

## EXCHANGE AGREEMENT FOR REAL PROPERTY

THIS EXCHANGE AGREEMENT FOR REAL PROPERTY ("Agreement") is made and entered into as of \_\_\_\_\_, 2013, by and between The Ketchum Urban Renewal Agency, hereinafter "KURA", and Alex Higgins and Patricia Higgins, husband and wife, Emil Capik and Barbara Capik, husband and wife, Bernard Gratton and Bernette Gratton, hereinafter collectively "CHG".

### RECITALS:

This Agreement is made and entered into with reference to the following facts:

A. Pursuant to Idaho Code Sections 50-2007, 50-2010 and 50-2011 KURA, an Urban Renewal Agency, has the power to acquire, dispose and exchange real property in accordance with the Urban Renewal law; Idaho Code Sections 50-2001 et seq.

B. Idaho Code Sections 67-2322 and 67-2325 provides a specific process for sale or transfer of real or personal property from one unit of government to another. "Such conveyance or transfer may be made without consideration or payment when it is in the best interest of the public in the judgment of the governing body of the granting unit".

C. KURA is the present fee owner of certain real property located at 211 E. First Street, in Ketchum, Idaho, hereinafter the "First Street Property", more particularly described in Exhibit "A" attached hereto and made a part hereof

D. CHG are the present fee owners, as tenants-in-common, of certain real property located at 611-691 2nd Avenue N., in Ketchum, Idaho, hereinafter the "2nd Avenue N. Property", more particularly described in Exhibit "B" attached hereto and made a part hereof.

E. KURA desires to trade its First Street Property for CHG's 2nd Avenue N. Property, and CHG desires to trade its 2nd Avenue N. Property for KURAs First Street Property; provided, that CHG desires only to make a qualified tax deferred exchange of the 2nd Avenue N. Property for the First Street Property pursuant to and in accordance with Section 1031 of the Internal Revenue Code, and the Treasury regulations promulgated thereunder.

F. The parties hereto desire to enter into this written agreement for the exchange of their respective properties as set forth in the Recitals of this agreement.

NOW THEREFORE, in consideration of the mutual covenants, conditions, and agreements set forth herein, KURA and CHG, and each of them, hereby agree as follows:

#### 1. Exchange of Properties.

1.1 Purpose. KURA is exchanging the First Street Property to CHG for the 2nd Avenue N. Property for the purpose of creating community affordable housing on the 2nd Avenue N. Property. KURA agrees to exchange and convey the First Street Property to CHG in consideration of, and in exchange for, the conveyance by CHG to KURA of the 2nd Avenue N. Property.

1.2 Fair Market Value of the Property. The Fair Market Value has been determined pursuant to an appraisal of the properties by Integra Realty Resources of Boise, Idaho. For purposes of this agreement, regardless of the differentiation in the Fair Market Values established by Integra Realty Resources, the properties shall be exchanged on an equal basis, property-for-property, with no additional payment of cash or other consideration save for that described in 2.1 below. The existing basis for each property shall remain with the owners of the exchanged property.

1.3 Conveyance of Title. Title to both properties shall be conveyed by a General Warranty Deed. Title to both properties shall be marketable and insurable and shall be free and clear of all liens, encumbrances and restrictions, including any urban renewal area use restrictions other than the current zoning ordinance, exclusive of (i) real property taxes for the current year which are not due and payable on or before Closing, and (ii) liens, encumbrances and conditions accepted in writing by each respective party on or before Closing.

2. Conditions Precedent. The parties' obligations to close the transaction contemplated herein are subject to and conditioned upon the parties' written satisfaction, or upon written waiver by the respective party of the following conditions precedent, hereinafter the "Closing Conditions":

2.1 The City of Ketchum will provide a "credit" (the "Housing Credit") for the entire affordable housing requirement for the First Street Property, based upon the maximum development potential on the First Street Property, to provide CHG, as additional consideration, the First Street Property free and clear of any affordable housing requirement under the Ketchum zoning ordinances. The Housing Credit shall be a covenant running with the land of the First Street Property, which shall inure to the benefit of the First Street Property, and shall be binding upon the parties hereto, the City of Ketchum, and all their assigns and successors in interest. KURA shall provide the Housing Credit to CHG in a written form satisfactory to CHG, approved in writing by the City of Ketchum, which form shall be notarized and able to be recorded in the official records of Blaine County, Idaho. In order to satisfy this closing condition, the KURA must receive such notarized and approved Housing Credit in favor of the First Street Property within one hundred and twenty days (120) days of the of mutual acceptance of this Agreement.

2.2 CHG, upon execution of this Agreement, will sponsor a rezone application (the "Rezone") to enable KURA to provide community affordable housing on the 2nd Avenue N. Property. The primary work of the Rezone shall be completed by the Ketchum Community Development Corporation under contract by KURA, and supported by the Sun Valley Board of Realtors. The Rezone shall occur within 120 days of mutual acceptance of this Agreement and will be predicated on the use of the 2nd Avenue N. Property for community affordable housing, with a reversionary clause that stipulates the zoning will revert if the transaction is not consummated. This time frame may be extended upon mutual agreement of the parties.

2.3 KURA shall provide CHG a Level I Environmental Assessment on the First Street Property (the "First Street Report") within fourteen (14) days of mutual acceptance of

this Agreement, and KURA will obtain a Level I Environmental Assessment on the 2nd Avenue N. Property for its own use (the "2nd Avenue N. Report") as soon as possible after mutual acceptance of this Agreement. CHG shall approve or disapprove the First Street Report and KURA shall approve or disapprove the 2nd Avenue N. Report in writing to the other party within three (3) business days of each party's receipt of the report requiring its approval or disapproval. If either report is disapproved as previously described, such disapproving party shall indicate in its written notice to the other why it is disapproving the report and the party receiving the written disapproval notice shall have three (3) business days to provide a solution to such concerns, which solution must be to the satisfaction of the disapproving party, otherwise this Agreement shall be terminated.

24 Sun Valley Board of Realtors ("SVBR") will provide a letter of support for the 2nd Avenue N. Property tax credit application addressed to the Idaho Housing and Finance Association within seven (7) days of mutual acceptance of this Agreement, and will continue to support the Rezone of the 2nd Avenue N. Property as set forth in paragraph 2.2 above. SVBR will support the tax credit application efforts for all future tax credit application rounds sponsored by the Ketchum Community Development Corporation in partnership with GMD Development that relate to the 2nd Avenue N. Property.

3. Warranties. The parties hereto warrant and represent to each other that each of the following statements is true and correct as of the date of execution of this agreement and the Closing Date:

3.1 Each party owns fee title to their respective Property described herein and has full power and right to enter into this agreement, and to sell and convey their respective Property, and the person executing this agreement has full power and right to execute this agreement on behalf of each respective party.

3.2 Each party further warrants and represents that, at present, and at Closing, no violation of any governmental statute, ordinance, regulation or administrative or judicial order, judgment or decision, whether or not appearing on public records, exists or will exist with respect to each party's respective Property.

3.3 There are no parties in possession of each party's respective Property, and there are no parties with possessory or any other rights in each party's respective Property other than KURA and CHG, and each party's respective Property is free and clear of all liens, claims, encumbrances, rights of first refusal, licenses, easements, encroachments on each party's respective Property from adjacent properties; or rights-of-way of any nature; or obligations of use under any urban renewal plan, other than those appearing on the preliminary title report or disclosed to each party in this agreement.

3.4 Each party has paid or caused to be paid all costs of work performed on each party's respective Property, or at each party's request. Each party shall not allow any mechanic's liens on account of work done on behalf of themselves or persons claiming under themselves to be filed on either Property (either prior to or after the Closing Date).

3.5 No agreements or contracts, whether written or oral, express or implied, for lease, mortgage or purchase of all or a portion of each respective Property, or other agreement, contract or mortgage affecting each respective Property exist as of the Closing.

3.6 Each party has received no notice and has no other knowledge of (i) any violation of any applicable law, ordinance, order or regulation (including, but not limited to environmental laws, zoning laws, building codes, health codes and fire codes) of any governmental or quasi-governmental agency having jurisdiction over each respective Property or any portion thereof, (ii) any proceedings of any type which have been instituted or contemplated against each party's respective Property, or affecting each party's respective Property, or any part thereof, and (iii) any communication from any insurance companies of any violations of any fire code or building code or any other insurable issues.

3.7 Each party further warrants it has not used at their respective Property or placed under, on or about their respective Property, and each party has no knowledge that any prior owner of their respective Property has used or placed under, on or about their respective Property, any underground storage tanks, hazardous or toxic substance, material or waste ("Hazardous Material") that is regulated by any governmental authority, including, without limitation, any material or substance that is designated or defined or regulated as such under any other applicable federal or state statute or county or municipal law or ordinance, in each case as amended ("Environmental Laws").

#### 4. Closing.

4.1 The closing agent shall be Blaine County Title, in Ketchum, Idaho ("Closing Agent"), at whose offices the closing of the transaction contemplated herein shall occur ("Closing"). The Closing shall occur no later than five (5) business days after satisfaction of all the Conditions Precedent set forth in Section 2 above provided that the other requirements of this Agreement including but not limited to Sections 4, 5 and 6 of this Agreement have been satisfied, or such other date as mutually agreed by the parties on or before Closing ("Closing Date"). At Closing, the following shall occur:

4.1.1 Each party shall pay all real property taxes and assessments (hereinafter "Taxes") levied and assessed against their respective Properties for the year 2013 and all prior years. Taxes for the year in which the Closing occurs shall be prorated as of the Closing Date.

4.1.2 Each party shall pay the premium for an ALTA owner's standard form of title insurance policy on their respective Property for an amount of \$1,030,000. If either party intends to purchase an ALTA owner's extended form of title insurance policy, such party shall pay any additional premium required therefore. The issuance of the owner's title insurance policy shall be a condition of Closing. Each party shall pay the cost of recording their respective Deeds. The Closing Agent's escrow fee shall be paid one-half by each party.

4.1.3 Each party shall be entitled to possession of the exchanged Properties

upon Closing.

**5. Conveyance and Closing Documents.** On or before the Closing Date, the parties shall execute and deliver to the Closing Agent i) executed escrow instructions to finalize and record the exchange upon satisfaction of all of the Closing Conditions listed in Section 2 and the other requirements of this Agreement with no further action required by CHG or KURA, ii) a Warranty Deed conveying marketable and insurable fee simple title to each party's respective property to be exchanged, free and clear of any defects or encumbrances except for the lien of real estate taxes for the year in which the Closing occurs and are not yet due and payable, and the Permitted Encumbrances (as defined in Section 6 below).

**6. Title and Insurance.**

6.1 Each party, at their sole cost and expense, shall furnish the other party (a) a commitment for the issuance of an owner's policy of title insurance, issued by Blaine County Title Company as of a current date, covering their respective property ("Commitment"), and (b) a true, correct and legible copy of all items referred to in the Commitment ("Existing Encumbrances"). Each party shall deliver the Commitment to the other party within ten (10) days of execution of this Agreement. Upon receipt, each party shall have a period of five (5) days to examine the Commitment and provide the other party with written notice of its objection to matters shown on the Commitment ("Objections"). Any matters which appear on the Commitment which are not timely objected to by the recipient of the Commitment shall be deemed to be acceptable to that party ("Permitted Encumbrances"). If Objections are so made, the party receiving the Objections shall use commercially reasonable efforts to cure (or remove) such Objections on or before the Closing. The party receiving the Objections shall be required to cure (or remove) those Objections set forth in paragraph 6.3 below.

6.2 Each party will provide the other party with a copy of all surveys of their respective property in their possession, if any. Each party, at its own expense, may, within thirty (30) days of mutual acceptance of this Agreement, elect to obtain an updated ALTA survey of the other party's property. Each party shall have an additional period of ten (10) days after receipt of the updated survey to notify the other party of its objections to matters disclosed by the survey, which objections shall be handled in the same manner as objections to title matters.

6.3 Subject to the remaining requirements of this Agreement, if a party to this Agreement is unable to cure or remove the Objections prior to Closing made by the other party, then, and in that event, the objecting party shall have the option to (i) waive such Objection and proceed to Closing, in which event such Objections shall become Permitted Encumbrances acceptable to that party for all purposes of this agreement, or (ii) terminate this agreement by written notice to the other party. Notwithstanding the foregoing, each party shall be obligated to cure any of the following objections to title: (a) all mortgages or other encumbrances securing monetary obligations affecting each party's respective property; (b) all past due and valorem taxes and assessments of any kind constituting a lien against each party's respective property; (c) all mechanics', material men's or similar liens; (d) monetary liens, judgment and judicial attachments that have become a lien against each party's

respective property; and (e) any other matters which each party has agreed to cure or remove.

6.4 As soon as available, each party will provide the other party an Owner's Policy of Title Insurance (standard coverage) ("Owner's Policy") in the amount of \$1,030,000, insuring that fee simple title to each respective Property is vested in each respective party, and that each respective Property has the beneficial right to any appurtenant easements, subject only to taxes and assessment for the current year and the Permitted Exceptions. Each party, at its own cost, may obtain an extended coverage Owner's Policy.

7. Execution of Documents. All the parties agree to execute any and all additional documents and instruments necessary to carry out the terms of this Agreement.

8. Conflict with Prior Agreements. In and to the extent that this Agreement is in conflict with any prior written agreement or understanding between the parties hereto, the terms of this Agreement shall prevail. No modification or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties.

9. Survival. The terms of this agreement shall survive the close of escrow and the delivery of the deeds to each respective property.

10. Time. Time is of the essence of this agreement.

11. Binding. This agreement shall inure to the benefit of, and shall be binding upon, the parties hereto, their estates, heirs, representatives and assigns.

12. Notices. Any notice to be given hereunder shall be given by personal delivery or by depositing such notice in the United States Mail first class postage prepaid, and addressed to the respective party at the following address:

KURA: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CHG: c/o Alex Higgins  
PO Box 552  
Ketchum, ID 83340  
208/720-0525

13. Attorney's Fees. Should suit be brought to enforce or interpret any part of this agreement, the prevailing party shall be entitled to recover as an element of its costs and not as damages, reasonable attorney's fees to be fixed by the court.

14. Governing Law. This agreement shall be interpreted under and governed by the laws of the State of Idaho.

15. This agreement may be executed in counterparts and shall be of the same force and effect as if one document had been signed by all parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

KURA:

The Ketchum Urban Renewal Agency

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

Its \_\_\_\_\_

CHG:

DATE: \_\_\_\_\_

\_\_\_\_\_  
Alex Higgins

\_\_\_\_\_  
Patricia Higgins

\_\_\_\_\_  
Emil Capik

\_\_\_\_\_  
Barbara Capik

\_\_\_\_\_  
Bernard Gratton

\_\_\_\_\_  
Bernette Gratton