

# Pocatello Development Authority

Board of Commissioners  
SPECIAL MEETING  
August 22, 2018 – 10:00 a.m.  
Paradise Conference Room

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

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

Call to order by Scott Smith, Chairman  
Acknowledge guests of the Board  
Disclosure of conflicts of interest  
Agenda: delete action or discussion items

**Call to Order and Roll Call:**

**Executive Session:**

Matters exist for discussion in an Executive Session of the Board of Commissioners pursuant to Idaho Code §74-206(1)(d, e, and f) to consider records that are exempt from disclosure as provided in Chapter 1 Title, 74; for preliminary negotiations involving matters of trade or commerce in which the Development Authority is in competition with governing bodies in other states or nations; and 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. 1:**      **Hoku Property Matters [ACTION ITEM]**

**Adjourn.**

City Hall is accessible to persons with disabilities. Program access accommodations may be provided with three (3) days' advance notice by contacting Skyler Beebe at [sbeebe@pocatello.us](mailto:sbeebe@pocatello.us); 208.234.6248; or 5815 South 5<sup>th</sup> Avenue, Pocatello, ID.

**RESOLUTION NO. 2018-\_\_**

**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

## 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: \_\_\_\_\_  
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 \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, \_\_\_\_\_  
the undersigned notary public in and for said county and state, personally appeared Scott  
Smith, known or identified to me to be the 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 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 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 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.

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

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

**DISPOSITION AND DEVELOPMENT AGREEMENT**

**POCATELLO DEVELOPMENT AUTHORITY**

**and**

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

**August \_\_, 2018**

## **LIST OF ATTACHMENTS**

- |                     |   |
|---------------------|---|
| <b>Attachment 1</b> | <b>Depiction of the Property</b>  |
| <b>Attachment 2</b> | <b>Legal Description of the Property (“Legal Description”)</b>                  |
| <b>Attachment 3</b> | <b>Form of Deed</b>   |
| <b>Attachment 4</b> | <b>Acknowledgement of Termination of Lease and Grant of Irrevocable License</b> |

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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 5.1.2.1.

"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 13.8.

**“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 5.1.6.

**“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.

**“License Security Deposit”** has the meaning ascribed to it in Section 5.1.2.1.

**“Outside Date”** has the meaning ascribed to it in Section 5.1.4.

**“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.

**“Permitted Title Exceptions”** has the meaning ascribed to it in Section 5.3.2.

**“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 5.1.1.

**"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, 83205.

### **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 land closing.
- (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.

**5.1.1. 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.

### **5.1.2. Payment of Purchase Price**

**5.1.2.1. 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.

**5.1.2.2. 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.

### **5.1.3. 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 Bonneville 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.

### **5.1.4. 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").

#### **5.1.5. 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")

#### **5.1.6. 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.

#### **5.1.7. 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 Bonneville County, Idaho.

#### **5.1.8. 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.

#### **5.1.9. 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.

#### **5.2. Conditions to Property Transfer.**

##### **5.2.1. 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.

### **5.2.2. 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.

### **5.3. 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.

### **5.4. 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.

**5.5. Termination.**

In the event each of the Agency Closing Conditions set forth in Section 5.3.1 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 5.5, 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 5.3.2 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 5.5, 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:

**7.3.1.1.** 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.

**7.3.1.2.** 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.

**8.1.8.** 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 Ada 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:

**11.6.1.1.** 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

**11.6.1.2.** 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:

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

**11.6.2.2.** 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

**11.6.2.3.** 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 by mail.

**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.

### **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 \_\_\_\_\_  
Scott Smith  
Chair

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

**DEVELOPER:**

**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 Scott  
Smith, known or identified to me to be the 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.

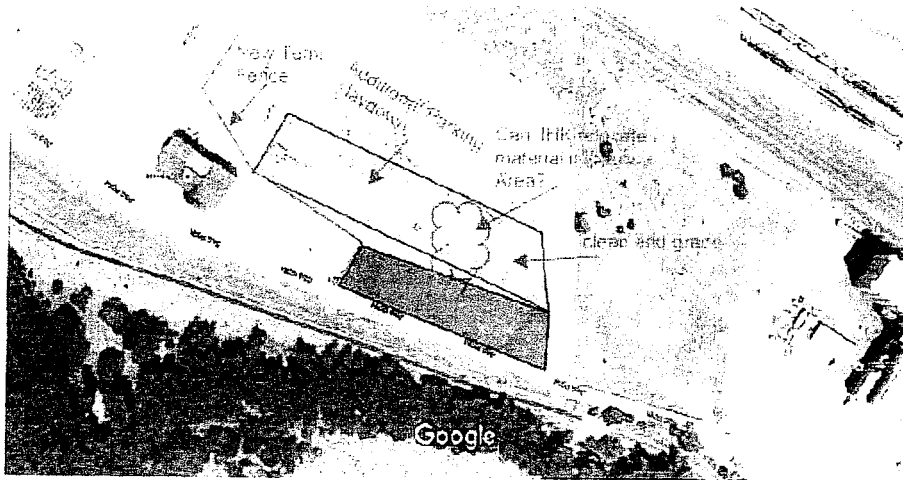
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day  
and year in this certificate first above written.

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



# Attachment 1 Depiction of the Property

Google Maps Pocatello, ID

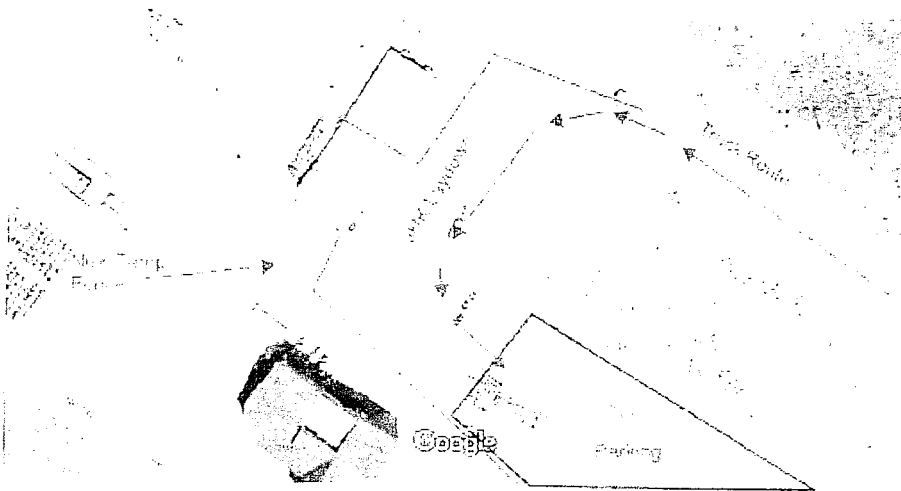


Imagery ©2015 Google, Map data ©2014 Google 100 ft

2/15/2015

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, 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 POUND 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.

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 \_\_\_\_\_

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 \_\_\_\_\_



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 CARBON 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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<b>Property</b>	<b>Description of Personal Property</b>	<b>Qty</b>
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

**ACKNOWLEDGEMENT OF TERMINATION OF LEASE AND GRANT OF IRREVOCABLE LICENSE - 16**

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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

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-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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- 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

## 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**

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°27'08" 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");

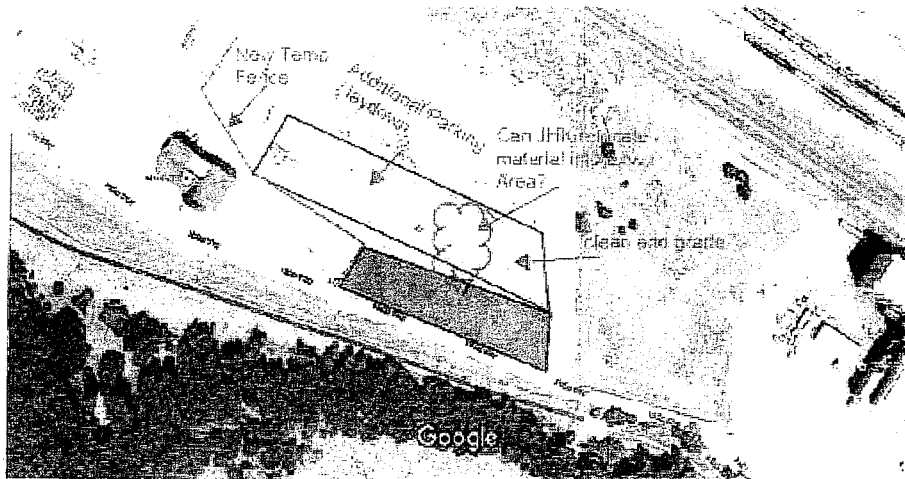
THENCE N 58°36'03" W ALONG SAID SOUTHWESTERLY DEED LINE, 1519.62 FEET TO A POINT ON THE WEST DEED DESCRIBED IN SAID INSTRUMENT NO. 27678, SAID POINT ALSO BEING ON THE WEST LINE OF SECTION 16, AND SAID POINT BEING MARKED BY A SET 5/8-INCH DIAMETER REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075");

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

Exhibit A

Property

Google Maps Pocatello, ID

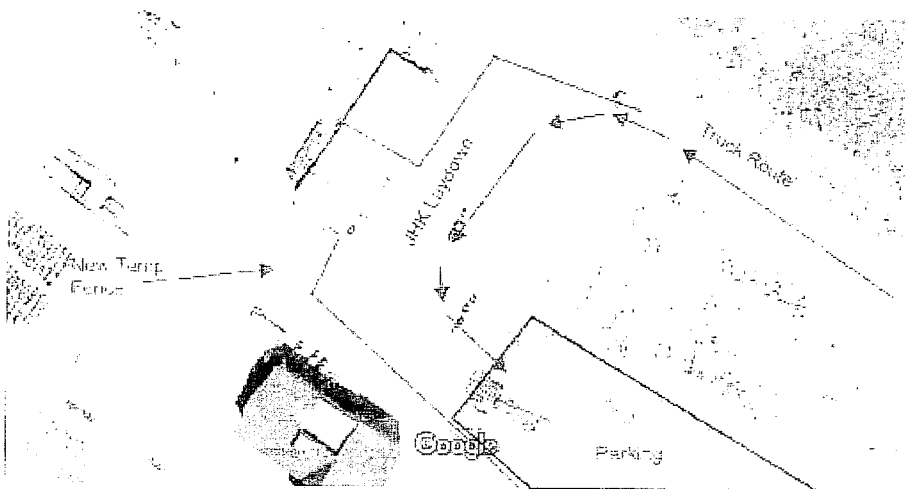


Imagery ©2016 Google, Map data ©2016 Google 100 ft

2/18/2016

Pocatello, ID - Google Maps

Google Maps Pocatello, ID



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



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 John Brunelle, known or identified to me to be the 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 \_\_\_\_\_

**LICENSOR**

**POCATELLO DEVELOPMENT AUTHORITY**

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

Scott Smith

Chair

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

**LICENSEE:**

**SOLARGISE AMERICA LLC**

a Delaware limited liability company

By \_\_\_\_\_

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

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

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.

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.

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.

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 Licensors in the amount of Two Hundred Thousand Dollars (\$200,000.00) ("**Security Deposit**") pursuant to the following conditions:

- (a) in the event that Licensors select 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 Licensors the Security Deposit in cash;
- (b) in the event that Licensors do not select Licensee to acquire the Property for any reason, or Licensors 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 Licensors to satisfy Licensee's obligation to pay the Security Deposit.
- (c) in the event that Licensors 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 Licensors use 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, Licensors agree 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 Licensors and this Agreement shall be automatically terminated effective immediately if Licensee fails to pay Licensors within fourteen (14) days of notice of such failure to pay by Licensors to Licensee.

10. **Indemnification:** Licensee hereby agrees to indemnify, defend, and hold Licensors 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 Licensors in defending any such claims.

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

## 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

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

PROPERTY DESCRIPTION EXHIBIT "A"

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.