

POCATELLO DEVELOPMENT AUTHORITY
Agenda for the meeting of
November 17, 2021 – 11:00 a.m.
Council Chambers – Pocatello City Hall

Limited in-person attendance is allowed, but due to COVID-19 guidelines, strict social distancing measures are in place. Individuals are encouraged, but not required, to wear masks/face coverings.

City Hall is accessible to persons with disabilities. Program access accommodations may be provided with three days' advance notice by contacting Skyler Beebe at sbeebe@pocatello.us, 208.234.6248, or 5815 South 5th Avenue, Pocatello, Idaho.

In the event this meeting is still in progress at 12:00 p.m., a ten-minute recess may be called.

- 1. CALL TO ORDER, DISCLOSURE OF CONFLICT OF INTEREST, AND ACKNOWLEDGMENT OF GUESTS.**
- 2. ACTION ITEM – Regular Meeting Minutes.** The Board may wish to waive the oral reading of the minutes and approve the minutes from the Regular Board of Commissioners meeting on October 20, 2021. *See attached document.*
- 3. ACTION ITEM – Executive Session Meeting Minutes.** The Board may wish to waive the oral reading of the minutes and approve the minutes from the Executive Session Board of Commissioners meeting on October 20, 2021. *See attached document.*
- 4. ACTION ITEM – Financial Report.** A financial report for the PDA will be provided by PDA Treasurer. The Board may wish to approve the financial report. *To be supplemented.*
- 5. ACTION ITEM – IRG Draft Owner Participation Agreement –** The Board may wish to discuss the draft owner participation agreement between IRG and the PDA in the Naval Ordinance District.
- 6. ACTION ITEM – CALENDAR REVIEW**
The Board may wish to take this opportunity to inform other Board members of upcoming meetings and events that should be called to their attention.
- 7. ADJOURN REGULAR MEETING.**

Action Item 2

POCATELLO DEVELOPMENT AUTHORITY
Meeting Minutes for October 20, 2021, at 11:00 AM
Council Chambers, 911 N 7th Avenue, Pocatello, Id

Present: Heidi Adamson, Brian Blad (Arrived 11:04 AM,) Victoria Byrd (Arrived 11:04 AM,) Greg Gunter, Jim Johnston, Rob Lion, Terrel Tovey, Scott Turner and David Villarreal.

Others Present: Brent McLane, Executive Director; Jim Krueger, Treasurer; Jeff Mansfield, Public Works Director; Merrill Quayle, Pocatello Dev. Engineer; and guests.

Agenda Item No. 1: Call to Order and Disclosure of Conflicts of Interest

Chair Villarreal called the meeting to order at approximately 11:01 AM and no conflicts were disclosed.

Lion asked that Agenda Item 5 follow Agenda Item 7 to allow guests and participants to hear all agenda items before being excused for the executive session. The PDA agreed.

It was moved by **R. Lion** and seconded by **S. Turner** to move Agenda Item 5 to follow Agenda Item 7. Adamson, Blad, Byrd, Gunter, Johnston Lion, Tovey, Turner and Villarreal. Unanimous. Motion Carried.

Agenda Item No. 2: Approve the Minutes

The Board may wish to waive the oral reading of the minutes and approve the minutes from the Board of Commissioners meeting held September 15, 2021.

It was moved by **R. Lion** and seconded by **J. Johnston** to approve the minutes from the Board of Commissioners meeting held September 15, 2021. Adamson, Blad, Byrd, Gunter, Johnston Lion, Tovey, Turner and Villarreal. Unanimous. Motion Carried.

Agenda No. 3: Financial Report. A financial report for the PDA will be provided by PDA Treasurer. The Board may wish to approve the financial report.

J. Krueger presented the financial report included in the agenda packet. Krueger had not run an updated commitments and outstanding elements report, he will get with Merrill Quayle between now and the next report. Krueger noted he would no longer be the PDA Treasurer and this would be his last meeting.

Adamson asked if Dane Simmons made the October 1 payment he stated he would be paid. **Krueger** stated he had not received a check. **McLane** stated Simmons called him the week of October 12 asking for a monthly statement to be sent to him with the breakdown in a monthly amount, he would then bring in a payment for that amount.

Tovey asked to add an agenda item for the November agenda to discuss how non-payment of an agreed upon payment schedule for outstanding loan agreements will be handled for current and future loans. The PDA agreed.

It was moved by **T. Tovey** and seconded by **B. Blad** to approve the financials as presented. Those in favor: Adamson, Blad, Byrd, Gunter, Johnston, Lion, Tovey, Turner and Villarreal. Unanimous. Motion Carried.

Agenda Item No. 4: Station Square PDA Loan. The Board may wish to hear from Denis Clijsters to approve reimbursement of expenses made that qualify under a loan agreement dated November 27, 2018 with Station Square and the PDA.

Denis Clijsters presented information regarding the grant funds issuance for the fire suppression system per

Adamson noted the agreement states the fire system needs to be fully functioning and approved before payment. **Tovey** recommended to pay the full balance, as the water tap is scheduled for October 25 and then the final approval would be done shortly after the hookup and testing. **Blad** noted that if this process would be completed within two weeks, according to Quayle, we could approve to pay once the Building and Fire Departments have signed off on the final inspection so Clijsters does not have to come back in November.

Discussion on economic improvement of historic buildings.

It was moved by **B. Blad** and seconded by **S. Turner** to approve the issuance of the remaining grant balance of \$84,941.00, when the completed final inspection documentation, from the Building and Fire Departments, has been submitted to the Executive Director. Those in favor: Adamson, Blad, Byrd, Gunter, Johnston Lion, Tovey, Turner and Villarreal. Unanimous. Motion Carried.

Agenda Item No. 6: Signature Update. The Board may wish to approve changes to the signature card for the PDA with Idaho Central Credit Union.

It was moved by **B. Blad** and seconded by **T. Tovey** to approve changes to the signature card for the PDA with Idaho Central Credit Union. Those in favor: Adamson, Blad, Byrd, Gunter, Johnston Lion, Tovey, Turner and Villarreal. Unanimous. Motion Carried.

Agenda Item No. 7: CALENDAR REVIEW

The Board may wish to take this opportunity to inform other Board members of upcoming meetings and events that should be called to their attention.

Discussion on work group session and training meeting at the beginning of 2022. Brent will send out a poll for available dates.

With no further business, it was moved by **T. Tovey** and seconded by **J. Johnston** to adjourn the meeting at approximately 11:34 AM and move into Executive Session as provided in Chapter 1, Title 74, Idaho Code; and consider preliminary negotiations involving matters of trade or commerce in which the PDA may be in competition with other jurisdictions. Idaho Code §74-206(1)(e). Vote by roll call, those in favor: Adamson, Blad, Byrd, Gunter, Johnston, Lion, Tovey, Turner and Villarreal. Unanimous. Motion Carried.

Agenda Item No. 5: EXECUTIVE SESSION – Consider records that are exempt from disclosure as provided in Chapter 1, Title 74, Idaho Code; and consider preliminary negotiations involving matters of trade or commerce in which the PDA may be in competition with other jurisdictions. Idaho Code §74-206(1)(e).

Agenda Item No. 8: ADJOURN

With no further business, it was moved by **T. Tovey** and seconded by **J. Johnston** to adjourn the meeting at 12:06 PM. Those in favor: Adamson, Blad, Byrd, Gunter, Johnston Lion, Tovey, Turner and Villarreal. Unanimous. Motion Carried.

Submitted by: Aceline McCulla, Secretary

Approved on: _____

Action Item 3

Pocatello Develop Authority Board of Commissioners
Executive Session Minutes
City Hall Council Chambers
October 20, 2021

Call to order by **Chair Villarreal** at 11:35 AM.

Roll Call by **Jim Anglesey**.

Members present: Heidi Adamson, Mayor Brian Blad, Victoria Byrd, Greg Gunter, Jim Johnston, Rob Lion, Terrel Tovey, Scott Turner, and David Villarreal.

Others present: Brent McLane, Executive Director; Jim Krueger, Treasurer (left at 11:56 AM), Jim Anglesey, Pocatello Long Range Sr. Planner; Jeff Mansfield, Public Works Director/City Engineer and Merrill Quayle, Pocatello Development Engineer.

Executive Session

The PDA Board may wish to consider records that are exempt from disclosure as provided in Chapter 1, Title 74, Idaho Code; and consider preliminary negotiations involving matters of trade or commerce in which the PDA may be in competition with other jurisdictions. Idaho Code §74-206(1)(e).

With no further discussion, it was moved by **T. Tovey** and seconded by **J. Johnston** to adjourn from the executive session pursuant to Idaho Code §74-206(1)(e), at approximately 2:05 PM, and reconvene to the regular meeting session. Those in favor: Adamson, Byrd, Gunter, Johnston, Lion, Tovey, Turner, and Villarreal. Unanimous. Motion Carried.

By: _____

Aceline McCulla, Secretary

Approved on: _____

Action Item 4

(TO BE SUPPLEMENTED)

Pocatello Development Authority
Balance Sheet by Class
 As of October 31, 2021

	<u>1-General Fund</u>	<u>4-Naval Ordnance</u>	<u>6-North Portneuf</u>	<u>7-Pocatello Regional Airport</u>	<u>8-Northgate</u>	<u>TOTAL</u>
ASSETS						
Current Assets						
Checking/Savings						
ICCU Checking	873,428.94	1,302,546.67	1,414,457.16	394.41	4,195.35	3,595,022.53
ICCU Savings	<u>25.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>25.00</u>
Total Checking/Savings	<u>873,453.94</u>	<u>1,302,546.67</u>	<u>1,414,457.16</u>	<u>394.41</u>	<u>4,195.35</u>	<u>3,595,047.53</u>
Accounts Receivable						
Notes Receivable	<u>276,716.16</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>276,716.16</u>
Total Accounts Receivable	<u>276,716.16</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>276,716.16</u>
Other Current Assets						
Accrued Interest Income	5,973.86	0.00	0.00	0.00	0.00	5,973.86
Allowance for Doubtful Accounts	0.00	0.00	0.00	0.00	0.00	0.00
Property Tax Receivable	0.00	0.00	0.00	0.00	0.00	0.00
Undeposited Funds	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Total Other Current Assets	<u>5,973.86</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>5,973.86</u>
Total Current Assets	<u>1,156,143.96</u>	<u>1,302,546.67</u>	<u>1,414,457.16</u>	<u>394.41</u>	<u>4,195.35</u>	<u>3,877,737.55</u>
TOTAL ASSETS	<u><u>1,156,143.96</u></u>	<u><u>1,302,546.67</u></u>	<u><u>1,414,457.16</u></u>	<u><u>394.41</u></u>	<u><u>4,195.35</u></u>	<u><u>3,877,737.55</u></u>
LIABILITIES & EQUITY						
Liabilities						
Current Liabilities						
Accounts Payable						
Accounts Payable	<u>32.31</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>32.31</u>
Total Accounts Payable	<u>32.31</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>32.31</u>
Other Current Liabilities						
Acct Payable	<u>10,294.79</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>10,294.79</u>
Total Other Current Liabilities	<u>10,294.79</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>10,294.79</u>

Pocatello Development Authority
Balance Sheet by Class
 As of October 31, 2021

	<u>1-General Fund</u>	<u>4-Naval Ordnance</u>	<u>6-North Portneuf</u>	<u>7-Pocatello Regional Airport</u>	<u>8-Northgate</u>	<u>TOTAL</u>
Total Current Liabilities	10,327.10	0.00	0.00	0.00	0.00	10,327.10
Long Term Liabilities						
Deferred Interest Receivable	5,094.61	0.00	0.00	0.00	0.00	5,094.61
Deferred Notes Receivable Rev	276,716.16	0.00	0.00	0.00	0.00	276,716.16
Total Long Term Liabilities	<u>281,810.77</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>281,810.77</u>
Total Liabilities	292,137.87	0.00	0.00	0.00	0.00	292,137.87
Equity						
Fund Balance	820,730.66	1,302,546.67	1,414,457.16	394.41	4,195.35	3,542,324.25
Net Income	43,275.43	0.00	0.00	0.00	0.00	43,275.43
Total Equity	<u>864,006.09</u>	<u>1,302,546.67</u>	<u>1,414,457.16</u>	<u>394.41</u>	<u>4,195.35</u>	<u>3,585,599.68</u>
TOTAL LIABILITIES & EQUITY	<u><u>1,156,143.96</u></u>	<u><u>1,302,546.67</u></u>	<u><u>1,414,457.16</u></u>	<u><u>394.41</u></u>	<u><u>4,195.35</u></u>	<u><u>3,877,737.55</u></u>

Pocatello Development Authority
Profit and Loss
October 2021

	1-General Fund		4-Naval Ordnance		6-North Portneuf		7-Pocatello Regional Airport		8-Northgate		Total	
	Oct '21 - Oct 21	Sep 22	Oct '21 - Oct 21	Sep 22	Oct '21 - Oct 21	Sep 22	Oct '21 - Oct 21	Sep 22	Oct '21 - Oct 21	Sep 22	Oct '21 - Oct 21	Sep 22
Ordinary Income/Expense												
Income												
Interest Income	437.85	437.85	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	437.85	437.85
Loan Repayments	42,834.11	42,834.11	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	42,834.11	42,834.11
Personal Property tax replace	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Property Taxes	198.28	198.28	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	198.28	198.28
Total Income	43,470.24	43,470.24	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	43,470.24	43,470.24
Gross Profit	43,470.24	43,470.24	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	43,470.24	43,470.24
Expense												
Administrative	194.81	194.81	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	194.81	194.81
Bank Fee	0.00	30.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	30.00
Non-Capital Infrastructure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Professional Services												
Engineering Services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other Professional Services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Professional Services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Expense	194.81	194.81	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	194.81	194.81
Net Ordinary Income	43,275.43	43,275.43	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	43,275.43	43,275.43
Net Income	43,275.43	43,275.43	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	43,275.43	43,275.43

Action Item 5

OWNER PARTICIPATION AGREEMENT

By and Between

**The Urban Renewal Agency of Pocatello, Idaho, also known as the
Pocatello Development Authority**

and

Pocatello Quinn, LLC

for the

Naval Ordnance Plant Urban Renewal Area Improvement Plan

OWNER PARTICIPATION AGREEMENT

THIS OWNER PARTICIPATION AGREEMENT (hereinafter “Agreement”) is entered into by and between the Urban Renewal Agency of Pocatello, Idaho, also known as the Pocatello Development Authority, an independent public body, corporate and politic (hereinafter “Agency”), organized pursuant to the Idaho Urban Renewal Law of 1965, Title 50, Chapter 20, Idaho Code, as amended (hereinafter the “Law”), and undertaking projects under the authority of the Law and the Local Economic Development Act, Title 50, Chapter 29, Idaho Code, as amended (hereinafter the “Act”), and Pocatello Quinn, LLC, a Delaware limited liability company (hereinafter “Participant”), collectively referred to as the “Parties” and each individually as “Party,” on the terms and provisions set forth below.

RECITALS

WHEREAS, Agency is an urban renewal agency created by and existing under the authority of the Law and the Act; and

WHEREAS, the Pocatello City Council adopted Ordinance No. 2797 on July 6, 2006, approving the Naval Ordnance Plant Urban Renewal Area Improvement Plan (hereinafter the “Urban Renewal Plan”), and establishing the Naval Ordnance Plant revenue allocation area (the “Project Area”). The termination date of the Urban Renewal Plan and Project Area is December 31, 2030; and

WHEREAS, Participant, acquired the approximately 150-acre former Naval Ordnance Plant, located within the City of Pocatello (the “City”) and within the Project Area (the “Site”); and

WHEREAS, Participant intends to make significant improvements to the Site to attract a mix of tenants to support industrial distribution, manufacturing, office and retail uses (the “Project”); and

WHEREAS, as part of the Project, Participant intends on constructing certain improvements to facades of several of the existing buildings, including painting and replacement of any existing damaged, loose and/or failing panels, which improvements are necessary to the proper redevelopment of the Site; and

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

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

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

WHEREAS, the Site is not registered in the National Register of Historic Places, but is historically significant and contributes to the historic integrity of the City. Additionally, the Site contributes greatly to the City's skyline;

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

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

I. EFFECTIVE DATE

The Effective Date of this Agreement shall be the date when this Agreement has been signed by the Parties (last date signed) and shall continue until: (1) the completion of all obligations of each party; or (2) thirty (30) months from the Effective Date, whichever comes first. Upon written request the Agency may grant one extension for a period not to exceed one year.

II. SUBJECT OF AGREEMENT

A. Recitals, Purpose of This Agreement, and Interest

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

The purpose of this Agreement is to effectuate the Urban Renewal Plan by providing for the construction and reimbursement of the Agency Funded Public Improvements, as generally identified in **Attachment 4**, on the Site.

The enhancements to the Site pursuant to the Agency Funded Public Improvements and the fulfillment, generally, of this Agreement are in the vital and best interests of the City and the health, safety, and welfare of its residents and are in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements. Implementation of this Agreement will further the goals and objectives of the Urban Renewal Plan.

B. The Plan

This Agreement is subject to the provisions of the Urban Renewal Plan.

C. The Project Area

The Project Area is located in the City, and the exact boundaries of the Project Area are set forth in **Attachment 1**, the Project Area Map, and as more particularly described in the Legal Description of the Project Area, attached hereto as **Attachment 2**. The Project Area has the same boundaries as the Site.

D. The Site

The Site has the same boundaries as the Project Area. An overview of the Site showing specific building numbers is attached hereto as **Attachment 3**.

E. Agency Participation Policy

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

F. Parties to This Agreement

1. Agency

The Agency is an independent public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Law and the Act. The office of the Agency is located at City of Pocatello, 911 North 7th Avenue, Pocatello, Idaho 83201. "Agency," as used in this Agreement, includes the Urban

Renewal Agency and any assignee of or successor to its rights, powers, and responsibilities.

2. Participant

The Participant is Pocatello Quinn, LLC, a Delaware limited liability company. The principal address of the Participant is 11111 Santa Monica Blvd., Suite 810, Los Angeles, CA 90025.

Whenever the term “Participant” is used herein, such term shall include any assignee or successor in interest approved or consented to by the Agency, which consent should not be unreasonably withheld.

G. City Agreements and Approvals

“City Agreements and Approvals” shall mean those certain agreements between Participant and City, concerning, among other things, any required building permits and other approvals by City for the improvements on the Site, including the Agency Funded Public Improvements.

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

III. IMPROVEMENT OF THE SITE AND AGENCY'S PARTICIPATION

A. Development Design

Participant agrees that the Agency Funded Public Improvements, defined below, will be in full compliance with the Urban Renewal Plan, all applicable City building and zoning ordinances, and any City Agreements and Approvals. Participant will submit the proposed development design plans to the Agency for its approval prior to commencement of the Agency Funded Public Improvements as set forth in Subsection E below.

B. Cost of Construction

The cost of all improvements to the Site, including the Agency Funded Public Improvements, defined below, shall be borne by the Participant except as may be eligible for reimbursement following completion as otherwise set forth herein.

C. Agency, City, and Other Governmental Agency Permits

Participant has or shall, at Participant's own expense, secure or cause to be secured any and all permits or approvals which may be required by Agency, City, or any other governmental agency relative to construction of the improvements on the Site, including the Agency Funded Public Improvements.

D. Agency Funded Public Improvements

The Agency Funded Public Improvements are: (a) critical to the redevelopment and/or improvement of the Site and (b) provide a higher quality of development that should assist Agency in meeting the objectives of the Urban Renewal Plan. Because of the proposed improvements to the Site, which achieves several of the objectives contained within the Urban Renewal Plan, Agency finds that a portion of the improvements related to the overall enhancement of the Site may be reimbursed by the Agency. Agency finds that the Agency Funded Public Improvements are in the best public interest and provide for enhanced improvements to the Site within the Project Area.

In consideration of the terms of this Agreement and subject to certain conditions as contained in this Agreement, Agency agrees to pay the costs of certain approved Agency Funded Public Improvements as verified by the Agency. Approved Agency Funded Public Improvements shall include those improvements listed on **Attachment 4**. Participant has provided Agency with the Schedule of Agency Funded Public Improvements, attached hereto as **Attachment 7**.

E. Agency Review and Approval of Design and Construction Documents

Agency shall have the right and the opportunity to review Participant's design, construction and/or improvement plans, budgets, and bids for the Agency Funded Public Improvements (collectively the "Agency Funded Public Improvement Construction Documents"). Participant will utilize commercially reasonable contracting, budgeting, and bidding practices to ensure that the Agency Funded Public Improvements are constructed consistent with the Agency Funded Public Improvement Construction Documents and are undertaken in a reasonable manner. For purposes of this Section and Section F, below, Participant shall be presumed to have utilized commercially reasonable contracting, budgeting and bidding practices if (1) Participant's general contractor solicits or solicited competitive bids for the Agency Funded Public Improvements pursuant to Title 67, Chapter 28, Idaho Code, as amended; (2) the work is performed by Idaho public works licensed contractors; and (3) such work is not performed by an affiliate or subsidiary of Participant.

Agency shall have the right and the opportunity to review and approve, prior to installation and construction, Participant's designs and construction plans,

including but not limited to the façade improvements, including, exterior painting, mural installation and/or windows. In reviewing said design and plans, approval by Agency shall not be unreasonably delayed or withheld. In addition, all such improvements to the exterior of the buildings' façades within the Site shall be subject to a Deed of Façade Easement, attached hereto as **Attachment 6**, granting the City the right to preserve the publicly funded buildings' exterior façades into the future.

F. Reimbursement Obligation

1. Amount of Reimbursement

In consideration of Participant's construction of the Agency Funded Public Improvements, Agency, subject to the terms of this Agreement, agrees to reimburse Participant an amount equal to the Actual Eligible Costs, as defined below, of the Agency Funded Public Improvements, **not to exceed** One Million, Six Hundred Thirty Eight Thousand, Nine Hundred and Seven Dollars and 00/100 (\$1,638,907.00), with no interest accruing on the Reimbursement Obligation (defined below).

2. Notification, Inspection, Approval

Upon completion of the Agency Funded Public Improvements associated with the Project and on not less than a quarterly basis during construction, Participant shall notify Agency in writing to request a meeting with the Agency Administrator to determine if the completed Agency Funded Public Improvements meet the requirements of this Agreement (the "Notification of Completion"). Agency shall provide Participant with written confirmation in a form generally consistent with the Confirmation of Agency Reimbursement form attached hereto as **Attachment 5** that the completed Agency Funded Public Improvements are eligible for reimbursement as follows:

(a) With respect to the Notification of Completion, Participant is responsible for submitting detailed schedule of values, invoices and receipts for work performed as part of the Project, including lien waivers, in a form deemed acceptable by the Agency (the "Cost Documentation") which will permit the Agency to determine the Actual Eligible Costs, which shall be the actual costs to construct the Agency Funded Public Improvements. Cost Documentation shall include the following:

- i. An accounting of the costs associated with the completed Agency Funded Public Improvements and evidence of payment of such costs by Participant. Participant shall include a schedule of values that includes line items for the Agency Funded Public Improvements for reimbursement so they are identifiable separate from other line items, invoices from Participant's general contractor,

subcontractor(s), and material suppliers for each type of eligible cost item, which shall specify quantities and unit costs of installed materials.

- ii. Explanation of any significant deviation between the initial cost estimates in Attachment 4 and the actual costs in the Cost Documentation.
- iii. Additional documentation or clarifications as requested by the Agency Administrator.

(b) The Agency Administrator shall have the right to review the Cost Documentation, to inspect the completed Agency Funded Public Improvements, and to obtain independent verification that the quantities of work claimed, and the costs associated therewith are accurate, commercially reasonable, and appropriate for the completed Agency Funded Public Improvements and consistent with the cost estimates provided by Participant to Agency prior to construction, and meet objectives of Title 67, Chapter 28, Idaho Code. The Agency's approval shall not be unreasonably delayed or withheld.

(c) Within thirty (30) days of Agency's receipt of the Cost Documentation, the Agency shall notify Participant in writing of Agency's acceptance or rejection of the Cost Documentation and Agency's determination of the Actual Eligible Costs to be reimbursed, memorialized in a confirmation form consistent with the Confirmation of Agency Reimbursement form set forth in **Attachment 5**, to be executed by the Participant and the Agency. Agency shall, in its discretion determine the Actual Eligible Costs following its review of the Cost Documentation, verification of the commercial reasonableness of the costs and expenses contained in such Cost Documentation, and comparison of the amounts in the Cost Documentation to the amounts in the Agency Funded Public Improvement Construction Documents. In no event shall the total for all Actual Eligible Costs exceed the amount allowed by Section II.F(1).

If Participant disagrees with Agency's calculation of the Actual Eligible Costs, Participant must respond to Agency in writing within three (3) business days explaining why Participant believes Agency's calculation was in error and providing any evidence to support any such contentions Participant wants Agency to consider. Agency shall respond to Participant within three (3) business days with a revised amount for the Actual Eligible Costs or notifying Participant that the Agency will not revise the initial amount calculated. At that point, the determination of the Actual Eligible Costs will be final.

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

3. Allocation of Costs

Agency and Participant agree Participant shall be able to allocate expenses among the various items listed on Attachment 4 so long as the total amount of those items shall not exceed One Million, Six Hundred Thirty Eight Thousand, Nine Hundred and Seven Dollars and 00/100 (\$1,638,907.00). Participant shall notify Agency of the allocation of costs among the items listed on **Attachment 4**.

4. Reimbursement

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

G. Reimbursement Procedure

1. Agency's Reimbursement Obligation shall not commence until: (1) the recordation of the Deed of Façade Easement; (2) completion of all the Agency Funded Public Improvements as determined by the Agency and, to the extent necessary, the City's acceptance of the improvements; (3) execution of the Confirmation of Reimbursement Form; and (4) the Agency Funded Public Improvements are completed within thirty (30) months from the Effective Date, unless otherwise extended as set forth in Section I.

2. Subsequent to the satisfaction of the conditions set forth in Section G(1), the Agency will pay the Reimbursement Obligation from existing Project Area revenue allocation proceeds.

3. Agency shall have no obligation to make payments to the Participant for taxes collected and paid to Agency beyond the term described herein and/or beyond the payment of the Reimbursement Obligation.

4. All payment due hereunder shall be paid to the Participant, and future owners or tenants of units created on the Site as part of the Project shall have no claim or entitlement to such payments as a result of such ownership or tenancy.

5. Non-general Obligation

As provided by Idaho Code Section 50-2910, the obligations of Agency hereunder shall not constitute a general obligation or debt of the Agency, the State of Idaho, or any of its political subdivisions, or give rise to a charge against their general credit or taxing powers to be payable out of any funds or properties other than the monies deposited in the special fund or funds provided for herein and pledged hereby to the payment of principal on this Reimbursement Obligation.

H. Taxes

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

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

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

Participant shall not apply for or otherwise request any exemption or reduction in property taxes on the Site pursuant to Idaho Code §§ 63-602NN, 63-4404, 63-602II, or Idaho Code §§ 63-606A or 63-602W, or similar exemptions, during the term of the Urban Renewal Plan, unless otherwise consented to by the Agency in writing.

I. No Security Interest

The Parties agree this Agreement does not provide Participant with a security interest in any other urban renewal plan area, including but not limited to revenue from any “Revenue Allocation Area” (as defined in Title 50, Chapter 29 of the Idaho Code).

J. Liens/Payment of General Contractor

Participant hereby certifies that as of the Effective Date no mechanic’s or materialman’s liens have been placed on the Site, as defined above, and that the general contractor and all subcontractors have been or will be paid in full for all work performed on the Site. In the event any materialman’s liens are placed on the Site, Participant agrees Agency may suspend any payments required under this Agreement until any liens or claims related to the Project and made by any contractor, subcontractor, or material supplier that performed work on the Site have been satisfied.

K. Agency Contribution Assignable

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

L. Indemnification

Participant shall indemnify, defend, and hold Agency and its respective commissioners, officers, agents, consultants and employees (collectively referred to in this Section L as “Agency”) harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable architect, design and attorney fees (collectively referred to in this Section L as “Claim”), which may be imposed upon or incurred by or asserted against Agency and for which Agency may be legally liable under applicable law (excluding any liability or obligation Agency assumes by contract) by reason of any of the following occurrences, provided Participant shall have no obligation to indemnify, defend, and hold Agency harmless from and against any Claim to the extent it arises from the negligence or willful act or omission of Agency or Agency’s contractors and associated subcontractors:

1. Any work done in, Project Area, including the Agency Funded Public Improvements, or work related to the Agency Funded Public Improvements; or

2. Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of the Site or any part thereof; or
3. Any negligent or intentional wrongful act or omission on the part of Participant or any of its agents, contractors, servants, employees, subtenants, operators, licensees, or invitees; or
4. Any accident, injury, or damage to any person or property occurring in, on, or about the Project Area, or any part thereof, during construction; or
5. Any failure on the part of Participant to perform or comply with any of the terms, provisions, covenants, and conditions contained in this Agreement to be performed or complied with on its part.
6. Funding, by Agency, of the Agency Funded Public Improvements.

In case any such Claim is brought against Agency, Participant, upon written notice from Agency, shall, at Participant's expense, resist or defend such Claim.

Participant shall also indemnify and hold harmless and defend Agency and its commissioners, officers, agents, consultants and employees from and against any and all claims or causes of action asserted by entities or individuals that are not a party to this Agreement regarding the validity or legality of this Agreement and the reimbursement to Participant of the costs of the Agency Funded Public Improvements by Agency (collectively referred to in this Section as "legality claim").

Upon the final decision of a court of competent jurisdiction that is not appealed or not appealable regarding the legality claim determining that the reimbursement to Participant by Agency of the costs of the Agency Funded Public Improvements is unlawful or invalid, the Agency shall have no further obligation or liability to reimburse or make payments to Participant for the costs associated with the Agency Funded Public Improvements and Participant shall solely bear the responsibility for such costs. Upon the final decision of a court of competent jurisdiction that is not appealed or not appealable regarding the legality claim determining that the reimbursement to Participant by Agency of the costs of the Agency Funded Public Improvements is unlawful or invalid, then Participant, in Agency's sole discretion, may be required to return any funds paid by Agency to Participant for the Agency Funded Public Improvements within ninety (90) days of written request from Agency to Participant.

If a legality claim is made, then Agency and Participant shall cooperate in defense of said claim. Participant has the discretion to hire its own legal counsel

with Participant reimbursing the Agency for its reasonable fees and costs, including without limitation, attorney and expert witness fees and costs.

If a claim, other than a legality claim, is brought against Agency or its respective commissioners, officers, agents, consultants and employees by reason of any such claim, Participant, upon written notice from Agency shall, at Participant's expense, bear the costs and expense of defending Agency against such action or proceedings by counsel selected by Agency.

M. Insurance

Participant shall, or through its contractor constructing the Agency Funded Public Improvements, shall, at Participant's sole cost, obtain and maintain in force for the duration of the Agreement (including the warranty period) insurance of the following types, with limits not less than those set forth below, and in a form acceptable to Agency:

1. 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 a general aggregate limit of not less than \$4,000,000, which general aggregate limit will be provided on a per project basis. The policy shall be endorsed to name Agency, including its respective affiliates, and City as additional insureds.
2. During the construction of the Project, Builder's Risk Insurance or equivalent upon the Project covering one hundred percent (100%) of the replacement cost of the Project. This policy shall be written on a builder's risk "all risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the construction, temporary buildings, falsework, and construction in transit, and shall insure against at least the following perils: (i) fire; (ii) lightning; (iii) explosion; (iv) windstorm or hail; (v) smoke; (vi) aircraft or vehicles; (vii) riot or civil commotion; (viii) theft; (ix) vandalism and malicious mischief; (x) leakage from fire extinguishing equipment; (xi) sinkhole collapse; (xii) collapse; (xiii) breakage of building glass; (xiv) falling objects; (xv) debris removal; (xvi) demolition occasioned by enforcement of laws and regulations; (xvii) weight of snow, ice, or sleet; (xviii) weight of people or personal property;
3. Workers' Compensation Insurance, if Participant has employees, including occupational illness or disease coverage, in accordance with the laws of the nation, state, territory, or province having jurisdiction over Participant's employees, and Employer's Liability Insurance. If Participant has employees,

Participant 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.

4. Automobile Liability Insurance covering use of all owned, 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. This policy shall be endorsed to name Agency, including its respective affiliates, directors, and employees, as additional insureds.

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

6. Certificates of insurance, reasonably satisfactory in form to Agency (ACORD form or equivalent), shall be supplied to Agency evidencing that the insurance required above is in force, and that notice will be given to Agency prior to any cancellation of the policies in accordance with the policies. Participant shall also provide, with its certificate of insurance, executed copies of the additional insured endorsements and dedicated limits endorsements required in this Agreement. At Agency's request, Participant shall provide a certified copy of each insurance policy required under this Agreement.

7. Except as otherwise stated in this Agreement, the obligations set forth in this Section shall remain in effect only until the date that Agency and/or the City, as the case may be, accepts the completed Agency Funded Public Improvements.

8. All policies of insurance required by this Agreement shall be issued by insurance companies with a general policyholder's rating of not less than A and a financial rating of AAA (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.

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

N. Warranty

Participant warrants that the materials and workmanship employed in the construction of the Agency Funded Public Improvements shall be good quality and shall conform to generally accepted standards within the construction industry and agrees to repair any non-conforming improvements during the warranty period upon receipt of notice from Agency of such non-conforming improvements. Such warranty and repair obligation shall extend for a period of one (1) year after acceptance of the Agency Funded Public Improvements by the City and/or other appropriate entity or utility or for the period described in any City Agreement and Approvals. Provided, nothing herein shall limit the time within which Agency may bring an action against Participant on account of Participant's failure to otherwise construct such improvements in accordance with this Agreement.

O. Time of the Essence.

As an express condition of approving the Agency Funded Public Improvements as eligible for reimbursement, Participant agrees to begin construction of the Agency Funded Public Improvements within six (6) months of the Effective Date of this Agreement. After commencement of the Agency Funded Public Improvements, Participant must complete all necessary construction and installation within twenty-four (24) months of commencement (the "Completion Date"). Should Participant not complete the Agency Funded Public Improvements within this timeframe, Agency may terminate this Agreement upon written notice and seek all remedies available to recover any losses Agency has suffered.

P. Surety.

Because completion of Agency Funded Public Improvements prior to the Completion Date is a material and essential term of this Agreement, the Participant shall secure a surety bond (the "Security") from such contractor or contractors that are selected to perform the work on the Agency Funded Public Improvements equaling one hundred and ten percent (110%) of the estimated costs of the Agency Funded Public Improvements to ensure prompt and faithful performance of this Agreement. Such Security shall name the Agency and City as additional obligees or like beneficiary. Whenever the Participant shall be, and is declared by the Agency to be in default of this Agreement, the Security may remedy the default or shall complete this Agreement in accordance with its terms and conditions. If there is any deficiency between the amount expended to complete the Agency Funded Public Improvements in accordance with the terms and conditions of this Agreement and the Security posted by the Participant, the Participant shall be liable for any deficient amount and in the event of enforcement to collect, shall be liable for attorneys' fees and costs.

Q. Maintenance

Participant recognizes Agency has no specific authority to accept maintenance responsibility of the Agency Funded Public Improvements. Agency anticipates Participant will retain maintenance obligations of some or all of the Agency Funded Public Improvements.

IV. USE AND MAINTENANCE OF THE SITE AND ADJACENT AREA

A. Use of the Site

Participant agrees and covenants to comply with all other provisions and conditions of the Urban Renewal Plan for the period of time the Urban Renewal Plan is in force and effect.

B. Effect and Duration of Covenants

Covenants contained in this Agreement shall remain in effect until: (1) the completion of all obligations of each party; or (2) thirty (30) months from the Effective Date, whichever comes first. Upon written request the Agency may grant one extension for a period not to exceed one year. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on the part of the Participant and any successors and assigns to the Site, or any part thereof, for the benefit of and in favor of Agency, its successors and assigns. The Deed of Façade Easement shall run with the land in perpetuity.

C. Local, State and Federal Laws

Participant covenants that it will carry out the construction of the Agency Funded Public Improvements in conformity with all applicable laws, including all applicable federal and state labor standards and anti-discrimination laws.

V. DEFAULTS, DISPUTE RESOLUTION, REMEDIES, AND TERMINATION

A. Defaults in General

Neither Party shall be deemed to be in default of this Agreement except upon the expiration of forty-five (45) days from receipt of written notice from the other Party specifying the particulars in which such Party has failed to perform its obligations under this Agreement unless such Party, prior to expiration of said forty-five (45) day period, has rectified the particulars specified in said notice of default, provided that in the case where rectifying the matters specified in the notice of default

requires more than forty-five (45) days, such notified Party shall not be in default so long as they commence prior to the expiration of the forty-five (45) days and diligently pursue actions needed to rectify such matters. In the event of a default, the non-defaulting Party may do the following:

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

Any default by Participant under any City Agreements and Approvals shall be deemed a default under this Agreement.

B. Dispute Resolution

In the event that a dispute arises between Agency and Participant regarding the application or interpretation of any provision of this Agreement, the aggrieved party shall promptly notify the other party to this Agreement of the dispute within ten (10) days after such dispute arises. If the Parties shall have failed to resolve the dispute within thirty (30) days after delivery of such notice, the Parties agree to first

endeavor to settle the dispute in an amicable manner by mediation or other process of structured negotiation under the auspices of a nationally or regionally recognized organization providing such services in the Northwestern States or otherwise, as the Parties may mutually agree before resorting to litigation. Should the Parties be unable to resolve the dispute to their mutual satisfaction within thirty (30) days after such completion of mediation or other process of structured negotiation, each Party shall have the right to pursue any rights or remedies it may have at law or in equity.

C. Legal Actions

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

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

D. Rights and Remedies Are Cumulative

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

VI. GENERAL PROVISIONS

A. Notices, Demands, and Communications Between the Parties

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

B. Conflicts of Interest

No member, official, or employee of Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his/her personal

interests or the interests of any corporation, partnership, or association in which he/she is directly or indirectly interested.

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

C. Non-liability of Agency Officials and Employees

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

D. Successors and Assigns

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

E. Attorney Fees and Costs

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

F. Severability

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

G. Headings

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

H. Counterparts

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

I. Forced Delay; Extension of Times of Performance

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

J. Inspection of Books and Records

Agency has the right, upon not less than five (5) business days' notice, at all reasonable times to inspect the books and records of Participant pertaining to the Agency Funded Public Improvements.

K. Attachments and Exhibits Made a Part

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

L. No Joint Venture or Partnership

Agency and Participant agree that nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making Agency and Participant a joint venture or partners.

M. Anti-Boycott Against Israel Certification. Participant hereby certifies pursuant to Section 67-2346, Idaho Code, that the Participant, its wholly owned subsidiaries, majority owned subsidiaries, parent companies and affiliates, are not currently engaged in, and will not for the duration of this Agreement, knowingly engage in, a boycott of goods or services from Israel or territories under its control.

VII. AMENDMENTS TO THIS AGREEMENT

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

VIII. ENTIRE AGREEMENT, WAIVERS, AND AMENDMENTS

This Agreement, including **Attachments 1 through 7**, inclusive, incorporated herein by reference, constitutes the entire understanding and agreement of the Parties.

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

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

[signatures on following page]

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

**URBAN RENEWAL AGENCY OF THE CITY OF POCA TELLO, IDAHO, A/K/A
THE POCA TELLO DEVELOPMENT AUTHORITY**

By: _____
David Villarreal, Chair
Date: _____

ATTEST:

By: _____
_____,
Secretary

**PARTICIPANT
POCA TELLO QUINN, LLC**

By: _____

Manager
Date: _____

DRAFT

ACKNOWLEDGMENTS

STATE OF IDAHO)
) ss.
County of Bannock)

On this ____ day of _____, 2021, before me, _____, the undersigned notary public in and for said county and state, personally appeared David Villareal, known or identified to me to be the Chair of the Urban Renewal Agency of the City of Pocatello, Idaho, also known as the Pocatello Development Authority, the public body corporate and politic, that executed the within instrument, and known to me to be the person that executed the within instrument on behalf of said Agency and acknowledged to me that such Agency executed the same for the purposes herein contained.

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

Notary Public for Idaho
Commission Expires _____

STATE OF _____)
) ss.
County of _____)

On this _____ day of _____, 2021, before me, _____, the undersigned notary public in and for said county and state, personally appeared _____, known or identified to me to be the Manager of Pocatello Quinn, LLC, and the person who signed the within instrument, and acknowledged to me that he has authority to execute and executed the foregoing instrument for the purposes therein contained on behalf of Industrial Realty Group, LLC.

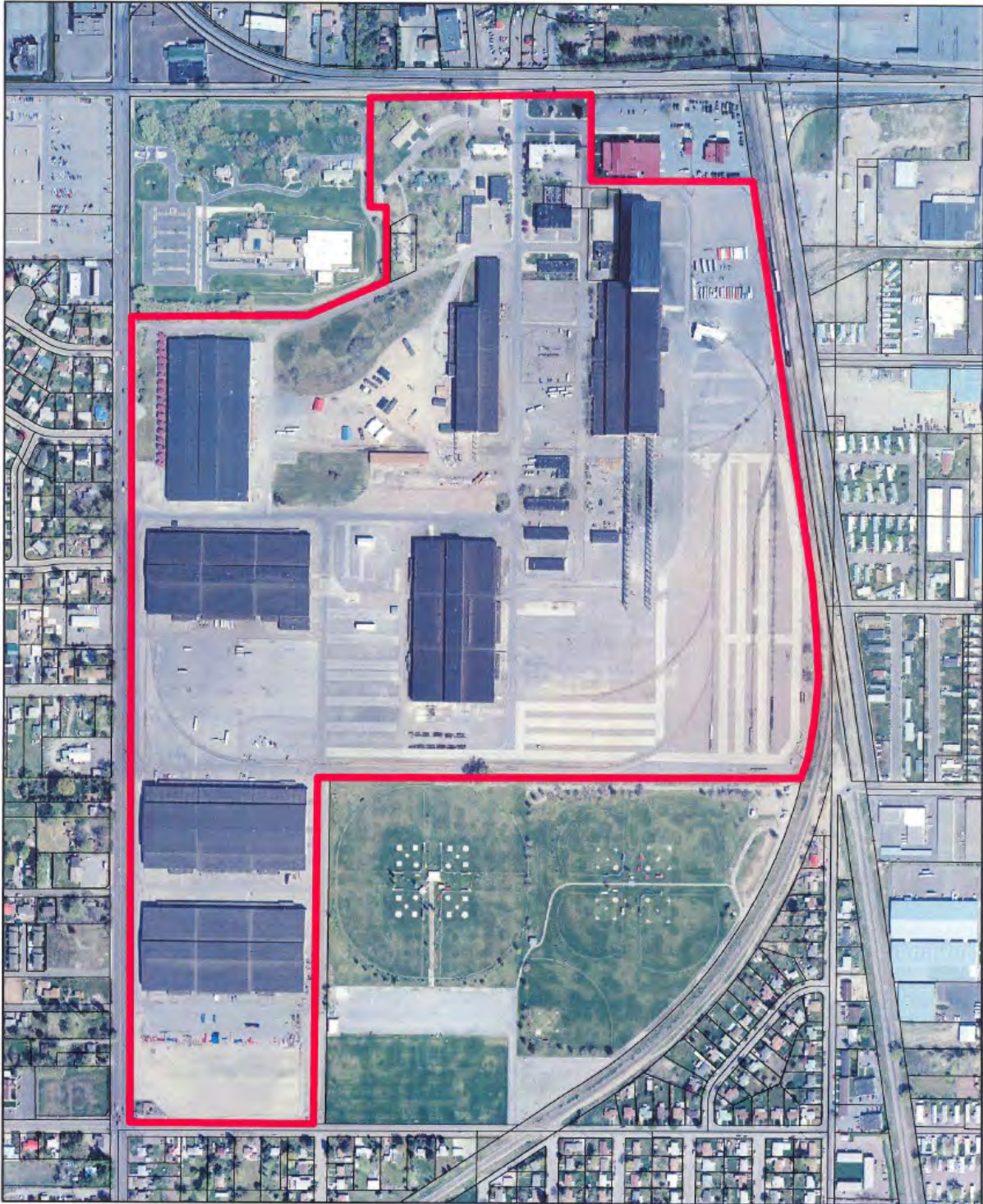
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.


Notary Public for _____
Commission Expires _____

Attachment 1

Project Area Map

DRAFT



 Urban Renewal Area and Revenue Allocation District

1 inch equals 500 feet

The City of Pocatello does not guarantee any information contained in this map to be an accurate representation of actual conditions.

No reproduction of this material in any form is authorized without written consent of the City of Pocatello.

Attachment 2

Legal Description of the Project Area

A parcel of land located in the E ½ of Section 15, Township 6 South, Range 34 East, Boise Meridian Bannock County, Idaho, a portion of the land described in instrument no. 724647 of the records of Bannock County, Idaho, being more particularly described as follows:

Commencing at the North one quarter corner of Section 15, Township 6 South, Range 34 East, Boise Meridian, said corner marked with an aluminum capped monument; thence North 89°28'06" East 65.30 feet to a point in the East right of way line of Pole Line Road; thence South 01°18'55" East along the East right of way line of Pole Line Road 25.0 feet;

thence continuing South 01°18'55" East 199.13 feet to an angle point; thence continuing along the East right of way line of Pole Line Road South 00°32'32" East 627.31 feet to the Southwest corner of the land described in instrument no. 732922 and depicted on the Record of Survey recorded as instrument no. 733159 of the records of Bannock County, Idaho, said corner marked by a ½-inch iron pin tagged LS-2652, the true point of beginning;

thence following the South and East boundaries of the said land described in instrument no. 732922 for the next five courses:

North 89°25'44" East 662.29 feet (recorded as North 89°28'06" East 662.24 feet) to a ½-inch iron pin tagged LS-2652; thence North 65°25'29" East 327.72 feet recorded as North 65°25'05" East 327.76 feet) to a ½-inch iron pin tagged LS-2652; thence North 00°31'05" West 274.76 (recorded as North 00°32'32" West 274.85 feet) to a ½-inch iron pin tagged LS-2652;

thence South 89°24'46" West 64.24 feet (recorded as South 89°28'06" West 64.25 feet) to a ½-inch iron pin tagged LS-2652; thence North 00°33'46" West 417.75 feet (recorded as North 00°32'32" West 418.0 feet) to a point in the South right of way line of Infirmary Road (commonly referred to as Quinn Road), said point marked with a ½-inch iron pin tagged LS-2652;

thence North 89°28'06" East 354.97 feet along the South right of way line of Infirmary Road to an angle point, said point marked with a 5/8-inch iron pin tagged PE/LS-2652; thence continuing along the South right of way line of Infirmary Road North 87°45'06" East 470.47 feet (recorded as 470.62 feet) to the Northwest corner of the Armed Forces Reserve Training Area, said corner marked with a ½-inch iron pin tagged LS-977, a distance of 2.3 feet easterly of a State of Idaho right of way monument identified as being 55 feet left of centerline station 93+60 of the Yellowstone Highway-Quinn Road Project;

thence South 00°02'34" East 324.22 feet (recorded as South 00°01'29" East 324.93 feet) to the Southwest corner of the said training area, said corner marked with a "PK" nail tagged LS-977; thence North 89°57'26" East 614.32 feet (recorded as North 89°58'00" East 614.59 feet) to a brass cap monument set in concrete, marking the Southeast corner of the said training area.

thence South 08°46'34" East 1568.57 feet (recorded as South 08°45'29" East 1568.22 feet) along the Westerly right of way line of the Union Pacific Railroad to a point of curvature, said point marked with an untagged ½- iron pin, from which the center of the curve bears South 81°22'51" West;

thence continuing along the Westerly right of way line of the Union Pacific Railroad, following an 1860 foot radius nontangent curve, concave to the West, through a central angle of 21°34'18" for an arc distance of 700.28 feet (recorded as 700.4 feet) to a concrete monument marking the Northeast corner of N.O.P. Park (a City of Pocatello Park), from which the East one quarter corner of Section 15 bears South 86°53'02" East 109.83 feet;

thence South $89^{\circ}20'26''$ West on a nontangent line 1771.96 feet (recorded as South $89^{\circ}21'27''$ West 1771.60 feet) to the Northwest corner of N.O.P. Park, said corner marked with a 1/2-inch iron pin tagged LS-977; thence South $00^{\circ}04'43''$ West along the West boundary of N.O.P. Park 1300.68 feet to a point on the North right of way line of Eldredge Road;

thence South $89^{\circ}21'43''$ West along the North right of way line of Eldredge Road 739.45 feet to a point in the East right of way line of Pole Line Road; thence North $00^{\circ}32'32''$ West 3042.61 feet to the point of beginning.

DRAFT

Attachment 3

Overview of the Site



Attachment 4

Agency Funded Public Improvements

Item	Estimated Cost
Improvements to Building 16 Façade, Windows and Paint	\$833,771
Improvements to Building 36 Facade, Paint	\$239,006
Improvements to Building 37 Facade, Paint	\$291,735
Improvements to Building 38 Facade, Paint	\$274,395
Total:	\$1,638,907

DRAFT

Attachment 5

Confirmation of Reimbursement

4816-4233-0809, v. 6

DRAFT

Attachment 6
Deed of Façade Easement

DRAFT

Attachment 7

Schedule of Agency Funded Public Improvements

4860-8769-6898, v. 1

DRAFT

CONFIRMATION OF AGENCY REIMBURSEMENT

This Confirmation of Agency Reimbursement (“Confirmation”) is entered into between the Urban Renewal Agency of the City of Pocatello, Idaho, also known as the Pocatello Development Authority, an independent public body, corporate and politic (hereinafter “Agency”), organized pursuant to the Idaho Urban Renewal Law of 1965, Title 50, Chapter 20, Idaho Code, as amended (hereinafter the “Law”), and undertaking projects under the authority of the Law and the Local Economic Development Act, Title 50, Chapter 29, Idaho Code, as amended (hereinafter the “Act”), and Pocatello Quinn, LLC, a Delaware limited liability company authorized to do business in the State of Idaho (hereinafter “Participant”). The Effective Date of this Confirmation is the date last signed by the parties.

WITNESSETH:

1. Agency Contribution

Agency has, pursuant to the procedures set forth in the Owner Participation Agreement by and between the Agency and Participant with an effective date of _____ (the “OPA”), determined the Actual Eligible Costs for those certain Agency Funded Public Improvements as those terms are defined in the OPA and as specifically identified below, shall be _____ and ___/100 dollars (\$_____) (the “Agency Reimbursement”) for the [identify Agency Funded Public Improvements subject to reimbursement in this Confirmation].

2. Payment Terms.

Agency agrees to reimburse Participant for the amount of the Agency Reimbursement, without interest from the Effective Date of this Confirmation pursuant to the Reimbursement Procedure set forth in the OPA.

3. Limitation on Making Payments

It is the intention of the parties that Participant shall only be paid from the existing revenue allocation proceeds, if any, collected within the Naval Ordnance Plan Urban Renewal Area Improvement Plan revenue allocation area pursuant to the terms and conditions set forth in the OPA. If, for any reason, the revenue allocation proceeds anticipated to be received by the Agency are reduced, curtailed or limited in any way by market conditions, actions by Participant, legislative enactments, initiative referendum, judicial decree, or other, the Agency shall have no obligation to pay the Agency Reimbursement to Participant as described in this Confirmation from other sources or monies which Agency has or might hereinafter receive.

4. Except as expressly modified above, the terms and conditions of the OPA are still binding on Agency and Participant as set forth in such OPA.

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

AGENCY

**URBAN RENEWAL AGENCY OF THE CITY OF POCA TELLO, IDAHO a/k/a
POCA TELLO DEVELOPMENT AUTHORITY**

By: _____

_____, Chair

Date: _____

ATTEST:

By: _____

_____,
Secretary

PARTICIPANT

POCA TELLO QUINN, LLC, a Delaware limited liability company.

By: _____

Date: _____

DEED OF FAÇADE EASEMENT

THIS DEED OF FAÇADE EASEMENT (“Façade Easement”) is made this ____ day of _____, 2021, by and between POCATELLO QUINN, LLC, a Delaware limited liability company (hereinafter “Grantor”), whose address is 11111 Santa Monica Blvd., Suite 810, Los Angeles, CA 90025 and the CITY OF POCATELLO, IDAHO, (hereinafter “Grantee”), whose address is 911 North 7th Avenue, Pocatello, Idaho 83201. Grantor and Grantee may be individually referred to as a Party and collectively referred to as the “Parties.”

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain premises and improvements, as hereinafter described, commonly known as the Naval Ordnance Plant situated in Pocatello, Bannock County, Idaho (the real property together with the buildings and improvements thereon and the fixtures attached thereto and the appurtenances thereof, being hereinafter collectively referred to as the “Buildings”); and

WHEREAS, the Buildings are located within the Naval Ordnance Plant Urban Renewal Area Improvement Plan (the “Plan”) revenue allocation area (the “Project Area”) adopted by Pocatello City Council Ordinance No. 2797 on July 6, 2006; and

WHEREAS, the Buildings are historically significant and contribute to the historic integrity of the City and to the aesthetics of the City of Pocatello’s (the “City”) skyline; and

WHEREAS, the grant of a façade easement, hereinafter referred to as the “Façade Easement,” by Grantor to Grantee on the Buildings will assist in preserving and maintaining the Buildings and its architectural ensemble and historic significance for the benefit of public; and

WHEREAS, Grantor desires to grant to Grantee, and Grantee desires to accept, the Façade Easement for the purposes of ensuring that the architectural and aesthetic improvement of the Buildings will not be destroyed, altered, or impaired.

NOW, THEREFORE, in consideration of the sum of One Dollar or other valuable consideration paid to the Grantor, the receipt thereof is hereby acknowledged, the Grantor does hereby give, grant, bargain, sell, and convey, with covenants of warranty to Grantee, a Façade Easement as hereinafter described with respect to the following described parcel of land, with the buildings and improvements thereon, located in the City of Pocatello, Bannock County, Idaho, and described more particularly as _____.

The Façade Easement granted herein shall be of the nature and character hereinafter described and shall be a covenant running with the land, in perpetuity, binding upon the Grantor, its successors and assigns forever. Grantor shall record this Façade Easement with the Bannock County Recorder in Pocatello, Idaho.

1. Description.

The "Property" for which this Façade Easement is granted is described as follows: all exterior surfaces of the Buildings (including, without limitation, the exterior walls and windows) within the Project Area as depicted in Exhibit A, attached hereto and incorporated herein by reference.

2. Maintenance.

Grantor agrees to assume the cost of all continued maintenance and repair of the Buildings and further agrees to conduct regular maintenance and repair in order to preserve the architectural and aesthetic improvements of the Buildings in perpetuity. All maintenance and repairs to the Buildings shall be of high quality and performed in a workmanlike manner, using materials of high quality, and shall be commenced and completed with a high degree of diligence and in a matter which preserves the improvements to the Buildings. Grantee shall have the right to approve such repair and maintenance and request additional maintenance should it be necessary to preserve the Buildings' exteriors.

3. Alterations.

Grantor, its successors or agents, shall make no alterations or changes to the exterior surfaces, including painting and murals, of the Buildings as presently existing without the express written consent of Grantee. The addition of any new building element onto the existing Buildings, the excavation under the Buildings, or the demolition of the Buildings, may be undertaken, commenced, or performed only with the prior written approval of Grantee.

Further, any proposed exterior remodel or change to the exterior of the Buildings, including repairs or repainting of the exterior of the Buildings (unless the repair or repainting shall duplicate the exact existing character, features, color, and material of the Buildings) shall be undertaken, commenced, or performed only after prior written approval of Grantee.

Grantor is not to interfere with the appearance or artistic impression of the Buildings' exteriors or murals by placing obstructions on or in front of it, by erecting structures adjacent to, above or below the murals or by undertaking other measures that would detract from enjoyment of the aesthetics.

4. Inspection.

Grantor hereby agrees that representatives of Grantee, its successors and assigns, shall be permitted at all reasonable times to inspect the Buildings. Inspections will normally take place from the street. However, Grantor agrees that representatives of Grantee, its successors and assigns, shall upon request be permitted to enter and inspect the interior of the Buildings to ensure the integrity of the Buildings' exteriors.

5. Grantor's Use.

Grantor Reserves the right and privilege for the use of the Buildings for any purpose not inconsistent with this Façade Easement. Nothing herein shall be construed to grant unto the general public or any other persons, other than Grantee and its agents for the inspection rights above, the right to enter the Buildings for the purposes set forth herein.

6. Casualty or Loss.

In the event the Buildings are, by reason of fire, flood, earthquake, or other disaster of any kind whatsoever:

A. Partially destroyed to such an extent or of such nature that the appearance of the Buildings are materially altered, then Grantor shall, within a reasonable period of time, restore the Buildings either to a condition so that the appearance is restored to that existing at the time immediately prior to such destruction, or to any other such condition as the Parties may agree to in writing, provided, however, that if the partial destruction of the Buildings is so extensive as to make repair or reconstruction impractical, taking into account the proceeds of any insurance available for reconstruction, then the Grantor may proceed under 6B below.

B. Totally destroyed, then this Façade Easement shall be extinguished and Grantor may thereafter erect a building which meet all applicable, zoning, land use restrictions pertaining to the Project Area.

Upon satisfactory completion of restoration under Paragraph 6A, this Façade Easement shall apply to the restored appearance. If Grantor fails, after written notice to restore the Buildings or exteriors within a reasonable period of time as required under Paragraph 6A, Grantee may invoke any remedy available to it under this Façade Easement.

7. Insurance. Grantor, shall maintain, at its own cost, insurance against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage in an amount at least equal to its fair market value. Such insurance shall include grantee's interest and name Grantee as additional insured's and shall provide for at least thirty (30) days notice to additional insured's before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured. Furthermore, Grantor shall deliver to Grantee certificates or other such documents evidencing the aforesaid insurance coverage at the commencement of this grant and a new policy or certificate at least ten (10) days prior to the expiration of such policy.

8. Release.

Grantor hereby releases and relieves Grantee of all liability with respect to the Buildings. Grantor shall defend and hold harmless Grantee from and against any and all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses which may be imposed upon or incurred by Grantee by reason of loss of life, personal injury, and of damage to property occurring in or around the Buildings subject to this Façade Easement, occasioned in whole or in part by the negligence of Grantor, its agents or employees.

9. Enforcement.

If Grantor violates or fails to observe any covenant, agreement or provision contained here, then Grantee shall, in addition to all other remedies available at law or in equity, have the right to enforce this Façade Easement, including each of its provisions by specific performance. If Grantor fails to maintain the Buildings in the same condition and repair existing

at the time of the grant, and if such failure shall not be completely cured and remedied within a reasonable period of time following written notice sent by Grantee to Grantor, then Grantee shall have the right, itself or through agents or contractors, to restore, repair, or maintain the Buildings, and the Grantor shall, promptly upon request, reimburse Grantee for all sums so expended by Grantee.

10. Successors and Assigns.

This Façade Easement shall be binding upon and shall inure to the benefit of the Grantor and the Grantee and their respective successors and assigns. Grantee agrees that it will hold this Façade Easement exclusively for conservation purposes and will not transfer this Façade Easement for money, other property, or services. Grantee may, however, assign or transfer its interest hereunder to the State of Idaho, any agency thereof, or any charitable organization qualified to accept this donation. Nothing herein shall be construed to limit Grantor’s right to assign, sell, transfer, convey, mortgage, pledge, or otherwise hypothecate its interest in the Buildings without Grantee’s consent, so long as any such transfer or pledge shall be subject to Grantee’s interest herein; provided further, that upon assignment, sale, or transfer (other than for security) of the Buildings, the obligations and duties of Grantor hereunder shall automatically transfer to Grantor’s successor in interest and Grantor shall be released from any liability hereunder.

11. Notice.

Any notice required herein shall be in writing sent by first class U.S. Mail to the following addresses:

<p>For Grantor:</p> <p>_____, Manager Pocatello Quinn, LLC 11111 Santa Monica Blvd., Suite 810 Los Angeles, CA 90025</p>	<p>For Grantee:</p> <p>City of Pocatello Brian Blad, Mayor 911 North 7th Avenue Pocatello, ID 83201</p>
---	---

12. Acceptance.

Grantee hereby accepts the rights and interests granted to it in this Façade Easement.

13. Severability of Provisions.

Should any term, provision, condition or other portion of this Façade Easement or the application thereof be held to be inoperative, invalid or unenforceable, the remainder of this Façade Easement or the application of the term or provision to persons or circumstances other

than those to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

TO HAVE AND TO HOLD, the afore granted and bargained Façade Easement, with all the privileges and appurtenances thereof to the said Grantee, its successors and assigns, in perpetuity.

IN WITNESS WHEREOF, the Grantor has executed this on _____ of _____, 2021.

_____,
Manager

Pocatello Quinn, LLC

IN WITNESS WHEREOF, the Grantee has executed this on _____ of _____, 2021.

Brian Blad, Mayor, City of Pocatello

STATE OF IDAHO)
) ss.
County of Ada)

On this ___ day of _____, 2021, before me, _____, a Notary Public in and for said State, personally appeared Brian Blad, known or identified to me to be the Mayor of the City of Pocatello that executed the said instrument, and acknowledged to me that such City executed the same.

S
E
A
L

Notary Public for Idaho
My commission expires on _____

STATE OF _____)
) ss.
County of _____)

On this ___ day of _____, 2021, before me, _____, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the Manager of Pocatello Quinn, LLC a Delaware limited liability company, the entity that executed the instrument or the person who executed the instrument on behalf of said entity and acknowledged to me that such entity executed the same.

S
E
A
L

Notary Public for _____
My commission expires on _____