

CTIA # 147219-WTHF

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Holland & Hart LLP
PO Box 68
Jackson, Wyoming 83001

Tax ID#s 00-0007-6864 + 00-0020-7784

(Above Space For Recorder's Use Only)

PROFIT-SHARING AGREEMENT

THIS PROFIT-SHARING AGREEMENT (this "**Agreement**") is made and entered into this 15 day of September, 2021 (the "**Effective Date**"), by and between AJ FIRESIDE PARK CITY LLC, a Delaware limited liability company ("**AJ Fireside**"), and BENLOCH CPC, LLC, a Utah limited liability company ("**Cache**"), which may collectively be referred to as the "**Parties**", or singularly as a "**Party**".

RECITALS

A. Pursuant to that Commercial Real Estate Purchase Agreement dated July 27, 2021 (collectively and as amended and assigned to Cache, the "**Purchase Agreement**"), AJ Fireside is selling certain real property located in Wasatch County, Utah, as more particularly description on Exhibit A attached hereto (the "**Property**") to Cache.

B. Pursuant to the terms and conditions of the Purchase Agreement, the Parties have agreed that as additional consideration for the sale of the Property to Cache, AJ Fireside will share in the profits therefrom in the manner and subject to the limitations set forth herein.

C. On even date herewith, AJ Fireside has conveyed the Property to Cache.

D. This Agreement, when recorded in the real property records of Wasatch County, Utah, will encumber title to the Property until such time as the terms and conditions herein are satisfied.

AGREEMENT

NOW THEREFORE, for and in consideration of the foregoing recitals (which are hereby incorporated into this Agreement), the mutual covenants and agreements contained herein, and other good and valuable consideration paid by each party hereto to the other, the receipt and sufficiency of which is hereby mutually acknowledged, AJ Fireside and Cache hereby agree as follows:

1. **Definitions.** Whenever used in this Agreement, the following terms shall have the meanings set forth in this Section 1:
- a. Benloch Ranch Development. “**Benloch Ranch Development**” shall mean the real property subject to the Declaration.
 - b. Capital Costs. “**Capital Costs**” shall mean all expenditures closely associated with the Property that create or enhance the Property, including any amounts paid out for Project Improvements made to increase the value of the Property. The determination of whether permanent improvements or betterments constitute Capital Costs shall be made in accordance with generally accepted accounting principles consistently applied.
 - c. Carry Costs. “**Carry Costs**” shall mean the amount of costs or expenses actually paid by Cache for maintenance, repair, water reservations, real property taxes, insurance and Debt Service relating to the Property.
 - d. Costs. “**Costs**” shall mean all reasonable, actual, documented out-of-pocket costs and expenses, incurred in connection with the construction, installation, repair, and/or performance of the Project Improvements hereunder, including, without limitation, all bond premiums paid in connection with the Work and Project Improvements, and all plan check, permit and other fees and costs incurred in connection with obtaining the necessary permits and approvals to undertake the Work.
 - e. Debt Service. “**Debt Service**” shall mean the interest and principal payments made or owed by Cache pursuant to (i) the acquisition loan entered into by Cache on or about the date hereof, and/or (ii) any loan or bond amounts entered into by Cache and used to fund vertical or horizontal infrastructure on the Property.
 - f. Declaration. “**Declaration**” shall mean that certain Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Benloch Ranch entered into by AJ Fireside and Benloch Ranch Land Company, LLC, dated June 16, 2021 and recorded in the Wasatch County, Utah Recorder’s Office as Entry No. 502142, Book 1360, Page 1043, as the same may be amended from time to time.
 - g. Lot or Lots. “**Lot**” or “**Lots**” shall mean the subdivided lots within the Property, but shall not include the “**Lots**” related to those 25 ERUs described on Exhibit B.
 - h. Net Profits. “**Net Profits**” shall mean the Net Sales Proceeds, less (i) the Capital Costs, and (ii) the Carry Costs.
 - i. Net Sales Proceeds. “**Net Sales Proceeds**” shall mean the actual sales price in connection with the Transfer of the Property or Lots, less (i) all broker’s commissions and other typical and customary closing costs related thereto, (ii) the Original Purchase Price and (iii) pro rata Costs and expenses incurred by Cache related to the Property or such Lots, including, but not limited to Costs associated

with Project Improvements. For purposes of the definition of Net Sales Proceeds, any cash-out financing undertaken by Cache shall be considered a Transfer of the Property and may be subject to a Profit Participation Payment.

- j. Original Purchase Price. The “**Original Purchase Price**” is \$95,000 per Lot or \$40,747,722.62 total for the entirety of the Property.
- k. Profit Participation Payment. “**Profit Participation Payment**” shall mean the payment by Cache to AJ Fireside of a portion of the Net Profits pursuant to this Agreement. Under no circumstances will AJ Fireside share in losses or be required to make any capital contribution to Cache’s development of the Property.
- l. Project Improvements. “**Project Improvements**” shall mean all horizontal or vertical improvements intended for public or private use and located within the boundaries of the Property, including but not limited to any proposed sewer lines, water lines, roads, electricity, gas, telephone, detention basins, curb and gutter, trails, recreational facilities, ponds, pathways, open space, landscaping and hardscaping, home construction, and any other improvements that create or enhance the Property.
- m. Transfer of the Property. “**Transfer of the Property**” shall mean any arm’s-length sale, assignment, exchange, conveyance, gift, or other transfer of the Property or any portion thereof, including individual Lots.
- n. Work. “**Work**” shall mean the provision of all labor, materials, supplies, equipment, services, permitting, required inspections and testing, approvals for completing the Project Improvements.

2. Profit Participation Payment

a. Subject to 2(b), at the time of the Transfer of the any of the Lots or the Property, AJ Fireside shall be entitled to receive twenty-five percent (25%) of the Net Profit generated by Cache.

b. The Profit Participation Payment shall accrue in favor of AJ Fireside and shall be payable to AJ Fireside following at the closing the sale of the Property via wire transfer of immediately available funds to a bank account designated by AJ Fireside.

In the event of a Transfer of the Property, Cache shall provide written instructions executed by Cache to the escrow agent handling the closing of the sale providing that the escrow agent shall pay AJ Fireside the Profit Participation Payment prior to the release of any funds to Cache in connection with such closing and AJ Fireside shall execute a partial release of this Agreement as to the property sold.

3. Accounting and Audit Rights. Cache shall deliver to AJ Fireside, on no less than a quarterly basis, an accounting of the Capital Costs and Carry Costs, which accounting shall describe the expenditures made by Cache during the previous three (3) months pertaining to the Property (the “**Quarterly Statement**”). AJ Fireside shall have the right, on no more than an annual

basis, to conduct an audit, at AJ Fireside's sole cost and expense. In connection therewith, Cache will reasonably cooperate with such audit requests by providing such data and information as reasonably requested by AJ Fireside. If after such audit, AJ Fireside disputes any Quarterly Statement, upon AJ Fireside's written request therefore, a certification as to the proper amount of Capital Costs and Carry Costs shall be made by an independent accounting firm selected by Cache and AJ Fireside. If Cache and AJ Fireside are unable to agree upon an accounting firm, Cache and AJ Fireside shall each select an accounting firm and the two firms so selected shall select a third firm which shall make the certification requested hereunder. Such certification shall be final and conclusive as to all Parties. The costs to obtain such certification shall be paid equally by the Parties.

4. **Recordation of Profit-Sharing Agreement.** This Agreement shall be recorded in the real property records of Wasatch County, Utah on the same date the Property is conveyed to Cache. Upon Cache's conveyance of all of the Property to third-parties, AJ Fireside shall cause a reconveyance and release of this Agreement to be recorded in the real property records of Wasatch County, Utah.

5. **Development Assistance.** The Parties acknowledge and agree that AJ Fireside, as the Declarant pursuant to the Declaration, has an interest in the orderly and timely development of the Benloch Ranch Development. As a material inducement to AJ Fireside selling the Property to Cache, Cache agrees that AJ Fireside shall have the right, but not the obligation, to (i) make any of the Project Improvements on, to or through the Property in accordance with this Agreement (and subject to reimbursement by Cache as provided in the Infrastructure Reimbursement Agreement of even date herewith), and (ii) engage third-parties on Cache's behalf to undertake Project Improvements on the Property. Notwithstanding anything to the contrary contained herein, ultimate financial responsibility for all Costs incurred by AJ Fireside or Cache for the Work and Project Improvements relating to the Property shall be borne solely by Cache, and, as applicable, Cache shall reimburse AJ Fireside for any Costs incurred by AJ Fireside within ten (10) business days following written request for same. The Costs for the Work and Project Improvements contemplated in this section shall be subject to the prior written consent of Cache prior to incurring the Cost, such consent not to be unreasonably withheld, delayed, or conditioned.

6. **General Provisions.**

- a. **Time is of Essence.** Time is of the essence when undertaking the requirements of this Agreement and all of the terms, provisions, and conditions hereof.
- b. **Notices.** Whenever a Party to this Agreement is required or permitted under this Agreement to provide the other Party with any notice, request, demand, consent, or approval ("**Notices**"), the Notices will be given in writing and will be delivered to the other Party at the address or facsimile number set forth below: (a) personally; (b) by a reputable overnight courier service; (c) by certified mail, postage prepaid, return receipt requested; or (d) by e-mail or facsimile transmission. Either Party may change its address for Notices by written notice to the other Party delivered in the manner set forth above. Notices will be deemed to have been duly given: (i) on the date personally delivered; (ii) one (1) business day after delivery to an overnight courier service with next-day service requested; (iii) on the third (3rd)

business day after mailing, if mailed using certified mail; or (iv) on the date sent when delivered by facsimile or e-mail (so long as a copy of the Notice is sent by one of the other means permitted hereunder on or before the next business day).

If to AJ Fireside: AJ Fireside Park City
2780 N. Moose-Wilson Rd.
PO Box 1827
Wilson, Wyoming 83014
Attn: Jamie Mackay

With a copy to: Holland & Hart LLP
Overnight: 645 S. Cache St. Suite 100
U.S. Mail: P.O. Box 68
Jackson, WY 83001
Attention: Matt Kim-Miller and Brad Flynt

If to Cache: c/o Cache Private Capital Management, LLC
2600 West Executive Parkway, Suite 120
Lehi, Utah 84043

With a copy to: Carman Lehnhof Israelsen, LLP
Attention: J. Martin Tate
375 W. 200 S., Suite 225
Salt Lake City, UT 84101

c. Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the state of Utah, without regard to the conflict of laws principles of such state. The federal and state courts of Utah shall have exclusive jurisdiction to adjudicate any dispute arising out of this Agreement. All Parties hereto expressly consent to: (a) the personal jurisdiction of the federal and state courts of Utah; and (b) service of process being effected upon them by registered mail sent to the addresses set forth in Section 7.b herein.

d. Amendments; Waiver. This Agreement may be amended or modified only by a written instrument executed by the Party or Parties asserted to be bound thereby. Except as otherwise expressly provided herein, no waiver of any provision of this Agreement shall be valid unless given in writing and duly executed by the Party to be charged therewith. No waiver of any breach or condition of this Agreement shall be deemed to be a waiver of any other or subsequent breach or condition.

e. Attorney's Fees. If any legal or equitable action, appeal, arbitration, bankruptcy, reorganization, or other proceeding, whether on the merits, application, or motion, are brought or undertaken, or an attorney retained, to enforce this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this

Agreement, then the successful or prevailing Party in such undertaking shall be entitled to recover its reasonable attorney's and other professional fees, expert witness fees, court costs, and other expenses incurred in such action, proceeding, or discussions, in addition to any other relief to which such Party may be entitled. The prevailing Party shall be that party receiving substantially the relief sought in the proceeding, regardless of whether such action was brought to final judgment. The Parties intend this provision to be given the most liberal construction possible and to apply to any circumstances in which such Party reasonably incurs the foregoing expenses.

f. Further Acts. Each Party shall, at the request of the other, execute, acknowledge (if appropriate), and deliver whatever additional documents, and do such other acts, as may be reasonably required in order to accomplish the intent and purposes of this Agreement.

g. Severability. Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise make ineffective any other provision of this Agreement.

h. Headings. The headings of the Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of the Agreement.

i. Counterparts/Facsimile. The Agreement may be executed in any number of counterparts or in facsimile, all of which shall constitute one and the same instrument.

j. Binding Effect; Covenant Running with Land. This Agreement shall constitute a covenant running with the land and shall bind and inure to the benefit of each Party, its successors and assigns.

k. Assignment. Cache shall not assign its rights and obligations under this Agreement without AJ Fireside's prior written consent, which AJ Fireside may grant or withhold in its sole and absolute discretion. No such assignment will alter the obligations of the owner of the Property to perform under the terms and conditions of that Agreement. AJ Fireside shall have the right to assign its rights and obligations under this Agreement upon prior written notice to Cache.

l. No Partnership. Nothing contained in this Agreement is intended to confer a membership interest to AJ Fireside in Cache or create any type of partnership or joint venture between AJ Fireside and Cache; and AJ Fireside shall not be subject or responsible for any capital calls by Cache or liable for any of Cache's debts and/or liabilities. AJ Fireside shall not have any responsibilities with respect to Cache other than to collect the consideration stated herein, which is a portion of Cache's profits. AJ Fireside shall not be allocated any of Cache's profits or losses for tax purposes. Cache shall be responsible for assuming all federal, state and local taxes related to the income and deductions with respect to operations and transactions on the Property. AJ Fireside will not be subject to any taxable earnings from operations of Cache.

[Signatures on Following Page.]

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

AJ FIRESIDE:

AJ FIRESIDE PARK CITY LLC,
a Delaware limited liability company

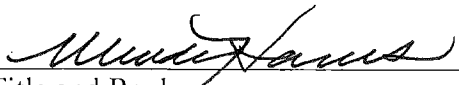
By: 

Name: Jamie Mackay

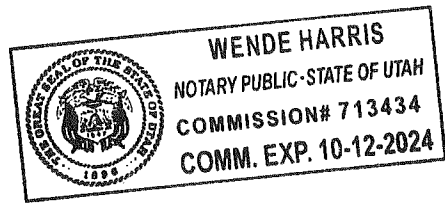
Title: President

STATE OF Utah)
)§
COUNTY OF salt lake)

This instrument was acknowledged before me on this 10 day of September, 2021,
by Jamie Mackay, the President of AJ Fireside Park City LLC, a Delaware limited liability
company.


Title and Rank

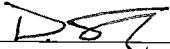
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CACHE:

BENLOCH CPC, LLC,
a Utah limited liability company

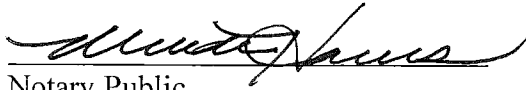
By: Cache Private Capital Management, LLC
Its: Manager


By: Sean Clark
Its: Manager

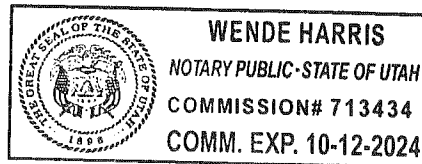

By: Kellen Jones
Its: Manager

STATE OF UTAH)
)§
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me, a notary public, on this 13th day of September, 2021, by Sean Clark, Manager of CACHE PRIVATE CAPITAL MANAGEMENT, LLC, a Nevada limited liability company, Manager of BENLOCH CPC, LLC, a Utah limited liability company.



Notary Public
Residing at: Salt Lake City, Utah

(Seal)



STATE OF UTAH)
)§
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me, a notary public, on this 13th day of September, 2021, by Kellen Jones, Manager of CACHE PRIVATE CAPITAL MANAGEMENT, LLC, a Nevada limited liability company, Manager of BENLOCH CPC, LLC, a Utah limited liability company.


Notary Public
Residing at: Salt Lake City, Utah

(Seal)

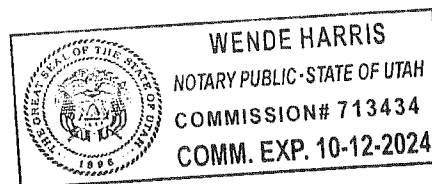


EXHIBIT A**LEGAL DESCRIPTION**

PARTS OF SECTIONS 1 AND 2, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SECTION 1, TOWNSHIP 3 SOUTH, RANGE 5 EAST (SAID NORTHEAST CORNER OF SECTION 1 BEING N89°31'27"E 16027.64 FEET FROM THE SOUTHWEST CORNER OF SECTION 34, TOWNSHIP 2 SOUTH, RANGE 5 EAST AND BEING THE BASIS OF BEARINGS FOR THIS PROJECT); THENCE S01°18'39"E, 2563.63 FEET TO THE TRUE POINT OF BEGINNING; THENCE S01°18'39"E, 86.33 FEET; THENCE S01°29'16"E, 2544.74 FEET; THENCE N89°51'47"W, 466.72 FEET; THENCE S00°36'10"E, 466.74 FEET; THENCE N89°51'52"W, 2470.19 FEET; THENCE N89°51'50"W, 2695.77 FEET; THENCE N00°26'57"W, 194.70 FEET TO THE BEGINNING OF A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 655.00 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 379.56 FEET, A DELTA ANGLE OF 33°12'07", A CHORD BEARING OF N17°03'01"W, AND A CHORD LENGTH OF 374.27 FEET; THENCE N05°15'38"E, 701.74 FEET; THENCE N07°07'05"E, 475.22 FEET; THENCE N12°20'34"W, 653.73 FEET; THENCE N00°52'42"W, 550.18 FEET; THENCE N04°43'52"E, 403.75 FEET; THENCE N15°34'44"E, 320.49 FEET; THENCE S89°58'21"E 2481.55 FEET; THENCE S52°14'52"E, 346.35 FEET; THENCE S16°50'21"E, 394.58 FEET; THENCE S01°06'44"W, 404.26 FEET; THENCE S37°42'12"E, 163.59 FEET; THENCE N90°00'00"E, 227.79 FEET; THENCE N67°20'38"E, 1125.22 FEET; THENCE N38°18'23"E, 494.94 FEET; THENCE N64°46'26"E, 220.52 FEET; THENCE S72°16'42"E, 552.74 FEET; THENCE S62°48'28"E, 354.89 FEET TO THE POINT OF BEGINNING.

AREA COMPRISES 18,457,515.86 SF OR 423.7263 AC, MORE OR LESS.

EXHIBIT B**LEGAL DESCRIPTION**

THE FOLLOWING REAL PROPERTY LOCATED IN WASATCH COUNTY, UTAH:

Area "B" legal

Beginning at a the North ¼ Corner of section 1, Township 3 South, Range 5 East, Salt Lake Base and Meridian, and running thence along the sections line N 89°33'13" E 591.19 feet, thence S 01°05'57" W 251.99 feet, thence S 55°40'51" W 309.87 feet, thence S 64°42'53" W 61.04 feet, thence S 62°36'38" W 165.23 feet, thence S 34°36'00" W 301.34 feet to a point on a non-tangent 180.00' radius curve to the left, thence along arc of said curve 88.12 feet through a delta of 28°03'03" (chord bears S 57°29'12" E 87.25'), thence S 27°43'44" W 188.30 feet, thence N 53°22'20" W 357.75 feet, thence N 01°06'03" E 501.38 feet, thence N 05°04'14" E 269.70 feet to the section line, thence along section line N 89°33'35" E 310.30 feet to the point of beginning. Parcel contains 12.80 acres.

Area "C" legal

Beginning at a point that is S 89°33'13" W 1,116.44 feet along the section line and South 2,279.92 feet from the Northeast Corner of section 1, Township 3 South, Range 5 East, Salt Lake Base and Meridian, and running thence S 66°21'19" W 260.00 feet, thence S 64°14'46" W 188.62 feet, thence S 64°14'46" W 239.85 feet, thence S 64°14'46" W 242.17 feet, thence N 76°48'44" W 315.90 feet, thence N 09°08'00" W 511.56 feet, thence N 64°23'57" E 460.06 feet to a non-tangent 500.00' radius curve to the right, thence along arc of said curve 132.69 feet through a delta of 15°12'19" (chord bears S 04°45'39" E 132.30 feet), thence S 02°50'31" W 18.16 feet to a 110.00' radius curve to the left, thence along arc of said curve 220.20 feet through a delta of 11°41'39" (chord bears S 54°30'19" E 185.23 feet), thence N 68°08'51" E 59.44 feet to a point on a 440.00' radius curve to the left, thence along arc of said curve 328.98 feet through a delta of 42°50'23" (chord bears N 46°43'39" E 321.37 feet) to a point on a 500.00' radius reverse curve to the right, thence along arc of said curve 88.30 feet through a delta of 10°07'05" (chord bears N 30°22'01" E 88.18 feet, thence S 36°04'25" E 545.90 feet to the point of beginning. Parcel contains 13.07 acres.