



OWNER PARTICIPATION AGREEMENT

BY AND BETWEEN

THE MOSCOW URBAN RENEWAL AGENCY

AND

GRITMAN MEDICAL PARK LLC

FOR

SOUTH MAIN STREET IMPROVEMENT PROJECT

January 5, 2018

OWNER PARTICIPATION AGREEMENT

THIS OWNER PARTICIPATION AGREEMENT (hereinafter "Agreement") is entered into this 12 day of JANUARY, 2018, by and between the MOSCOW URBAN RENEWAL AGENCY, a public body, corporate and politic (hereinafter "Agency"), organized pursuant to the Idaho Urban Renewal Law of 1965, Title 50, Chapter 20, Idaho Code, as amended (hereinafter the "Law"), and undertaking projects under the authority of the Local Economic Development Act, Title 50, Chapter 29 Idaho Code as amended (hereinafter the "Act"), and GRITMAN MEDICAL PARK LLC, an Idaho Limited Liability Company, whose sole member is Gritman Medical Center, Inc. and Idaho nonprofit corporation, or its assigns (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; and

WHEREAS, the Moscow City Council adopted its Ordinance No. 2008-10 on June 2, 2008, approving the Legacy Crossing Urban Renewal District Redevelopment Plan (hereinafter the "Urban Renewal Plan"); and

WHEREAS, Participant owns and controls the real property located at 803 S. Main Street, Moscow, Idaho, Assessor's Parcel Number RPM0200003001B & RPM00000180145, upon which Participant is constructing improvements and investing significant resources in developing its property; and

WHEREAS, in order to complement the newly constructed building improvements on the property, Participant desires to make improvements to the adjacent public infrastructure, including street reconstruction, improvements to sidewalks, curbs, gutters, street lighting, storm drainage and landscaping improvements, such as the addition of street trees (hereinafter referred to as the "Project" as defined below); and

WHEREAS, Participant has worked with the City of Moscow to develop a design for the Project and to secure the City's partial financial participation in the Project; and

WHEREAS, Section 504 of the Urban Renewal Plan authorizes Agency to use revenue allocation financing to fund specific projects and improvements to implement the Urban Renewal Plan;

WHEREAS, said Project implements several objectives outlined in Section 302 of the Urban Renewal Plan;

WHEREAS, Section 303 of the Urban Renewal Plan authorizes Agency to enter into Owner Participation Agreements to implement the Urban Renewal Plan;

WHEREAS, as a result of Participant's commitment to proceed with the Project and to construct public improvements in the public right-of-way which will enhance public access, safety, aesthetics, and environmental and economic well-being, 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, by entering into this Agreement and complying with its terms, Agency finds that Participant has complied with the provisions and requirements of the Urban Renewal Plan;

WHEREAS, the Agency Board, at its September 15, 2016 Board meeting, approved the Project Term Sheet, a copy of which is attached hereto as Attachment 1 (Term Sheet);

WHEREAS, the Agency Board, at its September 15, 2016 Board meeting, adopted Resolution No. 2016-05 authorizing the Chair of the Agency Board to execute this Agreement and related Promissory Note on behalf of the Agency.

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 the completion of all obligations of each Party, subject to the following: To be eligible for reimbursement under this Agreement, Participant must complete construction of the Project within eighteen (18) months from the Effective Date. Provided if Participant is diligently constructing the Project, upon written request by Participant, Agency shall grant one extension for a period not to exceed twelve (12) months which consent shall not be unreasonably withheld, conditioned, or delayed.

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 intended to constitute a grant of Agency funds and not be deemed a gift or donation of public funds.

The purpose of this Agreement is to effectuate the Urban Renewal Plan and a portion of the Legacy Crossing Urban Renewal District by providing necessary improvements to the public infrastructure within the Legacy Crossing Urban Renewal District.

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

B. The Plan

This Agreement is subject to the provisions of the Legacy Crossing Urban Renewal District Redevelopment Plan as adopted by the Moscow City Council through its Ordinance No. 2008-10 on June 2, 2008.

C. The Project Area

The Urban Renewal Project Area (Project Area) is located in the City of Moscow, and the exact boundaries of the Project Area are more specifically described in the Urban Renewal Plan.

D. The Project

The Project shall mean the development within the Project Area undertaken by Participant or its successors or assigns upon the public right-of-way adjacent to 803 S. Main Street. The Project consists of public improvements contained and contemplated in the "Project Design Diagram" attached to this Agreement as Attachment 2 which is incorporated herein by reference, and as more particularly described in the "Project Description," attached hereto as Attachment 3 which is incorporated herein by reference, including, but not limited to: street, sidewalk and curb demolition and reconstruction, installation of street lighting, installation of tree wells and tree grates and planting of street trees. The Project shall comply with all the provisions of the Urban Renewal Plan and all applicable City building and zoning ordinances.

E. The City

The term City as used herein shall be the City of Moscow, Idaho.

F. 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 the Project is as set forth herein.

G. 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 Law and the Act. The office of the Agency is located at 221 East Second Street, Moscow, Idaho. "Agency," as used in this Agreement, includes the Moscow Urban Renewal Agency and any assignee of or successor to its rights, powers, and responsibilities.

2. Participant

The Participant is Gritman Medical Park, an Idaho Limited Liability Company. The principal address of the Participant is 700 S. Main Street, Moscow, Idaho, 83843.

Whenever the term "Participant" is used herein, such term shall include any permitted nominee, assignee, or successor in interest as herein provided. The Participant qualifies as an "owner participant" as that term is used in the Urban Renewal Plan.

H. City Agreements and Approvals

City Agreements shall mean those certain agreements between Participant and City concerning, among other things, financial participation by the City in the Project, any required demolition permits or building permits, official review and approval by City for development of the Project.

Any default by Participant not cured within any cure period set forth in the agreements or approvals described above, shall constitute a default under this Agreement, with the Agency reserving any of its rights and remedies under this Agreement concerning default.

I. Funding of Project Improvements

In consideration of the terms of this Agreement, Agency agrees that certain of the Project costs may be eligible for reimbursement by the Agency in conformance with this Agreement. Such improvements are described in Attachment 4A of this Agreement and as further defined below.

- Actual costs incurred by Participant for Project construction, which costs are not funded by the City, any grants or other governmental financial sources. Such costs shall not exceed SIX HUNDRED THOUSAND DOLLARS (\$600,000.00).

The Agency expects that the Participant will provide funds, together with certain contributed funds, if any, which will be sufficient to pay in full the costs of construction for the Project. The Agency does reserve the right to certify all Project costs prior to

issuance of any Agency funds per this Agreement, to assure the reasonableness of such costs, to verify the costs incurred, and to assure such expenditures by the Agency achieve the Agency's objectives and compliance with the Law and any other applicable statutory provisions. The Agency may rely upon a schedule of values or other similar construction or engineering references to determine the reasonableness of the costs incurred. The Agency acknowledges it approves the design and specifications of the Project.

The Agency shall commence to reimburse Participant upon receipt of acceptance of the Project by the City of Moscow and any other state or local agencies having jurisdiction, and delivery of an itemized statement by Participant to the Agency setting forth in detail the total amount of the costs for which the Agency is responsible. Such reimbursement shall be subject to the availability of funds as contained herein.

The participation of Agency in the funding of the Project will be based on the verification of the costs of such improvements as set forth in Section III (I). Agency must be satisfied that the cost of such improvements is reasonable given the market conditions and usual and customary costs for the Project improvements. Such costs must be reasonable in light of the costs normally encountered for such development.

III. PROJECT IMPROVEMENT AND AGENCY'S PARTICIPATION

A. Project Improvements by Participant.

Participant represents that the Project will fully comply with the Urban Renewal Plan, the "Project Design Diagram" attached to this Agreement as Attachment 2, the "Project Description" attached to this Agreement as Attachment 3, and with requirements of City.

B. Cost of Construction

The cost of the Project improvements shall be borne by the Participant. Certain of the Project costs may be eligible for reimbursement by the Agency in conformance with this Agreement.

C. Agency, City, and Other Governmental Agency Permits

Participant 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.

D. Improvements by the Agency

As a result of the proposed Project, there will be improved infrastructure, which will consist of public improvements contained and contemplated in the "Project Design Diagram" (Attachment 2) and the "Project Description," (Attachment 3), including, but not limited

to: street, curbing, and sidewalk demolition and reconstruction, installation of street lighting, installation of tree wells and tree grates and planting of street trees.

Agency specifically finds and determines that the improvements are directly related to public facilities and when constructed will provide a higher quality of development that should assist Agency in achieving redevelopment of adjacent properties in the Project Area, and meeting the objectives of the Urban Renewal Plan. Because of Participant's improvements to the real property located at 803 S. Main Street, Moscow, Idaho, which achieves several of the objectives contained within the Urban Renewal Plan, Agency finds that a portion of the Project improvements may be funded by the Agency. Agency finds that the Project is in the best public interest and provides for enhanced development of adjacent properties within the Project Area.

E. Indemnification

Participant shall indemnify and hold Agency, City, and their respective officers, agents, and employees 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 as "Claim"), which may be imposed upon or incurred by or asserted against Agency, City, or their respective officers, agents, and employees by reason of any of the following occurrences during the term of this Agreement including, but not limited to:

1. Relating to the construction or design of the Project;
2. Any negligence on the part of Participant or any of its agents, contractors, servants, employees, subtenants, operators, licensees, or invitees; or
3. Any accident, injury, or damage to any person or property occurring in, on, or about the Project or any part thereof; or
4. 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.

Notwithstanding the foregoing, Participant shall have no obligation to indemnify and hold Agency or City, respectively, and their respective officers, agents, and employees harmless from and against any matter to the extent it arises from the active negligence or willful act of Agency or City, respectively, or their respective officers, agents, or employees.

In case any claim, action or proceeding is brought against Agency, City, or their respective officers, agents, and employees by reason of any such claim, Participant, upon written notice from Agency or City, shall, at Participant's expense, resist or defend such claim, action or proceeding.

F. Antidiscrimination during Construction

The Participant, for itself and its successors and assigns, agrees that in pursuit and construction of the Project provided for in this Agreement, the Participant will not discriminate against any employee or applicant for employment because of race, age, color, creed, religion, sex, marital status, ancestry, or national origin.

G. Approvals

Participant shall be responsible for obtaining any required approvals of the City or any other state or local agency having jurisdiction, for the installation and construction of the Project. Participant shall keep Agency advised of the status of the approval process and shall advise Agency immediately if any such approvals shall effect the scope and purpose of this Agreement. The Project shall be designed, constructed, and installed in keeping with all applicable City standards.

H. Proof of Agency Financing

Agency's funding mechanism for its financial participation in Project shall be by way of advance of funds by Participant (hereinafter the "Participant Advance"). Participant has agreed to fund the Project through its independent resources and/or financing. Agency agrees to reimburse and repay the Participant for such advance as described herein. As used herein, the term "Agency Financing" shall mean the Participant Advance.

Because the Agency has no currently available funds and the ability to issue bonds is conditioned, in part, on the Participant's successful completion of the Project and its improvements to the adjacent building located at 803 S. Main Street (thus creating revenue allocation or tax increment funds), Agency is unable to directly finance a portion of the Project. The Participant, in order to enhance its development, has agreed to undertake the Project. In consideration of this activity by the Participant, Agency agrees to reimburse the Participant for a portion of the Project improvements subject to the verification of Costs in an amount not to exceed SIX HUNDRED THOUSAND DOLLARS (\$600,000.00), as set forth in Attachment 4A of this Agreement. Agency agrees to issue its Limited Recourse Promissory Note upon the completion of the Project and its acceptance by the City of Moscow and any other state or local agency having jurisdiction and verification of costs as set forth herein, with such form of note set out in Attachment 4B of this Agreement.

The Participant has agreed to advance funds for the Project. This Participant Advance shall be repaid by the Agency through an amount of fifty percent (50%) of revenue allocation (tax increment) funds actually received specifically from the land and improvements located at 803 S. Main Street, Moscow, Idaho, also identified as Assessor's Parcel Number RPM0200003001B & RPM00000180145. Such Participant Advance shall be defined by the Limited Recourse Promissory Note, the form of which is attached hereto as Attachment 4B. The Participant Advance shall be repaid without interest. Agency reserves the right to prepay all or any portion of the Limited Recourse Promissory Note at any time by payment of the then principal amount. Agency shall disburse revenue allocation (tax

increment) proceeds from 803 S. Main Street, Moscow, Idaho beginning with the first receipt of revenue allocation from Latah County after completion of the Project and acceptance of the same as required by this Agreement.

Participant and Agency contemplate the full reimbursement of the Participant Advance no later than December 31, 2032.

It is the specific intent of the parties that the Limited Recourse Promissory Note shall be paid from the tax increment monies, if any, which are paid or are payable to the Agency as a direct result of the land and improvements located at 803 S. Main Street, Moscow, Idaho. If, for any reason, the tax increment monies anticipated to be received by Agency as a direct result of the land and improvements located at 803 S. Main Street, Moscow, Idaho are unpaid, reduced, curtailed, or limited in any way by enactments, initiative, referendum, delinquency, or judicial decree, the Agency shall have no obligation to pay the tax increment obligation to the Participant as described in this Agreement from other sources or monies which Agency has or might hereinafter receive. Because of the limitation on available funds, no amortization schedule shall be prepared or used by the Parties. Rather, Agency's obligation is to pay the fifty percent (50%) of the tax increment monies received as described herein, from the time period specified or until the principal amount is paid, whichever occurs first. Agency's obligation shall only be to pay the above-described percentages of the amounts of tax increment monies received by Agency from the Project, notwithstanding said amount may be reduced, curtailed, or limited in any way, and there shall be no amounts added to the principal in the event the tax increment monies are reduced, curtailed, or limited in any way. Agency shall commence such payment pursuant to Section 5 of Exhibit 1 of the Promissory Note, after completion of the Project and acceptance of the Project improvements by the City of Moscow and any other state or local agency having jurisdiction and shall continue such payments until the final principal amount, as determined be the Verification of Costs (in an amount not to exceed SIX HUNDRED THOUSAND DOLLARS (\$600,000.00)), has been paid, or as of December 31, 2032, whichever occurs first.

I. Cost Certification, Agency Verification, and Agency Participation

I. Cost Certification

When the Project improvements have been accepted by the City of Moscow and any other state or local agency having jurisdiction, the Participant shall then submit to Agency an itemized list of Project costs Participant seeks Agency to reimburse. Such reimbursement request shall be made in the form of a Certification of Costs which shall require the Participant to certify actual costs. Agency shall review the Certification of Costs and issue a written Verification of Costs Statement to the Participant. If Agency disputes the Certification of Costs, Agency shall be responsible for the costs of submitting its response and corrected Certification of Costs to the Participant. If the Participant and Agency cannot thereafter agree upon the Certification of Costs, they shall invoke the dispute resolution process set forth in this Agreement.

2. Warranty

Participant warrants that the materials and workmanship employed in the construction of the Project shall be of good quality and shall conform to generally accepted standards within the construction industry. Such warranty shall extend for a period of eighteen (18) months after completion of the Project and shall be independent of any other warranties required by the City of Moscow or any other state or local agency having jurisdiction.

3. Payment of Verified Costs

Agency shall pay only for those costs which are confirmed and verified by the Verification of Costs Statement as set forth in Subsection 1 above.

4. Amount of Participation by Agency

The exact amount of the participation by Agency shall be determined by the Verification of Costs Statement issued by Agency, provided that the total amount of participation by Agency shall not exceed SIX HUNDRED THOUSAND DOLLARS (\$600,000.00). Once the final participation amount is determined through the Verification of Costs process, the amount shall be reflected in the Limited Recourse Promissory Note (Attachment 4B), at which time the Note shall be issued and presented to the Participant.

J. Maintenance

The Participant recognizes Agency has no specific authority to accept maintenance responsibility of the Project improvements and that no agreement has been reached with Agency or City to accept any maintenance obligations for the Project improvements. Once the Project improvements have been completed, Participant shall have no obligation to maintain the Project Improvements.

IV. USE AND MAINTENANCE OF THE PROJECT SITE AND ADJACENT AREA

A. Agreement to Comply with Plan

Subject to its entitlements and permits obtained to develop the Project, Participant agrees and covenants to comply with all other provisions and conditions of the Urban Renewal Plan for the period of time such plan is in force and effect.

B. 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 property as part of the Project, insurance of the following types, with limits not less than those set forth below and in a form reasonably

acceptable to Agency, against claims for injuries to persons or damages to property which may arise from, or in connection with, the construction of the Project by Participant, its agents, representatives, employees or subcontractors:

1. Commercial General Liability Insurance ("Occurrence Form") with a minimum combined single limit liability of \$1,000,000 per 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, 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.
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, 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 and not as the result of the active negligence or willful act of Agency or City or its respective officers, agents, or employees.
5. Prior to the commencement of the construction of the Project, 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. At such time, 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 within a reasonable time of such request.

6. 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.

C. Obligation to Refrain From Discrimination

Participant covenants and agrees for itself, its successors and assigns, that there shall be no discrimination against or segregation of any person or group of persons on account of race, age, color, creed, religion, sex, marital status, handicap, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the improvements located at 803 S. Main Street, Moscow, Idaho, nor shall the Participant or any person claiming under or through the Participant 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 improvements located at 803 S. Main Street, Moscow, Idaho. The foregoing covenants shall run with the land and shall remain in effect in perpetuity.

D. Local, State and Federal Laws

Participant shall carry out the construction of the Project improvements in conformity with all applicable laws, including all applicable federal and state labor standards.

E. Taxes

1. Taxes Generally

Participant shall pay when due all real estate and personal property taxes and assessments assessed and levied on Participant's ownership of the site.

2. Delinquent Taxes

Participant recognizes the 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 Participant Advance is dependent on the ad valorem assessment and collection process. Therefore, in the event insufficient taxes are received by Agency because of non-payment, 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 Participant or its successors or assigns to its interests in the land and improvements located at 803 S. Main Street, Moscow, Idaho, 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 Participant Advance, but in no event shall Participant

receive more than fifty percent (50%) of the incremental taxes actually received by Agency from the site.

V. DEFAULTS, 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. 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. Notwithstanding the above and stated in this Agreement, in no event shall either Party be entitled to consequential damages.
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, seek reimbursement of the grant funds.

B. 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. Venue for such legal actions is the District Court of the County of Latah, State of Idaho. The nondefaulting party may also,

at its option, cure the default and sue to collect the attorney's fees and costs incurred by virtue of curing or correcting the Party's breach.

1. Applicable Law

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

2. Acceptance of Service of Process

In the event any legal action is commenced by Participant against Agency, service of process on Agency shall be made by personal service upon the Executive Director of Agency or in such other manner as may be provided by law.

In the event any legal action is commenced by Agency against Participant, service of process on Participant shall be made by personal service upon Participant or in such other manner as may be provided by law and shall be valid whether made within or without the State of Idaho.

C. 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.

D. Damages

If Agency or Participant defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice as contained herein. If the default is not cured or commenced to be cured by the defaulting party within forty-five (45) days after service of the notice of default, the defaulting party shall be liable to the other party for any damages caused by such default.

E. Specific Performance

If Agency or Participant defaults under any of the provisions of this Agreement, the nondefaulting Party shall serve written notice of such default upon the defaulting Party. If the default is not commenced to be cured by the defaulting party within sixty (60) days of service of the notice of default, the nondefaulting Party, at the non-defaulting Party's option, may institute an action for specific performance of the terms of this Agreement or for other equitable relief.

VI. GENERAL PROVISIONS

A. Notices, Demands, and Communications between the Parties

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

B. Conflicts of Interest

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

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

C. Non-liability of Agency Officials and Employees

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

D. Successors and Assigns

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

E. Attorney Fees and Costs

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

F. Severability

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

G. Headings

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

H. Counterparts

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

I. 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 Idaho or the surrounding region 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.

J. 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.

K. 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 Project.

L. 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 constitute the entire understanding and agreement of the parties.

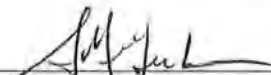
This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter thereof.

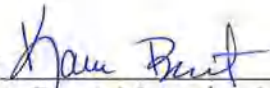
All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Agency and Participant, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and Participant.

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.

DATED this 12th day of January, 2018.

Moscow Urban Renewal Agency ("Agency")

By 
Steve McGeehan, Chair
Moscow Urban Renewal Agency ("Agency")

By 
Kara Besst, Managing Member
Gritman Medical Park LLC ("Participant")

ACKNOWLEDGMENTS

STATE OF IDAHO)
) ss.
 County of Latah)

On this 24th day of January, 2018, before me, Annel Peterson, the undersigned notary public in and for said county and state, personally appeared Steve McGeehan, known or identified to me to be the Chairman of the Moscow 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 the governing board of such Agency authorized 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.



Annel Peterson
 Residing at Moscow Idaho
 Commission Expires 8-27-18

STATE OF IDAHO)
) ss.
 County of Latah)

On this 12 day of January, 2018, before me, Danielle Bredt, the undersigned notary public in and for said county and state, personally appeared Kara Besst, known or identified to me to be Managing Member of Gritman Medical Park LLC, and the person who signed the within instrument, and acknowledged to me that he/she has authority to execute and executed the foregoing instrument for the purposes therein 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.



Danielle Bredt
 Residing at Latah County - Moscow, ID
 Commission Expires 11-21-2020

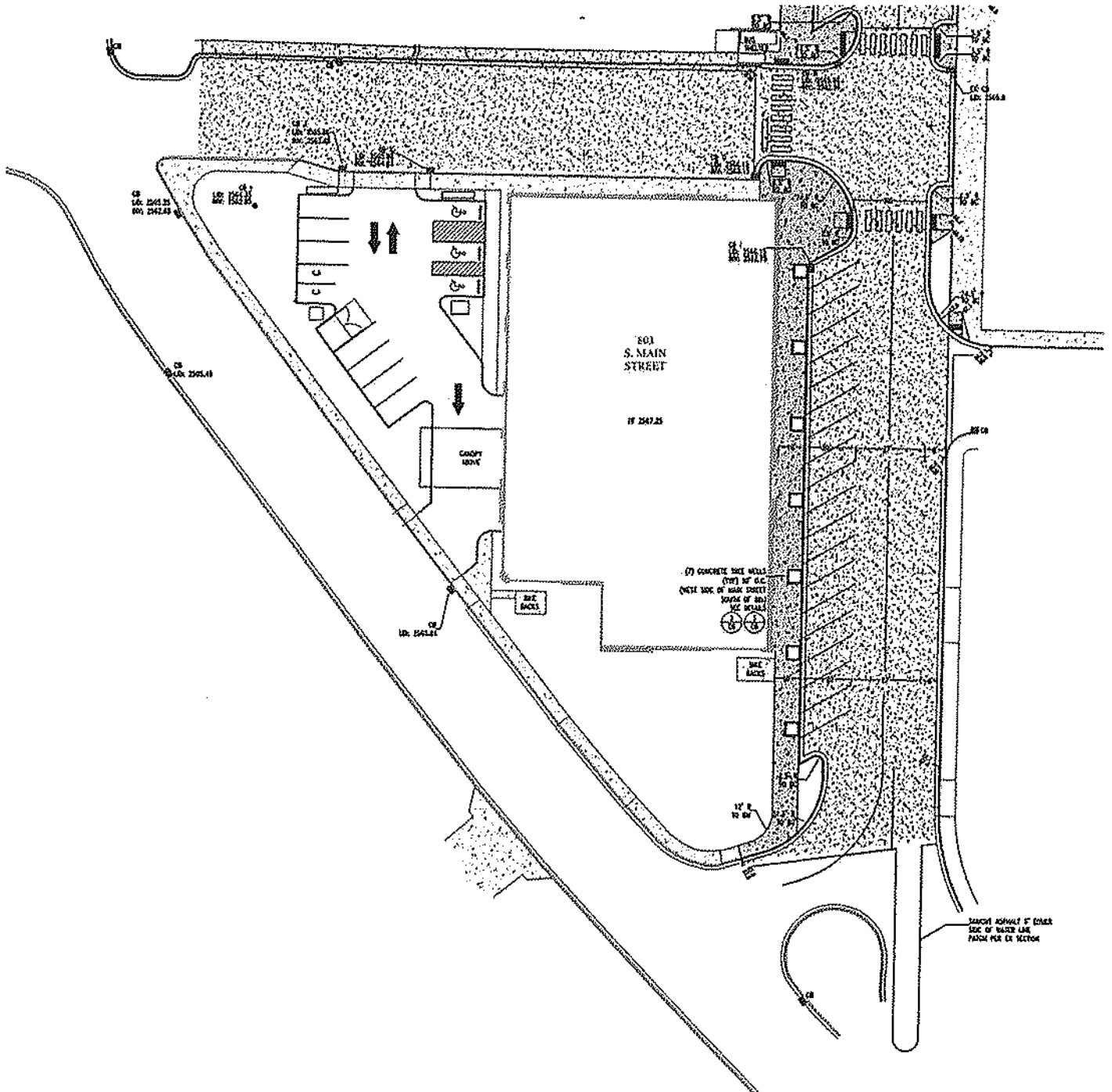
Attachment 1

Project Term Sheet

South Main Improvement Project Term Sheet	
Project Costs	
Main Street (south of northerly right-of-way of 8th Street) curbing, street, and sidewalk demolition, new curbing, driveway approaches, sidewalks, concrete street surface, street trees and storm drainage improvements	\$ 332,196.00
Eighth Street (west of Main Street) curbing, street, and sidewalk demolition, new curbing, driveway approaches, sidewalks, concrete street surface, street trees and storm drainage improvements	\$ 169,786.00
Jackson Sidewalk (west side of Jackson)	\$ 32,116.00
Fiber Optic Installation	\$ 29,500.00
Contingency	\$ 36,402.00
Total Improvement Project Cost	\$ 600,000.00

Attachment 2

Project Design Diagram



Attachment 3

Project Description

The purpose of the project is to improve motor vehicle and pedestrian facilities, enhance ADA compliance and improve the general condition and appearance of all public street and sidewalk infrastructure in the area surrounding 803 S. Main Street. This project includes demolition, removal and replacement of roadway surfacing, curbing and sidewalks located south of the northerly 8th Street right-of-way boundary and west of the easterly Main Street right-of-way boundary, being that portion of the larger South Main Street Improvement Project located within the Legacy Crossing Urban Renewal District boundary.

The work involves the removal of 165 square yards of deteriorated sidewalk, 24,176 square feet of roadway surface and base and the construction of 839 linear feet of curbing, 630 square yards of new sidewalks, 25,136 square feet of new concrete roadway, drainage improvements, 6 ADA compliant pedestrian ramps, 7 street trees, 11 new historical style street lights, and public art sculpture plinths as shown in Attachment 2.

Attachment 4

Agency Reimbursement of Project Improvement Costs

Generally, the objective of the funding of a portion of the Project improvements is to fund those activities, which comply with the eligibility criteria set forth in the Idaho Urban Renewal Law of 1965, Title 50, Chapter 20, Idaho Code, as amended (the "Law"), the Idaho Economic Development Act, Title 50, Chapter 29, Idaho Code, as amended (the "Act"), and the objectives of the Urban Renewal Plan. The extent and amount of such activities and funding by the Agency shall be determined as the Project is constructed. Such determination will be based upon the eligibility of those activities under the statutes and Urban Renewal Plan described above and the reasonable expenses for such activity. Agency and Participant shall review such activities prior to their construction and provide a written record of the determination. The specific activities identified for potential funding through this Owner Participation Agreement and their estimated cost estimates are as follows: street, curb and sidewalk demolition and reconstruction, installation of street lighting, installation of tree wells and tree grates and planting of street trees.

Agency's commitment shall be limited to eligible activities authorized by the Law, the Act, and the Urban Renewal Plan, as well as the reasonable costs of such activity as more particularly described above. The amount of funding by Agency for such activities and improvements set forth above shall be limited to a determination of the amount of tax increment received from the improvements located at 803 S. Main Street, Moscow, Idaho with the limitation (unless Agency, in its sole discretion, determines to use other proceeds available to it for such purpose) of committing no more than fifty percent (50%) of revenue allocation (tax increment) funds actually received specifically from the land and improvements located at 803 S. Main Street, Moscow, Idaho as more particularly defined in the Owner Participation Agreement. Provided, further, Agency's commitment in no event shall exceed and amount of SIX HUNDRED THOUSAND DOLLARS (\$600,000.00).

Attachment 4A

Agency Funding of Project

1. The Project consists of public improvements contained and contemplated in the "Project Design Diagram" attached to this Agreement as Attachment 2 and as more particularly described in the "Project Description," attached hereto as Attachment 3, including, but not limited to: street, curb and sidewalk demolition and reconstruction, installation of street lighting, installation of tree wells and tree grates and planting of street trees. Total Agency reimbursement shall not exceed SIX HUNDRED THOUSAND DOLLARS (\$600,000.00).

LIMITED RECOURSE PROMISSORY NOTE

This Limited Recourse Promissory Note (the "Note") is entered into as of the _____ day of _____, 2018, between the MOSCOW URBAN RENEWAL AGENCY, a public body, corporate and politic, organized and existing under the Idaho Urban Renewal Law of 1965, Chapter 20, Title 50, Idaho Code, as amended (the "Law") and the Local Economic Development Act, Chapter 29, Title 50, Idaho Code, as amended (the "Act") ("Borrower"), and Gritman Medical Park LLC ("Lender").

WITNESSETH:

For One Dollar (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender hereby agree as follows:

1. Definitions. As used in this Note, the following terms shall have the indicated meanings:

(a) "Agreement" means that Owner Participation Agreement between Borrower and Lender dated September ____, 2018.

(b) "Private Development" means the new development initiated and completed by Lender consisting of the land and improvements located at 803 S. Main Street, Moscow, Idaho as defined in the Agreement which generates additional assessed value and ad valorem taxes in excess of the base value, and for purposes of this Note is fifty percent (50%) of the revenue allocation (tax increment) funds actually received specifically from the land and improvements located at 803 S. Main Street, Moscow, Idaho.

(c) "Resolution" means Resolution No. _____, adopted by the Borrower on September 15, 2016, and as supplemented or restated, pursuant to which this Note was authorized.

(d) "Revenue Allocation Area" means all taxable real and personal property within the Urban Renewal Project Area as described in the Urban Renewal Plan as adopted by the Moscow Urban Renewal Agency and approved by the Mayor and the City Council of the City of Moscow, Idaho.

(e) "Urban Renewal Plan" shall mean that certain document entitled "Legacy Crossing Urban Renewal District Redevelopment Plan" adopted by the City pursuant to the Act and City Ordinance and as amended from time to time.

(f) "Urban Renewal Project" means the Project improvements and other costs identified in the Urban Renewal Plan, including design, engineering, consulting, insurance, audit, planning, and administration costs of the Borrower.

2. **Promise to Pay.** Borrower promises to pay in lawful money of the United States of America, to the order of Lender, at such place as Lender may from time to time designate, the principal sum not to exceed SIX HUNDRED THOUSAND DOLLARS (\$600,000.00), upon completion of the Project Improvements and Verification of Costs as defined in the executed Agreement, and continuing until December 31, 2032. The principal sum shall bear no interest.

In conjunction with its receipt of revenue allocation proceeds from the Private Development, the Agency agrees to make semi-annual payments of fifty percent (50%) of the tax revenue allocation proceeds from the Private Development as defined in subsection 1(b), commencing from the first date the Agency receives tax increment monies received specifically from the land and improvements located at 803 S. Main Street, Moscow, Idaho, until the principal amount of SIX HUNDRED THOUSAND DOLLARS (\$600,000.00), has been paid, or December 31, 2032, whichever occurs first. Agency shall have no obligation to make tax increment payments to the Participant for taxes collected and paid to Agency from the Private Development beyond the term described herein.

Borrower may redeem, at any time, in whole or in part, without penalty, the then principal amount outstanding.

3. **Default.** Provided that Borrower has received revenue allocation proceeds from the Private Development sufficient to make semi-annual payments of fifty percent (50%) of the tax revenue allocation proceeds from the Private Development, if any payment required under this Note is not made when due and within forty-five (45) days after notice is given by Lender to Borrower that the same is due, the entire unpaid principal balance hereof, shall, at the option of the Lender, become due and payable without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by Borrower and all endorsers, guarantors, sureties, accommodation parties, and other persons at any time liable for all or any portion of the indebtedness evidenced hereby
4. **Limited Recourse, Collection of Revenue Allocation.** Notwithstanding anything contained in this Note to the contrary, the recourse of Lender for payment of any amounts due hereunder shall be limited solely to fifty (50%) of the revenue allocation proceeds, from the Private Development, as the same are generated from time to time for the period necessary to obtain full payment of all principal payable under this Note. As of December 31, 2032 (or earlier period if redeemed), and upon Borrower's performance of its obligations to receive and disburse revenue allocation generated during such periods to Lender, Lender's obligations under this Note shall cease, and said Note shall be deemed canceled and fully satisfied. In any event, Lender shall not be entitled to receive more than the outstanding principal balance of this Note. The Borrower's obligations hereunder are specifically limited to the obligations contained in Exhibit I attached hereto and incorporated herein by reference.
5. **Assignment of Revenue Allocation.** Borrower hereby absolutely, unconditionally, and irrevocably transfers, assigns, and sets over to Lender fifty percent (50%) of the tax revenue allocation proceeds from the Private Development for the term of this Note until such time

as all such amounts due hereon are paid in full, or until December 31, 2032, whichever is earlier.

6. **Non-general Obligation.** As provided by Idaho Code Section 50-2910, the obligations of Borrower hereunder shall not constitute a general obligation or debt of the Borrower, the State of Idaho, or any of its political subdivision or give rise to a charge against their general credit or taxing powers to be payable out of any funds or properties other than the monies deposited in the special fund or funds provided for herein and pledged hereby to the payment of principal on this Note.
7. **Miscellaneous.** Time is of the essence with respect to all obligations of the parties hereunder. The unenforceability or invalidity of any provisions hereof shall not affect the enforceability or validity of any other provisions hereof. The terms hereof shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. This Note is delivered in Moscow, Idaho, and shall be governed by Idaho law.
8. **General Provisions.** Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower, to the extent allowed by law, waives presentment, demand for payment, protest, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, Borrower shall not be released from liability.
9. **Subordination.** Lender specifically acknowledges, recognizes, and consents to the subordination of this Note to Agency's other obligations as listed herein:
 - Legacy Crossing Bond Series 2010
 - Obligation to Latah County for Reimbursement of Tax Increment Revenues per the Release Settlement Agreement

IN WITNESS WHEREOF, this Note has been entered into as of the date and year first above written.

BORROWER:
MOSCOW URBAN RENEWAL AGENCY

By: _____
Steve McGeehan, MURA Chair

ATTEST:

By: _____
Anne Peterson, MURA Clerk

LENDER:
GRITMAN MEDICAL PARK LLC

By: _____
Kara Besst, Managing Member

Exhibit 1 to the Promissory Note

Description of Financing of Project Improvements

A. Obligation of the Agency to Pay Participant Revenue Allocation (Tax Increment) Proceeds

The Agency covenants and agrees to pay to the Participant a portion of the revenue allocation (tax increment) monies which the Agency shall actually receive specifically from the land and improvements located at 803 S. Main Street, Moscow, Idaho following the construction of the Project by the Participant according to the terms and conditions described herein. The revenue allocation proceeds are to be used to reimburse the Participant for the eligible costs of the Project, which the Participant has agreed to construct as described within this Agreement.

1. Tax Increment Monies Are Sole Source of Agency Funding

Agency and Participant agree that the only source of monies available to Agency to pay the Participant herein described are the revenue allocation proceeds to be received by Agency from the Private Development within the Project Area based upon the value of the Private Development to be constructed by Participant. Only the revenue allocation proceeds from the Private Development Site shall be used to make the payments due under this provision of the Agreement. No payments shall be made by Agency to Participant from other revenue allocation proceeds which Agency may receive from time to time from other portions of the Project Area or other redevelopment project areas which have been or may hereinafter be established, designated, or adopted by Agency and City at some future time.

2. Contingencies of Payment

Participant understands that Agency is entitled to receive revenue allocation proceeds pursuant to Idaho Code § 50-2908, which are to be paid to the Agency by Latah County. Participant understands that the revenue allocation proceeds shall become available to Agency only if and when the Private Development to be constructed by Participant on the Site is completed and has a current year assessed value which is greater than the assessed value of the Project Area "base year" established at the time the Urban Renewal Plan was adopted. Participant further understands that Agency is not a taxing agency under Idaho law, has no power to levy a property tax on real or personal property located within the Project Area, or to set a mill levy or rate of tax levy on real or personal property within the Site. Agency is entitled to receive tax increment funds from the Site for the period established by the Law, the Act, and the Urban Renewal Plan. Participant has investigated the provisions of Idaho laws governing the receipt of revenue allocation proceeds by Agency and assumes all risk that the anticipated revenue allocation proceeds derived from the Private Development to be constructed by Participant on the Site and in conformance with the Urban Renewal Plan will be paid to Agency and, if paid, that the amount of revenue allocation proceeds will be sufficient to repay the obligation of Agency to Participant according to the terms and conditions contained in this Agreement. Participant further assumes

the risk that no changes or amendments will be made in the provisions of the Law, the Act, or other tax statutes which would affect or impair either Agency's right or ability to receive the aforesaid revenue allocation proceeds and to pay the indebtedness created by execution of the Agreement, the length of time said monies can be received, or the percentage or the amount of the revenue allocation proceeds paid to or anticipated to be received by Agency based upon the current statutes.

3. Limitation on Making Payments

It is the intention of the parties that Participant shall only be paid from the revenue allocation proceeds, if any, which are paid or are payable to Agency as a direct result of the Private Development constructed by the Participant on the Site. If, for any reason, the revenue allocation proceeds anticipated to be received by Agency as a direct result of the Private Development to be constructed by Participant on the Site are reduced, curtailed, or limited in any way by enactments, initiative referendum, or judicial decree, Agency shall have no obligation to pay the tax increment obligation to Participant as described in this Agreement from other sources or monies which Agency has or might hereinafter receive.

4. Percentage of Tax Increment Payment

Agency agrees to pay to Participant fifty percent (50%) of the revenue allocation proceeds received by Agency from the Private Development Site, which Agency receives as set forth in the Act, Agency adopted policy, or Urban Renewal Plan, commencing upon receipt of revenue allocation proceeds received by Agency from the Private Development Site, after the completion, acceptance, and verification of the of the Agency Funded Public Improvements, the Private Development, and fifty percent (50%) thereafter for a period through December 31, 2032, or until the principal amount is retired, whichever occurs first. Because of the limitation on available funds, no amortization schedule shall be prepared or used by the parties. Rather, Agency's obligation is to pay Participant fifty percent (50%) of the overall revenue allocation proceeds as actually received specifically from the Private Development Site, which Agency receives as set forth in the Act, Agency adopted policy, or the Urban Renewal Plan, for the time period specified or until the principal amount is paid, whichever occurs first. Agency's obligation to Participant shall only be to pay above-described percentages of the amounts of revenue allocation proceeds received by Agency, notwithstanding said amount may be reduced, curtailed, or limited in any way, and there shall be no interest, compounding of interest or amounts added to the principal in the event the revenue allocation proceeds are reduced, curtailed or limited in any way.

5. Time and Terms of Tax Increment Payments

a. For any funds to which Participant is entitled, the payments received each year by Agency from the ad valorem taxes paid by taxpayers to the County Treasurer on the Site shall be paid to Participant within thirty (30) days following receipt of said funds by Agency. Agency anticipates receipt of these funds in January and July of each year from the ad valorem taxes paid by property owners each year.

b. The Act, as amended, provides that Agency will be paid tax increment funds contingent on the amount of assessed value as determined by the Latah 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 Latah County Assessor.

c. The revenue allocation proceeds resulting from the incremental increase in assessed value of the Site as a result of the construction of the Private Development on the Site by Participant (as determined from the assessment records of the Latah County Assessor and the payment records of the Latah County Treasurer) shall be paid to Participant if and only as they are paid to Agency by Latah County, the entity which has the legal responsibility to collect property taxes.

d. Agency agrees to make semi-annual payments of the revenue allocation proceeds, commencing from the first date Agency receives tax increment monies from the Site after completion of the components of the Agency Funded Improvements and the associated Private Development for which a Certificate of Completion has been issued for the period as described in the Agreement, or until the principal amount or the amount adjusted, has been paid; whichever occurs first. Agency shall have no obligation to make tax increment payments to Participant for taxes collected and paid to Agency beyond December 31, 2032.

e. The payments to Participant are secured solely by a pledge of Agency of the revenue allocation proceeds that are produced by the Private Development that are constructed on the Site by Participant, and Participant shall have no other recourse to Agency or City and no recourse whatever to any other party for payment.

6. Interest & Fees

Agency shall pay no interest on Participant Advance and shall not be subject to any fees or charges resulting from any activity authorized in this Agreement.

7. Default

As set forth in the Agreement, if the Participant defaults or breaches any of its obligations contained in the Agreement, and does not timely cure such default or breach as provided in the Agreement, or if Participant fails to obtain from the Agency a Certificate of Completion because the Private Development is not timely completed or is not completed according to the approved plans, the obligation to pay Participant the tax increment payment shall be voidable at the option of Agency until such time as the default is cured and/or the Certificate of Completion is issued. Notwithstanding the foregoing, if Participant is using its best efforts to cure any such delay or default and such delay or default is enforced beyond the Participant's control, then the obligation of Agency to pay the tax increment shall not be voidable for so long as Participant is using its best efforts to cure such default or delay.