

RESOLUTION NO. 21-URA05

BY THE BOARD OF COMMISSIONERS OF THE URBAN RENEWAL AGENCY OF KETCHUM, IDAHO:

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE URBAN RENEWAL AGENCY OF KETCHUM, IDAHO, AUTHORIZING AGENCY TO ENTER INTO A REIMBURSEMENT PARTICIPATION AGREEMENT WITH DAN DEVENPORT AND MARTINA DEVENPORT DBA MOUNTAIN LAND DESIGN; AUTHORIZING THE CHAIRMAN, VICE-CHAIRMAN, OR EXECUTIVE DIRECTOR AND THE SECRETARY OF AGENCY TO TAKE APPROPRIATE ACTION; AND PROVIDING FOR THIS RESOLUTION TO BE EFFECTIVE UPON ITS PASSAGE AND APPROVAL.

THIS RESOLUTION, made on the date hereinafter set forth by the Urban Renewal Agency of Ketchum, Idaho, also known as the Ketchum Urban Renewal Agency, 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 (hereinafter the “Law”) and the Local Economic Development Act, Chapter 29, Title 50, Idaho Code, as amended (hereinafter the “Act”), a duly created and functioning urban renewal agency for Ketchum, Idaho, hereinafter referred to as the “Agency.”

WHEREAS, the City Council (“City Council”) of the City of Ketchum (the “City”) by adoption of Ordinance No. 992 on November 15, 2006, duly adopted the Ketchum Urban Renewal Plan (the “2006 Plan”) to be administered by the Agency;

WHEREAS, upon the approval of Ordinance No. 1077 adopted by the City Council on November 15, 2010, and deemed effective on November 24, 2010, the Agency began implementation of the amended Ketchum Urban Renewal Plan (the “Amended Plan”);

WHEREAS, Dan Devenport and Martina Devenport dba Mountain Land Design (“Participant”) owns or controls certain real property located at 111 Washington Avenue, Ketchum, Idaho (the “Project Site”). The Project Site will be redeveloped and improved resulting in a new residential and commercial building (the “Participant’s Project”);

WHEREAS, as part of the Participant’s Project, Participant intends to remediate certain Project Site conditions and redevelop the Project Site (the “Improvement Project”);

WHEREAS, the Participant’s Project and the Improvement Project are located in the Amended Plan area, which consists of the 2006 Plan approved by the City Council on November

15, 2006, and the Amended Plan approved by the City Council on November 15, 2010 (“Ketchum Urban Renewal District”). The Amended Plan includes various measures to mitigate and remediate the Ketchum Urban Renewal District. The Agency has also previously adopted a Participation Policy;

WHEREAS the Improvement Project includes improvements of public infrastructure to install heated sidewalks, pavers, and street trees along First Street and Washington Avenue, adjacent to the Project Site that are consistent with the objectives of the Amended Plan. The Improvement Project will contribute to enhancing and revitalizing the Ketchum Urban Renewal District. Participant’s Improvement Project includes upgrades or enhanced improvements beyond city of Ketchum requirements;

WHEREAS, Participant has filed an application for funding as set forth in the Participation Policy. Participant qualifies for certain funding under the Participation Policy;

WHEREAS, the Improvement Project, while not specifically identified in the Amended Plan, consists of infrastructure improvement which will be of benefit to the public and achieve the overall objectives of the Amended Plan;

WHEREAS, Agency deems it appropriate to assist the development of the Improvement Project to achieve the objectives set forth in the Amended Plan;

WHEREAS, Agency and Participant have negotiated the terms of a Reimbursement Participation Agreement, attached hereto as Exhibit A, which sets forth the obligations of Agency and Participant, concerning the reimbursement by Agency to Participant for construction of the Improvement Project;

WHEREAS, the Board of Commissioners finds it in the best public interest to approve the Reimbursement Participation Agreement and to authorize the Chair or Vice-Chair to execute and attest the Reimbursement Participation Agreement, subject to certain conditions, and to execute all necessary documents to implement the transaction, subject to the conditions set forth below.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE BOARD OF COMMISSIONERS OF THE KETCHUM URBAN RENEWAL AGENCY OF THE CITY OF KETCHUM, IDAHO, AS FOLLOWS:

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

Section 2: That the Reimbursement Participation Agreement, attached hereto as Exhibit A, is hereby incorporated herein and made a part hereof by reference and is hereby approved and accepted, recognizing technical changes or corrections which may be required prior to execution of the Reimbursement Participation Agreement.

Section 3. That the Chair, Vice-Chair, or Executive Director, and Secretary of the Agency are hereby authorized to sign and enter into the Reimbursement Participation Agreement and to execute all necessary documents required to implement the actions contemplated by the Reimbursement Participation Agreement, subject to representations by Agency staff and Agency legal counsel that all conditions precedent to such actions have been met; and further, any necessary technical changes to the Reimbursement Participation Agreement or other documents are acceptable, upon advice from Agency's legal counsel that said changes are consistent with the provisions of the Reimbursement Participation Agreement and the comments and discussions received at the October 18, 2021, Agency Board meeting; Agency is further authorized to appropriate any and all funds contemplated by the Agreement and to perform any and all other duties required pursuant to said Agreement.

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

PASSED By the Urban Renewal Agency of Ketchum, Idaho, on October 18, 2021. Signed by the Chair of the Board of Commissioners, and attested by the Secretary to the Board of Commissioners, on October 18, 2021.

URBAN RENEWAL AGENCY OF KETCHUM

By _____
Ed Johnson, Chair

ATTEST:

By _____
Secretary

4843-3517-6959, v. 1

REIMBURSEMENT PARTICIPATION AGREEMENT

THIS REIMBURSEMENT PARTICIPATION AGREEMENT ("Agreement") is entered into by and between the Urban Renewal Agency of the City of Ketchum, also known as the Ketchum Redevelopment Agency, an independent public body, corporate and politic, organized and existing under the laws of the state of Idaho and known as the urban renewal agency of the city of Ketchum, Idaho ("Agency") and Dan Devenport and Martina Devenport dba Mountain Land Design ("Participant"). Agency and Participant may be collectively referred to as the "Parties" and individually referred to as a "Party."

RECITALS

A. Participant owns or controls certain real property located at 111 Washington Avenue, Ketchum, Idaho (the "Project Site"). The Project Site will be redeveloped and improved resulting in an upgraded residential and commercial building as more particularly described on attached **Exhibit A** (the "Participant's Project").

B. As part of the Participant's Project, Participant intends to remediate certain Project Site conditions and redevelop the Project Site (the "Improvement Project"). The Improvement Project is more accurately depicted on attached **Exhibit B**. A site map showing the Participant's Project is attached as **Exhibit B**.

C. The Participant's Project and the Improvement Project are located in the Ketchum Urban Renewal Plan (the "Plan") area, which consists of the Ketchum Urban Renewal Plan approved by the City Council on November 15, 2006, and the Amended Ketchum Urban Renewal Plan approved by the City Council on November 15, 2010 ("Ketchum Urban Renewal District"). The Plan includes various measures to mitigate and remediate the Ketchum Urban Renewal District. The Agency has also previously adopted a Participation Policy.

D. The Improvement Project includes improvements of public infrastructure to install heated sidewalks, pavers, and street trees along First Street and Washington Avenue, adjacent to the Project Site that are consistent with the objectives of the Plan. The Improvement Project will contribute to enhancing and revitalizing the Ketchum Urban Renewal District. Participant's Improvement Project includes upgrades or enhanced improvements beyond city of Ketchum requirements.

E. Participant has filed an application for funding as set forth in the Participation Policy. Participant qualifies for certain funding under the Participation Policy.

F. The Improvement Project, while not specifically identified in the Plan, consists of traditional infrastructure improvement which will be of benefit to the public and achieve the overall objectives of the Plan.

G. Agency deems it appropriate to assist the development of the Improvement Project to achieve the objectives set forth in the Plan.

AGREEMENTS

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:

1. Effective Date. The effective date ("Effective Date") of this Agreement shall be the date when this Agreement has been signed by the Participant and Agency (last date signed) and shall continue until: (1) the completion of all obligations of each Party; or (2) sixty (60) months from the issuance of a Certificate of Occupancy for the Participant's Project, as further described in section 6 of this agreement, whichever comes first.

2. Construction of the Improvement Project. Participant agrees to construct the Improvement Project consistent with the following:

The Parties agree that the Improvement Project is depicted on **Exhibit B**, with cost estimates for eligible items described in the Schedule of Eligible Costs in **Exhibit C** ("Estimated Eligible Costs"). Any other public improvements that are constructed by the Participant as part of the Participant's Project are not eligible for reimbursement pursuant to this Agreement. Additionally, Agency's reimbursement obligation is limited to the amount set forth in Section 6 of this Agreement.

The Improvement Project shall be designed, engineered, and constructed to comply with applicable city of Ketchum.

3. Initial Construction Funding. Participant shall pay for all of the costs of construction for the Improvement Project. Agency acknowledges that the Schedule of Costs attached as **Exhibit C** is an estimate by Participant's contractor and that actual costs for the Improvement Project, as well as each line item of cost, may be more or less than is shown on **Exhibit C**. The parties acknowledge and agree that Participant will utilize commercially reasonable contracting, budgeting, and bidding practices to ensure that the Projects are constructed consistent with the construction contracts (the "Construction Contracts") and is undertaken in a reasonable manner. Participant shall be presumed to have utilized commercially reasonable contracting, budgeting, and bidding practices if (1) each general contractor (the "Contractor(s)") has been selected through competitive bids for the Projects, pursuant to Idaho Code § 67-2805(1), which provides for a process of soliciting no fewer than three licensed public works contractors by written means, either by electronic or physical delivery, without the need for publication notice. This process is available for projects not to exceed \$200,000. The parties represent the estimate for the Improvement Project does not exceed \$200,000, (2) the work is performed by Idaho public works licensed contractors, and (3) the work is not performed by an affiliate or subsidiary of the Owner.

4. Notification of Completion; Inspection. Upon completion of construction, Participant shall notify Agency in writing and request a final construction

inspection and/ or a meeting with Agency to determine if the Improvement Project meets the requirements of this Agreement. Agency shall provide Participant with written confirmation that the Improvement Project has been completed in compliance with this Agreement.

5. Determining Actual Payment after Completion of Construction.

Participant shall provide appropriate documentation ("Cost Documentation") to Agency that Participant has expended funds for eligible costs in order to receive payment per the terms of this Agreement. Any Cost Documentation shall be submitted within thirty (30) days of Participant's notification to Agency that construction of the Improvement Project is complete and shall include:

- a. Schedule of values that includes line items for the Improvement Project improvements approved by Agency for reimbursement, so they are identifiable separate from other line items ("Schedule of Values").
- b. Invoices from Participant's general contractor, subcontractor(s), and material suppliers for each type of eligible cost item (e.g., excavation, material fill, pavement, etc.). Invoices shall specify quantities and unit costs of materials, and a percentage estimate of how much material was used for the Improvement Project in comparison to the amount used for the remainder of Participant's project ("Invoices").
- c. Explanation of any significant deviation between the initial cost estimates in **Exhibit C** and the actual costs in the Cost Documentation as requested by Agency.
- d. Additional documentation or clarifications may be required and requested by Agency.

Agency shall have the right to review the Cost Documentation and to obtain independent verification that the quantities of work claimed, the unit costs and the total costs for eligible costs are commercially reasonable and consistent with the cost estimates provided by Participant to Agency prior to construction. In the event Participant fails to timely deliver the Cost Documentation, Agency may, in its discretion, elect to terminate its payment obligations under this Agreement by providing Participant with written notice of such default. Participant shall have thirty (30) days from such written notice to cure the default. In the event Participant fails to cure such a default, Agency's payment obligations under this Agreement may be terminated in Agency's sole discretion.

Within fifteen (15) calendar days of Agency's receipt of the Cost Documentation, Agency will notify Participant in writing of Agency's acceptance or rejection of the Cost Documentation and Agency's determination of the Actual Eligible Costs to be reimbursed. Agency shall, in its discretion, determine the Actual Eligible Costs following its review of the Cost Documentation, verification of the commercial reasonableness of the costs and expenses contained in such Cost Documentation, and comparison of the amounts in the Cost Documentation to the amounts in **Exhibit C**. **In no event shall the**

total for the Actual Eligible Costs to be reimbursed exceed the amount allowed by Section 6.

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

Agency's determination of the Actual Eligible Costs to be reimbursed not to exceed \$73,176 is within its sole discretion.

6. Agency's Reimbursement Payment Amount and Payment Period. In accordance with the Participation Program, Agency agrees to reimburse Participant as follows:

A portion of Actual Eligible Costs of the Improvement Project not to exceed \$73,176 **WITH NO INTEREST**. Actual Eligible Costs include certain soft costs (e.g., architectural and engineering design). Agency shall disburse to Participant 50% of the revenue allocation (tax increment) proceeds Agency receives from the Project Site. Participant shall provide Agency with its property tax notices and evidence of property tax payments to assist the Agency in determining the amount of revenue allocation (tax increment) proceeds received and the assessed value of the Participant Project for three years after issuance of the Certificate of Occupancy. Participant shall be responsible for providing Agency property tax notices and evidence of property tax payment from other persons or entities being assessed for ownership interests within the Project Site. Agency disbursements shall commence upon the first receipt of revenue allocation (tax increment) proceeds after the issuance of the Certificate of Occupancy for the Participant's Project and shall continue for a period of sixty (60) months but not beyond the termination date of the Amended Plan, conditioned upon proof of property tax payment and property tax receipt by the Agency unless the reimbursement of the Actual Eligible Costs not to exceed \$73,176 has been extinguished previously. Agency shall determine its obligation for payment based on increases to assessed value above \$1,092,294. If the Actual Eligible Costs have not been fully reimbursed within sixty (60) months after the issuance of the Certificate of Occupancy for the Participant's Project, any further obligation of the Agency is terminated, and Participant shall have no right for any payments beyond that period.

PARTICIPANT ACKNOWLEDGES THE REVENUE ALLOCATION (TAX INCREMENT) PROCEEDS MAY NOT BE SUFFICIENT TO PAY OFF THE REIMBURSEMENT OBLIGATION ON OR BEFORE THE PERIOD SET FORTH HEREIN AND ASSUMES THAT RISK.

Participant has provided the Agency with an estimated assessed value of the Participant's Project of approximately \$10,000 of increment value above \$1,092,294.

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

Participant may allocate the reimbursement among the cost estimates shown on **Exhibit C** among only those categories identified, but in no event shall be entitled to reimbursement for an amount which exceeds \$73,176.

7. Conditions Precedent to Agency's Payment Obligation. Agency agrees to reimburse Participant in the amount as determined in compliance with Sections 2.b., 5, and 6 and submittal of the required information described in Section 6 above.

Participant's Project includes the commitment of providing one community housing unit in compliance with the city of Ketchum policy. Should the housing unit not be available for community housing, the Agency shall have the right to terminate its reimbursement obligation.

Participant's Project shall be completed, and a certificate of occupancy issued for the Participant's Project, on or before September 2023. Failure of Participant to obtain a Certificate of Occupancy by that date shall be a basis for Agency's termination of its obligations under this Agreement.

Participant shall provide KURA with evidence the Improvements listed on **Exhibit C** have been formally accepted by the city of Ketchum. In addition, Participant shall enter into the appropriate agreement with the city of Ketchum binding the Participant to maintain the Improvements listed on **Exhibit C**. Failure of the Participant to obtain acceptance by the city of Ketchum of the Improvements, failure to enter into the appropriate agreement for maintenance of the Improvements and failure to comply with the City agreement, shall be a basis for termination of Agency's reimbursement obligation.

Participant's failure to comply with all Agreement provisions shall be a basis for termination of Agency's reimbursement obligation.

8. Subordination of Reimbursement Obligations. The Parties agree this Agreement does not provide Participant with a security interest in any Agency revenues for the Ketchum Urban Renewal District or any other urban renewal plan area, including but not limited to revenue from any "Revenue Allocation Area" (as defined in Title 50, Chapter 29 of the Idaho Code). Notwithstanding anything to the contrary in this Agreement, the obligation of Agency to make the payments as specified in this Agreement shall be subordinate to all Agency obligations that have committed or in the future commit available Agency revenues, including but not limited to revenue from any Revenue Allocation Area and may be subject to consent and approval by Agency lenders or bondholders.

9. Default. Neither Party shall be deemed to be in default of this Agreement except upon the expiration of forty-five (45) days [ten (10) days in the event of failure to pay money] 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 45-day period [ten (10) days in the event of failure to pay money], has rectified the particulars specified in said notice of default. In the event of a default, the nondefaulting Party may do the following:

- a. 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.
- b. The nondefaulting Party may seek specific performance of those elements of this Agreement which can be specifically performed, in addition, recover all damages incurred by the nondefaulting Party. The Parties declare it to be their intent that elements of this Agreement requiring certain actions be taken for which there are not adequate legal remedies may be specifically enforced.
- c. 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.
- d. 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.
- e. 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, Participant shall reimburse Agency for any such funds Participant received.

10. Captions and Headings. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions, or agreements contained herein.

11. No Joint Venture or Partnership. Agency and Participant agree that nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making Agency and Participant a joint venture or partners.

12. Successors and Assignment. This Agreement is not assignable except that the Participant may assign Participant's rights or obligations under this Agreement to a third party only with the written approval of Agency, at Agency's sole discretion and cannot be reasonably denied.

13. Notices and Receipt. All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail, or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, or by electronic mail (e-mail) addressed to the appropriate Party at the address set forth below:

If to Participant: Dan Devenport
 Martina Devenport
 Mountain Land Design
 [Address]
 [City, State ZIP]
 [phone number]
 [email]

If to Agency: Suzanne Frick, Executive Director
 Ketchum Urban Renewal Agency
 P.O. Box 2315
 Ketchum, Idaho 83340
 208-726-7801
 sfrick@ketchumidaho.org

14. Applicable Law/Attorney Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Idaho. Should any legal action be brought by either Party because of breach of this Agreement or to enforce any provision of this Agreement, the prevailing Party shall be entitled to reasonable attorney fees, court costs, and such other costs as may be found by the court.

15. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties. Exhibits to this Agreement are as follows:

Exhibit A	Improvement Project Plan
Exhibit B	Participant's Project Site Map
Exhibit C	Schedule of Eligible Costs

16. Indemnification. Participant shall indemnify and hold Agency and its respective commissioners, officers, agents, consultants and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable architect, design and attorney fees (collectively referred to in this section as "Claim"), which may be imposed upon or incurred by or asserted against Agency or its respective commissioners, officers, agents, consultants and employees relating to the construction or design of Participant's Project, the Improvement Project or otherwise arising out of Participant's actions or inactions. In the event an action or proceeding is brought against Agency or its respective

commissioners, officers, agents, consultants, and employees by reason of any such Claim, Participant, upon written notice from Agency shall, at Participant's expense, resist or defend such action or proceeding. Notwithstanding the foregoing, Participant shall have no obligation to indemnify, defend, or hold Agency and its respective commissioners, officers, agents, consultants, and employees harmless from and against any matter to the extent it arises from the negligence or willful act of Agency or its respective commissioners, officers, agents, consultants, or employees.

Participant shall also indemnify and hold harmless and defend Agency and its commissioners, officers, agents, consultants, and employees from and against any and all claims or causes of action asserted by entities or individuals that are not a party to this Agreement regarding the validity or legality of this Agreement and the reimbursement to Participant of the costs of the Improvement Project by Agency (collectively referred to in this Section as "Legality Claim"). Upon the final decision of a court of competent jurisdiction that is not appealed or not appealable regarding the Legality Claim determining that the reimbursement to Participant by Agency of the costs of the Improvement Project is unlawful or invalid, the Agency shall have no further obligation or liability to reimburse or make payments to Participant for the costs associated with the Improvement Project and Participant shall solely bear the responsibility for such costs. Upon the final decision of a court of competent jurisdiction that is not appealed or not appealable regarding the Legality Claim determining that the reimbursement to Participant by Agency of the costs of the Improvement Project is unlawful or invalid, then Participant, in Agency's sole discretion, may be required to return any funds paid by Agency to Participant for the Improvement Project within ninety (90) days of written request from Agency to Participant.

If a Legality Claim is made, then Agency and Participant shall jointly defend against said claim. Participant has the discretion to hire its own legal counsel with Participant reimbursing the Agency for its reasonable fees and costs, including without limitation, attorney and expert witness fees and costs.

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

Notwithstanding anything to the contrary in this Section 16, in the event Participant's Indemnity obligations are triggered as a result of a Legality Claim, Participant shall have the right, in lieu of indemnifying and /or providing any defense to Agency, of returning all Reimbursements made in accordance with this Agreement to Agency and waiving any right to further Reimbursement. In such case, this Agreement shall terminate and neither party hereto shall have any further obligation to the other.

17. Antidiscrimination During Construction. Participant, for itself and its successors and assigns, agrees that in the rehabilitation and/or construction of improvements on the Project Site provided for in this Agreement, the Participant will not discriminate against any employee or applicant for employment because of race, color,

religion, sex, sexual orientation, gender identity/expression, national origin or ancestry, marital status, age, or physical disability.

18. Compliance with Laws. Participant agrees to comply with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, all conditions imposed by the city of Ketchum through its planning and zoning land use approval process and building permit approval process. Should the Participant not comply with the requirements set forth in the preceding sentence, the Agency shall no longer be obligated to provide the Participant reimbursement as set forth in this Agreement.

19. Warranty on Improvement Project. Participant warrants that the materials and workmanship employed in the construction of the Improvement Project shall be good and sound and shall conform to generally accepted standards within the construction industry. Such warranty shall extend for a period of one (1) year after acceptance of the Improvement Project by Agency, 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. The one-year warranty period does not constitute a limitation period with respect to the enforcement of Participant's other obligations under the Agreement.

20. Maintenance. Participant recognizes Agency has no specific authority to accept maintenance responsibility of the Improvement Project and that no agreement has been reached with Agency to accept any maintenance obligations for the Improvement Project. Provided however, that this Section shall not limit or modify any obligation that Agency assumes or may assume in the future pursuant to a separate agreement.

21. Insurance Requirements. Participant shall, or through its contractor, agents, representatives, employees or subcontractors shall, at its sole cost, obtain and maintain in force for the duration of the construction of the improvements to the Project Site as part of the Improvement Project, insurance of the following types, with limits not less than those set forth below and in a form acceptable to Agency, against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Participant, its agents, representatives, employees or subcontractors:

- a. Commercial General Liability Insurance 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 and City as additional insureds.
- b. Workers' Compensation Insurance, 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. 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.

- c. 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.
- d. 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, property damage covered by Participant's insurance or other insured claims arising out of Participant's performance under this Agreement or construction of the Improvement Project.
- e. Certificates of insurance satisfactory in form to Agency (ACORD form or equivalent) shall be supplied to Agency evidencing that the insurance required above is in force, that, to the extent commercially reasonable, not less than thirty (30) days' written notice will be given to Agency prior to any cancellation or restrictive modification of the policies, and that the waivers of subrogation are in force. 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.
- f. The foregoing insurance coverage shall be primary and noncontributing with respect to any other insurance or self-insurance that may be maintained by Agency. 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.

22. Taxes. Participant shall pay when due all real estate and personal property taxes and assessments assessed and levied on Participant's ownership interest of the Project Site. This provision shall be binding upon Participant's successors or assigns. 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 Agency Reimbursement is dependent on the ad valorem assessment and collection process. Participant expressly acknowledges and understands that the Agency Reimbursement is linked to the tax increment revenue *actually* generated from the Project Site, and in the event insufficient taxes are received by Agency for any reason, including a reduction of the tax levy rate or assessed values less than assumed by Agency and Participant or in the event any tax delinquency or contest of value by

any owner of parcels with the Project Site or by any tenant related to personal property, the actual tax increment received by Agency will be reduced which in turn will result in lower annual payments by Agency to Participant.

23. Exemptions. Participant shall not, without written consent of the Agency, file any application with Blaine County or the state of Idaho which could result in such property tax exemption or property tax abatement, including but not limited to the following:

The Idaho Small Employer Incentive Act of 2005, Chapter 44, Title 63,
Idaho Code
The Idaho Small Employer Growth Incentive Exemption, Idaho Code,
§ 63-606A
New Capital Investment Incentive Act, Chapter 45, Title 63
Idaho Code § 63-602NN, business property tax exemption or similar type
exemption.

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

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.

Agency:

Agency: the urban renewal agency of the City of Ketchum, a public body, corporate and politic

Ed Johnson, Chair

Date: _____

PARTICIPANT:

Mountain Land Design

Dan Devenport
Title: _____

Date _____

Martina Devenport
Title: _____

Date _____

Exhibits

- A: Participant's Project and Improvement Project
- B. Participant's Project Site Map
- C: Schedule of Eligible Costs

EXHIBIT A
PARTICIPANT'S PROJECT AND
IMPROVEMENT PROJECT

Redevelopment of the Project Site located at 111 Washington Avenue consisting of a mixed-use development containing commercial uses, residential uses, and one community housing unit along with common space totaling approximately 12,070 square feet.

The Improvement Project consists of improvements to include heated sidewalks, pavers, and street trees within the right of way.

EXHIBIT B
PARTICIPANT'S PROJECT SITE MAP

EXHIBIT C
SCHEDULE OF ELIGIBLE COSTS

Snow Melted Sidewalk	\$28,980
Street Trees	\$27,500
Paver Sidewalk	\$16,696
Not to exceed	\$73,176