

KETCHUM URBAN RENEWAL BOARD MEETING AGENDA

SPECIAL MEETING

March 2, 2018 beginning at 10:00 a.m.

480 East Avenue, Ketchum, Idaho



1. 10:00 AM- CALL TO ORDER
2. PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA
3. NEW BUSINESS
 - a. Discussion and approval of purchase and sale agreement between the KURA and the City of Ketchum for real property currently owned by the City of Ketchum (Lots 5 and 6, Block 19, Ketchum Townsite). The KURA is considering acquiring this property for the purpose of creating redevelopment opportunities that align with the objectives of the 2010 KURA Plan.
4. ADJOURNMENT

Any person needing special accommodations to participate in the above noticed meeting should contact the Ketchum Urban Renewal Agency prior to the meeting at (208) 726-3841. This agenda is subject to revisions and additions. NOTE: Revised portions of the agenda are underlined in bold. Public information on agenda items is available in the Clerk's Office located at 480 East Ave. N in Ketchum or (208) 726-3841.

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REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (“Agreement”) is made by and between the Seller, the City of Ketchum, an Idaho municipal corporation, whose address is: 480 East Avenue N., Ketchum, ID, 83340 (“**Seller**”), and the Purchaser, the Ketchum Urban Renewal Agency, an independent public body corporate and politic, organized under the laws of the state of Idaho (“**Purchaser**”) (Seller and Buyer are collectively referred to herein as the “**Parties**” and each individually as a “**Party**”).

RECITALS

A. Seller presently owns the real property more particularly described on attached **Exhibit A** (the “**Property**”).

B. The Parties wish to agree upon terms and conditions whereupon Buyer will acquire the Property.

AGREEMENT

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. Purchase and Sale. Seller agrees to sell, and Buyer agrees to purchase, the Property pursuant to the terms and conditions set forth in this Agreement.

2. Effective Date. The effective date of this Agreement shall be the date the Agreement is signed by both parties (last date signed).

3. Purchase Price. The Purchase Price shall be one million five hundred thousand and 00/100 Dollars (\$1,500,000.00). Upon execution of this Agreement by Seller and Purchaser, 10% of the purchase price, (\$150,000) (the “**Earnest Money Deposit**”), shall be deposited with the City’s designated escrow holder within three business days for benefit of Seller. Such deposited amount shall be applied to the Purchase Price. The deposit and any interest accrued thereon shall be returned to Buyer if Buyer decides, in its sole discretion, not to continue with the transaction to purchase the Property at the end of the property inspection due diligence period and satisfaction of certain other conditions detailed below in paragraph 4.

4. Payment of Purchase Price/Due Diligence Period. At Closing, Buyer shall pay the remaining Purchase Price to Seller as follows: In cash or certified funds at closing subject to Buyer’s satisfactory review of any inspections, studies or issues that may be deemed relevant by Buyer during the Property inspection due diligence period along with satisfaction of the other conditions stated herein. Buyer may terminate this Agreement and be refunded all funds

deposited and any interest accrued should Buyer deem the Property, in its discretion, unsatisfactory.

During the Property inspection due diligence period, Seller shall allow Buyer reasonable access to the Property to permit Buyer to inspect the Property. Buyer may conduct a Phase I and/or Phase II Environmental Study on the Property. If Buyer decides to conduct a Phase II Environmental Study, Seller agrees to grant Buyer a thirty (30) day extension for the Property inspection due diligence period. If, based on the results of either the Phase I or Phase II Environmental Study, or any other study or report, Buyer terminates this Agreement during the Property inspection due diligence period or any extensions thereto, Buyer shall be refunded the full amount deposited in escrow plus any accrued interest, minus any escrow fees.

At any time prior to the expiration of the Due Diligence Period, Buyer may, in its sole discretion, terminate this Agreement by giving written notice (the "**Termination Notice**") thereof to Seller (which shall be effective upon Seller's receipt) in which case (i) the Earnest Money Deposit, including all interest accrued thereon, shall be returned to Buyer within five (5) days of the effective date of such termination and (ii) this Agreement shall be deemed null and void and neither party shall have any obligation to the other except for liabilities which arose prior to the effective date of such termination. If Seller does not receive a Termination Notice on or before the expiration of the Due Diligence Period, Buyer shall be deemed to have elected to proceed with the transaction set forth herein and the Earnest Money Deposit shall be non-refundable to Buyer and all conditions shall be deemed waived or satisfied, except for Seller's failure to comply with its warranties as set forth in this Agreement. For purposes of this Agreement, the "**Due Diligence Period**" shall be ninety (90) days and shall expire at 5:00 p.m. (Mountain Time) on the day, which is ninety (90) days after the Due Diligence Commencement Date. Buyer shall have an option for one (1) thirty (30) day extension of the Due Diligence Period upon written notice to Buyer before termination of the initial Due Diligence Period. The "**Due Diligence Commencement Date**" shall be the date both Buyer and Seller have signed and executed this Agreement, last date signed. Notwithstanding anything herein to the contrary, except as otherwise expressly agreed to in writing by Buyer, the Earnest Money Deposit shall be fully refundable to Buyer until the expiration of the Due Diligence Period.

5. Closing. Closing shall take place after Buyer removes its contingency for Property inspection due diligence and satisfaction of the other conditions stated in this Agreement, in writing to Seller or Seller's agent, or at the expiration of the Property due diligence period or any extensions thereto. The transaction contemplated by this Agreement shall be consummated through an escrow with the Title Company on or prior to the date (the "**Closing Date**") that is no later than thirty (30) days after the expiration of the Due Diligence Period. The term "**Closing**" shall mean the consummation of the sale and conveyance of the Property to Buyer, as evidenced by the recordation of the deed. Real estate taxes and assessments, irrigation water assessments and utilities shall be pro-rated as of the Closing Date.

6. Documents at Closing. At Closing, Seller shall execute and deliver to Buyer a warranty deed conveying good and marketable title to the Property, subject only to existing easements, rights-of-way, real property taxes and assessments for the year of Closing and future years, and other encumbrances as may be consented to by Buyer as set forth below.

7. Title Insurance. Within ten (10) days after the Execution Date, Seller, at its expense, shall cause to be delivered to Buyer a current commitment for title insurance covering the Property issued by Blaine County Title, Inc., as agent for Stewart Title Guaranty Company ("**Title Company**"), for a standard coverage ALTA Owner's Policy of Title Insurance in the amount of the Purchase Price ("**Commitment**"), together with a copy of each document listed (i) as an encumbrance upon the title to the Property or (ii) as an exception to coverage in the Commitment. Buyer shall examine the Commitment and shall make any objections thereto in writing to Seller ("**Notice of Objection**") no later than the expiration of the Due Diligence Period. In the event there exists any such encumbrance or exception in the Commitment or the ALTA Survey to which Buyer objects, Seller shall have ten (10) days after its receipt of the Notice of Objection to elect (in Seller's sole discretion) to cure and remove or insure over the objectionable encumbrance or exception.

8. Seller shall cure any objection to a financial encumbrance or exception at Closing, it being agreed that such financial encumbrances or exceptions shall be satisfied at Closing from the proceeds of the Purchase Price. In the event Seller elects not to cure and remove or to insure over the objectionable non-financial encumbrance or exception within said ten (10) day period or in the event Seller does elect to cure and remove the objectionable encumbrance or exception but is unable to cure and remove said objectionable encumbrance or exception or, alternatively, to obtain a commitment from the Title Company ten (10) days prior to the expiration of the Due Diligence Period or any extensions thereof, that the Title Company will insure over the same, then (a) this Agreement, at the option of Buyer and upon written notice from Buyer to Seller, may be terminated and the Earnest Money Deposit, including all interest accrued thereon, shall be returned to Buyer within five (5) days of the date of such termination **or** (b) Buyer may elect to proceed with this transaction and purchase the Property, subject to the encumbrances or exceptions that Seller has not committed to remove or insure over.

In the event Seller elects to cure and remove the objectionable encumbrance(s) or exception(s), Seller agrees to use its best efforts to remove any objectionable encumbrance or exception. It is understood and agreed that if this Agreement is terminated by Buyer because of Seller's failure to cure or remove any objectionable title exception as provided in this Agreement, Seller shall be responsible for all fees charged by Title Company for cancellation of the Commitment.

It is a condition of Buyer's obligation to close that the Title Company has committed to issue, upon Closing, a standard coverage ALTA Owner's Policy of Title Insurance ("**Title Policy**"),

in the amount of the Purchase Price, insuring that fee simple title to the Property is vested in Buyer, is good and marketable, and is free and clear of all liens encumbrances, easements, assessments, restrictions, tenancies (whether recorded or unrecorded) and other exceptions to title, except the lien of taxes not yet due and payable, those exceptions approved in writing by or caused by Buyer, including the exceptions noted and accepted by Buyer pursuant to this Agreement, exceptions disclosed in the Commitment (subject to the provisions of this Agreement), and those exceptions caused or created by Buyer (collectively the “**Permitted Exceptions**”) and the documents approved and executed by the parties at Closing.

9. Environmental Warranty. The purchase of the Property will be subject to the following environmental warranty: To the best of Seller’s knowledge, there are no hazardous substances present on or under the real property in violation of any environmental law. The term “environmental law” for purposes of this Agreement shall mean any statute, regulation, rule, order, or decision of the United States of America, the state of Idaho, or the county of Blaine, City of Ketchum or any commission, department, agency, or tribunal thereof, regulating the presence of hazardous substances on or under real property including, but not limited to, the following federal acts:

The Resource Conservation and Recovery Act;

The Comprehensive Environmental Response, Compensation and Liability Act; and

The Clean Water Act.

10. Taxes and Assessments. Seller shall pay all real property taxes, personal property taxes, and assessments for all years prior to the year of Closing. Real property taxes for the year of Closing shall be paid by Seller on a prorated basis through the date of Closing.

11. Broker. Buyer and Seller each acknowledge and represent to the other that there are no brokers involved in this transaction and that there is no commission due to any broker, finder, or other party.

12. Possession. Seller acknowledges it is the only existing and operating entity located within the Property and there are no leases encumbering the Property. Seller agrees not to enter into any new leases regarding the Property, or any portion of it.

13. Attorney Fees on Default. If default be made by either Party hereto in keeping or performing any of the covenants, conditions, or agreements herein agreed to be kept by such Party and the other Party is required to employ an attorney to enforce any of the covenants, conditions, or agreements herein contained, then and in such event, the Party in default agrees to pay, in addition to all other sums herein agreed to be paid by such Party, a

reasonable attorney fee, together with any costs and disbursements that may be incurred in enforcing this Agreement.

14. Integration. The Parties hereto acknowledge the terms, conditions, and covenants of this Agreement shall supersede any prior negotiations and agreements of the Parties, there are no other agreements not contained in this Agreement, and this Agreement shall be the final expression of the agreement of the Parties and shall control. No modifications of this Agreement shall be valid unless in writing and be signed by the Party against which the enforcement of any extension, change, modification, or amendment is sought, and only then to the extent set forth in such instrument.

15. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, and assigns.

16. Notices.

a. Original Addresses. Whenever any Party hereto shall desire to give or serve any notice, demand, request, approval, or other communication, each such communication shall be in writing and shall be delivered personally, by messenger, or by mail, postage prepaid, addressed as set forth adjacent to that Party's signature on this Agreement or by telecopy with receipt confirmed by telephone. Service of any such communication shall be deemed made on the date of actual receipt at such address.

Seller: PO Box 2315

Ketchum, Idaho 83340

Buyer: PO Box 2315

Ketchum, Idaho 83340

with copy to: Ryan Armbruster
Elam & Burke, P.A.
251 E. Front Street, Suite 300
P.O. Box 1539
Boise, Idaho 83701

b. Change of Address. Any Party hereto may from time to time, by notice in writing served upon the other Party hereto, designate a different address to

which or a different person or additional persons to whom all communications are thereafter to be made.

17. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original of this Agreement and which together shall constitute but one and the same instrument.

18. Applicable Law. This Agreement shall be governed by the laws of the State of Idaho.

19. Risk of Loss. Risk of loss or damage to the Property shall be borne by Seller until the Closing Date. Seller shall keep the Property insured against loss by fire and other casualty usually insured against in the market area of the Property until the Closing.

20. Closing Costs and Fees. Seller and Buyer shall pay equal shares of all closing costs and fees.

21. Survival of Terms. The terms, provisions, warranties, covenants, and indemnities shall survive the Closing, and this Agreement shall not be merged therein but shall remain binding upon and for the Parties hereto until fully observed, kept, or performed.

22. Captions. The captions at the beginning of the several sections, respectively, are for convenience in locating the context but are not part of the text.

23. Severability. In the event any term or provision of this Agreement shall be held illegal, invalid, unenforceable, or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby, but each term and provision shall be valid and shall remain in full force and effect.

24. Additional Acts. Each Party agrees to take such other actions and to execute and deliver such further documents as may reasonably be required to consummate this transaction and to afford each other reasonable cooperation towards that end.

25. No Other Agreements. Seller represents that no person or entity has any rights to the Property by way of an option agreement, first right of refusal or similar agreement.

26. Waiver. Waiver of performance of any provision of this Agreement shall not be a waiver of, nor prejudice, the Party's rights otherwise to require performance of the same provision or any other provision.

27. Time of the Essence. Time is of the essence in this Agreement.

28. Representation and Warranties of Seller and Disclaimer. Seller's warranties and representations shall survive the Closing and delivery of the deed, and, unless otherwise

noted herein are true, material and relied upon by Buyer in all respects, both as of the date of Agreement, and as of the date of Closing. Seller hereby makes the following warranties and representations to Buyer:

- a. Authority of Seller.** Seller is the Seller of the Property and/or has the full right, power, and authority to sell, convey, and transfer the Property to Buyer as provided herein, and to perform Seller's obligations hereunder.
- b. Possessory Right.** Seller has no knowledge that anyone will, at the Closing, have any right to possession of the Property by way of an option agreement, first right of refusal, or similar agreement, except as disclosed by this Agreement or otherwise in writing to Buyer.
- c. Actions, Suits or Proceedings, Compliance With Law and Regulations.** Seller has no knowledge of any actions, suits or proceedings pending or threatened before any commission, board, bureau, Buyer, instrumentality, arbitrator(s) court or tribunal that would affect the Property or the right to occupy or utilize same. There is no prior or pending condemnation or taking affecting all or any portion of the Property and Seller has no notice or knowledge of any proposed taking or condemnation of all or any portion of the Property.
- d. Notice of Change.** Seller will promptly notify Buyer in writing of any material change affecting the Property that becomes known to Seller prior to the Closing.
- e. No Seller Bankruptcy Proceedings.** Neither Seller nor the Property is the subject of a bankruptcy, insolvency, or probate proceeding.
- f. Condition of Title.** Seller shall convey to Buyer good and marketable title to the Property, which shall be free and clear of all liens, encumbrances, and other exceptions to title, except the liens and taxes and assessments not yet due and payable, and any easements and restrictions of public record.
- g. Hazardous Materials.** During Seller's ownership of the Property, Seller has not used or permitted and Seller will not use or permit the Property to be used, whether directly or through contractors, agents or tenants, and to the best of Seller's knowledge, the Property has not at any time been used, for the generating, transporting, treating, storage, manufacture, emission of, or disposal of any dangerous, toxic or hazardous pollutants, chemicals, wastes or substances as defined in any federal, state or local environmental laws, statutes, regulations, requirements and ordinances, hereinafter referred to as "Hazardous Materials," except those items used in the ordinary course or business, including alcohol and cleaning solutions. Seller warrants that there have been no investigations or reports involving Seller or the Property by any governmental

authority, which in any way pertains to Hazardous Materials, nor is Seller aware of any environmental problems relating to the Property.

29. Condemnation. Should any entity having the power of condemnation decide prior to Closing to acquire any portion of, or interest in, the Property with a value of ten percent (10%) or less of the Purchase Price, Seller shall pay or assign the proceeds of the taking to Buyer at Closing and Seller and Buyer shall proceed with Closing without adjustment to the Purchase Price. If such taking exceeds ten percent (10%) of the Purchase Price, Buyer at Buyer's sole option may either (a) elect to terminate Buyer's obligation to purchase the Property by giving written notice to Seller at any time prior to Closing and Seller shall promptly return the earnest money deposit or (b) elect to complete the purchase of the Property and require Seller to immediately appoint Buyer as its attorney-in-fact to negotiate with said condemning entity, and, in such event, Buyer shall receive all sums awarded in such condemnation proceeding concerning the Property, excluding any amounts attributable to adverse impacts on other property owned by Seller. Seller hereby agrees to immediately give notice to Buyer of any condemnation or contemplated condemnation of the Property and Buyer hereby agrees to, within ten days of such notice, give written notice to Seller of Buyer's election with respect thereto.

30. Time Period Computation. All time periods in this Agreement shall be deemed to refer to calendar days unless the time period specifically references business days; provided that if the last date on which to perform any act or give any notice under this Agreement shall fall on a Saturday, Sunday or local, state or national holiday, such act or notice shall be deemed timely if performed or given on the next succeeding business day.

31. Binding Agreement. This Agreement shall not be binding or enforceable until both parties have fully executed this Agreement and have delivered to each other a counterpart of this Agreement fully executed by the delivering party.

32. Survival. All of the representations and warranties set forth in this Agreement shall constitute continuing representations and warranties, shall be deemed to be true and correct as of the Closing Date, and shall (along with all indemnification, defense and hold harmless obligations related thereto) survive the Closing.

33. No Third Party Beneficiary Rights. This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

34. Governing Law. This Agreement shall be governed by, interpreted under, and construed and enforceable with, the laws of the State of Idaho, without regard to any choice of law principles.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year written below.

SELLER:

The City of Ketchum

By _____

Its _____

STATE OF IDAHO)
) ss.
County of _____)

On this ____ day of _____, 2018, before me, _____, a Notary Public in and for said State, personally appeared _____, known or identified to me (or proved to me on the oath of _____) to be the _____ of the City of Ketchum that executed the said instrument, and acknowledged to me that the City of Ketchum executed the same.

S
E
A
L

Notary Public for Idaho
My commission expires on _____

BUYER:

THE KETCHUM URBAN RENEWAL AGENCY

By _____

Its _____

Attest: _____

Secretary

STATE OF IDAHO)

) ss.

County of _____)

On this ____ day of _____, 2018, before me, _____, a Notary Public in and for said State, personally appeared _____, known or identified to me (or proved to me on the oath of _____) to be the _____ of the Ketchum Urban Renewal Agency that executed the said instrument, and acknowledged to me that the Ketchum Urban Renewal Agency executed the same.

S
E
A
L

Notary Public for Idaho
My commission expires on _____

Exhibit A

Legal Description of Property

Lots 5 and 6, Block 19, Ketchum Townsite