pocatello/Chubbuck vendors, artists and entrepreneurs. The facility will act as a spin-off to new businesses in the area.



Does this project compete with other, already established businesses? How? No  
It will augment the downtown Antique and Art scene

Is this project currently subject to a competitive bid process? Please explain:  
No. However multiple bids for vendor work being solicited.

Are there other applicants that may be interesting in applying for PDA assistance for this same project? Please explain: No

Relationship of named applicant to the project: owner of Property & Business

Type of Assistance Requested  
(check all that apply):

- Public Infrastructure (water, sewer, street, etc.).
- Public Facility (building, park, parking lot, etc.).
- Match for other funding.
- Inspections, tests, surveys, appraisals, etc.
- Property Acquisition.
- Structure Demolition and Clearance.
- Other? Please Specify Funding for Bldg restoration.

Amount of Assistance Requested: \$ 109,000 -

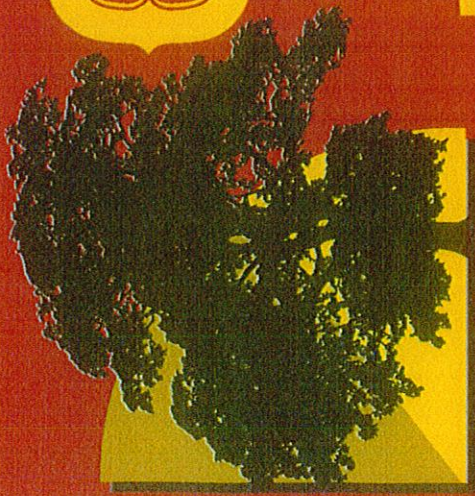
Form of Assistance Requested:

- Grant of Funds.
- Loan of Funds.
- Reimbursement for Approved Expenditures.
- Pay-As-You Go.
- Bonding.
- Other? Please specify \_\_\_\_\_

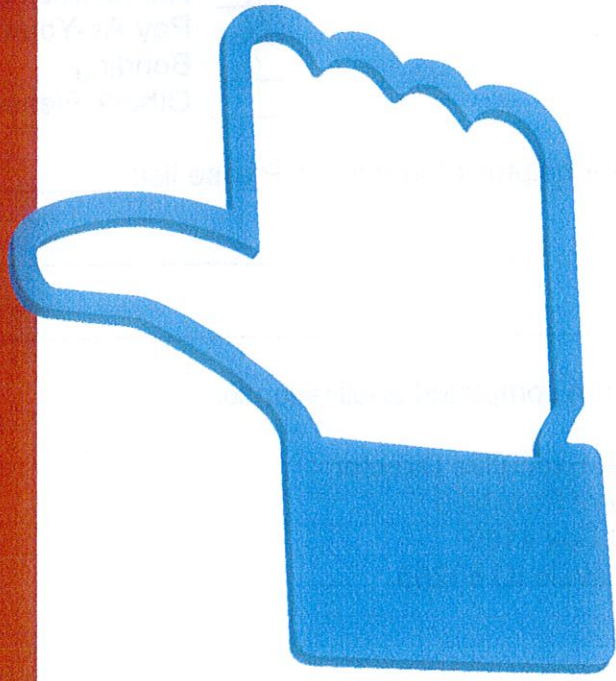
Other helpful information? Please list: \_\_\_\_\_

Return completed application to:

PDA Executive Director  
City of Pocatello  
P O Box 4169  
Pocatello ID 83205



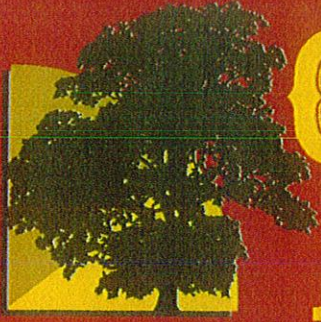
# COTTONWOOD JUNCTION



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Myers • Anderson



# COTTONWOOD JUNCTION

**Antiques & Vintage**

**Arrow West  
Properties**

**Book Nook**

**The Consignment  
Cottage**

**IB - IDAHO**

**The Rug Broker**

*Scenic* IDAHO

IDAHO

GIFTS & SOUVENIRS

<b>COST ESTIMATE</b>		<b>Myers &amp; Anderson</b>				
<b>Cottonwood Junction</b>						
Pocatello, ID						
Date:12-17-18						
<b>Item</b>	<b>Area/GSF</b>	<b>UNIT</b>	<b>UNIT COST</b>	<b>ESTIMATE</b>		
Replace Roof	12,600	SF	\$ 6.00	\$ 75,600		
Renovate Façade	2100	SF	\$ 35.00	\$ 73,500		
<b>TOTAL WORK ESTIMATE</b>				<b>\$ 149,100</b>		

**Note:** The costs above are derived from similar project costs of recently completed projects and interpolated as square foot costs. These costs are a broad estimate based on a cursory walk through the building. This estimate is for budget development and should be reviewed with the specific scope of work to be completed.



617 S. 2nd Avenue ~ P.O. Box 6049  
Pocatello, ID 83201  
Phone: 208-233-1996  
Fax: 208-233-2167

*Serving Southeastern Idaho for over 20 Years*

To: Michael Snyder

Date: 11/2/2018

Phone: 323-356-6124

Email: [michaelsnyder242@outlook.com](mailto:michaelsnyder242@outlook.com)

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**PROJECT: 141 N Main-main roof**

**SCOPE OF WORK: WE PROPOSE TO FURNISH LABOR AND MATERIAL IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS AS FOLLOWS:**

1. Install ½" fan fold over existing roof
2. Mechanically fasten 60 mil TPO roofing system
3. Flash walls, and vents. Curb on sign.

**Total: \$ 39,000.00**

*\*This includes a 2 year workmanship warranty and a 15 year manufacturer's integrated warranty from GAF.*

**Note: South roof is newer and can be repaired for a while.**

**CONDITIONS**

It is understood and agreed that we shall not be held liable for any loss, damage or delays occasioned by fire, strikes, or material stolen after delivery upon premises, lockouts, acts of God, or the public enemy, accidents, boycotts, material shortages, disturbed labor conditions, delayed delivery of materials from Seller's suppliers, force majeure, inclement weather, floods, freight embargoes, causes incident to national emergencies, war, or other causes beyond the reasonable control of Seller, whether of like or different character, or other causes beyond his control. Prices quoted in this contract are based upon present prices and upon condition that the proposal will be accepted within thirty days. Also, general conditions which are standard for specialty contractors in the construction industry apply.

If any decking work needs to be done (i.e. repair or replacement) there will be an additional charge.

**TERMS: HALF DOWN WITH BALANCE DUE ON COMPLETION.**

**SUBMITTED: ACCEPTED:**

By \_\_\_\_\_









**AGENDA ITEM  
NO. 6**

**POCATELLO DEVELOPMENT AUTHORITY (PDA)**  
**Preliminary Application for use of Tax Increment Financing**

Application:

Name: Dane Simmons Jr. Date: 12/5/18

Mailing Address: 123 N. Main Street , Pocatello , ID 83204

Work Phone: \_\_\_\_\_ Cell Phone: 208-406-1254 E-Mail: simmonssurgical@gmail.com

Project Description: To revitalize a National Registered Historic Building located in downtown Pocatello. Building facade, Hardwood floors, stamped tin ceilings, original skylights will be restored to originality, separation of utilities from adjacent building, and installation of fire sprinklers. Five luxury rental suites will be completed on upper floor, retail space completed on first floor. Project will also include a build out for a community surgical skills lab, while also servicing the home base for Simmons Surgical.

Project Location: 312 W. Center Street , Pocatello, ID 83204

Is this project currently in an urban renewal area?  Yes  No

Is the project currently in a revenue allocation area?  Yes  No

If you answered 'no' to both questions above, please describe the "deteriorated or deteriorating" conditions associated with this location:

\_\_\_\_\_  
\_\_\_\_\_

Current Assessed Value of Project Location: \$245,000

Estimated Construction Value of Project: \$500,000

Number of jobs created by this project: 10 Wage range of jobs: \$25,000-120,000

Employee Benefits?  Yes  No If yes, please describe: \_\_\_\_\_

\_\_\_\_\_

Time frame for job creation: Onboarding starts Feb 2019 for sales/surgical coverage positions.

Construction start date for project: Feb 2019 Anticipated completion date: Aug 2019

Briefly describe other public benefit(s) associated with this project:

The restoration will be a catalyst for others to follow in restoring downtown pocatello. The luxury suites will pave the way for individuals with disposable income to spend money in the old town district. The medical community will be able to take continuing education units from local surgeons at a state-of-art facility surgical lab facility which will be one of it's kind in the state of Idaho.

Does this project compete with other, already established businesses? How? \_\_\_\_\_

This project does not compete with any other project.

Is this project currently subject to a competitive bid process? Please explain: N/A

Are there other applicants that may be interesting in applying for PDA assistance for this same project? No  
Relationship of named applicant to the project: \_\_\_\_\_

Type of Assistance Requested

(check all that apply):

- Public Infrastructure (water, sewer, street, etc.).
- Public Facility (building, park, parking lot, etc.).
- Match for other funding.
- Inspections, tests, surveys, appraisals, etc.
- Property Acquisition.
- Structure Demolition and Clearance.
- Other? Please Specify \_\_\_\_\_

Amount of Assistance Requested: \$500,000 \$150,000 grant  
\$350,000 loan

Form of Assistance Requested:

- Grant of Funds.
- Loan of Funds.
- Reimbursement for Approved Expenditures.
- Pay-As-You Go.
- Bonding.
- Other? Please specify \_\_\_\_\_

Other helpful information? Please list: \_\_\_\_\_

Return completed application to:

PDA Executive Director  
City of Pocatello  
P O Box 4169  
Pocatello ID 83205

# **LIST**

## **Budget of Expenses**

## **Grant Proposal**

**PROJECT FUNDS ALLOTED**  
\$0.00

**FUNDS USED TO DATE**  
\$75,000.00

**FUNDS REMAINING**  
(\$75,000.00)

<b>Item</b>	<b>Category</b>	<b>Amount</b>
Plans and Designs	Labor	\$2,500.00
Demolition (Labor)	Labor	\$5,500.00
Hardwood Floor Restoration	Materials	\$7,500.00
Hardwood Floor Restoration	Labor	\$9,500.00
Original Skylight Restorations	Materials/Labor	\$18,500.00
Original Façade & Storefront Restoration	Materials/Labor	\$22,000.00
Orginal Ceiling Restoration	Materials/Labor	\$9,500.00
<b>Total</b>		<b>\$75,000.00</b>

**AGENDA ITEM  
NO. 9**

Celtic Life Sciences, LLC  
2861 N. Marburg Avenue  
Meridian, ID 83646-8281

January 7, 2019

Melanie Gygli  
Director, Planning & Development Services  
City of Pocatello  
P.O. Box 4169  
Pocatello, ID 83205

Dear Ms. Gygli:

This letter is intended to serve as public comment to the Pocatello Development Authority's Request for Proposal and executed Disposition and Development Agreement with Solargise America, LLC ("Solargise"), and to explain why Celtic Life Sciences, LLC ("Celtic") is in the best position to develop the former "Hoku Property."

Celtic finds itself in a unique position, unlike any other potential developer, including Solargise. Celtic was formed on August 19, 2016, with the purpose of being the entity that would develop the Hoku Property following the sale of the equipment that is still on the property. Celtic's vision for the property will be described in more detail below. Celtic also has legal ownership of all of the buildings and improvements on the Hoku Property, purchasing these from V.A. Metals, LLC ("V.A. Metals") on January 19, 2017. Payment was made to V.A. Metals and a Bill of Sale was executed between the parties. In addition, V.A. Metals assigned all of its rights and interest in the lease with the Pocatello Development Authority ("Agency").

For whatever reason, the Agency chose to ignore Celtic's ownership of the buildings and improvements, and the assignment of the lease, and negotiated a secret deal with Solargise. As part of the secret agreements between the Agency and Solargise, V.A. Metals assigned all of its interests in the lease to Solargise so that Solargise could cancel the lease. The only problem is that V.A. Metals had no interest in the lease at the time of assignment, as it had already assigned it to Celtic. The Agency was well aware of these facts, but seems to have believed or been advised that V.A. Metals had reacquired the rights to the building and lease. The Agency failed to conduct any due diligence on the matter, despite receiving inquiries from Celtic about the status of the property. Instead, the Agency and its board members simply lied to representatives of Celtic, and to the public, about the status of the secret negotiations with Solargise. Despite the Agency making no assertion as to the ownership of the buildings, leaving that item unresolved will create an issue for any future developer of the property that is not Celtic.

Solargise has no real interest in developing the Hoku Property – its only interest is purchasing and removing the equipment from the property and relocating it to Canada. While Solargise may be telling the Agency of its interests in developing the property, in other circles principals of Solargise are representing that there is no interest in ever purchasing or owning the property. That is what you will get with Solargise – lies and deception. By contrast, Celtic's sole purpose was to acquire the land, which together with the buildings owned by Celtic would provide an opportunity for Celtic to develop a life sciences and technology park, as will be explained further below.



While Celtic will outline its position as to the Hoku Property, its opposition to the Solargise Disposition and Development Agreement ("DDA"), and its proposal for development, Celtic believes that it is in the best interests of all parties to withhold any decision on the DDA or development of the Hoku Property for a 90-day period. During this period, the Agency, V.A. Metals, Solargise, and Celtic can work in good faith to resolve these issues and avoid a more-costly form of resolution. That said, if the Agency continues to desire to defend its secretive actions, Celtic will have no choice but to expand the litigation to defend its ownership and rights in the Hoku property, or to be paid the fair market value of the property that the Agency is taking from Celtic.

#### Celtic's Ownership of the Buildings

Celtic purchased the buildings from V.A. Metals on January 19, 2017, evidenced by a Bill of Sale acknowledged by K.V. Naidu on behalf of V.A. Metals. This transfer was made so that Celtic could move forward with plans to develop the Hoku Property following V.A. Metals' sale of the equipment. In December 2017, Kola Innovative Technologies Design LLP ("KITD"), a company owned by K.V. Naidu, signed a term sheet with Global Horizons Capital Ltd with respect to an attempt to gain financing to assist Celtic in purchasing the Hoku Property (land) from the Agency pursuant to an option to purchase in the land lease. The term sheet states:

"GHC confirms that both KITD and Celtic have disclosed that the buildings have been purchased by Celtic and there exists a land lease with a purchase option, GHC confirms and acknowledges that it is aware of this and has agreed to extend the loan with the first payment being made directly to the PDA authority, for Celtic to exercise the land purchase option."

K.V. Naidu, Habibulla Syed, and Prosenjit Purkayaska, all principals and equity holders of V.A. Metals signed this acknowledgement almost one year following Celtic's acquisition of the buildings. It was known by all involved with V.A. Metals and Celtic, and Solargise and the Agency had also been put on notice of this assignment. Despite this knowledge, or possibly because of this knowledge, the Agency worked in secret with Solargise to negotiate the DDA and the termination of the land lease. The Agency then entered into a License Agreement with Solargise. Celtic was unaware of the extent of these negotiations until the Agency issued its public notice on October 18, 2019 requesting public comment on its arrangement with Solargise and Celtic was later able to obtain documents in public record requests to begin to piece together the secretive deal. Such actions have forced Celtic to take action against the Agency by filing a complaint in Magistrate Court alleging that all actions taken by the Agency in violation of Idaho's open meeting laws are null and void – this would include all arrangements and agreements between the Agency and Solargise. While the Agency's counsel has requested that this complaint be dismissed based on a 30-day provision in the statute, Celtic brought the action within 30 days of discovering the extent of the Agency's cover up. Celtic has valid arguments and case law supporting its position that an agency should not be allowed to cover up a decision that should have been public and then rely on a 30-day window for a party to have to discover the secret decision. Once the decision comes to light, a party has 30 days to bring an action to declare the decision null and void. This was done by Celtic.

Celtic's complaint against the Agency provided the Agency with an opportunity to self correct the secretive actions that violated the open meeting laws. It appears the Agency is not willing to admit to its mistakes and the fact that it has been duped by Solargise. While Celtic only brought the initial action against the Agency, it may have been more appropriate to also bring actions against the individual board members who seem to have openly engaged in secretive negotiations that may not have been known to the entire board or to the Agency as a whole. Celtic will be reviewing such claims.

The Agency based its agreements with Solargise on information that was not true – in fact, it based its decisions on intentionally misleading representations by Solargise and V.A. Metals. The Agency then engaged in deception of the general public and of Celtic, by failing to bring the negotiations and the agreements into the public eye where Celtic would be able to assert its rights to the Hoku properties. Once the Agency entered into the fraudulent license agreement with Solargise, access to the property was limited and could not be obtained without the consent of Solargise. Despite a number of attempts, Celtic has been unable to gain access to the property. Together with the Agency, V.A. Metals and Solargise have effectively taken Celtic's rights to its buildings resulting in damages to Celtic.

#### Celtic's Ownership of Leasehold Interest

Celtic not only acquired the buildings on the Hoku Property but also acquired the lease rights held by V.A. Metals under the original lease between the City of Pocatello and JH Kelly dated January 17, 2014, as amended and extended ("Land Lease"). V.A. Metals assigned all its rights under the Land Lease to Celtic on January 19, 2017, in connection with the purchase of the buildings. Mr. Naidu signed this notarized agreement on behalf of V.A. Metals. Between V.A. Metals and Celtic, the assignment of the Land Lease occurred on January 19, 2017, and Mr. Naidu personally benefitted from the proceeds of that transaction.

On September 18, 2018, V.A. Metals attempted to once again assign the Land Lease, this time to Solargise America, LLC. Mr. Naidu again signed on behalf of V.A. Metals. This second assignment provides that "VA Metals wishes to assign any interest it may have in the Lease to Solargise." At the time of this assignment, V.A. Metals had no interest in the Lease, so V.A. Metals assigned nothing to Solargise. It is interesting to note that Celtic requested the Agency to approve the assignment between V.A. Metals and Celtic, such request being sent to Scott Smith in May 2018. The Agency never formally provided consent to the transfer and never provided any reason for its failure to provide such consent, which cannot be unreasonably withheld. Instead, the Agency ignored this request and moved forward in secret during July, August, and September to provide consent to the assignment from V.A. Metals to Solargise, which assignment conferred no rights to Solargise.

All parties involved in this second assignment knew of Celtic's earlier acquisition of the leasehold interest in the Land Lease. V.A. Metals, Mr. Naidu, Solargise, Mr. Basu, and the Agency all misrepresented facts to the general public in executing this second assignment, which is completely fraudulent. It is also been made known to Celtic that V.A. Metals received no consideration for such transfer and that Solargise is in fact in default with respect to its obligations to V.A. Metals. Interestingly enough, the other owners of V.A. Metals have openly contested the authority of Mr. Naidu to act on behalf of V.A. Metals, and have even provided such notice to Solargise. Those issues are part of a lawsuit that was filed in May 2018 in Bannock County, to which the parties are aware. Despite this, Solargise has continue to orchestrate deception with the Agency and V.A. Metals to attempt to deprive Celtic of its property rights.

Celtic has ownership of the leasehold interest in the Hoku Property pursuant to the Land Lease. Any actions taken by the Agency, V.A. Metals, or Solargise asserting that Celtic has no rights in the Land Lease are effectively a taking without providing Celtic with any consideration.

#### Celtic's Development Plan

Celtic's vision for the property following removal of the equipment was to immediately finish certain improvements in the administration building that would allow for leasing opportunities for science, technology, and research firms. Celtic has connections with a variety of prospective tenants, who were interested in the facility, but Celtic has been denied access to its own buildings. Celtic has a desire to development the Hoku Property into something positive for Pocatello.

Solargise has provided absolutely no detail in the proposed DDA other than it will magically develop the property by putting \$150,000,000 into it and creating 50-60 jobs paying \$80,000 to \$100,000 annually. This is unrealistic, although not surprising from Solargise. Mr. Basu and his Solargise entities struggle to keep commitments and frequently default on obligations. Another Solargise entity entered into negotiations with V.A. Metals back in 2016, only to default on its obligations and be unable to move forward. Solargise is only concerned about the equipment on the Hoku Property. Once the equipment is off, Solargise will be gone and operating in Canada. There will be no investment in the Hoku Property and Solargise will either leave the property dilapidated or will raze the buildings and ruin opportunity for real investment in the property. The current buildings provide a great base of opportunity for a tech and life sciences park, if in the right hands. Solargise has no interest in that direction.

The Agency should not accept the vague and misleading DDA with Solargise without specifics as to what will be developed on the property. Celtic was founded with the vision from Irfan Sharief, the mastermind behind V.A. Metals and the one who has the dream of turning the Hoku Property into a life science park. The Agency should select a developer who has integrity and who will not simply abandon the project in two years when the equipment is removed.

The entire process of the Agency receiving development proposals is a complete sham. Any potential developer cannot gain access to the property without the consent of Solargise under the license agreement Solargise secured with the Agency. The license agreement was executed outside the public eye with the intent to eliminate the competitive nature of the proposal process.

Celtic is not officially able to submit a development proposal because Celtic cannot sign Attachment 4 providing the Agency with a release and waiver at this time. Once issues are resolved with the Land Lease and ownership of the buildings, Celtic is prepared to purchase the Hoku Property and enter into a specific and realistic DDA with the Agency that will be of long-term benefit to the City of Pocatello.

### Conclusion

The Agency is in a position to help fashion a remedy that allows Solargise to continue with its purchase of the equipment at the Hoku site while also respecting the ownership interests of Celtic in the buildings. In the alternative, the Agency can continue to defend its secretive deal, which will only lead to more discovery of what really happened in the negotiations with the Agency and Solargise, with Agency members and representatives of Solargise, and what benefits may have been promised or paid outside of the public eye. The City of Pocatello deserves better than this – it deserves something positive at the Hoku facility. The actions of the Agency are however leading the City into years of litigation that may threaten any deal to revitalize the property. It is time for the Agency to take appropriate steps to correct its illegal actions, or be forced to do so publicly.

Sincerely,



Webb Moulton



**RESOLUTION NO. 2018-2**

**BY THE BOARD OF COMMISSIONERS OF THE URBAN RENEWAL AGENCY OF  
POCATELLO, IDAHO:**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF  
THE URBAN RENEWAL AGENCY OF POCATELLO, IDAHO,  
ALSO KNOWN AS THE POCATELLO DEVELOPMENT  
AUTHORITY, APPROVING THE DISPOSITION AND  
DEVELOPMENT AGREEMENT BETWEEN THE AGENCY  
AND SOLARGISE AMERICA, LLC AND THE ASSIGNMENT  
OF RIGHTS BETWEEN V.A. METALS, LLC AND  
SOLARGIZE AMERICA, LLC; AUTHORIZING THE  
EXECUTION OF THE DISPOSITION AND DEVELOPMENT  
AGREEMENT AND THE ASSIGNMENT OF RIGHTS; AND  
PROVIDING AN EFFECTIVE DATE.**

**THIS RESOLUTION, made on the date hereinafter set forth by the Pocatello Urban  
Renewal Agency of the city of Pocatello, Idaho, also known as the Pocatello Development  
Authority, 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 and  
supplemented (the "Law") and the Local Economic Development Act, Chapter 29, Title 50,  
Idaho Code as amended and supplemented (the "Act"), a duly created and functioning urban  
renewal agency for Pocatello, Idaho, hereinafter referred to as the "Agency;"**

**WHEREAS, the City Council (the "City Council") of the city of Pocatello (the "City")  
found that deteriorating areas exist in the City, therefore, for the purposes of the Law, created an  
urban renewal agency pursuant to the Law, authorizing the Agency to transact business and  
exercise the powers granted by the Law and the Act upon making the findings of necessity  
required for creating the Agency;**

**WHEREAS, the Mayor has duly appointed the Board of Commissioners of the Agency,  
which appointment was confirmed by the City Council;**

**WHEREAS, the City Council, on April 19, 2007, after notice duly published, conducted  
a public hearing on the North Portneuf Urban Renewal Plan (the "North Portneuf Plan");**

**WHEREAS, following said public hearing, the City Council adopted its Ordinance No.  
2814 on April 19, 2007, approving the North Portneuf Plan and making certain findings;**

**WHEREAS, the Agency owns certain real property located at 1 Hoku Way, Pocatello,  
Idaho (the "Property");**

**WHEREAS, the Agency took ownership of the Property subject to a lease with V.A.  
Metals, LLC (the "Lease");**

**WHEREAS, V.A. Metals desires to assign any rights it may have under the Lease to  
Solargise America, LLC pursuant to the Assignment of Rights, attached hereto as Attachment 1**

and incorporated herein as if set forth in full;

WHEREAS, Agency seeks to dispose of the Property to Solargise America, LLC, pursuant to the terms and conditions of the Disposition and Development Agreement (“DDA”) attached hereto as Attachment 2 and incorporated herein as if set forth in full;

WHEREAS, pursuant to the DDA, the Agency and Solargise America, LLC agree that the Lease is terminated and of no further force and effect, subject to the Acknowledgement of Termination of Lease and Grant of Irrevocable License, attached to the DDA as an exhibit;

WHEREAS, pursuant to the DDA, Agency shall publish a Request for Proposals for the development of the Property and, in accordance with Idaho Code § 50-2011, advise the public of the intent to dispose of the Property to Solargise America, LLC and seek public comment on the planned disposition and invite competing proposals for consideration prior to disposing of the Property to Solargise America, LLC;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE BOARD OF COMMISSIONERS OF THE POCATELLO DEVELOPMENT AUTHORITY OF POCATELLO, IDAHO, AS FOLLOWS:

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

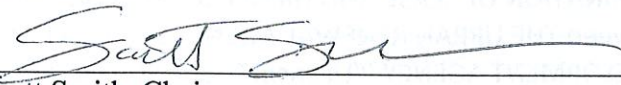
Section 2: That the Assignment of Rights, attached hereto as Attachment 1, and the DDA, a copy of which is attached hereto as Attachment 2, are hereby approved as to both form and content.

Section 3: That the Chair, Vice-Chair, Secretary and Treasurer are hereby authorized to sign and enter into the Assignment of Right and the DDA and, further, is hereby authorized to execute all necessary documents required to implement the actions contemplated by the Assignment of Rights and the DDA, including but not limited to preparing and publishing the Request for Proposals contemplated by the DDA, subject to representations by Agency legal counsel that all conditions precedent to actions and any necessary technical changes to the Assignment of Rights and the DDA or other documents are acceptable and that said changes are consistent with the provisions of the Assignment of Rights or DDA and the comments and discussions received at the August 22, 2018, Agency Board meeting.

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

PASSED by the Pocatello Development Authority of the city of Pocatello, Idaho, on August 22, 2018. Signed by the Chair of the Board of Commissioners and attested by the Secretary to the Board of Commissioners, on August 22, 2018.

APPROVED:

By:   
Scott Smith, Chair

ATTEST:

By:   
Secretary

4842-1083-6826, v. 2

## ACKNOWLEDGEMENT OF TERMINATION OF LEASE AND GRANT OF IRREVOCABLE LICENSE

This ACKNOWLEDGEMENT OF TERMINATION OF LEASE AND GRANT OF IRREVOCABLE LICENSE ("Agreement") is entered into between THE URBAN RENEWAL AGENCY OF POCATELLO, IDAHO, also known as the POCATELLO DEVELOPMENT AGENCY ("Licensor"), and SOLARGISE AMERICA LLC, a Delaware limited liability company qualified to do business in Idaho ("Licensee"), individually referred to as a "Party" and collectively referred to as the "Parties." The Parties agree as follows:

### RECITALS:

- A. Licensor is the owner of that certain parcel of real property located at 1 Hoku Way, Pocatello, Idaho and depicted on attached **Exhibit A ("Property")**.
- B. Licensee is, pursuant to the Assignment of Rights dated August \_\_, 2018, the former tenant of the Property pursuant to that certain Lease Agreement between the City of Pocatello and JH Kelly, LLC, which was subsequently assigned to Licensor as landlord and Licensee as tenant, and subsequently amended (the "Lease").
- C. The Parties acknowledge and agree that the Lease is terminated and of no further force and effect, subject to this Agreement.
- D. Licensee desires to obtain an exclusive and irrevocable license (the "License") to access the Property to remove any equipment, appurtenances, furnishings and fixtures.
- E. Licensor disclaims any interest in the appurtenances, furnishings, equipment, and fixtures on the Property (the "Improvements"), subject to the terms of this Agreement.

This grant is made on the following terms:

1. **Exclusive Grant; Authorized Uses By Licensee:** Licensor grants to Licensee under the License the exclusive and irrevocable right to access the Property to remove the Improvements. No third party shall have the right to use the Property during the Term. Provided, Licensor may enter the Property and authorize third parties to enter the Property for purposes of assessing compliance with this Agreement and for purposes related to the marketing and sale of the Property with reasonable prior notice. Licensee's use of the License granted herein shall be solely for the removal of the Improvements on the Property that Licensee acquired from JH Kelly, which are listed on **Exhibit B**, attached hereto. Licensee shall be solely responsible for the security and safety of the Improvements.
2. **Hazardous Materials Prohibited on the Property.** Licensee shall not use or permit the Property to be used, whether directly or through contractors, agents or tenants, for the generating, transporting, treating, storage, manufacture, emission of, or disposal of any

**ACKNOWLEDGEMENT OF TERMINATION OF LEASE AND GRANT OF IRREVOCABLE LICENSE - 1**

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dangerous, toxic or hazardous pollutants, chemicals, wastes or substances as defined in any federal, state or local environmental laws, statutes, regulations, requirements and ordinances, hereinafter referred to as "Hazardous Materials," except such non-toxic items used in the ordinary course or business, including alcohol and cleaning solutions.

3. Restoration on Expiration of Term: Upon the expiration of the Term of this License the Property shall be cleared and graded by Licensee to the level of the adjacent property at Licensee's sole cost and expense. All Improvements shall be removed prior to the expiration of the Term, including all above ground and subsurface components and Improvements. Any Improvements, structures, assets, personal property, or fixtures remaining on the Property at the end of the Term of this License shall become the property of Licensor. Provided, Licensee shall have no obligations under this section if Licensee acquires the Licensed Property during the Term or Extension Term, defined below.

4. Safety Responsibilities. Licensee assumes all risk and responsibility with respect to the use of the Licensed Property during the Term of the License, defined below. During the Term, Licensee shall take all reasonable and necessary precautions to secure the Licensed Property.

5. Compliance with Laws. Licensee's use of the Property shall at all times comply with all applicable federal, state, county, and City of Pocatello laws, ordinances, rules, and regulations, including but not limited to all applicable environmental laws, ordinances, rules, or regulations. Licensee may not, under any circumstances, discharge pollutants of any kind into the Portneuf River or its tributaries in connection with Licensee's use of the Property.

6. Use by Others Under Licensee: Licensee's right to use the Licensed Property during the term of the License shall extend to use by Licensee's employees, contractors and agents.

7. Term: This License shall be for a term commencing on the date of Licensee's and Licensor's execution of this Agreement (last date signed) (the "Effective Date") and continuing for a period of two (2) years ("Term"); provided, however, that Licensee, upon written notice, shall be entitled to a six (6) month extension of the Term if Licensee determines is reasonably necessary, in its commercially reasonable discretion, to remove the Improvements ("Extension Term"). During the Term, Licensor may not terminate this Agreement unless Licensee is in default of the terms of this Agreement.

Provided, if Licensee acquires the Licensed Property pursuant to that certain Disposition and Development Agreement between the Parties (the "DDA"), this License shall terminate. Provided further, sections 9 and 11 shall survive termination.

8. License Fee: Licensee shall pay Licensor an annual license fee of Thirty Thousand Dollars (\$30,000.00), payable annually in advance on August 30. Licensee shall pay Licensor a

fee of Thirty Thousand Dollars (\$30,000.00) per month during any Extension Term, payable in advance.

9. **Security Deposit:** Licensee shall be responsible to provide a security deposit to Licensor in the amount of Two Hundred Thousand Dollars (\$200,000.00) ("**Security Deposit**") pursuant to the following conditions:

- (a) in the event that Licensor selects Licensee to acquire the Property pursuant to the terms of the DDA and Licensee fails to consummate the sale of the Property, then, within ten (10) business days of the Outside Date (as defined in the DDA), Licensee shall pay Licensor the Security Deposit in cash;
- (b) in the event that Licensor does not select Licensee to acquire the Property for any reason, or Licensor otherwise fails to consummate the sale of the Property following selection of Licensee, then the security deposit paid pursuant to the DDA shall be automatically credited by Licensor to satisfy Licensee's obligation to pay the Security Deposit.
- (c) in the event that Licensor and Licensee consummate the sale of the Property, this License Agreement shall terminate pursuant to Section 6 above and no Security Deposit shall be due.

The purpose of the Security Deposit is to secure Licensee's performance under this Agreement. The Security Deposit shall not bear interest and may not be applied against any License fees. In the event that Licensor uses the Security Deposit to pay any of Licensee's obligations under this Agreement, Licensee agrees to immediately replenish the amount spent so as to return the Security Deposit to its original amount. Upon expiration of the Term of this Agreement, and only in the event Licensee has fulfilled its obligations hereunder and vacated the Property as prescribed in Section 3 of this Agreement, Licensor agrees to return to Licensee its Security Deposit.

If Licensee fails to timely pay the Security Deposit, any Improvements, structures, assets, personal property, or fixtures remaining on the Property shall immediately and irrevocably become the property of Licensor and this Agreement shall be automatically terminated effective immediately if Licensee fails to pay Licensor within fourteen (14) days of notice of such failure to pay by Licensor to Licensee.

10. **Indemnification:** Licensee hereby agrees to indemnify, defend, and hold Licensor harmless from and against any and all claims for loss, injury, death, and damage (including but not limited to any environmental damage to the Property) caused by or arising out of the use of the Licensed Property by Licensee, its employees, contractors, and agents or otherwise arising under this Agreement, including without limitation, attorney's fees and costs that might be incurred by Licensor in defending any such claims.

**ACKNOWLEDGEMENT OF TERMINATION OF LEASE AND GRANT OF IRREVOCABLE LICENSE - 3**

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Licensee further agrees to indemnify Licensor for any claims arising out of or related to the Lease, including claims from any third parties claims a right to the Property pursuant to the Lease or any purported assignment of rights under the Lease.

Notwithstanding the foregoing, Licensee's indemnification obligations under this License shall only apply to the extent that any such claims do not arise out of Licensor's or Licensor's employees', contractors' or agent's gross negligence, willful misconduct, or fraud.

11. Insurance:

Licensee shall, or through its contractor shall, at its sole cost, obtain and maintain in force from and after the Closing insurance of the following types, with limits not less than those set forth below with respect to the Project, and with the following requirements:

Commercial General Liability Insurance (Occurrence Form) with a minimum combined single limit liability of \$2,000,000 each occurrence for bodily injury and property damage; with a minimum limit of liability of \$2,000,000 each person for personal and advertising injury liability. Such policy shall have an aggregate products/completed operations liability limit of not less than \$2,000,000 and a general aggregate limit of not less than \$2,000,000. The products/completed operations liability coverage shall be maintained in full force and effect for not less than three (3) years following completion of the Project issuance of a certificate of occupancy, whichever is later. The policy shall be endorsed to name Licensor, including its respective affiliates, the financing parties and the respective officers, directors, and employees of each as additional insureds. All policies shall be occurrence form policies and not a claims-made policy.

Workers' Compensation Insurance, including occupational illness or disease coverage, in accordance with the laws of the nation, state, territory, or province having jurisdiction over Licensee's employees, and Employer's Liability Insurance with minimum limits as required by law. Licensee shall not utilize occupational accident or health insurance policies, or the equivalent, in lieu of mandatory Workers' Compensation Insurance or otherwise attempt to opt out of the statutory Workers' Compensation system.

Automobile Liability Insurance covering use of all, non-owned, and hired automobiles with a minimum combined single limit of liability for bodily injury and property damage of \$1,000,000 per occurrence.

Waiver of Subrogation. All insurance provided by Licensee under this Agreement shall include a waiver of subrogation by the insurers in favor of Licensor. Licensee hereby releases Licensor, including its respective affiliates, directors, and employees, for losses or claims for bodily injury, property damage, or other insured claims arising out of Licensee's performance under this Agreement or construction of the Project.

**Certificates of Insurance.** Licensee (or Licensee's contractor(s), as applicable) shall provide certificates of insurance satisfactory in form to Licensor (ACORD form or equivalent) to Licensor evidencing that the insurance required above is in force, that, to the extent commercially reasonable, not less than thirty (30) days' written notice will be given to Licensor prior to any cancellation or restrictive modification of the policies, and that the waivers of subrogation are in force. Licensee (or Licensee's contractor(s), as applicable) shall also provide, with its certificate of insurance, executed copies of the additional insured endorsements and dedicated limits endorsements required in this Agreement. At Licensor's request, Licensee shall provide a certified copy of each insurance policy required under this Agreement.

All policies of insurance required by this Agreement shall be issued by insurance companies with a financial rating of A or better (or equivalent ratings if such are changed) as rated in the most current available "Best's Insurance Reports" and qualified to do business in the State of Idaho.

The foregoing insurance coverage shall be primary and non-contributing with respect to any other insurance or self-insurance that may be maintained by Licensor. Licensee's General Liability Insurance policy shall contain a Cross-Liability or Severability of Interest clause. The fact that Licensee has obtained the insurance required in this Section shall in no manner lessen or affect Licensee's other obligations or liabilities set forth in the Agreement.

12. **Waiver:** In consideration of the terms and conditions of this Agreement, Licensee expressly waives and releases any and all claims against Licensor, its officers, directors, shareholders, members, employees, agents, and contractors arising out of any accident, illness, injury, damage or other loss or harm to or incurred or suffered by the Licensee or his/her/their property arising out of Licensee's exercise of rights under this Agreement or the Lease, except to the extent that any such losses or harms arise out of the gross negligence, willful misconduct, or fraud Licensor, its officers, directors, shareholders, members, employees, agents or contractors.

13. **Binding Effect:** This Agreement, and the covenants and agreements herein contained, shall, during the entire term hereof, be binding upon and inure to the benefit of Licensee and Licensor, respectively, and their successors and assigns.

This Agreement and the License hereunder shall be binding on subsequent owners of the Property and Licensor shall provide notice of this License to any purchasers of the Property.

14. **No Recordation:** This Agreement shall not be recorded.

15. **Attorney Fees:** Should any of the parties to this Agreement be required to retain legal counsel to enforce any of the terms and/or conditions of this Agreement, the prevailing party shall be entitled to reasonable attorney fees and costs.

16. **Recitals:** The Recitals form a part of this Agreement and are fully incorporated herein by this reference.

17. **Effective Date:** This Agreement shall be effective as of the date executed by the Parties, last date signed.

**LICENSOR**

POCATELLO DEVELOPMENT AUTHORITY

By: \_\_\_\_\_

Chad Carr

Vice-Chair

8/31, 2018

**LICENSEE:**

SOLARGISE AMERICA LLC

a Delaware limited liability company

By \_\_\_\_\_

RAJ BASS  
It's Manager

SEPT 19, 2018

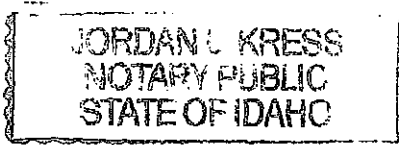
*Manon Giguère*



STATE OF IDAHO       )  
                                  ) ss.  
County of Bannock    )

On this 31<sup>st</sup> day of August, 2018, before me, Jordan L. Kress, the undersigned notary public in and for said county and state, personally appeared Chad Carr, known or identified to me to be the Vice-Chair of Pocatello Development Authority, the public body, corporate and politic, 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.



Jordan L. Kress  
Notary Public for Idaho  
Residing at Pocatello  
Commission Expires 7/26/2022

STATE OF NEW YORK )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, \_\_\_\_\_,  
the undersigned notary public in and for said county and state, personally appeared  
\_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of Solargise America LLC, a  
Delaware limited liability company, "Licensee" herein, and acknowledged to me that he  
executed the within instrument on behalf of such Licensee for the purposes herein contained.

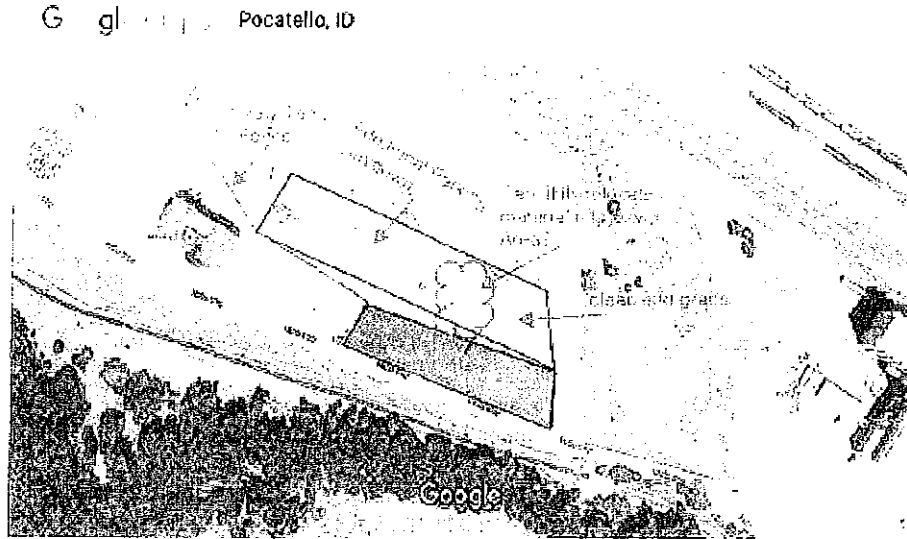
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day  
and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for New York  
Residing at \_\_\_\_\_  
Commission Expires \_\_\_\_\_



Exhibit A

Property

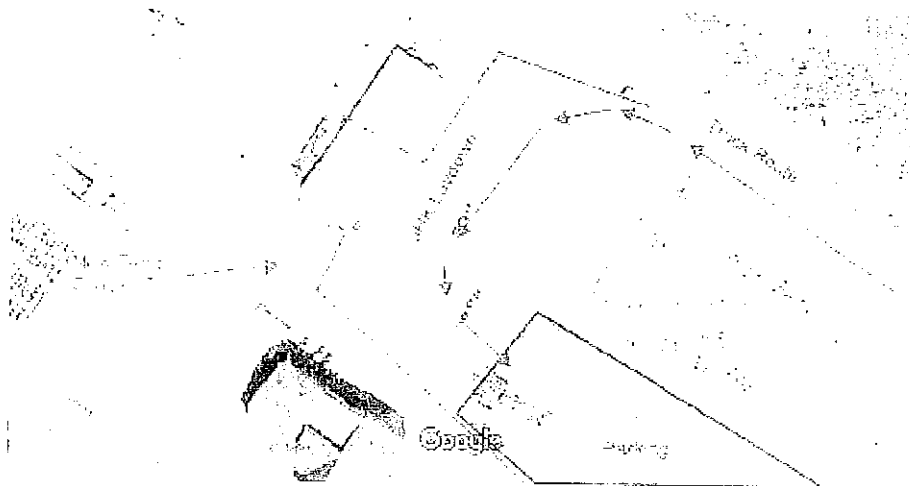


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3/19/2016

Pocatello ID - Google Maps

Google Maps Pocatello, ID



Imagery ©2016 Google, Map data ©2016 Google 50 ft

LEGAL DESCRIPTION:

PARCEL 1:

A PARCEL OF LAND LOCATED IN THE EAST 1/2 OF SECTION 17, AND IN THE WEST 1/2 OF THE WEST 1/2 OF SECTION 16, T 6 S, R 34 E, B.M., BANNOCK COUNTY, IDAHO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS (ALL ANGLE POINTS BEING MARKED BY A 1/2-INCH DIAMETER REBAR WITH A YELLOW PLASTIC CAP STAMPED "PE/LS 4440", UNLESS OTHERWISE NOTED):

COMMENCING AT THE WEST 1/4 CORNER OF SAID SECTION 16, SAID CORNER BEING MARKED BY A FOUND 5/8-INCH DIAMETER REBAR WITH NO MARKINGS, SAID REBAR BEING REFERENCED BY A BANNOCK COUNTY BRASS CAP MONUMENT 25 FEET EAST OF THE CORNER;

THENCE S 0°11'07" W ALONG THE WEST LINE OF SECTION 16, 280.55 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE OREGON SHORT LINE RAILROAD (NOW OPERATING AS THE UNION PACIFIC RAILROAD), SAID POINT BEING 50 FEET DISTANT, MEASURED AT RIGHT ANGLES, FROM THE CENTERLINE OF THE NO. 1 MAINLINE TRACK (FORMERLY THE WEST BOUND MAINLINE), AND SAID POINT BEING MARKED BY A SET 5/8-INCH REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075", SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE N 56°36'03" W ALONG THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE OREGON SHORT LINE RAILROAD, 2557.86 FEET TO AN ANGLE POINT ON THE NORTHEASTERLY DEED LINE DESCRIBED IN CORPORATION WARRANTY DEED INSTRUMENT NO. 96009187;

THENCE SOUTHEASTERLY ALONG THE SAID NORTHEASTERLY DEED LINE THE FOLLOWING 10 COURSES AND DISTANCES:

S 21°52'28" E, 267.87 FEET TO AN ANGLE POINT; THENCE S 30°43'41" E, 1457.94 FEET TO AN ANGLE POINT; THENCE S 40°27'08" E, 201.74 FEET TO AN ANGLE POINT; THENCE S 54°06'17" E, 336.24 FEET TO AN ANGLE POINT; THENCE S 43°50'53" E, 313.03 FEET TO AN ANGLE POINT; THENCE S 55°07'18" E, 664.68 FEET TO AN ANGLE POINT; THENCE S 42°27'08" E, 177.06 FEET TO AN ANGLE POINT; THENCE S 59°48'13" E, 280.11 FEET TO AN ANGLE POINT; THENCE S 71°50'27" E, 699.97 FEET TO AN ANGLE POINT; THENCE S 72°36'36" E, 428.65 FEET TO AN ANGLE POINT ON THE WEST 1/16 LINE OF SECTION 16; THENCE N 0°03'36" E ALONG THE WEST 1/16 LINE OF SECTION 16, 653.00 FEET TO THE SOUTHWEST 1/16 CORNER OF SAID SECTION 16, SAID CORNER BEING MARKED BY A 6-INCH DIAMETER STEEL FENCE CORNER POST;

THENCE S 89°05'05" W ALONG THE SOUTH 1/16 LINE OF SECTION 16, 43.11 FEET TO A POINT ON THE SOUTHWESTERLY DEED LINE DESCRIBED IN INSTRUMENT NO. 27678, SAID POINT BEING MARKED BY A SET 5/8-INCH DIAMETER REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075";

THENCE N 56°36'03" W ALONG SAID SOUTHWESTERLY DEED LINE, 1519.62 FEET TO A POINT ON THE WEST DEED DESCRIBED IN SAID INSTRUMENT NO. 27678, SAID POINT ALSO BEING ON THE WEST LINE OF SECTION 16, AND SAID POINT BEING MARKED BY A SET 5/8-INCH DIAMETER REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075";

THENCE N 0°11'17" E ALONG THE WEST LINE OF SAID SECTION 16, 179.29 FEET TO THE TRUE POINT OF BEGINNING. ↓

## Exhibit B

### Improvements

#### Real Property

- All structures above Ground that are onsite at the Plant, including without limitation, the following:
  - **Administration Building:** The administrative building is an estimated 44,545 square feet plan. The building is a four-story, steel -braced frame and clad structure with a double- pitch roof. The building is designed as a climate controlled space and includes a number of internal enclosures/spaces for offices, conference rooms, lunch rooms, restrooms, apartments and related spaces.
  - **Control / Maintenance Building:** The control maintenance building is an approximately 60'-0" x 180'-0" plan with an eave height of approximately 15'-3" over the control room area and portion of the warehouse and 23'-9" over the remaining portion of the warehouse. The building is a single story, steel braced frame and clad pre-engineered structure (Butler) with a double-pitch roof. The control room area is a climate controlled space consisting primarily of a control room, computer room, locker room, restroom, offices and a kitchen/meeting room,
  - **Post Processing Building:** The post processing building is an approximately 308'-0" x plan with an additional approximately 53'-0" x 68'-0" truck loading dock plan area on the southwest corner. The majority of the building is approximately 21'-0" high, with portions extending up to approximately 30'-0". The building is a single story, steel braced frame and clad structure with a membrane roof. The building was designed to be a climate controlled space to include a number of internal enclosures/spaces including rod sizing/breaking room, sample preparation room, slim rod/analytic puller room, laboratories, break/lunch rooms, offices and restrooms. The building incorporates cleanroom enclosures with associated HVAC.
  - **Reactor Building including Chiller Building:** The reactor building is a multi-space enclosure. The building is a three-story, steel braced frame and clad structure with a double-pitch roof. The building was designed to be a climate controlled space and houses the reactors, reactor support electrical equipment, gas consoles, and wash facilities, and includes a number of internal enclosures/spaces for offices.
  - **Waste Treatment Building:** The wastewater treatment building is an approximately 100'-0" x 62'-0" plan with an eave height of approximately 34'-0". The building is a single story, steel braced frame and clad pre-engineered structure (Butler) with a double-pitch roof. The building includes heating and ventilation and consists primarily of an open plan space with one framed interior enclosure.
  - Compressor Building

- All manuals, paperwork, drawings regarding equipment, building and structure both onsite at the Facility and in the electronic data room to which Buyer has been given access.
- Equipment as detailed In Hoku #3 Auction Catalog lot #2- 399 including A Lots.

**Personal Property**

<b>Property</b>	<b>Description of Personal Property</b>	<b>Qty</b>
449	UNUSED ABB POWER DISTRIBUTION CENTER. WITH SWITCHGEAR. 3000 AMPS. 4.16 KV. WITH DIRECTIONAL OVERCURRENT RELAYS. UPS SYSTEM, TEMPERATURE CONTROLLED STEEL ENCLOSURE, STRUCTURAL STEEL FRAME. BUILT 2003.	1
460	UNUSED ABB POWER DISTRIBUTION CENTER. WITH 15 KV SWITCHGEAR, 3000 AMPS. MOTOR CONTROL CENTER, COMMUNICATION PROCESSORS, FEEDER RELAYS. UPS SYSTEM, TEMPERATURE CONTROLLED. ELEVATED ON STEEL STRUCTURE AND MEZZANINE. BUILT 2012.	1
468	UNUSED ASS MAXSG POWER DISTRIBUTION CENTER TYPE NEMA 1A. WITH 0.48 KV SWITCHGEAR. 4000 AMPS, 85 KA RMS. 480 VOLTS. UNITIZED IN TEMPERATURE CONTROLLED MODULE, STEEL CONSTRUCTION.	1
452	UNUSED ABB POWER DISTRIBUTION CENTER. WITH SWITCHGEAR, 3000 AMPS, 480 VOLTS. WITH DIRECTIONAL OVERCURRENT RELAYS, UPS SYSTEM, TEMPERATURE CONTROLLED STEEL ENCLOSURE, STRUCTURAL STEEL FRAME. BUILT 2009.	1
467	UNUSED PACIFIC SYSTEM ELECTRIC SWITCHGEAR & MOTOR CONTROL CENTER, ABB SWITCHGEAR, 480V INCOMING, TEMPERATURE CONTROLLED, ENCLOSURE, METAL ENCLOSED INTERRUPTER SWITCH. QUALITROL TEMPERATURE MONITOR, SCHWEITZER ENGINEERING LABORATORIES DIRECTIONAL OVERCURRENT RELAYS, ABB TYPE SACE E6 MCC DRIVES, ACCESS DOORWAYS & STAIRWAYS.	1
453	Remote Instrumentation Enclosure, Elevated Galvanized Steel Structure, Stairway, Handrails, Temperature Controlled, (8) Honeywell Instrumentation Cabinet, uninterruptible Power Supply, Remote Internet Uplink,	1
461	Remote Instrumentation Enclosure, Elevated Galvanized Steel Structure, Stairway, Handrails, Temperature Controlled, (4) Honeywell Instrumentation Cabinet, Uninterruptable Power Supply, Remote Internet Uplink.	1
462	Remote instrumentation Enclosure, Elevated Galvanized Steel Structure, Stairway, Handrails, Temperature Controlled, (5) Honeywell Instrumentation Cabinet, Uninterruptable Power Supply, Remote Internet Uplink.	1

<b>Property</b>	<b>Description of Personal Property</b>	<b>Qty</b>
21	UNUSED GERHARD RAUH TCS APPROXIMATELY 2,700 GALLON VERTICAL STAINLESS STEEL INJECTION TANK. 5' DIAMETER X 18' STRAIGHT SIDE. RATED 189 PSI @ 302°F. INSULATED, BUILT 2008	1
71	UNUSED 547 SQFT G & R GERHARD AND RAUH GMBH STAINLESS STEEL SHELL AND TUBE, U-TUBE TYPE HEAT EXCHANGED. 316L STAINLESS STEEL SHELL BUILT FOR 94PSI AT 356 DEGREES FAHRENHEIT. 316L STAINLESS STEEL TUBES BUILT FOR 94PSI AT 572 DEGREES FAHRENHEIT, BUILT 2008.	1
72	UNUSED 547 SQFT G & R GERHARD AND RAUH GMBH STAINLESS STEEL SHELL AND TUBE, U-TUBE TYPE HEAT EXCHANGER. 316L STAINLESS STEEL SHELL BUILT FOR 94PSI AT 356 DEGREES FAHRENHEIT. 316L STAINLESS STEEL TUBES BUILT FOR 94PSI AT 572 DEGREES FAHRENHEIT. BUILT 2008.	1
73	UNUSED 547 SQFT G & R GERHARD AND RAUH GMBH STAINLESS STEEL SHELL AND TUBE, U-TUBE TYPE HEAT EXCHANGER. 316L STAINLESS STEEL SHELL BUILT FOR 94PSI AT 356 DEGREES FAHRENHEIT. 316L STAINLESS STEEL TUBES BUILT FOR 94PSI AT 572 DEGREES FAHRENHEIT. BUILT 2008.	1
74	UNUSED 547 SQFT G & R GERHARD AND RAUH GMBH STAINLESS STEEL SHELL AND TUBE, U-TUBE TYPE HEAT EXCHANGER. 316L STAINLESS STEEL SHELL BUILT FOR 94PSI AT 355 DEGREES FAHRENHEIT. 316L STAINLESS STEEL TUBES BUILT FOR 94PSI AT 572 DEGREES FAHRENHEIT. BUILT 2008.	
173	UNUSED OHMSTEDE 1717.3 SQUARE FOOT HORIZONTAL CARBON STEEL SHELL AND TUBE HEAT EXCHANGER. 36" DIAMETER X 12' STRAIGHT SIDE. SHELL RATED 280 PSI @ 600°F. TUBES RATED 247 PSI @ 450°F. INSULATED. ON CONCRETE PIERS.	1
176A	UNUSED HARRIS THERMAL TRANSFER PRODUCTS APPROXIMATELY 8414 SQUARE FOOT HORIZONTAL SHELL AND TUBE HEAT EXCHANGER. CARBON STEEL SHELL RATED 150 PSIG @ 170°F. 316L STAINLESS STEEL TUBES RATED 170 PSIG @ 275°F. 316L STAINLESS STEEL HEADS. BUILT 2010.	
176B	UNUSED HARRIS THERMAL TRANSFER PRODUCTS APPROXIMATELY 8414 SQUARE FOOT HORIZONTAL SHELL AND TUBE HEAT EXCHANGER. CARBON STEEL SHELL RATED 150 PSIG @ 170°F. 316L STAINLESS STEEL TUBES RATED 170 PSIG @ 275°F. 316L STAINLESS STEEL HEADS. BUILT 2010.	1
178	UNUSED SMITHCO ENGINEERING AIR COOLER/FIN FAN HEAT EXCHANGER, 9,441 BARE SQ.FT., SURFACE PER UNIT - FINNED TUBE 199,900 SQ.FT., MODEL 3 F42-140-3, CARBON STEEL 96,600,000 BTU PER HOUR, WATER INPUT AND OUTPUT RATED 4,800,000 LBS PER HOUR. CONSISTS OF (3) BAYS, EACH BUNDLE SIZE 14' WIDE X	1

**ACKNOWLEDGEMENT OF TERMINATION OF LEASE AND GRANT OF IRREVOCABLE LICENSE - 14**

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Property	Description of Personal Property	Qty
	42' LONG, SINGLE PASS. (286) 1" DIAMETER X 42' LONG CARBON STEEL TUBES IN EACH BUNDLE RATED 185 PSI AT -30 TO 345 DEGREES F. EACH BAY HAS (3) 11' DIAMETER, 6-BLADE FANS, DRIVEN BY A 30 HP, 3/60/460 VOLT, 1750 RPM MOTOR, WITH REDUCER, 7.12:1 RATIO.MOUNTED ON A GALVANIZED FRAME.	
179	UNUSED SMITHCO ENGINEERING AIR COOLER/FIN FAN HEAT EXCHANGER, 9,441 BARE SQ.FT., SURFACE PER UNIT - FINNED TUBE 199,900 SQ.FT., MODEL 3 F42-140-3, CARBON STEEL. 96,600,000 BTU PER HOUR, WATER INPUT AND OUTPUT RATED 4,800,000 LBS PER HOUR. CONSISTS OF (3) BAYS, EACH BUNDLE SIZE 14' WIDE X42' LONG, SINGLE PASS. (286) 1" DIAMETER X 42' LONG CARBON STEEL TUBES IN EACH BUNDLE RATED 185 PSI AT -30 TO 345 DEGREES F. EACH BAY HAS (3) 11' DIAMETER, 6-BLADE FANS, DRIVEN BY A30 HP, 3/50/460 VOLT, 1750 RPM MOTOR, WITH REDUCER, 7.12:1 RATIO.MOUNTED ON A GALVANIZED FRAME.	1
191	UNUSED PERRY PRODUCTS SINGLE PASS SHELL AND TUBE HEAT EXCHANGER, 4,143 SQ.FT., MODEL FTS-48-4143, VERTICAL. CARBON STEEL SHELL RATED 183 PSI/FULL VACUUM AT -20 TO 300 DEGREES F. (2110) 3/4" DIAMETER X 10' LONG SEAMLESS CARBON STEEL TUBES RATED 150 PSI/FULL VACUUM AT -20 TO 300 DEGREES F. OPENINGS SHELL: (2) 8" DIAMETER, TUBES: (2) 10" DIAMETER, CARBON STEEL DOUBLE TUBESHEET DESIGN, CARBON STEEL HEADS.	1
192	UNUSED STEELTEK 1GG SQUARE FOOT HORIZONTAL 304L STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 12" DIAMETER X 15' LONG. RATED 150 PSI @ 400°F/-50°F SHELL AND TUBE SIDES. INSULATED. BUILT 2009.	1
193	UNUSED STEELTEK 1225 SQUARE FOOT HORIZONTAL 304L STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. SHELL RATED 324 PSI @ 300°F, TUBES RATED 262 PSI @ 300' F. BUILT 2009.	1
194	UNUSED STEELTEK APPROXIMATELY 1355 SQUARE FOOT HORIZONTAL 304L STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. SHELL RATED 356F/V PSI @ 400' F. TUBES RATED 317F/V PSI @ 400' F. BUILT 2009.	1
195	UNUSED STEELTEK 157 SQUARE FOOT U-TUBE HORIZONTAL 304L STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. TYPE BXU 15" DIAMETER X11' LONG. SHELL RATED 350F/V PSI @ 400°F/-50°F MAXIMUM WORKING PRESSURE. TUBES RATED 150F/V PSI @ 400°F/- 50°F. INSULATED. BUILT 2009.	
197	UNUSED PERRY 1753 SQUARE FOOT HORIZONTAL 304L STAINLESS STEEL U-TUBE SHELL AND TUBE HEAT EXCHANGER. SHELL RATED 350F/V PSI @ 150°F/-55°F. TUBES RATED 150F/V PSI @ 150°F/55°F. WITH FLANGED OUTLETS. INSULATED.	1

**ACKNOWLEDGEMENT OF TERMINATION OF LEASE AND GRANT OF IRREVOCABLE LICENSE - 15**

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Property	Description of Personal Property	Qty
199	UNUSED STEELTEK 2311 SQUARE FOOT HORIZONTAL CARBON STEEL SHELL AND TUBE HEAT EXCHANGER. 26" DIAMETER X 25' LONG. SHELL RATED 312 PSI/FULL VACUUM @ 400°F, TUBES RATED 307 PSI/FULL VACUUM @ 400°F. INSTALLED ON CONCRETE FOOTING. BUILT 2009.	1
205	UNUSED 1231 SQUARE FOOT PERRY HORIZONTAL 304 STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 22" DIAMETER X 22' LONG. RATED 300 PSI @ 300°F/-50°F SHELL AND TUBE SIDES. INSULATED. BUILT 2009.	1
206	UNUSED 1231 SQUARE FOOT PERRY HORIZONTAL 304 STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 22" DIAMETER X 22' LONG. RATED 300 PSI @ 300°F/-50°F SHELL AND TUBE SIDES. INSULATED. BUILT 2009.	1
207	UNUSED 1231 SQUARE FOOT PERRY HORIZONTAL 304 STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 22" DIAMETER X 22' LONG. RATED 300 PSI @ 300°F/-50°F SHELL AND TUBE SIDES. INSULATED. BUILT 2009.	1
208	UNUSED 1231 SQUARE FOOT PERRY HORIZONTAL 304 STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 22" DIAMETER X 22' LONG. RATED 300 PSI @ 300°F/-50°F SHELL AND TUBE SIDES. INSULATED. BUILT 2009.	1
209	UNUSED 1231 SQUARE FOOT PERRY HORIZONTAL 304 STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 22" DIAMETER X 22' LONG. RATED 300 PSI @ 300°F/-50°F SHELL AND TUBE SIDES. INSULATED. BUILT 2009.	1
210	UNUSED STEELTEK U-TUBE HEAT EXCHANGER, APPROXIMATELY 253 SQ.FT., HORIZONTAL. CARBON STEEL SHELL RATED 550 PSI AT -20 TO 300 DEGREES F. (32) 3/4" DIAMETER X 20' LONG CARBON STEEL TUBES RATED 550 PSI AT -20 TO 300 DEGREES F. INSULATED, TWO-PASS. OPENINGS SHELL: (2) 2", TUBES: (2) 3". SADDLE MOUNTED.	1
234	UNUSED PERRY 17S3 SQUARE FOOT HORIZONTAL 304L STAINLESS STEEL U-TUBE SHELL AND TUBE HEAT EXCHANGER. 4' DIAMETER X 22' LONG. SHELL RATED 350 PSI @ 150°F/-55°F. TUBES RATED 212 PSI @ 150°F/55°F.	1
242	UNUSED STEELTEK 1355 SQUARE FOOT HORIZONTAL 304 STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. SHELL RATED 350 PSI @ 400°F/-50°F. TUBES RATED 300 PSI @ 400°F/-50°F. BUILT 2009.	1
243	UNUSED STEELTEK 3058 SQUARE FOOT 304L STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 60" DIAMETER X 20' LONG SHELL RATED 350 PSI @ 150°F/-55°F MAXIMUM WORKING PRESSURE. TUBES RATED 260 PSI @ 150°F/-55°F. INSULATED. BUILT 2009	1
246	UNUSED STEELTEK U-TUBE HEAT EXCHANGER, APPROXIMATELY	1

Property	Description of Personal Property	Qty
	2,311 SQ.FT., HORIZONTAL. CARBON STEEL SHELL RATED 312 PSI/FV AT -20 TO 400 DEGREES F. (302) 3/4" DIAMETER X 20' LONG CARBON STEEL TUBES RATED 307 PSI/FV AT -20 TO 400 DEGREES F. TWO-PASS. OPENINGS SHELL: (2) 12", TUBES: (2) 8". SADDLE MOUNTED.	
253	UNUSED PERRY 331 SQUARE FOOT CARBON STEEL SHELL AND TUBE HEAT EXCHANGER- 12" DIAMETER X 20' LONG. SHELL RATED 240 PSI @ 480'F/-20'F. TUBE RATED 340 PSI @480'F/-20'F.	1
254	UNUSED PERRY 1231 SQUARE FOOT STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. RATED 300 PSI @ 300' F/-50' F SHELL AND TUBE SIDES. INSULATED. BUILT2009.	1
266	UNUSED FABSCO APPROXIMATELY 3177 SQFT CARSON STEEL SHELL AND TUBE HEAT EXCHANGER. SHELL RATED 350 PSI @ 250'F/-30'F. TUBES RATED 150 PSI @ 200" F/-30'F.BUILT 2008.	1
317	UNUSED HARRIS THERMAL TRANSFER PRODUCTS APPROXIMATELY 2,500 GALLON STAINLESS STEEL STORAGE VESSEL. 6' DIAMETER X 12' STRAIGHT SIDE. WITH FLANGED OUTLETS. ON CARBON STEEL SKIRT. BUILT 2011.	1
318	UNUSED HARRIS THERMAL TRANSFER PRODUCTS APPROXIMATELY 740 GALLON STAINLESS STEEL STORAGE VESSEL. 4' 6" DIAMETER X 6' 6" STRAIGHT SIDE. WITH FLANGED OUTLETS. ON CARBON STEEL SKIRT. BUILT 2011.	1
418	UNUSED APPROXIMATELY 496 SQFT 304L STAINLESS STEEL STEELTEK SHELL AND TUBE HEAT EXCHANGER. RATED FOR 150PSI @ 250 DEGREES FAHRENHEIT SHELL SIDE AND TUBE SIDE. BUILT 2010.	1
459	UNUSED ABB POWER DISTRIBUTION CENTER. WITH SWITCHGEAR. 3000 AMPS. 480 VOLTS. WITH DIRECTIONAL OVERCURRENT RELAYS, UPS SYSTEM, TEMPERATURE CONTROLLED STEEL ENCLOSURE, STRUCTURAL STEEL FRAME. BUILT 2009	1
366	UNUSED SIEMENS 30 KVA TRANSFORMER. DRY TYPE. CLASS AA. 3 PHASE, 60 HZ	1
356a	UNUSED SIEMENS 30 KVA TRANSFORMER. DRY TYPE. CLASS AA. 3 PHASE, 60 HZ	1
425	UNUSED EATON 30 KVA TRANSFORMER. DRY TYPE, BUILT 2011	1
5000	100 gallon steel gas tank	1
5001	(2) 2' x 8' diameter steel water troughs	1 set of 2 pieces
	500 gallon steel gas tank	1
5003	Misc. (30) 2" steel piping	1 set of 30 pieces

**ACKNOWLEDGEMENT OF TERMINATION OF LEASE AND GRANT OF IRREVOCABLE LICENSE - 17**

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**DISPOSITION AND DEVELOPMENT AGREEMENT POCATELLO DEVELOPMENT AUTHORITY  
and**

**SOLARGISE AMERICA, LLC, a Delaware Limited Liability Company**

**August \_\_\_\_\_, 2018**

## **LIST OF ATTACHMENTS**

- Attachment 1**      **Depiction of the Property**
- Attachment 2**      **Legal Description of the Property (“Legal Description”)**
- Attachment 3**      **Form of Deed**
- Attachment 4**      **Acknowledgement of Termination of Lease and Grant of Irrevocable License**
- Attachment 5**      **Depiction and Description of Easements to be Granted**

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## DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between THE URBAN RENEWAL AGENCY OF POCATELLO, IDAHO, also known as the POCATELLO DEVELOPMENT AGENCY, and SOLARGISE AMERICA LLC, a Delaware limited liability company qualified to do business in Idaho, individually referred to as a "Party" and collectively referred to as the "Parties." The Parties agree as follows:

### 1. DEFINITIONS

"Agency" means the Pocatello Development Authority, and any assignee of or successor to its rights, powers, and responsibilities under this Agreement.

"Agency Closing Conditions" has the meaning ascribed to it in Section 5.3.1.

"Agreement" has the meaning ascribed to it in the first paragraph of this document.

"Certificate of Completion" means the Certificate of Completion for the Project, as ascribed to it in Section 9.

"City" means the City of Pocatello, Idaho.

"Close" and "Closing" refer to that point in time when the Special Warranty Deed is recorded in the office of the Recorder of the county in which the subject property is located and funds due to Agency upon delivery of the such deed are paid to Agency.

"Closing" has the meaning ascribed to it in Section 5.2.3

"Closing Date" means the date of the Closing.

"Deed" means the Special Warranty Deed.

"Deposit" has the meaning ascribed to it in Section 5.2.1.1.

"Developer" means Solargise America LLC, a Delaware limited liability company qualified to do business in Idaho, any Developer Affiliate that takes title to any portion of the Property under this Agreement, and any other permitted assignee or successor in interest as herein provided.

"Developer Affiliate" has the meaning ascribed to it in Section 2.5.2.

"Developer Closing Conditions" has the meaning ascribed to it in Section 5.3.2.

**“Effective Date”** has the meaning ascribed to it in Section 13.7.

**“Escrow”** means the escrow set up by the Parties with the Escrow Agent with respect to the account.

**“Escrow Agent”** means First American Title Company, 223 N 15th Avenue Pocatello, ID 83201 (208) 232-6224.

**“Guarantee Fee”** has the meaning ascribed to it in Section 5.2.5.

**“Hazardous Materials”** means any substance, material, or waste which is (1) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” or “restricted hazardous waste” under any provision of federal or Idaho law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1251, *et seq.* (33 U.S.C. § 1321), or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317); (7) defined as a “hazardous substance” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* (42 U.S.C. § 6903); (8) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.* (42 U.S.C. § 9601); or (9) determined by Idaho, federal, or local governmental authority to be capable of posing a risk of injury to health, safety, or property, including underground storage tanks.

**“License Agreement”** has the meaning ascribed to it in Section 2.5.2 and attached hereto as Attachment 4.

**“Outside Date”** has the meaning ascribed to it in Section 5.2.3.

**“Party”** has the meaning ascribed to it in the first paragraph of this document.

**“Parties”** has the meaning ascribed to it in the first paragraph of this document.

**“Plan Area”** means the area under the jurisdictional scope of the Redevelopment Plan.

**“Project”** means the project that is the subject of this Agreement and more particularly described in Section 2.6 below.

**“Project Area”** means the Project Area identified in the Redevelopment Plan.

**“Project Budget”** has the meaning ascribed to it in Section 4.1.

**“Property”** has the meaning ascribed to it in Section 2.4 and means the real property described

on Attachment 2.

"Purchase Price" has the meaning ascribed to it in Section 5.2.

"Redevelopment Plan" means the North Portneuf Urban Renewal Area and Revenue Allocation District Improvement Plan, adopted by City of Pocatello Ordinance No. 2814.

"Site" means certain real property (the "Site") as depicted on Attachment 1 and described on Attachment 2 attached hereto and incorporated herein.

"Special Warranty Deed" means a deed in the substance and form of the draft deed attached hereto as Attachment 3.

"Urban Renewal Law" has the meaning ascribed to it in Section 2.5.1.

## **2. SUBJECT OF AGREEMENT**

### **2.1. Purpose of This Agreement.**

The purpose of this Agreement is to effectuate the Redevelopment Plan by memorializing the disposition of Agency owned property to Developer to facilitate the Project.

### **2.2. The Redevelopment Plan.**

This Agreement is subject to the provisions of the Redevelopment Plan.

### **2.3. The Project Area.**

The Project Area is located in the Plan Area, and the exact boundaries thereof are specifically described in the Redevelopment Plan.

### **2.4. The Redevelopment Property ("Property")**

The Property contemplated for disposition and redevelopment is located 1 Hoku Way, Pocatello, Idaho, as is more particularly described in **Attachment 2**. The Property is approximately 68.5 acres and is currently owned by Agency.

### **2.5. Parties to This Agreement.**

#### **2.5.1. Agency**

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, chapters 20 and 29, Idaho Code (collectively the "Urban Renewal Law"). The office of Agency is located at 911 North 7th Avenue, Pocatello, Idaho, 83201.

### **2.5.2. Developer**

Developer is Solargise America LLC, a Delaware limited liability company qualified to do business in Idaho. The principal office of Developer is located at 1 Hoku Way, Pocatello, Idaho. Developer reserves the right to transfer the rights under this Agreement as authorized herein, including the right to have the Property to which it is to take title hereunder conveyed to and developed by an affiliated entity ("Developer Affiliate") that it has a majority ownership stake in and controls or to any entity succeeding to Developer's interest in and to that certain Acknowledgment of Termination of Lease and Grant of Irrevocable License dated on or about the Effective Date (the "License Agreement").

### **2.6. The Project.**

The Project that is the subject of this Agreement is construction of a project that will entail investment in the range of One Hundred Fifty Million Dollars (\$150,000,000.00) and which will create between fifty (50) to sixty (60) full time skilled jobs paying approximately Eighty Thousand Dollars (\$80,000.00) to One Hundred Thousand Dollars (\$100,000.00) per annum plus benefits.

Developer shall commence construction of the Project on the Property on or before two (2) years after the Closing. Commencement of construction means obtaining a building permit for the Project and commencement of initial excavation under said permit. Developer shall complete construction of the Project within two (2) years of commencement of construction. Completion of construction means issuance of a certificate of occupancy or temporary certificate of occupancy by the City for the Project. Upon completion of the construction of the Project, the Project shall have a value of approximately One Hundred Fifty Million Dollars (\$150,000,000.00), which valuation shall be the greater of: a) the project costs for the Project as identified in building permits issued by the City of Pocatello for the Project; b) the fair market value of the Project unit or units, as determined by an appraiser licensed in the State of Idaho; or c) the assessed value of the Project unit or units, as determined by the Bannock County Assessor.

### **2.7. Disposition Does Not Contemplate Land Speculation.**

Developer represents and warrants that its undertakings pursuant to this Agreement are and will be used for the purpose of the development of the Project and not for speculation in landholding except as to the extent authorized in this Agreement.

### **2.8. Selection of Developer.**

Developer further recognizes that in view of:

- (1) The importance of the Project as part of the development of the Property to the general welfare of the community;
- (2) the reliance by Agency on the real estate expertise of Developer and the continuing interest which Developer will have in the Project to assure the quality of the use, operation, and maintenance of the development thereof; and
- (3) the fact that a change in control of Developer or any other act or transaction involving or resulting in a significant change in the ownership or a change with respect to the identity of the parties in control of Developer or the degree thereof may be for practical purposes a transfer or disposition of any portion of the Project.

The qualifications and identity of Developer are of particular concern to Agency, and it is because of such qualifications and identity that Agency has entered into this Agreement with Developer. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein. Except as provided herein (including Section 2.5.2), Developer shall not assign all or any part of this Agreement without the prior written approval of Agency, which approval shall not be unreasonably withheld.

It shall not be unreasonable for Agency to withhold its approval when using criteria such as those used by this and other redevelopment agencies in selecting redevelopers for similar developments, or because the proposed transferee does not have a current financial strength, experience, or reputation for integrity equal to or better than the Developer as of the date this Agreement has been executed by Agency. Developer shall promptly notify Agency of any and all changes whatsoever in the identity of the parties having control of Developer. This Agreement may be terminated by Agency if there is any significant change (voluntary or involuntary) in the management or control of Developer in violation of this Agreement (other than such changes occasioned solely by the death or incapacity of an individual) that has not been approved by Agency prior to the time of such change, if such change occurs prior to the issuance of the Certificate of Completion referred to in Section 9.1, provided that Agency shall have no right to repurchase the Property upon the issuance of the Special Warranty Deed notwithstanding any provision of this Agreement.

Developer warrants and represents, as of the date of this Agreement, to Agency that Developer is a manager-managed limited liability company. The sole manager of Developer is Mr. Raj Basu. The manager of Developer has full and exclusive authority, power and discretion to manage and control the business and affairs of Developer relating to the acquisition and development of the Project, without the need for approval by the members of Developer. Although the manager is and intends to remain a member of Developer, the authority of the manager of Developer is not dependent upon the manager's ownership of a membership interest in Developer.

Notwithstanding any other provisions hereof, Developer reserves the right, at its

discretion and without the prior written consent of Agency, subject to the disclosure requirements set forth below, to join and associate with other persons in joint ventures, partnerships, or other entities for the purpose of acquiring and developing the Property, or portions thereof, provided that Developer maintains operating control of such entities and remains fully responsible to Agency as provided in this Agreement with respect to the Property. This section is not deemed to preclude mortgage-lender participation and conditions therein, provided such mortgage-lender participation complies with this Agreement.

Provided further, however, Developer is required to make full disclosure to Agency of its principals, officers, managers, joint venturers, key managerial employees involved in the Project, and all similar material information concerning Developer, in each case to the extent relevant to Developer's performance hereunder. Any significant change during the period of this Agreement in the control of Developer or the control by Developer of the Project covered by this Agreement is subject to the approval of Agency, such approval not to be unreasonably withheld.

### **3. AS IS CONDITION**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED THAT AGENCY IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PROPERTY. EXCEPT AS OTHERWISE SET FORTH HEREIN AND AS SET FORTH IN OTHER DOCUMENTS TO BE DELIVERED TO DEVELOPER AT CLOSING, DEVELOPER ACKNOWLEDGES AND AGREES THAT UPON CLOSING AGENCY SHALL SELL AND CONVEY TO DEVELOPER AND DEVELOPER SHALL ACCEPT THE PROPERTY IN ITS THEN EXISTING "AS IS, WHERE IS, WITH ALL FAULTS" CONDITION.

DEVELOPER HAS INSPECTED THE PROPERTY AND THE CHAIN OF TITLE TO THE PROPERTY AND TAKES THE PROPERTY WITHOUT ANY WARRANTY AS TO CONDITION OF THE PROPERTY, INCLUDING THE ENVIRONMENTAL CONDITION, AND WITHOUT WARRANTY AS TO THE CONDITION OF THE TITLE TO THE PROPERTY.

### **4. EVIDENCE OF PROJECT FINANCING**

#### **4.1. Submission of Preliminary Evidence of Financing.**

No later than ten (10) days after the Effective Date or such later time as may be approved by Agency, Developer shall make available solely at the offices of Developer's local counsel, Holland & Hart, located at 800 W. Main Street, Suite 1750, Boise, ID 83702 for Agency's review evidence satisfactory to the Agency that Developer will have at or before Closing the financial capability necessary for the acquisition of the Property and the development of the Project thereon pursuant to this Agreement. Such review shall occur during normal business hours at a time mutually agreed upon by the Parties. This evidence shall include documentation of financial capacity and ability to construct the Project. Such preliminary evidence of financial capability

shall include all of the following:

- (a) Reliable cost estimates for Developer's total cost of acquiring the Property and developing the Project (including both "hard" and "soft costs") ("Project Budget").
- (b) A copy of the term sheets or loan commitment or commitments obtained by Developer, or a Letter of Intent and proof of funds from and equity partner, for all of the sources of funds to finance acquisition of the Property and construction of the Project. All copies of term sheets and loan commitments submitted by Developer to Agency shall be certified by Developer to be true and correct copies thereof. Each commitment for financing shall be in such form and content acceptable to Agency's Chair and shall reasonably evidence a firm and enforceable commitment, with only those contingencies and conditions that are standard or typical for similar projects prior to landclosing.
- (c) If the total Project Budget exceeds the amount of financing commitments received pursuant to subparagraph (b) above, evidence satisfactory to the Chair demonstrating that Developer has adequate funds available and committed to cover such difference.

#### **4.2. Time to Approve Evidence of Financing.**

Agency shall approve or disapprove of Developer's preliminary evidence of financing within five (5) business days of receipt of a complete submission. Agency's approval shall not be unreasonably withheld. If Agency's Chair shall disapprove such evidence of financing, he or she shall do so by written notice to Developer stating the reasons for such disapproval and Developer shall promptly resubmit its evidence of financial capability, as modified to conform to Agency's requirements, not more than twenty (20) days after receipt of the Agency Chair's disapproval.

#### **4.3. Public Records Law.**

All information submitted to Agency may be subject to the Idaho Public Records Law.

#### **4.4. Lender Modifications.**

The Parties acknowledge that substantial debt financing will be necessary for the development of the Project. Developer may submit for Agency approval, and Agency shall reasonably consider, modifications to this Agreement requested by Developer's lenders or prospective lenders for the Project.

### **5. DISPOSITION AND CONVEYANCE OF THE PROPERTY**

#### **5.1. Disposition and Conveyance of the Property.**

In accordance with and subject to all the terms, covenants, and conditions of this Agreement, Agency agrees to convey the entire fee estate of the Property as is and without warranty of any kind whatsoever to Developer.

Developer agrees to develop the Property within the time, for the consideration, and subject to the terms, conditions, and provisions as herein provided. Agency agrees to meet its obligations herein provided with respect to the Property. The time periods set forth Developer's obligations hereunder may be extended in Agency's commercially reasonable discretion if the delays are caused by matters beyond the Developer's reasonable control. Any extension must be agreed upon in writing by Agency's Chair.

The sale of the Property by Agency to Developer is for purpose of development, in compliance with the Urban Renewal Law, and to achieve the objectives of the Redevelopment Plan. Thus, use of the Property for land speculation is prohibited.

## **5.2. Purchase Price**

The purchase price for the Property (the "Purchase Price") is One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00), which is above the fair market value of the Property as determined by Valbridge Property Advisors. The Agency, in accordance with Idaho law, may only sell real property for not less than its fair value for uses in accordance with the urban renewal plan and other restrictions that may be imposed by the Agency. See Idaho Code § 50- 2011. Agency and Developer have determined that the fair value (or the "fair re-use value") of the Property is less than the Purchase Price. In determining the fair re-use value of the Property, Agency considered the requirements of the Plan, the permitted uses of the Property provided in the Plan; the restrictions upon, and the covenants, conditions and obligations to develop and construct the Project in accordance with this Agreement; and the objectives of the Plan for the prevention of the recurrence of slum or blighted areas within the Plan Area and how the disposition of the Property to Developer is designed to achieve those goals.

Developer acknowledges the Purchase Price is final.

### **5.2.1. Payment of Purchase Price**

**5211. Deposit.** Within five (5) days of the Effective Date, Developer shall deposit with Agency the sum of Two Hundred Thousand Dollars (\$200,000.00). The Deposit shall be credited to the Purchase Price upon the Closing.

Notwithstanding the foregoing, in the event Agency does not select Developer for any reason to acquire the Property pursuant to this Agreement, or Agency otherwise fails to consummate the sale of the Property to Developer following selection of Developer to acquire the Property, then, upon termination of this Agreement pursuant to Section 5.1.8 below, the Deposit shall, in lieu of being returned to Developer, be credited to satisfy Developer's obligation to pay the security deposit required under the License Agreement.

**5212. Closing Funds.** At Closing, the balance of the Purchase Price shall

be paid to Agency by Developer by (i) a wire transfer of funds, (ii) cashier's or certified check drawn on or issued by the offices of a financial institution located in the State of Idaho, or (iii) cash.

### **5.2.2. Payment of Costs**

Developer shall pay all the fees and charges for recording the Special Warranty Deed and the other documents to be recorded hereunder (to the extent the County Recorder's Office does not waive such charges). Developer shall pay the charge for an ALTA standard owner's policy in the amount of the Purchase Price, if desired by Developer. Developer shall pay the charge for any additional title coverage requested by Developer, including an ALTA extended owner's policy, if Developer obtains such policies. Developer will be responsible for paying endorsements desired by Developer except for the cost of any endorsements. Taxes and assessments, if any, applicable to periods before and after Closing shall be paid at Closing by Developer. Developer shall be responsible for costs associated with such utility services prior to Closing. All other costs of the Closing not specifically allocated in this Agreement shall be allocated to the Parties as is customary in a commercial real estate transaction in Bannock County, Idaho.

In addition, Developer shall be responsible for its attorneys' fees and costs and agrees to pay Agency up to Fifty Thousand Dollars (\$50,000.00) for any professional fees and costs incurred by Agency with respect to the disposition of the Property.

### **5.2.3. Closing**

"Closing" shall occur within ten (10) days after the date all of the Agency Closing Conditions and the Developer Closing Conditions in Sections 5.3.1 and 5.3.2 are satisfied or waived by the benefited party, but in no event later than the date that is six (6) months after the Effective Date (the "Outside Date").

### **5.2.4. Deliveries by Agency**

At Closing, Agency shall be prepared to deliver the following to Developer:

- (a) the Special Warranty Deed, duly executed and acknowledged by Agency;
- (b) Invoices for professional costs and fees incurred in connection with the sale of the Property to Developer, not to exceed \$50,000 (the "Invoices")

### **5.2.5. Deliveries by Developer**

On or before the scheduled Closing Date, Developer shall be prepared to deliver the following to Agency:

- (a) the balance of the Purchase Price;

(b) \$150,000 over and above the Purchase Price (the "Guarantee Fee") to be held in Escrow and released per the terms of this Agreement and any associated Escrow Agreement between the Escrow Agent, Agency and Developer. In the event that Developer fails to develop the Property pursuant to Article 7 below, Developer shall not be entitled to a return of the Guarantee Fee.

#### **5.2.6. Closing, Recording and Disbursements**

On the Closing Date (except as otherwise provided below), and when all of the conditions precedent to the Close of Escrow set forth in Sections 5.3.1 and 5.3.2 of this Agreement have been satisfied or waived by the appropriate party in writing, the Parties shall take the actions set forth in this Section in the following order.

- (a) Developer shall pay the balance of the purchase price, the closing costs attributable to Developer, and the amount of the Invoices to Agency (less any closing costs and prorations chargeable to Agency hereunder) by (i) a wire transfer of funds, (ii) cashier's or certified check drawn on or issued by the offices of a financial institution located in the State of Idaho, or (iii) cash.
- (b) Agency shall deliver the fully executed Special Warranty Deed to Developer
- (c) Developer shall cause the Special Warranty Deed to be recorded in the office of the Recorder of Bannock County, Idaho.

#### **5.2.7. Termination**

If the transfer of the Property contemplated by this Agreement is not in condition to close by the Outside Date for any reason, either Party who has fully performed its obligations under this Agreement to permit the Closing to occur, may, in writing to the other Party, terminate this Agreement in the manner set forth in Section 11.6 hereof, and demand the return of its money, papers, and documents. Thereupon all obligations and liabilities of the Parties under this Agreement shall cease and terminate in the manner set forth in Section 11.6. The terms of this paragraph shall not affect the rights of Agency or Developer to terminate this Agreement under Section 11 hereof.

#### **5.2.8. No Real Estate Commissions or Fees**

Agency represents that it has not engaged any broker, agent, or finder in connection with this transaction. Developer represents that it has not engaged a broker in connection with this transaction (other than the independent third party appraiser Valbridge Property Advisors for the determination of the Property's fair market value pursuant to Section 5.1.1). Developer agrees to hold Agency harmless from any claim concerning any real estate commission or brokerage fees arising out of Developer's actions and agrees to defend and indemnify Agency from any such claim asserted concerning the commission or brokerage fees. Agency agrees to

hold Developer harmless from any claim concerning any real estate commission or brokerage fees arising out of Agency's actions and agrees to defend and indemnify Developer from any such claim asserted concerning the commission or brokerage fees. Provided, however, nothing herein shall prevent Developer from preleasing or preselling space within the Project, thus incurring real estate commissions or brokerage fees. In no event, though, shall Agency be liable for any real estate commission or brokerage fees on account of any such preleasing or preselling activity.

### **5.3. Conditions to Property Transfer.**

#### **5.3.1. Conditions to Agency's Obligations**

In addition to any other condition set forth in this Agreement in favor of Agency, Agency shall have the right to condition its obligation to convey the Property to Developer upon the satisfaction, or written waiver by Agency, of each of the following conditions precedent on the Closing Date or such earlier time as provided for herein (collectively, the "Agency Closing Conditions"):

- (a) **Developer Deliveries Made.** Developer has deposited with Escrow Agent the Guarantee Fee required of Developer by this Agreement for the Closing. Developer shall have executed all agreements with the Escrow Agent and Agency necessary for Developer to deposit the Guarantee Fee with Escrow Agent.
- (b) **Evidence of Financing.** Agency shall have approved Developer's evidence of financing in accordance with Section 4 of this Agreement.
- (c) **No Default.** Developer shall not be in material default of any of its obligations under this Agreement (and shall not have received notice of a default hereunder which has not been cured), and all representations and warranties of Developer contained herein shall be true and correct in all material respects.

#### **5.3.2. Conditions to Developer's Obligations**

In addition to any other condition set forth in this Agreement in favor of Developer, Developer shall have the right to condition its obligation to purchase the Property upon the satisfaction, or written waiver by Developer, of each of the following conditions precedent on the Closing Date or such earlier time as provided for herein (collectively, the "Developer Closing Conditions"):

- (a) **Agency Deliveries Made.** Agency shall be ready and prepared to provide Developer with the executed Special Warranty Deed upon payment of the amounts due hereunder. Agency shall have executed all agreements with Escrow Agent and Developer necessary for Developer to deposit the Guarantee Fee with Escrow Agent.
- (b) **No Default.** Agency shall not be in default of any of its obligations under this



Agreement (and shall not have received notice of a default hereunder which has not been cured), and Agency's representations and warranties contained herein shall be true and correct in all material respects as of the date of this Agreement and the Closing Date.

(e) **Debt and Equity Financing.** Agency shall have approved Developer's evidence of financing in accordance with Section 4 of this Agreement.

**5.4. Satisfaction of Conditions.**

Where satisfaction of any of the foregoing conditions requires action by Developer or Agency, each party shall use its diligent efforts, in good faith, and at its own cost, to expeditiously satisfy such condition. If a party is not in a position to know whether or not a condition precedent has been satisfied, then the party that is aware of the status of the condition shall immediately notify the other party.

**5.5. Waiver.**

Agency may at any time or times, at its election, waive any of the Agency Closing Conditions set forth in Section 5.3.1, but any such waiver shall be effective only if contained in a writing signed by Agency and delivered to Developer. Developer may at any time or times, at its election, waive any of the Developer Closing Conditions set forth in Section 5.3.2, but any such waiver shall be effective only if contained in a writing signed by Developer and delivered to Agency.

**5.6. Termination.**

In the event each of the Agency Closing Conditions set forth in Section 5.2.1 is not fulfilled by the outside date for the Closing Date, or such earlier time period as provided for herein, or waived by Agency pursuant to Section 5.4, and provided Agency is not in default of this Agreement, Agency may at its option terminate this Agreement. In the event that each of the Developer Closing Conditions set forth in Section 5.2.2 is not fulfilled by the outside date for the Closing Date, or such earlier time period as provided for herein, or waived by Developer pursuant to Section 5.4, and provided Developer is not in default of this Agreement, Developer may at its option terminate this Agreement. No termination under this Agreement shall release either party then in default from liability for such default. In the event this Agreement is terminated, all closing documents and funds delivered by Agency to Developer shall be returned immediately to Agency and all closing documents and funds delivered by Developer to Agency shall be returned immediately to Developer; provided, however, that Agency shall retain the Deposit as provided herein.

**6. CONDITION OF THE PROPERTY.**

**6.1. "As Is".**

Subject to Agency's representations and warranties expressly set forth in this Agreement, Developer acknowledges and agrees that any portion of the Property that it acquires from Agency pursuant to this Agreement shall be purchased "as is."

**6.2. Environmental Release and Waiver.**

Developer hereby releases and waives all rights, claims, or causes of action Developer may have in the future against Agency arising out of or in connection with any Hazardous Materials at, on, in, beneath, or from the Property or concerning the environmental condition of the Property.

**7. DEVELOPMENT OF THE PROPERTY.**

**7.1. Development Obligation.**

If acquired by Developer, the Property shall be developed as provided by and subject to the terms and conditions of this Agreement.

**7.2. Local, State, and Federal Laws.**

Developer shall carry out any required construction of the improvements in conformity with all applicable laws, including all applicable federal and state labor standards. Developer shall comply with all applicable environmental rules and regulations concerning the construction of any improvements on the property and will comply with all federal, state, county, and City of Pocatello zoning and land use ordinances, rules, and regulations concerning the construction and operation of any facility or development built on the Property.

Developer shall prepare, adopt, and comply with an industrial wastewater management plan for the improvements to be constructed on the Property. Developer shall not discharge any industrial wastewater or other pollutants into the Portneuf River or any local waterways or channels during the construction or operation of the facility to be constructed on the Property. This obligation shall be perpetual and extend beyond Closing. The City of Pocatello is a third party beneficiary of the obligations set forth in this section and may enforce such rights in a court of law or equity.

**7.3. Antidiscrimination During Construction.**

Developer, for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, Developer will not discriminate against any employee or applicant for employment because of physical disability, race, color, creed, religion, sex, sexual orientation, gender identity/ expression, marital status, ancestry, or national origin.

**7.3.1. Developer's Obligations**

Developer, as requested by Agency, shall:

**73.11** Provide Agency with a monthly written status report on the Project (consisting of a simple narrative of the status, an update as to the progress on the schedule of performance, and a summary of the percentage of completion) in sufficient time to allow for their distribution to Agency's board of directors prior to their regular monthly meetings; such monthly report shall include any photos taken by Developer in the normal course of project supervision that would be helpful to supplement the simple written narrative in the monthly status reports.

**73.12** If requested, attend and provide oral status reports on the Project at regular monthly meetings of Agency's board of directors; and

### **7.3.2. Access to the Property**

For the purpose of assuring compliance with this Agreement, upon prior written 24 hour advance notice to Developer, representatives of Agency shall have the reasonable right of access to the Property without charges or fees and at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements. Agency shall cause anyone who comes onto the Property on Agency's behalf to comply with applicable OSHA or other safety regulations. To the extent permitted by law, Agency shall indemnify, defend, and hold harmless Developer, and its officers, officials, representatives, members, employees, volunteers and agents from and against any and all loss, cost, liability or expense (including reasonable attorneys' fees) arising from the entries of Agency, its agents, contractors, consultants, and employees upon the Property.

## **8. INSURANCE AND INDEMNIFICATION.**

### **8.1. Indemnification.**

Developer shall indemnify, defend, and hold Agency, and its officers, agents, and employees harmless from and against all third party 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 by reason of any of the following occurrences:

**8.1.1.** Agency's sale of the Property to Developer;

**8.1.2.** Any work or thing done in connection with the Project by or at the direction of Developer, including, without limitation, inspection of the Property prior to Closing, any work on the Property prior to Closing, and the construction of any improvements, or any tenant

improvements, in each case by or at the direction of Developer; or

**8.1.3.** Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of the Project or any part thereof by Developer; or

**8.1.4.** Any negligence on the part of Developer or any of its agents, contractors, servants, employees, subtenants, operators, licensees, or invitees; or

**8.1.5.** Any accident, injury, or damage to any person or property occurring in, on, or about the Property or any part thereof during construction of the Project by or at the direction of Developer; or

**8.1.6.** Any failure on the part of Developer 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.

**8.1.7.** In case any action or proceeding is brought against Agency, or its respective officers, agents, and employees by reason of any such claim for which Developer is required to provide indemnification hereunder, Developer, upon written notice from Agency shall, at Developer's expense, resist or defend such action or proceeding with counsel selected by Agency. Notwithstanding the foregoing, Developer shall have no obligation to indemnify and hold Agency and its respective officers, agents, and employees harmless from and against any matter to the extent a court of competent jurisdiction determines it arises from the active negligence or willful act of, or breach of this Agreement by, Agency, or its respective officers, agents, or employees or from conduct resulting in an award of punitive damages against Agency. The obligations of Developer under this Section are not intended to run with the land or to be binding upon subsequent owners of portions of the Property.

## **9. CERTIFICATE OF COMPLETION**

Promptly after completion of all construction and development to be completed by Developer for the Project, Developer shall submit to Agency a request for a certificate of completion for the Project ("Certificate of Completion"). Agency shall promptly issue the Certificate of Completion if (a) City has issued a certificate of occupancy for the shell and core of the Project or otherwise indicates to Agency that the Project is complete and Developer is authorized to occupy and operate the Project as intended by Developer and (b) if Developer is not in default under this Agreement and Agency has not sent notice to Developer of any event which with the passing of time could give rise to a default under this Agreement. The Parties acknowledge the failure to construct the Project within the time frame set forth in this Agreement may, after Agency provided Developer with written notice of default and an opportunity to cure any such default as set forth in Section 11, be considered by Agency as a default by Developer under this Agreement. Agency shall not unreasonably withhold the Certificate of Completion.

The Certificate of Completion shall be executed by Agency and Developer and be in such form as to permit it to be recorded by the Office of the County Recorder of Bannock County, Idaho.

The Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction of the Project and conclusive determination of satisfactory completion of the obligations of Developer and Agency required by this Agreement with respect to completion of the construction of the Project.

The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the improvements or any part thereof. Such Certificate of Completion is not notice of completion as referred to under other laws of the State of Idaho.

**10. DEVELOPER'S POST-DEVELOPMENT AND CONSTRUCTION OBLIGATIONS.**

**10.1. Taxes, Assessments, Encumbrances, and Liens.**

Developer shall pay when due all ad valorem property taxes and personal property taxes and assessments assessed and levied on the Property for any period subsequent to Developer's acquisition of the Property from Agency.

**10.2. In-Lieu-of Taxes.**

In the event the Property or any improvements thereon or any possessory interest therein should at any time be subject to ad valorem taxes or privilege taxes levied, assessed, or imposed on the Property, Developer shall pay taxes upon the assessed value of the entire Property and any improvements thereon and not merely upon the assessed value of its ownership of the Property interest. In the event the Property or any portion thereof or leasehold interest is leased, conveyed, or transferred to an entity exempt or partially exempt from ad valorem taxes and to the extent that ad valorem, privilege, or any other taxes or assessments levied on the Property or any improvements thereon are of a lesser amount than would be levied if the Property or any portion thereof were entirely in private, nonexempt ownership, the then owner of the Property shall be responsible to pay as in-lieu-of taxes the difference between the taxes and assessments actually levied and the taxes and assessments which would be levied if the Property or any portion thereof were privately owned. Developer shall pay such difference to Agency within thirty (30) days after the taxes for such year become payable to the taxing agencies and in no event later than the delinquency date of such taxes established by law. Any in-lieu-of taxes received by Agency pursuant to this Section shall be treated by Agency as incremental tax revenues and promptly deposited upon receipt into the appropriate Agency account. The obligation set forth in this Section shall terminate and cease to be of any effect upon the date upon which the current

Redevelopment Plan expires. Developer acknowledges payments in lieu of taxes for taxes levied and imposed in 2018 are due and payable in 2019.

**10.3. Use of the Property During Term of the Redevelopment Plan.**

Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest that during construction and thereafter, Developer, its successors, and assignees shall devote the Property to the uses specified in the Redevelopment Plan, the Deeds, and this Agreement for the periods of time specified therein.

**10.4. Obligation to Refrain From Discrimination.**

Developer covenants by and for Developer and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of physical disability, race, color, creed, religion, sex, sexual orientation, gender identity/expression, marital status, ancestry, or national origin. in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of Property, nor shall Developer or any person claiming under or through Developer 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 Property. The foregoing covenants shall run with the land.

**10.4.1. Effect and Duration of Covenants**

Except as otherwise provided in this Section and the Deed, the covenants contained in this Section and the Deed shall remain in effect until the termination date of the Redevelopment Plan. The covenants against discrimination shall remain in effect in perpetuity. The covenants established in this Agreement that expressly run with land and the Deeds shall, without regard to technical classification and designation, be binding for the benefit and in favor of Agency, Agency's successors and assigns, City, and any successors in interest to the Property or any part thereof.

**10.4.2. Provisions That Run With the Land**

Agency is deemed the beneficiary of the terms and provisions of this Agreement that expressly run with the land for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The covenants that expressly run with the land shall run in favor of Agency without regard to whether Agency has been, remains, or is an owner of any land or interest therein in the Property, any parcel or subparcel, or in the Project Area. Agency shall have the right, if the covenants that expressly run with the land are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of such covenants may be entitled.

Notwithstanding the foregoing, if Developer or any subsequent owner of any portion of the Property conveys any portion of the Property, such owner shall, upon the conveyance, be released and discharged from all of its obligations in connection with the portion of the Property conveyed by it arising under this Agreement after the conveyance but shall remain liable for all obligations in connection with the portion of the Property so conveyed arising under this Agreement prior to the conveyance. The new owner of any such portion of the Property shall be liable for all obligations arising under this Agreement with respect to such portion of the Property after the conveyance.

## **11. DEFAULTS, REMEDIES, AND TERMINATION.**

### **11.1. Defaults—General.**

Failure or delay by either Party to perform any term or provision of this Agreement after receiving notice and an opportunity to cure as set forth herein shall constitute a default under this Agreement. Upon receipt of such notice, a Party must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction, or remedy with reasonable diligence. A Party so acting and during any period of curing shall not be in default.

### **11.2. Written Notice.**

The Party claiming a failure or delay in performance shall give written notice of default to the Party failing or delaying performance specifying the default complained of by the injured Party. Except as required to protect against further damages, the Party claiming default may not institute proceedings against the Party in default until sixty (60) days after giving such notice, said sixty (60) days constituting the period to cure any default.

### **11.3. No Waiver.**

Except as otherwise expressly provided in this Agreement, any failure or delay by either Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies.

### **11.4. Materiality of Provisions.**

It is expressly understood and agreed that each of the covenants, promises, stipulations, and agreements of the Parties hereto and under the provisions of this Agreement are an integral and indivisible part of the consideration given by each to the other and that each covenant, promise, stipulation, and agreement of the Parties shall be deemed and construed as material. Subject to Section 11.1 above, it is further understood and agreed that time is of the essence of this Agreement; that failure, refusal, or neglect for any reason whatsoever of either Party hereto to perform any of the covenants, promises, stipulations, or agreements to be performed by the

Party pursuant to the terms and provisions of this Agreement shall constitute a material default on the part of the Party failing to perform such covenant, promise, stipulation, or agreement; and that the occurrence of any such default on the part of either Party shall give the other Party the right to terminate or otherwise enforce this Agreement in accordance with the provisions of this Section.

**11.5. Legal Actions.**

**11.5.1. Institution of Legal Actions**

Subject to the express limitations herein, either Party may institute legal action to cure, correct, or remedy any default or recover damages for any default or to obtain any other remedy consistent with the purpose of this Agreement.

**11.5.2. Applicable Law**

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

**11.5.3. Acceptance of Service of Process**

In the event that any legal action is commenced by Developer against Agency, service of process on Agency shall be made by personal service upon the Chair of Agency or in such other manner as may be provided by law. In the event that any legal action is commenced by Agency against Developer, service of process on Developer shall be made by personal service upon Developer or in such other manner as may be provided by law and shall be valid whether made within or without the State of Idaho.

**11.5.4. Rights and Remedies**

Subject to the express limitation herein, 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.

**11.5.5. Specific Performance**

If Developer or Agency has provided notice and an opportunity to cure pursuant to Section 11.1, the default is not cured, the nondefaulting Party, at the nondefaulting Party's option, may institute an action for specific performance of the terms of this Agreement provided that specific performance shall be limited to those actions which necessitate action on the part of a Party but not for any action where damages are otherwise available.

**11.5.6. Limitation on Agency's Remedies Prior to Developer's Acquisition of the Property**



If Developer defaults in its obligation to acquire the Property or to satisfy any conditions relating to the acquisition of the Property, Agency's sole and exclusive remedy shall be to terminate this Agreement and retain Developer's Deposit relating to the Property as liquidated damages. Such amount to be retained by Agency has been agreed by the Parties to be reasonable compensation and the exclusive remedy in those events, because the precise amount of damages in those events would be difficult to determine.

**11.6. Remedies and Rights of Termination Prior to Conveyance of the Property to Developer.**

**11.6.1. Termination by Developer**

In the event that prior to Closing for the Property, as applicable:

**11611.** Agency does not tender title to the Property, as applicable, or possession thereof in the manner and condition and by the dates provided in this Agreement, and any such failure is not cured within sixty (60) days after written demand by Developer; or

**11612.** Agency is in breach or default with respect to any other obligation of Agency under this Agreement, subject to the cure provisions set forth in Section 11 of this Agreement; then this Agreement may, at the option of Developer, be terminated by written notice thereof to Agency. Upon such termination, neither Agency nor Developer shall have any further rights against or liability to the other under this Agreement. In the event this Agreement is so terminated, all closing documents and funds delivered by Agency to Developer shall be returned immediately to Agency and all closing documents and funds delivered by Developer to Agency shall be returned immediately to Developer.

Developer may terminate this Agreement upon written notice to Agency.

**11.6.2. Termination by Agency prior to the conveyance of the Property**

Subject to Section 13.5, In the event that prior to the conveyance of the Property, as applicable, to Developer:

**11621.** Developer fails to pay the Deposit as required by Section 5.1.2.1 of this Agreement;

**11622.** Developer transfers or assigns or attempts to transfer or assign this Agreement or any rights herein or in the Property or the buildings or improvements thereon in violation of this Agreement; or

**11623.** after and despite diligent effort and prior to the dates established

If Developer defaults in its obligation to acquire the Property or to satisfy any conditions relating to the acquisition of the Property, Agency's sole and exclusive remedy shall be to terminate this Agreement and retain Developer's Deposit relating to the Property as liquidated damages. Such amount to be retained by Agency has been agreed by the Parties to be reasonable compensation and the exclusive remedy in those events, because the precise amount of damages in those events would be difficult to determine.

**11.6. Remedies and Rights of Termination Prior to Conveyance of the Property to Developer.**

**11.6.1. Termination by Developer**

In the event that prior to Closing for the Property, as applicable:

**11611** Agency does not tender title to the Property, as applicable, or possession thereof in the manner and condition and by the dates provided in this Agreement, and any such failure is not cured within sixty (60) days after written demand by Developer; or

**11612** Agency is in breach or default with respect to any other obligation of Agency under this Agreement, subject to the cure provisions set forth in Section 11 of this Agreement; then this Agreement may, at the option of Developer, be terminated by written notice thereof to Agency. Upon such termination, neither Agency nor Developer shall have any further rights against or liability to the other under this Agreement. In the event this Agreement is so terminated, all closing documents and funds delivered by Agency to Developer shall be returned immediately to Agency and all closing documents and funds delivered by Developer to Agency shall be returned immediately to Developer.

Developer may terminate this Agreement upon written notice to Agency.

**11.6.2. Termination by Agency prior to the conveyance of the Property**

Subject to Section 13.5, In the event that prior to the conveyance of the Property, as applicable, to Developer:

**11621** Developer fails to pay the Deposit as required by Section 5.1.2.1 of this Agreement;

**11622** Developer transfers or assigns or attempts to transfer or assign this Agreement or any rights herein or in the Property or the buildings or improvements thereon in violation of this Agreement; or

**11623** after and despite diligent effort and prior to the dates established

therefore in the this Agreement, subject to the cure provisions set forth in of Section 11 of this Agreement, Developer is unable to obtain and submit the evidence of financing reasonably acceptable to Agency; or

**11.6.2.4.** Subject to the cure provisions set forth herein, Developer does not pay the Purchase Price and take title to the Property under tender of conveyance by Agency pursuant to this Agreement; or

**11.6.2.5.** Developer is in breach or default with respect to any other obligation of Developer under this Agreement, subject to the cure provisions set forth in of Section 11 of this Agreement.

**11.6.2.6.** Following the statutory notice period outlined in Section 14, Agency selects an entity other than Developer to develop the Property.

Agency may terminate this Agreement upon written notice to Developer.

Upon such termination by either Party, neither Agency nor Developer shall have any further rights against or liability to the other under this Agreement. In the event this Agreement is so terminated, all closing documents and funds delivered by Agency to Developer shall be returned immediately to Agency and all closing documents and funds delivered by Developer to Agency shall be returned immediately to Developer; **provided, however, that Agency shall retain any Deposit so long as Agency has fully performed the obligations required to be performed by Agency prior to that time. However, if Agency terminates the Agreement pursuant to 11.6.2.6, Agency shall return the Deposit to Developer.**

## **12. GENERAL PROVISIONS.**

### **12.1. No Assignment of Rights.**

Prior to the issuance by Agency of a Certificate of Completion pursuant to Section 9 with respect to the Property, Developer shall not, except as expressly permitted by this Agreement, sell, transfer, convey, assign, or lease the whole or any part of such Property or the buildings or improvements thereon without the prior written approval of Agency, which approval shall not be unreasonably withheld. Conveyance to a Developer Affiliate shall be permitted and shall not be subject to further review or approval by Agency. This prohibition shall not apply subsequent to the issuance of the Certificate of Completion, which shall signify Agency's acknowledgment that the work required on the Property has been completed. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the Project or to prohibit or restrict the leasing of any part or parts of a building or structure when said improvements are completed or to prohibit or restrict the preleasing or preselling of any part or parts of the structure so long as the lessee or buyer shall obtain no rights under this Agreement and that any right to occupy or acquire any part of the structure prior to Developer completing all the necessary improvements shall be terminable by Agency in the event Developer fails to complete all the necessary improvements. In the absence of specific written agreement by Agency, no such

transfer, assignment, or approval by Agency shall be deemed to relieve Developer from any obligations under this Agreement until completion of the Project as evidenced by the issuance of a Certificate of Completion. Provided, Agency shall agree to any assignment of Developer and Developer's successor in interest's rights and obligations under this Agreement to any lender financing the construction of the Project, so long as such assignment shall be for purposes of securing performance in the construction and development of same.

**12.2. Notices, Demands, and Communications Between the Parties.**

Formal notices, demands, and communications between Agency and Developer shall be sufficiently given upon dispatch if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of Agency and Developer as set forth in Section 2.5 hereof. 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 bymail.

**12.3. 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 or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly involved.

**12.4. Warranty Against Payment of Consideration for Agreement.**

Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as for architects, engineers, and attorneys.

**12.5. Nonliability of Agency Officials and Employees.**

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

**12.6. 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; inability to secure necessary labor, material, or tools; delay of any contractor, subcontractor, or suppliers; acts of another Party; proceedings before or acts or failures to act of any public or governmental agency

or entity, including approvals by any historic preservation agency (other than acts or failures to act of Agency shall not excuse performance by Agency); unreasonable delays in approvals by building officials for issuance of building permits (other than acts or failures to act of Developer shall not excuse performance by Developer); and temporary cessation of work for archeological digs, environmental analysis, or removal of hazardous or toxic substances; or any 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. If, however, notice by the Party claiming such extension is sent to the other Parties more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the Parties.

**12.7. Approvals by the Parties.**

Wherever this Agreement requires Agency and/or Developer to approve, or permits a Party to submit to the other Party for approval, any contract, document, plan specification, drawing, or other matter, such approval shall not be unreasonably withheld, conditioned or delayed.

**12.8. Attorney Fees.**

In the event of any action or proceeding at law or in equity between Developer and Agency to enforce any provision of this Agreement or to protect or establish any right or remedy of either Party hereunder, the unsuccessful Party to such litigation shall pay to the prevailing Party all costs and expenses, including reasonable attorney fees incurred therein by such prevailing Party (including such costs and fees incurred on appeal), and if such prevailing Party shall recover judgment in any such action or proceeding, such costs, expenses, and attorney fees shall be included in and as a part of such judgment.

**13. SPECIAL PROVISIONS.**

**13.1. Submission of Documents for Approval.**

Whenever this Agreement requires either Party to submit plans, drawings, or other documents to the other Party for approval, which shall be deemed approved if not acted on by the Party within a specified time, said plans, drawings, or other documents shall be accompanied by a letter stating that they are being submitted and shall be deemed approved unless rejected by the other Party within the stated time. If there is no time specified herein for such Party's action, the other Party may submit a letter requiring approval or rejection of documents within thirty (30) days after submission or such documents shall be deemed approved.

**13.2. Computation of Time.**

In computing any period of time prescribed or allowed under this Agreement, the day of

the act, event, or default from which the designated period of time begins to run shall not be included. The last calendar day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. As used herein, "legal holiday" means a legal holiday recognized by Agency on which the offices of Agency are closed for regular business.

**13.3. No Third-Party Beneficiary.**

The provisions of this Agreement are for the exclusive benefit of Agency and Developer, and their successors and assigns, and not for the benefit of any third person; nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person except for provisions expressly for the benefit of a mortgagee or lender of Developer or its successors and assigns.

**13.4. Dispute Resolution.**

In the event that a dispute arises between the Parties concerning (i) the meaning or application of the terms of, or (ii) an asserted breach of this Agreement, the Parties shall meet and confer in a good faith effort to resolve their dispute. The first such meeting shall occur within thirty (30) days of the first written notice from either Party evidencing the existence of the dispute. The Chair of Agency and the managing member of Developer shall both be included among the individuals representing the Parties at the first such meeting. If the Parties shall have failed to resolve the dispute within thirty (30) days after delivery of such notice, the Parties agree to first consider 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 United States or otherwise, as the Parties may mutually agree before resorting to litigation or to arbitration. The costs of such mediation or other process of structured negotiation shall be equally split between the Parties. The mediation or other process of structured negotiations shall take place in Pocatello, Idaho. 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, or if the Parties cannot mutually agree to attempt to settle any dispute by 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.

**13.5. Good Faith and Cooperation.**

It is agreed by Agency and Developer to act in good faith in compliance with all of the terms, covenants, and conditions of this Agreement and shall deal fairly with each other.

**13.6. Entire Agreement, Waivers, and Amendments.**

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 hereof including, without limitation, the Agreement to Negotiate Exclusively. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Agency and Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and Developer.

**13.7. Effective Date of Agreement.**

This Agreement, when executed by Developer and delivered to Agency, must be authorized, executed, and delivered by Agency within forty-five (45) days after the date of signature by Developer or this Agreement shall be void, except to the extent that Developer shall consent in writing to further extensions of time for the authorization, execution, and delivery of this Agreement. Developer recognizes that Agency must comply with certain notice, solicitation, and comment periods and a disclosure process as required by law. Because of that process Agency may be unable to execute this Agreement as proposed, and in such event, this Agreement shall be void. The effective date of this Agreement (the "Effective Date") shall be the date when this Agreement has been signed by Agency.

**13.8. Easements to be Granted Prior to Closing.**

The Parties acknowledge that prior to Closing Agency shall grant two easements with respect to the Property to the City for purposes of a right-of-way and slope easement in the location depicted on Exhibit 5-A and an easement for a water line in the location depicted on Exhibit 5-B. Prior to Closing, City shall prepare and provide drafts of the declarations of easement for these two easements for the Parties review and approval, such approval shall not be unreasonably withheld.

**14. Agency's Condition Precedent to Disposition of the Property**

It is a mandatory condition precedent to Agency's obligations under this Agreement that prior to Closing, Agency and Developer must proceed through the disposition process imposed upon the Agency pursuant to Idaho Code § 50-2011. Such process includes, *inter alia*, that prior to the effectiveness of this Agreement by the Agency or the obligation of Agency to transfer the Property to Developer, the Agency shall invite proposals from and make available all pertinent information related to this Agreement and not otherwise protected under the Idaho Public Records Law to the public and allow for competitive proposals to the Project. The Agency must provide no less than thirty (30) days' notice (by publication in the newspaper of record) of the intention to select Developer to acquire the Property before this Agreement is effective. The Agency is not legally bound to transfer the Property to Developer and may accept any such proposal as it deems to be in the best public interest and in furtherance of the purposes of the Idaho Urban Renewal Law, chapter 50, title 20 of the Idaho Code, and the Redevelopment Plan. Developer understands and acknowledges this legal requirement and the possibility that Agency may not select Developer's proposal to construct the Project and is not bound to transfer the Property until Agency has completed the statutory selection process.

After the notice is published and competitive proposals received, Agency shall allow Developer and any other proposers to present any additional information to the Agency Board at an open meeting of the Board.

If the Agency selects another entity to develop the Property and enters into an agreement to transfer the Property to an entity other than Developer, Agency's transfer of the Property shall be subject to the License Agreement. Furthermore, the Deposit shall be retained by Agency as the Security Deposit under the License Agreement.

If Agency selects Developer to develop the Property and Developer fails to close on the acquisition of the Property pursuant to the terms of this Agreement, unless such failure is caused by the Agency the License Agreement will automatically terminate and any and all Improvements, personal property, fixtures, or buildings on the Property shall be the property of the Agency.

**15. Security Deposit for Indemnification Obligation and Completion Of Project**

In the event Agency is subjected to a claim or demand that is covered by the indemnification obligation set forth in Section 8.1, Agency may access the Guarantee Fee (defined above) funds to reimburse Agency for any and all costs incurred with respect to such claim.

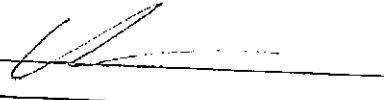
In the event Developer fails to construct the Project according to this Agreement (as may be extended pursuant to this Agreement), Agency shall retain the full amount of the Guarantee Fee.

Any remaining amounts of the Guarantee Fee shall be refunded to Developer sixty (60) days after Agency issues a Certificate of Completion for the Project.

**[signatures on following page]**



AGENCY:  
POCATELLO DEVELOPMENT AUTHORITY

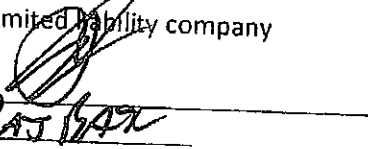
By 

Chad Carr  
Vice-Chair

Aug 29, 2018

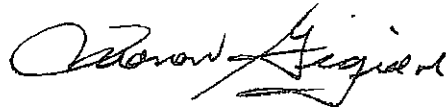
DEVELOPER:

SOLARGISE AMERICA LLC  
a Delaware limited liability company

By 

It's Manager

SEPT 19, 2018

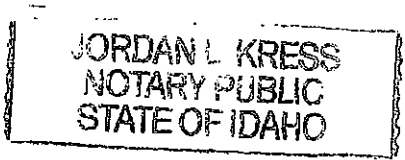




STATE OF IDAHO )  
 ) ss.  
County of Bannock )

On this 29<sup>th</sup> day of August, 2018, before me, Jordan L. Kress, the undersigned notary public in and for said county and state, personally appeared Chad Carr, known or identified to me to be the Vice-Chair of Pocatello Development Authority, the public body, corporate and politic, 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.



Jordan L. Kress  
Notary Public for Idaho  
Residing at Pocatello  
Commission Expires 7/26/2022

STATE OF NEW YORK )

County of \_\_\_\_\_ ) ss.

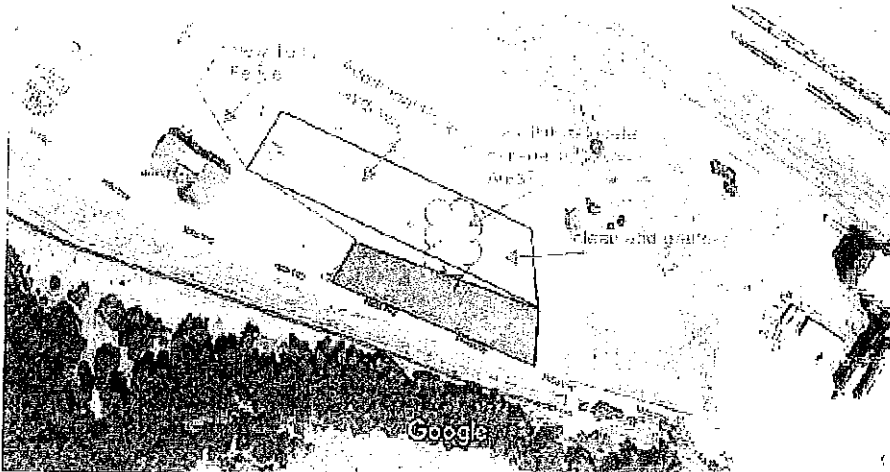
On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, \_\_\_\_\_, the undersigned notary public in and for said county and state, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of Solargise America LLC, a Delaware limited liability company, "Developer" herein, and acknowledged to me that he executed the within instrument on behalf of such Developer 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.

\_\_\_\_\_  
Notary Public for New York  
Residing at \_\_\_\_\_  
Commission Expires \_\_\_\_\_

# Attachment 1 Depiction of the Property

Google Maps Pocatello, ID

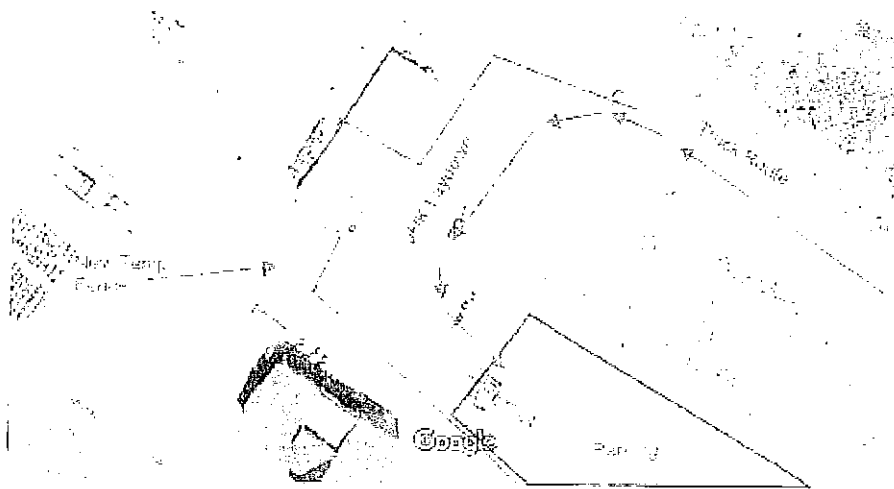


Imagery ©2016 Google, Map data ©2016 Google 100 ft

3/15/2016

Pocatello, ID - Google Maps

Google Maps Pocatello, ID



Imagery ©2016 Google, Map data ©2016 Google 50 ft

Attachment 2                      Legal Description of the Property

LEGAL DESCRIPTION:

PARCEL 1:

A PARCEL OF LAND LOCATED IN THE EAST 1/2 OF SECTION 17, AND IN THE WEST 1/2 OF THE WEST 1/2 OF SECTION 16, T 6 S, R 34 E, B.M., BANNOCK COUNTY, IDAHO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS (ALL ANGLE POINTS BEING MARKED BY A 1/2-INCH DIAMETER REBAR WITH A YELLOW PLASTIC CAP STAMPED "PE/LS 4440", UNLESS OTHERWISE NOTED):

COMMENCING AT THE WEST 1/4 CORNER OF SAID SECTION 16, SAID CORNER BEING MARKED BY A FOUND 5/8-INCH DIAMETER REBAR WITH NO MARKINGS, SAID REBAR BEING REFERENCED BY A BANNOCK COUNTY BRASS CAP MONUMENT 25 FEET EAST OF THE CORNER;

THENCE S 0°11'07" W ALONG THE WEST LINE OF SECTION 16, 280.55 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE OREGON SHORT LINE RAILROAD (NOW OPERATING AS THE UNION PACIFIC RAILROAD), SAID POINT BEING 50 FEET DISTANT, MEASURED AT RIGHT ANGLES, FROM THE CENTERLINE OF THE NO. 1 MAINLINE TRACK (FORMERLY THE WEST BOUND MAINLINE), AND SAID POINT BEING MARKED BY A SET 5/8-INCH REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075", SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE N 56°36'03" W ALONG THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE OREGON SHORT LINE RAILROAD, 2557.86 FEET TO AN ANGLE POINT ON THE NORTHEASTERLY DEED LINE DESCRIBED IN CORPORATION WARRANTY DEED INSTRUMENT NO. 96009187;

THENCE SOUTHEASTERLY ALONG THE SAID NORTHEASTERLY DEED LINE THE FOLLOWING 10 COURSES AND DISTANCES:

S 21°52'28" E, 267.87 FEET TO AN ANGLE POINT; THENCE S 30°43'41" E, 1457.94 FEET TO AN ANGLE POINT; THENCE S 40°27'08" E, 201.74 FEET TO AN ANGLE POINT; THENCE S 54°06'17" E, 336.24 FEET TO AN ANGLE POINT; THENCE S 43°50'53" E, 313.03 FEET TO AN ANGLE POINT; THENCE S 55°07'18" E, 664.68 FEET TO AN ANGLE POINT; THENCE S 42°27'08" E, 177.06 FEET TO AN ANGLE POINT; THENCE S 59°48'13" E, 280.11 FEET TO AN ANGLE POINT; THENCE S 71°50'27" E, 699.97 FEET TO AN ANGLE POINT; THENCE S 72°36'36" E, 428.65 FEET TO AN ANGLE POINT ON THE WEST 1/16 LINE OF SECTION 16; THENCE N 0°03'36" E ALONG THE WEST 1/16 LINE OF SECTION 16, 693.00 FEET TO THE SOUTHWEST 1/16 CORNER OF SAID SECTION 16, SAID CORNER BEING MARKED BY A 6-INCH DIAMETER STEEL FENCE CORNER POST;

THENCE S 89°05'05" W ALONG THE SOUTH 1/16 LINE OF SECTION 16, 43.11 FEET TO A POINT ON THE SOUTHWESTERLY DEED LINE DESCRIBED IN INSTRUMENT NO. 27678, SAID POINT BEING MARKED BY A SET 5/8-INCH DIAMETER REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075");

THENCE N 56°36'03" W ALONG SAID SOUTHWESTERLY DEED LINE, 1519.62 FEET TO A POINT ON THE WEST DEED DESCRIBED IN SAID INSTRUMENT NO. 27678, SAID POINT ALSO BEING ON THE WEST LINE OF SECTION 16, AND SAID POINT BEING MARKED BY A SET 5/8-INCH DIAMETER REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075";

THENCE N 0°11'17" E ALONG THE WEST LINE OF SAID SECTION 16, 179.29 FEET TO THE TRUE POINT OF BEGINNING.

Recording Requested By and  
When Recorded Return to:

\_\_\_\_\_

\_\_\_\_\_

SPACE ABOVE THIS LINE FOR  
RECORDER'S USE ONLY

**SPECIAL WARRANTY DEED**

THE URBAN RENEWAL AGENCY OF POCATELLO, also known as POCATELLO DEVELOPMENT AUTHORITY ("Grantor"), for valuable consideration paid by Solargise America LLC, a Delaware limited liability company ("Grantee"), which has a current address of \_\_\_\_\_, does hereby sell, transfer and convey unto Grantee, all of that certain real property located in \_\_\_\_\_ County, Idaho, and described on Exhibit "A" attached hereto and incorporated herein ("Property").

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof and all estate, right, title and interest in and to the Property.

To have and to hold, all and singular the Property together with its appurtenances unto Grantee and Grantee's successors and assigns forever, subject to any and all easements, restrictions, agreements and encumbrances of record or appearing on the land as of the date of this instrument.

Grantor makes no covenants or warranties with respect to title, express or implied, other than that previous to the date of this instrument, Grantor has not conveyed the same estate to any person other than Grantee and that such estate is at the time of the execution of this instrument free from encumbrances done, made or suffered by the Grantor, or any person claiming under Grantor, subject to any and all easements, restrictions, agreements and encumbrances of record or appearing on the land as of the date of this instrument.

1. The Property is conveyed subject to:
  - a. The Disposition and Development Agreement entered into by and between the Grantor and Grantee and dated \_\_\_\_\_, 20\_, as implemented by any subsequent implementation agreements between Grantor and Grantee (herein collectively referred to as the "DDA") and the Redevelopment Plan (as defined in the DDA); the full text of the Redevelopment Plan, the DDA and such implementation agreements are available for review at the offices of the Grantor and the City of Pocatello.

2. Prior to commencement of construction of the improvements as required in the DDA and notwithstanding any provisions in the DDA to the contrary, the Grantee shall not enter into, create, or suffer any transfer of title, assignment, lien, or other encumbrances without the written consent of the Grantor except in furtherance and financing of the development of the Property. On or following commencement of construction of the improvements as required by the DDA, the following provisions of this paragraph shall apply.

Prior to the recordation by the Grantor of a Certificate of Completion of construction as provided in the DDA, the Grantee shall not, except as permitted by the DDA, assign or attempt to assign or lease the whole or any part of the Property (or any portion thereof) or of the improvements to be constructed thereon without the prior written approval of the Grantor. This prohibition shall not be applicable to a transfer or transfers to any entity or entities owned or controlled by the Grantee transfer permitted by the DDA. This prohibition shall not apply to any of such Property (or any portion thereof) subsequent to the recordation of the Certificate of Completion with respect to the construction of the improvements thereon or to a sale of any such Property (or any portion thereof) at foreclosure (or to a conveyance thereof in lieu of a foreclosure) pursuant to a foreclosure thereof by a lender approved by the Grantor under the DDA. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of such property or to prohibit or restrict the leasing or selling of any part or parts thereof or of any improvements constructed thereon with respect to which a Certificate of Completion has been issued by the Grantor.

3. The Grantee covenants by and for itself, its heirs, executors, administrators, assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property; nor shall the Grantee itself, or any person claiming under or through it 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 in the Property.
4. No violation or breach of the covenants, conditions restrictions, provisions, or limitations contained in this Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust, or other financing or security instrument permitted by the DDA; provided, however, any successor of the Grantee to the Property shall be bound by such remaining covenants, conditions, restrictions, limitations, and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale, or otherwise.
5. Except as otherwise provided, the covenants contained in paragraph 2 of this Deed shall remain in effect for the term of the Redevelopment Plan. The covenants contained in

paragraphs 2, 3, 4, and 5 of this Deed shall be binding for the benefit of the Grantor, its successors and assigns, and any successor in interest to the Property, or any part thereof, and such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The Grantor and such aforementioned parties, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants contained in this Deed shall be for the benefit of and shall be enforceable only by the Grantor, its successors, and such aforementioned parties. Notwithstanding the foregoing, if Grantee or any subsequent owner of any portion of the Property conveys any portion of the Property, such owner shall, upon the conveyance, be released and discharged from all of its obligations in connection with the portion of the Property conveyed by it arising under this Deed after the conveyance but shall remain liable for all obligations in connection with the portion of the Property so conveyed arising under this Deed prior to the conveyance. The new owner of any such portion of the Property shall be liable for all obligations arising under this Deed with respect to such portion of the Property after the conveyance.

6. In the event of any express conflict between this Deed and the DDA, the provisions of this Deed shall control.
7. Any amendments to the Redevelopment Plan which change the uses or development permitted on the Property as proposed in the DDA or otherwise change the restrictions or controls that apply to the Property or otherwise affect the grantee's obligations or rights with respect to the Property shall require the written consent of the Grantee. Amendments to the Redevelopment Plan applying to other property in the Project Area shall not require the consent of the Grantee.

[Signature Pages Follow]



IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized.

**GRANTOR:**

POCATELLO DEVELOPMENT AUTHORITY

By \_\_\_\_\_

Chad Carr

Its Vice-Chair

Date: \_\_\_\_\_

The provisions of this Deed are hereby approved and accepted:

**GRANTEE:**

SOLARGISE AMERICA LLC, a Delaware limited liability company

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

ACKNOWLEDGEMENTS

STATE OF IDAHO )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ known or identified to me to be the Chair of The Urban Renewal Agency of the City of Pocatello, also known as the Pocatello Development Authority, the entity that executed the within instrument or the person who executed the instrument on behalf of said entity, and acknowledged to me that such entity executed the same.

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

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF NEW YORK )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ respectively, of Solargise America LLC, a Delaware limited liability, the entity that executed the within instrument or the person who executed the instrument on behalf of said entity, and acknowledged to me that such entity executed the same.

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

\_\_\_\_\_  
Notary Public for New York  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

**PROPERTY DESCRIPTION EXHIBIT "A"**

LEGAL DESCRIPTION:

PARCEL 1:

A PARCEL OF LAND LOCATED IN THE EAST ½ OF SECTION 17, AND IN THE WEST ½ OF THE WEST ½ OF SECTION 16, T 6 S, R 34 E, 8.M., BANNOCK COUNTY, IDAHO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS (ALL ANGLE POINTS BEING MARKED BY A ½-INCH DIAMETER REBAR WITH A YELLOW PLASTIC CAP STAMPED "PE/LS 4440", UNLESS OTHERWISE NOTED):

COMMENCING AT THE WEST ¼ CORNER OF SAID SECTION 16, SAID CORNER BEING MARKED BY A FOUND 5/8-INCH DIAMETER REBAR WITH NO MARKINGS, SAID REBAR BEING REFERENCED BY A BANNOCK COUNTY BRASS CAP MONUMENT 25 FEET EAST OF THE CORNER;

THENCE S 0°11'07" W ALONG THE WEST LINE OF SECTION 16, 280.55 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE OREGON SHORT LINE RAILROAD (NOW OPERATING AS THE UNION PACIFIC RAILROAD), SAID POINT BEING 50 FEET DISTANT, MEASURED AT RIGHT ANGLES, FROM THE CENTERLINE OF THE NO. 1 MAINLINE TRACK (FORMERLY THE WEST BOUND MAINLINE), AND SAID POINT BEING MARKED BY A SET 5/8-INCH REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075", SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE N 56°35'03" W ALONG THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE OREGON SHORT LINE RAILROAD, 2557.86 FEET TO AN ANGLE POINT ON THE NORTHEASTERLY DEED LINE DESCRIBED IN CORPORATION WARRANTY DEED INSTRUMENT NO. 96009187;

THENCE SOUTHEASTERLY ALONG THE SAID NORTHEASTERLY DEED LINE THE FOLLOWING 10 COURSES AND DISTANCES:

S 21°52'28" E, 267.87 FEET TO AN ANGLE POINT; THENCE S 30°43'41" E, 1457.94 FEET TO AN ANGLE POINT; THENCE S 40°27'08" E, 201.74 FEET TO AN ANGLE POINT; THENCE S 54°05'17" E, 336.24 FEET TO AN ANGLE POINT; THENCE S 43°50'53" E, 313.03 FEET TO AN ANGLE POINT; THENCE S 55°07'18" E, 664.68 FEET TO AN ANGLE POINT; THENCE S 42°27'08" E, 177.06 FEET TO AN ANGLE POINT; THENCE S 59°48'13" E, 280.11 FEET TO AN ANGLE POINT; THENCE S 71°50'27" E, 699.97 FEET TO AN ANGLE POINT; THENCE S 72°36'36" E, 428.65 FEET TO AN ANGLE POINT ON THE WEST 1/16 LINE OF SECTION 16; THENCE N 0°03'36" E ALONG THE WEST 1/16 LINE OF SECTION 16, 693.00 FEET TO THE SOUTHWEST 1/16 CORNER OF SAID SECTION 16, SAID CORNER BEING MARKED BY A 6-INCH DIAMETER STEEL FENCE CORNER POST;

THENCE S 89°05'05" W ALONG THE SOUTH 1/16 LINE OF SECTION 16, 43.11 FEET TO A POINT ON THE SOUTHWESTERLY DEED LINE DESCRIBED IN INSTRUMENT NO. 27678, SAID POINT BEING MARKED BY A SET 5/8-INCH DIAMETER REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075");

THENCE N 56°36'03" W ALONG SAID SOUTHWESTERLY DEED LINE, 1519.62 FEET TO A POINT ON THE WEST DEED DESCRIBED IN SAID INSTRUMENT NO. 27678, SAID POINT ALSO BEING ON THE WEST LINE OF SECTION 16, AND SAID POINT BEING MARKED BY A SET 5/8-INCH DIAMETER REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075");

THENCE N 0°11'17" E ALONG THE WEST LINE OF SAID SECTION 16, 179.29 FEET TO THE TRUE POINT OF BEGINNING.

Attachment 4 Acknowledgement of Termination of Lease and Grant of Irrevocable License

**ACKNOWLEDGEMENT OF TERMINATION OF LEASE AND GRANT OF IRREVOCABLE LICENSE**

This ACKNOWLEDGEMENT OF TERMINATION OF LEASE AND GRANT OF IRREVOCABLE LICENSE ("Agreement") is entered into between THE URBAN RENEWAL AGENCY OF POCATELLO, IDAHO, also known as the POCATELLO DEVELOPMENT AGENCY ("Licensor"), and SOLARGISE AMERICA LLC, a Delaware limited liability company qualified to do business in Idaho ("Licensee"), individually referred to as a "Party" and collectively referred to as the "Parties." The Parties agree as follows:

**RECITALS:**

- A. Licensor is the owner of that certain parcel of real property located at 1 Hoku Way, Pocatello, Idaho and depicted on attached **Exhibit A ("Property")**.
- B. Licensee is, pursuant to the Assignment of Rights dated August, 2018, the former tenant of the Property pursuant to that certain Lease Agreement between the City of Pocatello and JH Kelly, LLC, which was subsequently assigned to Licensor as landlord and Licensee as tenant, and subsequently amended (the "**Lease**").
- C. The Parties acknowledge and agree that the Lease is terminated and of no further force and effect, subject to this Agreement.
- D. Licensee desires to obtain an exclusive and irrevocable license (the "**License**") to access the Property to remove any equipment, appurtenances, furnishings and fixtures.
- E. Licensor disclaims any interest in the appurtenances, furnishings, equipment, and fixtures on the Property (the "**Improvements**"), subject to the terms of this Agreement.

This grant is made on the following terms:

1. **Exclusive Grant; Authorized Uses By Licensee:** Licensor grants to Licensee under the License the exclusive and irrevocable right to access the Property to remove the Improvements. No third party shall have the right to use the Property during the Term. Provided, Licensor may enter the Property and authorize third parties to enter the Property for purposes of assessing compliance with this Agreement and for purposes related to the marketing and sale of the Property with reasonable prior notice. Licensee's use of the License granted herein shall be solely for the removal of the Improvements on the Property that Licensee acquired from JH Kelly, which are listed on **Exhibit B**, attached hereto. Licensee shall be solely responsible for the security and safety of the Improvements.

2. Hazardous Materials Prohibited on the Property. Licensee shall not use or permit the Property to be used, whether directly or through contractors, agents or tenants, for the generating, transporting, treating, storage, manufacture, emission of, or disposal of any dangerous, toxic or hazardous pollutants, chemicals, wastes or substances as defined in any federal, state or local environmental laws, statutes, regulations, requirements and ordinances, hereinafter referred to as "Hazardous Materials," except such non-toxic items used in the ordinary course or business, including alcohol and cleaning solutions.

3. Restoration on Expiration of Term: Upon the expiration of the Term of this License the Property shall be cleared and graded by Licensee to the level of the adjacent property at Licensee's sole cost and expense. All improvements shall be removed prior to the expiration of the Term, including all above ground and subsurface components and improvements. Any improvements, structures, assets, personal property, or fixtures remaining on the Property at the end of the Term of this License shall become the property of Licensor. Provided, Licensee shall have no obligations under this section if Licensee acquires the Licensed Property during the Term or Extension Term, defined below.

4. Safety Responsibilities. Licensee assumes all risk and responsibility with respect to the use of the Licensed Property during the Term of the License, defined below. During the Term, Licensee shall take all reasonable and necessary precautions to secure the Licensed Property.

5. Compliance with Laws. Licensee's use of the Property shall at all times comply with all applicable federal, state, county, and City of Pocatello laws, ordinances, rules, and regulations, including but not limited to all applicable environmental laws, ordinances, rules, or regulations. Licensee may not, under any circumstances, discharge pollutants of any kind into the Portneuf River or its tributaries in connection with Licensee's use of the Property.

6. Use by Others Under Licensee: Licensee's right to use the Licensed Property during the term of the License shall extend to use by Licensee's employees, contractors and agents.

7. Term: This License shall be for a term commencing on the date of Licensee's and Licensor's execution of this Agreement (last date signed) (the "Effective Date") and continuing for a period of two (2) years ("Term"); provided, however, that Licensee, upon written notice, shall be entitled to a six (6) month extension of the Term if Licensee determines is reasonably necessary, in its commercially reasonable discretion, to remove the Improvements ("Extension Term"). During the Term, Licensor may not terminate this Agreement unless Licensee is in default of the terms of this Agreement.

Provided, if Licensee acquires the Licensed Property pursuant to that certain Disposition and Development Agreement between the Parties (the "DDA"), this License shall terminate. Provided further, sections 9 and 11 shall survive termination.

8. **License Fee:** Licensee shall pay Licensor an annual license fee of Thirty Thousand Dollars (\$30,000.00), payable annually in advance on August 30. Licensee shall pay Licensor a fee of Thirty Thousand Dollars (\$30,000.00) per month during any Extension Term, payable in advance.

9. **Security Deposit:** Licensee shall be responsible to provide a security deposit to Licensor in the amount of Two Hundred Thousand Dollars (\$200,000.00) ("Security Deposit") pursuant to the following conditions:

- (a) in the event that Licensor selects Licensee to acquire the Property pursuant to the terms of the DDA and Licensee fails to consummate the sale of the Property, then, within ten (10) business days of the Outside Date (as defined in the DDA), Licensee shall pay Licensor the Security Deposit in cash;
- (b) in the event that Licensor does not select Licensee to acquire the Property for any reason, or Licensor otherwise fails to consummate the sale of the Property following selection of Licensee, then the security deposit paid pursuant to the DDA shall be automatically credited by Licensor to satisfy Licensee's obligation to pay the Security Deposit.
- (c) in the event that Licensor and Licensee consummate the sale of the Property, this License Agreement shall terminate pursuant to Section 6 above and no Security Deposit shall be due.

The purpose of the Security Deposit is to secure Licensee's performance under this Agreement. The Security Deposit shall not bear interest and may not be applied against any License fees. In the event that Licensor uses the Security Deposit to pay any of Licensee's obligations under this Agreement, Licensee agrees to immediately replenish the amount spent so as to return the Security Deposit to its original amount. Upon expiration of the Term of this Agreement, and only in the event Licensee has fulfilled its obligations hereunder and vacated the Property as prescribed in Section 3 of this Agreement, Licensor agrees to return to Licensee its Security Deposit.

If Licensee fails to timely pay the Security Deposit, any Improvements, structures, assets, personal property, or fixtures remaining on the Property shall immediately and irrevocably become the property of Licensor and this Agreement shall be automatically terminated effective immediately if Licensee fails to pay Licensor within fourteen (14) days of notice of such failure to pay by Licensor to Licensee.

10. **Indemnification:** Licensee hereby agrees to indemnify, defend, and hold Licensor harmless from and against any and all claims for loss, injury, death, and damage (including but not limited to any environmental damage to the Property) caused by or arising out of the use of the Licensed Property by Licensee, its employees, contractors, and agents or otherwise arising under this Agreement, including without limitation, attorney's fees and costs that might be

incurred by Licensor in defending any such claims.

Licensee further agrees to indemnify Licensor for any claims arising out of or related to the Lease, including claims from any third parties claims a right to the Property pursuant to the Lease or any purported assignment of rights under the Lease.

Notwithstanding the foregoing, Licensee's indemnification obligations under this License shall only apply to the extent that any such claims do not arise out of Licensor's or Licensor's employees', contractors' or agent's gross negligence, willful misconduct, or fraud.

11. Insurance:

Licensee shall, or through its contractor shall, at its sole cost, obtain and maintain in force from and after the Closing insurance of the following types, with limits not less than those set forth below with respect to the Project, and with the following requirements:

Commercial General Liability Insurance (Occurrence Form) with a minimum combined single limit liability of \$2,000,000 each occurrence for bodily injury and property damage; with a minimum limit of liability of \$2,000,000 each person for personal and advertising injury liability. Such policy shall have an aggregate products/completed operations liability limit of not less than \$2,000,000 and a general aggregate limit of not less than \$2,000,000. The products/completed operations liability coverage shall be maintained in full force and effect for not less than three (3) years following completion of the Project issuance of a certificate of occupancy, whichever is later. The policy shall be endorsed to name Licensor, including its respective affiliates, the financing parties and the respective officers, directors, and employees of each as additional insureds. All policies shall be occurrence form policies and not a claims- made policy.

Workers' Compensation Insurance, including occupational illness or disease coverage, in accordance with the laws of the nation, state, territory, or province having jurisdiction over Licensee's employees, and Employer's Liability Insurance with minimum limits as required by law. Licensee shall not utilize occupational accident or health insurance policies, or the equivalent, in lieu of mandatory Workers' Compensation Insurance or otherwise attempt to opt out of the statutory Workers' Compensation system.

Automobile Liability Insurance covering use of all, non-owned, and hired automobiles with a minimum combined single limit of liability for bodily injury and property damage of \$1,000,000 per occurrence.

Waiver of Subrogation. All insurance provided by Licensee under this Agreement shall include a waiver of subrogation by the insurers in favor of Licensor. Licensee hereby releases Licensor, including its respective affiliates, directors, and employees, for losses or claims for bodily injury, property damage, or other insured claims arising out of Licensee's performance under this Agreement or construction of the Project.

Certificates of Insurance. Licensee (or Licensee's contractor(s), as applicable) shall provide certificates of insurance satisfactory in form to Licensor (ACORD form or equivalent) to Licensor evidencing that the insurance required above is in force, that, to the extent commercially reasonable, not less than thirty (30) days' written notice will be given to Licensor prior to any cancellation or restrictive modification of the policies, and that the waivers of subrogation are in force. Licensee (or Licensee's contractor(s), as applicable) shall also provide, with its certificate of insurance, executed copies of the additional insured endorsements and dedicated limits endorsements required in this Agreement. At Licensor's request, Licensee shall provide a certified copy of each insurance policy required under this Agreement.

All policies of insurance required by this Agreement shall be issued by insurance companies with a financial rating of A or better (or equivalent ratings if such are changed) as rated in the most current available "Best's Insurance Reports" and qualified to do business in the State of Idaho.

The foregoing insurance coverage shall be primary and non-contributing with respect to any other insurance or self-insurance that may be maintained by Licensor. Licensee's General Liability Insurance policy shall contain a Cross-Liability or Severability of Interest clause. The fact that Licensee has obtained the insurance required in this Section shall in no manner lessen or affect Licensee's other obligations or liabilities set forth in the Agreement.

12. **Waiver:** In consideration of the terms and conditions of this Agreement, Licensee expressly waives and releases any and all claims against Licensor, its officers, directors, shareholders, members, employees, agents, and contractors arising out of any accident, illness, injury, damage or other loss or harm to or incurred or suffered by the Licensee or his/her/their property arising out of Licensee's exercise of rights under this Agreement or the Lease, except to the extent that any such losses or harms arise out of the gross negligence, willful misconduct, or fraud Licensor, its officers, directors, shareholders, members, employees, agents or contractors.

13. **Binding Effect:** This Agreement, and the covenants and agreements herein contained, shall, during the entire term hereof, be binding upon and inure to the benefit of Licensee and Licensor, respectively, and their successors and assigns.

This Agreement and the License hereunder shall be binding on subsequent owners of the Property and Licensor shall provide notice of this License to any purchasers of the Property.

14. **No Recordation:** This Agreement shall not be recorded.

15. **Attorney Fees:** Should any of the parties to this Agreement be required to retain legal counsel to enforce any of the terms and/or conditions of this Agreement, the prevailing party shall be entitled to reasonable attorney fees and costs.

16. **Recitals:** The Recitals form a part of this Agreement and are fully incorporated herein by this reference.



17. Effective Date: This Agreement shall be effective as of the date executed by the Parties, last date signed.

**LICENSOR**

POCATELLO DEVELOPMENT AUTHORITY

By: \_\_\_\_\_

Chad Carr

Vice-Chair

\_\_\_\_\_, 2018

**LICENSEE:**

SOLARGISE AMERICA LLC

a Delaware limited liability company

By \_\_\_\_\_

\_\_\_\_\_  
It's Manager

\_\_\_\_\_, 2018

STATE OF IDAHO     )  
                                  ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, \_\_\_\_\_, the undersigned notary public in and for said county and state, personally appeared Chad Carr, known or identified to me to be the Vice-Chair of Pocatello Development Authority, the public body, corporate and politic, 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.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
Commission Expires \_\_\_\_\_

STATE OF NEW YORK )

County of \_\_\_\_\_ ) ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, \_\_\_\_\_, the undersigned notary public in and for said county and state, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of Solargise America LLC, a Delaware limited liability company, "Licensee" herein, and acknowledged to me that he executed the within instrument on behalf of such Licensee 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.

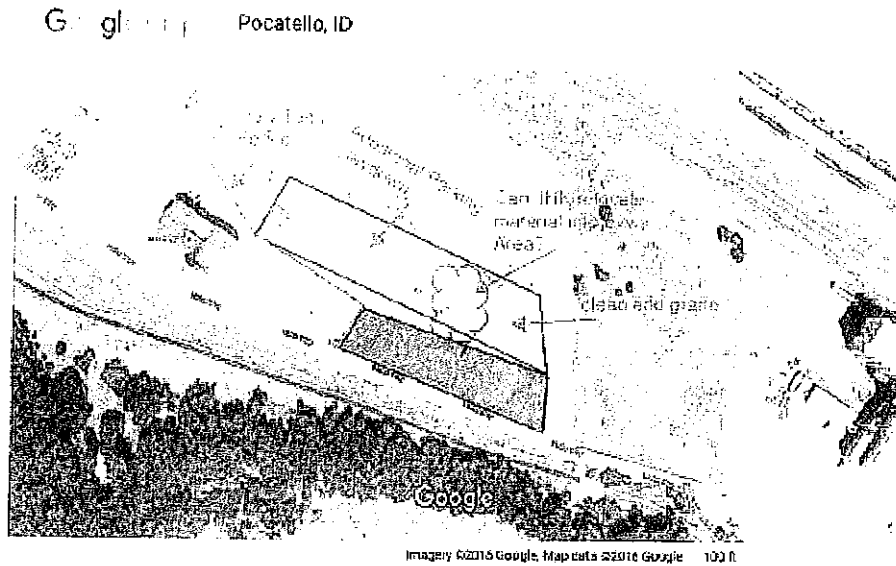
\_\_\_\_\_  
Notary Public for New York

Residing at \_\_\_\_\_

Commission Expires \_\_\_\_\_

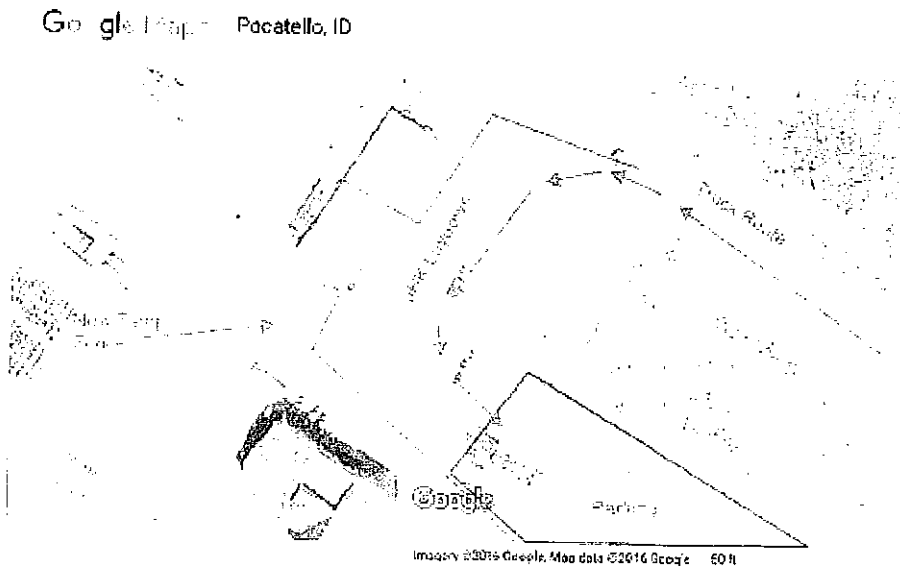
# Exhibit A

## Property



3/16/2015

Pocatello, ID - Google Maps



LEGAL DESCRIPTION:

PARCEL 1:

A PARCEL OF LAND LOCATED IN THE EAST 1/2 OF SECTION 17, AND IN THE WEST 1/2 OF THE WEST 1/2 OF SECTION 16, T 6 S, R 34 E, S.M., BANNOCK COUNTY, IDAHO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS (ALL ANGLE POINTS BEING MARKED BY A 1/2-INCH DIAMETER REBAR WITH A YELLOW PLASTIC CAP STAMPED "PE/LS 4440", UNLESS OTHERWISE NOTED):

COMMENCING AT THE WEST 1/4 CORNER OF SAID SECTION 16, SAID CORNER BEING MARKED BY A FOUND 5/8-INCH DIAMETER REBAR WITH NO MARKINGS, SAID REBAR BEING REFERENCED BY A BANNOCK COUNTY BRASS CAP MONUMENT 25 FEET EAST OF THE CORNER;

THENCE S 0°11'07" W ALONG THE WEST LINE OF SECTION 16, 280.55 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE OREGON SHORT LINE RAILROAD (NOW OPERATING AS THE UNION PACIFIC RAILROAD), SAID POINT BEING 50 FEET DISTANT, MEASURED AT RIGHT ANGLES, FROM THE CENTERLINE OF THE NO. 1 MAINLINE TRACK (FORMERLY THE WEST BOUND MAINLINE), AND SAID POINT BEING MARKED BY A SET 5/8-INCH REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075", SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE N 56°36'03" W ALONG THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE OREGON SHORT LINE RAILROAD, 2557.86 FEET TO AN ANGLE POINT ON THE NORTHEASTERLY DEED LINE DESCRIBED IN CORPORATION WARRANTY DEED INSTRUMENT NO. 96009187;

THENCE SOUTHEASTERLY ALONG THE SAID NORTHEASTERLY DEED LINE THE FOLLOWING 10 COURSES AND DISTANCES:

S 21°52'28" E, 267.87 FEET TO AN ANGLE POINT; THENCE S 30°43'41" E, 1457.94 FEET TO AN ANGLE POINT; THENCE S 40°27'08" E, 201.74 FEET TO AN ANGLE POINT; THENCE S 54°06'17" E, 336.24 FEET TO AN ANGLE POINT; THENCE S 43°50'53" E, 313.03 FEET TO AN ANGLE POINT; THENCE S 55°07'18" E, 664.68 FEET TO AN ANGLE POINT; THENCE S 42°27'06" E, 177.06 FEET TO AN ANGLE POINT; THENCE S 59°48'13" E, 280.11 FEET TO AN ANGLE POINT; THENCE S 71°50'27" E, 699.97 FEET TO AN ANGLE POINT; THENCE S 72°36'36" E, 428.65 FEET TO AN ANGLE POINT ON THE WEST 1/16 LINE OF SECTION 16; THENCE N 0°03'36" E ALONG THE WEST 1/16 LINE OF SECTION 16, 653.00 FEET TO THE SOUTHWEST 1/16 CORNER OF SAID SECTION 16, SAID CORNER BEING MARKED BY A 6-INCH DIAMETER STEEL FENCE CORNER POST;

THENCE S 89°05'05" W ALONG THE SOUTH 1/16 LINE OF SECTION 16, 43.11 FEET TO A POINT ON THE SOUTHWESTERLY DEED LINE DESCRIBED IN INSTRUMENT NO. 27678, SAID POINT BEING MARKED BY A SET 5/8-INCH DIAMETER REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075";

THENCE N 56°36'03" W ALONG SAID SOUTHWESTERLY DEED LINE, 1519.62 FEET TO A POINT ON THE WEST DEED DESCRIBED IN SAID INSTRUMENT NO. 27678, SAID POINT ALSO BEING ON THE WEST LINE OF SECTION 16, AND SAID POINT BEING MARKED BY A SET 5/8-INCH DIAMETER REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075";

THENCE N 0°11'17" E ALONG THE WEST LINE OF SAID SECTION 16, 179.29 FEET TO THE TRUE POINT OF BEGINNING. ↓

## Exhibit B

### Improvements

#### Real Property

- All structures above Ground that are onsite at the Plant, including without limitation, the following:
  - **Administration Building:** The administrative building is an estimated 44,545 square feet plan. The building is a four-story, steel-braced frame and clad structure with a double-pitch roof. The building is designed as a climate controlled space and includes a number of internal enclosures/spaces for offices, conference rooms, lunch rooms, restrooms, apartments and related spaces.
  - **Control / Maintenance Building:** The control maintenance building is an approximately 60'-0" x 180'-0" plan with an eave height of approximately 15'-3" over the control room area and portion of the warehouse and 23'-9" over the remaining portion of the warehouse. The building is a single story, steel braced frame and clad pre-engineered structure (Butler) with a double-pitch roof. The control room area is a climate controlled space consisting primarily of a control room, computer room, locker room, restroom, offices and a kitchen/meeting room,
  - **Post Processing Building:** The post processing building is an approximately 308'-0" x plan with an additional approximately 53'-0" x 68'-0" truck loading dock plan area on the southwest corner. The majority of the building is approximately 21'-0" high, with portions extending up to approximately 30'-0". The building is a single story, steel braced frame and clad structure with a membrane roof. The building was designed to be a climate controlled space to include a number of internal enclosures/spaces including rod sizing/breaking room, sample preparation room, slim rod/analytic puller room, laboratories, break/lunch rooms, offices and restrooms. The building incorporates cleanroom enclosures with associated HVAC.
  - **Reactor Building including Chiller Building:** The reactor building is a multi-space enclosure. The building is a three-story, steel braced frame and clad structure with a double-pitch roof. The building was designed to be a climate controlled space and houses the reactors, reactor support electrical equipment, gas consoles, and wash facilities, and includes a number of internal enclosures/spaces for offices.
  - **Waste Treatment Building:** The wastewater treatment building is an approximately 100'-0" x 62'-0" plan with an eave height of approximately 34'-0". The building is a single story, steel braced frame and clad pre-engineered structure (Butler) with a double-pitch roof. The building includes heating and ventilation and consists primarily of an open plan space with one framed interior enclosure.
  - Compressor Building

- All manuals, paperwork, drawings regarding equipment, building and structure both onsite at the Facility and in the electronic data room to which Buyer has been given access.
- Equipment as detailed in Hoku #3 Auction Catalog lot #2- 399 including A Lots.

Personal Property

Property	Description of Personal Property	Qty
449	UNUSED ABB POWER DISTRIBUTION CENTER. WITH SWITCHGEAR. 3000 AMPS. 4.16 KV. WITH DIRECTIONAL OVERCURRENT RELAYS. UPS SYSTEM, TEMPERATURE CONTROLLED STEEL ENCLOSURE, STRUCTURAL STEEL FRAME. BUILT 2003.	1
460	UNUSED ABB POWER DISTRIBUTION CENTER. WITH 15 KV SWITCHGEAR, 3000 AMPS. MOTOR CONTROL CENTER, COMMUNICATION PROCESSORS, FEEDER RELAYS. UPS SYSTEM, TEMPERATURE CONTROLLED. ELEVATED ON STEEL STRUCTURE AND MEZZANINE. BUILT 2012.	1
468	UNUSED ASS MAXSG POWER DISTRIBUTION CENTER TYPE NEMA 1A. WITH 0.48 KV SWITCHGEAR. 4000 AMPS, 85 KA RMS. 480 VOLTS. UNITIZED IN TEMPERATURE CONTROLLED MODULE, STEEL CONSTRUCTION.	1
452	UNUSED ABB POWER DISTRIBUTION CENTER. WITH SWITCHGEAR, 3000 AMPS, 480 VOLTS. WITH DIRECTIONAL OVERCURRENT RELAYS, UPS SYSTEM, TEMPERATURE CONTROLLED STEEL ENCLOSURE, STRUCTURAL STEEL FRAME. BUILT 2009.	1
467	UNUSED PACIFIC SYSTEM ELECTRIC SWITCHGEAR & MOTOR CONTROL CENTER, ABB SWITCHGEAR, 480V INCOMING, TEMPERATURE CONTROLLED, ENCLOSURE, METAL ENCLOSED INTERRUPTER SWITCH. QUALITROL TEMPERATURE MONITOR, SCHWEITZER ENGINEERING LABORATORIES DIRECTIONAL OVERCURRENT RELAYS, ABB TYPE SACE E6 MCC DRIVES, ACCESS DOORWAYS & STAIRWAYS.	1
453	Remote Instrumentation Enclosure, Elevated Galvanized Steel Structure, Stairway, Handrails, Temperature Controlled, (8) Honeywell Instrumentation Cabinet, uninterruptible Power Supply, Remote Internet Uplink,	1
461	Remote Instrumentation Enclosure, Elevated Galvanized Steel Structure, Stairway, Handrails, Temperature Controlled, (4) Honeywell Instrumentation Cabinet, Uninterruptable Power Supply, Remote Internet Uplink.	1
462	Remote instrumentation Enclosure, Elevated Galvanized Steel Structure, Stairway, Handrails, Temperature Controlled, (5) Honeywell Instrumentation Cabinet, Uninterruptable Power Supply, Remote Internet Uplink.	1

Property	Description of Personal Property	Qty
21	UNUSED GERHARD RAUH TCS APPROXIMATELY 2,700 GALLON VERTICAL STAINLESS STEEL INJECTION TANK. 5' DIAMETER X 18' STRAIGHT SIDE. RATED 189 PSI @ 302°F. INSULATED, BUILT 2008	1
71	UNUSED 547 SQFT G & R GERHARD AND RAUH GMBH STAINLESS STEEL SHELL AND TUBE, U-TUBE TYPE HEAT EXCHANGED. 316L STAINLESS STEEL SHELL BUILT FOR 94PSI AT 356 DEGREES FAHRENHEIT. 316L STAINLESS STEEL TUBES BUILT FOR 94PSI AT 572 DEGREES FAHRENHEIT, BUILT 2008.	1
72	UNUSED 547 SQFT G & R GERHARD AND RAUH GMBH STAINLESS STEEL SHELL AND TUBE, U-TUBE TYPE HEAT EXCHANGER. 316L STAINLESS STEEL SHELL BUILT FOR 94PSI AT 356 DEGREES FAHRENHEIT. 316L STAINLESS STEEL TUBES BUILT FOR 94PSI AT 572 DEGREES FAHRENHEIT. BUILT 2008.	1
73	UNUSED 547 SQFT G & R GERHARD AND RAUH GMBH STAINLESS STEEL SHELL AND TUBE, U-TUQE TYPE HEAT EXCHANGER. 316L STAINLESS STEEL SHELL BUILT FOR 94PSI AT 356 DEGREES FAHRENHEIT. 316L. STAINLESS STEEL TUBES BUILT FOR 94PSI AT 572 DEGREES FAHRENHEIT. BUILT 2008.	1
74	UNUSED 547 SQFT G & R GERHARD AND RAUH GMBH STAINLESS STEEL SHELL AND TUBE, U-TUBE TYPE HEAT EXCHANGER. 316L STAINLESS STEEL SHELL BUILT FOR 94PSI AT 355 DEGREES FAHRENHEIT. 316L STAINLESS STEEL TUBES BUILT FOR 94PSI AT 572 DEGREES FAHRENHEIT. BUILT 2008.	
173	UNUSED OHMSTEDE 1717.3 SQUARE FOOT HORIZONTAL CARBON STEEL SHELL AND TUBE HEAT EXCHANGER. 36" DIAMETER X 12' STRAIGHT SIDE. SHELL RATED 280 PSI @ 600°F. TUBES RATED 247 PSI @ 450°F. INSULATED. ON CONCRETE PIERS.	1
176A	UNUSED HARRIS THERMAL TRANSFER PRODUCTS APPROXIMATELY 8414 SQUARE FOOT HORIZONTAL SHELL AND TUBE HEAT EXCHANGER. CARBON STEEL SHELL RATED 150 PSIG @ 170°F. 316L STAINLESS STEEL TUBES RATED 170 PSIG @ 275°F. 316L STAINLESS STEEL HEADS. BUILT 2010.	
17GB	UNUSED HARRIS THERMAL TRANSFER PRODUCTS APPROXIMATELY 8414 SQUARE FOOT HORIZONTAL SHELL AND TUBE HEAT EXCHANGER. CARBON STEEL SHELL RATED 150 PSIG @ 170°F. 316L STAINLESS STEEL TUBES RATED 170 PSIG @ 275°F. 316L STAINLESS STEEL HEADS. BUILT 2010.	1
178	UNUSED SMITHCO ENGINEERING AIR COOLER/FIN FAN HEAT EXCHANGER, 9,441 BARE SQ.FT., SURFACE PER UNIT - FINNED TUBE 199,900 SQ.FT., MODEL 3 F42-140-3, CARBON STEEL 96,600,000 BTU PER HOUR, WATER INPUT AND OUTPUT RATED 4,800,000 LBS PER HOUR. CONSISTS OF (3) BAYS, EACH BUNDLE SIZE 14' WIDE X	1



Property	Description of Personal Property	Qty
	42' LONG, SINGLE PASS. (286) 1" DIAMETER X 42' LONG CARBON STEEL TUBES IN EACH BUNDLE RATED 185 PSI AT -30 TO 345 DEGREES F. EACH BAY HAS (3) 11' DIAMETER, 6-BLADE FANS, DRIVEN BY A 30 HP, 3/60/460 VOLT, 1750 RPM MOTOR, WITH REDUCER, 7.12:1 RATIO.MOUNTED ON A GALVANIZED FRAME.	
179	UNUSED SMITHCO ENGINEERING AIR COOLER/FIN FAN HEAT EXCHANGER, 9,441 BARE SQ.FT., SURFACE PER UNIT - FINNED TUBE 199,900 SQ.FT., MODEL 3 F42-140-3, CARBON STEEL. 96,600,000 BTU PER HOUR, WATER INPUT AND OUTPUT RATED 4,800,000 LBS PER HOUR. CONSISTS OF (3) BAYS, EACH BUNDLE SIZE 14' WIDE X42' LONG, SINGLE PASS. (286) 1" DIAMETER X 42' LONG CARBON STEEL TUBES IN EACH BUNDLE RATED 185 PSI AT -30 TO 345 DEGREES F. EACH BAY HAS (3) 11' DIAMETER, 6-BLADE FANS, DRIVEN BY A30 HP, 3/50/460 VOLT, 1750 RPM MOTOR, WITH REDUCER, 7.12:1 RATIO.MOUNTED ON A GALVANIZED FRAME.	1
191	UNUSED PERRY PRODUCTS SINGLE PASS SHELL AND TUBE HEAT EXCHANGER, 4,143 SQ.FT., MODEL FTS-48-4143, VERTICAL. CARBON STEEL SHELL RATED 183 PSI/FULL VACUUM AT -20 TO 300 DEGREES F. (2110) 3/4" DIAMETER X 10' LONG SEAMLESS CARBON STEEL TUBES RATED 150 PSI/FULL VACUUM AT -20 TO 300 DEGREES F. OPENINGS SHELL: (2) 8" DIAMETER, TUBES: (2) 10" DIAMETER, CARBON STEEL DOUBLE TUBESHEET DESIGN, CARBON STEEL HEADS.	1
192	UNUSED STEELTEK 1GG SQUARE FOOT HORIZONTAL 304L STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 12" DIAMETER X 15' LONG. RATED 150 PSI @ 400°F/-50°F SHELL AND TUBE SIDES. INSULATED. BUILT 2009.	1
193	UNUSED STEELTEK 1225 SQUARE FOOT HORIZONTAL 304L STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. SHELL RATED 324 PSI @ 300°F, TUBES RATED 262 PSI @ 300' F. BUILT 2009.	1
194	UNUSED STEELTEK APPROXIMATELY 1355 SQUARE FOOT HORIZONTAL 304L STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. SHELL RATED 356F/V PSI @ 400' F. TUBES RATED 317F/V PSI @ 400' F. BUILT 2009.	1
195	UNUSED STEELTEK 157 SQUARE FOOT U-TUBE HORIZONTAL 304L STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. TYPE BXU 15" DIAMETER X11' LONG. SHELL RATED 350F/V PSI @ 400°F/-50°F MAXIMUM WORKING PRESSURE. TUBES RATED 150F/V PSI @ 400°F/- 50°F. INSULATED. BUILT 2009.	
197	UNUSED PERRY 1753 SQUARE FOOT HORIZONTAL 304L STAINLESS STEEL U-TUBE SHELL AND TUBE HEAT EXCHANGER. SHELL RATED 350F/V PSI @ 150°F/-55°F. TUBES RATED 150F/V PSI @ 150°F/55°F. WITH FLANGED OUTLETS. INSULATED.	1

Property	Description of Personal Property	Qty
199	UNUSED STEELTEK 2311 SQUARE FOOT HORIZONTAL CARBON STEEL SHELL AND TUBE HEAT EXCHANGER. 26" DIAMETER X 25' LONG. SHELL RATED 312 PSI/FULL VACUUM @ 400°F, TUBES RATED 307 PSI/FULL VACUUM @ 400°F. INSTALLED ON CONCRETE FOOTING. BUILT 2009.	1
205	UNUSED 1231 SQUARE FOOT PERRY HORIZONTAL 304 STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 22" DIAMETER X 22' LONG. RATED 300 PSI @ 300°F/-50°F SHELL AND TUBE SIDES. INSULATED. BUILT 2009.	1
206	UNUSED 1231 SQUARE FOOT PERRY HORIZONTAL 304 STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 22" DIAMETER X 22' LONG. RATED 300 PSI @ 300°F/-50°F SHELL AND TUBE SIDES. INSULATED. BUILT 2009.	1
207	UNUSED 1231 SQUARE FOOT PERRY HORIZONTAL 304 STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 22" DIAMETER X 22' LONG. RATED 300 PSI @ 300°F/-50°F SHELL AND TUBE SIDES. INSULATED. BUILT 2009.	1
208	UNUSED 1231 SQUARE FOOT PERRY HORIZONTAL 304 STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 22" DIAMETER X 22' LONG. RATED 300 PSI @ 300°F/-50°F SHELL AND TUBE SIDES. INSULATED. BUILT 2009.	1
209	UNUSED 1231 SQUARE FOOT PERRY HORIZONTAL 304 STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 22" DIAMETER X 22' LONG. RATED 300 PSI @ 300°F/-50°F SHELL AND TUBE SIDES. INSULATED. BUILT 2009.	1
210	UNUSED STEELTEK U-TUBE HEAT EXCHANGER, APPROXIMATELY 253 SQ.FT., HORIZONTAL. CARBON STEEL SHELL RATED 550 PSI AT -20 TO 300 DEGREES F. (32) 3/4" DIAMETER X 20' LONG CARBON STEEL TUBES RATED 550 PSI AT -20 TO 300 DEGREES F. INSULATED, TWO-PASS. OPENINGS SHELL: (2) 2", TUBES: (2) 3". SADDLE MOUNTED.	1
234	UNUSED PERRY 17S3 SQUARE FOOT HORIZONTAL 304L STAINLESS STEEL U-TUBE SHELL AND TUBE HEAT EXCHANGER. 4' DIAMETER X 22' LONG. SHELL RATED 350 PSI @ 150°F/-55°F. TUBES RATED 212 PSI @ 150°F/55°F.	1
242	UNUSED STEELTEK 1355 SQUARE FOOT HORIZONTAL 304 STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. SHELL RATED 350 PSI @ 400°F/-50°F. TUBES RATED 300 PSI @ 400°F/-50°F. BUILT 2009.	1
243	UNUSED STEELTEK 3058 SQUARE FOOT 304L STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 60" DIAMETER X 20' LONG SHELL RATED 350 PSI @ 150°F/-55°F MAXIMUM WORKING PRESSURE. TUBES RATED 260 PSI @ 150°F/-55°F. INSULATED. BUILT 2009	1
246	UNUSED STEELTEK U-TUBE HEAT EXCHANGER, APPROXIMATELY	1

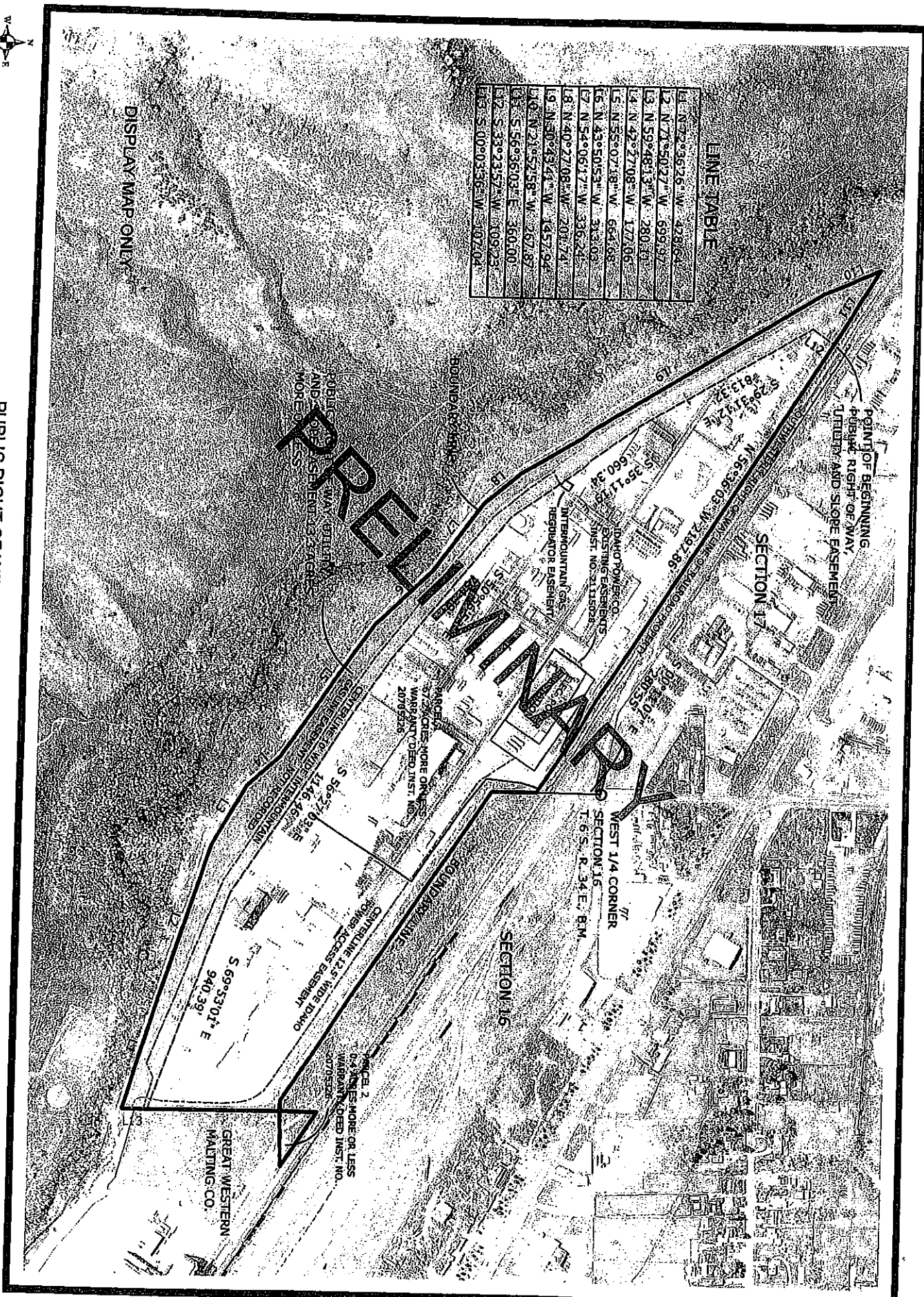
Property	Description of Personal Property	Qty
	2,311 SQ.FT., HORIZONTAL. CARBON STEEL SHELL RATED 312 PSI/FV AT -20 TO 400 DEGREES F. (302) 3/4" DIAMETER X 20' LONG CARBON STEEL TUBES RATED 307 PSI/FV AT -20 TO 400 DEGREES F. TWO-PASS. OPENINGS SHELL: (2) 12", TUBES: (2) 8". SADDLE MOUNTED.	
253	UNUSED PERRY 331 SQUARE FOOT CARBON STEEL SHELL AND TUBE HEAT EXCHANGER- 12" DIAMETER X 20' LONG. SHELL RATED 240 PSI @ 480'F/-20'F. TUBE RATED 340 PSI @480'F/-20'F.	1
254	UNUSED PERRY 1231 SQUARE FOOT STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. RATED 300 PSI @ 300' F/-50' F SHELL AND TUBE SIDES. INSULATED. BUILT2009.	1
266	UNUSED FABSCO APPROXIMATELY 3177 SQFT CARSON STEEL SHELL AND TUBE HEAT EXCHANGER. SHELL RATED 350 PSI @ 250'F/-30'F. TUBES RATED 150 PSI @ 200'F/-30'F.BUILT 2008.	1
317	UNUSED HARRIS THERMAL TRANSFER PRODUCTS APPROXIMATELY 2,500 GALLON STAINLESS STEEL STORAGE VESSEL. 6' DIAMETER X 12' STRAIGHT SIDE. WITH FLANGED OUTLETS. ON CARBON STEEL SKIRT. BUILT 2011.	1
318	UNUSED HARRIS THERMAL TRANSFER PRODUCTS APPROXIMATELY 740 GALLON STAINLESS STEEL STORAGE VESSEL. 4' 6" DIAMETER X 6' 6" STRAIGHT SIDE. WITH FLANGED OUTLETS. ON CARBON STEEL SKIRT. BUILT 2011.	1
418	UNUSED APPROXIMATELY 496 SQFT 304L STAINLESS STEEL STEELTEK SHELL AND TUBE HEAT EXCHANGER. RATED FOR 150PSI @ 250 DEGREES FAHRENHEIT SHELL SIDE AND TUBE SIDE. BUILT 2010.	1
459	UNUSED ABB POWER DISTRIBUTION CENTER. WITH SWITCHGEAR. 3000 AMPS. 480 VOLTS. WITH DIRECTIONAL OVERCURRENT RELAYS, UPS SYSTEM, TEMPERATURE CONTROLLED STEEL ENCLOSURE, STRUCTURAL STEEL FRAME. BUILT 2009	1
366	UNUSED SIEMENS 30 KVA TRANSFORMER. DRY TYPE. CLASS AA. 3 PHASE, 60 HZ	1
356a	UNUSED SIEMENS 30 KVA TRANSFORMER. DRY TYPE. CLASS AA. 3 PHASE, 60 HZ	1
425	UNUSED EATON 30 KVA TRANSFORMER. DRY TYPE, BUILT 2011	1
5000	100 gallon steel gas tank	1
5001	(2) 2' x 8' diameter steel water troughs	1 set of 2 pieces
	500 gallon steel gas tank	1
5003	Misc. (30) 2" steel piping	1 set of 30 pieces

**Attachment 5A**  
**Depiction and Description of Right of Way / Slope Easement**



**LINE TABLE**

1. N. 2° 36' 26" W. 428.64
2. N. 71° 50' 27" W. 699.87
3. N. 59° 48' 13" W. 280.17
4. N. 42° 27' 08" W. 127.06
5. N. 53° 07' 18" W. 664.68
6. N. 43° 50' 53" W. 318.08
7. N. 54° 06' 17" W. 336.24
8. N. 40° 27' 08" W. 201.74
9. N. 30° 25' 41" W. 1457.94
10. N. 21° 52' 58" W. 267.87
11. S. 56° 35' 03" E. 360.00
12. S. 39° 23' 57" W. 109.25
13. S. 09° 03' 38" W. 107.04



DISPLAY MAP ONLY

PUBLIC RIGHT OF WAY UTILITY AND SLOPE EASEMENT  
 LOCATED IN PARCEL 1 OF WARRANTY DEED INSTRUMENT NO. 20705326

## PUBLIC RIGHT OF WAY, UTILITY AND SLOPE EASEMENT

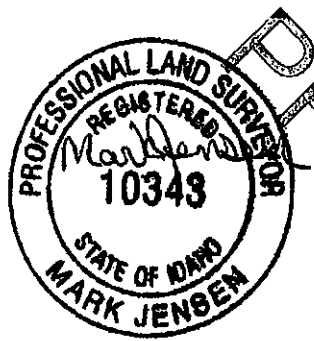
A parcel of land located in the Southwest 1/4 of Section 16, the Southeast 1/4 and the Northeast 1/4 of Section 17, Township 6 South, Range 34 East, Bannock County, Idaho; described as follows:

Commencing at the West 1/4 corner of Section 16, Township 6 South, Range 34 East, said corner marked by a 5/8" dia. rebar, being referenced by a Bannock County brass cap monument 25 feet east of said 1/4 corner; thence South 00°11'07" East a distance of 280.55 feet to a point on the southwesterly Right-of-Way line of the Union Pacific Railroad as depicted on the Record of Survey map recorded in Bannock County under instrument no. 20707393, and being described in parcel 1 of Warranty Deed instrument no. 20705326 of said County records; thence North 56°36'03" West along southwesterly Right-of-Way line of the Union Pacific Railroad a distance of 2197.86 feet, to a point which bears South 56°36'03" East a distance of 368.08 feet from the most northwest corner of said parcel 1, the **TRUE POINT OF BEGINNING**; thence leaving said southwesterly Right-of-Way line, South 33°23'57" West a distance of 109.23 feet; thence South 29°31'12" East a distance of 813.32 feet; thence South 35°11'19" East a distance of 660.34 feet; thence South 50°56'53" East a distance 754.39 feet; thence South 56°27'03" East a distance of 1146.46 feet; thence South 69°53'01" East a distance of 940.39 feet to a point on the east boundary line of said parcel 1, described in said Deed instrument no. 20705326; thence South 00°03'36" West along said east boundary line a distance of 107.04 feet, to the southeast corner of said parcel 1; thence following the southerly and southwesterly boundary line of parcel 1 for the next following ten (10) courses;

1. North 72°36'26" West, 428.64 feet;
2. North 71°50'27" West, 699.97 feet;
3. North 59°48'13" West, 280.11 feet;
4. North 42°27'08" West, 177.06 feet;
5. North 55°07'18" West, 664.68 feet;
6. North 43°50'53" West, 313.03 feet;
7. North 54°06'17" West, 336.24 feet;
8. North 40°27'08" West, 201.74 feet;

9. North 30°43'41" West, 1457.94 feet;
  10. North 21°52'28" West, 267.87 feet to the northwest corner of said parcel 1 which point also being on the southwesterly of the Union Pacific Railroad Right-of-Way line;
- thence following said southwesterly Right-of-Way line South 56°36'03" East a distance of 360.00 feet, to the POINT OF BEGINNING.

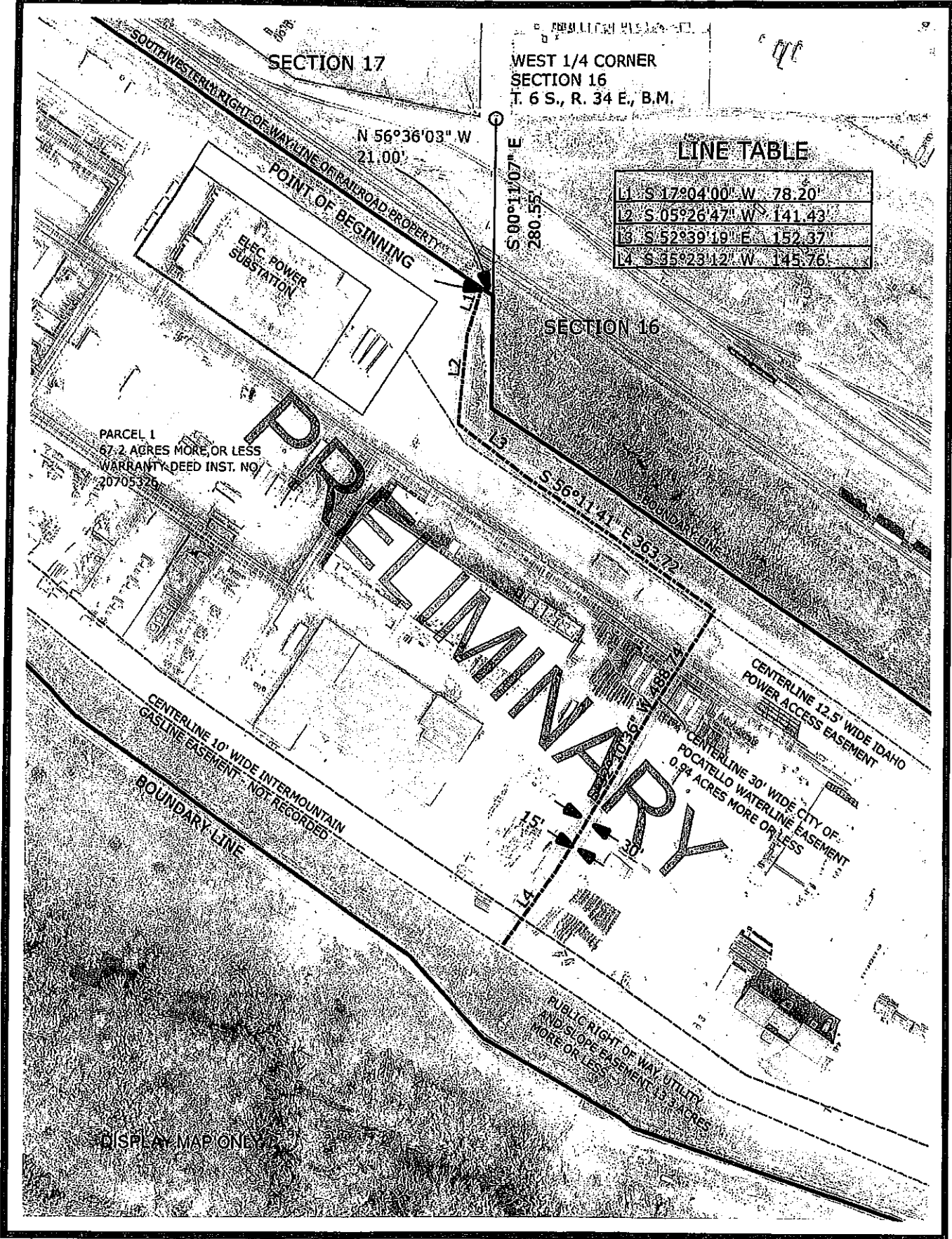
Area of the above described parcel of land contains 13.30 acres more or less



PRELIMINARY

**Attachment 5B  
Depiction and Description of Water Line Easement**





SECTION 17

WEST 1/4 CORNER SECTION 16 T. 6 S., R. 34 E., B.M.

N 56°36'03" W 21.00'

LINE TABLE

1.	S 17°04'00" W	78.20'
2.	S 05°26'47" W	141.43'
3.	S 52°39'19" E	152.37'
4.	S 35°23'12" W	145.76'

SECTION 16

PARCEL 1 67.2 ACRES MORE OR LESS WARRANTY DEED INST. NO. 20705326

PRELIMINARY

CENTERLINE 10' WIDE INTERMOUNTAIN GASLINE EASEMENT - NOT RECORDED BOUNDARY LINE

CENTERLINE 12.5' WIDE IDAHO POWER ACCESS EASEMENT

CENTERLINE 30' WIDE CITY OF POCATELLO WATERLINE EASEMENT 0.94 ACRES MORE OR LESS

PUBLIC RIGHT OF WAY UTILITY AND SLOPE EASEMENT 3.3 ACRES MORE OR LESS

DISPLAY MAP ONLY



30 FOOT WIDE WATERLINE EASEMENT LOCATED IN PARCEL 1 OF WARRANTY DEED INSTRUMENT NO. 20705326

## 30 FOOT WIDE WATERLINE EASEMENT

A 30 foot wide strip of land located in the Southwest 1/4 of Section 16 and in the Southeast 1/4 of Section 17, Township 6 South, Range 34 East, Boise Meridian, Bannock County, Idaho, said strip being 15 feet wide on each side of the following described centerline:

Commencing at the West 1/4 corner of Section 16, Township 6 South, Range 34 East, said corner marked by a 5/8" dia. rebar, being referenced by a Bannock County brass cap monument 25 feet east of said 1/4 corner; thence South 00°11'07" East a distance of 280.55 feet to a point on the southwesterly Right-of-Way line of the Union Pacific Railroad as depicted on the Record of Survey map recorded in Bannock County under instrument no. 20707393, and being described in parcels of Warranty Deed instrument no. 20705326 of said County records; thence North 56°36'03" West along southwesterly Right-of-Way line of the Union Pacific Railroad a distance of 21.00 feet, to a point on the centerline being described the **TRUE POINT OF BEGINNING**; thence leaving said southwesterly Right-of-Way line, South 17°04'00" West a distance of 78.20 feet; thence South 05°26'47" West a distance of 141.43 feet; thence South 52°39'19" East a distance of 152.37 feet; thence South 56°11'41" East a distance of 363.17 feet; thence South 32°10'36" West a distance of 488.74 feet; thence South 35°23'12" West a distance of 145.76 feet to the terminus of the centerline being described.

Contains 0.94 acres more or less



## ASSIGNMENT OF RIGHTS

THIS ASSIGNMENT OF RIGHTS (the "Assignment") is entered into by and between the Urban Renewal Agency of Pocatello, Idaho, also known as the Pocatello Development Agency ("PDA"), V.A. Metals, LLC, an Idaho limited liability company ("VA Metals") and Solargise America LLC, a Delaware limited liability company qualified to do business in Idaho ("Solargise"), individually referred to as a "Party" and collectively referred to as the "Parties." The Parties agree as follows:

### RECITALS

A. PDA is the successor landlord under that certain Lease (the "Lease"), dated as of January 17, 2014 and as amended to date, by and between the City of Pocatello as landlord and JH Kelly, LLC as tenant, as subsequently amended and assigned. VA Metals is the successor tenant under the Lease. PDA is the successor landlord under the Lease. A copy of the Lease and subsequent amendments and assignments is attached hereto as Exhibit A.

B. VA Metals wishes to assign any interest it may have in the Lease to Solargise.

### AGREEMENT

1. Assignment of Lease. For good and valuable consideration, the receipt, adequacy and legal sufficiency of which is hereby acknowledged, VA Metals hereby grants, sells, assigns, transfers, conveys and delivers to Solargise, effective as of the date this Assignment has been signed by the Parties (last date signed), (the "Effective Date"), all of VA Metals' right, title and interest in, to and under the Lease.

2. Assumption of Lease. Solargise hereby accepts this assignment of the Lease and assumes any and all of VA Metals' rights and obligations under the Lease, and agrees to be bound by all terms of the Lease, from and after the Effective Date.

3 Consent. PDA hereby consents to the assignment by VA Metals to Solargise of any rights VA Metals may have under the Lease.

4. Waiver. VA Metals hereby expressly waives and releases any and all claims against PDA, its officers, directors, shareholders, members, employees, agents, and contractors arising out of any accident, illness, injury, damage or other loss or harm to or incurred or suffered by VA Metals or his/her/their property arising out of the Lease. Solargise takes the assignment of the Lease subject to this waiver.

5. Binding on Successors and Assigns. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and the parties' respective successors and assigns.

6. Idaho Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Idaho.

7. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

8. Indemnification: VA Metals and Solargise hereby agree to indemnify, defend, and hold PDA harmless from and against any and all third party claims for loss, injury, death, and damage caused by or arising out of or related to the Lease, including claims from any third parties claiming any right or interest in or to the Property pursuant to the Lease or any purported assignment of rights under the Lease, including without limitation, attorney's fees and costs that might be incurred by PDA in defending any such claims.

Notwithstanding the foregoing, VA Metals' and Solargise's indemnification obligations under this Assignment shall only apply to the extent that any such claims do not arise out of PDA's or PDA's employees', contractors' or agent's gross negligence, willful misconduct, or fraud.

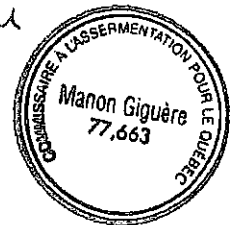
**POCATELLO DEVELOPMENT AUTHORITY**

By: [Signature]  
Chad Carr  
Vice-Chair  
8/31, 2018

**SOLARGISE AMERICA LLC**  
a Delaware limited liability company

By: [Signature]  
It's Manager  
SEPT 19, 2018

[Signature]



**V.A. Metals, LLC** an Idaho limited liability company

By \_\_\_\_\_  
Kola Venkatrma Naidu \_\_\_\_\_  
It's Sole Member \_\_\_\_\_  
\_\_\_\_\_, 2018

6. Idaho Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Idaho.

7. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

8. Indemnification: VA Metals and Solargise hereby agree to indemnify, defend, and hold PDA harmless from and against any and all third party claims for loss, injury, death, and damage caused by or arising out of or related to the Lease, including claims from any third parties claiming any right or interest in or to the Property pursuant to the Lease or any purported assignment of rights under the Lease, including without limitation, attorney's fees and costs that might be incurred by Licensor in defending any such claims.

Notwithstanding the foregoing, Licensee's indemnification obligations under this License shall only apply to the extent that any such claims do not arise out of PDA's or PDA's employees', contractors' or agent's gross negligence, willful misconduct, or fraud.

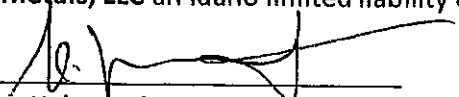
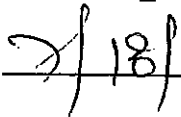
**POCATELLO DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Scott Smith  
Chair  
\_\_\_\_\_, 2018

**SOLARGISE AMERICA LLC**  
a Delaware limited liability company

By \_\_\_\_\_  
\_\_\_\_\_  
It's Manager  
\_\_\_\_\_, 2018

**V.A. Metals, LLC** an Idaho limited liability company

By  \_\_\_\_\_  
Kola Venkatrma Naidu  
It's Sole Member \_\_\_\_\_  
 2018

STATE OF IDAHO )  
 ) ss.  
County of Bannock )

On this 31st day of August, 2018, before me, Jordan L. Kress, the undersigned notary public in and for said county and state, personally appeared Chad Carr, known or identified to me to be the Vice-Chair of Pocatello Development Authority, the public body, corporate and politic, 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.



Jordan L. Kress  
Notary Public for Idaho  
Residing at Pocatello, ID  
Commission Expires 7/26/2022

STATE OF IDAHO     )  
  ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, \_\_\_\_\_,  
the undersigned notary public in and for said county and state, personally appeared  
\_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of Solargise America LLC, a  
Delaware limited liability company, "Licensee" herein, and acknowledged to me that he  
executed the within instrument on behalf of such Licensee 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.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
Commission Expires \_\_\_\_\_

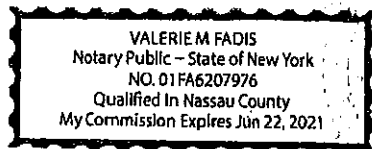
STATE OF New York )  
 ) ss.  
County of New York )

On this 18 day of July, 2018, before me, Valerie Fadis,  
the undersigned notary public in and for said county and state, personally appeared  
Kola Venkatram Naidu known or identified to me to be the Sole Member of V.A. Metals, LLC, a  
\_\_\_\_\_ and acknowledged to me that he executed the within instrument on behalf  
of VA Metals, Inc. 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.

Valerie Fadis

Notary Public for New York  
Residing at 1251 Ave of Americas NY, NY 10020  
Commission Expires June 22, 2021





**Exhibit A**  
**[insert copy of lease and amendments]**

LEASE AGREEMENT

THIS AGREEMENT, made and entered into this 21 day of January, 2014, by and between the CITY OF POCATELLO, a municipal corporation of Idaho, hereinafter referred to as "LESSOR" or "CITY", and JH KELLY LLC, a Washington Limited Liability Company, hereinafter referred to as "LESSEE" or "JH KELLY",

WITNESSETH:

WHEREAS, LESSOR is the owner of certain lands commonly known and designated as the "HOKU property" located at 1 HOKU Way, Pocatello, Bannock County, Idaho more specifically described as attached hereto in Exhibits "1" and "2" hereinafter referred to as the "Premises"; and

WHEREAS, the LESSOR previously entered into a long term ground lease of the above described property with HOKU Materials, Inc. (hereinafter referred to as "HOKU"), a Delaware corporation on the 22<sup>nd</sup> day of March, 2007, as well as a First Amendment to Lease dated June 6, 2008 and Second Amendment to Lease dated the 19<sup>th</sup> day of June, 2008 (collectively, the "Hoku Lease"); and

WHEREAS, pursuant to the terms of the Hoku Lease, HOKU had buildings and other structures constructed on the Premises; and

WHEREAS, HOKU failed to pay its Contractors for the development of the site; and

WHEREAS, HOKU filed for bankruptcy protection in the United States Bankruptcy Court in the District of Idaho in July 2013, under Case Number 13-40837; and

WHEREAS, the Bankruptcy Court appointed Gary L. Rainsden as the Trustee in that case, and the Trustee sold the HOKU assets to JH KELLY pursuant to public auction and said sale was approved by the Bankruptcy Court; and

WHEREAS, TRUSTEE desires to assume the HOKU Lease and assign its interest to JH KELLY, and JH KELLY desires to accept the assignment of said Hoku Lease; and

*JH*  
*MS*

WHEREAS the CITY and JH KELLY, the parties to this lease agreement (the "Kelly Lease"), desire to enter into a short term lease agreement so that JH KELLY can have sufficient time to repurpose the facility and/or sell or remove the assets from the Premises,

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter contained, the Parties agree as follows:

### I. PREMISES

LESSOR hereby lets and rents to LESSEE the Premises. Such property so let being more particularly described as set out in Attachments 1 and 2, attached hereto and incorporated herein by reference.

### II. TERM

The initial term for this Kelly Lease shall commence contemporaneously with the assumption and assignment of the HOKU Lease from the TRUSTEE to JH KELLY (the "Commencement Date") and continuing therefrom for a period of three (3) years.

A. Option to Extend Lease: In the event LESSEE desires an extended Kelly Lease of the Premises, LESSEE shall notify LESSOR in writing at least six (6) months prior to the expiration of this Kelly Lease term, whereupon the parties will negotiate an extended Kelly Lease upon such terms and conditions as the parties may agree.

### III. RENT

A. Basic Rent. JH KELLY agrees to pay as rent the sum of One dollar (\$1) per year, the payment of which is acknowledged as received by the LESSOR.

B. Contingent Rent. Should JH KELLY be successful in recovering payment in full for HOKU's debts to Kelly via the Bankruptcy action or other pending claims, Kelly agrees to provide LESSOR with up to two hundred fifty thousand dollars (\$250,000) in consideration (either in the form of cash or assets on the Premises).

#### IV. EXAMINATION OF PREMISES

LESSEE has inspected the aforescribed Premises and accepts the same "as is." LESSOR makes no warranties, express or implied, concerning the property and LESSEE in executing this Kelly Lease is relying upon its own judgment, information, and inspection of the Premises. LESSEE hereby acknowledges that it is accepting the Premises from the City subject to any and all physical conditions of the Premises as of the Commencement Date (the "Commencement Condition"). LESSEE further affirms that the City, its agents, employees, and/or attorneys have not made nor has LESSEE relied upon any representation, warranty, or promise with respect to the Premises or any other subject matter of this Kelly Lease except as expressly set forth in this Agreement, including without limitation, any warranties or representations expressed or implied as the general plan designation, zoning, value, use tax status or physical conditions of the Premises or improvements thereon, or any part thereof, including, but not limited to the flood elevations, drainage patterns and soil and subsoil compositions and compaction level, and other conditions at the Premises, or the existence or non-existence of toxic or hazardous materials on or under the Premises, or as to the accuracy of any boundary survey or other survey or any soils reports or other plans or report therefore.

#### V. WASTE

LESSEE covenants that it will not commit or allow others to commit waste on the Premises. LESSOR understands that LESSEE may sell or otherwise dismantle the assets located on the Premises, however, to the extent LESSEE intends to leave buildings or other structures intact, LESSEE covenants that it will not commit or allow others to commit waste upon those structures or otherwise upon the Premises.

#### VI. MAINTENANCE OF FACILITY

LESSOR understands that LESSEE may dismantle and sell off the property, buildings and structures located on the Premises, but to the extent that any of the improvements or structures on the Premises are intended to remain on the Premises at the end of this Lease term, LESSEE shall keep and maintain said Premises and all improvements of any kind in good and substantial repair and condition, consistent with the Commencement Condition, ordinary wear and tear excepted therefrom. LESSEE shall provide proper containers for trash and garbage, and

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*MS*

shall keep the Premises free and clear of rubbish, debris and litter at all times. All roadways or other paved/asphalt areas within the Premises shall be maintained by LESSEE at LESSEE's expense. LESSOR shall have the right to enter upon and inspect said Premises, but shall attempt to make such inspections at a mutually agreeable time.

#### VII. UTILITIES

LESSEE shall promptly pay any charges for water, electricity, telephone, and all other charges for utilities which may be furnished to the Premises at LESSEE's order or with LESSEE's consent.

#### VIII. NO SUBLEASE OR ASSIGNMENT

LESSEE shall not directly or indirectly assign, transfer or encumber any of the rights in or to this Lease or any interest herein, without the express written consent of LESSOR (which such consent shall not be unreasonably withheld) except as expressly discussed in Paragraph VI hereinabove. LESSEE acknowledges that LESSOR has the right to require termination of this Lease and the execution of a new Lease on the part of a prospective sublessee or assignee rather than consenting to any sublease or assignment and LESSEE agrees to so inform any interested party.

#### IX. INDEMNIFICATION

LESSEE agrees that it will at all times maintain Worker's Compensation coverage for the benefit of its employees, and adequate liability and property damage insurance as specified in Section X covering the activities of LESSEE, his agents, servants and employees, on the Premises.

LESSEE further agrees to defend, indemnify, and save LESSOR, its agents, employees and public officials, harmless from any and all claims or causes of action of any nature whatsoever arising out of the activities and operations of LESSEE, his agents, servants, invitees, officers, and employees, in connection with this Kelly Lease.

MS BB

## X. INSURANCE

In order to effectuate the foregoing indemnification provisions, LESSEE shall maintain insurance coverage as follows:

A. LESSEE shall purchase a comprehensive liability insurance policy in the amount of \$3,500,000 combined single limit to indemnify LESSOR from any and all public liability claims. Further, such policy shall include coverage for fire legal liability to repair or replace of the Premises in accordance with such limit. LESSOR shall be named as an additional insured or be acknowledged by LESSEE's insurance carrier as a covered entity under the terms of said policy. Moreover, the LESSEE is required to put its surety on notice, that said surety may not change or cancel the existing insurance policy with LESSEE without first giving LESSOR, City of Pocatello, at least thirty (30) days written notice.

B. LESSEE shall purchase personal property insurance in an amount sufficient to insure any and all of LESSEE's personal property or structures or buildings, fixtures which might be present on the Premises as of the Commencement Date.

C. If applicable, LESSEE shall purchase Worker's Compensation insurance or the equivalent as required by Idaho Code.

D. An Accord Certificate of Insurance evidencing compliance with the foregoing insurance requirements shall be filed with the Clerk of City of Pocatello within forty-eight (48) hours of the Commencement Date. The above described insurance shall contain contractual coverage sufficiently broad to insure the provisions of Section IX "Indemnification." The LESSEE's failure to maintain insurance shall be a basis for immediate termination of this Lease.

## XI. DISCHARGE OF LIENS

LESSEE agrees to pay when due all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered by or with LESSEE's consent upon or about the Premises, which may be secured by any mechanic's, materialman's or other lien against the Premises or LESSOR's interest therein, and will cause each such lien to be fully discharged and released at

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the time the performance of any obligation secured by any such lien matures or becomes due; provided however, that LESSEE may in good faith contest any mechanic's or other lien filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest. In any event, LESSEE agrees to defend and indemnify the LESSOR for any such claim and/or lien.

## XII. TERMINATION

On the termination date of this Kelly Lease, LESSEE shall forthwith surrender possession of the Premises, with any improvements still thereon in Commencement Condition, reasonable wear and tear excepted. By the end of this initial Kelly Lease term, the LESSOR expects that any and all appurtenances and improvements that were constructed or installed on the Premises and sold to third parties will have been removed from the Premises. With regard to any improvements or appurtenances remaining at the end of the Kelly Lease term, LESSEE assures the LESSOR that the remaining furnishings, equipment, improvements appurtenances will be in Commencement Condition, ordinary wear and tear excepted therefrom. Moreover, upon the termination of this Kelly Lease term, any and all buildings appurtenances, fixtures, equipment and things that remain on the Premises (the "Remainder") will become the property of the CITY and LESSEE agrees that it will execute such documents as are necessary to effect the transfer of said Remainder to the ownership of the CITY; provided however, that the value of such Remainder may, at the option of LESSEE, be credited against any obligation contained in or prescribed by Section III. B. hereinabove.

## XIII. DESTRUCTION OF PREMISES

The LESSEE shall be required to maintain insurance in the appropriate amounts to insure the buildings, structures, appurtenances, equipment and facilities at the Premises. In the event said buildings, structures, appurtenances, equipment and things are destroyed, LESSEE shall be required to remove the destroyed buildings, structures, appurtenances, equipment and things, whereon this Lease shall be deemed terminated. In the alternative, the proceeds from the insurance may be used to reconstruct structures and facilities at the Premises under such terms and conditions as the parties may agree.

#### XIV. STATUTES, ORDINANCES, RULES AND REGULATIONS

LESSEE, for itself, its employees, agents, successors and assigns, expressly agrees to obey all applicable laws and regulations of the United States, including regulations of the State of Idaho, of Bannock County, and of the City of Pocatello, as well as the rules and regulations of the Premises.

#### XV. DEFAULT

A. Failure of LESSEE to comply with any term or condition or to fulfill or comply with any obligation of this Kelly Lease, within thirty (30) days after written notice by LESSOR specifying the nature of the default with reasonable particularity, shall constitute default. If the default is of a nature that it cannot be cured within the said thirty (30) day period, LESSEE may, within said period, present a plan, in writing, to the City of Pocatello that provides a schedule in which LESSEE will be able to cure the default. If the LESSEE'S plan is approved by the City of Pocatello, LESSEE'S default will be held in abeyance so long as the LESSEE thereafter proceeds with reasonable diligence, in good faith and is able to meet the plan's deadlines, then the default shall be deemed cured.

B. The following shall constitute default by insolvency: 1) Insolvency of LESSEE; 2) An assignment by LESSEE for the benefit of creditors; 3) The filing by LESSEE of a voluntary Petition in Bankruptcy; 4) An adjudication that LESSEE is bankrupt or the appointment of a receiver of the properties of LESSEE; 5) The filing of an involuntary Petition of Bankruptcy and failure of the LESSEE to secure dismissal of the Petition within thirty (30) days after filing; and 6) Attachment of or the levying of execution on the Leasehold interest and failure of the LESSEE to secure discharge of the attachment or release of the levy or execution within ten (10) days.



## XVI. REMEDIES IN DEFAULT

In the event of default, the LESSOR, at its option, may terminate this Kelly Lease. In the event of a Termination on Default, LESSOR shall be entitled to recover the reasonable costs of reentry and re-letting, including, without limitation, the costs of any cleanup, refurbishing, removal of LESSEE's property and fixtures or any other expense occasioned by LESSEE's failure to quit the Premises upon termination and to leave them in the required condition, and any attorney fees, court costs, brokerage commissions and advertising costs, along with any lost or rental value hereunder from the date of default until a new tenant has been, or with the exercise of reasonable efforts could have been, secured. The remedies afforded the LESSOR in this section shall not be exclusive but shall be cumulative, and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this Kelly Lease.

## XVII. ENVIRONMENTAL MATTERS

LESSEE hereby indemnifies, agrees to defend and shall hold LESSOR harmless from and against all liability, loss, claim, damage or expense, including but not limited to reasonable attorneys' and experts' fees, clean-up or other remediation costs and fees and government fines, arising out of or in connection with the existence of any toxic or hazardous materials, pollutants, contaminants or hazardous wastes contained on the Premises by LESSEE or its agents or from sources within LESSEE's reasonable control in violation of any Environmental Law, as defined hereinafter, from and after the commencement date of this Kelly Lease and through and until the date on which LESSEE vacates the Premises. LESSOR hereby indemnifies, agrees to defend and shall hold LESSEE harmless from and against all liability, loss, claim, damage or expense, including, but not limited to, reasonable attorneys' and experts' fees, clean-up or other remediation costs and fees, and governmental fines, arising out of or in connection with the existence of any toxic or hazardous materials, pollutants, contaminants or hazardous wastes existing on the Premises in violation of any Environmental Law, as defined hereinafter, as of the Commencement Date, or which come onto the Premises during the term of this Kelly Lease from sources outside of LESSEE's reasonable control including, without limitation, any expense associated with the removal of any underground storage tanks at the Premises and any costs of remediation associated therewith. As used herein, 'Environmental Law' means any one or more

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of all federal, state and local environmental protection, occupational, health, safety and similar laws, ordinances, restrictions, licenses and regulations, including, without limitation the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 *et seq.*), Safe Drinking Water Act (42 U.S.C. Sec. 300f *et seq.*), Toxic Substance Control Act (15 U.S.C. Sec. 2601 *et seq.*), Clean Air Act (42 U.S.C. Sec. 7401 *et seq.*), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 *et seq.*), Hazardous Materials Transportation Act (49 U.S.C. Sec. 1801 *et seq.*), and other similar federal, state or local laws, statutes, ordinances, orders, decrees, rules and/or regulations, regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material as now or at any time hereafter be applicable.

### XVIII. HAZARDOUS MATERIALS

"Hazardous Material" means any use or activity involving any substance which would cause (1) the Premises to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Premises within the ambit of, the Resource Conservation and Recovery Act of 1976, or any similar federal or state law or local ordinance or any other environmental law, (2) a release or threatened release of hazardous waste from the Premises within the ambit of, the Comprehensive Environmental response, Compensation and Liability Act of 1980, or any similar federal or state law or ordinance or any other environmental law, or (3) the discharge of pollutants or effluent into the air or any emissions, which would require a permit under the Federal Water Pollution Control Act, or the Clean Air Act, or any similar federal or state law or local ordinance or other environmental law, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law ordinance, code, rule, regulation, order or decree, now or hereafter in force, regulating, relating to or imposing liability or standards on conduct concerning any hazardous material.

LESSEE expressly assumes the risk and responsibility for any Hazardous Material during the term of this Kelly Lease, hereafter located on the Premises, and hold harmless the City, its officers, employees, representatives, agents, and successors from and against any and all judgments, claims expenses, causes of action, damages, liability (including reasonable attorneys'

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fees and costs) (1) including all foreseeable and unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage, or disposal of hazardous materials on the Premises, and (2) including, without limitation, the cost of any required or necessary repair, cleanup or detoxification and the preparation of any closure or other required plans, to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release, or disposal of hazardous materials by any person on the Premises.

### XIX. SIGNS

LESSEE shall have the right to install or cause to be installed appropriate signs on the Premises. The cost of such installations and operations shall be borne by LESSEE. LESSEE shall not erect, install, operate or cause, nor permit to be erected, installed, or operated upon the Premises herein, any sign or other advertising device without first having obtained LESSOR's written consent thereto as to size, construction, location, general appearance, and adherence to Pocatello Municipal Code.

### XX. MISCELLANEOUS

A. TAXES AND FEES. In the event the State of Idaho, Bannock County, or any State or local agency imposes a property tax or any substitute therefore on the Premises, and/or the Leasehold, LESSEE shall pay the tax promptly when due.

B. NON-DISCRIMINATION. LESSEE, for itself, its agents, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the grounds of race, color, sex, age, or national origin shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination in the use of said facilities, and (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, gender, age, sexual orientation or gender identify/expression or national origin shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination

C. MERGER. This writing represents the entire Agreement between the parties. No prior promises, representations or agreements, written or oral, shall amend, change or add to any of the express provisions herein.

D. SECTION CAPTIONS. The captions appearing under the section number designations of this Kelly Lease are for convenience only and are not a part of this Kelly Lease and do not in any way limit or amplify the terms and provisions of the Kelly Lease.

E. CONSTRUCTION. This Agreement shall be construed pursuant to the laws of the State of Idaho. The parties agree that no construction of this Agreement shall be made in a Court of competent jurisdiction against the interests of any party to the Agreement on the basis that the party had primary responsibility for drafting the Agreement.

F. ENTIRE AGREEMENT. This instrument constitutes the sole and only agreement between LESSOR and LESSEE respecting the Premises, the leasing of said Premises to LESSEE, or the Kelly Lease term herein provided and correctly sets forth the obligations of LESSOR and LESSEE to each other as of its date. No prior promises, representations, or agreements, written or oral, shall amend, change or add to any of the expressed provisions herein contained. This agreement can only be modified or amended in writing upon the mutual agreement of the parties hereto.

G. JURISDICTION AND VENUE. Any action or proceeding relative to this Lease Agreement shall be maintained in the Sixth District Court, County of Bannock, State of Idaho.

H. CORPORATE AUTHORITY. Any individual or individuals executing the within document on behalf of any corporation which is a party hereto, hereby acknowledge and represent that he, she, or they have the power and authority to so bind the corporate authority, and that such authority was conferred by an act of the Board of Directors of such corporate authority, unless the binding of any such corporation is within the power of the person or persons executing this document on such corporation's behalf. In the event that the party or parties executing this document on behalf of any corporate party hereto, do not have authority to so bind the corporation for any cause or reason, then such person or persons shall be personally liable under the terms hereof.

## XXI. NOTICES

All notices under this Lease Agreement shall be deemed to be properly served if sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by written notice, said addresses shall be as follows:

LESSOR:                      City of Pocatello  
                                    Attn: Legal Dept.  
                                    P.O. Box 4169  
                                    Pocatello, ID 83205

LESSEE:                      JH KELLY, LLC  
                                    c/o Mark Fleischauer  
                                    Senior Vice President  
                                    2311 E. First Street  
                                    Vancouver, WA 98661

Notice shall be complete upon receipt, unless the recipient ignores or refuses to sign for the certified letter, in which event notice shall be deemed to have been completed on the first attempted delivery by the United State Post Office.

## XXII. DISMISSAL OF LAWSUIT AND INDEMNIFICATION

In further consideration of the terms of this Lease, LESSEE further agrees as follows:

- A. LESSEE presently has pending in Bannock County, an action against the City of Pocatello, styled, *JH KELLY v. HOKU and City of Pocatello, et al.*, Bannock County District Court Case No. CV-2012-1123-OC. JH KELLY agrees to dismiss said lawsuit against the CITY, its employees, agents, officers, and assigns with prejudice. Moreover JH KELLY agrees that it will never bring another lawsuit against the City of Pocatello arising out of the same core of aggregate facts that were presented in the aforementioned lawsuit.
- B. In addition, JH KELLY agrees that it will withdraw its Response to the City's Motion for Summary Judgment filed in the aforementioned Bannock County Case. JH Kelly

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further agrees that it will also encourage the other parties in the lien foreclosure action to withdraw their respective responses to the City's Motion for Summary Judgment.

C. Due to the bankruptcy filing of HOKU, the CITY found it necessary to hire the firm of Kumm & Reichert, PLLC of Pocatello, Idaho to defend it in the lawsuit heretofore mentioned and in the HOKU bankruptcy proceedings. As a gesture of good faith and cooperation, KELLY agrees to reimburse the CITY the sum of \$6,226.80 that the City spent in its defense of the claims made in Bannock County Case No. CV-2012-1123-OC and for certain expenses incurred by the City to the firm of Kumm & Reichert in representing the City of Pocatello in the HOKU Bankruptcy proceedings. The CITY acknowledges and agrees that in so doing; JH KELLY neither admits to nor assumes any liability or obligation arising under or with respect to the Hoku Lease prior to the Commencement Date.

### XXIII. ATTORNEY'S FEES UPON BREACH

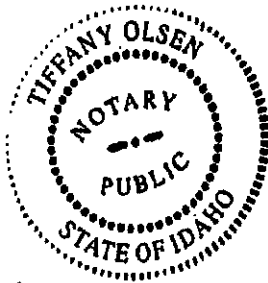
In the event it becomes necessary for either party to enforce the terms of this agreement, the prevailing party shall be awarded by a sum which will reasonably compensate it for the attorney's fees and costs incurred by such party to enforce the terms of this agreement. In the event attorney fees are awarded by a Court of law, the parties agree that a reasonable rate for attorney fees is \$350.00 per hour.

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STATE OF IDAHO )  
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 :SS  
County of Bannock )

On this 21 day of January, 2014, before me, the undersigned, a Notary Public in and for the State, personally appeared Brian C. Blad and Ruth E. Whitworth, known to me to be the Mayor and City Clerk, respectively, of the City of Pocatello, a municipal corporation of Idaho, who executed the foregoing instrument on behalf of said municipal corporation, and acknowledged to me that such corporation executed the same.

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

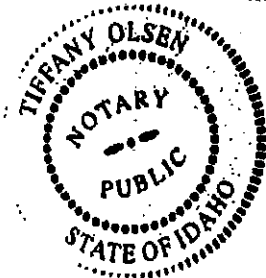


Tiffany Olsen  
NOTARY PUBLIC FOR IDAHO  
My Commission Expires: 10/3/2017

STATE OF Idaho )  
 )  
 :SS  
County of Bannock )

On this 21<sup>st</sup> day of January, 2014, before me, the undersigned, a Notary Public in and for the State, personally appeared Mark Fleischauer, known to me to be the Senior Vice President of the corporation of JH KELLY, LLC, who executed the foregoing instrument, and acknowledged to me that he/she executed the same.

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



Tiffany Olsen  
NOTARY PUBLIC FOR Idaho  
My Commission Expires: 10/3/2017

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Description of the Hoku Parcel

LEGAL DESCRIPTION:

PARCEL 1:

A PARCEL OF LAND LOCATED IN THE EAST 1/2 OF SECTION 17, AND IN THE WEST 1/2 OF THE WEST 1/2 OF SECTION 16, T 6 S, R 34 E, B.M., BANNOCK COUNTY, IDAHO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS (ALL ANGLE POINTS BEING MARKED BY A 1/2-INCH DIAMETER REBAR WITH A YELLOW PLASTIC CAP STAMPED "PE/LS 4440", UNLESS OTHERWISE NOTED):

COMMENCING AT THE WEST 1/4 CORNER OF SAID SECTION 16, SAID CORNER BEING MARKED BY A FOUND 5/8-INCH DIAMETER REBAR WITH NO MARKINGS, SAID REBAR BEING REFERENCED BY A BANNOCK COUNTY BRASS CAP MONUMENT 25 FEET EAST OF THE CORNER;

THENCE S 0°11'07" W ALONG THE WEST LINE OF SECTION 16, 280.55 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE OREGON SHORT LINE RAILROAD (NOW OPERATING AS THE UNION PACIFIC RAILROAD), SAID POINT BEING 50 FEET DISTANT, MEASURED AT RIGHT ANGLES, FROM THE CENTERLINE OF THE NO. 1 MAINLINE TRACK (FORMERLY THE WEST BOUND MAINLINE), AND SAID POINT BEING MARKED BY A SET 5/8-INCH REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075", SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE N 56°36'03" W ALONG THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE OREGON SHORT LINE RAILROAD, 2557.86 FEET TO AN ANGLE POINT ON THE NORTHEASTERLY DEED LINE DESCRIBED IN CORPORATION WARRANTY DEED INSTRUMENT NO. 96009187;

THENCE SOUTHEASTERLY ALONG THE SAID NORTHEASTERLY DEED LINE THE FOLLOWING 10 COURSES AND DISTANCES:

S 21°52'28" E, 267.87 FEET TO AN ANGLE POINT; THENCE S 30°43'41" E, 1457.94 FEET TO AN ANGLE POINT; THENCE S 40°27'08" E, 201.74 FEET TO AN ANGLE POINT; THENCE S 54°06'17" E, 336.24 FEET TO AN ANGLE POINT; THENCE S 43°50'53" E, 313.03 FEET TO AN ANGLE POINT; THENCE S 55°07'18" E, 664.68 FEET TO AN ANGLE POINT; THENCE S 42°27'08" E, 177.06 FEET TO AN ANGLE POINT; THENCE S 59°48'13" E, 280.11 FEET TO AN ANGLE POINT; THENCE S 71°50'27" E, 699.97 FEET TO AN ANGLE POINT; THENCE S 72°36'36" E, 428.65 FEET TO AN ANGLE POINT ON THE WEST 1/16 LINE OF SECTION 16; THENCE N 0°03'36" E ALONG THE WEST 1/16 LINE OF SECTION 16, 653.00 FEET TO THE SOUTHWEST 1/16 CORNER OF SAID SECTION 16, SAID CORNER BEING MARKED BY A 6-INCH DIAMETER STEEL FENCE CORNER POST;

THENCE S 89°05'05" W ALONG THE SOUTH 1/16 LINE OF SECTION 16, 43.11 FEET TO A POINT ON THE SOUTHWESTERLY DEED LINE DESCRIBED IN INSTRUMENT NO. 27678, SAID POINT BEING MARKED BY A SET 5/8-INCH DIAMETER REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075";

THENCE N 56°36'03" W ALONG SAID SOUTHWESTERLY DEED LINE, 1519.62 FEET TO A POINT ON THE WEST DEED DESCRIBED IN SAID INSTRUMENT NO. 27678, SAID POINT ALSO BEING ON THE WEST LINE OF SECTION 16, AND SAID POINT BEING MARKED BY A SET 5/8-INCH DIAMETER REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075";

THENCE N 0°11'17" E ALONG THE WEST LINE OF SAID SECTION 16, 179.29 FEET TO THE TRUE POINT OF BEGINNING.

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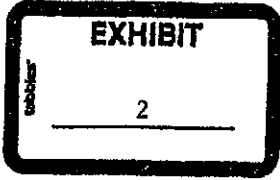


Description of tract to be excluded from parcel leased to Hoku to be used for  
construction of the Proposed Public Road

A parcel of land located in the SW ¼, Section 16 and the E ½, Section 17, Township 6 south, Range 34 East, Boise Meridian, Bannock County Idaho, being a portion of the tract described in instrument #20705326 as recorded in the records of Bannock County, Idaho, more particularly described as follows:

Commencing at the SW 1/16 corner of Section 16, marked by a 6inch diameter steel post; thence S. 0°03'36" W. along said 1/16 line (basis of bearing City of Pocatello grid bearing of N.00°23'25" E. between the found Bannock County brass cap monument marking the Southeast corner and the found 5/8 inch diameter rebar with no markings, marking the East ¼ of Section 17 as shown on Record of Survey instrument number 20511998) a distance of 548.75 feet to the TRUE POINT OF BEGINNING; thence continuing along the 1/16 line S.0°03'36" W. a distance of 104.75 feet to a ½ " rebar with a yellow plastic cap stamped PE/LS 4440; (the next ten angle points also being marked with ½" rebar with yellow caps marked PE/LS 4440); thence N. 72°36'36" W. a distance of 428.65 feet; thence N.71°50'27" W. a distance of 699.97 feet; thence N. 59°48'13" W. a distance of 280.11 feet; thence N. 42°27'08" W. a distance of 177.06 feet; thence N.55°07'18" W a distance of 664.68 feet; thence N.43°50'53" W a distance of 313.03 feet; thence N.54°06'17" W. a distance of 336.24 feet; thence N.40°27'08" W. a distance of 201.74 feet; thence N.30°43'41" W. a distance of 1,457.94 feet; thence N.21°52'28" W. a distance of 267.87 feet to a point on the southwesterly right of way line of the Oregon Short Line Railroad (now operating as the Union Pacific Railroad) said point being 50 feet distant, measured at right angles, from the centerline of the No. 1 mainline track (formerly the westbound main); thence S.56°36'03"E. along the southwesterly right of way line of the Oregon Short Line Railroad a distance of 294.16 feet; thence S.59°16'19" W. a distance of 69.59 feet; thence S.30°43'42" E. a distance of 1,457.93 feet; thence S.49°31'51" E. a distance of 494.18 feet; thence S. 51°59'04" E. a distance of 1,415.78 feet; thence S.72°14'30" E. a distance of 1,075.21 feet to the TRUE POINT OF BEGINNING.

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COPY

ASSIGNMENT OF LEASE AGREEMENT

FOR VALUE RECEIVED, the undersigned, the City of Pocatello, a municipal corporation of Idaho, hereby assigns to the Pocatello Development Authority, an Idaho Urban Renewal Agency, all of the City of Pocatello's rights, obligations and interest in that certain Lease Agreement dated January 21, 2014, between the City of Pocatello, as Lessor, and JH Kelly, a Washington Limited Liability Company, as Lessee. The City of Pocatello represents that this assignment has been approved by the Pocatello City Council at its regularly scheduled meeting on September 17, 2015, subject to Pocatello Development Authority's acceptance of the assignment of the Lease Agreement. A true and correct copy of the Lease Agreement being assigned is attached hereto as Exhibit A.

DATED this 17<sup>th</sup> day of September, 2015.

City of Pocatello, a municipal corporation of Idaho

APPROVED BY LEGAL

Date 9/11/15 Atty Bybee  
Comments approved  
9/17/15 Council Mtg.

By: [Signature] Brian C. Blad, Mayor

ACCEPTANCE OF ASSIGNMENT

The undersigned, Pocatello Development Authority, an Idaho Urban Renewal Agency, hereby accepts the above assignment of Lease made between the City of Pocatello and JH Kelly, a Washington Limited Liability Company, and agrees to assume all of the City of Pocatello's obligations as Lessor under the Lease Agreement attached hereto as Exhibit A.

DATED this 21<sup>st</sup> day of October, 2015.

Pocatello Development Authority, an Idaho Urban Renewal Agency

By: [Signature] Michael Orr, Chairman

[Handwritten initials/signature]

Ratified on  
2/6/2014

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LEASE AGREEMENT

THIS AGREEMENT, made and entered into this 21 day of January, 2014, by and between the CITY OF POCATELLO, a municipal corporation of Idaho, hereinafter referred to as "LESSOR" or "CITY", and JH KELLY LLC, a Washington Limited Liability Company, hereinafter referred to as "LESSEE" or "JH KELLY",

WITNESSETH:

WHEREAS, LESSOR is the owner of certain lands commonly known and designated as the "HOKU property" located at 1 HOKU Way, Pocatello, Bannock County, Idaho more specifically described as attached hereto in Exhibits "1" and "2" hereinafter referred to as the "Premises"; and

WHEREAS, the LESSOR previously entered into a long term ground lease of the above described property with HOKU Materials, Inc. (hereinafter referred to as "HOKU"), a Delaware corporation on the 22<sup>nd</sup> day of March, 2007, as well as a First Amendment to Lease dated June 6, 2008 and Second Amendment to Lease dated the 19<sup>th</sup> day of June, 2008 (collectively, the "Hoku Lease"); and

WHEREAS, pursuant to the terms of the Hoku Lease, HOKU had buildings and other structures constructed on the Premises; and

WHEREAS, HOKU failed to pay its Contractors for the development of the site; and

WHEREAS, HOKU filed for bankruptcy protection in the United States Bankruptcy Court in the District of Idaho in July 2013, under Case Number 13-40837; and

WHEREAS, the Bankruptcy Court appointed Gary L. Rainsden as the Trustee in that case, and the Trustee sold the HOKU assets to JH KELLY pursuant to public auction and said sale was approved by the Bankruptcy Court; and

WHEREAS, TRUSTEE desires to assume the HOKU Lease and assign its interest to JH KELLY, and JH KELLY desires to accept the assignment of said Hoku Lease; and

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WHEREAS the CITY and JH KELLY, the parties to this lease agreement (the "Kelly Lease"), desire to enter into a short term lease agreement so that JH KELLY can have sufficient time to repurpose the facility and/or sell or remove the assets from the Premises.

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter contained, the Parties agree as follows:

### I. PREMISES

LESSOR hereby lets and rents to LESSEE the Premises. Such property so let being more particularly described as set out in Attachments 1 and 2, attached hereto and incorporated herein by reference.

### II. TERM

The initial term for this Kelly Lease shall commence contemporaneously with the assumption and assignment of the HOKU Lease from the TRUSTEE to JH KELLY (the "Commencement Date") and continuing therefrom for a period of three (3) years.

A. Option to Extend Lease: In the event LESSEE desires an extended Kelly Lease of the Premises, LESSEE shall notify LESSOR in writing at least six (6) months prior to the expiration of this Kelly Lease term, whereupon the parties will negotiate an extended Kelly Lease upon such terms and conditions as the parties may agree.

### III. RENT

- A. Basic Rent. JH KELLY agrees to pay as rent the sum of One dollar (\$1) per year, the payment of which is acknowledged as received by the LESSOR.
- B. Contingent Rent. Should JH KELLY be successful in recovering payment in full for HOKU's debts to Kelly via the Bankruptcy action or other pending claims, Kelly agrees to provide LESSOR with up to two hundred fifty thousand dollars (\$250,000) in consideration (either in the form of cash or assets on the Premises).

#### IV. EXAMINATION OF PREMISES

LESSEE has inspected the aforescribed Premises and accepts the same "as is." LESSOR makes no warranties, express or implied, concerning the property and LESSEE in executing this Kelly Lease is relying upon its own judgment, information, and inspection of the Premises. LESSEE hereby acknowledges that it is accepting the Premises from the City subject to any and all physical conditions of the Premises as of the Commencement Date (the "Commencement Condition"). LESSEE further affirms that the City, its agents, employees, and/or attorneys have not made nor has LESSEE relied upon any representation, warranty, or promise with respect to the Premises or any other subject matter of this Kelly Lease except as expressly set forth in this Agreement, including without limitation, any warranties or representations expressed or implied as the general plan designation, zoning, value, use tax status or physical conditions of the Premises or improvements thereon, or any part thereof, including, but not limited to the flood elevations, drainage patterns and soil and subsoil compositions and compaction level, and other conditions at the Premises, or the existence or non-existence of toxic or hazardous materials on or under the Premises, or as to the accuracy of any boundary survey or other survey or any soils reports or other plans or report therefore.

#### V. WASTE

LESSEE covenants that it will not commit or allow others to commit waste on the Premises. LESSOR understands that LESSEE may sell or otherwise dismantle the assets located on the Premises, however, to the extent LESSEE intends to leave buildings or other structures intact, LESSEE covenants that it will not commit or allow others to commit waste upon those structures or otherwise upon the Premises.

#### VI. MAINTENANCE OF FACILITY

LESSOR understands that LESSEE may dismantle and sell off the property, buildings and structures located on the Premises, but to the extent that any of the improvements or structures on the Premises are intended to remain on the Premises at the end of this Lease term, LESSEE shall keep and maintain said Premises and all improvements of any kind in good and substantial repair and condition, consistent with the Commencement Condition, ordinary wear and tear excepted therefrom. LESSEE shall provide proper containers for trash and garbage, and

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shall keep the Premises free and clear of rubbish, debris and litter at all times. All roadways or other paved/asphalt areas within the Premises shall be maintained by LESSEE at LESSEE's expense. LESSOR shall have the right to enter upon and inspect said Premises, but shall attempt to make such inspections at a mutually agreeable time.

#### VII. UTILITIES

LESSEE shall promptly pay any charges for water, electricity, telephone, and all other charges for utilities which may be furnished to the Premises at LESSEE's order or with LESSEE's consent.

#### VIII. NO SUBLEASE OR ASSIGNMENT

LESSEE shall not directly or indirectly assign, transfer or encumber any of the rights in or to this Lease or any interest herein, without the express written consent of LESSOR (which such consent shall not be unreasonably withheld) except as expressly discussed in Paragraph VI hereinabove. LESSEE acknowledges that LESSOR has the right to require termination of this Lease and the execution of a new Lease on the part of a prospective sublessee or assignee rather than consenting to any sublease or assignment and LESSEE agrees to so inform any interested party.

#### IX. INDEMNIFICATION

LESSEE agrees that it will at all times maintain Worker's Compensation coverage for the benefit of its employees, and adequate liability and property damage insurance as specified in Section X covering the activities of LESSEE, his agents, servants and employees, on the Premises.

LESSEE further agrees to defend, indemnify, and save LESSOR, its agents, employees and public officials, harmless from any and all claims or causes of action of any nature whatsoever arising out of the activities and operations of LESSEE, his agents, servants, invitees, officers, and employees, in connection with this Kelly Lease.

## X. INSURANCE

In order to effectuate the foregoing indemnification provisions, LESSEE shall maintain insurance coverage as follows:

A. LESSEE shall purchase a comprehensive liability insurance policy in the amount of \$3,500,000 combined single limit to indemnify LESSOR from any and all public liability claims. Further, such policy shall include coverage for fire legal liability to repair or replace of the Premises in accordance with such limit. LESSOR shall be named as an additional insured or be acknowledged by LESSEE's insurance carrier as a covered entity under the terms of said policy. Moreover, the LESSEE is required to put its surety on notice, that said surety may not change or cancel the existing insurance policy with LESSEE without first giving LESSOR, City of Pocatello, at least thirty (30) days written notice.

B. LESSEE shall purchase personal property insurance in an amount sufficient to insure any and all of LESSEE's personal property or structures or buildings, fixtures which might be present on the Premises as of the Commencement Date.

C. If applicable, LESSEE shall purchase Worker's Compensation insurance or the equivalent as required by Idaho Code.

D. An Accord Certificate of Insurance evidencing compliance with the foregoing insurance requirements shall be filed with the Clerk of City of Pocatello within forty-eight (48) hours of the Commencement Date. The above described insurance shall contain contractual coverage sufficiently broad to insure the provisions of Section IX "Indemnification." The LESSEE's failure to maintain insurance shall be a basis for immediate termination of this Lease.

## XI. DISCHARGE OF LIENS

LESSEE agrees to pay when due all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered by or with LESSEE's consent upon or about the Premises, which may be secured by any mechanic's, materialman's or other lien against the Premises or LESSOR's interest therein, and will cause each such lien to be fully discharged and released at

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the time the performance of any obligation secured by any such lien matures or becomes due; provided however, that LESSEE may in good faith contest any mechanic's or other lien filed or established, and in such event may permit the liens so contested to remain undischarged and unsatisfied during the period of such contest. In any event, LESSEE agrees to defend and indemnify the LESSOR for any such claim and/or lien.

## XII. TERMINATION

On the termination date of this Kelly Lease, LESSEE shall forthwith surrender possession of the Premises, with any improvements still thereon in Commencement Condition, reasonable wear and tear excepted. By the end of this initial Kelly Lease term, the LESSOR expects that any and all appurtenances and improvements that were constructed or installed on the Premises and sold to third parties will have been removed from the Premises. With regard to any improvements or appurtenances remaining at the end of the Kelly Lease term, LESSEE assures the LESSOR that the remaining furnishings, equipment, improvements appurtenances will be in Commencement Condition, ordinary wear and tear excepted therefrom. Moreover, upon the termination of this Kelly Lease term, any and all buildings appurtenances, fixtures, equipment and things that remain on the Premises (the "Remainder") will become the property of the CITY and LESSEE agrees that it will execute such documents as are necessary to effect the transfer of said Remainder to the ownership of the CITY; provided however, that the value of such Remainder may, at the option of LESSEE, be credited against any obligation contained in or prescribed by Section III. B. hereinabove.

## XIII. DESTRUCTION OF PREMISES

The LESSEE shall be required to maintain insurance in the appropriate amounts to insure the buildings, structures, appurtenances, equipment and facilities at the Premises. In the event said buildings, structures, appurtenances, equipment and things are destroyed, LESSEE shall be required to remove the destroyed buildings, structures, appurtenances, equipment and things, whereon this Lease shall be deemed terminated. In the alternative, the proceeds from the insurance may be used to reconstruct structures and facilities at the Premises under such terms and conditions as the parties may agree.



#### XIV. STATUTES, ORDINANCES, RULES AND REGULATIONS

LESSEE, for itself, its employees, agents, successors and assigns, expressly agrees to obey all applicable laws and regulations of the United States, including regulations of the State of Idaho, of Bannock County, and of the City of Pocatello, as well as the rules and regulations of the Premises.

#### XV. DEFAULT

A. Failure of LESSEE to comply with any term or condition or to fulfill or comply with any obligation of this Kelly Lease, within thirty (30) days after written notice by LESSOR specifying the nature of the default with reasonable particularity, shall constitute default. If the default is of a nature that it cannot be cured within the said thirty (30) day period, LESSEE may, within said period, present a plan, in writing, to the City of Pocatello that provides a schedule in which LESSEE will be able to cure the default. If the LESSEE'S plan is approved by the City of Pocatello, LESSEE'S default will be held in abeyance so long as the LESSEE thereafter proceeds with reasonable diligence, in good faith and is able to meet the plan's deadlines, then the default shall be deemed cured.

B. The following shall constitute default by insolvency: 1) Insolvency of LESSEE; 2) An assignment by LESSEE for the benefit of creditors; 3) The filing by LESSEE of a voluntary Petition in Bankruptcy; 4) An adjudication that LESSEE is bankrupt or the appointment of a receiver of the properties of LESSEE; 5) The filing of an involuntary Petition of Bankruptcy and failure of the LESSEE to secure dismissal of the Petition within thirty (30) days after filing; and 6) Attachment of or the levying of execution on the Leasehold interest and failure of the LESSEE to secure discharge of the attachment or release of the levy or execution within ten (10) days.

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## XVI. REMEDIES IN DEFAULT

In the event of default, the LESSOR, at its option, may terminate this Kelly Lease. In the event of a Termination on Default, LESSOR shall be entitled to recover the reasonable costs of reentry and re-letting, including, without limitation, the costs of any cleanup, refurbishing, removal of LESSEE's property and fixtures or any other expense occasioned by LESSEE's failure to quit the Premises upon termination and to leave them in the required condition, and any attorney fees, court costs, brokerage commissions and advertising costs, along with any lost or rental value hereunder from the date of default until a new tenant has been, or with the exercise of reasonable efforts could have been, secured. The remedies afforded the LESSOR in this section shall not be exclusive but shall be cumulative, and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this Kelly Lease.

## XVII. ENVIRONMENTAL MATTERS

LESSEE hereby indemnifies, agrees to defend and shall hold LESSOR harmless from and against all liability, loss, claim, damage or expense, including but not limited to reasonable attorneys' and experts' fees, clean-up or other remediation costs and fees and government fines, arising out of or in connection with the existence of any toxic or hazardous materials, pollutants, contaminants or hazardous wastes contained on the Premises by LESSEE or its agents or from sources within LESSEE's reasonable control in violation of any Environmental Law, as defined hereinafter, from and after the commencement date of this Kelly Lease and through and until the date on which LESSEE vacates the Premises. LESSOR hereby indemnifies, agrees to defend and shall hold LESSEE harmless from and against all liability, loss, claim, damage or expense, including, but not limited to, reasonable attorneys' and experts' fees, clean-up or other remediation costs and fees, and governmental fines, arising out of or in connection with the existence of any toxic or hazardous materials, pollutants, contaminants or hazardous wastes existing on the Premises in violation of any Environmental Law, as defined hereinafter, as of the Commencement Date, or which come onto the Premises during the term of this Kelly Lease from sources outside of LESSEE's reasonable control including, without limitation, any expense associated with the removal of any underground storage tanks at the Premises and any costs of remediation associated therewith. As used herein, 'Environmental Law' means any one or more

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of all federal, state and local environmental protection, occupational, health, safety and similar laws, ordinances, restrictions, licenses and regulations, including, without limitation the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 *et seq.*), Safe Drinking Water Act (42 U.S.C. Sec. 300f *et seq.*), Toxic Substance Control Act (15 U.S.C. Sec. 2601 *et seq.*), Clean Air Act (42 U.S.C. Sec. 7401 *et seq.*), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 *et seq.*), Hazardous Materials Transportation Act (49 U.S.C. Sec. 1801 *et seq.*), and other similar federal, state or local laws, statutes, ordinances, orders, decrees, rules and/or regulations, regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material as now or at any time hereafter be applicable.

#### XVIII. HAZARDOUS MATERIALS

"Hazardous Material" means any use or activity involving any substance which would cause (1) the Premises to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Premises within the ambit of, the Resource Conservation and Recovery Act of 1976, or any similar federal or state law or local ordinance or any other environmental law, (2) a release or threatened release of hazardous waste from the Premises within the ambit of, the Comprehensive Environmental response, Compensation and Liability Act of 1980, or any similar federal or state law or ordinance or any other environmental law, or (3) the discharge of pollutants or effluent into the air or any emissions, which would require a permit under the Federal Water Pollution Control Act, or the Clean Air Act, or any similar federal or state law or local ordinance or other environmental law, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law ordinance, code, rule, regulation, order or decree, now or hereafter in force, regulating, relating to or imposing liability or standards on conduct concerning any hazardous material.

LESSEE expressly assumes the risk and responsibility for any Hazardous Material during the term of this Kelly Lease, hereafter located on the Premises, and hold harmless the City, its officers, employees, representatives, agents, and successors from and against any and all judgments, claims expenses, causes of action, damages, liability (including reasonable attorneys'

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fees and costs) (1) including all foreseeable and unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage, or disposal of hazardous materials on the Premises, and (2) including, without limitation, the cost of any required or necessary repair, cleanup or detoxification and the preparation of any closure or other required plans, to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release, or disposal of hazardous materials by any person on the Premises.

#### XIX. SIGNS

LESSEE shall have the right to install or cause to be installed appropriate signs on the Premises. The cost of such installations and operations shall be borne by LESSEE. LESSEE shall not erect, install, operate or cause, nor permit to be erected, installed, or operated upon the Premises herein, any sign or other advertising device without first having obtained LESSOR's written consent thereto as to size, construction, location, general appearance, and adherence to Pocatello Municipal Code.

#### XX. MISCELLANEOUS

A. **TAXES AND FEES.** In the event the State of Idaho, Blaine County, or any State or local agency imposes a property tax or any substitute therefore on the Premises, and/or the Leasehold, LESSEE shall pay the tax promptly when due.

B. **NON-DISCRIMINATION.** LESSEE, for itself, its agents, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the grounds of race, color, sex, age, or national origin shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination in the use of said facilities, and (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, gender, age, sexual orientation or gender identity/expression or national origin shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination

C. **MERGER.** This writing represents the entire Agreement between the parties. No prior promises, representations or agreements, written or oral, shall amend, change or add to any of the express provisions herein.

D. **SECTION CAPTIONS.** The captions appearing under the section number designations of this Kelly Lease are for convenience only and are not a part of this Kelly Lease and do not in any way limit or amplify the terms and provisions of the Kelly Lease.

E. **CONSTRUCTION.** This Agreement shall be construed pursuant to the laws of the State of Idaho. The parties agree that no construction of this Agreement shall be made in a Court of competent jurisdiction against the interests of any party to the Agreement on the basis that the party had primary responsibility for drafting the Agreement.

F. **ENTIRE AGREEMENT.** This instrument constitutes the sole and only agreement between LESSOR and LESSEE respecting the Premises, the leasing of said Premises to LESSEE, or the Kelly Lease term herein provided and correctly sets forth the obligations of LESSOR and LESSEE to each other as of its date. No prior promises, representations, or agreements, written or oral, shall amend, change or add to any of the expressed provisions herein contained. This agreement can only be modified or amended in writing upon the mutual agreement of the parties hereto.

G. **JURISDICTION AND VENUE.** Any action or proceeding relative to this Lease Agreement shall be maintained in the Sixth District Court, County of Bannock, State of Idaho.

H. **CORPORATE AUTHORITY.** Any individual or individuals executing the within document on behalf of any corporation which is a party hereto, hereby acknowledge and represent that he, she, or they have the power and authority to so bind the corporate authority, and that such authority was conferred by an act of the Board of Directors of such corporate authority, unless the binding of any such corporation is within the power of the person or persons executing this document on such corporation's behalf. In the event that the party or parties executing this document on behalf of any corporate party hereto, do not have authority to so bind the corporation for any cause or reason, then such person or persons shall be personally liable under the terms hereof.

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MJ

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**XXI. NOTICES**

All notices under this Lease Agreement shall be deemed to be properly served if sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by written notice, said addresses shall be as follows:

**LESSOR:** City of Pocatello  
Attn: Legal Dept.  
P.O. Box 4169  
Pocatello, ID 83205

**LESSEE:** JH KELLY, LLC  
c/o Mark Fleischauer  
Senior Vice President  
2311 E. First Street  
Vancouver, WA 98661

Notice shall be complete upon receipt, unless the recipient ignores or refuses to sign for the certified letter, in which event notice shall be deemed to have been completed on the first attempted delivery by the United State Post Office.

**XXII. DISMISSAL OF LAWSUIT AND INDEMNIFICATION**

In further consideration of the terms of this Lease, LESSEE further agrees as follows:

- A. LESSEE presently has pending in Bannock County, an action against the City of Pocatello, styled, *JH KELLY v. HOKU and City of Pocatello, et al.*, Bannock County District Court Case No. CV-2012-1123-OC. JH KELLY agrees to dismiss said lawsuit against the CITY, its employees, agents, officers, and assigns with prejudice. Moreover JH KELLY agrees that it will never bring another lawsuit against the City of Pocatello arising out of the same core of aggregate facts that were presented in the aforementioned lawsuit.
- B. In addition, JH KELLY agrees that it will withdraw its Response to the City's Motion for Summary Judgment filed in the aforementioned Bannock County Case. JH Kelly

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JH

further agrees that it will also encourage the other parties in the lien foreclosure action to withdraw their respective responses to the City's Motion for Summary Judgment.

- C. Due to the bankruptcy filing of HOKU, the CITY found it necessary to hire the firm of Kumm & Reichert, PLLC of Pocatello, Idaho to defend it in the lawsuit heretofore mentioned and in the HOKU bankruptcy proceedings. As a gesture of good faith and cooperation, KELLY agrees to reimburse the CITY the sum of \$6,226.80 that the City spent in its defense of the claims made in Bannock County Case No. CV-2012-1123-OC and for certain expenses incurred by the City to the firm of Kumm & Reichert in representing the City of Pocatello in the HOKU Bankruptcy proceedings. The CITY acknowledges and agrees that in so doing, JH KELLY neither admits to nor assumes any liability or obligation arising under or with respect to the Hoku Lease prior to the Commencement Date.

#### XXIII. ATTORNEY'S FEES UPON BREACH

In the event it becomes necessary for either party to enforce the terms of this agreement, the prevailing party shall be awarded by a sum which will reasonably compensate it for the attorney's fees and costs incurred by such party to enforce the terms of this agreement. In the event attorney fees are awarded by a Court of law, the parties agree that a reasonable rate for attorney fees is \$350.00 per hour.

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JK  
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JK

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their authorized representatives the date and year first above written.

CITY OF POCATELLO, a municipal corporation of Idaho



BRIAN C. BLAD, Mayor

APPROVED BY LEGAL

Date 11/11/14 Atty B. J. [unclear]

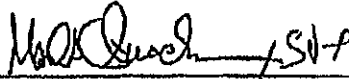
Comments \_\_\_\_\_

ATTEST:

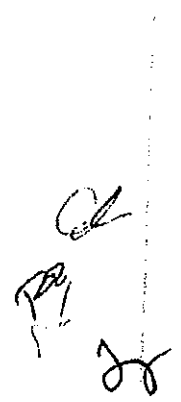


RUTH E. WHITWORTH, City Clerk

JH KELLY, LLC



By: MARK FLEISCHAUER, Senior Vice President

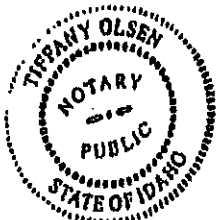




STATE OF IDAHO     )  
  :SS  
County of Benewah    )

On this 21 day of January, 2014, before me, the undersigned, a Notary Public in and for the State, personally appeared Brian C. Blad and Ruth E. Whitworth, known to me to be the Mayor and City Clerk, respectively, of the City of Pocatello, a municipal corporation of Idaho, who executed the foregoing instrument on behalf of said municipal corporation, and acknowledged to me that such corporation executed the same.

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

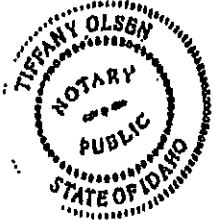


Tiffany Olsen  
NOTARY PUBLIC FOR IDAHO  
My Commission Expires: 10/3/2017

STATE OF Idaho     )  
  :SS  
County of Benewah    )

On this 21<sup>st</sup> day of January, 2014, before me, the undersigned, a Notary Public in and for the State, personally appeared Mark Fleischauer, known to me to be the Senior Vice President of the corporation of JH KELLY, LLC, who executed the foregoing instrument, and acknowledged to me that he executed the same.

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



Tiffany Olsen  
NOTARY PUBLIC FOR Idaho  
My Commission Expires: 10/3/2017

*BA*

*POCATELLO*  
*JP*

Description of the Hoku Parcel

LEGAL DESCRIPTION:

PARCEL 1:

A PARCEL OF LAND LOCATED IN THE EAST 1/2 OF SECTION 17, AND IN THE WEST 1/2 OF THE WEST 1/2 OF SECTION 16, T 6 S, R 34 E, D.M., BANNOCK COUNTY, IDAHO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS (ALL ANGLE POINTS BEING MARKED BY A 1/2-INCH DIAMETER REBAR WITH A YELLOW PLASTIC CAP STAMPED "PE/LS 4440", UNLESS OTHERWISE NOTED):

COMMENCING AT THE WEST 1/4 CORNER OF SAID SECTION 16, SAID CORNER BEING MARKED BY A FOUND 5/8-INCH DIAMETER REBAR WITH NO MARKINGS, SAID REBAR BEING REFERENCED BY A BANNOCK COUNTY BRASS CAP MONUMENT 25 FEET EAST OF THE CORNER;

THENCE S 0°11'07" W ALONG THE WEST LINE OF SECTION 16, 280.35 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE OREGON SHORT LINE RAILROAD (NOW OPERATING AS THE UNION PACIFIC RAILROAD), SAID POINT BEING 50 FEET DISTANT, MEASURED AT RIGHT ANGLES, FROM THE CENTERLINE OF THE NO. 1 MAINLINE TRACK (FORMERLY THE WEST BOUND MAINLINE), AND SAID POINT BEING MARKED BY A SET 5/8-INCH REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075", SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE N 56°36'03" W ALONG THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE OREGON SHORT LINE RAILROAD, 2557.86 FEET TO AN ANGLE POINT ON THE NORTHEASTERLY DEED LINE DESCRIBED IN CORPORATION WARRANTY DEED INSTRUMENT NO. 96009187;

THENCE SOUTHEASTERLY ALONG THE SAID NORTHEASTERLY DEED LINE THE FOLLOWING 10 COURSES AND DISTANCES:

S 21°52'28" E, 267.87 FEET TO AN ANGLE POINT; THENCE S 30°43'41" E, 1457.94 FEET TO AN ANGLE POINT; THENCE S 40°27'08" E, 201.74 FEET TO AN ANGLE POINT; THENCE S 54°06'17" E, 336.24 FEET TO AN ANGLE POINT; THENCE S 43°50'53" E, 313.03 FEET TO AN ANGLE POINT; THENCE S 55°07'18" E, 664.88 FEET TO AN ANGLE POINT; THENCE S 42°27'08" E, 177.06 FEET TO AN ANGLE POINT; THENCE S 59°40'13" E, 280.11 FEET TO AN ANGLE POINT; THENCE S 71°50'27" E, 699.97 FEET TO AN ANGLE POINT; THENCE S 72°38'36" E, 428.65 FEET TO AN ANGLE POINT ON THE WEST 1/16 LINE OF SECTION 16; THENCE N 0°03'36" E ALONG THE WEST 1/16 LINE OF SECTION 16, 653.00 FEET TO THE SOUTHWEST 1/16 CORNER OF SAID SECTION 16, SAID CORNER BEING MARKED BY A 6-INCH DIAMETER STEEL FENCE CORNER POST;

THENCE S 89°05'05" W ALONG THE SOUTH 1/16 LINE OF SECTION 16, 43.11 FEET TO A POINT ON THE SOUTHWESTERLY DEED LINE DESCRIBED IN INSTRUMENT NO. 27678, SAID POINT BEING MARKED BY A SET 5/8-INCH DIAMETER REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075";

THENCE N 56°36'03" W ALONG SAID SOUTHWESTERLY DEED LINE, 1519.62 FEET TO A POINT ON THE WEST DEED DESCRIBED IN SAID INSTRUMENT NO. 27478, SAID POINT ALSO BEING ON THE WEST LINE OF SECTION 16, AND SAID POINT BEING MARKED BY A SET 5/8-INCH DIAMETER REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075";

THENCE N 0°11'17" E ALONG THE WEST LINE OF SAID SECTION 16, 179.29 FEET TO THE TRUE POINT OF BEGINNING.



MS PR  
JH

**Description of tract to be excluded from parcel leased to Hoku to be used for  
construction of the Proposed Public Road**

A parcel of land located in the SW 1/4, Section 16 and the E 1/4, Section 17, Township 6 south, Range 34 East, Boise Meridian, Bannock County Idaho, being a portion of the tract described in instrument #20705326 as recorded in the records of Bannock County, Idaho, more particularly described as follows:

Commencing at the SW 1/16 corner of Section 16, marked by a 6inch diameter steel post; thence S. 0°03'36" W. along said 1/16 line (basis of bearing City of Pocatello grid bearing of N.00°23'23" E. between the found Bannock County brass cap monument marking the Southeast corner and the found 5/8 inch diameter rebar with no markings, marking the East 1/4 of Section 17 as shown on Record of Survey instrument number 20511998) a distance of 548.75 feet to the TRUE POINT OF BEGINNING; thence continuing along the 1/16 line S.0°03'36" W. a distance of 104.75 feet to a 1/2" rebar with a yellow plastic cap stamped PE/LS 4440; (the next ten angle points also being marked with 1/2" rebar with yellow caps marked PE/LS 4440); thence N. 72°36'36" W. a distance of 428.65 feet; thence N.71°50'27" W. a distance of 699.97 feet; thence N. 59°48'13" W. a distance of 280.11 feet; thence N. 42°27'08" W. a distance of 177.06 feet; thence N.55°07'18" W. a distance of 664.68 feet; thence N.43°50'53" W. a distance of 313.03 feet; thence N.54°06'17" W. a distance of 336.24 feet; thence N.40°27'08" W. a distance of 201.74 feet; thence N.30°43'41" W. a distance of 1,457.94 feet; thence N.21°52'28" W. a distance of 267.87 feet to a point on the southwesterly right of way line of the Oregon Short Line Railroad (now operating as the Union Pacific Railroad) said point being 50 feet distant, measured at right angles, from the centerline of the No. 1 mainline track (formerly the westbound main); thence S.56°36'03"E. along the southwesterly right of way line of the Oregon Short Line Railroad a distance of 294.16 feet; thence S.59°16'19" W. a distance of 69.59 feet; thence S.30°43'42" E. a distance of 1,457.93 feet; thence S.49°31'51" E. a distance of 494.18 feet; thence S. 51°59'04" E. a distance of 1,415.78 feet; thence S.72°14'30" E. a distance of 1,075.21 feet to the TRUE POINT OF BEGINNING.



**ASSIGNMENT AND AMENDMENT OF LAND LEASE  
AGREEMENT AND RELEASE OF JH KELLY LLC**

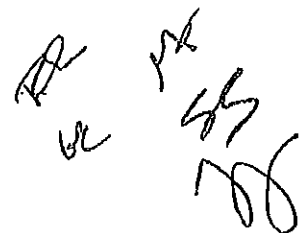
THIS ASSIGNMENT AND AMENDMENT OF LAND LEASE AGREEMENT AND RELEASE OF JH KELLY LLC ("Agreement"), has an effective date of the 29th day of January 2016, and is entered into by and among JH KELLY LLC, a Washington limited liability company ("JHK" or "Seller"), 821 Third Avenue, P.O. Box 2038, Longview, Washington 98632, V.A. METALS, L.L.C, an Idaho limited liability company, P.O. Box 1047, Blackfoot, Idaho 83221 ("Lessee" or "Buyer"), and the Pocatello Development Authority, an urban renewal agency formed under the laws of the State of Idaho, 911 North 7<sup>th</sup> Avenue, Pocatello, Idaho 83206, ("Lessor" or "PDA"). All of the defined entities herein shall be referred to as the "Parties" and each individual entity, a "Party."

WHEREAS, the land ("Land") under the former Hoku facility located at 1 Hoku Way, Pocatello, Idaho, as legally described in the attachment to the Kelly Lease (as defined below), was sold by the City of Pocatello to the PDA on September 17, 2015; and,

WHEREAS, the City of Pocatello had entered into a lease of the Land dated March 22, 2007, as amended (the "Hoku Lease") with Hoku Materials, Inc.; and,

WHEREAS, the Parties acknowledge that by Order of the Honorable Jim D. Pappas in the United States Bankruptcy Court, District of Idaho, Case No. 13-40837-JDP, the Bankruptcy Trustee of the bankruptcy estate of *Hoku Materials, Inc* was authorized to assume the Hoku Lease and was further authorized to assign said Hoku Lease to JHK as a new Lessee, and,

WHEREAS, the Parties acknowledge that on or about January 21, 2014 a new lease was entered into by and between JHK and the City of Pocatello that related to the same Land as the lease that was assumed by the bankruptcy trustee and assigned to JHK (the "Kelly Lease"); and,



WHEREAS, the Parties acknowledge that the Intent of the City of Pocatello and JMK in entering into the January 21, 2014 lease was to terminate the Hoku Lease, and that the Parties' relationship and ownership or leasehold interest would be solely controlled by the Kelly Lease; and,

WHEREAS, it is acknowledged by the Parties that on September 17, 2015 the City of Pocatello assigned the City of Pocatello's Interest in the Kelly Lease to the PDA and that on October 21, 2015 the PDA accepted the assignment of such Kelly Lease. It is further acknowledged by the Parties that the Land that is the subject matter of the Kelly Lease is owned by the PDA and that the City of Pocatello has no further interest in the Land or any leasehold interest related thereto; and,

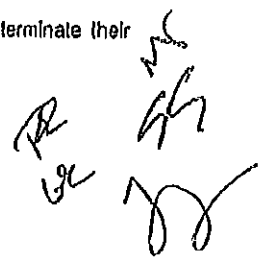
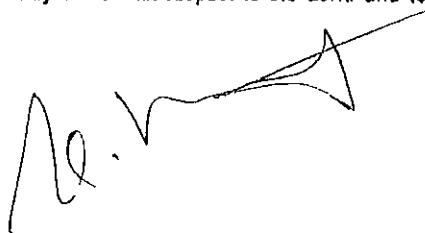
WHEREAS, Lessee has offered to buy Assets (as defined in the Asset Purchase Agreement "APA") from Seller currently located on the Land at what is generally referred to as the HOKU facility in Pocatello, Idaho pursuant to the terms of an APA executed on December 21, 2015.

WHEREAS, it is acknowledged that pursuant to the APA, Lessee is purchasing from Seller, the Assets (as defined in the APA) located on the Land owned by PDA and currently leased by Seller under the Kelly Lease and that Seller desires to assign said Kelly Lease to Lessee, who desires to assume the existing Kelly Lease subject to it being amended as set out herein. It is further acknowledged that it is the Intent of Lessee to either purchase the Land owned by the PDA or enter into a new long term lease for such Land prior to the term of the Kelly Lease expiring; and,

WHEREAS, it is the Intent of Seller to assign to Lessee any and all leasehold interest it may have in the Land and be released from any and all obligations under any and all leasehold interests, known or unknown, related to such Land, including but not limited to the Kelly Lease and the Hoku Lease, and,

WHEREAS, it is acknowledged that the terms of the APA between Seller and Lessee relate to and are integral to both Seller and Lessee and that verification of the termination of the Hoku Lease and an agreement by Seller to assign the Kelly Lease to Lessee constitutes additional consideration for both the APA and this Agreement; and

WHEREAS, it is the Intent of the Parties to reach an Agreement which verifies the respective interests each Party currently owns with respect to the Land and to transfer, assign or terminate their



respective interests and any duties and obligations by and between the Parties hereto as it relates to the ownership interests of each in the Land; and,

WHEREAS, it is the intent of the Parties that each is entitled to rely upon the representations of the others as set out herein for the purpose of making decisions concerning the purchase of the Land and/or the relinquishment of obligations owed to them by other Parties to this Agreement; and,

WHEREAS, it is the intent of the PDA to agree to the assignment of the Kelly Lease from JHK to Lessee and the termination of any and all other leases that now exist or have existed in the past, including the Hoku Lease and release Seller from any and all obligations arising from any lease between Seller and the City or the PDA, including the Kelly Lease and Hoku Lease, so long as the assigned Kelly Lease is assumed by Lessee pursuant to the terms of this Agreement; and,

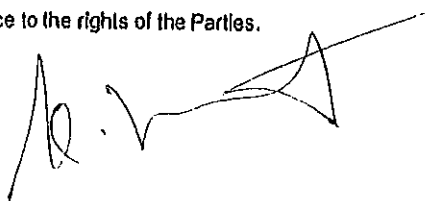
WHEREAS, it is the intent of the Parties that this Agreement and any assignments or releases contained herein will not be valid or effective until such time as Seller and Lessee have complied with all of the requirements set out in the APA and a closing has occurred in conjunction with the APA.

NOW, THEREFORE, intending to be legally bound, and in mutual consideration of the promises contained herein, the Parties agree as follows:

1. **Recitals Incorporated.** The Recitals set forth above are incorporated by reference with the Parties agreeing that said recitals are not mere recitations, but are full and complete statements of the facts underlying the basis for the Parties' respective agreements set out herein and are covenants of the Parties and a portion of the consideration for this Agreement.

2. **Agreements of the Parties.**

a. The Parties agree that the effectiveness of this Agreement is conditioned upon and subject to the occurrence of the Closing, anticipated for January 29, 2016, and the payment of the full Purchase Price (as such terms are defined in the APA). In the event the Closing does not occur, this Agreement shall be null and void and the Recitals and terms hereof shall have no legal effect or prejudice to the rights of the Parties.



b. Sellers and PDA agree that the Hoku Lease between the City and Hoku Materials, Inc., including any and all modifications or amendments, has been terminated and is of no further effect or validity;

c. JHK agrees to assign to Lessee the Kelly Lease between JHK and the PDA and Lessee agrees to assume said lease as modified herein. Said transfer will be automatically effective upon the purchase by Lessee of the Items set out in the APA between JHK and Lessee and the payment of all sums owing thereunder;

d. PDA agrees to the assignment of the Kelly Lease between JHK and Lessee effective upon the completion of the sale of Assets under the APA between Seller and Lessee, including, but not limited to payment of the Purchase Price by Lessee;

e. PDA agrees to amend the assigned Kelly Lease as follows:

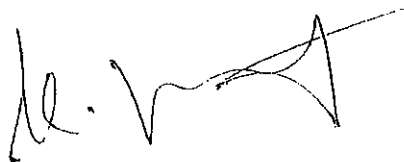
1. The rental amount under paragraph III.A. will be increased from \$1.00 per year to \$20,000 per year. Said rental payment is due on the same date as the Closing and by January 1<sup>st</sup> for each lease year thereafter;

2. Paragraph III.B will be eliminated and both JHK and Lessee shall be released from any obligation thereunder;

3. Paragraph XII. will be eliminated and replaced in its entirety by the following:

**XII. Removal and Security**

On the termination date of this lease, Lessee shall have removed from the Premises any and all assets, equipment and other Items purchased by Lessee from Seller, pursuant to the terms of the APA, and surrender possession of the Premises to Lessor. Lessee agrees to secure its obligation to remove the Identified Items by providing an Irrevocable Letter of Credit or other agreed upon security instrument in the amount of One Million (\$1,000,000.00) dollars to be used only in the event that Lessor is required to remove the Items Identified herein and owned by Lessee. Lessor



shall only be entitled to draw upon such security in the amounts necessary to reimburse Lessor for the amounts, if any, expended by Lessor in removing the Identified Items from the Premises. In the event that Lessee fails to do so. All amounts not expended by Lessor, if any, shall be returned to Lessee. Lessor agrees that the amount of the agreed upon security instrument shall be the limit of Lessee's liability, of any kind or nature and in any and all amounts, relating to or arising from any duty to remove any assets from the Premises and any claims made as a result thereof. It is agreed that any property remaining on the Premises on the termination date of the lease shall be the property of Lessor. The required security instrument will be agreed upon between Lessor and Lessee and provided to Lessor simultaneously with the effective date of this agreement, January 29, 2016.

4. Paragraph XXI and the first paragraph of the Kelly Lease will be amended to reference V.A. Metals, LLC, an Idaho Limited Liability Company as the Lessee;

5. Paragraph XXII will be eliminated in its entirety and have no effect upon or create any duty or responsibility for Lessee for the reason that all obligations under said paragraph have been satisfied by Seller prior to the assignment of the Kelly Lease and the PDA agrees by executing this Agreement to release and discharge Seller from any obligations under such paragraph that have not been satisfied prior to the effective date of the assignment of this Kelly Lease to Lessee.

f. PDA agrees to release Seller from any and all obligations under the Kelly Lease and Hoku Lease effective upon the assignment of said Kelly Lease to Lessee, and

g. PDA agrees to grant to Lessee an extension of the assigned Kelly Lease for an additional one year period from the termination date to January 17, 2018

3. Assignment. It is agreed that Lessee only shall have the right to assign its rights, including but not limited to, the option to purchase the premises, under this agreement to another person or party chosen by Lessee with the written consent of Lessor, which will not be unreasonably withheld or delayed.



4. **Option to Purchase.** Lessor agrees that Lessee shall at all times during the term of this lease have the option to purchase the property under the following terms and conditions:

a. **Appraisal of Property.** It is agreed that Lessee will choose a qualified appraiser for purposes of determining the fair market value of the real property owned by Lessor and that Lessor will pay for the cost of such appraisal. It is agreed that the Lessee will have until January 29, 2016 to identify the appraiser.

b. **Purchase of property.** Lessee shall have the option to purchase the property at the appraised value as determined by the appraiser identified by Lessee on terms to be determined by Lessor and Lessee. Lessee has the right to exercise such option at any time during the term of this lease. The decision to purchase will be based upon the results of the feasibility study to be undertaken by Lessee and its decision on how to proceed with the buildings and equipment purchased by Lessee from Seller. The Parties agree that if the fair market value of the property is \$1,200,000.00 or less that Lessee will, but is not required to, exercise its option to purchase the Premises for no less than \$1,200,000.00. In the event that the fair market value exceeds \$1,200,000.00 Lessee shall make the determination to exercise its option based upon all the facts and information then available to Lessee. Lessor agrees to take no action of any kind to prevent or restrict Lessee from exercising its rights hereunder.

c. **Cancellation of Security.** In the event that Lessee purchases the premises any and all security instruments provide to Lessor by Lessee shall immediately be cancelled and returned to Lessee with Lessor waiving any and all rights thereto upon the closing of such purchase.

5. **Governing Law.** This Agreement shall be interpreted and enforced according to the laws of the State of Idaho. Jurisdiction and venue shall at all times be in Bannock County, Idaho.

6. **Attorney Fees.** Should it be necessary for any Party to this Agreement to initiate or defend any legal proceedings wherein any issues arising under the Agreement are adjudicated, the prevailing party in such legal proceedings shall be entitled to an award of its attorney fees, costs, expenses and disbursements.



(including the fees and expenses of expert and fact witnesses), reasonably incurred or made by it in preparing to bring suit, during suit, on appeal, on petition for review and in enforcing any judgment or award.

7. **Equal Participation In Drafting.** The Parties have had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any Party based upon a claim that the Party drafted any language determined to be ambiguous

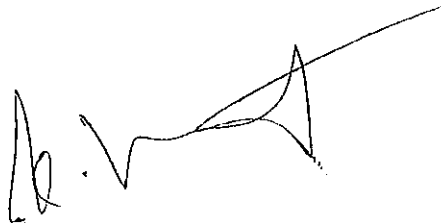
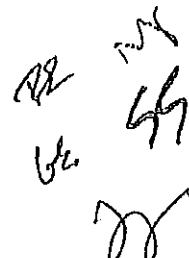
8. **Entire Agreement.** This Agreement memorializes the entire agreement of the Parties in all respects. This Agreement may not be modified, interpreted, amended, waived, or revoked orally, but only by writing signed by all Parties. No Party is entering into this Agreement in reliance on oral or written promises, inducements, representations, understandings, interpretations or agreements other than those contained in this Agreement.

9. **Counterparts** This Agreement may be executed in any number of identical counterparts, notwithstanding that all Parties have not signed the same counterpart, with the same effect as if all Parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

10. **Signature Pages.** A facsimile of the signature page evidencing the signature of a Party(s) to this Agreement shall constitute an original signature(s).

11. **Authority to Execute.** The Parties hereto verify that the person or persons executing this agreement have full and complete authority to execute this agreement and bind the entity for which they are signing.

*(signature page to follow)*

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.A cluster of handwritten initials and marks in black ink, including 'RR', '62', '49', and a signature-like mark at the bottom.

IN WITNESS WHEREOF, the Parties have entered this ASSIGNMENT AND AMENDMENT OF  
LAND LEASE AGREEMENT AND RELEASE OF JH KELLY LLC as of the date first specified above

SELLER

JH KELLY LLC

By: [Signature]  
Name: Maha P. Subramanian  
Title: Senior Vice President

LESSEE

V.A. METALS, LLC

By: [Signature]  
Name: ROLA VENKAT RAMANAIYO  
Title: V.P. / Manager

LESSOR

POCATELLO DEVELOPMENT AUTHORITY

By: [Signature]  
Name: Scott J. Smith  
Title: PDA Vice-Chairman

*Handwritten initials and numbers:*  
R2  
62  
6  
44  
JX

**FIRST AMENDMENT TO ASSIGNMENT AND AMENDMENT  
OF LAND LEASE AGREEMENT AND RELEASE OF JH KELLY LLC**

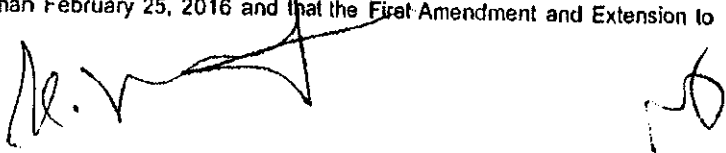
THIS FIRST AMENDMENT TO ASSIGNMENT AND AMENDMENT OF LAND LEASE AGREEMENT AND RELEASE OF JH KELLY LLC ("Agreement"), is entered into by and among JH KELLY LLC, a Washington limited liability company ("JHK" or "Seller"), 821 Third Avenue, P.O. Box 2038, Longview, Washington 98632, V.A. METALS, L.L.C, an Idaho limited liability company, P.O. Box 1047, Blackfoot, Idaho 83221 ("Lessee" or "Buyer"), and the Pocatello Development Authority, an urban renewal agency formed under the laws of the State of Idaho, 911 North 7<sup>th</sup> Avenue, Pocatello, Idaho 83205, ("Lessor" or "PDA"). All of the defined entities herein shall be referred to as the "Parties" and each individual entity, a "Party."

WHEREAS, it is acknowledged by the parties that JHK and Buyer on February 3, 2016 entered into an agreement entitled First Amendment and Extension to Asset Purchase Agreement for the purpose of extending the closing date for Buyers purchase of certain property specifically identified in the Asset Purchase Agreement.

WHEREAS, it is the intent of the Parties to amend the terms of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC to be consistent with the changes contained in the First Amendment and Extension to Asset Purchase Agreement.

WHEREAS, it is the parties intent that all provisions of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC not specifically altered, changed or amended by this First Amendment to Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC remain in full force and effect.

WHEREAS, the Parties acknowledge that the closing date set out in the APA as January 29, 2016 has been extended to no later than February 25, 2016 and that the First Amendment and Extension to

Handwritten signatures of the parties, including a large signature on the left and a smaller one on the right.

Asset Purchase Agreement sets out certain extension fees and penalties for nonpayment that relate to the extended closing date.

WHEREAS, Buyer, JHK and Lessor wish to enter into this First Amendment to Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC to identify the terms and conditions constituting the agreed upon amendments to the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC.

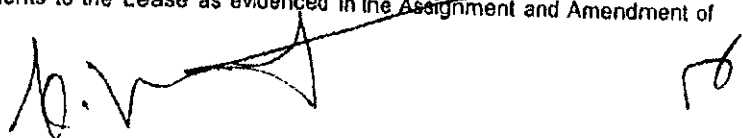
NOW, THEREFORE, intending to be legally bound, and in mutual consideration of the promises contained herein, the Parties agree as follows:

**1. Recitals Incorporated.** The Recitals set forth above are incorporated by reference with the Parties agreeing that said recitals are not mere recitations, but are full and complete statements of the facts underlying the basis for the Parties respective agreements set out herein and are covenants of the Parties and a portion of the consideration for this Agreement.

**2. Agreements of the Parties.**

a. The Parties agree that the effectiveness of this Agreement is conditioned upon and subject to the occurrence of the Closing and the payment of the full Purchase Price as set out and required by the First Amendment and Extension to Asset Purchase Agreement. In the event the Closing does not occur on or before February 25, 2016, this Agreement shall be null and void and the Recitals and terms hereof shall have no legal effect or prejudice to the rights of the Parties.

b. The Parties agree that the new Paragraph XII of the Lease as set out in Paragraph 3 of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC shall be amended to provide that the required security instrument will be determined and agreed upon by and between Lessee and Lessor within 7 days after the closing and that Lessee shall have 14 days after such agreement to provide to Lessor the required One Million (\$1,000,000.00) dollar security instrument in the form to be agreed upon by the parties. It is further agreed that the amendments to the Lease as evidenced in the Assignment and Amendment of

Handwritten signature and initials in black ink, located at the bottom center of the page.

Land Lease Agreement and Release of JH Kelly, LLC shall not be effective until the agreed upon security instrument is in place and effective.

c. It is agreed and understood by and between Lessee and Lessor that the lessee shall undertake the feasibility study associated with the property purchased from JHK and the real property leased from Lessor immediately upon the closing with JHK and the transfer of the lease to Lessee.

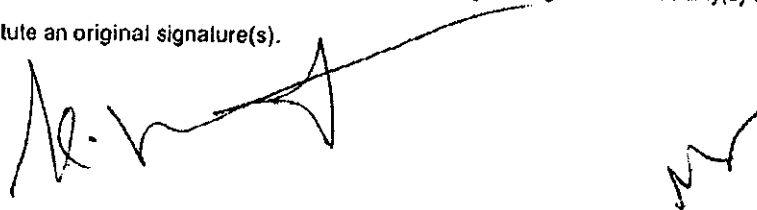
d. It is agreed by the PDA that the release of JHK from any obligations under the Lease and the assignment of the Lease by JHK to Buyer shall be effective upon JHK verifying to PDA and Buyer that all amounts required have been paid pursuant to the First Amendment and Extension to Asset Purchase Agreement.

e. It is agreed by and between PDA and Buyer that Paragraph 4.a. of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC shall be amended to provide that Buyer shall have until March 2, 2016 to identify the appraiser.

f. Unless specifically set out in this First Amendment to Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC the terms of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC remain in full force and effect and shall govern this agreement.

**3. Counterparts.** This Agreement may be executed in any number of identical counterparts, notwithstanding that all Parties have not signed the same counterpart, with the same effect as if all Parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

**4. Signature Pages.** A facsimile of the signature page evidencing the signature of a Party(s) to this Agreement shall constitute an original signature(s).

Two handwritten signatures are present. The first is a large, stylized signature in black ink, possibly reading 'M. Kelly'. The second is a smaller, more compact signature to the right, possibly reading 'M. Kelly'.

5. Authority to Execute. The Parties hereto verify that the person or persons executing this agreement have full and complete authority to execute this agreement and bind the entity for which they are signing.

IN WITNESS WHEREOF, the Parties have entered this FIRST AMENDMENT TO ASSIGNMENT AND AMENDMENT OF LAND LEASE AGREEMENT AND RELEASE OF JH KELLY LLC as of the \_\_\_\_\_ day of February, 2016.

**SELLER**

JH KELLY LLC

By: [Signature]  
Name: MARK FLECKMAN  
Title: SENIOR VICE PRESIDENT

**LESSEE**

V.A. METALS, LLC

By: [Signature]  
Name: KOLA VENKATARAMA NAIDU  
Title: PRESIDENT

**LESSOR**

POCATELLO DEVELOPMENT AUTHORITY

By: \_\_\_\_\_  
Scott Smith, Chairman


[Handwritten mark]

5. Authority to Execute. The Parties hereto verify that the person or persons executing this agreement have full and complete authority to execute this agreement and bind the entity for which they are signing.

IN WITNESS WHEREOF, the Parties have entered this FIRST AMENDMENT TO ASSIGNMENT AND AMENDMENT OF LAND LEASE AGREEMENT AND RELEASE OF JH KELLY LLC as of the \_\_\_\_\_ day of February, 2016.

**SELLER**

JH KELLY LLC

By:   
Name: Mike FELSMAN  
Title: SELLER VICE PRESIDENT

**LESSEE**

V.A. METALS, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LESSOR**

POCATELLO DEVELOPMENT AUTHORITY

By:   
Scott Smith, Chairman

58



**FIRST AMENDMENT TO ASSIGNMENT AND AMENDMENT  
OF LAND LEASE AGREEMENT AND RELEASE OF JH KELLY LLC**

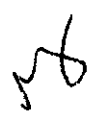
THIS FIRST AMENDMENT TO ASSIGNMENT AND AMENDMENT OF LAND LEASE AGREEMENT AND RELEASE OF JH KELLY LLC ("Agreement"), is entered into by and among JH KELLY LLC, a Washington limited liability company ("JHK" or "Seller"), 821 Third Avenue, P.O. Box 2038, Longview, Washington 98632, V.A. METALS, L.L.C, an Idaho limited liability company, P.O. Box 1047, Blackfoot, Idaho 83221 ("Lessee" or "Buyer"), and the Pocatello Development Authority, an urban renewal agency formed under the laws of the State of Idaho, 911 North 7<sup>th</sup> Avenue, Pocatello, Idaho 83205, ("Lessor" or "PDA"). All of the defined entities herein shall be referred to as the "Parties" and each individual entity, a "Party."

WHEREAS, it is acknowledged by the parties that JHK and Buyer on February 3, 2016 entered into an agreement entitled First Amendment and Extension to Asset Purchase Agreement for the purpose of extending the closing date for Buyers purchase of certain property specifically identified in the Asset Purchase Agreement.

WHEREAS, it is the intent of the Parties to amend the terms of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC to be consistent with the changes contained in the First Amendment and Extension to Asset Purchase Agreement.

WHEREAS, it is the parties intent that all provisions of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC not specifically altered, changed or amended by this First Amendment to Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC remain in full force and effect.

WHEREAS, the Parties acknowledge that the closing date set out in the APA as January 29, 2016 has been extended to no later than February 25, 2016 and that the First Amendment and Extension to



Asset Purchase Agreement sets out certain extension fees and penalties for nonpayment that relate to the extended closing date.

WHEREAS, Buyer, JHK and Lessor wish to enter into this First Amendment to Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC to identify the terms and conditions constituting the agreed upon amendments to the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC.

NOW, THEREFORE, intending to be legally bound, and in mutual consideration of the promises contained herein, the Parties agree as follows:

**1. Recitals Incorporated.** The Recitals set forth above are incorporated by reference with the Parties agreeing that said recitals are not mere recitations, but are full and complete statements of the facts underlying the basis for the Parties respective agreements set out herein and are covenants of the Parties and a portion of the consideration for this Agreement.

**2. Agreements of the Parties.**

a. The Parties agree that the effectiveness of this Agreement is conditioned upon and subject to the occurrence of the Closing and the payment of the full Purchase Price as set out and required by the First Amendment and Extension to Asset Purchase Agreement. In the event the Closing does not occur on or before February 25, 2016, this Agreement shall be null and void and the Recitals and terms hereof shall have no legal effect or prejudice to the rights of the Parties.

b. The Parties agree that the new Paragraph XII of the Lease as set out in Paragraph 3 of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC shall be amended to provide that the required security instrument will be determined and agreed upon by and between Lessee and Lessor within 7 days after the closing and that Lessee shall have 14 days after such agreement to provide to Lessor the required One Million (\$1,000,000.00) dollar security instrument in the form to be agreed upon by the parties. It is further agreed that the amendments to the Lease as evidenced in the Assignment and Amendment of

Land Lease Agreement and Release of JH Kelly, LLC shall not be effective until the agreed upon security instrument is in place and effective.

c. It is agreed and understood by and between Lessee and Lessor that the lessee shall undertake the feasibility study associated with the property purchased from JHK and the real property leased from Lessor immediately upon the closing with JHK and the transfer of the lease to Lessee.

d. It is agreed by the PDA that the release of JHK from any obligations under the Lease and the assignment of the Lease by JHK to Buyer shall be effective upon JHK verifying to PDA and Buyer that all amounts required have been paid pursuant to the First Amendment and Extension to Asset Purchase Agreement.

e. It is agreed by and between PDA and Buyer that Paragraph 4.a. of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC shall be amended to provide that Buyer shall have until March 2, 2016 to identify the appraiser.

f. Unless specifically set out in this First Amendment to Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC the terms of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC remain in full force and effect and shall govern this agreement.

**3. Counterparts.** This Agreement may be executed in any number of identical counterparts, notwithstanding that all Parties have not signed the same counterpart, with the same effect as if all Parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

**4. Signature Pages.** A facsimile of the signature page evidencing the signature of a Party(s) to this Agreement shall constitute an original signature(s).

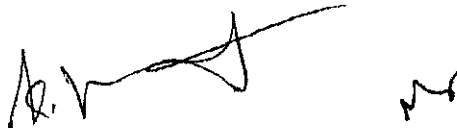
**SECOND AMENDMENT TO ASSIGNMENT AND  
AMENDMENT OF LAND LEASE AGREEMENT AND RELEASE OF  
JH KELLY LLC**

THIS SECOND AMENDMENT TO ASSIGNMENT AND AMENDMENT OF LAND LEASE AGREEMENT AND RELEASE OF JH KELLY LLC ("Agreement"), is entered into by and among JH KELLY LLC, a Washington limited liability company ("JHK" or "Seller"), 821 Third Avenue, P.O. Box 2038, Longview, Washington 98632, V.A. METALS, L.L.C, an Idaho limited liability company, P.O. Box 1047, Blackfoot, Idaho 83221 ("Lessee" or "Buyer"), and the Pocatello Development Authority, an urban renewal agency formed under the laws of the State of Idaho, 911 North 7<sup>th</sup> Avenue, Pocatello, Idaho 83205, ("Lessor" or "PDA"). All of the defined entities herein shall be referred to as the "Parties" and each individual entity, a "Party."

WHEREAS, it is acknowledged by the parties that JHK and Buyer on February 3, 2016 entered into an agreement entitled First Amendment and Extension to Asset Purchase Agreement for the purpose of extending the closing date for Buyers purchase of certain property specifically identified in the Asset Purchase Agreement; and

WHEREAS, the Parties amended the terms of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC in the First Amendment and Extension to Asset Purchase Agreement; and

WHEREAS, it is the parties intent that all provisions of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC not specifically altered, changed or amended by the First Amendment to Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC remain in full force and effect and that all provisions of the First Amendment to Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC not specifically altered, changed or amended by this Second Amendment to Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC remain in full force and effect; and



WHEREAS, the Parties acknowledge that the closing date set out in the APA as January 29, 2016 has been extended to no later than April 15, 2016 and that the Second Amendment and Extension to Asset Purchase Agreement sets out certain extension fees and penalties for nonpayment that relate to the extended closing date; and

WHEREAS, Buyer, JHK and Lessor wish to enter into this Second Amendment to Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC to identify the terms and conditions constituting the agreed upon amendments to the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC.

NOW, THEREFORE, intending to be legally bound, and in mutual consideration of the promises contained herein, the Parties agree as follows:

**1. Recitals Incorporated.** The Recitals set forth above are incorporated by reference with the Parties agreeing that said recitals are not mere recitations, but are full and complete statements of the facts underlying the basis for the Parties respective agreements set out herein and are covenants of the Parties and a portion of the consideration for this Agreement.

**2. Agreements of the Parties.**

a. The Parties agree that the effectiveness of this Agreement is conditioned upon and subject to the occurrence of the Closing and the payment of the full Purchase Price as set out and required by the Second Amendment and Extension to Asset Purchase Agreement. In the event the Closing does not occur on or before April 15, 2016, this Agreement shall be null and void and the Recitals and terms hereof shall have no legal effect or prejudice to the rights of the Parties.

b. The Parties agree that the new Paragraph XII of the Lease as set out in Paragraph 3 of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC shall be amended to provide that the required security instrument will be determined and agreed upon by and between Lessee and Lessor within 7 days after the closing and that Lessee shall have 14 days after such agreement to provide to Lessor the required One Million (\$1,000,000.00) dollar security instrument in the form to be agreed upon by the parties. It is further agreed that the



MG

amendments to the Lease as evidenced in the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC or any amendment or extension thereof shall not be effective until the agreed upon security instrument is in place and effective.

c. It is agreed and understood by and between Lessee and Lessor that the lessee shall undertake the feasibility study associated with the property purchased from JHK and the real property leased from Lessor immediately upon the closing with JHK and the transfer of the lease to Lessee.

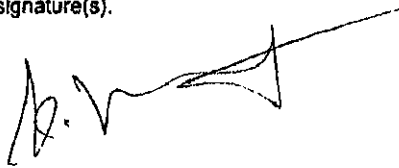
d. It is agreed by the PDA that the release of JHK from any obligations under the Lease and the assignment of the Lease by JHK to Buyer shall be effective upon JHK verifying to PDA and Buyer that all amounts required have been paid pursuant to the Second Amendment and Extension to Asset Purchase Agreement.

e. It is agreed by and between PDA and Buyer that Paragraph 4.a. of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC shall be amended to provide that Buyer shall have until April 29, 2016 to identify the appraiser.

f. Unless specifically set out in this First or Second Amendment to Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC the terms of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC remain in full force and effect and shall govern this agreement.

**3. Counterparts.** This Agreement may be executed in any number of identical counterparts, notwithstanding that all Parties have not signed the same counterpart, with the same effect as if all Parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

**4. Signature Pages.** A facsimile of the signature page evidencing the signature of a Party(s) to this Agreement shall constitute an original signature(s).

A handwritten signature in black ink, appearing to be 'A. V. [unclear]', written over a horizontal line.Handwritten initials 'MS' in black ink.

5. Authority to Execute. The Parties hereto verify that the person or persons executing this agreement have full and complete authority to execute this agreement and bind the entity for which they are signing.

IN WITNESS WHEREOF, the Parties have entered this SECOND AMENDMENT TO ASSIGNMENT AND AMENDMENT OF LAND LEASE AGREEMENT AND RELEASE OF JH KELLY LLC as of the 14<sup>th</sup> day of March, 2016.

**SELLER**

JH KELLY LLC

By: [Signature]  
Name: MARK FUELSCHMIDT  
Title: SENIOR VICE PRESIDENT

**LESSEE**

V.A. METALS, LLC

By: [Signature]  
Name: K. Venkat Rama Nandy  
Title: President

**LESSOR**

POCATELLO DEVELOPMENT AUTHORITY

By: [Signature] 3/7/16  
Scott Smith, Chairman

MS

**THIRD AMENDMENT TO ASSIGNMENT AND AMENDMENT  
OF LAND LEASE AGREEMENT AND RELEASE OF JH KELLY LLC**

THIS THIRD AMENDMENT TO ASSIGNMENT AND AMENDMENT OF LAND LEASE AGREEMENT AND RELEASE OF JH KELLY LLC ("Agreement"), is entered into by and among JH KELLY LLC, a Washington limited liability company ("JHK" or "Seller"), 821 Third Avenue, P.O. Box 2038, Longview, Washington 99632, V.A. METALS, L.L.C. an Idaho limited liability company, P.O. Box 1047, Blackfoot, Idaho 83221 ("Lessee" or "Buyer"), and the Pocatello Development Authority, an urban renewal agency formed under the laws of the State of Idaho, 911 North 7<sup>th</sup> Avenue, Pocatello, Idaho 83205, ("Lessor" or "PDA"). All of the defined entities herein shall be referred to as the "Parties" and each individual entity, a "Party."

WHEREAS, it is acknowledged by the parties that JHK and Buyer have previously entered into three Amendment and Extension to Asset Purchase Agreements for the purpose of extending the closing date for Buyers purchase of certain property specifically identified in the Asset Purchase Agreement; and

WHEREAS, the Parties amended the terms of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC in the First and Second Amendment and Extension to Asset Purchase Agreements for the purpose of conforming the terms with the amended APA; and

WHEREAS, it is the parties intent that all provisions of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC not specifically altered, changed or amended by the First and Second Amendment to Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC remain in full force and effect and that all provisions of the First and Second Amendment to Assignment and Amendment of Land Lease Agreements and Release of JH Kelly, LLC not specifically altered, changed or amended by this Third Amendment to Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC remain in full force and effect; and





WHEREAS, the Parties acknowledge that the closing date set out in the APA and all extensions thereto has been extended to no later than June 30, 2016 and that the Parties desire to extend the effective date of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC and all previous amendments thereto pursuant to the terms hereof, and

WHEREAS, Buyer, JHK and Lessor wish to enter into this Third Amendment to Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC to identify the terms and conditions constituting the agreed upon amendments to the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC.

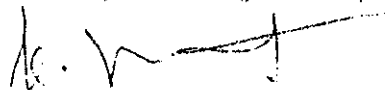
NOW, THEREFORE, intending to be legally bound, and in mutual consideration of the promises contained herein, the Parties agree as follows:

1. **Recitals Incorporated.** The Recitals set forth above are incorporated by reference with the Parties agreeing that said recitals are not mere recitations, but are full and complete statements of the facts underlying the basis for the Parties respective agreements set out herein and are covenants of the Parties and a portion of the consideration for this Agreement.

**2. Agreements of the Parties.**

a. The Parties agree that the effectiveness of this Agreement is conditioned upon and subject to the occurrence of the Closing and the payment of the full Purchase Price as set out and required by the Third Amendment and Extension to Asset Purchase Agreement (Third Extension). In the event the Closing does not occur on or before June 30, 2016 pursuant to the terms of the Third Extension, this Agreement shall be null and void and the Recitals and terms hereof shall have no legal effect or prejudice to the rights of the Parties.

b. The Parties agree that the new Paragraph XII of the Lease as set out in Paragraph 3 of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC shall be amended to provide that the required security instrument will be determined and agreed upon by and between Lessee and Lessor within 7 days after the closing and that Lessee shall have 14 days after such agreement to provide to Lessor the required One Million



(\$1,000,000.00) dollar security instrument in the form to be agreed upon by the parties. It is further agreed that the amendments to the Lease as evidenced in the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC or any amendment or extension thereof shall not be effective until the agreed upon security instrument is in place and effective.

c. It is agreed and understood by and between Lessee and Lessor that the lessee shall undertake the feasibility study associated with the property purchased from JHK and the real property leased from Lessor immediately upon the closing with JHK and the transfer of the lease to Lessee.

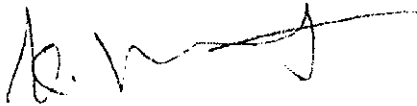
d. It is agreed by the PDA that the release of JHK from any obligations under the Lease and the assignment of the Lease by JHK to Buyer shall be effective upon JHK verifying to PDA and Buyer that all amounts required have been paid pursuant to the Third Amendment and Extension to Asset Purchase Agreement.

e. It is agreed by and between PDA and Buyer that Paragraph 4 a. of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC shall be amended to provide that Buyer shall have until June 30, 2016 to identify the appraiser.

f. Unless specifically set out in this First, Second or Third Amendment to Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC the terms of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC remain in full force and effect and shall govern this agreement.

3. **Counterparts.** This Agreement may be executed in any number of identical counterparts, notwithstanding that all Parties have not signed the same counterpart, with the same effect as if all Parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

4 **Signature Pages.** A facsimile of the signature page evidencing the signature of a Party(s) to this Agreement shall constitute an original signature(s).



5. Authority to Execute. The Parties hereto verify that the person or persons executing this agreement have full and complete authority to execute this agreement and bind the entity for which they are signing

IN WITNESS WHEREOF, the Parties have entered this THIRD AMENDMENT TO ASSIGNMENT AND AMENDMENT OF LAND LEASE AGREEMENT AND RELEASE OF JH KELLY LLC as of the \_\_\_\_ day of May, 2016.

**SELLER**

JH KELLY LLC

By: [Signature] SUP  
Name: WILL SEWELL  
Title: SEWELL VICE PRESIDENT

**LESSEE**

V.A. METALS, LLC

By: [Signature]  
Name: K. A. VENKAT RATHANATHU  
Title: PRESIDENT

**LESSOR**

POCATELLO DEVELOPMENT AUTHORITY

By: [Signature]  
Scott Smith, Chairman

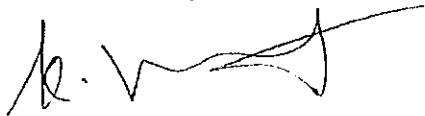
**THIRD AMENDMENT TO ASSIGNMENT AND AMENDMENT  
OF LAND LEASE AGREEMENT AND RELEASE OF JH KELLY LLC**

THIS THIRD AMENDMENT TO ASSIGNMENT AND AMENDMENT OF LAND LEASE AGREEMENT AND RELEASE OF JH KELLY LLC ("Agreement"), is entered into by and among JH KELLY LLC, a Washington limited liability company ("JHK" or "Seller"), 821 Third Avenue, P.O. Box 2038, Longview, Washington 98632, V.A. METALS, L.L.C, an Idaho limited liability company, P.O. Box 1047, Blackfoot, Idaho 83221 ("Lessee" or "Buyer"), and the Pocatello Development Authority, an urban renewal agency formed under the laws of the State of Idaho, 911 North 7<sup>th</sup> Avenue, Pocatello, Idaho 83205, ("Lessor" or "PDA"). All of the defined entities herein shall be referred to as the "Parties" and each individual entity, a "Party."

WHEREAS, it is acknowledged by the parties that JHK and Buyer have previously entered into three Amendment and Extension to Asset Purchase Agreements for the purpose of extending the closing date for Buyers purchase of certain property specifically identified in the Asset Purchase Agreement; and

WHEREAS, the Parties amended the terms of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC in the First and Second Amendment and Extension to Asset Purchase Agreements for the purpose of conforming the terms with the amended APA; and

WHEREAS, it is the parties intent that all provisions of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC not specifically altered, changed or amended by the First and Second Amendment to Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC remain in full force and effect and that all provisions of the First and Second Amendment to Assignment and Amendment of Land Lease Agreements and Release of JH Kelly, LLC not specifically altered, changed or amended by this Third Amendment to Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC remain in full force and effect; and



WHEREAS, the Parties acknowledge that the closing date set out in the APA and all extensions thereto has been extended to no later than June 30, 2016 and that the Parties desire to extend the effective date of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC and all previous amendments thereto pursuant to the terms hereof; and

WHEREAS, Buyer, JHK and Lessor wish to enter into this Third Amendment to Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC to identify the terms and conditions constituting the agreed upon amendments to the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC.

NOW, THEREFORE, intending to be legally bound, and in mutual consideration of the promises contained herein, the Parties agree as follows:

1. **Recitals Incorporated.** The Recitals set forth above are incorporated by reference with the Parties agreeing that said recitals are not mere recitations, but are full and complete statements of the facts underlying the basis for the Parties respective agreements set out herein and are covenants of the Parties and a portion of the consideration for this Agreement.

**2. Agreements of the Parties.**

a. The Parties agree that the effectiveness of this Agreement is conditioned upon and subject to the occurrence of the Closing and the payment of the full Purchase Price as set out and required by the Third Amendment and Extension to Asset Purchase Agreement(Third Extension). In the event the Closing does not occur on or before June 30, 2016 pursuant to the terms of the Third Extension, this Agreement shall be null and void and the Recitals and terms hereof shall have no legal effect or prejudice to the rights of the Parties.

b. The Parties agree that the new Paragraph XII of the Lease as set out in Paragraph 3 of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC shall be amended to provide that the required security instrument will be determined and agreed upon by and between Lessee and Lessor within 7 days after the closing and that Lessee shall have 14 days after such agreement to provide to Lessor the required One Million



(\$1,000,000.00) dollar security instrument in the form to be agreed upon by the parties. It is further agreed that the amendments to the Lease as evidenced in the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC or any amendment or extension thereof shall not be effective until the agreed upon security instrument is in place and effective.

c. It is agreed and understood by and between Lessee and Lessor that the lessee shall undertake the feasibility study associated with the property purchased from JHK and the real property leased from Lessor immediately upon the closing with JHK and the transfer of the lease to Lessee.

d. It is agreed by the PDA that the release of JHK from any obligations under the Lease and the assignment of the Lease by JHK to Buyer shall be effective upon JHK verifying to PDA and Buyer that all amounts required have been paid pursuant to the Third Amendment and Extension to Asset Purchase Agreement.

e. It is agreed by and between PDA and Buyer that Paragraph 4.a. of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC shall be amended to provide that Buyer shall have until June 30, 2016 to identify the appraiser.

f. Unless specifically set out in this First, Second or Third Amendment to Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC the terms of the Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, LLC remain in full force and effect and shall govern this agreement.

**3. Counterparts.** This Agreement may be executed in any number of identical counterparts, notwithstanding that all Parties have not signed the same counterpart, with the same effect as if all Parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

**4. Signature Pages.** A facsimile of the signature page evidencing the signature of a Party(s) to this Agreement shall constitute an original signature(s).

A handwritten signature in black ink, appearing to be "A. W. Kelly", written over a horizontal line.Handwritten initials in black ink, possibly "JH", written vertically.

5. Authority to Execute. The Parties hereto verify that the person or persons executing this agreement have full and complete authority to execute this agreement and bind the entity for which they are signing.

IN WITNESS WHEREOF, the Parties have entered this THIRD AMENDMENT TO ASSIGNMENT AND AMENDMENT OF LAND LEASE AGREEMENT AND RELEASE OF JH KELLY LLC as of the \_\_\_\_\_ day of May, 2016.

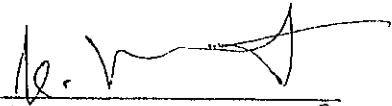
**SELLER**

JH KELLY LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LESSEE**

V.A. METALS, LLC

By:   
Name: K. A. VENKAT RAMANAIDU  
Title: PRICEDENT

**LESSOR**

POCATELLO DEVELOPMENT AUTHORITY

By:   
Scott Smith, Chairman

