

**POCATELLO DEVELOPMENT AUTHORITY**  
**Board of Commissioners Meeting**  
**November 20, 2019 – 11:00 a.m.**  
**Paradise Conference Room – Pocatello City Hall**

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

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

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1. **CALL TO ORDER, DISCLOSURE OF CONFLICT OF INTEREST, AND ACKNOWLEDGMENT OF GUESTS.**
2. ✓ **ACTION ITEM – Approval of the Agenda.**
3. ✓ **ACTION ITEM – Minutes.** The Board may wish to waive the oral reading of the minutes and approve the minutes from the Board of Commissioners Regular Meeting held October 16, 2019. *See attached document.*
4. ✓ **ACTION ITEM – Financial Report.** A financial report for the PDA will be provided by PDA Treasurer. The Board may wish to approve the financial report. *See attached documents.*
5. ✓ **ACTION ITEM – Expense Payments & Reimbursements.** The Board may wish to approve the payment or reimbursement of the following PDA expenses:
  - a. \$43.00 from North Portneuf District Fund to Elam & Burke for legal fees re: North Portneuf TIF District. ✓
  - b. \$1,447.50 from General Fund to Elam & Burke for legal fees re: Special Counsel General ✓
  - c. \$760.00 from North Portneuf District Fund to Stacey & Parks for legal services re: North Portneuf TIF District. ✓
6. ✓ **ACTION ITEM – Administrative Fee Transfer.** The Board may wish to authorize transfer of administrative fees from existing, active urban renewal areas. *See attached document.*
7. ✓ **ACTION ITEM – Disbursements under Previously Approved Grants & Loans.** The Board may wish to approve the following requested disbursements of funds under grants and loans previously approved by the Board. *See attached documents.*
  - a. Simmons Surgical LLC is requesting disbursements of \$4,500.00 under the loan approved by the Board on 1/16/19 and \$4,003.00 under the grant approved by the Board on 12/19/18. ✓
8. ✓ **ACTION ITEM – Amendment to Yellowstone Loan.** The Board may wish to consider a request by Denis Clijsters to remove his name and responsibility for the loan made to The Yellowstone, based on agreement with the other partners. *See attached documents.*
9. ✓ **ACTION ITEM – North Portneuf TIF District.** The Board may wish to review responses to the Request for Proposals, make an award to the chosen developer, and authorize the Board officers to sign the necessary documents to further the disposition and closing process. *See attached document; supplemental documents may also be available. Pay taxes @ closing*
10. ✓ **ACTION ITEM – Airport TIF District.** The Board may wish to: 1) review and approve the updated feasibility study; 2) define and approve the terms of and authorize the Chair's signature on an owner participation agreement with Frigitek. *See attached documents.*
11. ✓ **ACTION ITEM – Potential TIF District.** Tanner Hernandez will present a proposal for a potential urban renewal area/revenue allocation district in the South 5<sup>th</sup> area. *See attached documents.*
12. ✓ **CALENDAR REVIEW –** The Board may wish to take this opportunity to inform other Board members of upcoming meetings and events that should be called to their attention.
13. **ADJOURN.**

**AGENDA ITEM**

**NO. 3**

Pocatello Development Authority  
Balance Sheet by Class  
As of October 31, 2019

	1-General Fund	3-North Yellowstone	4-Naval Ordnance	6-North Portneuf	7-Pocatello Regional Airport	TOTAL
<b>ASSETS</b>						
Current Assets						
Checking/Savings						
ICCU Checking	694,115.42	0.00	1,005,408.40	395,894.85	609,912.35	2,705,331.02
ICCU Savings	25.00	0.00	0.00	0.00	0.00	25.00
Total Checking/Savings	694,140.42	0.00	1,005,408.40	395,894.85	609,912.35	2,705,356.02
Accounts Receivable						
Accounts Receivable	5,250.00	0.00	0.00	0.00	0.00	5,250.00
Total Accounts Receivable	5,250.00	0.00	0.00	0.00	0.00	5,250.00
Other Current Assets						
Accrued Interest Income	23,932.63	4,424.57	173.37	66.68	100.00	28,697.25
Property Tax Receivable	0.00	96,168.01	0.00	201,165.23	0.00	299,333.24
Total Other Current Assets	23,932.63	102,592.58	173.37	201,231.91	100.00	328,030.49
Total Current Assets	723,323.05	102,592.58	1,005,581.77	597,126.76	610,012.35	3,038,636.51
Other Assets						
Inventory - Leasehold	424,779.00	0.00	0.00	0.00	0.00	424,779.00
Note Receivable	76,000.00	0.00	0.00	0.00	0.00	76,000.00
Total Other Assets	500,779.00	0.00	0.00	0.00	0.00	500,779.00
<b>TOTAL ASSETS</b>	<b>1,224,102.05</b>	<b>102,592.58</b>	<b>1,005,581.77</b>	<b>597,126.76</b>	<b>610,012.35</b>	<b>3,539,415.51</b>
<b>LIABILITIES &amp; EQUITY</b>						
Liabilities						
Current Liabilities						
Other Current Liabilities						
Acct Payable	18,311.63	0.00	0.00	6,964.31	0.00	25,275.94
Security Deposit	0.00	0.00	0.00	200,000.00	0.00	200,000.00
Total Other Current Liabilities	18,311.63	0.00	0.00	206,964.31	0.00	225,275.94
Total Current Liabilities	18,311.63	0.00	0.00	206,964.31	0.00	225,275.94
Long Term Liabilities						
Deferred Interest Receivable	23,632.57	0.00	0.00	0.00	0.00	23,632.57
Deferred Notes Receivable Rev	76,000.00	0.00	0.00	0.00	0.00	76,000.00
Deferred Tax Revenues	0.00	10,399.03	0.00	201,025.90	0.00	211,424.93
Total Long Term Liabilities	99,632.57	10,399.03	0.00	201,025.90	0.00	311,057.50
Total Liabilities	117,944.20	10,399.03	0.00	407,990.21	0.00	536,333.44
Fund Balance						
Fund Balance	1,173,076.65	92,193.55	1,005,207.44	191,829.91	609,783.59	3,072,093.14
Net Income	-66,920.80	0.00	374.33	-2,693.36	228.76	-69,011.07
Total Fund Balance	1,106,155.85	92,193.55	1,005,581.77	189,136.55	610,012.35	3,003,082.07
<b>TOTAL LIABILITIES &amp; FUND BALANCE</b>	<b>1,224,102.05</b>	<b>102,592.58</b>	<b>1,005,581.77</b>	<b>597,126.76</b>	<b>610,012.35</b>	<b>3,539,415.51</b>

9:27 AM  
 11/14/19  
 Accrual Basis

Pocatello Development Authority  
 Profit & Loss by Class

	October 2019				
	1-General Fund	4-Naval Ordnance	6-North Portneuf	7-Pocatello Regional Airport	TOTAL
Ordinary Income/Expense					
Income					
Interest Income	291.15	374.33	145.57	228.76	1,039.81
Rental Income	750.00	0.00	0.00	0.00	750.00
Total Income	<u>1,041.15</u>	<u>374.33</u>	<u>145.57</u>	<u>228.76</u>	<u>1,789.81</u>
Gross Profit	1,041.15	374.33	145.57	228.76	1,789.81
Expense					
Administrative	168.83	0.00	57.43	0.00	226.26
Dues and Memberships	1,750.00	0.00	0.00	0.00	1,750.00
Economic Grants Issued	38,138.00	0.00	0.00	0.00	38,138.00
Economic Loans	18,727.12	0.00	0.00	0.00	18,727.12
Professional Services					
Other Professional Services	9,178.00	0.00	2,781.50	0.00	11,959.50
Total Professional Services	<u>9,178.00</u>	<u>0.00</u>	<u>2,781.50</u>	<u>0.00</u>	<u>11,959.50</u>
Total Expense	<u>67,961.95</u>	<u>0.00</u>	<u>2,838.93</u>	<u>0.00</u>	<u>70,800.88</u>
Net Ordinary Income	<u>-66,920.80</u>	<u>374.33</u>	<u>-2,693.36</u>	<u>228.76</u>	<u>-69,011.07</u>
Net Income	<u><u>-66,920.80</u></u>	<u><u>374.33</u></u>	<u><u>-2,693.36</u></u>	<u><u>228.76</u></u>	<u><u>-69,011.07</u></u>

At month end, the Authority had cash on hand of \$2,705,356.02. The checking account balance was \$2,705,331.02 and the savings account balance was \$25.00.

Pocatello Development Authority recognized below average financial activity for the month of October. The Authority received revenues totaling \$1,789.81 of which \$1,039.81 was interest earnings from cash invested. Rental income from the Positron Facility was received in the amount of \$750.

Expenses paid for the month totaled \$70,800.88. The administrative expenses were \$168.83 for the lunch meeting in October and \$57.43 to Idaho State Publishing. Annual dues of \$1,750 were paid to the Redevelopment Association of Idaho. Economic Grants were issued for \$38,138.00 and Economic Loans were issued for \$18,727.12. Other professional services include \$6,383 to ICRMP for an annual premium, \$2,816.50 to Elam & Burke for legal assistance on the North Portneuf TIF District, North Yellowstone District closure and special counsel, and \$2,760.00 to Stacey & Parks, PLLC for the North Portneuf TIF District.

Year to date revenues of \$1,789.81 (see page 3) are less than expenses of \$70,800.88, so there is an overall net use of reserves of \$69,011.07.

Pocatello Development Authority  
 Profit & Loss by Class

	October 2019				
	1-General Fund	4-Naval Ordnance	6-North Portneuf	7-Pocatello Regional Airport	TOTAL
Ordinary Income/Expense					
Income					
Interest Income	291.15	374.33	145.57	228.76	1,039.81
Rental Income	750.00	0.00	0.00	0.00	750.00
Total Income	1,041.15	374.33	145.57	228.76	1,789.81
Gross Profit	1,041.15	374.33	145.57	228.76	1,789.81
Expense					
Administrative	168.83	0.00	57.43	0.00	226.26
Dues and Memberships	1,750.00	0.00	0.00	0.00	1,750.00
Economic Grants Issued	38,138.00	0.00	0.00	0.00	38,138.00
Economic Loans	18,727.12	0.00	0.00	0.00	18,727.12
Professional Services					
Other Professional Services	9,178.00	0.00	2,781.50	0.00	11,959.50
Total Professional Services	9,178.00	0.00	2,781.50	0.00	11,959.50
Total Expense	67,961.95	0.00	2,838.93	0.00	70,800.88
Net Ordinary Income	-66,920.80	374.33	-2,693.36	228.76	-69,011.07
Net Income	-66,920.80	374.33	-2,693.36	228.76	-69,011.07

Name	General Fund Obligations (w/payments requested as of 11/20/19)			General Fund Obligations (w/payments requested as of 11/20/19)			Payments Start
	Grant	Drawn	Remaining	Loan	Drawn	Remaining	
Northgate TIF				\$2,000,000.00	(\$2,000,000.00)	\$0.00	2021 - TIF reimbursement begins
Station Square	\$100,000.00	(\$15,059.00)	\$84,941.00	\$100,000.00	(\$47,882.44)	\$52,117.56	NA 8/1/2020 (\$6,250 + interest quarterly)
The Yellowstone				\$16,795.00	\$0.00		Not yet disbursed, \$1,050 + interest quarterly
The Yellowstone/Bridge				\$26,000.00	(\$26,000.00)	\$0.00	2/1/2020 (\$1,839.89 quarterly)
Inergy	\$25,000.00	\$0.00	\$25,000.00				Only if employment incentive not met
BGS	\$60,000.00	(\$60,000.00)	\$0.00	\$200,000.00	(\$200,000.00)	\$0.00	NA 6/1/2020 (\$12,500 + interest quarterly)
Simmons	\$75,000.00	(\$74,900.45)	\$99.55	\$125,000.00	(\$125,000.00)	\$0.00	NA - Applicant does not intend to request remaining grant 6/1/2020 (\$7,813 + interest quarterly)
Snyder	\$75,000.00	(\$75,000.00)	\$0.00				NA
Bartholme	\$10,000.00	(\$10,000.00)	\$0.00	\$17,500.00			NA Chose not to take loan

**AGENDA ITEM**

**NO. 6**

**Pocatello Development Authority**  
**Administrative Fee Review for FY 2019 Reporting**  
**11/20/2019**

	General Fund	Naval Ordinance	North Portneuf	Pocatello Airport	Totals
Checking & Savings 10/31/2019	\$ 694,115.42	\$ 1,005,408.40	\$ 395,894.85	\$ 609,912.35	\$ 2,705,331.02
Administrative Fee Transfer for FY 2019	\$ 35,604.11	\$ (26,865.70)	\$ (8,738.41)	\$ -	\$ -
Checking & Savings	<u>\$ 729,719.53</u>	<u>\$ 978,542.70</u>	<u>\$ 387,156.44</u>	<u>\$ 609,912.35</u>	<u>\$ 2,705,331.02</u>
Commitments	\$ 160,000.00	\$ -	\$ 17,741.00	\$ 500,000.00	
Checking & Savings uncommitted	<u>\$ 569,719.53</u>	<u>\$ 978,542.70</u>	<u>\$ 369,415.44</u>	<u>\$ 109,912.35</u>	

\* Delay Administrative Transfers until development has been solidified ✓

**AGENDA ITEM  
NO. 7**

# Pocatello Development Authority

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

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TO: Pocatello Development Authority Board of Directors *An urban renewal agency for the City of Pocatello, Idaho*

FROM: Melanie Gygli, Interim Executive Director   
Merril Quayle, Public Works Development Engineer 

DATE: Meeting of November 20, 2019

SUBJECT: Simmons Surgical – Issuance of Grant Funds

As part of the Economic Development Loan & Grant Agreements with Simmons Surgical, the Board provided grant funds of \$75,000.00 for costs related to restoration of the hardwood floors, original skylights, original ceiling, and façade and storefront, along with associated plans and demolition, for the building at 312 West Center.

Dane Simmons, representing Simmons Surgical, has submitted a request for payment in the amount of \$4,003.00 for work on the hardwood floors and electrical work for the interior store front. A permit and the appropriate inspection was done on the electrical work and the hardwood floor was inspected on 11/13/19. It is our determination that the fund request is appropriate.

With this request, the total drawn on this grant will be \$74,900.55. The remaining amount to be drawn is \$99.45, however, Simmons has stated he does not intend to request these funds.

Payment will be made as follows:



1. Simmons Surgical in the amount of \$4,003.00

# Pocatello Development Authority

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

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

TO: Pocatello Development Authority Board of Directors

FROM: Melanie Gygli, Interim Executive Director   
Merril Quayle, Public Works Development Engineer 

DATE: Meeting of November 20, 2019

SUBJECT: Simmons Surgical – Issuance of Loan Funds

As part of the Economic Development Loan & Grant Agreements with Simmons Surgical, the Board provided loan funds of \$125,000.00 for costs related to necessary repairs and add facilities to create a surgical skills training suite and an Air BnB-type lodging room in the building at 312 West Center, with plans for an Air BnB room later amended to mixed use retail space.

Dane Simmons, representing Simmons Surgical, has submitted a request for \$4,500.00 covering drywall and framing. No formal permits or inspections were required for the work performed, but a site visit was done on November 13, 2019, and we determined the fund request is proportionate to the work that has been done. However, only \$3,627.08 remains available.

If approved, with this request, the total drawn on this loan will be \$125,000.00, with no funds remaining to be drawn.

A check should be made payable to:

1. Simmons Surgical in the amount of \$3,627.08

**AGENDA ITEM**

**NO. 8**

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims (hereinafter "Agreement") is made to be effective as of October 30, 2019 (hereinafter "the Effective Date") by and between Denis Clijsters, *an individual* (hereinafter referred to as "Clijsters") Yellowstone Restaurant LLC, *an Idaho limited liability company* (hereinafter "YR"), Michael McCormick, an individual (hereinafter "McCormick"), Rory Erchul, *an individual* (hereinafter "Rory"), and Jennifer Erchul, *an individual* (hereinafter "Jennifer"). Clijsters, YR, McCormick, Rory, and Jennifer may sometimes may be referred to in this Agreement singularly as a "Party," and collectively as "the Parties."

### RECITALS

- A. Clijsters, McCormick, Rory, and Jennifer engaged in a series of transactions culminating in the formation of YR and the operation of a restaurant business thereunder.
- B. In connection with their business transactions, Clijsters, McCormick, Rory, and Jennifer asserted various claims against each other, which ultimately led to a civil action being filed in the Sixth Judicial District Court of Idaho, Bannock County, as Case No. CV03-19-02711 (hereinafter "the Litigation").
- C. The Parties now desire to settle and finally resolve all the matters, claims, liabilities, deficiencies, causes of action, and all other matters they currently have or may hereafter acquire arising from or related to their interests in YR, The Bridge, BLGL, LLC, or any claim, counterclaim, or matter that was asserted or could be asserted in the Litigation on the terms, conditions, and provisions of this Agreement.

### AGREEMENT

In consideration of the promises, covenants, representations, and warranties hereinafter set forth, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### DEFINITIONS

The following terms shall have the following meanings when capitalized throughout this Agreement:

**Agreement** – This Settlement Agreement and Mutual Release of Claims.

**Claims** – All claims, counterclaims, causes of action, damages, losses, injuries, offsets, liabilities, attorney fees (including attorney fees incurred on appeal), expenses, or demands any Party has or could assert presently or in the future against each and every Party to this Agreement by reason of

any act, occurrence, transaction, or omission prior to the Effective Date, including without limitation all such matters and claims alleged in the Litigation and all such matters arising prior to the Effective Date from or related to one or more of the Parties' interests in or conduct related in any way to The Bridge, BLGL, LLC, YR, and the restaurant business carried on prior to the Effective Date as YR. The term "Claims" shall not include the claims or rights of any Party that may arise under this Agreement. Also, the term "Claims" shall not apply to the duty of YR, McCormick, Rory, and Jennifer to indemnify Clijsters as set forth in Section 2.02.

***Clijsters Transfer Instrument*** – The instrument substantially in the form attached hereto as Exhibit A whereby Clijsters will transfer, release, and remise his interest in YR to YR upon receipt of the Consideration.

***Consideration*** – The amount of Fifty-Five Thousand and 00/100 U.S. Dollars (\$55,000.00).

***Effective Date*** – October 30, 2019.

***Escrow Holder*** – Beard St. Clair Gaffney PA, located at 2105 Coronado St., Idaho Falls, ID 83404.

***Litigation*** – The civil action filed in the Sixth Judicial District Court of Idaho, Bannock County, as Case No. CV03-19-02711.

## **ARTICLE ONE SETTLEMENT AND MUTUAL RELEASE OF CLAIMS**

### **Section 1.01 No Admission of Liability or Fault**

This Agreement shall not be construed as an admission of liability or fault by any Party in connection with any disagreements, disputes, allegations, or controversies described, asserted, or otherwise set forth in the Litigation.

### **Section 1.02 Clijsters Transfer Instrument**

Immediately upon execution of this Agreement by all Parties, Clijsters shall execute and deliver into escrow with Escrow Holder the Clijsters Transfer Instrument. When Escrow Holder is unconditionally prepared to disburse the Consideration to Clijsters, Escrow Holder shall release and deliver to YR, McCormick, Rory, and Jennifer from escrow the duly executed Clijsters Transfer Instrument.

### **Section 1.03 Payment of Consideration**

Immediately upon execution of this Agreement by all Parties, YR, McCormick, Rory, and Jennifer shall cause the Consideration to be deposited into the attorney trust account of Escrow Holder. Escrow Holder shall hold the Consideration in escrow until it has received the Clijsters Transfer Instrument. Upon Escrow Holder's receipt of the Clijsters Transfer Instrument, Escrow Holder shall disburse the Consideration to Clijsters.

#### **Section 1.04 Instructions to Escrow Agent**

The Parties agree they shall cooperate in providing instructions to Escrow Agent to act in accordance with the provisions of this Agreement.

#### **Section 1.05 Non-Disparagement**

Each Party agrees and covenants that it shall not at any time make, publish, or communicate to any person or entity or in any public forum any communication that a reasonable person would consider to be defamatory, maliciously false, or disparaging concerning any Party or any Party's reputation for honesty, integrity, character, trustworthiness, or professional or business competency. For purposes of this Section, the term Party includes each Party's business, or any of its employees, officers, or directors and its existing and prospective customers, suppliers, investors, and other associated third parties, now or in the future.

#### **Section 1.06 Dismissal of Litigation**

Upon Escrow Agent's disbursement of the Clijsters Transfer Instrument and the Consideration as provided in Section 1.02 and Section 1.03 of this Agreement, the Parties shall enter a stipulation in a form acceptable to the Parties and their counsel to cause the Litigation to be dismissed with prejudice. Such stipulation shall provide that the Parties shall bear their own attorney fees and costs incurred in the Litigation.

### **ARTICLE TWO RELEASE OF CLAIMS AND INDEMNIFICATION**

#### **Section 2.01 Mutual Release of Claims**

Upon delivery of the Clijsters Transfer Instrument to YR, McCormick, Rory, and Jennifer and delivery of the Consideration to Clijsters as provided in the preceding Article, and in consideration of the mutual promises and covenants set forth in this Agreement, and on behalf of themselves, their estate or estates, heirs, beneficiaries, assigns, insurers, creditors, executors, administrators, trustees, attorneys, agents, spouses, or successors in interest, each Party does hereby unconditionally and irrevocably release, acquit, forever discharge, hold harmless, and indemnify from such Party's Claims each other Party, its assigns, insurers, creditors, trustees, attorneys, and successors in interest. The Parties further agree and covenant that they shall not sue each other or otherwise seek any form of relief against each other, whether monetary or non-monetary, in any jurisdiction or forum based on or arising from one or more of the Parties' ownership, acts, omissions, or transactions related to YR and the purchase and acquisition of the interests in The Bridge and BLGL, LLC.

The preceding paragraph notwithstanding, nothing in this Agreement shall be construed to cause a release or waiver of a Party's right to enforce the terms of this Agreement, and it shall not be construed to relieve YR, McCormick, Rory, and Jennifer of their duty to indemnify Clijsters .

## **Section 2.02 Indemnification**

### **(a) Pocatello Development Authority Loan**

The Parties acknowledge McCormick, Rory, Jennifer, and Clijsters collectively executed a guaranty (hereinafter "PD Guaranty"), dated as of October 17, 2018, in order to guarantee payment of \$42,795.00, plus interest, represented by a promissory note, also dated October 17, 2018, payable to the Pocatello Development Authority (hereinafter "PD Note"). YR, McCormick, Rory, and Jennifer hereby agree to indemnify, defend, and hold harmless Clijsters from all claims and liabilities arising from or related to the PD Note or the PD Guaranty. Further, YR, McCormick, Rory, and Jennifer agree to use commercially reasonable efforts to cause Clijsters's liability under the PD Guaranty to be terminated.

### **(b) Other Guaranteed Indebtedness**

YR, McCormick, Rory, and Jennifer agree to indemnify, defend, and hold harmless Clijsters from all claims and liabilities arising from or related to any other indebtedness of YR incurred in the ordinary course of business for which Clijsters agreed to be a guarantor prior to the Effective Date.

### **(c) Post-Closing Indemnification**

YR, McCormick, Rory, and Jennifer (hereinafter "Indemnifying Parties") hereby agree to indemnify, defend, and hold harmless Clijsters (hereinafter "Indemnified Party") from an against all claims, demands, deficiencies, losses, injuries, and liabilities arising from or related to ownership and operation of YR after the Effective Date. As soon as practicable after the Indemnified Party learns of any event or condition invoking the Indemnifying Parties' obligations under this Agreement, Indemnified Party shall give written notice of the same to Indemnifying Parties within a reasonable period of time thereafter. Indemnifying Parties shall have no duty to indemnify Indemnified Party hereunder until Indemnified Party has given written notice of Indemnifying Parties of an event or condition giving rise to a duty to indemnify hereunder. Indemnifying Parties shall not be liable to Indemnified Party for any damages, losses, or penalties incurred by Indemnified Party due to Indemnified Party's unreasonable delay in giving written notice to Indemnifying Parties of their duty to indemnify under this subsection.

**ARTICLE THREE  
REPRESENTATIONS, WARRANTIES AND COVENANTS**

**Section 3.01      The Parties General Representations, Warranties, and Covenants**

With respect to this Agreement, the Parties, or any one of the Parties as the case may be, represent, warrant, and agree as follows:

- a. The Parties have legal authority and are competent to enter this Agreement and to perform the obligations contemplated by it.
- b. In entering this Agreement, the Parties are not under any duress or misapprehension as to the consequences of this Agreement.
- c. The individuals executing this Agreement have authority to act in the capacities set forth herein.
- d. The Parties own their interests in their own Claims; they have authority to compromise the Claims; and it is not necessary to obtain the consent of any other person or entity for the Parties to enter this Agreement or perform the obligations contemplated by this Agreement.
- e. The Parties have received adequate disclosure concerning the subject matter of this Agreement.
- f. The Parties are not relying on any representation (oral or written) or information not expressed explicitly in this Agreement.
- g. The Parties have had the opportunity to seek independent legal, accounting, and other professional advice concerning this Agreement and, by entering this Agreement, the Parties represent either that they consulted with an attorney concerning this Agreement or voluntarily and knowingly chose not to consult with an attorney.

**ARTICLE FOUR  
GENERAL PROVISIONS**

**Section 4.01    Additional Requirements**

The Parties agree that following execution of this Agreement, they will execute any such documents or perform any such acts, which are not specifically identified herein, but which are necessary or advisable to facilitate the purpose and intent of this Agreement.

**Section 4.02    Governing Law; Jurisdiction**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Idaho. Except as otherwise provided in this Agreement or the attached exhibits, venue for any action arising from this Agreement shall be in the Sixth Judicial District of Idaho, Bannock County, Idaho.

### **Section 4.03 Legal Representation and Costs – Waiver of Conflict of Interest**

Clijsters was represented exclusively and independently by Beard St. Clair Gaffney PA in entering this Agreement. Beard St. Clair Gaffney PA has not represented or provided legal advice concerning this Agreement to YR, McCormick, Rory, or Jennifer, and they are advised to obtain independent legal representation concerning this Agreement. YR, McCormick, Rory, or Jennifer were represented by an independent attorney of their choice, or, if they enter this Agreement without having been represented by an independent attorney of their choice, they represent that they have done so knowingly and voluntarily. The Parties agree they shall bear their own respective costs, expenses, and fees incurred in studying, investigating, evaluating, negotiating, entering, and performing the obligations of this Agreement.

The Parties acknowledge that Beard St. Clair Gaffney formerly represented YR in the Litigation. YR and all Parties hereby waive any conflict of interest, whether theoretical, actual, or possible, associated with Beard St. Clair Gaffney PA's representation of Clijsters as described in this Agreement, and the Parties consent to the same.

### **Section 4.04 Rights Cumulative**

Except as expressly provided in this Agreement, and to the extent permitted by law, any remedies described in this Agreement are cumulative and not alternative to any other remedies available at law or in equity.

### **Section 4.05 No Third-Party Beneficiary**

Except as specifically provided in this Agreement, no term or provision of this Agreement or its exhibits is intended to be, nor shall any such term or provision be construed to be, for the benefit of any person, individual, corporation, or other entity not a party to this Agreement, and no such other person, individual, corporation, or other entity shall have any right or cause of action under this Agreement.

### **Section 4.06 Default and Attorney Fees**

In the event a Party is required to employ an attorney or attorneys for the enforcement of any right under this Agreement or for the resolution of any dispute arising from this Agreement, with or without suit, the non-prevailing Party agrees to pay the prevailing Party's reasonable attorney fees and costs.

### **Section 4.07 Interpretation**

The Article titles and Section headings are for convenience of reference only and are not intended to be a part of, or to affect the meaning or interpretation of, any of the provisions of this Agreement. All references to Sections contained in this Agreement refer to the Sections of this Agreement. In this Agreement, the words include, includes, and including mean include without limitation,

includes without limitation and including without limitation, respectively. Include, includes, and including are words of illustration and enlargement, not words of limitation or exclusivity. All recitals, exhibits, schedules, or other documents or instruments referred to in or attached to this Agreement, including the introductory portion of this Agreement, are incorporated by reference as though fully set forth at the point referred to in this Agreement. No presumption against any Party (or its counsel) exists on the ground that the Party (or its counsel) was responsible for preparing this Agreement or any part of it. Any representation or warranty of a Party based upon knowledge or best knowledge or similar words includes actual knowledge and constructive knowledge. Constructive knowledge means imputed knowledge under principles of agency law or knowledge that an ordinary person would have exercising prudence of a reasonable manner in the same or similar circumstances. All pronouns refer to the masculine, feminine, neuter, singular, or plural as the context may require.

#### **Section 4.08 Severability**

In the event any term or provision of this Agreement is adjudicated to be unenforceable, invalid, illegal, or otherwise ineffective, the remaining terms and provisions of this Agreement shall not be affected and shall remain fully enforceable, provided that severance of the unenforceable provision does not materially alter the overall intent of this Agreement.

#### **Section 4.09 Non-waiver of Remedies**

The failure or neglect of a Party to enforce any remedy available by reason of the failure of the other Party to observe or perform a term or condition set forth in this Agreement shall not constitute a waiver of such term or condition. A waiver by a Party 1) shall not affect any term or condition other than the one specified in such waiver, and 2) shall waive a specified term or condition only for the time and in a manner specifically stated in the waiver.

#### **Section 4.10 Binding Effect**

This Agreement and the covenants between the Parties to this Agreement shall be binding upon them and their respective agents, executors, personal representatives, heirs, successors in interest, and assigns.

#### **Section 4.11 Time is of the Essence**

Time is of the essence with respect to the obligations to be performed by the Parties under this Agreement.

#### **Section 4.12 Entire Agreement**

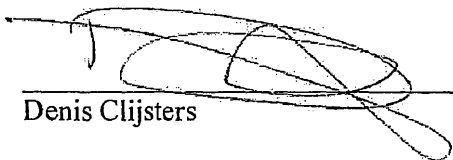
The Parties agree that this Agreement constitutes the entire and integrated agreement between the Parties. This Agreement supersedes and replaces any prior oral agreements or claimed written agreements between the Parties, and the Parties represent that they are not entering this Agreement

based upon any representation not contained in this Agreement. This Agreement may be modified only by a written agreement between the Parties and may not be modified or altered by any claimed oral agreement.

**Section 4.13 Counterparts**

This Agreement may be executed in any number of counterparts with the same effect as if the signatures to each were upon the same instrument.

DATED: The Effective Date.

  
\_\_\_\_\_  
Denis Clijsters

YELLOWSTONE RESTAURANT LLC

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

\_\_\_\_\_  
Michael McCormick

\_\_\_\_\_  
Rory Erchul

\_\_\_\_\_  
Jennifer Erchul

based upon any representation not contained in this Agreement. This Agreement may be modified only by a written agreement between the Parties and may not be modified or altered by any claimed oral agreement.

**Section 4.13 Counterparts**

This Agreement may be executed in any number of counterparts with the same effect as if the signatures to each were upon the same instrument.

DATED: The Effective Date.

\_\_\_\_\_  
Denis Clijsters

YELLOWSTONE RESTAURANT LLC

\_\_\_\_\_  
By: MICHAEL J MCCORMICK  
Its: MEMBER

\_\_\_\_\_  
Michael McCormick

\_\_\_\_\_  
Rory Erchul

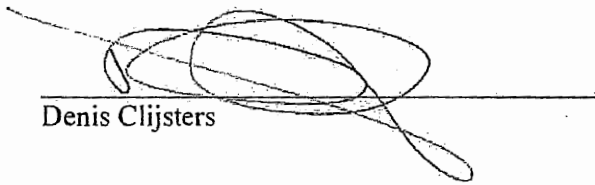
\_\_\_\_\_  
Jennifer Erchul

# **Exhibit A**

## IRREVOCABLE TRANSFER OF INTEREST IN YELLOWSTONE RESTAURANT LLC

**Denis Clijsters**, *an unmarried man* (hereinafter "Transferor"), for and in consideration of \$10.00 and other good and valuable consideration, hereby quitclaims, remises, relinquishes, and transfers unto **Yellowstone Restaurant LLC**, *an Idaho limited liability company* (hereinafter "Transferee"), all of Transferor's membership interest, equity, units, or other evidence of ownership in and to Yellowstone Restaurant LLC, *an Idaho limited liability company*. Transferor further releases and disclaims all rights and interest he has or could claim in the business or assets operating under Yellowstone Restaurant LLC.

Date: October 25, 2019.

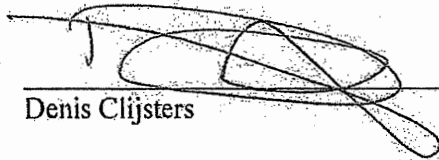
  
\_\_\_\_\_  
Denis Clijsters

based upon any representation not contained in this Agreement. This Agreement may be modified only by a written agreement between the Parties and may not be modified or altered by any claimed oral agreement.

**Section 4.13 Counterparts**

This Agreement may be executed in any number of counterparts with the same effect as if the signatures to each were upon the same instrument.

DATED: The Effective Date.

  
\_\_\_\_\_  
Denis Clijsters

YELLOWSTONE RESTAURANT LLC

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

\_\_\_\_\_  
Michael McCormick

\_\_\_\_\_  
Rory Erchul

\_\_\_\_\_  
Jennifer Erchul

**AGENDA ITEM  
NO. 9**

**THE URBAN RENEWAL AGENCY OF THE CITY OF POCATELLO, ALSO KNOWN AS POCATELLO  
DEVELOPMENT AUTHORITY  
REQUEST FOR PROPOSAL (RFP) SUBMISSION INSTRUCTIONS  
1 Hoku Way**

The Urban Renewal Agency of the City of Pocatello, also known as Pocatello Development Authority (“**Agency**”) is pleased to announce the redevelopment offering for the underlying real property located at 1 Hoku Way, Pocatello, Idaho (hereinafter the “**Property**”).

In accordance with Idaho Code § 50-2011, the Agency invites developers to submit redevelopment proposals for the Property in conformance with this Request for Proposals (“**RFP**”) and the North Portneuf Urban Renewal Area and Revenue Allocation District Improvement Plan, adopted in 2007 (the “**Urban Renewal Plan**”, <http://pda.pocatello.us/documents/NorthPortneufTIFPLAN.pdf>).

Proposals are due on October 24, 2019 by 5 p.m. MT. Further instructions on the contents of the proposal and where they must be delivered are set forth below.

The Agency will consider all responses to this RFP before making a final decision as to the selection of the developer of the Property. Responsive proposals to this RFP must demonstrate a workable planning and business framework for the use of the Property, consistent with the vision and other principles described herein.

This RFP is a competitive proposal process. After reviewing the responses to this RFP and potentially interviewing parties who have submitted responsive submittals (such interviews to be held at the sole discretion of the Agency), the Agency anticipates ranking the submittals and negotiating with the highest ranked proposer (the “**Preferred Developer**”). The process and criteria that will be used to make the selection are described herein.

The Agency and the Preferred Developer will negotiate in good faith to reach agreement on an Exclusive Negotiation Agreement (“**ENA**”) that sets out the terms for the parties to move forward. The Agency will establish terms and conditions for exclusive negotiations, clarify the parties’ respective roles and responsibilities, and provide key terms and conditions of the sale of the Property. During the process of discussion and negotiation, the Agency will not disclose the contents of proposals to competing proposers. If the Agency and the Preferred Developer cannot negotiate the terms of an acceptable ENA, the Agency may, in its discretion, move on to negotiate with the next highest ranked proposer or may choose not to enter into any agreements with any of the proposers. The ENA is intended to guide discussions leading to the preparation of a Disposition and Development Agreement (“**DDA**”). Depending on the level of completeness of the proposal of the Preferred Developer, the Agency may skip the ENA process and negotiate the terms of the DDA with the Preferred Developer.

**1. Property Characteristics:**

- The Property is in the City of Pocatello at the end of Hoku Way off Kraft Way and is further identified as Assessor's Parcel Numbers (APN) RPCPPO44853, RPCPP044809, RPCPP044844. The Property subject is approximately 68.560-acres or 2,986,474-square-feet. The Property is an industrial parcel located in an established industrial neighborhood.
- The Property consists of the underlying real property **only** and does not include the buildings or other improvements on the Property. However, the Agency will quitclaim to the selected developer or developer team any rights the Agency arguably may have in the buildings and improvements on the Property.
- Interested Developers are strongly encouraged to investigate the history of the Property, including the history of litigation concerning the failed construction of a facility by Hoku Corporation. **Litigation and disputes over the ownership of the buildings and improvements on the Property are ongoing and have not been resolved.**
- **THE PDA WILL TRANSFER THE PROPERTY AS-IS WITH NO WARRANTY AS TO THE CONDITION OF THE PROPERTY OR THE ENCUMBRANCES ON THE TITLE TO THE PROPERTY.**
- The Property characteristics are set forth in the July 18, 2018, Appraisal Report for the Property (**Attachment 1**). The Appraisal Report also contains information about the existing improvements on the Property. However, that information is dated and should not be relied upon in lieu of additional due diligence. Interested Developers are strongly encouraged to investigate the existing improvements and buildings on the Property.
- The Property is currently zoned "Industrial (I)". Industrial District (I) zoning district provides appropriate locations for intensive industrial uses including industrial service, manufacturing and production, warehousing and freight movement, railroad yards, waste related, and wholesale sales activities. Activities in the I district include those which involve the use of raw materials, require significant outdoor storage and generate heavy truck and/or rail traffic. Because of these characteristics, industrially zoned property should be carefully located to minimize impacts on established residential, commercial, and light industrial areas.
- Interested developers are encouraged to contact the City of Pocatello concerning the current zoning of the Property and the potential for a zoning classification amendment. The Agency has no authority over zoning for the Property.
- Interested developers are encouraged to contact Bannock County concerning the past due taxes that may encumber the Property and/or the buildings and improvements on the Property. The Agency has no authority over the assessment and collection of taxes.
- City sewer and water, and electric service are available to the Project Site. For additional information on the utilities, please contact the respective provider. Interested developers are encouraged to contact Idaho Power concerning the substations located on the Property, the location of the substations, and Idaho Power's

easement rights over portions of the Property – specifically concerning any encroachments of buildings onto Idaho Power’s easement.

- A preliminary title report for the Property is included as **Attachment 2** for informational purposes only.

2. **Objective:** The Agency is seeking business-owners and developers who are prepared to pay **no less than One Million Two Hundred Fifty Thousand Dollars (\$1,250,000)** for the Property and who are willing to develop the property for purposes and uses in conformance with the *Urban Renewal Plan*. Proposals to purchase the Property for less than \$1,250,000 will not be selected as the winning proposal. A fair re-use appraisal may be required based upon the nature of the winning proposal to establish the purchase price. A fair reuse appraisal is discussed in Idaho Code Section 50-2011 and is an appraisal which estimates the resale value of a parcel considering the restrictions and controls set forth in the urban renewal plan, time of performance, environmental conditions, public process, and other conditions not normally placed on a property. Provided, Agency will not sell the Property for less than \$1,250,000, even if the fair re-use value is less than that amount.

**In addition to the purchase price to be established, the Agency will require that all unpaid property taxes owed to Bannock County for the buildings and improvements on the Property be paid at closing. Interested developers should contact Bannock County concerning the past due taxes that may encumber the Property and/or the buildings and improvements on the Property.**

### 3. Submittal Requirements

Each proposer shall:

- Submit a cover letter which outlines the relevant details of the development proposed for the Property, including, but not limited to: type of business to be conducted; business plan; proposed uses for the existing buildings and improvements on the Property; and a basic design and description of the proposed additional improvements
- Identify the primary development entity (the “**Lead Entity**”) and business partners, principals, design professionals, and other proposed development team members, highlighting similar relevant project experience and past successful development projects. Include the following:
  - i. Contact information for the Lead Entity (address, email contact, and telephone number)
  - ii. Contact information for each member of the Development Team (architect, engineer, contractor) (address, email contact, and telephone number)
  - iii. Description of form of organization of Lead Entity (corporation, partnership, sole-proprietorship, limited liability company) and list of all principal members of the Lead Entity
  - iv. Statement of years the Lead Entity has been in business under current name and a list of other names under which the Lead Entity has operated

- v. Webpage address, if available, of the Lead Entity
- vi. Name, address, and telephone number for person or persons with the Lead Entity that will manage the proposed development
- Provide an overall narrative description of the proposed project, which includes proposed uses of the Property and a plan for the buildings and improvements located on the Property. The Agency encourages developers to provide creative proposals for the development of the Property
- A concept sketch of the site plans, floor plans, and building elevations for the proposed use
- Photographs or perspective drawings of other projects depicting possible architectural concepts viewed as appropriate for this project
- Additional written or graphic materials if needed to communicate the project concept
- Identify any proposed phasing or development sequencing proposed and the timing and schedule of all such phasing. Priority will be given to projects proposed to be completed within a shorter timeframe. Describe the timeline for the project including the design development phase, construction duration, and issuance of a certificate of occupancy
- Provide preliminary project pro-forma including project funding sources and development and revenue estimates that demonstrate project viability. Letters from financial institutions which describe prior credit relationships, prior lending history/amounts/range, and anticipated parameters for lending on proposed project are desirable.
- A list of preliminary development financing sources and uses for the proposed development **MUST BE** included in your submittal.
- Be prepared to execute a either an ENA or DDA (defined above) within thirty (30) days of selection; and
- Execute release documents as attached (**Attachment 3**) at time of submission of proposal.

**Page Limit:** Responses shall be limited to thirty (30) pages.

Four (4) copies of the proposal, including the executed release documents, should be submitted to the Agency in care of:

**Melanie Gygli**  
**Director, Planning & Development Services City of Pocatello**  
**P.O. Box 4169**  
**Pocatello ID 83205**  
**Ph: 208-234-6583**  
**Fax: 208-234-6586**  
**mgygli@pocatello.us.**

All proposals shall be clearly marked with "Redevelopment Proposal." Project proposals may be received at any time during regular business hours (8:00 a.m. through 5:00 p.m. Monday through

Friday, except holidays). The proposals shall be received in the office or postmarked by 5:00 p.m. on the date specified below. No facsimile or e-mail delivery will be accepted.

The Agency reserves the right to reject any and all proposals submitted, or to waive any minor formalities of this request if, in the judgment of the Chair, the interest of the Agency would be served.

4. **Agency Selection Criteria:** The Agency will select the preferred development proposal based on the Project Objective and the following criteria:
  - Contribution to economic development of Pocatello and the local employment and economy.
  - Anticipated job creation resulting from the proposed development.
  - Anticipated value of the proposed development upon completion.
  - Probability of the proposed development's success – based upon the stability and capability of the developer, demonstrated success based on past development projects undertaken by the developer, market analysis, business plan, financial strength, and timeline.
  - Developer's expectations of the Agency for the project's success.
  - Time frame for acquisition of the Property, commencement of construction, and completion of the development.
  
5. **Target Dates and Timelines:**
  - Notice published and RFP issued September 24, 2019.
  - Proposals due to the Agency: October 24, 2019.
  - Review of proposals by Agency and selection of Preferred Developer: November 2019.
  - Execution of DDA Agreement: November 2019.
  - Closing: December 2019.
  
6. **Other Information:** All questions regarding this RFP should be in writing and directed to the Agency Board Chair, Scott Smith, c/o Melanie Gygli (see above for contact information). Only written responses from the Agency will be deemed official responses.
  
7. **Agency Discretion and Authority:** The Agency may accept such proposals as it deems to be in the public interest and furtherance of the purposes of the Idaho Urban Renewal Law, chapter 20, title 50, Idaho Code, as amended, the Urban Renewal Plan, or it may proceed with further selection processes, or it may reject any and all submissions. The Agency will determine from the information submitted in the responses, the most qualified developer as evaluated under the criteria set forth herein. Final selection will be made by the Agency Board.

The issuance of the RFP and the receipt and evaluation of submissions does not obligate the Agency to select a developer and/or enter into the DDA. Submissions do not constitute business terms under any eventual DDA. The Agency will not pay costs incurred in responding

to this RFP. The Agency may cancel this process at any time prior to the execution of a DDA without liability.

#### **8. Public Nature of all Submissions**

This RFP is a public process. Therefore, information collected under the RFP is of public record. The information that is received by the Agency may be subject to disclosure under the Idaho Public Records Law. With the potential exception of some credit data, it is anticipated submissions to this RFP will contain little or no material that is exempt from disclosure under the Idaho Public Records Law. Any questions regarding the applicability of the Public Records Law should be addressed by your own legal counsel **PRIOR TO SUBMISSION**. Any proprietary or otherwise sensitive information contained in or with any proposals may be subject to potential disclosure.

Accordingly, RFP Respondents should take the following steps with respect to any information believed to be exempt from disclosure or confidential: On any items submitted with the RFP that the Respondent believes are exempt from disclosure under the Idaho Public Records Law, clearly mark the upper right corner of each page of any such document or material with the word "Exempt". This does not mean the document qualifies under the legal definition of eligibility, but the Agency will evaluate the request to make the document/page exempt if the content meets the legal requirement otherwise the document will be considered public.

The Agency's disclosure of documents or any portion of a document submitted and marked as exempt from disclosure under the Idaho Public Records Law may depend upon official or judicial determinations made pursuant to the Idaho Public Records Law.



# PC PORTNEUF CAPITAL


**PROPOSAL TO:**

Melanie Gygli

Director, Planning & Development Services City of Pocatello

P.O. Box 4169

Pocatello ID 83205



Portneuf Capital, LLC | 9950 Peppergrass | Pocatello, ID 83204

LD Barthlome  
9950 Peppergrass  
Pocatello, ID 83204

Darren Miller  
1355 Granite Dr.  
Pocatello, ID 83201



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## **REDEVELOPMENT PROPOSAL**

Pursuant to the Request for Proposals (“RFP”) issued by the Pocatello Development Authority (“PDA”), Portneuf Capital, LLC hereby submits a proposal in conformance with the North Portneuf Urban Renewal Area and Revenue Allocation District Improvement Plan and the terms and requirements of the RFP issued by the PDA on September 24, 2019.

## **ABOUT PORTNEUF CAPITAL**

Portneuf Capital, LLC (“Portneuf Capital”) is an Idaho limited liability company established by LD Barthlome and Darren Miller for the sole purpose of redeveloping the former Hoku facility in a manner that takes into consideration the needs of the City of Pocatello, the area surrounding the facility, the unique aspects of the real property, the dictates of the market, and the current conditions of the area. Barthlome and Miller are the sole owners of Portneuf Capital, each holding ownership interest through individually-owned LLCs, namely, Barthlome Holdings, LLC (Barthlome), and Hard Assets, LLC (Miller).

Barthlome and Miller are both natives of Southeast Idaho and have been active in the Pocatello business community for decades. Contact information and bios for Barthlome and Miller are attached as Exhibit 1. Through other companies, Barthlome and Miller have provided services at the Hoku site through the years, both during and following the Hoku construction. They, along with many others in the region, have witnessed the excitement and disappointment the Hoku site has brought to the area. They now have the incredible opportunity and privilege to turn the Hoku site into something positive for Pocatello, Southeast Idaho, and the entire region and put the Hoku, VA Metals, and Solargise failures in the past.

## **DUE DILIGENCE**

Portneuf Capital has spent considerable time and resources over the past months investigating the Hoku property, its troubled past and history, various parties making claims to the property, buildings, and other items currently located at the facility. It has at times been a frustrating endeavor given the people and entities involved, dealing with language and cultural barriers, and sorting through the various conflicting claims made concerning ownership and control of the buildings and equipment on the property, not to mention the list of liens and other associated items contained in the preliminary title report provided by the PDA.

Portneuf Capital has reviewed documents from the Hoku bankruptcy and the bankruptcy sale to JH Kelly, sale documents from JH Kelly to VA Metals, lease and other documents between VA Metals and the PDA, and various documents between the PDA and Solargise America. In addition to the review of documents, Portneuf spoke extensively to the various parties involved, including representatives of VA Metals; representatives of Solargise UK, Solargise America, and Solargise USA; and representatives of Celtic Life Sciences, LLC. Considerable due diligence involved discussions with former JH Kelly employees and executives, construction professionals, experts in the polysilicon industry, neighboring businesses, and potential tenants in order to solidify Portneuf Capital’s plan for the development and use of the property.

## **OVERALL PLAN FOR FUTURE USE OF THE PROPERTY**

### **Industrial Business Park**

Based on the due diligence undertaken by Portneuf Capital, including discussions and negotiations with representatives of Solargise America, VA Metals, and Celtic Life; discussions with Great Western Molding and other adjacent property owners; and discussions with a number of individuals and entities that worked

on or were involved in the initial construction of the unfinished polysilicon facility; Portneuf Capital strongly believes that the most practical use of the property, given all of the various factors associated with the property, is an industrial business park. This belief came after an extensive look into whether the plant could currently be commissioned as a polysilicon producer. Portneuf Capital met with as many people and entities as possible to determine what would be involved in attempting to reinvigorate the original plan of manufacturing polysilicon at the location utilizing the equipment at the facility. Through these extensive due diligence activities, Portneuf Capital has concluded that it is impractical to attempt to commission the facility as it was originally intended and for the purposes for which it was constructed. This conclusion is based on the extensive amount of time required to prepare and repair the plant to be capable of polysilicon production, the extensive capital that would be required in that process, and engineering and environmental concerns that potentially make it impossible to complete and start up the facility. A summary of Portneuf Capital's due diligence in this area are summarized on Exhibit 2.

Use of the property as an industrial business park aligns with the goal of an urban renewal agency, which is to "...afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment of the urban renewal area by private enterprise..." I.C. 50-2003. Redevelopment of the site as an industrial business park will involve using the existing buildings (to the extent possible based upon potential tenants), removal of the equipment and infrastructure that is unnecessary for the repurposing of the existing buildings, and the construction of new buildings on the extensive open acreage of the property. On the approximate 68-acre site, the buildings to land ratio is less than 6%, providing ample opportunity for future growth and construction of additional buildings. Portneuf Capital has attached a conceptual schematic of what the industrial park could look like when completed (see Exhibit 3). The actual look of the project may vary depending on market conditions, the needs of build-to-suit tenants in future phases of development, and whether or not the existing buildings can be repurposed to meet the needs of the park and tenants.

### **Proposed Use and Development of the Property**

Portneuf Capital's business plan contemplates the development of an industrial park providing facilities and space required to support everything from light manufacturing, assembly, technical and educational research, server and data farms, office space, and breweries/micro-breweries, among other uses. The existing buildings on the property provide an opportunity to immediately begin development and to pursue leads for these new uses of the property that have been explored over the past few months. Portneuf Capital has engaged in preliminary discussions with a number of companies, including an ATV manufacturer that may use space for manufacturing and assembly, a manufacturer of a solid tire for use in industrial applications, server and data farms, a local construction company, and several large manufacturers who may be interested in expanding operations to Southeast Idaho. These opportunities have come without any marketing of the property by Portneuf Capital. A more detailed business plan outlining the uses of the existing and future buildings is attached as Exhibit 4.

### **Research and Development Opportunities**

In addition to the new uses contemplated by the industrial park, some of the equipment located at the facility also provides opportunities for educational and other governmental entities to utilize certain equipment for research in an environment that is not currently available outside of a secure governmental facility. The current "Reactor Building" is one such space. We know of no other place in the immediate geographic area where a clean room of the size and quality located in the Reactor Building could be available to

the educational or private sector. Portneuf Capital has had preliminary discussions with representatives at Idaho State University and the Idaho National Laboratory concerning the donation and use of one or more reactors for use in research.

### **Data Centers and Server Farms**

The availability of a designated power substation on the property provides the requisite power needed for data and server farms utilizing either existing or new structures. The existence of three high-voltage feeds in the power substation located on the property provides unparalleled opportunities for data centers to utilize the property, have access to sufficient power, and to have power from different feeds in order to ensure reliable backup power. Housing these types of businesses on the property may also provide a benefit to the park in the form of the heat generated from the servers. That heat could easily be used elsewhere in the facility and buildings to supplement the costs of utilities, further reducing the operational costs of the entities that are interested in locating at the park. Pocatello provides a perfect climate for data centers and server farms because of the cool, dry climate and the absence of frequent natural disasters.

### **Opportunities with New Access Point**

The proposed project will also include the construction and development of an additional ingress and egress point into the facility connecting the facility to Philbin Road. Portneuf Capital is optimistic that with the help and involvement of Great Western, the City, and Union Pacific Railroad that the new access point to the property can be configured to provide better safety and access than what currently exists off Kraft Road for the current truck traffic for Great Western. In addition, a new access point off Philbin Road would provide easier access to Highway 30 and the interstates, making future growth at the park and surrounding areas less of a burden on residential areas around Kraft Road. The proposed point of access is shown on the attached schematic (see Exhibit 5). Preliminary discussions have been undertaken with Great Western to determine its desires and needs with the proposed new access point. Great Western is very supportive of this idea and has provided a letter indicating its support which is attached as Exhibit 6. Portneuf Capital is also working on preliminary discussions with Union Pacific, but any significant discussions or proposals will only come after the rights to the property are acquired. At that point, it is the hope of Portneuf Capital that the City will also be supportive of this new access point.

In the event that it becomes impossible to add an additional point of access then Portneuf Capital and Great Western will work together to develop the necessary area for a turnaround for trucks and an entrance that functions for both the industrial park and Great Western. The new access point also opens up other opportunities to benefit Great Western and other neighbors to the park by allowing easements to the Idaho Power substations on the property, providing these businesses with better and closer access to the power they require to operate. Portneuf Capital is willing to provide such easements to neighboring properties for no reason other than to aid development in surrounding properties and create synergies among the businesses located in this area.

### **Synergies with Great Western Malting**

The close proximity of Great Western Malting to the south of the property provides great potential for joint projects between Portneuf Capital and Great Western. The two companies have discussed other synergies in addition to the new access point off Philbin Road, including power easements and the addition of breweries/micro-breweries and other businesses using malt as a main ingredient in production. The

ultimate success of any project is the sense of community that can be developed. We believe that all of the potential tenants will work well together and offer a synergy that will draw others to the project.

### **Unique Opportunities with the Administration Building**

The fact that there is a 45,000 square foot administration building on the property that could be finished and configured into offices for administrative uses for business utilizing other aspects of the facility provides a unique opportunity for all involved. Having office space not directly tied to the manufacturing facility, research facility, brewery or any other imaginable activity eliminates many of the parking, security and operational problems that most businesses attempting to operate all aspects of their business out of a warehouse or manufacturing facility experience. The administration building would be able to provide office resources such as conference rooms, office space, social areas and secretarial support to many businesses wishing to locate at the park, thereby offering something unique and valuable to these businesses that cannot be found elsewhere in the Pocatello or surrounding area. The location of the river alongside the project allows for a much more upscale facility which enhances the desirability of businesses wanting to be located in the park.

### **Job Creation**

Although it is difficult to accurately estimate the overall job creation for all of the potential businesses and uses of the industrial park, Portneuf Capital believes that a fair estimate taking into consideration the office space, manufacturing, brewing, retail and other foreseeable uses to be one job per 200 square feet of usable building space. There is currently over 170,000 square feet of space in the existing buildings. With additional space on the horizon in Phase II of Portneuf Capital's business plan, there will be over 200,000 square feet of space within two years. This could project out to 1,000 jobs in the park. When completed the facility could easily have 1,500 people working in the overall facility.

### **PDA and City Assistance**

One of the important aspects of this project is the fact that the PDA has already been instrumental in providing to the project all necessary utilities and infrastructure to immediately begin the project. The expectations on the PDA by Portneuf Capital is limited to assisting in the overall development of the new Philbin Road access point, as well as utilization of any available or future funds to improve the existing access point and the construction of the primary roadways within the project itself - through the implementation or continuation of the TIF district encompassing the Hoku property.

In addition, Portneuf Capital believes the time has come to retire the name "Hoku" in reference to the facility. Hoku conjures up the painful memories of the plant's failure and the strain it put on many area businesses. Portneuf Capital would like to name the industrial park "Portneuf Park" and work on renaming what is currently 1 Hoku Way to Portneuf Park Way, or something similar.

## **CLOSING AND PURCHASE PRICE**

Portneuf Capital's intent is to close on the project as soon as possible and immediately begin the final inspections and planning for the removal of any equipment or super structure that cannot be used as part of the planned business park. It is hoped that the process of removal could begin within 10 days of closing and be completed within 240 days. To a major extent, signing agreements with tenants will dictate the

repurposing of the existing buildings and the construction of new buildings. Portneuf Capital's goal is to have tenants on the property within 240 days of closing.

Portneuf Capital offers to purchase the entire facility which includes the land and fixtures, along with any and all rights which the PDA has concerning the buildings and moveable equipment that is currently located at the former Hoku Facility for a total purchase price of \$1,250,000.00. Said amount will be paid via certified funds within 7 days of the selection of Portneuf Capital under the terms and conditions of the RFP. As verified by Exhibit 7, the funds necessary to purchase the property and pay any and all other amounts required by the RFP are available without conditions, other than the preparation of all necessary documentation to transfer ownership of the property. Specific amounts of loans can be confirmed with Citizens Community Bank upon request. Portneuf Capital has a committed relationship with Citizens Community Bank. Future financing of improvements and structures will come from a mix of equity investment from Portneuf Capital principals and borrowing from Citizens Community Bank.

Portneuf Capital has already paid one year of the personal property taxes due with respect to the buildings and the polysilicon equipment (\$111,000) and is working with the County to ascertain the exact amount that will need to be paid at closing to bring any and all taxes due with respect to the buildings and the equipment current.

## **LEAD ENTITY AND DEVELOPMENT CONTRACTORS**

The lead entity for the development of the business park is Portneuf Capital, LLC. It is an Idaho limited liability company owned by Bartholme and Miller, both who have been long-time Pocatello residents and successful area businessmen (see Exhibit 1 for bios). It is possible as additional capital needs arise that additional investors could be involved to insure adequate capitalization and availability of development funds. These investors may involve associates of the current principals, as well as, potential users of the property. That said, Portneuf Capital does not anticipate the need for any additional investors through Phase I of the proposed project.

Portneuf Capital will rely on a number of professionals and experts in preparing the facility and making necessary improvements. Portneuf Capital has signed a contingent consulting agreement with Jeff Dean, who was the lead superintendent for JH Kelly in constructing the Hoku facility. Jeff has since retired from JH Kelly, but his knowledge of the construction of the plant will be incredibly valuable as Portneuf removes unnecessary equipment and structure in a timely fashion. A number of local contractors will be used in construction services necessary in removing certain structure from the park.

Portneuf Capital has already engaged Pocatello-based RMES in projecting future phases and buildings on the property. RMES will be engaged to assist in the platting and layout of the park, implementation of roads, and design/layout of buildings. Portneuf Capital has also had discussions and meetings with steel

erectors and recyclers concerning removal of some of the steel piping structure that will need to be removed from the property.

The project will be jointly managed by Barthlome and Miller until such time as necessary to hire additional personnel. The following are their contact information.

## CLOSING

As indicated above Portneuf Capital, if selected as the developer, anticipates closing this deal within 10 days of its selection as developer. In the event that Portneuf Capital is the only bidder, it is requested that the PDA schedule a special meeting for the purpose of reviewing this bid, and making a decision on whether or not it complies with the requirements of the RFP. Portneuf Capital sees no reason to in any fashion delay the selection process until the regular PDA meeting in November. There is a great deal of work that could be done before the severe winter weather ascends upon Pocatello. There is no reason not to take advantage of time now, merely to wait for a regularly-scheduled meeting.

## CONCLUSION

Portneuf Capital would like to thank the PDA and everyone associated for the help and cooperation in providing access to the facility, other information that has allowed Portneuf Capital to undertake and complete its due diligence, and be in a position to submit this bid. We hope that the proposal set out herein provides the PDA with the necessary information to make an immediate decision, and to establish with the PDA a basis to conclude that Portneuf Capital is a viable entity with a vision that is achievable as well as beneficial for the Pocatello area. Dated this \_\_\_ day of October, 2019.

**Portneuf Capital, LCC**

By   
LD Barthlome, Manager

By   
Darren Miller, Manager

## EXHIBIT 1

### BIOS OF LD BARTHLOME AND DARREN MILLER

#### LD BARTHLOME

LD has a long history of successful business ownership and community involvement in Pocatello. His career began after studying CIS at Idaho State University while attending on a football scholarship. Out of college, he worked for IBM to provide customer support and maintain network systems for local hospitals, police and fire locations, and department stores. He then served as Director of IT for the City of Pocatello Police Department.

In 1999 LD started his first company, HostIdaho, which later became Big Dog Internet. During his years at HostIdaho, LD's projects overlapped with two other individuals who would soon become longtime business partners. In 2002 the three formed Ngroup, LLC, which provided network services to clients such as Bannock Regional Medical Center, Bannock County including the Court House and Sheriff's Department, and the police departments of both Pocatello and Chubbuck. The three partners eventually streamlined their companies and operated as Big Dog Internet and Data Solutions. Over a span of 10 years, Big Dog Internet grew to have over 10,000 customers in Idaho, Colorado, and Puerto Rico. Meanwhile, the partners grew Data Solutions into one of the largest networking companies in Southeastern Idaho.

LD and partners sold the Data Solutions customer base to an employee in 2013, and around the same time, they accepted an offer from another local company to sell Big Dog Internet. The partners wasted no time jumping into their next venture, forming Optix Media, with a goal of connecting Southern Idaho with fiber optic cable for internet, phone, and TV. LD's responsibility for Optix Media was overseeing the construction to build their fiber optic network. After successfully connecting commercial, government, and multi-tenant residential customers from Malad to St. Anthony and as far west as Twin Falls, they turned their focus to deliver home internet services in Pocatello and Chubbuck under the brand they created, Tru Fiber. After much growth, they accepted a buyout offer in 2017 to sell Optix Media/Tru Fiber to another local company.

LD has been a resident of Pocatello for over 30 years, moving to Pocatello in 1988 from his hometown of Soda Springs, Idaho. After selling his tech companies, LD turned his focus to real estate, most recently investing in a property in Old Town Pocatello. LD serves on the Board of Directors for the ISU Football Alumni Team (FAT Club), assisting with fundraising efforts to support ISU athletes and their programs.

LD can be reached at:

**Phone:** (208) 251-6878

**Email:** ldb@optix.net

**Mail:** 9950 Peppergrass, Pocatello, ID 83204



## **DARREN MILLER**

Darren Miller is an entrepreneur with three decades of successful experience. Darren started his entrepreneurial career at an early age. While still attending High School in Pocatello, Darren began a computer sales and support company. Darren continued this business while attending Idaho State University where he completed his degree in software engineering and computer networking.

Darren's first career position was as the Network Administrator for the City of Pocatello. A few years later, Darren partnered with some experts in the computer industry and started several businesses in the Pocatello area (Ngroup, Data Solutions, Big Dog Internet), including the largest Wireless Internet Service Provider in Southern Idaho, and a computer/network security consulting company serving some of the largest employers in Southeastern Idaho. Serving as the Chief Technology Officer, Darren's primary responsibility was leading his team in network design and implementation, network security, and guiding the overall technology direction of the enterprise.

Looking for a new challenge, Darren and his business partners started a new company focused on fiber optic construction, wireless network engineering, and a fiber backbone ISP called Optix Media where he again served as the CTO. Over the coming years, this business would grow to serve over 100,000 users daily in several states including large enterprises, university housing, and fiber connected homes. Darren and his partners sold this business in late 2017.

Currently, Darren is a partner in several commercial properties and a large skilled nursing enterprise based in Salt Lake City, Cascades Healthcare. Darren also owns a utility construction company, Bortek Utilities, based in Pocatello serving the Mountain West.

Darren can be reached at:

**Phone:** (208) 251-6269

**Email:** dmiller@optix.net

**Mail:** 1355 Granite Dr., Pocatello, ID 83201

**EXHIBIT 2**

**SUMMARY OF DUE DILIGENCE ON USE OF POLYSILICON FACILITY**

The following is a summary of the due diligence of Portneuf Capital with respect to the property located at 1 Hoku Way, Pocatello, Idaho (the “Property” or “Project”). The purpose of the due diligence was to ascertain the highest and best use of the Property, and in particular, whether the Property should be used for the purpose for which it was constructed or if it should be repurposed for another use.

**I. Overview of Property**

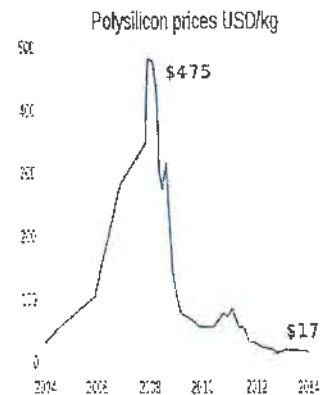
- A. In general. The Property consists of 171,011 square feet of building space that is located on a 68.56-acre site on 1 Hoku Way, Pocatello, Idaho. The Property is adjacent to the current Great Western Malting location to the southeast and the JR Simplot property to the northwest. The Property has a 5.8% building-to-land ratio, providing opportunity for the addition and construction of additional buildings on the Property.
- B. Improvements on the Property were originally constructed for the Hoku Corporation and its subsidiaries, with a plan to produce polysilicon at the constructed facilities. Hoku Corporation filed for bankruptcy in 2013 and the buildings and equipment on site were sold to JH Kelly, the contractor who constructed the facility. The Pocatello Development Authority acquired the underlying land from the City of Pocatello.

**II. Highest and Best Use of Property**

- A. Operational – Polysilicon Production. The improvements on the Property were constructed for the production of polysilicon. Portneuf Capital does not believe it is feasible to produce polysilicon on the Property for the following reasons:

- 1. **Price and Market Uncertainty.** There is tremendous uncertainty in the polysilicon industry and pricing is at near all-time lows, averaging around \$7.50 - \$8.00 per kg. When the Hoku plant was being constructed, the price of polysilicon was above \$100 per kg (peaking at \$475 per kg in 2008). By the time Hoku went bankrupt in 2013, polysilicon was less than \$14 per kg.

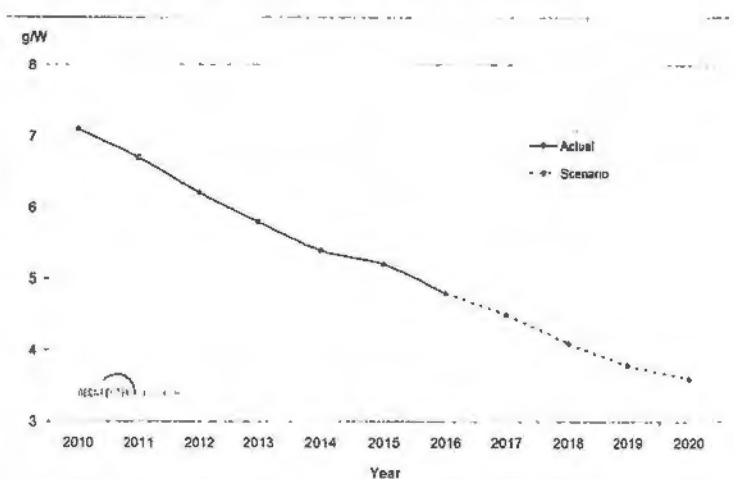
The current price for polysilicon is well below the price point that forced Hoku into bankruptcy. One of the primary drivers of the price is the manipulation caused by Chinese polysilicon production. Prior to 2010, the Chinese produced very little of the world’s polysilicon. Today, they produce over 70% of the world supply. This drastic shift was one of the leading causes of the collapse of the U.S. polysilicon industry, with



most plants shuttering. Hoku was just one of many plants to shut down operations, never to reopen.

- Market Outlook.** Experts in the industry paint a bleak outlook with respect of polysilicon production in the solar industry. Bernreuter Research, one of the leading polysilicon analysts warned that “the polysilicon industry has to prepare for the fact that demand is slowing down on two fronts: The annual growth rate of global photovoltaic installations is decreasing, and the polysilicon consumption for each new gigawatt installed in 2020 will be only half as much as it was in 2010.” (Press Release at <http://www.bernreuter.com/en/news/press-releases/polysilicon-consumption-for-solar-cells.html>) The following shows the dramatic decrease in polysilicon consumption per solar cell and the continued projection into 2020:

It is no mystery why so many polysilicon plants have closed in the past decade – the future is bleak in the industry and without massive government subsidies, the industry faces significant hurdles in rebounding to its peak periods in 2008-09.



- Investment Capital.** The investment capital necessary to bring the Hoku plant up to production may be cost prohibitive. Many essential assets were sold by JH Kelly upon acquiring the plant. In addition, it has been almost a decade since the construction began and many parts and assets may not be in working condition or the technology has become obsolete. Companies competing in the polysilicon space are massive, global companies with almost unlimited resources, including the likes of Dow Chemical, who shuttered its \$1.2B Hemlock Semiconductor polysilicon plant in Clarksville, Tennessee in late 2014.

The reality is this – Portneuf Capital does not believe the polysilicon industry is stable enough, nor has a bright enough outlook, to justify the investment of capital necessary to bring the Hoku facility into production. Based on its due diligence, the cost estimated to repair the plant, replace necessary and essential equipment, and bring the plant back into operation would cost anywhere from \$150M to \$200M. There is also significant risk that even if such capital were to be infused, that the market could drive the plant to closure yet again as prices and demand fall and as China continues to manipulate the industry.

- Environmental Concerns.** Producing polysilicon requires the use of TCS gas (trichlorosilane) in a reactor under extreme heat and pressure to create rods of polysilicon. TCS gas and hydrogen are combined at high temperatures in a reactor (600-900 degrees). The silicon from

the TCS is released during the reaction and is deposited onto multicrystalline silicon filaments inside the reactor, which eventually turn into a polysilicon rod that is extracted from the reactor.

TCS gas is a hazardous material that reacts violently with water and water vapor in the air to form corrosive and toxic hydrogen chloride gas and hydrochloric acid. TCS gas causes severe corrosive burns of the skin, eyes or respiratory tract and ingestion (swallowing) may cause severe internal injury or death. TCS gas is also flammable. An accidental spill or release of TCS gas results in a hydrogen chloride vapor fog, which can only be controlled by means of a water spray into the acid plume. This results in acidic waste water being discharged into the surrounding area. While in the air, acidic fumes will burn plants and trees that come in contact with it. The fumes and waste water can contaminate soil. If the acidic plume or spill comes in contact with an aquatic environment, the result may be a dramatic increase in water acidity which may harm aquatic life.

These concerns are amplified because of the close proximity of the Hoku facility to the Portneuf River – the river runs the entire length of the Hoku facility to the south. The Portneuf River is the largest river running through Bannock County and the City of Pocatello and drains into the Snake River at the American Falls’ Reservoir, just a few miles from the Hoku facility. In addition to the close proximity to the Portneuf River, the Hoku facility also sits on the edge of the City of Pocatello, close to residential neighborhoods.

Many environmental and other experts were puzzled that the Hoku facility was built so close to the Portneuf River and residential areas. In recent years the Idaho Department of Environmental Quality has been working on protecting and improving the quality of the Portneuf River. Allowing the Hoku site to be used for polysilicon production would undo all the positive steps that have been taken and would jeopardize the Portneuf River and the safety of the citizens of the City of Pocatello. In a recent Idaho State Journal article, Bruce Olenick, regional administrator at the Idaho DEQ was quoted as saying “Pocatello needs to plan for the entire build out of Northgate and that is the level of detail we are asking for. We don’t want another project like Hoku that falls through the cracks.” (See Idaho State Journal: “DEQ: Pocatello’s drinking water, wastewater plans for Northgate are inadequate” Shelby Harris, June 30, 2019.) While Olenick was quoted with respect to the Northgate project, his comment illustrates the hindsight on the Hoku project.

Portneuf Capital strongly believes that the Hoku facility, even if viable economically, should not be used for polysilicon production. The environmental risk is too high to compromise our region’s air and water – two of our most valuable and necessary resources.

5. **Waste Water Concerns.** In researching the viability of operating the Hoku facility as a polysilicon producer, Portneuf Capital encountered unresolved concerns with the plan for waste water from the facility – concerns that were never resolved by Hoku previously and would have caused delays in making the plant fully operational. Polysilicon production requires massive amount of water. The result of this is massive amounts of waste water. At the time of construction, Hoku failed to address this issue. It had three options: (1) discharge to the City of Pocatello; (2) look to neighboring properties to use waste water or assist in the disposal; or (3) discharge into the Portneuf River. It is our understanding that the City of Pocatello did not have the capacity at the time to handle the projected amounts of waste water from the Hoku

facility. While the City has since increased its waste water capacity that increased capacity is presumably to cover projected household growth, not one large industrial user. Further, it is our understanding that neighboring properties and facilities were also unable or unwilling to provide a solution for Hoku. Finally, the remaining option of discharging into the Portneuf River is a serious issue that would require environmental assessment and a permit. It is our understanding from speaking with the Idaho DEQ that obtaining such a permit is a lengthy process that can take years to obtain. This concern over the timing of a necessary permit would by itself put any investment into the plant for polysilicon production into serious trouble, as it would be impossible to tie up investment dollars for years without any certainty of obtaining the permit.

- B. Portneuf Capital has engaged in preliminary discussions with a number of manufacturing and other businesses about locating at the Hoku site and is confident that it can bring a number of new businesses to the site. This is the best option for the Pocatello region, to have a number of diverse businesses that are not tied to a volatile market or industry. The businesses Portneuf Capital is looking at range from light manufacturing, construction, fabrication, data centers/high tech, food/beverage, and office space.

Portneuf plans to systematically remove the unnecessary polysilicon equipment and infrastructure from the site, leaving the core buildings for future tenants. In addition, Portneuf plans to construct additional build-to-suit buildings on site to fill the business park. This plan will require subdividing the Property and building a better infrastructure of roads and parking lots throughout.

EXHIBIT 3

CONCEPTUAL DRAWINGS OF PROJECT

DRAWING #1

*Aerial of Project showing existing and potential future buildings:*



DRAWING #2

*View of possible future buildings on southeast corner of Project:*



DRAWINGS #3 AND #4

*View of current Administration and Control Buildings along with future buildings on southeast corner of Project and enhanced exterior improvements to Administration Building:*



**DRAWING #5**

*View of Project looking west:*



**DRAWING #6**

*View of additional potential new buildings and current Post-Production Building:*



**DRAWING #7**

*Additional View of Post-Production Building, along with potential new buildings and the view of the new Philbin Road entrance in lower right corner:*



**DRAWING #8 AND #9**

*Views of new Philbin Road entrance (looking south from Philbin Road and aerial view):*



**DRAWING #10**

*View from western-most tip of Project looking east at potential new improvements and buildings (Alternative #1 – smaller buildings, more buildings):*



**DRAWING #11**

*View from western-most tip of Project looking east at potential new improvements and buildings (Alternative #2 – larger buildings, fewer buildings, open area/park):*



## EXHIBIT 4

## BUSINESS PLAN – PHASING OF PROJECT

Portneuf Capital asserts that the proposed lease values and costs of repair of refurbishing set out in this business plan along with the business plan in general contains information that is proprietary which if disclosed to third-parties could allow them to obtain an economic advantage over Portneuf Capital and it is reasonable under the circumstances to maintain its secrecy while the initial stages of the projected are being developed. We believe that I.C. 74-107(1) specifically exempts this information (each page marked "Exempt-Confidential") from disclosure.

## PHASE I (Closing to 180 Days)

- A. The first phase of the repurposing of the Property is to utilize the existing buildings. There are currently five major buildings on the Property totaling combined 171,011 square feet of leasable space on the 68.56-acre site. Phase I will include the following preparation and utilization of the current buildings and vacant land:

1. **Control Building.** The "Control Building" consists of 11,160 total square feet, with 4,278 square feet of actual control/computer room area with a sectional/paneled sub-floor to run wiring with fluorescent lighting, suspended acoustic tile ceilings, and paint over textured sheetrock walls. The remaining 6,882 square foot is warehouse/shop area. It has fluorescent lighting, sealed slab warehouse, space heaters, and an 18-foot clearance height. This building has a Class S design with corrugated metallic paneling exterior and a pitched corrugated metallic paneled roof.

This building needs very little preparation to be leasable and there have been preliminary discussions with prospective tenants of this building. The Phase I plan for this building is to separate the warehouse space from the computer control space. The warehouse space is ideal for a small industrial/manufacturing shop. As illustrated in the pro forma below, this space is currently estimated to lease at [REDACTED]/sq ft, which is slightly below market for this type of space. In addition to the warehouse space, office space in the Administration Building will be coupled so that the tenant will not be required to construct office space in the Control Building. As discussed below, space in the Administration Building will generally be at \$ [REDACTED]/sq ft, but for tenants occupying other space in the facility, the office space will be discounted to \$ [REDACTED]/sq ft.

The computer control space (4,278 sq ft) is in ready condition to house a computer server farm and there have been discussions with a prospective tenant for this space, which will lease at [REDACTED] sq ft.

Estimated time for cleaning, preparation, and light construction within the Control Building to prepare it for leasing is approximately 30-60 days and the cost is less than \$2,500.

2. **Post-Production Building.** The "Post-Production Building" is a 46,746 square foot warehouse/distribution building, with clearance height ranges from approximately 26 to 32

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feet high for an average clearance height of roughly 29 feet. There is an egress loading area located on the southwest corner of the building.

There are currently various parts and pieces of unnecessary equipment in the Post-Production Building. These items will be removed and the necessary improvements to the building will be made. There are currently preliminary discussions with two prospective tenants to occupy this space. One tenant plans to manufacture and assemble off-road ATVs, beginning as soon as Spring/Summer 2020. Another prospective tenant plans to manufacture a solid industrial tire. If an agreement is reached with one of these tenants, Portneuf Capital will work with the tenant to begin improvements to the space immediately. It is estimated this space will lease at \$ [REDACTED] sq ft. This building needs all of the interior lighting installed and space heaters need to be completed. There is framing for interior building partitions which simply can be removed or completed. It is projected that remaining interior improvement costs are approximately \$250,000. Exterior improvements would include a parking lot and some minor landscaping and sidewalks, estimated at \$150,000. Time to completion is approximately 90 days, weather permitting.

3. **Reactor Building.** The “Reactor Building” is a large manufacturing/production building, consisting of approximately 59,466 square feet and two floors – an upper floor that is a “clean room” with 50-foot ceilings and an overhead crane. The lower floor houses electrical and other components. The upper floor was designed to house reactors that produce polysilicon, thus the name “Reactor Building.” The building has corrugated metallic siding exterior for both the walls and the ceiling. The exterior is finished. The interior will require necessary adjustments as equipment is removed.

The upper clean room can be used in many different applications. Portneuf has engaged in preliminary discussions with a number of potential businesses interested in similar space ranging from the manufacturing of building materials to component parts for vehicles and aerospace, as well as assembly of equipment. Clean rooms are rare space and this particular clean room, because of its size, could offer an opportunity to attract a major tenant, possibly even a defense contractor producing parts or equipment for military use. Lease rates on clean rooms varies based on the use, but it is anticipated that lease rates will be at least \$ [REDACTED] for this space. For the lower level, this space would lease at lower rates, likely in the \$ [REDACTED] sq ft range.

There are currently reactors installed in the upper clean room space that will need to be removed and repairs made to the flooring. Other improvements to entry/exit may also be required for this space. The lower floor has been used for storage – those items will be removed along with unnecessary equipment installed on that floor. This work should be capable of completion within the first 180 days following closing. Estimated cost for all improvements is approximately \$75,000.

4. **Administration Building.** The Administration Building is a four-story building with 11,476 sq ft per floor and 45,904 total sq ft in the building. It was built in 2008-2009 and has a Class B construction with a masonry and glass exterior and a generally good overall construction quality, but is not 100% complete. Although the structure and the partitions are in place, there is still a considerable amount of work that needs to be done to finish the interior, particularly

[REDACTED]

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on the top three floors. All infrastructure and HVAC is in place, while finish floors, suspended acoustic tile ceilings, and electrical fixtures need to be installed (these improvements are on site). Finish flooring and carpentry is absent and there are some exterior portions of the building that will require stone finish (first floor) and some work on the exterior entrance. Approximate cost for completion is \$800,000.

Portneuf Capital intends to finish the exterior of the Administration Building first, then finish the entry and first floor common areas and conference rooms. The upper three floors will be finished on a build-to-suit basis as tenants are secured. The Administration Building offers a central location for management and executive offices for businesses located in the park. In addition to the Administration Building, the parking area surrounding the building is gravel and there is no curb, gutter, or landscaping. Portneuf Capital intends to finish the surrounding common area with paved parking, curb and gutter, sidewalks to the entry of the building, and landscaping.

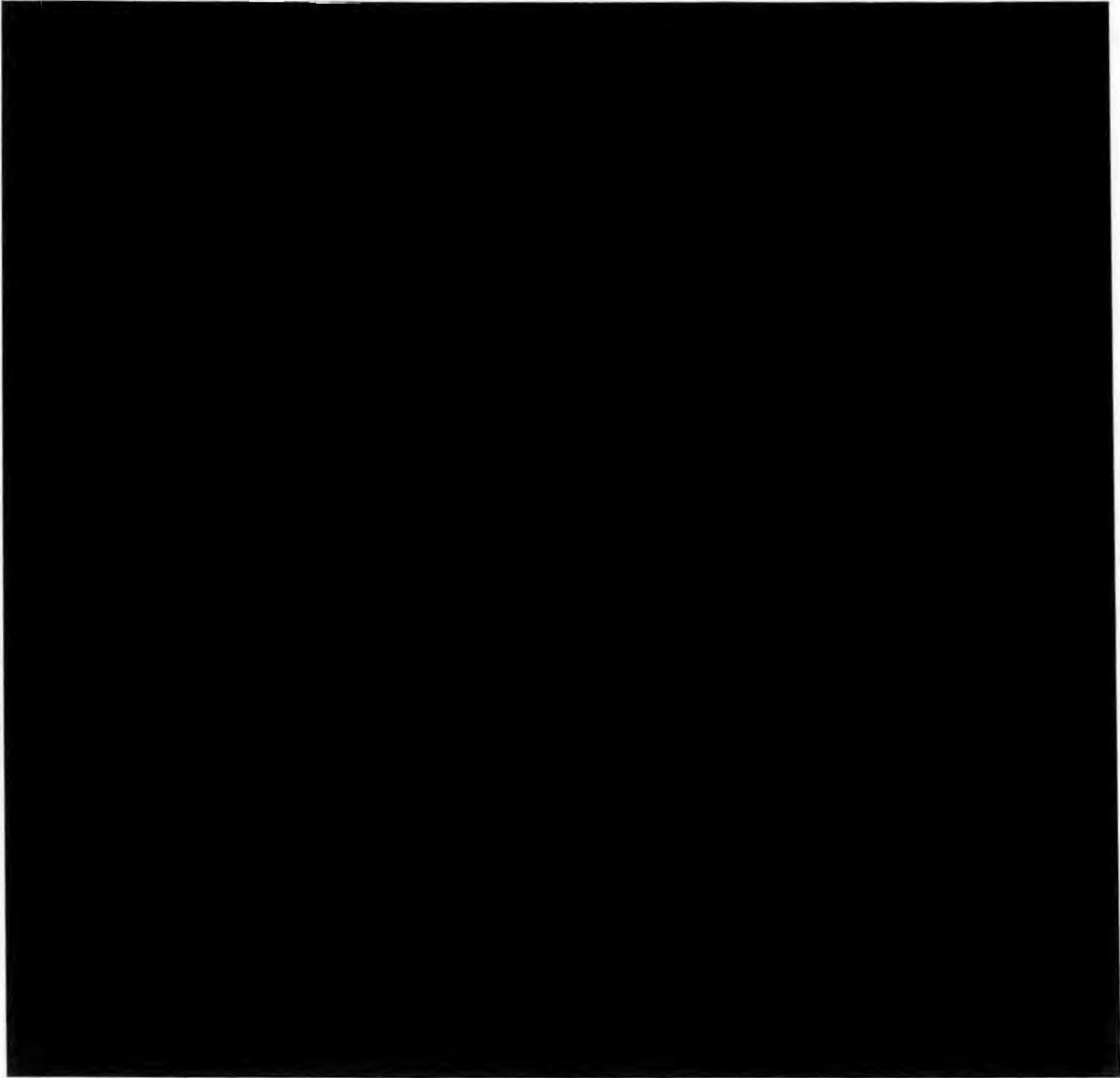
Lease rates for space within the Administration Building will vary from [REDACTED] sq ft. With other tenants of the business park, Portneuf intends to build out mini office suites to suit the tenant, with a small reception area and offices. Portneuf intends to finish the first floor space to include several common conference room areas that can provide tenants with the ability to hold large meetings on site without having to lease additional space. This common space will be made available to all tenants.

5. **Auxiliary Building.** This is a 2,135 sq ft building constructed on the northwest corner of the Reactor Building. This space is suitable for production equipment and it is anticipated it would be used in connection with a tenant of the Reactor Building. There is some equipment and structure that would need to be removed from this building, but it could be ready for leasing within 180 days following closing. Repair costs are minimal.
6. **Waste Water Building.** This is a 6,500 sq ft building capable of housing production equipment, repair shop, or light manufacturing or assembly. There are some repairs necessary to the building but it is anticipated that this building could be ready to lease within 180 days following closing. Repair costs are estimated at less than \$10,000.

With respect to the existing buildings on the property, Phase I will begin at closing and will continue for the first 180 days. Completion of Phase I for the buildings will result in all current existing buildings being in leasable condition.

The following is the financial data and projected income and improvement costs associated with the initial stages of the project, along with a projection of the income from the completed project.

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PORTNEUF CAPITAL, LLC - PORTNEUF BUSINESS PARK PHASE I PRO FORMA

\*\*Estimated at completion of Phase I (approximately July 1, 2020)

Leasing Income

	Available Sq Ft
Administration Building	
First Floor	6,000
Second Floor	11,476
Third Floor	11,476
Fourth Floor	11,476
Totals:	

	Available Sq Ft
Control Building	
Computer Room Space	4,278
Warehouse Space	6,882

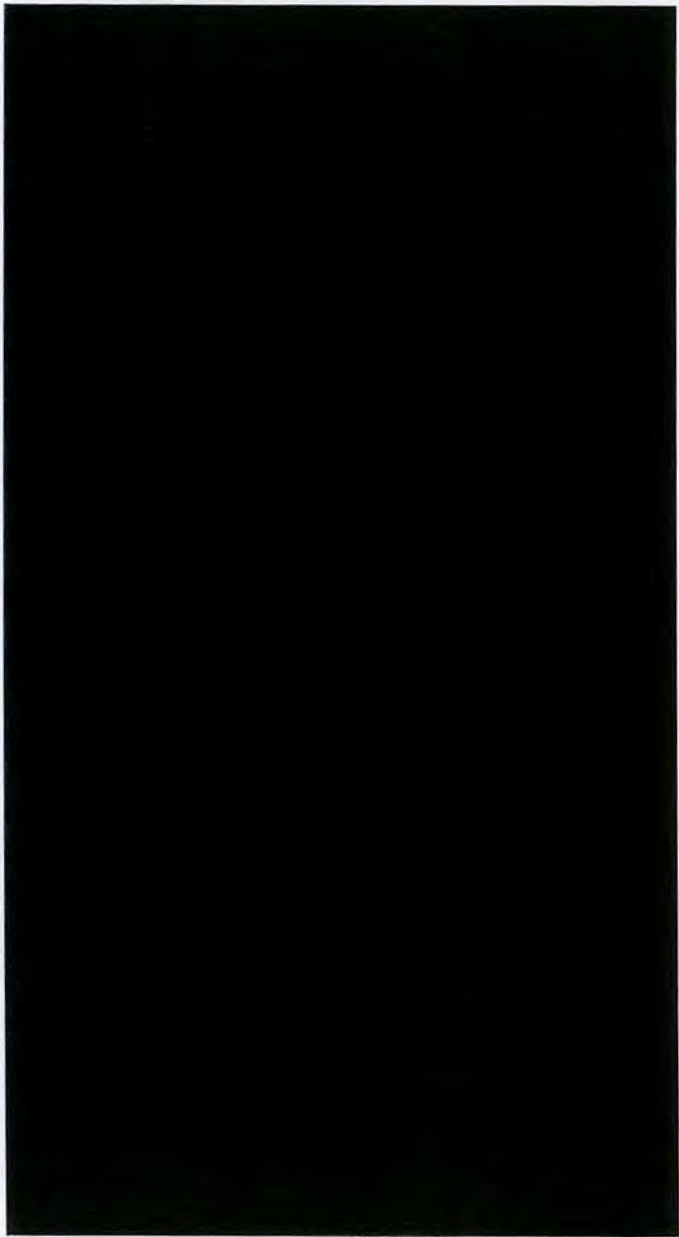
	Available Sq Ft
Reactor Building	
Bottom Floor	29,000
Clean Room	29,000

	Available Sq Ft
Post Production Building	46,746

	Available Sq Ft
Waste Water Building	6,500

	Available Sq Ft
Auxiliary Building	2,135

	Available Acres
Acreage Rentals	25



Projected Annual Lease Income  
 Projected Debt Service  
 Projected Net Income



\*\*Projected Annual income does not include any scrapping income as reflected on the Summary

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PORTNEUF CAPITAL, LLC - PORTNEUF BUSINESS PARK PHASE II PRO FORMA SUMMARY

Debt Service		
Phase II Operating Capital		
Debt Service and Operating Capital		Lease Income + Equity Capital
Phase II Improvements/Costs		
New Buildings		Estimated - financed by Citizens Community Bank
Exterior Improvements		
Total Phase II Improvements/Costs		Citizens Community Bank + Equity Capital
Phase II Income		
Projected Phase II Net Income		after debt service
Total Phase II Net Income		
Total Phase II Net income		
Total Phase I Improvements/Costs		
Shortfall	Citizens Community Bank + Equity Capital	

\*\*Projected loss is based on investment in new buildings and improvements that will increase the overall value of the park. It is difficult to project timing, income, and expenses of future improvements

PORTNEUF CAPITAL, LLC - PORTNEUF BUSINESS PARK PHASE I PRO FORMA

\*\*Estimated Beginning Phase II (existing buildings only)

Leasing Income

	Available Sq Ft	
Administration Building	40,428.00	
Control Building - Computer	4,278	
Control Building - Warehouse	6,882	
Reactor Building - Bottom	29,000	
Reactor Building - Top	29,000	
Post-Production Building	46,746	
Waste Water Building	6,500	
Auxiliary Building	2,135	
		Less Debt Service:
		Phase II Annual Net Income:

EXEMPT - CONFIDENTIAL

PORTNEUF CAPITAL, LLC - PORTNEUF BUSINESS PARK COMPLETED PARK PRO FORMA

\*\*Estimated Based on Future Buildings and Today's Lease Rates

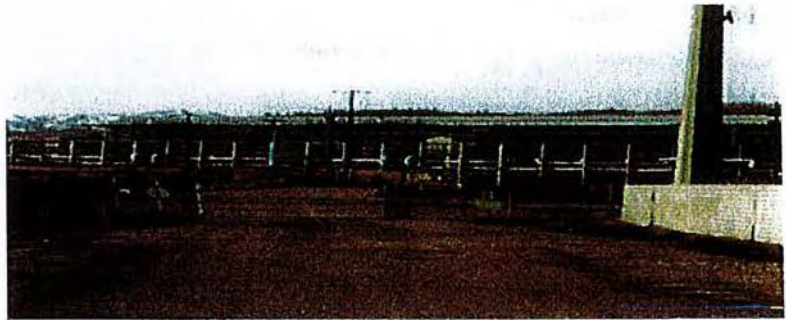
Leasing Income

	Available Sq Ft	
Administration Building	40,428.00	
Control Building - Computer	4,278	
Control Building - Warehouse	6,882	
Reactor Building - Bottom	29,000	
Reactor Building - Top	29,000	
Post-Production Building	46,746	
Waste Water Building	6,500	
Auxiliary Building	2,135	
New Building #1	25,000	
New Building #2	25,000	
New Building #3	15,000	
New Building #4	15,000	
New Building #5	30,000	
New Building #6	50,000	
New Building #7	50,000	
New Building #8	50,000	
New Building #9	50,000	

PROJECTED ANNUAL REVENUE:

- B. Site Plan and Infrastructure Improvements. Phase I will also include the completion of the site plan, replating and subdivision work, and preliminary work on the access roads to the property and within the property. One of the main goals of Portneuf is to develop a new access road into the property off Philbin Road. This new access would be the primary entrance to the business park. This would be accomplished by pursuing an extension of Philbin Road, which is in close proximity to U.S. Highway 30 and provides close access to Interstate 84. Access off Philbin Road would provide easier truck access than the current access off Kraft Road and Main Street, and would avoid heavy truck traffic through residential areas. Extending Philbin Road into the facility matches up perfectly with an improved railroad crossing and a road that extends along the Property parallel to the railroad tracks.

Not only would the facility benefit from this additional access point, it would also provide a much-needed solution for the existing truck traffic for the facility's neighbor, Great Western Malting, who currently uses Kraft Road as its only entrance to its facility. Kraft Road, while not heavily populated, does run through a residential area and also has an awkward entrance to Main Street, which is very dangerous for large trucks to maneuver due to double stop signs that must be navigated to enter onto N. Main Street.



Portneuf has entered into preliminary discussions with Great Western Malting concern this access point and a potential easement across the property. Great Western Malting believes this access road will greatly enhance the safety of its operations and provide a great benefit to the surrounding area by eliminating the heavy truck traffic on Kraft Road, and instead route that traffic on US 30 which is better suited to safely handle the truck traffic and expedite the trucks' access to I-84.

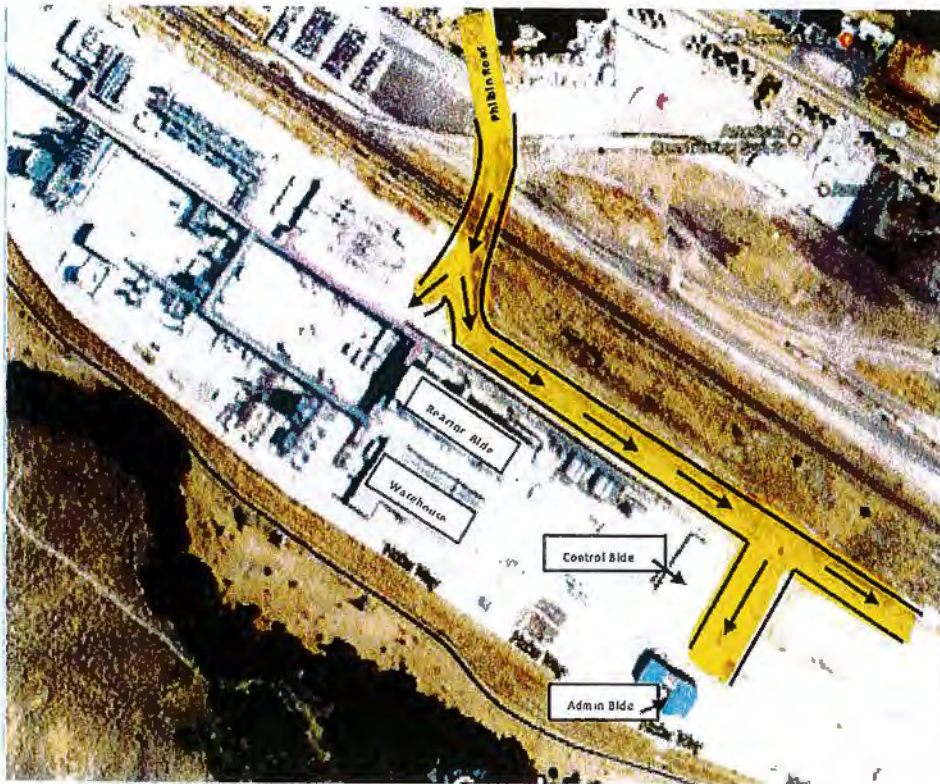
- C. Site Cleaning. The final part of Phase I will be cleaning the site of all unnecessary equipment and structure so that Phase II can begin with construction of roads and buildings throughout the business park. The steel piping structure that runs the length of the plant will not be necessary and will be removed. It is estimated that the costs of cleaning the site of unnecessary equipment and structure could exceed \$1M.

## **PHASE II (BEGINNING 180 DAYS FOLLOWING CLOSING)**

Phase II of the project will begin once the site has been cleared of all unnecessary equipment and the site plan has been finalized. Phase II will include infrastructure improvements such as roads and parking areas as well as additional buildings as illustrated on the conceptual drawings attached to Portneuf Capital's proposal as Exhibit 3.

EXHIBIT 5

DIAGRAM OF NEW PHILBIN ROAD ACCESS (AERIAL VIEW)



**EXHIBIT 6**

**LETTER FROM GREAT WESTERN MALTING CO.**



P.O. Box 1529  
Vancouver, Wa 98668-1529  
Phone: (360) 693-3661  
Fax: (360) 905-3378

October 21, 2019

City of Pocatello  
911 N. 7<sup>th</sup> Avenue  
Pocatello, ID 83201

Great Western Malting Co. has been a part of the Pocatello community since opening its plant in 1981 and adding a \$100 million expansion in 2017. Since that time, Great Western Malting has been a major employer in the region and a good corporate citizen in the community. The success of Great Western Malting in Pocatello and in other areas of the country is based on a solid commitment to conducting business ethically, working with local growers and producers, putting its people and customers first, and striving for excellence in its service and products.

Great Western Malting shares its northern border with the former Hoku facility. With that facility being sold through an RFP process, there is interest as to who may purchase the property and to the future use of the facility. Over the past several months, we have been in discussions with representatives of Portneuf Capital concerning their desire to purchase the Hoku facility and its proposed use of the abandoned site. We have found these discussions to be very beneficial to both sides and we strongly support having Portneuf Capital as our new neighbor for the following key reasons.

First, we have a long-standing commitment to the health and safety of our workers, the safety of our products, and to the overall environment. Portneuf Capital's commitment to repurpose the Hoku facility into an industrial business park is very important as it provides a diversity of different industrial businesses which are similarly committed to safety and the environment.

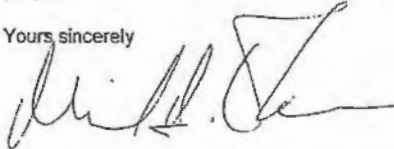
Second, we have discussed certain easements and improvements on the Hoku property that would have significant benefits for our business. One is the proposal to provide a new access point at Philbin Road, allowing truck traffic to enter off Philbin rather than by way of Kraft Road. This will improve the safety of the surrounding area, eliminate truck traffic through residential areas, and eliminate dangerous crossing of the highway after exiting Kraft Road. In addition, the access via Philbin Road provides closer to interstate access, saving thousands of miles of truck traffic annually. Another, is an easement to access the power substations that currently exist on the Hoku site. These stations were built for a large industrial user. With a business park, Great Western Malting would have improved access to this infrastructure with Portneuf is more than willing to grant such access and easement.

Third, with an industrial business park next door, there are other synergies between Great Western Malting and Portneuf for future business development in the business park that feeds off of products

provided by Great Western. This includes a brewery/micro-brewery and other possible offshoot businesses that would benefit from the close proximity to Great Western Malting.

Finally, we believe the principals of Portneuf to be men of integrity and believe they would be good neighbors with some advantageous synergies to our business and the community. We understand that Portneuf will be submitting a proposal to purchase the Hoku property and we fully support such a proposal.

Yours sincerely



Michael A. O'Toole  
President  
Great Western Malting Company

**EXHIBIT 7**

**LETTERS FROM CITIZENS COMMUNITY BANK**



ADMINISTRATION  
201 South Main  
Pocatello, ID 83204  
(208) 232-5373 Phone

POCATELLO REAL ESTATE  
253 South Main  
Pocatello, ID 83204  
(208) 239-8657 Phone

POCATELLO REAL ESTATE  
BIMBA BUILDING  
812 East Clark, Suite C  
Pocatello, ID 83201  
(208) 239-8657 Phone

ARTHUR BRANCH  
280 South Arthur  
Pocatello, ID 83204  
(208) 232-5373 Phone

FLANDRO BRANCH  
2000 Flandro Drive  
Pocatello, ID 83206  
(208) 238-8378 Phone

QUINN BRANCH  
850 W. Quinn Rd.  
Chubbuck, ID 83202  
(208) 239-8780 Phone

AMMON BRANCH  
2797 South 25th East  
Ammon, ID 83406  
(208) 528-2329 Phone

LEWIS CROSBY BRANCH  
900 South Utah Ave.  
Idaho Falls, ID 83402  
(208) 529-6805 Phone

REXBURG BRANCH  
453 North 2nd East  
Rexburg, ID 83440  
(208) 356-5377 Phone

Pocatello Development Authority:

RE: Portneuf Capital, LLC, letter of approval

At the request of the principals of Portneuf Capital, LLC, we were asked to provide the following regarding a loan that has been approved by Citizens Community Bank.

Citizens Community Bank recently approved a loan in an amount sufficient for the purchase of real estate owned by the Pocatello Development Authority. This loan is approved pending Portneuf Capital, LLC being the successful bidder and is able to secure the property in question.

If you should need any additional information or have any question, please feel free to contact me.

Sincerely,

Daniel C. Heiner  
Citizens Community Bank  
EVP /Chief Credit Officer  
850 W. Quinn  
Chubbuck, ID. 83202  
Office (208)-239-8643  
Cell (208)-390-0227  
[dheiner@ccb-idaho.com](mailto:dheiner@ccb-idaho.com)



ADMINISTRATION  
201 South Main  
Pocatello, ID 83204  
(208) 232-5373 Phone

POCATELLO REAL ESTATE  
253 South Main  
Pocatello, ID 83204  
(208) 239-8657 Phone

POCATELLO REAL ESTATE  
ELMA BUILDING  
812 East Clark, Suite C  
Pocatello, ID 83201  
(208) 239-8657 Phone

ARTHER BRANCH  
280 South Arthur  
Pocatello, ID 83204  
(208) 232-5373 Phone

FLANDRO BRANCH  
2000 Flandro Drive  
Pocatello, ID 83206  
(208) 238-8378 Phone

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850 W. Quinn Rd.  
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AMMON BRANCH  
2797 South 25th East  
Ammon, ID 83406  
(208) 528-2329 Phone

TAYLOR CROSSING BRANCH  
900 South Utah Ave.  
Idaho Falls, ID 83402  
(208) 529-6805 Phone

REXBURG BRANCH  
452 North 2nd East  
Rexburg, ID 83440  
(208) 356-5377 Phone

To: Pocatello Development Authority:

RE: Portneuf Capital, LLC

Citizens Community Bank is aware that Portneuf Capital, LLC has submitted a bid to PDA to purchase the defunct HOKU facility real estate.

In all our prior dealings with the principals of Portneuf Capital, LLC, we have seen them experience a lot of success through their hard work and ingenuity. In reviewing their request to seek financing for the property, the plan they presented to us seemed feasible, and we support their efforts.

If you should need any additional information or have any question, please feel free to contact me.

Sincerely,

Daniel C. Heiner  
Citizens Community Bank  
FVP /Chief Credit Officer  
850 W. Quinn  
Chubbuck, ID. 83202  
Office (208)-239-8643  
Cell (208)-390-0227  
[dheiner@ccb-idaho.com](mailto:dheiner@ccb-idaho.com)

## ATTACHMENT 3

### RELEASE, WAIVER AND INDEMNITY AGREEMENT

The undersigned has read and fully accepts the discretion and non-liability of the Urban Renewal Agency of the City of Pocatello, also known as the Pocatello Development Authority (the "Agency") and the City of Pocatello, Idaho (hereinafter "City") as stipulated herein.

#### A. Discretion of City and Agency

Agency reserves the right in its sole discretion and judgment for whatever reasons it deems appropriate to, at any time:

1. Modify or suspend any and all aspects of the process for the Request for Proposals (hereinafter "RFP") seeking interested developers for the Property, as defined in the RFP.
2. Obtain further information from any person, entity, or group, including, but not limited to, any person, entity, or group responding to the Agency's RFP (any such person, entity, or group so responding is, for convenience, hereinafter referred to as "Developer"), and to ascertain the depth of Developer's capability and desire to purchase and/or lease and develop the property expeditiously, and in any and all other respects, to meet with and consult with Developer or any other person, entity, or group;
3. Waive any formalities or defects as to form, procedure, or content with respect to its RFP and any responses by any Developer thereto;
4. Accept or reject any proposal or statement of interest received in response to the RFP including any proposal or statement of interest submitted by the undersigned, or select one Developer over another;
5. Accept or reject all or any part of any materials, drawings, plans, implementation programs, schedules, phasings, and proposals or statements, including, but not limited to, the nature and type of development.

#### B. Non-Liability of City and Agency

The undersigned agrees: (1) that neither City nor Agency shall have any liability whatsoever of any kind or character, directly or indirectly, by reason of all or any of the following; and (2) that the undersigned has not obtained and shall not obtain at any time, whether before or after acceptance or rejection of any statement of interest or proposal, any claim or claims against City, Agency, or any of them, or against City property (all as hereinafter defined) or Agency, directly or indirectly, by reason of all or any of the following:

1. Any aspect of the RFP, including any information or material set forth therein or referred to therein;
2. Any modification or suspension of the RFP for informalities or defects therein;
3. Any modification of criteria for selection or defects in the selection procedure or any act or omission of Agency with respect thereto, including, but not limited to, obtaining information from any Developer contacts or consultations with Developers who have submitted statements of interest or proposals as to any matters or any release or dissemination of any information submitted to Agency;
4. The rejection of any statement of interest or proposal, including any statement of interest or proposal by the undersigned, or the selection of one Developer over another;
5. The acceptance by Agency of any statement of interest or proposal;
6. Entering into and thereafter engaging in exclusive negotiations;
7. The expiration of exclusive negotiations;
8. Entering into any development agreement, other agreement or lease, relating to the statement of interest or proposal, or as a result thereof;
9. Any statement, representations, acts, or omissions of Agency in connection with all or any of the foregoing;
10. The exercise of Agency discretion and judgment set forth herein or with respect to all or any of the foregoing; and
11. Any and all other matters arising out of or directly or indirectly connected with all or any of the foregoing.

The undersigned further, by its execution of this Release, expressly and absolutely waives any and all claim or claims against Agency and Agency property, or City and City property, directly or indirectly, arising out of or in any way connected with all or any of the foregoing.

For purposes of this section, the terms "Agency," and "City" include their respective commissioners, appointed and elected officials, members, officers, employees, agents, selection committee, volunteers, successors, and assigns; the terms "Agency property" or "City property" include property which is the subject of the RFP and all other property of Agency and City, real, personal, or of any other kind or character; the terms "claim or claims" include any and all protests, rights, remedies, interest, objections, claims, demands, actions, or causes of actions, of

every kind or character whatsoever, in law or equity, for money or otherwise including, but not limited to, claims for injury, loss, expense, or damage, claims to property, real or personal, or rights or interests therein, and claims to contract or development rights or development interests of any kind or character, in any Agency and/or City property, or claims which might be asserted against to cloud title to Agency or City property. The words "Developer or Developers" shall include any person, entity, or group responding to Agency's RFP.

C. Hold Harmless and Indemnity

The undersigned shall defend, hold harmless, and indemnify Agency and City, and each of them, from and against any and all claims, directly or indirectly, arising out of the Undersigned's responses to the RFP, including, but not limited to, claims, if any, made by Undersigned or by anyone connected or associated with Undersigned or by anyone claiming directly or indirectly through Undersigned.

PORTNEUF CAPITAL  
Interested Developer  
BY: [Signature]  
Its: Owner

Date: 10-21-19

ACKNOWLEDGMENT

STATE OF IDAHO )  
 ) ss.  
COUNTY OF Bannock )

On this 21 day of October, 2019, before me, Molly Pena, a Notary Public in and for said State, personally appeared L.D. Bartholme, known or identified to me (or proved to me on the oath of \_\_\_\_\_) to be the owner of Portneuf Capital LLC an Idaho LLC, the entity that executed the instrument or the person who executed the instrument on behalf of said entity and acknowledged to me that such entity executed the same.



Molly Pena  
Notary Public for the State of Idaho  
Residing at Bannock County  
My commission expires 11/24/2020

**AGENDA ITEM**

**NO. 10**

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

Application:

Name: **Elden Charles**

Date: **8/29/2019**

Mailing Address: **6565 North MacArthur Blvd. Suite 225 Irving, TX 75039**

Work Phone: **469.325.1616**

E-Mail: **ec@frigitekip.com**

**Project Description: Frigitek Industrial Parks proposes to build two hi-tech, temperature-controlled warehouse facilities (200,000 SF and 280,000 SF) at the Pocatello Regional Airport. Frigitek facilities are capable of blast freezing, dry storage, refrigeration, or freezing, as well as pre-cooling, processing, and packaging depending on the tenants needs. The first phase of the project would include a \$53M investment and approximately 40 jobs at an average wage of about \$40,000. The project requires an estimated \$4M in public infrastructure including rail, sewer, water, stormwater, earthwork, aggregates and asphalt, traffic signals and street lighting.**

**Project Location: Pocatello Regional Airport**

**Is this project currently in an urban renewal area? Yes (Pocatello Regional Airport)**

**Is the project currently in a revenue allocation area? Yes (Pocatello Regional Airport)**

**Current Assessed Value of Project Location: No ground is owned by the City. \$0**

**Estimated Construction Value of Project: \$50,000,000**

**Number of jobs created by this project: 40 Wage range of jobs: \$33,280 - \$80,000**

**Employee Benefits? Yes If yes, please describe: The company expects to contribute 50% toward health and dental. Life insurance and profit sharing would be available for executives.**

**Time frame for job creation: Year 1: 10 jobs Year 2: 10 jobs Year 3: 20 jobs**

**Construction start date for project: 03/2020 Anticipated completion date: 03/2021**

**Briefly describe other public benefit(s) associated with this project: With the 40 good paying jobs and significant investment Frigitek brings, they will be able to help fill the demand for cold storage in an under-served market, Cold storage is in high demand in the Pocatello region and this facility will allow local tenants to take advantage of a quality, temperature-controlled warehouse with food safety and energy management features located conveniently at the airport. This quick and easy access to air transport is a huge benefit to the local food processing industry.**

**Does this project compete with other, already established businesses? How? With no other cold storage facilities in the immediate Pocatello region, the project would fill an unmet gap and provide an opportunity for local industry to take advantage of such a facility as well as attract additional industry to the Pocatello region.**

**Is this project currently subject to a competitive bid process? Please explain: The project will not be subject to a competitive bid process due to an existing relationship with a design-build firm that has experience with cold storage facilities. The general contractor will have subcontracts that will need to be awarded for which local subs will have an opportunity to competitively bid.**

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

Relationship of named applicant to the project: **Executive Vice President of Frigitek Industrial Parks**

Type of Assistance Requested  
(check all that apply):

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

Amount of Assistance Requested: \$4,131,000

Form of Assistance Requested:

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

Other helpful information? **Please see attached support including detailed infrastructure cost estimates, property tax schedule and TIF reimbursement schedule.**

Return completed application to:

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

**Pocatello Development Authority TIF Application Other Helpful Info**

<b>Public Infrastructure Requirements</b>	
<b>Spend Category</b>	<b>Estimated Costs</b>
Railroad Track	\$ 1,326,000
Sewer	\$ 1,478,000
Aggregates and Asphalt	\$ 476,000
Water	\$ 343,000
Electrical	\$ 100,000
Stormwater	\$ 112,000
Earthwork	\$ 34,000
Concrete	\$ 22,000
Outdoor lighting	\$ 40,000
Infrastructure Design and Project Management	\$ 200,000
<b>Total Estimated Costs:</b>	<b>\$ 4,131,000</b>

**Pocatello, Idaho TIF Reimbursement Request Schedule**

	<b>Year 1-2020</b>	<b>Year 2-2021</b>	<b>Year 3-2022</b>	<b>Year 4-2023</b>	<b>Year 5-2024</b>	<b>Total</b>
<b>Real Property Investment</b>		\$ 50,000,000.00	\$ 50,000,000.00	\$ 50,000,000.00	\$ 50,000,000.00	
<b>Assessment Ratio</b>		100%	100%	100%	100%	
<b>Code 16 Area Rate</b>		2.519%	2.519%	2.519%	2.519%	
<b>Property Tax Generated</b>		\$ 1,259,352.55	\$ 1,259,352.55	\$ 1,259,352.55	\$ 1,259,352.55	\$ 5,037,410.20
<b>TIF Reimbursement Request</b>	\$ 500,000.00	\$ 1,133,417.30	\$ 1,133,417.30	\$ 1,133,417.30	\$ 230,748.12	\$ 4,131,000.00

\*Year 1 request from existing funds

\*\*Request \$500,000 in the first year once work is complete and 90% of incremental tax generated each year until paid off in year 5.

**POCATELLO REGIONAL AIRPORT  
URBAN RENEWAL AREA PLAN  
ECONOMIC FEASIBILITY STUDY  
(updated October, 2019)**

With the proposal by Frigitek Industrial Parks to build two new high-tech, temperature-controlled warehouse facilities, the Pocatello Development Authority Board of Commissioners authorized completion of an updated feasibility study as part of their due diligence before entering into agreements to fund infrastructure development for the warehouse facilities.

Frigitek proposes to build two warehouse facilities within the Pocatello Regional Airport Urban Renewal and Revenue Allocation Area. The initial phase of the project anticipates an investment of \$50 million, with 40 jobs averaging \$40,000 annually. Infrastructure improvements include rail spur and track; water, sewer, stormwater, and electrical infrastructure; and related expenses for aggregates and asphalt, earthwork, concrete, outdoor lighting, and design and project management. Total anticipated cost for the infrastructure improvements is \$4,131,000.

The following tables were taken from the original feasibility study within the plan. They provide a breakdown of base-assessment valuations for the revenue allocation district. This analysis of the tax levy rates applied in calculating tax collection for taxing entities and the Pocatello Airport Revenue Allocation District was completed at the time of the plan's creation and is shown below. The 2009 tax levies for each of the taxing jurisdictions was supplied by the Power County Assessor's Office, as follows:

<u>Taxing Jurisdictions</u>	<u>Tax levy</u>
City of Pocatello	.009577781
Power County	.004321735
School District #381	.004300170
Power County Highway District	.002876996
A.F. Library	.000600302
County Hospital	.000951690
Ambulance	.000258694
East Po. Co. Fire	.000557434
Mosquito Abatement	.000368596
<b>Total</b>	<b>.023813398</b>

**TABLE 3 – 2009 Levy Rates and Valuation**

<b>Taxing Entity</b>	<b>Tax Levy</b>	<b>Valuation</b>	<b>Revenue</b>
City of Pocatello	.009577781	\$995,883	\$ 9,538
Power County	.004321735	\$995,883	\$ 4,304
School District #381	.004300170	\$995,883	\$ 4,282
Power County Highway District	.002876996	\$995,883	\$ 2,865
A.F. Library	.000600302	\$995,883	\$ 598
County Hospital	.000951690	\$995,883	\$ 948
Ambulance	.000258694	\$995,883	\$ 258

East Po. Co. Fire	.000557434	\$995,883	\$ 555
Mosquito Abatement	.000368596	\$995,883	\$ 367
<b>Total</b>	<b>.023813398</b>	---	<b>\$23,715</b>

Table 3 shows the amount of revenue anticipated in the original plan that the taxing jurisdictions would continue to be allocated calculated on the base year value of the revenue allocation district for the Pocatello Regional Airport Urban Renewal Plan.

In the years since creation of the plan, levies have changed. Certified levy amounts for 2018 are as follows:

<u>Taxing Jurisdictions</u>	<u>Tax levy</u>
City of Pocatello	.011426736
Power County	.004015827
School District #381	.003766811
Power County Highway District	.002683045
A.F. Library	.000402505
County Hospital	.000891659
Ambulance	.000200000
East Po. Co. Fire	.000502471
Mosquito Abatement	.000200000*
<b>Total</b>	<b>.024089054</b>

\*The Mosquito Abatement levy was not in effect for tax year 2018, but will be included again in 2019, according to information from the Power County Commissioner's office. The 2019 levy amount has been included as though collected each year.

Table 4. provides an analysis of the total tax increment financing value anticipated within the Pocatello Regional Airport Revenue Allocation District with the addition of the proposed Frigitek development. The levy rate has been updated to the 2018 tax year. The base value is not included in these numbers, and the School District levy is subtracted from the total levy rate. Therefore, the entire revenue stream shown here would be allocated to the Authority. This analysis assumes completion of the project in 2020; if completed later or with a lesser value, revenues would be reduced or delayed.

**Table 4 – Revenue Projection**

Year	Estimated Increment Value	Levy Rate	Annual Revenue	Cumulative Annual Revenue*	Admin Expenses (10%)*	Available for Projects (90%)*
2019	\$5,301,487	.020322243	\$107,738		\$10,774	\$96,994
2020	\$5,301,487	.020322243	\$107,738	\$215,476	\$10,744	\$204,702
2021	\$55,301,487	.020322243	\$1,123,850	\$1,339,326	\$112,385	\$1,226,941
2022	\$55,301,487	.020322243	\$1,123,850	\$2,463,176	\$112,385	\$2,350,791
2023	\$55,301,487	.020322243	\$1,123,850	\$3,587,026	\$112,385	\$3,474,641
2024	\$55,301,487	.020322243	\$1,123,850	\$4,710,876	\$112,385	\$4,598,491
2025	\$55,301,487	.020322243	\$1,123,850	\$5,834,726	\$112,385	\$5,722,341

2026	\$55,301,487	.020322243	\$1,123,850	\$6,958,576	\$112,385	\$6,846,191
2027	\$55,301,487	.020322243	\$1,123,850	\$8,082,426	\$112,385	\$7,970,041
2028	\$55,301,487	.020322243	\$1,123,850	\$9,206,276	\$112,385	\$9,093,891
2029	\$55,301,487	.020322243	\$1,123,850	\$10,330,126	\$112,385	\$10,217,741
2030	\$55,301,487	.020322243	\$1,123,850	\$11,453,976	\$112,385	\$11,341,591
2031	\$55,301,487	.020322243	\$1,123,850	\$12,577,826	\$112,385	\$12,465,441
2032	\$55,301,487	.020322243	\$1,123,850	\$13,701,676	\$112,385	\$13,589,291
2033	\$55,301,487	.020322243	\$1,123,850	\$14,825,526	\$112,385	\$14,713,141
<b>Total</b>			<b>\$14,825,526</b>	<b>\$14,825,526</b>	<b>\$1,482,493</b>	<b>\$14,713,141</b>

\*Does not include revenues currently on hand.

Estimated taxable value was provided by representatives of Frigitek and added to the existing increment amount supplied by the Power County Assessor. Costs of the required infrastructure improvements, as developed by Frigitek, are shown below in Table 5:

Table 5 – Estimated Frigitek Project Costs

Project	Estimated Cost
Railroad Track Infrastructure	\$1,326,000
Sewer Infrastructure	\$1,478,000
Aggregates and Asphalt	\$ 476,000
Water Infrastructure	\$ 343,000
Electrical Infrastructure	\$ 100,000
Stormwater Infrastructure	\$ 112,000
Earthwork	\$ 34,000
Concrete	\$ 22,000
Outdoor Lighting	\$ 40,000
Design & Project Management	\$ 200,000
<b>Total</b>	<b>\$4,131,000</b>

The total dollar amount that may be collected by the PDA through the remaining life of the district is approximately \$14,835,526. This amount can be used to finance the proposed Frigitek project, as well as other planned improvement projects within the Pocatello Regional Airport Urban Renewal Area Plan. If all projects are completed prior to scheduled closure, surplus funds may be returned to Power County for distribution to the various taxing districts.

**OWNER PARTICIPATION AGREEMENT**

**By and Between**

**The Pocatello Urban Renewal Agency**

**and**

**FRIGITEK INDUSTRIAL PARKS, INC.**

**for the**

**POCATELLO REGIONAL AIRPORT PROJECT**

**DRAFT**

## OWNER PARTICIPATION AGREEMENT

THIS OWNER PARTICIPATION AGREEMENT (hereinafter "Agreement") is entered into by and between the Pocatello Urban Renewal Agency, commonly known as the Pocatello Development Authority, an independent public body, corporate and politic (hereinafter "Agency"), organized pursuant to the Idaho Urban Renewal Law, Title 50, Chapter 20, Idaho Code, as amended (hereinafter the "Law"), and undertaking projects under the authority of the Local Economic Development Act, Title 50, Chapter 29, Idaho Code, as amended (hereinafter the "Act"), and Frigitek Industrial Parks,, Inc., a Texas corporation authorized to do business in the State of Idaho (hereinafter "Participant"), collectively referred to as the "Parties" and each individually as "Party," on the terms and provisions set forth below.

### RECITALS

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

WHEREAS, the Pocatello City Council adopted its Ordinance No. 2889 on November 4, 2010, approving the Urban Renewal Plan for the Pocatello Regional Airport Urban Renewal Area and Revenue Allocation Area District Plan (hereinafter the "Urban Renewal Plan");

WHEREAS, Participant controls by lease real property located within Pocatello Regional Airport non-aviation lands in Pocatello, Idaho (hereinafter referred to as the "Site" as defined below);

WHEREAS, Participant intends on constructing railroad track and spurs, water, sewer, stormwater, street, and electrical infrastructure, outdoor lighting, and excavation/site grading on the Site and adjacent public rights of way in conjunction with the development of new high-tech, temperature-controlled warehouse facilities on the Site (the "Project");

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

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

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

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

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

WHEREAS, Participant and the City of Pocatello entered into that certain lease (the "City Lease"), dated \_\_\_\_\_, setting forth certain obligations by the Participant concerning the Participant's project;

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

I. EFFECTIVE DATE

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

II. SUBJECT OF AGREEMENT

A. Recitals, Purpose of This Agreement, and Interest

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

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

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

B. The Plan

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

C. The Project Area

The Urban Renewal Project Area ("Project Area") is located in the City, and the boundaries of the site are within the Project Area.

D. The Site

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

E. Agency Participation Policy

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

F. Parties to This Agreement

1. Agency

The Agency is an independent public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Law and the Act. The office of the Agency is located at City of Pocatello, 911 North 7<sup>th</sup> Avenue, Pocatello, Idaho 83201. "Agency," as used in this Agreement, includes the Urban Renewal Agency and any assignee of or successor to its rights, powers, and responsibilities.

## 2. Participant

The Participant is Frigitek Industrial Parks, Inc., a Texas corporation. The principal address of the Participant is 6565 North MacArthur Blvd. Suite 225, Irving, Texas 75039.

Whenever the term "Participant" is used herein, such term shall include any assignee or successor in interest approved or consented to by the Agency, which consent should not be unreasonably withheld. The Participant qualifies as an "owner participant" as that term is used in the Urban Renewal Plan.

### G. The Private Development

The Private Development shall mean the development undertaken by Participant or the approved successors or assigns upon the Site. The Private Development consists of the construction of new high-tech, temperature-controlled warehouse facilities. The Private Development and any further development upon the Site or any portion of the Site shall comply with all the provisions of the Urban Renewal Plan and all applicable City codes and ordinances.

## III. IMPROVEMENT OF THE SITE AND AGENCY'S PARTICIPATION

### A. Development Design

Participant agrees that the Private Development will be in full compliance with the Urban Renewal Plan and the approved building permit and City Lease.

### B. Cost of Construction

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

### C. Agency, City, and Other Governmental Agency Permits

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

### D. Agency Funded Public Improvements

The Agency Funded Public Improvements are directly related to public infrastructure and excavation/site grading and are: (a) critical to the redevelopment of the Site and (b) provide a higher quality of development that should assist

Agency in achieving redevelopment of other properties adjacent to the Site and meeting the objectives of the Urban Renewal Plan. Because of the Private Development, which achieves several of the objectives contained within the Urban Renewal Plan, Agency finds that a portion of the public improvements may be reimbursed by the Agency. Agency finds that the Agency Funded Public Improvements are in the best public interest and provide for enhanced development of the Site within the Project Area.

In consideration of the terms of this Agreement and subject to certain conditions as contained in this Agreement, Agency agrees to pay the costs of certain approved Agency Funded Public Improvements, inclusive of design and engineering costs, as verified by the Agency. Approved Agency Funded Public Improvements shall include those improvements listed on Attachment 3.

E. Agency Review of Construction Documents

Upon Agency's request, Agency shall have the right and the opportunity to review Participant's construction plans, budgets, and bids for the Agency Funded Public Improvements (collectively the "Agency Funded Public Improvement Construction Documents"). Participant will utilize commercially reasonable contracting, budgeting, and bidding practices to ensure that the Agency Funded Public Improvements are constructed consistent with the Agency Funded Public Improvement Construction Documents and are undertaken in a reasonable manner. For purposes of this Section and Section F, below, Participant shall be presumed to have utilized commercially reasonable contracting, budgeting and bidding practices if its general contractor solicits or solicited competitive bids for the Agency Funded Public Improvements and such work is not performed by an affiliate or subsidiary of Participant.

F. Reimbursement Obligation

1. Amount of Reimbursement

In consideration of Participant's construction of the Agency Funded Public Improvements, Agency, subject to the terms of this Agreement, agrees to reimburse Participant an amount equal to the Actual Eligible Costs, as defined below, of the Agency Funded Public Improvements, not to exceed Four Million, One Hundred Thirty-one Thousand and 00/100 dollars (\$4,131,000.00), with no interest accruing on the Reimbursement Obligation (defined below).

2. Notification, Inspection, Approval

Upon completion of construction of any category of the Agency Funded Public Improvements associated with the Project and on not less than a quarterly

basis during construction, Participant shall notify Agency in writing to request a meeting with the Agency to determine if the completed Agency Funded Public Improvements meet the requirements of this Agreement. Agency shall provide Participant with written confirmation that the completed Public Improvements are eligible for reimbursement as follows:

(a) With respect to each Notification of Completion, Participant is responsible for submitting invoices or receipts for work performed as part of the Project (the "Cost Documentation") which will permit Agency to determine the Actual Eligible Costs, which shall be the actual costs to construct the Agency Funded Public Improvements, including costs incurred prior to the Effective Date of this Agreement, as approved by the Agency. Cost Documentation shall include the following:

- i. An accounting of the costs associated with the completed Agency Funded Public Improvements and evidence of payment of such costs by Participant. Participant shall include invoices from Participant's design professionals, general contractor, subcontractor(s), and material suppliers for each type of eligible cost item, which shall specify quantities and unit costs of installed materials.
- ii. Explanation of any significant deviation between the initial cost estimates in Attachment 3 and the actual costs in the Cost Documentation.

(b) The Agency shall have the right to review the Cost Documentation, to inspect the completed Agency Funded Public Improvements, and to obtain independent verification that the quantities of work claimed and the costs associated therewith are accurate, commercially reasonable, and appropriate for the Agency Funded Public Improvements completed. The Agency's approval shall not be unreasonably delayed or withheld.

(c) Within thirty (30) days of Agency's receipt of the Cost Documentation, the Agency shall notify Participant in writing of Agency's acceptance of the Cost Documentation and Agency's determination of the Actual Eligible Costs. Agency shall notify Participant of any disputes with the Cost Documentation and provide Participant a reasonable time to explain any discrepancy. If the Agency and the Participant cannot agree on any disputed costs, the Parties agree to submit the dispute to the Agency Board of Commissioners for final determination.

3. Allocation of Costs

Agency and Participant agree Participant shall be able to allocate expenses among the various items listed on Attachment 3 so long as the total amount of those items shall not exceed Four Million One Hundred Thirty-one Thousand and 00/100 Dollars (\$4,131,000.00). Participant shall notify Agency of the allocation of costs among the items listed on Attachment 3.

4. Reimbursement

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

G. Reimbursement Procedure

1. Agency's Reimbursement Obligation shall not commence until the first Certificate of Occupancy, or the equivalent thereof, is issued for the Private Development, or upon the City's acceptance of the improvements required to be constructed as described in the lease and approved building permit.

2. In conjunction with its receipt of revenue allocation proceeds on a biannual basis, the Agency will retain ten percent (10%) of the revenue allocation proceeds per year for Project Area operating and administrative expenses and agrees to make payment to Participant of the remaining tax increment revenue allocation proceeds actually received and arising from the Project Area commencing from the first date the Agency receives tax increment monies arising from the Project Area subsequent to the satisfaction of the conditions set forth in Section G(1) and until such time as the Reimbursement Obligation has been paid in full or the termination of the revenue allocation authority under the Urban Renewal Plan, whichever occurs first. PARTICIPANT ACKNOWLEDGES THE TAX REVENUE ALLOCATION PROCEEDS MAY NOT BE SUFFICIENT TO PAY OFF THE REIMBURSEMENT OBLIGATION ON OR BEFORE THE TERMINATION OF THE REVENUE ALLOCATION AUTHORITY UNDER THE URBAN RENEWAL PLAN AND ASSUMES THAT RISK.

3. The biannual payments are due to Participant within sixty (60) days of receipt of revenue allocation proceeds from the Project Area by Agency.

4. Agency shall have no obligation to make payments to the Participant for taxes collected and paid to Agency beyond the term described herein.

5. Agency may pay, at any time, in whole or in part, without penalty, the then remaining outstanding balance of the Reimbursement Obligation.

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

7. Non-general Obligation

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

H. Taxes

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

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

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

Participant recognizes Agency has no authority or involvement in the assessment, tax, or collection process for ad valorem taxes, including real property

and personal property taxes. Participant also recognizes the ability of Agency to reimburse Participant for the Reimbursement Obligation is dependent on the ad valorem assessment and collection process. Therefore, in the event insufficient taxes are received by Agency because of reduction of the tax levy rate or assessed values less than assumed by Agency and Participant or in the event of any tax delinquency by any owner of parcels within the Project Area or by any tenant related to personal property, Participant must elect to either pay the delinquent taxes or in-lieu-of taxes reflecting higher assessments or levy rate on behalf of those taxpayers or receive less reimbursement from Agency to pay the Reimbursement Obligation.

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

I. Liens/Payment of General Contractor

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

J. Agency Contribution Assignable

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

K. Indemnification

Participant shall indemnify and hold Agency and its respective officers, agents, and employees (collectively referred to in this Section K as "Agency") harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable architect and attorney fees (collectively referred to in this Section K as "Claim"), which may be imposed upon or incurred by or asserted against Agency and for which Agency may be legally liable under applicable law (excluding any liability or obligation Agency assumes by

contract) by reason of any of the following occurrences, provided Participant shall have no obligation to indemnify and hold Agency harmless from and against any Claim to the extent it arises from the negligence or willful act or omission of Agency or Agency's contractors and associated subcontractors:

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

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

L. Insurance

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

1. Commercial General Liability Insurance ("Occurrence Form") with a minimum combined single limit liability of \$1,000,000 each occurrence for bodily injury and property damage, with a minimum limit of liability of \$1,000,000 each person for personal and advertising injury liability. Such policy shall have a general aggregate limit of not less than \$2,000,000, which general aggregate limit will be provided on a per project basis. The policy shall be endorsed to name Agency, including its respective affiliates, and City as additional insureds.

2. Workers' Compensation Insurance, if Participant has employees, including occupational illness or disease coverage, in accordance with the laws of the nation, state, territory, or province having jurisdiction over Participant's employees, and Employer's Liability Insurance. If Participant has employees, Participant shall not utilize occupational accident or health insurance policies, or the equivalent, in lieu of mandatory Workers' Compensation Insurance or otherwise attempt to opt out of the statutory Workers' Compensation system.
3. Automobile Liability Insurance covering use of all owned, non-owned, and hired automobiles with a minimum combined single limit of liability for bodily injury and property damage of \$1,000,000 per occurrence. This policy shall be endorsed to name Agency, including its respective affiliates, directors, and employees, as additional insureds.
4. All insurance provided by Participant under this Agreement shall include a waiver of subrogation by the insurers in favor of Agency. Participant hereby releases Agency, including its respective affiliates, directors, and employees, for losses or claims for bodily injury or property damage covered by Participant's insurance or other insured claims arising out of Participant's performance under this Agreement or construction of the Project.
5. Certificates of insurance, reasonably satisfactory in form to Agency (ACORD form or equivalent), shall be supplied to Agency evidencing that the insurance required above is in force, and that notice will be given to Agency prior to any cancellation of the policies in accordance with the policies. Participant shall also provide, with its certificate of insurance, executed copies of the additional insured endorsements and dedicated limits endorsements required in this Agreement. At Agency's request, Participant shall provide a certified copy of each insurance policy required under this Agreement.
6. Except as otherwise stated above, the obligations set forth in this Section shall remain in effect only until the date City accepts the dedication of the Agency Funded Public Improvements.
7. All policies of insurance required by this Agreement shall be issued by insurance companies qualified to do business in the State of Idaho.
8. The foregoing insurance coverage shall be primary and noncontributing with respect to any other insurance or self-insurance that may be maintained by Agency. Participant's General and Automobile

Liability Insurance policies shall contain a Cross-Liability or Severability of Interest clause. The fact that Participant has obtained the insurance required in this Section shall in no manner lessen or affect Participant's other obligations or liabilities set forth in the Agreement.

M. Warranty

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

N. Maintenance

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

IV. USE AND MAINTENANCE OF THE SITE AND ADJACENT AREA

A. Use of the Site

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

B. Effect and Duration of Covenants

Covenants contained in this Agreement shall remain in effect until sooner of December 31, 2033, or the date on which the Urban Renewal Plan terminates, whichever is sooner. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on the part of the Participant and any successors and assigns to the Site, or any part thereof, for the benefit of and in favor of Agency, its successors and assigns.

C. Local, State and Federal Laws

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

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

A. Defaults in General

Neither Party shall be deemed to be in default of this Agreement except upon the expiration of forty-five (45) days from receipt of written notice from the other Party specifying the particulars in which such Party has failed to perform its obligations under this Agreement unless such Party, prior to expiration of said forty-five (45) day period, has rectified the particulars specified in said notice of default, provided that in the case where rectifying the matters specified in the notice of default requires more than forty-five (45) days, such notified Party shall not be in default so long as they commence prior to the expiration of the forty-five (45) days and diligently pursue actions needed to rectify such matters. In the event of a default, the nondefaulting Party may do the following:

1. The nondefaulting Party may terminate this Agreement upon written notice to the defaulting Party and recover from the defaulting Party all direct damages incurred by the nondefaulting Party.
2. The nondefaulting Party may seek specific performance of this Agreement and, in addition, recover all damages incurred by the nondefaulting Party. The Parties declare it to be their intent that this Agreement may be specifically enforced.
3. The nondefaulting Party may perform or pay any obligation or encumbrance necessary to cure the default and offset the cost thereof from monies otherwise due the defaulting Party or recover said monies from the defaulting Party.

4. The nondefaulting Party may pursue all other remedies available at law, it being the intent of the Parties that remedies be cumulative and liberally enforced so as to adequately and completely compensate the nondefaulting Party.

5. In the event Participant defaults under this Agreement, Agency (the nondefaulting Party) shall have the right to suspend or terminate its payment under this Agreement, as more specifically defined in this Agreement, for so long as the default continues and if not cured, Agency's obligation for payment shall be deemed extinguished. In addition, if Agency funds shall have been paid, Agency may seek reimbursement of any amounts paid to Participant up to the amount of damages incurred by Agency for Participant's default.

Any default by Participant under the approved building permit or City Lease shall be deemed a default under this Agreement.

B. Dispute Resolution

In the event that a dispute arises between Agency and Participant regarding the application or interpretation of any provision of this Agreement, the aggrieved party shall promptly notify the other party to this Agreement of the dispute within ten (10) days after such dispute arises. If the Parties shall have failed to resolve the dispute within thirty (30) days after delivery of such notice, the Parties agree to first endeavor to settle the dispute in an amicable manner by mediation or other process of structured negotiation under the auspices of a nationally or regionally recognized organization providing such services in the Northwestern States or otherwise, as the Parties may mutually agree before resorting to litigation. Should the Parties be unable to resolve the dispute to their mutual satisfaction within thirty (30) days after such completion of mediation or other process of structured negotiation, each Party shall have the right to pursue any rights or remedies it may have at law or in equity.

C. Legal Actions

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

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

D. Rights and Remedies Are Cumulative

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

VI. GENERAL PROVISIONS

A. Notices, Demands, and Communications Between the Parties

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

B. Conflicts of Interest

No member, official, or employee of Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his/her personal interests or the interests of any corporation, partnership, or association in which he/she is directly or indirectly interested.

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

C. Non-liability of Agency Officials and Employees

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

D. Successors and Assigns

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

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

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

E. Attorney Fees and Costs

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

F. Severability

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

G. Headings

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

H. Counterparts

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

I. Forced Delay; Extension of Times of Performance

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

J. Inspection of Books and Records

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

K. Attachments and Exhibits Made a Part

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

VII. AMENDMENTS TO THIS AGREEMENT

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

VIII. ENTIRE AGREEMENT, WAIVERS, AND AMENDMENTS

This Agreement, including Attachments 1 through 3, inclusive, incorporated herein by reference, constitutes the entire understanding and agreement of the Parties.

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

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

*[signatures on following page]*

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

**POCATELLO URBAN RENEWAL AGENCY,  
THE POCATELLO DEVELOPMENT AUTHORITY**

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

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_,  
Secretary

**PARTICIPANT  
FRIGITEK INDUSTRIAL PARKS, INC.**

By: \_\_\_\_\_  
Elden Charles, \_\_\_\_\_  
Date: \_\_\_\_\_

DRAFT

ACKNOWLEDGMENTS

STATE OF IDAHO )  
 ) ss.  
County of Power )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, 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 the Pocatello Urban Renewal Agency, the public body corporate and politic, that executed the within instrument, and known to me to be the person that executed the within instrument on behalf of said Agency and acknowledged to me that such Agency executed the same for the purposes herein contained.

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

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

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, \_\_\_\_\_, the undersigned notary public in and for said county and state, personally appeared Elden Charles, known or identified to me to be the \_\_\_\_\_ of Frigitek Industrial Parks, Inc., and the person who signed the within instrument, and acknowledged to me that he has authority to execute and executed the foregoing instrument for the purposes therein contained on behalf of Frigitek Industrial Parks, Inc.

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

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Commission Expires \_\_\_\_\_

Attachment 1

Map of the Site

DRAFT

Attachment 2

Legal Description

Legal Description of Site

An area consisting of approximately 20 acres as more particularly described as follows:

DRAFT

Attachment 3

Agency Funded Public Improvements

Item	Estimated Cost
Railroad Track	\$1,326,000
Sewer	\$1,478,000
Aggregates and Asphalt	\$476,000
Water	\$343,000
Electrical	\$100,000
Stormwater	\$112,000
Earthwork	\$34,000
Concrete	\$22,000
Outdoor Lighting	\$40,000
Infrastructure Design & Project Management	\$200,000
<b>TOTAL</b>	<b>\$4,131,000</b>

**AGENDA ITEM**

**NO. 11**

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

**Application:**

Name: Tanner Hernandez, Prime Time Auctions Inc Date: Nov 10, 2019

Mailing Address: 3400 S 5<sup>th</sup> Pocatello 83204

Work Phone: 208 232-4912 Cell Phone: 208 221-9285

E-Mail: [sold@primetimeauctions.com](mailto:sold@primetimeauctions.com)

Project Description: New Gas Station and Auction Warehouse Improvements

Project Location: 3200 – 3400 S 5<sup>th</sup> Pocatello

Is this project currently in an urban renewal area? No

Is the project currently in a revenue allocation area? No

**Conditions associated with this location:**

This property had 2 Gas Stations and a Restaurant Developed on it from 1950s – 1970s. A portion was platted as a Residential Development in 1950 and one home was built. The Freeway then dissected the development in the 1960s. It was since zoned as commercial property. The old gas station has been used as many different businesses. The others have been torn down. The fuel tanks have been removed and cleanup complete. Several factors have kept the area from developing and are hoping to change this and revitalize this area.

**Current Assessed Value of Project Location:**

Prime Time Subdivision Lots 1 & 2 4.5 Acres: \$597,000 (Tax \$13,231 year)

Prime Time Subdivision Lots 3 + Metes and Bounds

Total 6.5 Acres: \$586,000 (Tax \$7,920 year)

Calculated (S6-T7S-R35E TR LOT 5 TAX 429 0.70 AC TR LOT 5 TAX 437 1.65 AC COUNT PROP IN POCATELLO) Lot 3 \$262,200 taxed as undeveloped ground, \$236,500, \$15,700, \$27,400, \$44,200.

**Estimated Construction Value of Project:**

(Estimate of New Tax Value)

Prime Time Subdivision Lots 1 & 2

Total 4.5 Acres: \$1,317,000 to \$1,900,000 (Tax \$29,000 - \$42,231)

Prime Time Subdivision Lots 3 + Metes and Bounds

Total 6.5 Acres: \$800,000 - \$1,100,000 (Tax \$17,600 - \$23,600)

Total Current: \$21,151 Improved Value: \$46,600 - \$65,831

**Potential Increase in dollars to TIF: Range - \$25,449 - \$44,680 Annually**

Number of jobs created by this project: 8 - 15 Wage range of jobs: \$12 – \$30 per hour

Employee Benefits? Yes If yes, please describe: Paid Vacation, Company Sponsored Retirement, Company Sponsored Health Insurance, Bonuses, Commissions

Time frame for job creation: 2020

Construction start date for project: March 2020 Anticipated completion date: Oct 2020

Briefly describe other public benefit(s) associated with this project: Improved Public Infrastructure, Much Needed Services in the Area, Beautification, Removal of Old and New Installation,

Does this project compete with other, already established businesses? How? The Auction Business does not, it compliments and works with many businesses, Gas Station would add services not available in the area with RV and Diesel Services for Trucks, there is another gas station on the other side of freeway.

Is this project currently subject to a competitive bid process? Please explain: No

Are there other applicants that may be interesting in applying for PDA assistance for this same project? Please explain: Yes. There are other properties in the area that could use infrastructure improvements. Sidewalks, Go Underground with Cable Lines to remove deteriorating Telephone Poles, Potential Traffic Improvements, Improved Utilities.

Relationship of named applicant to the project: Owner

Type of Assistance Requested

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

Amount of Assistance Requested: 70,000 – 350,000 Depending

Form of Assistance Requested:

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

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

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

Return completed application to:

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

Improvements being proposed, by priority:

Telephone Poles removed and Cable going underground

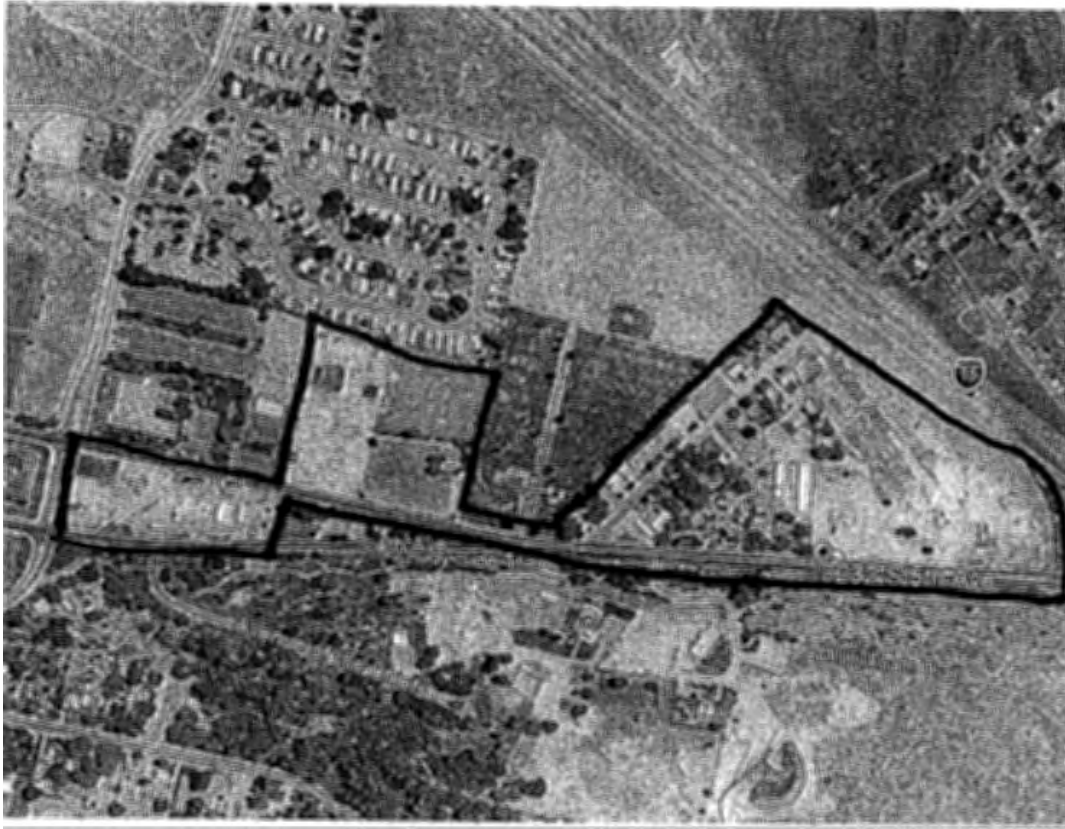
Sidewalks

Utility improvements

Improved Curb Cuts, Entry into property from State Property

Traffic Flow – Potentially working with ITD for Traffic Signals

Improving offramp



**RESOLUTION NO. 2019-6**

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 PORTNEUF CAPITAL, LLC; AUTHORIZING THE EXECUTION OF THE DISPOSITION AND DEVELOPMENT AGREEMENT; 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"), which Property is located within the jurisdictional boundaries of the North Portneuf Plan;

WHEREAS, on September 18, 2019, at an open meeting duly noticed and held in accordance with the Open Meeting Law, Idaho Code Title 74, Chapter 2, the Agency authorized publication of a Request for Proposals to acquire and develop the Property in accordance with Idaho Code § 50-2011;

WHEREAS, the Agency published a Request for Proposals for the development of the Property on September 24, 2019, and received one response prior to the deadline, such response being submitted by Portneuf Capital, LLC, an Idaho limited liability company;

WHEREAS, Agency staff and legal counsel prepared a Disposition and Development Agreement (“DDA”), which is attached hereto as Exhibit A and incorporated herein;

WHEREAS, the Agency Board has determined it is in the best interest of the Agency, the City of Pocatello, Bannock County, and the public to select Portneuf Capital, LLC’s response to the Request for Proposals as the winning proposal and to approve, authorize, and ratify the execution of the DDA between Agency and Portneuf Capital, LLC, concerning the transfer of the Property to Portneuf Capital, LLC and the development of the Property accordingly.

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 Portneuf Capital, LLC is selected as the developer of the Property based on and subject to its response to the Request for Qualifications.

Section 3: That the Chair, Vice-Chair, Secretary and Treasurer are hereby authorized to sign and enter into the DDA with Portneuf Capital, LLC on behalf of the Agency and, further, are hereby authorized to execute all necessary documents required to implement the actions contemplated by the DDA, including but not limited to executing all closing documents, including but not limited to the deed transferring the Property to Portneuf Capital, LLC at closing, subject to representations by Agency legal counsel that all conditions precedent to actions and any necessary technical changes to the DDA or other documents required to implement the actions contained therein are acceptable and that said changes are consistent with the provisions of the DDA (as applicable) and the comments and discussions received at the November 20, 2019, 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 November 20, 2019. Signed by the Chair of the Board of Commissioners and attested by the Secretary to the Board of Commissioners, on November 20, 2019.

APPROVED:

\_\_\_\_\_  
By: Scott Smith  
Its: Chair

ATTEST:

\_\_\_\_\_  
By: Melanie Gygli  
Its: Secretary

**DISPOSITION AND DEVELOPMENT AGREEMENT**

**POCATELLO DEVELOPMENT AUTHORITY**

**and**

**Portneuf Capital, LLC, an Idaho Limited Liability Company**

**November \_\_, 2019**

## LIST OF ATTACHMENTS

- |              |   |
|--------------|---|
| Attachment 1 | Depiction of the Property                               |
| Attachment 2 | Legal Description of the Property (“Legal Description”) |
| Attachment 3 | Form of Deed  |
| Attachment 4 | Developer’s Response to the Request for Proposals       |

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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 Portneuf Capital, LLC, an Idaho 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.

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

"City" means the City of Pocatello, Idaho.

"Close" and "Closing" refer to that point in time when the Quitclaim 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 4.1.4.

"Closing Date" means the date of the Closing.

"Deed" means the Quitclaim Deed.

"Deposit" has the meaning ascribed to it in Section 4.1.2.1.

"Developer" means Portneuf Capital, LLC, an Idaho limited liability company, 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 2.4.2.

"Effective Date" has the meaning ascribed to it in Section 10.7.

"Escrow" means the escrow set up by the Parties with the Escrow Agent with respect to the account.

"Escrow Agent" means First American Title Company, Dena Weaver, 223 N. 15th Avenue, Pocatello, Idaho 83201, Phone 208.232.6224

"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.

"Outside Date" has the meaning ascribed to it in Section 4.1.4.

"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.

"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 2.5 below.

"Property" has the meaning ascribed to it in Section 2.3 and means the real property described on Attachment 2.

"Purchase Price" has the meaning ascribed to it in Section 4.1.1.

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

"Response" has the meaning ascribed to it in Section 2.5.

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

"Quitclaim 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 2.4.1.

## **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 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.

### **2.4. Parties to This Agreement.**

#### **2.4.1. Agency**

Agency is an independent public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Idaho Urban Renewal Law of the State of Idaho, title 50, chapters 20 and 29, Idaho Code (collectively the “Urban Renewal Law”). The office of Agency is located at 911 North 7th Avenue, Pocatello, Idaho, 83201.

#### **2.4.2. Developer**

Developer is Portneuf Capital, LLC, an Idaho limited liability company qualified to do business in Idaho. The principal office of Developer is located at \_\_\_\_\_, 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.

### **2.5. The Project.**

The Project that is the subject of this Agreement is construction of an industrial park project that will entail repurposing approximately 170,000 sq/ft of existing buildings on the Site into industrial and commercial office space and constructing an additional 30,000 sq/ft of office

building space. A description of the Project is included in Developer's response to Agency's Request for Proposals (the "Response"). A copy of the Response is attached hereto as **Attachment D**.

**2.6. 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.

**2.7. 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 2.4.2), 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.

Developer warrants and represents, as of the date of this Agreement, to Agency that Developer is a member-managed limited liability company. The member-managers of Developer are Lysle D. Barthlome and Darren Miller. The managers of Developer have 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.

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.

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.

**4. DISPOSITION AND CONVEYANCE OF THE PROPERTY**

**4.1. 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 Agency's ownership rights in the entire fee estate of the Property as is and without warranty of any kind whatsoever to Developer. Agency also agrees to quitclaim to Developer whatever rights the Agency has in the improvements and fixtures on the Property as is and without warranty of any kind whatsoever.

Developer agrees to develop the Property within the time, for the consideration, and subject to the terms, conditions, and provisions as herein provided and as set forth in the Response.

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.

**4.1.1. 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.

**4.1.2. Payment of Purchase Price**

**4.1.2.1. Deposit.** Within five (5) days of the Effective Date, Developer shall deposit with Agency the sum of One Hundred Thousand Dollars (\$100,000.00). The Deposit shall be credited to the Purchase Price upon the Closing.

**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.

#### **4.1.3. Payment of Costs and Taxes and Assessments**

Developer shall pay all the fees and charges for recording the Quitclaim 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 title policy endorsements desired by Developer.

All unpaid and/or overdue taxes and assessments for the Property shall be paid by Developer in addition to the Purchase Price.

Developer shall be responsible for costs associated with utility services prior to Closing.

All other costs of the Closing not specifically allocated in this Agreement shall be allocated to Developer.

#### **4.1.4. Closing**

"Closing" shall as soon as possible after the Effective Date, but in no event later than the date that is two (2) months after the Effective Date (the "Outside Date").

#### **4.1.5. Deliveries by Agency**

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

- (a) the Quitclaim Deed, duly executed and acknowledged by Agency;

#### **4.1.6. 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;

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

On the Closing Date (except as otherwise provided below), 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 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 Quitclaim Deed to Developer
- (c) Developer shall cause the Quitclaim Deed to be recorded in the office of the Recorder of Bannock County, Idaho.

#### **4.1.8. 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 8.6 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 8.6. The terms of this paragraph shall not affect the rights of Agency or Developer to terminate this Agreement under Section 8 hereof.

#### **4.1.9. 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. 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. DEVELOPMENT OF THE PROPERTY.**

**5.1. Development Obligation.**

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

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

Developer shall carry out any required construction of the Project 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.

**5.3. 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.

**5.3.1. Developer's Obligations**

Developer, as requested by Agency, shall:

**5.3.1.1.** 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.

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

**5.3.1.3.** Developer's obligations under this Section shall terminate 3 years after the Effective Date.

## **6. INDEMNIFICATION.**

### **6.1. 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:

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

**6.1.2.** 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

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

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

**6.1.5.** 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

**6.1.6.** 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.

**6.1.7.** 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.

**6.1.8.** 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 shall survive Closing and are not intended to run with the land or to be binding upon subsequent owners of portions of the Property.

## **7. DEVELOPER'S POST-DEVELOPMENT AND CONSTRUCTION OBLIGATIONS.**

### **7.1. 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.

### **7.2. 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 payment of taxes for the tax year during which the current Redevelopment Plan expires. The Redevelopment Plan is currently required to terminate on or before December 31, 2031, but may be, in Agency's discretion, terminated any time prior to that date.

### **7.3. 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 and this Agreement for the periods of time specified therein.

### **7.4. 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.

#### **7.4.1. Effect and Duration of Covenants**

Except as otherwise provided in this Agreement, the covenants contained in this Agreement 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 shall not terminate upon the termination of the Redevelopment Plan and, without regard to technical classification and designation, shall 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.

#### **7.4.2. 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 Plan 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.

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

### **8.1. 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.

### **8.2. 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 ten (10) days after giving such notice, said ten (10) days constituting the period to cure any default.

### **8.3. 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.

### **8.4. 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 8.1 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.

**8.5. Legal Actions.**

**8.5.1. 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.

**8.5.2. Applicable Law**

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

**8.5.3. 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.

**8.5.4. 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.

**8.5.5. Specific Performance**

If Developer or Agency has provided notice and an opportunity to cure pursuant to Section 8.1, 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.

#### **8.5.6. 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.

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

##### **8.6.1. Termination by Developer**

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

**8.6.1.1.** 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 ten (10) days after written demand by Developer; or

**8.6.1.2.** 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 8 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.

##### **8.6.2. Termination by Agency Prior to the Conveyance of the Property**

Subject to Section 10.3, In the event that prior to the conveyance of the Property, as applicable, to Developer:

**8.6.2.1.** Developer fails to pay the Deposit as required;

**8.6.2.2.** 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

**8.6.2.3.** 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

**8.6.2.4.** 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 8 of this Agreement.

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.**

## **9. GENERAL PROVISIONS.**

### **9.1. 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 2.4 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.

### **9.2. 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.

### **9.3. 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.

**9.4. 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.

**9.5. 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.

**9.6. 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.

**9.7. Attorney Fees.**

In the event of any action or proceeding at law or in equity between Developer and Agency arising from or related to 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.

**10. SPECIAL PROVISIONS.**

**10.1. 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.

**10.2. 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.

**10.3. 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.

**10.4. 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.

**10.5. 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.

**10.6. Signature Authority.** The person who executes this Agreement on behalf of any party hereto expressly represents and warrants that he/she has full and complete authority to do so, knowing that the other parties intend to rely solely thereon.

**10.7. Effective Date of Agreement.**

The effective date of this Agreement (the "Effective Date") shall be the date when this Agreement has been signed by Agency and Developer, last date signed.

**[signatures on following page]**

AGENCY:  
POCATELLO DEVELOPMENT AUTHORITY

By \_\_\_\_\_  
Scott Smith  
Chair

\_\_\_\_\_, 2019

DEVELOPER:

PORTNEUF CAPITAL LLC  
An Idaho limited liability company

By \_\_\_\_\_  
\_\_\_\_\_  
Its **Manager**

\_\_\_\_\_, 2019

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

On this \_\_\_\_ day of \_\_\_\_\_, 2019, 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 \_\_\_\_\_, 2019, before me, \_\_\_\_\_,  
the undersigned notary public in and for said county and state, personally appeared  
\_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of Portneuf Capital, LLC, an  
Idaho limited liability company, "Developer" herein, and acknowledged to me that he executed  
the within instrument on behalf of such Developer for the purposes herein contained.

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

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

**Attachment 1 Depiction of the Property**

**Attachment 2**

**Legal Description of the Property**

Recording Requested By and  
When Recorded Return to:

\_\_\_\_\_

SPACE ABOVE THIS LINE FOR  
RECORDER'S USE ONLY

**QUITCLAIM DEED**

THE URBAN RENEWAL AGENCY OF POCATELLO, also known as POCATELLO DEVELOPMENT AUTHORITY ("**Grantor**"), for valuable consideration paid by Portneuf Capital, LLC, an Idaho limited liability company ("**Grantee**"), which has a current address of \_\_\_\_\_, does hereby quitclaim unto Grantee, all right, title and interest which Grantor now has or may hereafter acquire in the real property situated in Bannock County, Idaho, and described on Exhibit "A" attached hereto and incorporated herein ("**Property**"), together with all right, title and interest which Grantor now has or may hereafter acquire in the following: 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.

1. The Property is conveyed subject to 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. In the event of any express conflict between this Deed and the DDA, the provisions of this Deed shall control.
3. 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 Plan Area shall not require the consent of the Grantee.

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:**

PORTNEUF CAPITAL LLC, an Idaho limited liability company

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

ACKNOWLEDGEMENTS

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

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

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

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

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

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

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

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

**PROPERTY DESCRIPTION EXHIBIT "A"**

**ATTACHMENT D**

**[INSERT COPY OF RESPONSE]**