

WHEN RECORDED MAIL TO:

Glacier Bank
Attn: Jennifer Wheeler
202 S. Main Street
P.O. Box 27
Kalispell, MT 59903-0027

NON-DISTURBANCE AGREEMENT #22801

This Non-Disturbance Agreement (this “**Agreement**”) dated effective as of the date this Agreement is recorded in the real property records of Blaine County, Idaho (the “**Effective Date**”) among City Of Ketchum, an Idaho municipal corporation (“**Owner**”); Ketchum Community Development Corporation, an Idaho nonprofit corporation (“**Tenant**”); 9% Bluebird Housing Partners LLC, an Idaho limited liability company (“**Subtenant**”); WNC Holding, LLC, a California limited liability company, its successors and assigns (“**WNC**”); and Glacier Bank (“**Mortgagee**”).

RECITALS

- A. Owner and Tenant entered into the Ground Lease for Bluebird Village recorded in the real property records of Blaine County, Idaho as Instrument No. 689499, as amended by that certain Amended and Restated Ground Lease for Bluebird Village recorded in the real property records of Blaine County, Idaho as Instrument No. [_____] (collectively the “**Ground Lease**”), whereby Owner leased the parcel of land located at 480 East Avenue, Ketchum, Idaho 83353, as the land is legally described therein (the “**Land**”) to Tenant.
- B. Tenant and Subtenant entered into the Parcel B Sublease, which is evidenced by that certain Memorandum of Sublease which was recorded in the real property records of Blaine County, Idaho as Instrument No. [____], as amended (collectively the “**Parcel B Sublease**”), whereby Tenant leased the 9% Residential Parcel that is graphically depicted on Exhibit A to the Subtenant (the “**Residential Parcel**”).
- C. In addition to the Residential Parcel, the Tenant and Subtenant entered into the Parcel D Sublease, which is evidenced by that certain Memorandum of Sublease which was recorded in the real property records of Blaine County, Idaho as Instrument No. [____], as amended (collectively the “**Parcel D Sublease**”), whereby Tenant leased the 9% Commercial Parcel that is graphically depicted on Exhibit B to the Subtenant (the “**Commercial Parcel**”).
- D. In addition to the Residential Parcel and Commercial Parcel, the Tenant and Subtenant, as joint tenants, entered into the Parcel E Sublease, which is evidenced by that certain Memorandum of Sublease which was recorded in the real property records of Blaine County, Idaho as Instrument No. [____], as amended (collectively the “**Parcel E Sublease**” and with Parcel B Sublease and Parcel D Sublease, collectively the “**Sublease**”), whereby Tenant leased the 9% Parking and Common Area Parcel that is graphically depicted on Exhibit C to the Subtenant (the “**Parking and Common Area Parcel**” together with the Residential Parcel and Commercial Parcel the “**Subleased Property**”).
- E. Subtenant will redevelop the Subleased Property into a mixed-use project with street-level retail, parking, and affordable rental housing units in an energy-efficient building designed to blend into Ketchum's downtown core, as further described in the Ground Lease (the “**9% Bluebird Project**”).
- F. To enable Subtenant to develop the 9% Bluebird Project, Mortgagee has agreed to make a loan to Subtenant in the amount of [_____] and No/100 Dollars (\$_____) (the “**Loan**”) secured by a subleasehold deed of trust on Subtenant’s interests in the Subleased Property (as amended, restated, replaced, supplemented or otherwise modified from time to time, or at any time, the “**Subleasehold Mortgage**”), and other Related Documents (as defined in the Subleasehold Mortgage), including without limitation an Assignment of Lease and Landlord’s Consent assigning the Ground Lease to Mortgagee, and an Assignment of Sublease and Landlord’s Consent assigning the Sublease to Mortgagee (Collectively, as

amended, restated, replaced, supplemented or otherwise modified from time to time, or at any time, the “Assignments”).

- G. To further enable Subtenant to develop the 9% Bluebird Project, WNC has agreed to contribute equity in the projected amount of [\$_____] to the Subtenant, all in accordance with the terms and conditions of the Amended and Restated Operating Agreement of the Subtenant, as a capital contribution in return for a non-managing member interest in Subtenant (collectively, the “Capital Contribution”).
- H. Subtenant, WNC and Mortgagee desires that Subtenant’s possession of the Subleased Property under the Sublease should not be disturbed if Owner exercises all or any of its rights under the Ground Lease.
- I. Subtenant, WNC and Mortgagee further desire that Subtenant’s possession of the Subleased Property under the Sublease should not be disturbed if the Ground Lease is terminated, whether voluntarily or involuntarily, or by operation of law, and Owner agrees not to disturb Subtenant’s possession of the Subleased Property subject to and upon the provisions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants of the parties, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce WNC to make the Capital Contribution and the Mortgagee to make the Loan, the parties agree as follows:

- 1. **GROUND LEASE.** Owner and Tenant confirm that the Ground Lease is in full force and effect and there is no default thereunder or which, with the passage of time or giving of notice, or both, would constitute a default on the part of the Tenant under the Ground Lease.
- 2. **SUBLEASE.** Owner acknowledges and agrees that Tenant has the right and the authority to enter into the Sublease pursuant to the terms of the Ground Lease. Tenant and Subtenant confirm that the Sublease is in full force and effect and there is no default thereunder.
- 3. **MORTGAGE.** Tenant acknowledges and agrees that Subtenant has the right and the authority to enter into the Subleasehold Mortgage and the Assignments pursuant to the terms of the Sublease. Subtenant and Mortgagee confirm that the Subleasehold Mortgage is in full force and effect and there is no default thereunder.
- 4. **RECOGNIZED INTEREST HOLDER STATUS.** Owner recognizes Subtenant, WNC and Mortgagee as Recognized Interest Holders under Section 6.4 of the Ground Lease. Tenant recognizes WNC and Mortgagee as a Recognized Interest Holder under Section 6.4 of the Sublease. Subtenant, WNC and Mortgagee each hereby provide Owner pursuant to Section 6.4 of the Ground Lease, and WNC and Mortgagee hereby provides Tenant pursuant to Section 6.4 of the Sublease, with the names and addresses set forth in Section 7 for the purpose of receiving notices.
- 5. **NON-DISTURBANCE BY OWNER.** Owner will not disturb the tenancy or rights of a Recognized Interest Holder (its successors or assigns and any subsequent purchaser) so long as the Recognized Interest Holder (its successors or assigns and subsequent purchaser) cures any existing defaults as required herein and commits no default beyond the applicable notice and curative periods hereunder and is otherwise in full compliance with the terms of the Ground Lease. Under no circumstances will Owner be responsible for the payment of the debt secured by the Subleasehold Mortgage, and in no event will Owner’s fee simple estate in the Land, including Owner’s reversionary interest in the 9% Bluebird Project be subject or subordinate to any Sublease or the lien of the Subleasehold Mortgage.
- 6. **NON-DISTURBANCE BY TENANT.** Tenant will not disturb the tenancy or rights of a Recognized Interest Holder (its successors or assigns and any subsequent purchaser) so long as the Recognized Interest Holder (its successors or assigns and subsequent purchaser) cures any existing defaults as required herein

and commits no default beyond the applicable notice and curative periods hereunder and is otherwise in full compliance with the terms of the Sublease. Under no circumstances will Tenant be responsible for the payment of the debt secured by the Subleasehold Mortgage, and in no event will Tenant's leasehold estate under the Ground Lease be subject or subordinate to the lien of the Subleasehold Mortgage.

7. **NOTICE.** Unless otherwise specifically required by applicable law, any notices, approvals, consents or other communications required or permitted by this Agreement or by applicable law to be served on, given to, or delivered to any party to this Agreement must be in writing and will be deemed duly served, given, delivered and received only when actually received by the receiving party (or delivery is refused by the receiving party). Delivery may be by any reasonable method. Each party agrees to give notice to the other parties of its address and any change of its address for the purpose of this section by giving written notice of the change to the other party in the manner herein provided. If any party fails to provide a current address for notices, then the other parties may serve notices to the then current address for the other party (or its registered agent) in the records of the Idaho Secretary of State or the records of the Blaine County Assessor. For so long as the City of Ketchum remains the Owner, then City of Ketchum may update its notice address by public notice.

7.1 If to Owner: City of Ketchum
Attn: Mayor
PO Box 2315, 191 5th Street West, Ketchum, Idaho 83340

with a copy to:

Attn: _____

Email: _____

7.2 If to Tenant: Ketchum Community Development Corporation
Attn: Executive Director
PO Box 6452, Ketchum, Idaho 83340
Email: friedman.charles@gmail.com

with a copy to:

Winthrop & Weinstine, P.A.
Attn: Jason C. Harby
225 S 6th Street, Suite 3500 Minneapolis, MN 55402
Email: jharby@winthrop.com

7.3 If to Subtenant: 9% Bluebird Housing Partners LLC
c/o GMD Development LLC
Attn: Gregory M. Dunfield
520 Pike St #1010, Seattle, WA 98101
Email: greg@gmddevelopment.com

with a copy to:

Downs Pham & Kuei
Attn: Gary P. Downs
235 Montgomery Street 30th Floor, San Francisco, CA 94104
Email: gdowns@downspham.com

And with copies to WNC and counsel, as set forth below.

7.4 If to Mortgagee: Glacier Bank

Attn: Jennifer Wheeler
202 Main Street
P.O. Box 27
Kalispell, Montana 59903

Email: jwheeler@glacierbank.com

with a copy to:

Bjornson Jones Mungas, PLLC
Attn: David Bjornson
2809 Great Northern Loop, Suite 100
Missoula, Mt 59808
Email: david@bjornsonlaw.com

7.5 If to WNC:

WNC & Associates, Inc.
WNC Housing, L.P.
WNC Holding, LLC
17782 Sky Park Circle
Irvine, CA 92614-6404
Attn: Melanie Wenk

Jonathan Sirois, Esq.
Holland & Knight, LLP
10 Saint James Avenue
11th Floor
Boston, MA 02116

8. **TERMINATION OF GROUND LEASE.** If the Ground Lease is cancelled, terminated or surrendered, whether voluntarily or involuntarily or by operation of law, prior to the expiration date of the Sublease, then the Sublease will continue in full force and effect as a direct lease between Owner, as owner, and Subtenant, as tenant, upon and subject to the terms in the Sublease. Owner will not disturb the possession of Subtenant and Owner agrees to be bound by all of the terms and conditions contained in the Sublease, and the Assignments, except such terms as are not applicable to the remainder of the term of the Sublease. Owner will also not be:
- 8.1 liable for any act, omission or default of Tenant or any prior tenant, as owner under the Sublease, unless such act, omission or default is otherwise applicable to the period after the cancellation, termination or surrender of the Ground Lease;
 - 8.2 liable for any damage or other relief attributable to any breach or any representation or warranty contained in the Sublease by Tenant or any prior tenant, as owner under the Sublease;
 - 8.3 subject to any offsets or defenses which Subtenant might have against Tenant or any prior tenant, as owner under the Sublease;

- 8.4 bound by any prepayment of rent or additional rent which Subtenant might have paid for more than the current month to Tenant or any prior tenant, as landlord under the Sublease, except for prepayments of additional rent made on account of operating expenses and real estate taxes in accordance with the terms of the Sublease; or
- 8.5 bound by any amendment or modification of the Sublease or by any waiver or forbearance on the part of Tenant or any prior tenant, as landlord under the Sublease, made or given without Owner's written consent, but only if such amendment, modification, waiver or forbearance without the consent of Owner is prohibited by the terms of the Ground Lease.
9. **LIMITATION ON MORTGAGEE'S PERFORMANCE.** Nothing in this Agreement will be deemed or construed to be an agreement by Mortgagee to perform any obligation of Subtenant under the Sublease, the Sublease Mortgage, or the Assignments unless and until Mortgagee obtains the Subtenant's interests under the Sublease.
10. **ATTORNEYS' FEES.** In the event that any party hereto institutes any legal suit, action or proceeding, including arbitration, against another party, arising out of this Agreement, the prevailing party in the suit, action or proceeding will be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action, or proceeding, including reasonable attorneys' fees, expenses and court costs.
11. **ENTIRE AGREEMENT.** This Agreement, the Ground Lease, the Sublease, the Subleasehold Mortgage, and the Assignments supersede and cancel all oral negotiations and prior and other writings with respect to such subordination. If there is any conflict between the provisions of this Agreement and those of the Ground Lease or the Sublease, the provisions of this Agreement will prevail.
12. **AMENDMENTS AND MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.
13. **WAIVER.** No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party will operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
14. **GOVERNING LAW.** This Agreement will be governed by the law of the State of Idaho, without regard to the choice of law rules of Idaho.
15. **SEVERABILITY.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provisions in any other jurisdiction.
16. **SUCCESSORS AND ASSIGNS.** The Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective successors and permitted assigns.
17. **COUNTERPARTS AND ORIGINAL COUNTERPARTS.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which when taken together will be deemed to be one and the same instrument. A signed copy of the Agreement delivered by email will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[end of text; counterpart signature pages follow]

COUNTERPART SIGNATURE PAGE

DATED effective as of the Effective Date.

Subtenant:

4% BLUEBIRD HOUSING PARTNERS LLC,
an Idaho limited liability company

By: ID 4% Bluebird KCDC LLC,
an Idaho limited liability company
its Managing Member

By: Ketchum Community Development Corporation,
an Idaho nonprofit corporation
its Sole Member

By: _____
Name: Charles Friedman
Its: President

By: ID 4% Bluebird GMD LLC,
an Idaho limited liability company
its Administrative Member

By: GMD Development LLC,
a Washington limited liability company
its Sole Member

By: _____
Name: Gregory M. Dunfield
Its: Manager

[Notary blocks on following page]

STATE OF IDAHO)
 :SS
County of Blaine)

On this ___ day of _____ 2022, before me, a notary public for the State of Idaho, personally appeared Charles Friedman, President of Ketchum Community Development Corporation, the Sole Member of ID 9% Bluebird KCDC LLC, Managing Member of 9% Bluebird Housing Partners LLC, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

Notary Signature

STATE OF WASHINGTON)
 :SS
County of _____)

On this ___ day of _____ 2022, before me, a notary public for the State of Washington, personally appeared Gregory M. Dunfield, Manager of GMD Development LLC, the Sole Member of ID 9% Bluebird GMD LLC, Administrative Member of 9% Bluebird Housing Partners LLC, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

Notary Signature

COUNTERPART SIGNATURE PAGE

DATED effective as of the Effective Date.

Mortgagee: Glacier Bank

By: _____
Name: Jennifer Wheeler
Title: Vice President

STATE OF MONTANA)
) ss.
County of Flathead)

This record was signed before me on [_____], 2022 by Jennifer Wheeler as Vice President of Mortgagee.

Notary Signature

COUNTERPART SIGNATURE PAGE

DATED effective as of the Effective Date.

WNC: WNC HOLDING, LLC,
a California limited liability company

By: WNC & Associates, Inc., a California corporation,
its managing member

By: _____
Melanie Wenk
Executive Vice President – Business
Operations

EXHIBIT A

Residential Parcel

EXHIBIT B
Commercial Parcel

EXHIBIT C

Parking and Common Area Parcel

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