

CITY COUNCIL CALENDAR OF THE CITY OF KETCHUM, IDAHO

Monday, April 15, 2013, beginning at 5:30 p.m.

480 East Avenue, North, Ketchum, Idaho

Approximate starting time for each agenda item is indicated at left.



- 5:30 1. CALL TO ORDER
- 5:30 2. COMMUNICATIONS FROM MAYOR AND COUNCILORS.
a) Communications from Mayor and Councilors.
b) Alcohol Awareness Proclamation - Mayor Hall Tab 1
3. COMMUNICATIONS FROM THE PUBLIC.
- 5:45 a) Communications from the public.
- 6:00 b) Wood River YMCA Land Lease - Jason Fry, Executive Director. Tab 2
4. COMMUNICATIONS FROM CITY STAFF.
- 6:20 a) Request for authorization to proceed with Hemingway Park Splash Pad Project Planning - Jennifer L. Smith, Director of Parks and Recreation. Tab 3
- 6:40 b) Resolution 13-005: Providing for publication of notice of public hearing and for public hearing for an amendment to the 2012-13 Fiscal Year Budget (regarding appropriations for the Hemingway Park Splash Pad Project.) Tab 4
- 6:50 5. COMMUNICATIONS FROM THE PRESS.
- 6:55 6. PUBLIC HEARINGS.
a) Request for an amendment to the approved planned unit development for Bald Mountain Lodge, LLC at Ketchum Townsite, Amended Lot 1A, Block 20 (151 South Main Street); Applicant: Bald Mountain Lodge LLC - Lisa Horowitz, Community and Economic Development Director. Tab 5
7. AGREEMENTS AND CONTRACTS.
- 7:45 a) Recommendation to approve Street Maintenance Paint Bids - Brian Christiansen, Street Superintendent. Tab 6
- 7:50 b) Recommendation to approve a Chip Seal Bid - Brian Christiansen, Street Superintendent. Tab 7
8. ORDINANCES AND RESOLUTIONS.
- 7:55 a) Ordinance 1105: An ordinance enacting Chapter 8.10, under Title 8, Ketchum Municipal Code, entitled Smoke-Free Air Ordinance, Regulating smoking in public places; setting forth the statutory authority for local government regulation of smoking; Providing legislative findings; Providing definitions of key terms; Prohibiting smoking on all City owned property and in all City owned facilities and all places of employment and setting forth a nonexclusive list of enclosed places where smoking is prohibited; Prohibiting smoking outdoors on public and private school property, within twenty feet of public transportation facilities; Providing exemptions from the smoking prohibition for exclusive retail tobacconists, in residences, except for any portion that is used as a business with employees or customers, and for bona fide Native American religious practices; Permitting businesses where smoking is not prohibited to designate any or all of the business nonsmoking; Providing for a public education program prior to enforcement; Providing infraction penalties for violation; Tab 8

Setting forth a severability clause and providing an effective date. (Third Reading and Adoption) - Stephanie Bonney, City Attorney.

8:15 9. CONSENT CALENDAR.

Tab 9

- a) Approval of minutes from the March 18, 2013 Council meeting.
- b) Recommendation to approve current bills and payroll summary.
- c) Request for final plat and Findings of Fact, Sawtooth Residence Townhomes, Townhouse Subdivision.
- d) Recommendation to revoke certain LOT tax permits due to delinquency.

10. EXECUTIVE SESSION to discuss personnel, litigation and land acquisition pursuant to Idaho Code §§67-2345 1(a) (b), (c) and (f).

11. ADJOURNMENT.

Any person needing special accommodations to participate in the above noticed meeting should contact the City of Ketchum three days 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.

Check out our website: www.ketchumidaho.org.

City of Ketchum, Idaho

P.O. Box 2315 Ketchum, ID 83340 (208) 726-3841 Fax: (208) 726-8234



April 10, 2013

Mayor Hall and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Hall and City Councilors:

April 15, 2013 City Council Agenda Report

The regular Council meeting will begin at **5:30 p.m.**

2. COMMUNICATIONS FROM MAYOR AND COUNCIL.
 - b) Alcohol Awareness Proclamation - Mayor Hall

Mayor Hall will proclaim April to be "Alcohol Awareness Month". A copy of the proclamation has been provided in the packet.

RECOMMENDATION: None.

RECOMMENDED MOTION: None.

This is an executive action.

3. COMMUNICATIONS FROM THE PUBLIC.
 - b) Wood River YMCA Land Lease - Jason Fry, Executive Director.

The City entered into a lease agreement with the YMCA in 2005 on City property commonly known as the Park and Ride lot. The YMCA is seeking minor changes to the lease. A detailed staff report from Lisa Horowitz along with copies of the lease and the proposed amendment have been provided in the packet for Council review.

RECOMMENDATION: Staff respectfully recommends the City Council adopt the First Amendment to the Lease between the City and the YMCA.

RECOMMENDED MOTION: "I move to adopt the First Amendment to the Lease between the City and the YMCA dated April 15, 2013."

This is a legislative matter.

4. COMMUNICATIONS FROM CITY STAFF.

- a) Request for authorization to proceed with Hemingway Park Splash Pad Project Planning - Jennifer L. Smith, Director of Parks and Recreation.

In 2005 a project was started to build a children's splash pad at Atkinson Park. At the time, private donations were made to the City toward the project. Due to tight budgets, the retirement of the then park director and the recession the project has not gone forward. The recent receipt of \$141,167 from Blaine County as a rebate on the Law Enforcement Contract, provides an opportunity to consider the project anew. The project is proposed for property owned by the Blaine County School District as part of the Hemingway School campus adjacent to Atkinson Park. The School District Board approved the project site at a recent meeting. A detailed staff report from Jen Smith has been provided in the packet for Council review.

RECOMMENDATION: Staff respectfully recommends the City Council authorize the Parks and Recreation Department to proceed with planning for the Hemingway Splash Park.

RECOMMENDED MOTION: *"I move to authorize the Parks and Recreation Department to proceed with planning for the Hemingway Splash Pad Project."*

This is a legislative matter.

- b) Resolution 13-005: Providing for Publication of Notice of Public Hearing and for Public Hearing for an Amendment to the 2012-13 Fiscal Year Budget (regarding appropriations for the Hemingway Park Splash Pad Project) - City Administrator Gary Marks.

Resolution 13-005 authorizes the publication of a notice of public hearing to be conducted on May 6, 2013 for the purpose of amending the FY2012-13 Budget. The amendments will address the creation of appropriations for the Hemingway Park Splash Pad Project by appropriating \$141,167 in unrestricted revenues received through Blaine County Law Enforcement Contract rebate and funds previously donated for a splash pad for the project. A staff report from Sandy Cady and a copy of the resolution have been provided in the packet for council review.

RECOMMENDATION: Staff respectfully recommends the City Council approve Resolution 13-005, providing for publication of notice of public hearing and for public hearing to be held on May 6, 2013 for an amendment to the Fiscal Year 2012-2013 Budget.

RECOMMENDED MOTION: *"I move to approve Resolution 13-005, providing for publication of notice of public hearing and for public hearing for an amendment to the FY2012-2013 Budget."*

This is a legislative matter.

6. PUBLIC HEARINGS.

- a) Request for an amendment to the approved planned unit development for Bald Mountain Lodge, LLC at Ketchum Townsite, Amended Lot 1A, Block 20 (151 South Main Street); Applicant: Bald Mountain Lodge LLC - Lisa Horowitz, Community and Economic Development Director.

Bald Mountain Lodge, LLC is seeking an amendment to the approved planned unit development located at 151 South Main Street. A detailed staff report from Lisa Horowitz and supporting documents have been provided in the packet for Council review.

RECOMMENDATION: Staff respectfully recommends the City Council approve the Bald Mountain Lodge PUD Amendment, subject to the conditions as noted in the staff report.

RECOMMENDED MOTION: *“I move to approve the Bald Mountain Lodge PUD Amendment, finding the application meets with the applicable review standards with the conditions 1 -24, as noted in the staff report.”*

This is a quasi-judicial matter.

7. AGREEMENTS AND CONTRACTS.

- a) Recommendation to approve Street Maintenance Paint Bids - Brian Christiansen, Street Superintendent.

The Street Department is seeking approval of a street painting bid for summer maintenance projects. A bid from Idaho Traffic Safety in the amount of \$42,777.50 was the lowest responsible bid. A staff report from Brian Christiansen has been provided in the packet for Council review.

RECOMMENDATION: Staff respectfully recommends the City Council approve the bid from Idaho Traffic Safety in the amount of \$42,777.50 for street painting.

RECOMMENDED MOTION: *“I move to approve the bid from Idaho Traffic Safety in the amount of \$42,777.50 for street painting.”*

This is a legislative matter.

- b) Recommendation to approve a Chip Seal Bid - Brian Christiansen, Street Superintendent.

The Street Department is seeking approval of a chip sealing bid for summer maintenance projects. A bid from Idaho Asphalt in the amount of \$530.50 per ton is recommended for approval. A staff report from Brian Christiansen has been provided in the packet for Council review.

RECOMMENDATION: Staff respectfully recommends the City Council approve the bid from Idaho Asphalt in the amount of \$530.50 per ton for chip seal work.

RECOMMENDED MOTION: “I move to approve the bid from Idaho Asphalt in the amount of \$530.50 per ton for chip sealing work.”

This is a legislative matter.

8. ORDINANCES AND RESOLUTIONS.

- a) Ordinance 1105: An ordinance enacting Chapter 8.10, under Title 8, Ketchum Municipal Code, entitled Smoke-Free Air Ordinance, Regulating smoking in public places; setting forth the statutory authority for local government regulation of smoking; Providing legislative findings; Providing definitions of key terms; Prohibiting smoking on all City owned property and in all City owned facilities and all places of employment and setting forth a nonexclusive list of enclosed places where smoking is prohibited; Prohibiting smoking outdoors on public and private school property, within twenty feet of public transportation facilities; Providing exemptions from the smoking prohibition for exclusive retail tobacconists, in residences, except for any portion that is used as a business with employees or customers, and for bona fide Native American religious practices; Permitting businesses where smoking is not prohibited to designate any or all of the business nonsmoking; Providing for a public education program prior to enforcement; Providing infraction penalties for violation; Setting forth a severability clause and providing an effective date. (Third Reading and Adoption) - Stephanie Bonney, City Attorney.

Ordinance 1105 proposes to prohibit smoking in public places. The Council approved the first and second readings of the ordinance at its March 4, 2013 and March 18, 2013 Council meetings, respectively. A staff report from Lisa Horowitz has been included in the packet along with a copy of Ordinance 1105.

RECOMMENDATION: Staff respectfully recommends the City Council adopt the ordinance on third reading.

RECOMMENDED MOTION: “Pursuant to Idaho Code 50-902, I move for the approval and adoption of Ordinance 1105, the Ketchum Smoke-Free Ordinance.”

This is a legislative matter.

9. CONSENT AGENDA.

- a) Approval of minutes from the March 18, 2013 Council meeting.

Copies of the minutes from the March 18, 2013 Council meeting have been provided in the packet of Council review.

- b) Recommendation to approve current bills and payroll summary.

A list of bills for approval and the payroll summary have been included in the packet for Council review.

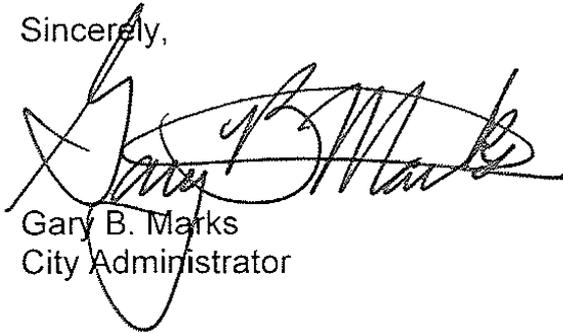
- c) Request for final plat and Findings of Fact, Sawtooth Residence Townhomes, Townhouse Subdivision.

Staff recommends the City Council approve the final plat and Findings of Fact for Sawtooth Residence Townhomes. Materials concerning this matter have been provided in the meeting packet.

- d) Recommendation to revoke certain LOT tax permits due to delinquency.

Staff recommends revocation of the LOT tax permits (as listed in the packet).

Sincerely,

A handwritten signature in black ink, appearing to read "Gary B. Marks". The signature is written in a cursive style with a large, stylized initial "G".

Gary B. Marks
City Administrator

**PROCLAMATION
NCADD ALCOHOL AWARENESS MONTH
APRIL 2013**

WHEREAS, Alcohol is the most commonly used addictive substance in the United States; and

WHEREAS, one in every 12 adults (17.6 million people) suffer from alcohol abuse or dependence; and

WHEREAS, more than half of all adults have a family history of alcoholism or problem drinking; and

WHEREAS, 100,000 persons die each year from alcohol-related causes: drinking and driving crashes, other accidents, falls, fires, alcohol-related homicides and suicides; and

WHEREAS, more than 7 million children live in a household where at least one parent is dependent on or has abused alcohol; and

WHEREAS, alcohol is a primary factor in the four leading causes of death for young persons ages 10-21; and

WHEREAS, young people who begin drinking before age 15 are four times more likely to develop alcohol dependence than those who begin drinking at age 21; and

WHEREAS, alcohol-related problems cost America \$224 billion (\$746 per person) in lost productivity, absenteeism, healthcare costs, crime and family-related problems; and

WHEREAS, the typical American will see 100,000 beer commercials before he or she turns 18,

NOW, THEREFORE, I Randy Hall join the National Council on Alcoholism and Drug Dependence, Inc. (NCADD) and do hereby proclaim that April 2013 is NCADD Alcohol Awareness Month in Ketchum. As the Mayor, I also call upon all citizens, parents, governmental agencies, public and private institutions, businesses, hospitals and schools in Ketchum to support efforts that will reduce stigma, increase community awareness and increase support for individuals and families coping with alcoholism. Through these efforts, together, we can provide help for those in our community who are facing challenges with alcohol use and abuse. May it be so decreed.

Randy Hall, Mayor

City of Ketchum, Idaho

P.O. Box 2315 Ketchum, ID 83340 (208) 726-3841 Fax: (208) 726-8234



April 9, 2013

Mayor Hall and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Hall and City Councilors:

First Amendment, YMCA Lease

Attachment 1: 2005 Lease Agreement, City of Ketchum and YMCA

Attachment 2: Proposed First Amendment to the Lease Agreement, City of Ketchum and YMCA

Attachment 3: 2013 Leasehold Deed of Trust and Assignment

Introduction/History

The City entered into a lease agreement with the YMCA in 2005 on City property commonly known as the Park and Ride Lot. The YMCA is requesting some minor changes to that lease to clarify the terms and conditions of the lease and to approve assignment of the leasehold related to a transaction with the "Allies of the Y". (The Allies of the Y are a group of community-minded YMCA supporters who have purchased the debt related to the YMCA from Republic Financial.) The 2005 lease, a proposed First Amendment and Leasehold Deed of Trust are attached to this report.

Current Report

The Amended lease contains the following elements:

- The first section of the Amendment (Recitals) lays out the reasons for the amendment.
- Section 4.1. removes references to an "ice rink and cultural center" to include broader terms for future improvements that may be contemplated, and to acknowledge that the City finds that the YMCA has met their obligations for improvements under the lease.
- Section 4.2 permits the YMCA to assign to Bond Holders interest in the lease as collateral for performance in the form of a Deed of Trust.
- Section 4.3, A Reserve Account was established in the original lease (Section 12.4) in the event that the City needed to step in and demolish

- operate or maintain improvements. The YMCA is requesting that this reserve account be waived.
- The remainder is standard lease language.

The documents have been reviewed by the City Attorney.

Financial Requirement/Impact

The YMCA has been operating since 2007. There are no direct financial implications of the proposed lease changes to the City.

Recommendation

I respectfully recommend that the Council adopt the First Amendment to the Lease between the City and the YMCA.

Proposed Motion: "I move to adopt the First Amendment to the Lease between the City and the YMCA dated April 15, 2013".

Sincerely,

Lisa Horowitz
Community and Economic Development Director

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (“Amendment”) is entered into by and between the City of Ketchum (“Landlord”), a municipal corporation and the Wood River Community Young Men’s Christian Association, Inc. (“Tenant”), an Idaho nonprofit corporation.

RECITALS

This Amendment is entered into with reference to the following facts and purposes:

A. Landlord and Tenant executed that certain Lease (“Lease”), dated March 16, 2005, under and by virtue of which landlord leased to Tenant the property (“Premises”) commonly known as the Park and Ride Property, Ketchum, Idaho and more particularly described in Exhibit A to the Lease.

B. In 2009, Tenant obtained a reissued Idaho Housing and Finance Association Nonprofit Facilities Revenue Bond, Series 2009 (“2009 Bond”) in the aggregate principal amount of six million dollars (\$6,000,000), which replaced the Idaho Housing and Finance Association Nonprofit Facilities Revenue Bond, Series 2006 (“2006 Bond”). The 2006 Bond was purchased by Bank of America, N.A. and such bank continued as the lender for the 2009 Bond. Allies of the Y, LLC, an Idaho limited liability company (“Bond Holder”), is the successor in interest to Bank of America, N.A. as to the 2009 Bond and is willing to reduce the aggregate principal indebtedness of the 2009 Bond to two million dollars (\$2,000,000) upon the approval of, and the reissuance by, the Idaho Housing and Finance Association of a reissued bond in said amount (“Bond”). As security for the reissuance of the Bond, Bond Holder desires, and Tenant is willing, subject to the approval of Landlord, to grant a security interest in its leasehold interest in the Premises by way of a “Leasehold Deed of Trust, Security Agreement, Fixture Filing and Assignment of Leases and Rents.”

C. Landlord and Tenant now desire to amend and modify the Lease in order to clarify its terms and conditions and provide protection for the Bond Holder so that Tenant may obtain the said financing.

AGREEMENT

In consideration of their mutual covenants and agreements contained in this Amendment and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, Landlord and Tenant hereby agree:

1. Recitals And Definitions. Landlord and Tenant incorporate the above recitals into this Amendment and affirm such recitals are true and correct. All capitalized terms used in this Amendment, unless specifically defined herein, have the same meanings attributed to them in the Lease.

2. No Further Amendments. Except as amended by this Amendment, the Lease remains unchanged and in full force and effect. If there is any conflict between the provisions of the Lease and the provisions of this Amendment, the provisions of this Amendment shall control.

3. Effective Date. This Amendment is effective as of the date on which the last of Landlord and Tenant execute this Amendment. Landlord and Tenant have no rights with respect to this Amendment until Landlord and Tenant have both executed this Amendment.

4. Amendments. The Lease is hereby amended and supplemented as follows:

4.1 *Initial Improvements.* The terms “Initial Improvements,” as defined in paragraph 5.2(a) as “... recreational and swimming pool facility, ice rink and cultural center” are hereby modified to read “recreational center, swimming pool facility and any and all other improvements as may be needed or desired by Tenant.” Landlord acknowledges that Tenant has fulfilled its obligations under Section 5.2(a) and may, but is under no obligation to, construct an ice rink and such other improvements at any time during the Lease Term.

4.2 *Assignment of Leasehold Interest.* Pursuant to paragraph 10.1 of the Lease, Landlord hereby consents to an assignment (“Assignment”) by Tenant to Bond Holder of its interest in this Lease as collateral for the performance of Tenant’s obligations to Bond Holder under the Bond. To the extent that any provision of the Lease prohibits such the Assignment, Landlord and Tenant waive such prohibition. The Assignment shall be substantially in the form of the Deed of Trust (“Deed of Trust”) attached hereto as Exhibit A. In the event there is a Default as that term is defined in the Deed of Trust (“Default”), and Bond Holder exercises its rights and remedies as a creditor under the Deed of Trust and/or under Idaho law, Landlord and Tenant represent and warrant to Bond Holder that Tenant’s interest in the Lease may be sold, assigned, transferred or conveyed to Bond Holder without further consent or approval of Landlord or other restriction set forth in paragraph 10.1, and/or to any other third party purchaser at any private or public sale according to applicable law but subject to the restrictions on transferability as stated in the Lease. Landlord and Tenant further represent and warrant to Bond Holder that in the event of a Default and subsequent exercise of Bond Holder’s rights and remedies under the Deed of Trust and/or under Idaho law as a creditor, that such exercise, including but not limited to the assignment or transfer of the Lease by Tenant to Bond Holder, shall not constitute a default under the Lease or otherwise result in or permit Landlord or Tenant to declare a default, breach or otherwise terminate the Lease. In the event Bond Holder exercises its rights as a creditor of Tenant pursuant to the Deed of Trust and/or Idaho law, Bond Holder, its assigns and/or any approved third party purchaser shall be entitled to continued quiet enjoyment under the Lease.

4.3 *Reserve Account.* The reserve account requirement set forth in paragraph 12.4 of the Lease is hereby unconditionally and absolutely waived by Landlord in its entirety.

5. Joinder And Authority. Landlord represents and warrants to Tenant that (a) Landlord holds fee simple title to the Premises, (b) there is no mortgage or deed of trust lien encumbering any portion of the Premises, and (c) no joinder or approval of another person or entity is required with respect to Landlord’s authority to enter into and execute this Amendment.

6. Estoppel Certificate. Pursuant to Paragraph 16.16 of the Lease, together with execution of this Amendment, Landlord and Tenant shall execute, acknowledge and deliver to Bond Holder the Estoppel Certificate in the form attached hereto as Exhibit B.

7. Rule Of Construction. Landlord and Tenant acknowledge they and, if they so choose, their respective counsel have reviewed and revised this Amendment and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of the Lease, this Amendment or any exhibits, attachments and addenda to the Lease and/or this Amendment.

8. Brokers. Landlord and Tenant represent and warrant to the other that they have not had any dealings with any real estate brokers or agents in connection with the negotiation of this Amendment. Each party agrees to indemnify and hold the other harmless from and against any and all liability and cost that the indemnified party may suffer in connection with any real estate brokers claiming by, through, or under the indemnifying party seeking any commission, fee or payment in connection with this Amendment.

9. Counterparts. This Amendment may be executed in multiple counterparts, each of which taken together shall constitute one and the same agreement binding upon the parties. Signatures transmitted by facsimile or via e-mail in a "PDF" format shall have the same force and effect as original signatures on this Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the day and year indicated below to be effective pursuant to Section 3 above.

LANDLORD:

City of Ketchum, a municipal corporation

By: _____

Name:
Title:
Dated:

TENANT:

Wood River Community Young Men's
Christian Association, Inc., an Idaho
nonprofit corporation

By: _____

Name:
Title:
Dated:

Exhibit A
Deed of Trust

Exhibit B
Estoppel Certificate

City of Ketchum, a municipal corporation (“Landlord”), and Wood River Community Young Men’s Christian Association, Inc., an Idaho nonprofit corporation (“Tenant”) each respectively certify to Allies of the Y, LLC, an Idaho limited liability company, and its respective successors and assigns, that the following information and representations are accurate as of the date each sign below:

1. The Lease Agreement entered into between Landlord and Tenant dated as of March 16, 2005 (the “Lease”), and as modified by that certain First Amendment to Lease dated as of _____, 2013 (the “First Amendment,” together with the Lease are collectively referred to herein as the “Lease”), is in full force and effect and has not been otherwise modified;
2. The Rent has been paid to _____, __ 201__;
3. Neither Landlord nor Tenant is in default under the terms of the Lease, nor do either party claim any default under the Lease;
4. Neither Landlord nor Tenant has assigned any interest in the Premises or any interest in its respective leasehold interest.
5. Landlord’s representations and warranties set forth in Paragraph 4.2 of the First Amendment to Lease are incorporated herein by this reference as if stated in full in this Estoppel Certificate and are given to and for the benefit of the Bond Holder as a third party beneficiary, and Bond Holder is relying upon such representations and warranties in connection with the reissuance of the 2009 Bond.

LANDLORD: _____

TENANT: _____

City of Ketchum, a municipal corporation

Wood River Community Young Men’s
Christian Association, Inc., an Idaho
nonprofit corporation

By: _____

Name:
Title:
Dated:

By: _____

Name:
Title:
Dated:

ACCEPTED BY BOND HOLDER:

Allies of the Y, LLC,
An Idaho limited liability company

By: _____

John Dondero, President of the Board of Managers

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Jill Eshman Law, P.C.
P.O. Box 4991
Ketchum, Idaho 83340

**LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT, FIXTURE FILING
AND ASSIGNMENT OF LEASES AND RENTS
(Wood River Community YMCA)**

THIS LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS (hereinafter called the "Deed of Trust") is made as of April __, 2013, between and among WOOD RIVER COMMUNITY YOUNG MEN'S CHRISTIAN ASSOCIATION, INC., an Idaho nonprofit corporation whose mailing address is P.O. Box 6801, Ketchum, Idaho 83340, (the "Trustor") and SUN VALLEY TITLE COMPANY, 271 1st Avenue North, Ketchum, Idaho 83340, or its substitutes, successors and assigns as hereinafter permitted (the "Trustee"), for the benefit of ALLIES OF THE Y, LLC, an Idaho limited liability company, (the "Lender" or the "Beneficiary") whose mailing address is Post Office Box 739, Sun Valley, Idaho 83353. THIS LEASEHOLD DEED OF TRUST ALSO CONSTITUTES A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE WITH TRUSTOR AS DEBTOR AND BENEFICIARY AS A SECURED PARTY.

W I T N E S S E T H:

WHEREAS, in order to refinance existing debt incurred in connection with the financing of the cost of improvements of a recreational facility for the Trustor (the "Project"), a Financing Agreement among the Idaho Housing and Finance Association (the "Issuer"), Lender and the Trustor, dated as of April __, 2013 (the "Agreement" or "Financing Agreement"), has been duly executed between the Issuer, the Trustor and Lender; and

WHEREAS, the Issuer, by its Resolution, adopted on April 12, 2013 (the "Resolution") has authorized the issuance of its Nonprofit Facilities Revenue Bonds, (Wood River Community YMCA Project), Series 2013, in the aggregate principal amount of \$2,000,000 (the "Bonds"), which Bonds are secured by a pledge and assignment of all of the right, title and interest of the Issuer in and to the Agreement (except for certain rights to indemnification and compensation), including loan repayments in the principal amount of TWO MILLION AND NO/100THS DOLLARS (\$2,000,000.00) plus interest on such principal; and

WHEREAS, as an inducement to the issuance of the Bonds, the Trustor has unconditionally agreed to execute, deliver and perform all provisions, terms and conditions of this Deed of Trust;

NOW, THEREFORE, in order to secure the repayment of all amounts due and payable by the Trustor under the Financing Agreement as the same shall become due and payable according to their tenor, and to secure the performance and observance of all the provisions therein and herein contained, and for and in consideration of the Loan (as defined in Section 1.01 in the Financing Agreement) and to secure the Trustor's performance of each and every term, covenant, agreement and condition contained in this Deed of Trust, the Financing Agreement, and the other Loan Documents, the Trustor by these presents does irrevocably grant, bargain, sell, and convey to the Trustee, in trust, with power of sale, all of the following contained in Granting Clauses I to VII inclusive (all of which are hereinafter sometimes collectively called the "Mortgaged Property"):

GRANTING CLAUSE I

Land. All of the Trustor's right, title and interest in and to the leasehold interest in that certain lease of the Land by that certain Lease Agreement dated as of March 16, 2005 and by that certain First Amendment to Lease dated as of _____, __, 2013 (collectively, the "Site Lease") and all right, title and interest now owned or hereafter acquired by the Trustor in and on the fee estate in the real property described in Exhibit A attached hereto, more commonly known as the Park and Ride Property, Ketchum, Idaho.

GRANTING CLAUSE II

Fixtures and Improvements. All right, title and interest of the Trustor in and to the Fixtures and Improvements, including without limitation all apparatus, appliances, furnaces, boilers, machinery, engines, motors, compressors, dynamos, elevators, fittings, piping, connections, conduits, ducts, and equipment, together with all awnings, carpeting, drapes, screens, stormdoors and windows, shades, floor coverings, wallbeds, cabinets, and partitions, and other like personal property owned by Trustor of every kind and description now or hereafter affixed or attached to any such building, structure, or improvement as shall be now or hereafter used or procured for use in connection with the heating, cooling, lighting, plumbing, ventilating, air conditioning, refrigeration, cleaning or general operation and which are structural components of any such building structure, or improvement, (all of which other than such foundations and footings are hereinafter referred to as "Building Equipment"), together with any and all alterations, replacements and additions to any such building, structure or improvement or Building Equipment, whether made by Trustor or any successor in interest (all of the foregoing including the Building Equipment being hereinafter sometimes collectively called the "Buildings"), provided that so-called "trade fixtures" which can be removed without damage to the Buildings are not intended to be covered by this Granting Clause II.

GRANTING CLAUSE III

(a) Easements and Roadways. All right, title and interest of the Trustor, now or at any time hereafter existing, in and to all highways, roads, streets, alleys and other public thoroughfares, bordering on or adjacent to any and all real estate covered or intended to be covered by this Deed of Trust, together with all right, title and interest of the Trustor to the land lying within such highways, roads, streets, alleys and other public thoroughfares, and together with all heretofore or

hereafter vacated highways, roads, streets, alleys (but only to the extent lying within the Land described in Exhibit "A"), and public thoroughfares and all strips and gores adjoining or within such real estate or any part thereof;

(b) Appurtenances, etc. All rights, privileges, licenses, easements, tenements, hereditaments and appurtenances now or at any time hereafter belonging to or in any way appertaining to the real estate covered or intended to be covered by this Deed of Trust, or to any property now or at any time hereafter comprising a part of the property subject to this Deed of Trust; and all right, title and interest of the Trustor, whether now or at any time hereafter existing, in all reversions and remainders to such real estate and other property.

GRANTING CLAUSE IV

Assignment of Rents and Other Rights and Interests of Trustor in or to the Land and the Fixtures and Properties. All right, title and interest of Trustor now owned or hereafter acquired, in and to all and singular the tenements, hereditaments, privileges, easements, franchises, leases and subleases, licenses, and appurtenances belonging or in any way appertaining to the property described in the preceding Granting Clauses, and the reversions, remainders, rents, issues and profits thereof, including all interest of the Trustor as landlord in and to all present and future licenses, leases, tenancies and occupancies of space in the Improvements and in each and every sublease of the entire or any part of the Land, and all the estate, rights, title and interest, claim and demand whatsoever in law or in equity, which the Trustor now has or may hereafter acquire in and to such property, including, without limiting the generality of the foregoing, any award in condemnation and the proceeds of any policy of insurance relating to the Mortgaged Property.

All of the above described property and interest therein are hereinafter referred to as the "Premises."

GRANTING CLAUSE V

Personal Property Used in Operation of the Premises. A security interest and a continuing lien in the following described property, together with all proceeds of all such property (collectively, the "Personal Property"), to-wit:

(a) All leases and subleases of the Land (b) all fixtures, appliances, furnishings, machinery, equipment and tangible personal property of Trustor now owned or hereafter acquired by Trustor and located on the Land, together with all additions, replacements and substitutions thereof as permitted under the Financing Agreement, and (c) all rents, issues and profits of said property.

GRANTING CLAUSE VI

Awards or Payments with Respect to the Land, the Fixtures, the Improvements and Other Properties. Any and all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Land, the Fixtures, the Improvements or the other properties referred to in Granting Clauses I through VII hereof as a result of (a) the

exercise of the right of eminent domain, or (b) the alteration of the grade of any street, or (c) any other injury to or decrease in the value of the premises referred to in Granting Clauses I through VII hereof, to the extent of all amounts which may be secured by this Deed of Trust at the date of receipt of any such award or payment by the Beneficiary, and of the reasonable counsel fees, costs and disbursements incurred by the Beneficiary in connection with the collection of such award or payment. The Trustor agrees to execute and deliver, from time to time, such further instruments as may be requested by the Beneficiary to confirm such assignment to the Beneficiary of any such award or payment.

GRANTING CLAUSE VII

Further Property of Trustor. All right, title and interest of the Trustor in and to all property and rights, if any, which are, by the express provisions of this Deed of Trust, required to be subjected to the lien hereof by the Trustor or by anyone in its behalf.

Any reference herein to the "Mortgaged Property" shall be deemed to apply to all the properties expressed in foregoing Granting Clauses I through VII and all of the properties described in Section 1.(a) hereof, unless the context shall require otherwise. It is understood that all the properties hereby granted, bargained, sold, alienated, released, remised, transferred, mortgaged and conveyed are intended so to be as a unit and are hereby understood, agreed, and declared to form a part and parcel of the Mortgaged Property described in Granting Clauses I through VII hereof and to be appropriated to the use of the said Mortgaged Property, and shall for the purposes of this Deed of Trust, so far as permitted by law, be deemed to be real estate and covered by this Deed of Trust, and as to the balance of the properties as aforesaid, this Deed of Trust is hereby deemed to be as well a security agreement for the purpose of creating a security interest in said properties referred to in Granting Clauses I through VII hereof, which security interest the Trustor hereby grants to the Beneficiary as security for the obligations aforesaid.

SUBJECT HOWEVER, to Permitted Encumbrances.

TO HAVE AND TO HOLD the Mortgaged Property described in Granting Clauses I through VII hereof together with all improvements thereon and all the rights, hereditaments and appurtenances in any way appertaining or belonging thereto, whether now owned or hereafter acquired, unto the Trustee and its successors and assigns forever.

THIS DEED OF TRUST IS GIVEN FOR THE PURPOSE OF SECURING: (1) Payment of the sum of TWO MILLION AND NO/100THS DOLLARS (\$2,000,000.00) with premium, if any, and interest thereon (the "Bond" as defined in the Financing Agreement), according to the terms of the Financing Agreement and all amendments, modifications, extensions or renewals thereof, but with a final payment on the Loan due as provided in the Financing Agreement; (2) Payment of such additional sums with interest thereon as herein provided (a) as may be hereafter borrowed from the Beneficiary by the Trustor with respect to the Project or (b) as may be paid out or advanced by the Beneficiary, or may otherwise be due to the Beneficiary, under any provision of this Deed of Trust and all modifications, extensions or renewals thereof; and (3) performance of each agreement of the Trustor contained herein or incorporated herein by reference or contained in the Financing Agreement or in any other instrument executed by the Trustor relating thereto.

The Trustor warrants that (i) it is lawfully possessed and is the lawful owner of leasehold estate in the Land under the Site Lease; (ii) the Land described in Exhibit "A" is free and clear of any deed of trust, mortgage, lien, charge or encumbrance thereon or affecting the title thereto prior to this Deed of Trust (other than as are specifically set forth in this Deed of Trust and Permitted Encumbrances); (iii) it is well and truly seized of the property described in the preceding Granting Clauses hereof, free and clear of any liens and encumbrances except as expressly set forth in this Deed of Trust; (iv) except for the assignment contained herein there is no present assignment of the rents and payments described under Granting Clause IV hereof; (v) it will maintain and preserve the lien of this Deed of Trust until the indebtedness secured hereby has been paid in full; (vi) it has good right and lawful authority to mortgage and pledge the Mortgaged Property described in Granting Clauses I through VII hereof, as provided in and by this Deed of Trust and the execution, delivery and performance of the Deed of Trust will not violate, conflict with, breach or constitute a default under any Legal Requirement; (vii) that it will forever warrant and defend the same against any and all claims and demands whatever, except as are specifically set forth in this Deed of Trust; and (viii) that there are no defaults by Trustor or the City of Ketchum under the terms of the Site Lease.

Section 1. Deed of Trust/Security Agreement.

(a) This document constitutes a security agreement with respect to all Personal Property described in Granting Clauses I through VII above in which Beneficiary is hereby granted a security interest hereunder, and Beneficiary shall have all of the rights and remedies of a secured party under the UCC (as defined below) as well as all other rights and remedies available hereunder or at law or in equity or by judicial decision, and Trustor shall have all the responsibilities and rights of a debtor under the UCC.

The Trustor and the Beneficiary agree that the filing of any such financing or continuation statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and hereby stated intention of the parties hereto, that everything used in connection with the production of income from the Mortgaged Property and/or adopted for use therein and which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether, (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment or items capable of being thus identified in a recital contained in this Deed of Trust or in any list filed with the Beneficiary, or (iii) any such item is referred to or reflected in any such financing or continuation statement so filed at any time.

(b) Upon any default of the Trustor, the Beneficiary may use any of the Personal Property for any purpose for which the Trustor could have used it or with respect to the construction, financing, management, use, operation or occupancy of any improvements on the Premises, and the Trustor hereby irrevocably appoints the Beneficiary as its attorney-in-fact to exercise (but the Beneficiary shall not be obligated to and shall incur no liability to the Trustor or any third party for failure so to exercise) any and all rights and powers which the Trustor might exercise with respect to any of the Personal Property.

The Trustor agrees to reimburse the Beneficiary on demand for any and all costs and expenses, including without limitation reasonable attorneys' fees, which the Beneficiary may incur while acting as the Trustor's attorney-in-fact hereunder, together with interest thereon at a rate equal to the Maximum Rate, all of which costs and expenses and interest thereon shall be secured by this Deed of Trust and any other documents or agreements now or hereafter securing the Loan and Financing Agreement. The Beneficiary shall also have all other rights and remedies with respect to any of the Personal Property or the enforcement of their security interest upon default by the Trustor as are provided under applicable law (including without limitation the UCC) to a secured creditor, including without limitation the right to notify any account holder, account debtor or depository to make payment directly to the Beneficiary, and the right to foreclose or otherwise enforce the Beneficiary's security interest in any manner permitted by applicable law or provided for herein, all of which rights and remedies shall be cumulative and in addition to all rights, powers, and remedies which the Beneficiary at any time may have under the other instruments, agreements or documents now or hereafter securing or relating to the Bonds.

Without limiting the foregoing, in the event that the Beneficiary elects to sell or dispose of or cause to be sold or disposed of any of the Personal Property at any one or more public or private sales as permitted by applicable law, such sale or disposition may, in the discretion of Beneficiary, be made together with or separately from any sale of any real property encumbered hereby, and any such sale or disposition may be conducted by an employee or agent of Beneficiary or Trustee. In exercising any such remedies the Beneficiary may sell all the Mortgaged Property as a unit even though the sales price thereof may exceed the amount remaining unpaid by the Trustor and the Beneficiary, shall be eligible to purchase any part or all of the Personal Property at any such sale or disposition.

(c) Expenses of retaking, holding, preparing for sale, selling and the like shall be borne by Trustor and shall include Beneficiary's and Trustee's attorneys' fees and legal expenses. Trustor, upon demand of Beneficiary and at Trustor's cost and expense, shall assemble any Personal Property and make it available to Beneficiary at the Premises, a place which is hereby deemed to be reasonably convenient to Beneficiary and Trustor. Beneficiary shall give Trustor at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of any Personal Property or of the time of or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Trustor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Trustor under the UCC or any other applicable law.

Section 2. Reconveyance. This conveyance is made in trust, and these presents are upon this express condition, that if the Trustor, or its successors or assigns, (i) pays the sums of money and the interest thereon stated in the Financing Agreement and secured by this Deed of Trust, and (ii) otherwise performs all of its obligations as provided hereunder and under the Financing Agreement and other documents evidencing or securing the Loan, then this Deed of Trust and the estate hereby granted shall cease, terminate and be void, and the Trustee shall reconvey without warranty the property then held hereunder. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Neither the Beneficiary nor the Trustee shall

be required to bear any expense or cost in connection with such reconveyance or the recording thereof.

Section 3. Definitions. In addition to all other words defined herein, and unless a different meaning or intent clearly appears from the context, the following terms have the following defined meanings:

“Agreement” or “Financing Agreement” means the Financing Agreement among Trustor, Lender and the Issuer dated as of April __, 2013.

“Beneficiary” means the Lender and its respective substitutes, successors and assigns.

“Deed of Trust” means the Leasehold Deed of Trust, Security Agreement, Fixture Filing and Assignment of Leases and Rents evidenced by this document.

“Fixtures” means all materials, supplies, equipment, apparatus and other items owned by the Trustor, now or hereafter and financed with the proceeds of the Bonds including any property acquired by Trustor with funds other than Bond Proceeds which have been reimbursed or refinanced with the proceeds of the Bonds attached to, installed in or used, whether temporarily or permanently, in connection with any of the Improvements, as hereinafter defined, or the Land, as hereafter defined, and all renewals, replacements, substitutions thereof and additions thereto, including, but not limited to, any and all partitions, ducts, shafts, pipes, radiators, conduit, wiring, window screens and shades, drapes, carpeting and other floor coverings, awnings, motors, engines, boilers, pumps, transformers, generators, fans, blowers, vents, switchboards, elevators, escalators, compressors, furnaces, cleaning, call and sprinkler systems, fire extinguishing apparatus, water tanks, swimming pools, heating, ventilating, pumping, laundry, incinerating, air conditioning and other cooling systems, water, gas and electrical equipment, disposals, dishwashers, refrigerators and ranges, cafeteria equipment, recreational equipment and facilities of all kinds, all of which property and things, to the extent permitted by law, are hereby declared to be permitted accessions to the Land.

“Governmental Authority” means any and all governmental or quasi-governmental entities of any nature whatsoever, whether federal, state, county, district, city or otherwise, and whether now or hereafter in existence.

“Impositions” means all rates, charges and penalties, including deposits, insurance, taxes and fines, including regular and special assessments, both as to realty and as to personalty, water, gas, sewer, garbage, electricity, telephone and other utilities, any easement, license or agreement, payments maintained for the benefit of the Mortgaged Property, and all other charges or taxes and any interest, costs or penalties with respect thereto of any nature whatsoever which may now or hereafter be assessed, levied or imposed upon the Mortgaged Property or the ownership, use, occupancy and enjoyment thereof.

“Improvements” means any and all buildings, structures, sidewalks, parking areas, fences, and other improvements, and any and all additions, alterations or appurtenances thereto, and any

and all plans, specifications, feasibility studies, cost estimates, permits, licenses and certificates now or at any time hereafter placed or constructed upon the Land or any part thereof.

“Land” means the Trustor’s leasehold interest under the Site Lease in the real estate and all improvements and fixtures and all rights, titles and interests appurtenant thereto, and any and all surveys, engineering studies, appraisal reports, permits, licenses and certificates now or hereafter acquired, situated in Blaine County, Idaho, as more particularly described in Exhibit “A” attached hereto, which is incorporated herein by this reference for all purposes, hereditaments, prescriptions, profits and advantages thereto in any way belonging.

“Leases” means all leases, including oil, gas and other mineral leases, subleases, licenses, concessions, contracts or other agreements, whether written or oral, now or hereafter in effect including without limitation the Site Lease, which grant a possessory interest in and to or the right to use any portion of the Mortgaged Property or which relate to the use or construction of the Improvements.

“Legal Requirements” means any and all of the following that may now or hereafter be applicable to the Trustor or the Mortgaged Property:

- (i) Judicial decisions, statutes, rulings, rules regulations, permits, certificates or ordinances of any Governmental Authority;
- (ii) Trustor’s Articles of Incorporation, Bylaws and any other agreements pertaining to the form of the Trustor’s business entity;
- (iii) Leases;
- (iv) Easements, privileges, restrictions and any other incorporeal rights of record; and
- (v) Other written agreements or promises of any nature.

“Lender” means Allies of the Y, LLC, an Idaho limited liability company, successor in interest to Bank of America, and its successor in interest US Acquisition, LLC, a Delaware limited liability company, as purchaser of the Bonds, defined above in paragraph three of the Deed of Trust.

“Loan Documents” means the collective reference to this Deed of Trust and all other instruments, agreements and documents entered into from time to time, evidencing or securing any obligation of payment or performance of Trustor’s obligations in connection with the transaction contemplated hereunder, each as amended.

“Maximum Rate” means the Prime Rate plus two percent (2%).

“Mortgaged Property” means the property defined and described in the Granting Clauses and Section 1.(a) hereof, together with all or any part of and any interest in the following:

(i) Rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances in any way pertaining thereto, and rights, titles and interests of the Trustor in and to any streets, alleys, driveways and strips of land adjoining the Land or any part thereof;

(ii) Promises made or undertaken by the Trustor as set forth in the Financing Agreement but only insofar as any or all of the foregoing relates thereto and any extensions, renewals or refundings thereof.

“Obligated Party” means any maker, co-maker, guarantor, surety, endorser, or other party, including the Trustor, directly or indirectly obligated or primarily or secondarily liable for any part of the Indebtedness or the performance of any of the Obligations.

“Obligations” and “Indebtedness” are equivalent terms and mean any and all actions which an Obligated Party is required to perform under the Financing Agreement, the Resolution and this Deed of Trust and all related loan documents including without limitation, all obligations, liabilities and indebtedness of the Trustor to the Beneficiary, whether now existing or hereafter created, absolute or contingent, direct or indirect, due or not, whether created directly or acquired by assignment or otherwise, including without limitation, all obligations, liabilities and indebtedness of the Trustor.

“Permitted Encumbrances” means (i) utility, access and other easements and rights-of-way, restrictions and exceptions that in the opinion of independent counsel will not materially impair the utility or value of the property affected thereby for the purposes for which it is intended, (ii) mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar liens which are being appropriately contested in good faith by the Trustor, and as to which adequate reserves have been placed with the Beneficiary in the amounts acceptable to said Beneficiary, (iii) liens for taxes, assessments, fees or governmental charges or levies at the time not delinquent or being contested in good faith by appropriate proceedings diligently conducted, (iv) such easements and rights-of-way as normally exist with respect to properties similar in character to the Land and as do not in the aggregate, in the opinion of independent counsel, materially impair the property affected thereby for the purpose for which it was acquired or is held by the Trustor, (v) the lien of the Resolution and the Deed of Trust, and (vi) first liens existing on the date hereof on the Personal Property described in subparagraph (b) of Granting Clause V hereof.

“Prime Rate” means the rate of interest announced by Bank of America as its “prime rate” from time to time.

“Project Facilities” or “Project” means the Wood River Community YMCA facilities to be financed with the proceeds of the Bonds and Loan as more fully described in the Resolution and Agreement.

“Rents” means all consideration, whether money or otherwise, paid or payable for the use or occupancy of the Mortgaged Property by any third party.

“Trustee” or “Trustee for the Deed of Trust” means Sun Valley Title Company, 271 1st Avenue North, Ketchum, Idaho 83340 and its substitutes, successors and assigns.

“Trustor” means Wood River Community Young Men’s Christian Association, Inc., an Idaho nonprofit corporation and its substitutes, successors and assigns as permitted under the Financing Agreement.

“UCC” means the Uniform Commercial Code, Title 28, Chapters 1-10, Idaho Code, as amended. All other capitalized terms shall have the same meaning or intent as defined in the Resolution.

Section 4. Payment of Debts, Secured Assessments and Liens. The Trustor hereby covenants and agrees as follows:

- (a) to pay all Indebtedness and perform all Obligations secured by this Deed of Trust, when, for any cause, the same shall become due;
- (b) to pay all real estate taxes and special assessments coming due on the said property;
- (c) to maintain the Improvements and Fixtures on the said property in a rentable and tenantable condition and state of repair, to neither commit nor suffer any waste, to comply promptly with all Legal Requirements and pay Impositions of any kind in connection therewith. The Beneficiary may recover as damages for any breach of this covenant the amount it would cost to put the said property in the condition called for herein. The Trustor shall permit Beneficiary or its agents the opportunity to inspect the said property, including the interior of any structures, at reasonable times and after reasonable notice;
- (d) to complete or restore promptly and in good workmanlike manner any building or improvement which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefor;
- (e) to keep the Mortgaged Property insured according to the terms of the Financing Agreement;
- (f) to appear in and defend any suit, action or proceeding that might affect the value of this Deed of Trust or the Mortgaged Property or the rights and powers of the Beneficiary or the Trustee; and should the Beneficiary or the Trustee elect also to appear in or defend any such action or proceeding, be made a party to such action by reason of this Deed of Trust, or elect to prosecute such action as appears necessary to preserve said value, the Trustor will, at all times, indemnify and save the Beneficiary or the Trustee harmless from, and, on demand, reimburse the Beneficiary or the Trustee for, any and all loss, damage, expense or cost, including cost of evidence of title and attorneys’ fees, arising out of or incurred in connection with any such suit, action or proceeding, and the sum of such expenditures, shall be secured by this Deed of Trust and shall be due and payable on demand; and further to pay costs of suit, cost of evidence of title and a reasonable attorneys’ fee in any proceeding or suit brought by Beneficiary to foreclose this Deed of Trust;

(g) to pay in full before delinquent all Impositions that may now or hereafter be levied, assessed or claimed upon said property or any part thereof, which at any time appear to be prior or superior hereto for which provision has not been made heretofore, and upon request will exhibit official receipts therefor to the Beneficiary, and to pay all taxes imposed upon, reasonable costs, fees and expenses of this Deed of Trust;

(h) to repay immediately after written notice to the Trustor all sums expended or advanced hereunder by or on behalf of the Beneficiary or the Trustee, and the repayment thereof shall be secured by this Deed of Trust. Failure to repay such expenditure or advance within thirty (30) days of the mailing of such notice will, at the Beneficiary's option, constitute an event of default hereunder, or, the Beneficiary may, at its option, commence an action against the Trustor for the recovery of such expenditure or advance, and in such event the Trustor agrees to pay, in addition to the amount of such expenditure or advance, all costs and expenses incurred in such action, together with reasonable attorneys' fees; and

(i) to permit any representative of Beneficiary, at any reasonable time and from time to time, to inspect, audit and examine accounting books and records and make copies of the same.

Section 5. Direct Payment by Trustor or Beneficiary. Should the Trustor fail to make any payment or to do any act as herein provided, then the Beneficiary or the Trustee, but without obligation so to do and without notice to or demand upon the Trustor and without releasing the Trustor from any obligation hereof may:

(a) make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, the Beneficiary or the Trustee being authorized to enter upon said property for such purposes;

(b) commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary or the Trustee;

(c) pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and

(d) in exercising any of the foregoing powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor including cost of evidence of title, employ counsel, and pay its reasonable fees, provided that Trustor shall reimburse Beneficiary or Trustee for sums expended plus interest thereon at the Maximum Rate.

Section 6. Condemnation and Casualty.

(a) Should the Mortgaged Property or any part, appurtenance, right or interest therein be taken or damaged by reason of any public or private improvement, condemnation proceeding (including change of grade), fire, earthquake or other casualty, or in any other manner, Trustor shall give immediate written notice to the Beneficiary and the insurance

carrier. Subject to the provisions of Section 6(b) below, Beneficiary may elect to collect, retain and apply upon the indebtedness of Trustor under this Agreement or any of the other Loan Documents, all proceeds of insurance or condemnation (individually and collectively referred to as "Proceeds") after deduction of all expenses of collection and settlement, including attorneys' and adjusters' fees and charges. Any proceeds remaining after repayment of the indebtedness under the Loan Documents shall be paid by Beneficiary to Trustor.

(b) Notwithstanding anything in Section 6(a) to the contrary, in the event of any casualty to the Property or any condemnation of part of the Property, Trustor shall have the option of applying the Proceeds to restoration of the Property, as the case may be, if (i) no Event of Default exists, (ii) all Proceeds are deposited with Beneficiary, (iii) in Beneficiary's reasonable judgment, the amount of Proceeds available for restoration of the Property (together with undisbursed proceeds of the Loan, if any, allocated for the cost of the construction and any sums or other security acceptable to Beneficiary deposited with Beneficiary by Trustor for such purpose) is sufficient to pay the full and complete costs of such restoration, (iv) no material leases in effect at the time of such casualty or condemnation are or will be terminated as a result of such casualty or condemnation, (v) if the cost of restoration exceeds seventy-five percent (75%) of the loan amount, in Beneficiary's sole determination after completion of restoration, the loan amount will not exceed seventy-five percent (75%) of the fair market value of the Property, (vi) in Beneficiary's reasonable determination, the Property can be restored to an architecturally and economically viable project in compliance with applicable Laws, (vii) in Beneficiary's reasonable determination, such restoration is likely to be completed not later than three (3) months prior to the Maturity Date, and (viii) Trustor has caused to be furnished to Beneficiary all Required Permits.

(c) In case Beneficiary does not elect to apply or does not have the right to apply the Proceeds to the indebtedness, as provided in Section 6(a) or 6(b) above, Trustor shall:

- (i) Proceed with diligence to make settlement with insurers or the appropriate governmental authorities and cause the Proceeds to be deposited with Beneficiary;
- (ii) In the event of any delay in making settlement with insurers or the appropriate governmental authorities or effecting collection of the Proceeds, deposit with Beneficiary the full amount required to complete construction as aforesaid; and
- (iii) Promptly proceed with the repair of all damage resulting from such fire, condemnation or other cause and restoration of the Project to its former condition.

The Trustor further assigns to the Beneficiary any return of premiums or other repayments upon any insurance at any time provided for the benefit of the Beneficiary, refunds or rebates made of taxes or assessments on said Mortgaged Property, and the Beneficiary may at any time collect said return of premiums, repayments, refunds or rebates, notwithstanding that no sum secured hereby be overdue when such right to collection be asserted. The Trustor also agrees to execute its further assignments of any compensation, awards, damages, rebates, return

of premiums, repayments, rights of action and proceeds as the Beneficiary or Trustee may require.

If the insurance proceeds are applied to the payment of the sums secured by this Deed of Trust, any such application of proceeds to principal shall not extend or postpone the due dates of scheduled installments or change the amounts of such installments. In the event of a foreclosure of this Deed of Trust or a nonjudicial sale of the Mortgaged Property, the purchaser of the Mortgaged Property shall have all of the right, title and interest of the Beneficiary in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the property prior to such sale or acquisition.

Section 7. Alteration or Removal of Property. No building or other property now or hereafter covered by the lien of this Deed of Trust shall be removed, demolished, transferred or altered in the amount of \$100,000 or more, without the prior written consent of the Beneficiary, except as provided in the Financing Agreement, provided that Trustor may replace any single item of worn out or outmoded personal property in an amount up to \$25,000 with personal property of equal or greater value without the approval of Beneficiary.

Section 8. Proceeds of Condemnation Awards. Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the premises by any public or quasi-public authority or corporation, the Trustor shall continue to pay the amounts secured until any such award or payment shall have been actually received by the Beneficiary and subject to the provisions of Section 6 hereof, have been applied to redemption of the Bonds and any reduction in the outstanding principal resulting from the application of such award or payment shall be deemed to take effect only on the date of such redemption of the Bonds. If, prior to the receipt of such award or payment, the premises shall have been sold on foreclosure including a sale under a power of sale by this Deed of Trust, the Beneficiary shall have the right to receive said award or a payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Deed of Trust shall have been sought or recovered or denied, and of the reasonable counsel fees, costs and disbursements incurred by the Beneficiary in connection with the collection of such award or payment.

Section 9. Environmental Matters.

(a) Trustor warrants that it has not placed or brought onto the Land, nor permitted to be placed or brought onto the Land, hazardous substances (as defined by Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601(14)) or materials (including without limitation petroleum products) the removal of which is required or the maintenance of which is prohibited or penalized by any applicable local, state or federal law, ordinance, rule, regulation or requirement and, to the best of Trustor's knowledge, the Land is free of all such hazardous substances and materials provided, however, that petroleum products may be kept on the Land if properly stored in accordance with all applicable federal, state and local laws and regulations. Trustor shall not permit any such hazardous substances or materials to be on the Land and, if found located thereon, shall cause the same to be immediately removed.

(b) Trustor acknowledges that it is responsible for compliance with all material local, state and federal environmental laws, ordinances, rules, regulations and requirements (collectively, "Environmental Laws"). In the event that Trustor does not expeditiously proceed with any compliance required by any local, state or federal authority under the applicable Environmental Laws, Beneficiary, immediately after notice to Trustor, may elect to undertake such compliance. Any applicable Environmental Laws (including the costs of hiring consultants, undertaking sampling and testing, performing any cleanup necessary or useful in the compliance process and attorneys' fees) shall be secured by this Deed of Trust and be due and payable on demand with interest thereon at a rate per annum equal to the Reference Rate from the date such cost is incurred. There shall be unlimited recourse to Trustor to the extent of any liability incurred by Beneficiary with respect to any breaches of the provisions of this Deed of Trust pertaining to environmental matters and with respect to the indemnification in Section 9(c).

(c) Trustor shall indemnify and defend and hold Beneficiary harmless from and against all loss, cost, damage and expense (including, without limitation, attorneys' fees and costs incurred in the investigation, defense and settlement of claims) the Beneficiary may incur, directly or indirectly, as a result of or in connection with the assertion against Beneficiary of any claim relating to the presence or removal of any hazardous substance or other regulated material, or compliance or non-compliance with any applicable Environmental Laws, whether before, during or after the term of this Deed of Trust, including claims relating to personal injury or damage to personal property.

(d) Trustor may enter into separate agreements with the Beneficiary addressing the subject matter of this Section 9 and, in the event of any conflict between the provisions of this Section 9 and such separate agreement, the separate agreement shall control and supersede as to the Beneficiary.

Section 10. Right of Entry. The Beneficiary and any persons authorized by the Trustor shall have the right to enter and inspect the Premises at all reasonable times and upon reasonable notice; and if, at any time after default by the Trustor in the performance of any of the terms, covenants or provisions of this Deed of Trust or the Financing Agreement, the management or maintenance of the Premises shall be determined by the Beneficiary to be unsatisfactory, the Trustor shall employ, for the duration of such default, as managing agent of the premises, any person from time to time designated by the Beneficiary.

Section 11. Nonwaiver. Any failure by the Beneficiary to insist upon the strict performance by the Trustor of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and the Beneficiary, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the Trustor of any and all of the terms and provisions of this Deed of Trust to be performed by the Trustor. Neither the Trustor nor any other person now or hereafter obligated for the payment of the whole or any part of the sums now or hereafter secured by this Deed of Trust shall be relieved of such obligation by reason of the failure of the Beneficiary to comply with any request of the Trustor or of any other person so obligated to take action to foreclose this Deed of Trust or otherwise enforce any of the provisions of this Deed of Trust or of any obligations secured by this Deed of Trust, or by reason of the

release, regardless of consideration, of the whole or any part of the security held for the indebtedness secured by this Deed of Trust, or by reason of any agreement or stipulation between any subsequent owner or owners of the Premises and the Beneficiary extending the time of payment or modifying the terms of the Financing Agreement, or the Deed of Trust without first having obtained the consent of the Trustor or such other person, and in the latter event, the Trustor and all such other persons shall continue liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by the Beneficiary.

Section 12. Time is of the Essence. Time is of the essence hereof in connection with all obligations of the Trustor herein and in the Financing Agreement. By accepting payment of any obligation secured by this Deed of Trust after its due date, the Beneficiary does not waive its right either to require prompt payment when due of all other obligations so secured or to declare default for failure so to pay.

Section 13. Plats, Easements, Reconveyances and Other Agreements. The Trustee may, at any time upon written request of the Beneficiary, and upon payment of its fees and presentation of this Deed of Trust for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of any obligations secured by this Deed of Trust:

- (a) consent to the making of any map or plat of said property;
- (b) join in granting any easement or creating any restriction thereon;
- (c) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge thereof; and
- (d) reconvey, without warranty, all or any part of the said property. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. The Trustor agrees to pay a reasonable Trustee's fee for full or partial reconveyance, together with a recording fee if the Trustee, at its option, elects to record said reconveyance.

Section 14. Sale of Premises Pursuant to a Foreclosure. In case of a sale pursuant to a foreclosure of this Deed of Trust, the said Premises, real, personal or mixed, may be sold as an entirety or in parcels, by one sale or by several sales held at one time or at different times, all as Trustee in its unrestricted discretion may elect, and the Trustor for and on behalf of itself and all persons claiming by, through or under it, waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure sale and agrees that upon foreclosure the Premises may be sold as an entirety and not in parcels.

Section 15. Appointment of Receiver. The holder of this Deed of Trust, in any action to foreclose it, shall be entitled (without notice and without regard to the adequacy of any security for said debt) to the appointment of a receiver of the rents, issues and profits of the said property and such receiver shall have, in addition to all the rights and powers customarily given to and

exercised by such receiver, all the rights and powers granted to the Beneficiary by the covenants contained in Section 19 hereof.

Section 16. Assignment of Rents and Profits Under All Leases and Rental Agreements.

The Trustor absolutely and irrevocably assigns to the Beneficiary the rents, issues and profits of the Mortgaged Property and the right, title and interest of the Trustor in and under all leases now or hereafter affecting the said property are hereby assigned and transferred to the Beneficiary. The Trustor will not assign the whole or any part of the rents, income, or profits arising from the Premises without the written consent of the Beneficiary, and any attempted assignment without such consent will be null and void. So long as no default shall exist in compliance with any requirement hereof or of any further instrument at any time executed with respect to this Deed of Trust, the Trustor may collect assigned rents and profits as the same fall due, but upon the occurrence of any such default, all rights of the Trustor to collect or receive rents or profits shall wholly terminate. All rents, issues or profits receivable from or in respect to the said property which the Trustor shall be permitted to collect hereunder shall be received by it to pay the usual and reasonable operating expenses of, and the taxes upon, the said property and the sums owing to the Beneficiary as they may become due and payable as provided in this Deed of Trust or in said Financing Agreement or in any modification of any of them.

The Trustor hereby agrees:

- (a) it will promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by it, as landlord under any Leases affecting the Mortgaged Property and will do all things necessary to preserve and keep unimpaired its rights thereunder and will maintain any Leases in full force and effect and will enforce the same and will take such action to that end as Beneficiary may request;
- (b) except as otherwise provided in the Financing Agreement it will not create, nor permit any lien, charge or encumbrance upon its interest as landlord under any Leases except the lien of this Deed of Trust;
- (c) it will promptly cause a copy of each notice, report, demand, request or other document or instrument, received by it from the tenant of any of the Leases to be delivered to Beneficiary in writing, specifying any default claimed to have been made by it as landlord under the provisions of any Lease;
- (d) it will not, without written consent of the Beneficiary, collect or permit the collection of any rental payment under any of the Leases for a period of more than one month in advance of the date on which such payment is due;
- (e) it will not, without prior written consent of the Beneficiary, with respect to any Lease:
 - (i) cancel or terminate, or consent to any cancellation, termination or surrender, or permit any event to occur which would entitle the tenant to terminate or cancel any of the Leases;

- (ii) amend or modify any of the Leases;
 - (iii) waive any default under or breach thereunder; or
 - (iv) give any consent, waiver or approval which would impair the lessor's interests thereunder;
- (f) it will promptly notify the Beneficiary of the occurrence of any default under any of the Leases and will not, without the prior written consent of the Beneficiary, commence any summary proceeding or other action or proceeding to recover possession of the premises leased, except in the case of default in payment of the rent reserved therein;
- (g) it will not, without prior written consent of the Beneficiary, consent to the assignment or mortgaging by the tenant of any of the Leases of the tenant's interest, except in accordance with the provisions of the Leases; and
- (h) all Leases shall be submitted to Beneficiary for its prior written approval prior to execution. Any standard lease form to be used by Trustor shall be submitted to Beneficiary for their prior written approval.

All Leases of the whole or any part of said property shall be subject and subordinate to the lien of this Deed of Trust unless Beneficiary, in its sole discretion, shall otherwise specify. Beneficiary may, at its option, require that specific Leases be made superior to the lien of this Deed of Trust. Trustor shall pay all costs incident to making such Leases superior to such lien, including attorney's fees. In the event of any default hereunder and the exercise by Beneficiary of its rights hereby granted, Trustor agrees that payments made by tenants or occupants to Beneficiary shall, as to such tenants, be considered as though made to Trustor and in discharge of tenants' obligations as such to Trustor. Nothing herein contained shall be construed as obliging Beneficiary to perform any of the Trustor's covenants under any lease or rental agreement. Trustor shall execute and deliver to Beneficiary upon demand any further or supplemental assignments necessary to effectuate the intentions of this section and upon failure of the Trustor so to comply, Beneficiary may, in addition to any other rights or remedies, at its option, declare all obligations secured by this Deed of Trust to be immediately due and payable.

Section 17. Subrogation. The Beneficiary shall be subrogated for further security to the lien, although released of record, of any and all encumbrances paid out of the proceeds of the Bonds secured by this Deed of Trust.

Section 18. Default, Entry and Possession. Upon the occurrence of any event of default under this Deed of Trust, or the Financing Agreement, the Beneficiary may, at its option, and at any time thereafter, either in person, by agent, or by a receiver to be appointed by a court, and without regard for the adequacy of any security for the obligations secured by this Deed of Trust, enter upon and take possession of the Mortgaged Property or any part thereof, and let said property or any part thereof, making therefor such alterations as they find necessary, in their own name sue for or otherwise collect such rents, issues and profits including those past due and unpaid and apply the same, less costs and expenses of operation and collection, including reasonable

attorneys' fees, upon any obligations secured by this Deed of Trust in such order as the Beneficiary may determine, and terminate in any lawful manner any tenancy or occupancy of said property or any part thereof, exercising with respect thereto any right or option available to the Trustor. From and after the occurrence of an event of default under this Deed of Trust, or the Financing Agreement, if any person shall occupy said property or any part thereof, such person shall pay to the Beneficiary in advance on the first day of each month a reasonable rental for the space so occupied, and upon failure to do so the Beneficiary shall have the right to remove such occupant from said property or any part thereof by any appropriate action or proceeding.

Section 19. Default, Nonwaiver. The entering upon and taking possession of the Mortgaged Property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of said property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

Section 20. Events of Default; Remedies.

(a) If any one or more of the following events occur, it is hereby defined as and declared to be an "Event of Default" under this Deed of Trust:

- (1) Default in the due and punctual payment of any installment of principal or interest under the Financing Agreement and any promissory notes related thereto;
- (2) The institution of a foreclosure action with respect to the Mortgaged Property or any part thereof;
- (3) Default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Trustor in this Deed of Trust contained and the continuance thereof for a period of 30 days after notice to the Trustor from the Beneficiary; or
- (4) An "event of default" (as defined therein) shall occur under the Financing Agreement.

(b) The Trustor agrees that an "Event of Default" hereunder shall constitute an "event of default" (as defined therein) under the Financing Agreement and that an "event of default" (as defined therein) under the Financing Agreement (regardless how or by whom caused) shall constitute an Event of Default hereunder.

(c) If an Event of Default occurs, the Beneficiary shall have the following remedies, in addition to any other remedies then provided by law or in equity:

- (1) The Beneficiary (or their assignee) may by written notice to the Trustor, declare the then outstanding principal of the Financing Agreement and any promissory notes related thereto to be forthwith due and payable, and upon such declaration the principal, together with interest accrued thereon, shall become due and payable forthwith at the place of payment specified.

(2) In addition, the Beneficiary may proceed to protect and enforce its rights under this Deed of Trust by requesting the Trustee of the Deed of Trust to sell the Mortgaged Property described in Granting Clauses I through VII hereof (in the manner hereinafter provided) or by other suit in equity, action at law, or other appropriate proceedings, including actions for the specific performance of any covenant or agreement contained in this Deed of Trust, or in the Financing Agreement, or in aid of the exercise of any power granted in this Deed of Trust or in the Financing Agreement, or may proceed in any other manner to enforce the payment of amounts due under the Financing Agreement and any other legal or equitable right of the Beneficiary. The Trustor expressly understands and agrees that on the bringing of any suit to foreclose this Deed of Trust, or to enforce any other remedy of the Beneficiary hereunder, the Beneficiary shall be entitled as a matter of right, without notice and without giving bond to the Trustor, or anyone claiming through, by or under it, and without regard to the value of the Mortgaged Property and/or the adequacy of the Mortgaged Property to have a receiver appointed of all or any part of the Mortgaged Property and of the earnings, income, rents, issues and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer. Such receiver shall have the right to complete construction of the buildings and improvements which the Trustor is obligated to construct under the Financing Agreement, the Trustor hereby confirming that the only way to preserve the value of the time, money, talent, labor and materials invested and incorporated into partially completed buildings and improvements is to complete the same. The Trustor does hereby irrevocably consent to such appointment.

(3) In event of any such default and upon written request of Beneficiary, Trustee shall sell the Premises in accordance with the Deed of Trust Act of the State of Idaho, Title 45, Chapter 15, Idaho Code (as existing now or hereafter amended) and the Uniform Commercial Code of the State of Idaho, where applicable. Any person except Trustee of the Deed of Trust (unless the Trustee of the Deed of Trust is acting as a fiduciary on behalf of the Beneficiary in which case it shall not be excluded) may bid at Trustee's sale. Trustee of the Deed of Trust shall apply the proceeds of the sale as follows: (1) to the expense of sale, including a reasonable fee of the Trustee of the Deed of Trust and attorney's fee; (2) to all the indebtedness evidenced by the Financing Agreement, and all other indebtedness secured by this Deed of Trust or any other instrument; (3) the surplus, if any, shall be distributed in accordance with said Deed of Trust Act. Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the property which Trustor had or had the power to convey at the time of its execution of this Deed of Trust, and such as it may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of the law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value. The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Idaho is not an exclusive remedy and

when not exercised, Beneficiary may foreclose this Deed of Trust as a mortgage. At any time Beneficiary may appoint in writing a successor trustee, or discharge and appoint a new trustee in place of any Trustee named herein, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original Trustee. The Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Trustee or Beneficiary shall be a party, unless such action or proceeding is brought by the Trustee.

(4) To the extent permitted by law, the Beneficiary, acting by its agents or attorneys, may, in its discretion, enter upon and take possession of the Mortgaged Property, or any part or parts thereof, and may exclude the Trustor and its agents and servants wholly therefrom, and having and holding the same, the Beneficiary may use, operate, manage and control the Mortgaged Property or any part thereof, and conduct the business thereof, either personally or by superintendents, managers, agents, servants and attorneys and from time to time, by purchase, repair or construction, may maintain and restore and may insure and keep insured the buildings, structures, improvements, fixtures and other property comprising the Mortgaged Property. If construction remains incomplete, the Beneficiary may cause construction of the buildings and improvements to be completed and the Beneficiary for such purpose may use all available materials and equipment at the Mortgaged Property and acquire all other necessary materials and equipment and employ contractors and other employees. All sums expended by the Beneficiary for such purpose shall constitute disbursements pursuant to the Financing Agreement and shall be secured by this Deed of Trust and shall forthwith be due and payable by the Trustor to the Beneficiary. The authority and agency conferred hereby upon the Beneficiary shall be deemed to create a power coupled with an interest and shall be irrevocable.

(5) In addition, the Beneficiary shall have the remedies of a secured party under the Idaho Uniform Commercial Code or other applicable law.

Section 21. Limitation on Transfer of Premises; Trustor Interest. The Premises shall not be sold, conveyed, vacated, encumbered or transferred in whole or in part by Trustor without the Beneficiary' prior written consent except as provided for in the Financing Agreement. If the Premises are so sold, the Beneficiary may declare all sums secured hereby, immediately due and payable.

Section 22. Negative Pledge. For so long as the Bonds shall remain in effect or any balance shall remain outstanding, Trustor covenants and agrees that it will not encumber, pledge or grant any lien (whether voluntary or involuntary) against the new building, the improvements, and/or assign the ground lease, or give any other party or lender a negative pledge. This obligation shall be evidenced by a written negative pledge agreement, in form and substance acceptable to Lender and recorded in the appropriate personal or real property records.

Section 23. No Usury. If from any circumstances whatever fulfillment of any provision of this Deed of Trust or the Financing Agreement at the time performance of such provision shall be due shall constitute usury, then the obligation to be fulfilled shall be reduced so as not to constitute usury, so that in no event shall any exaction be possible under this Deed of Trust or under the Financing Agreement that would constitute usury, but such obligation shall be fulfilled to the maximum lawful extent. The provisions of this paragraph shall control every other provision of this Deed of Trust and the Financing Agreement.

Section 23. Right of Foreclosure. The Beneficiary shall have the right at its option to foreclose this Deed of Trust subject to the rights of any tenant or tenants of said property and the failure to make any such tenant or tenants a party defendant to any such suit or action or to foreclose its rights will not be asserted by the Trustor as a defense in any action or suit instituted to collect the obligations secured by this Deed of Trust or any part thereof or any deficiency remaining unpaid after foreclosure and sale of said property, any statute or rule of law at any time existing to the contrary notwithstanding.

Section 24. Duty to Execute Instruments (Further Assurances). The Trustor, from time to time, within fifteen (15) days after request by Beneficiary, shall execute, acknowledge and deliver to the Beneficiary, such security agreements or other security instruments, in form and substance satisfactory to the Beneficiary, covering all property located on the Mortgaged Property and owned by the Trustor or in which the Trustor has any interest which, in the sole opinion of the Beneficiary, is essential to the operation of the Mortgaged Property. The Trustor shall further, from time to time, within fifteen (15) days after request by the Beneficiary, execute, acknowledge and deliver any financing statement, renewal, affidavit, certificate, continuation statement or other document as the Beneficiary may request in order to perfect, preserve, continue, extend or maintain the security interest under, or the priority of, this Deed of Trust and the priority of such security agreement or other security instrument as a first lien. However, neither a request so made by the Beneficiary nor the failure of the Beneficiary to make such request shall be construed as a release of such property, or any part thereof, from the conveyance of title by this Deed of Trust, it being understood and agreed that this covenant and any such security agreement or other security instrument, delivered to the Beneficiary, are cumulative and given as additional security.

Section 25. Cumulative Remedies. All of the Beneficiary' rights and remedies herein specified are intended to be cumulative. No requirement whatsoever may be waived at any time except by a writing signed by the Beneficiary, nor shall any waiver be operative upon other than a single occasion. This Deed of Trust may only be amended in writing. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on their heirs, devisees, legatees, administrators, executors, successors and assigns. The Beneficiary may also accept additional security, either concurrently herewith or hereafter, and sell same or otherwise realize thereon, either before, concurrently with, or after sale hereunder. Any notices to be given to the Trustor by the Beneficiary hereunder shall be deemed given upon mailing thereof to Trustor. Any time period provided in the giving of any notice hereunder shall commence upon mailing thereof to Trustor by the appropriate party.

Section 26. Location, Land Size and Non-Agricultural Use. The Land is either located within an incorporated city or village or contains not more than forty (40) acres.

Section 27. No Notice Required. The Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. The Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which the Trustor, the Beneficiary or the Trustee shall be a party unless brought by the Trustee.

Section 28. Appointment of Another Trustee. The Beneficiary may, from time to time, as provided by statute, appoint another Trustee in place and stead of the Trustee herein named, and thereupon, the Trustee herein named shall be discharged and the Trustee so appointed shall be substituted as the Trustee hereunder with the same effect as if originally named the Trustee herein.

Section 29. Two or More Trustees. If two or more persons be designated as the Trustee herein, any, or all, powers granted herein to the Trustee may be exercised by any of such persons, if the other person or persons is unable, for any reason, to act, and any recital of such inability in any instrument executed by any of such persons shall be conclusive against the Trustor, its successors and assigns.

Section 30. No Change Without Writing. No change, amendment, modification, cancellation or discharge hereof shall be valid unless in writing and signed by the Lender and Trustor or their respective successors and assigns. The interest rate, payment terms or balance due with respect to the Loan may be indexed, adjusted, renewed or renegotiated in accordance with Idaho Code §45-116.

Section 31. Conflict with Financing Agreement or Resolution. If any provision of this Deed of Trust conflicts with or is supplemented by any provision of the Financing Agreement or the Resolution, the provision of the Financing Agreement or the Resolution shall control.

Section 32. Acceptance of Affidavit. The Trustee, upon presentation to it of an affidavit signed by the Beneficiary setting forth facts showing a default by the Trustor hereunder, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon under this Deed of Trust.

Section 33. Notices. The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to it at its address set forth in the Financing Agreement.

Section 34. Expenses. Trustor agrees to pay all costs, expenses and fees, including all reasonable attorneys' fees, which may be incurred by the Beneficiary or their assignee in enforcing or attempting to enforce this Deed of Trust following any Event of Default whether the same shall be enforced by suit or otherwise.

Section 35. Governing Law; Jurisdiction and Venue. This Deed of Trust is to be governed by and construed in accordance with the laws of the State of Idaho. Association, Lender and Trustor hereby consent to the exclusive jurisdiction of the state courts of Idaho situated in Blaine County and waive any objection based on forum non conveniens with regard to any actions, claims,

disputes or proceedings relating to this Agreement. Nothing herein shall affect any party's right to serve process in any manner permitted by law, or limit Lender's right to bring proceedings against Trustor in the competent courts of any other jurisdiction or jurisdictions.

Section 36. Severability. If any provision of this Deed of Trust, or its application to any person or circumstance, is held invalid, the other provisions hereof, or the application of the provision to other persons or circumstances, shall not be affected.

Section 37. Miscellaneous. Without affecting the liability of any other person for the payment of any obligation herein mentioned and without affecting the lien hereof upon any portion of the Premises not released, Beneficiary may, without notice, release any person so liable, extend the maturity or modify the terms of any such obligation, or grant other indulgences, release or reconvey or cause to be released or reconveyed at any time all or part of the said Premises described herein, take or release any other security or make compositions or other arrangements with debtors. This Deed of Trust shall be so construed that wherever applicable, the use of the singular number shall include the plural number, the use of the plural number shall include the singular number, the use of any gender shall be applicable to all genders and shall likewise be so construed as applicable to and including a corporation.

Section 38. Representations and Warranties. Trustor represents and warrants to Beneficiary that, to Trustor's current actual knowledge after reasonable investigation and inquiry, the following statements are true and correct as of the effective date of the Deed of Trust:

(a) **Legal Status.** Trustor is duly organized and existing and in good standing under the laws of the state(s) in which Trustor is organized. Trustor is qualified or licensed to do business in all jurisdictions in which such qualification or licensing is required.

(b) **Authorization and Validity.** The execution and delivery of the Loan Documents have been duly authorized and the Loan Documents constitute valid and binding obligations of Trustor, or the party which executed the same, enforceable in accordance with their respective terms.

(c) **Violations.** The execution, delivery and performance by Trustor of each of the Loan Documents do not violate any provision of any law or regulation, or result in any breach or default under any contract, obligation, indenture or other instrument to which Trustor is a party or by which Trustor is bound. Neither Trustor nor the City of Ketchum is in default of the terms of the Site Lease.

(d) **Subordination.** There is no agreement or instrument to which Trustor is a party or by which Trustor is bound that would require the subordination in right of payment of any of Trustor's obligations under the Bond, the related promissory note or any of the Loan Documents to an obligation owed to another party.

(e) **Title.** Trustor lawfully holds and possesses a leasehold interest in the Property, without limitation on the right to encumber same, and there are no liens filed against the Property.

(f) **Mechanics' Liens.** There are no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under law could give rise to any such liens) affecting the Property which are or may be prior to or equal to the lien of this Deed of Trust.

Section 39. Site Lease Obligations.

(a) **Compliance with Site Lease.** Trustor will pay all rents and will strictly observe and perform on a timely basis all other terms, covenants, and conditions of the Site Lease. Trustor will indemnify, defend, and hold Beneficiary harmless against all losses, liabilities, actions, suits, proceedings, costs including reasonable attorneys' fees claims, demands, and damages whatsoever which may be incurred by reason of Trustor's failure to pay rents or strictly observe or perform under the Site Lease.

(b) **Other Agreements Relating to the Site Lease.** Trustor further agrees (1) not to surrender, terminate, or cancel the Site Lease, and (2) not to modify, change, supplement, alter, or amend the Site Lease, either orally or in writing, without Beneficiary's prior written notice. Any attempt by Trustor to do any of the foregoing without Beneficiary's prior written consent will be void and of no force and effect. At Beneficiary's option, Trustor will deposit with Beneficiary as further security all original documents relating to the Site Lease and the leasehold interest in the Property. Unless Trustor is in breach or default of any of the terms contained in this Deed of Trust, Beneficiary will have no right to cancel, modify, change, supplement, alter or amend the leasehold interest. No estate in the Property, whether fee title to the leasehold premises, the leasehold estate, or any subleasehold estate, will merge without Beneficiary express written consent; rather these estates will remain separate and distinct, even if there is a union of these estates in the landlord, Trustor, or a third party who purchases or otherwise acquires the estates. Trustor further agrees that if Trustor acquires all or a portion of the fee simple title, or any other leasehold or subleasehold title to the property, that title will, at Beneficiary's option, immediately become subject to the terms of this Deed of Trust, and Trustor will execute, deliver and record all documents necessary or appropriate to assure that such title is secured by this Deed of Trust

(c) **Notices Relating to the Site Lease.** Trustor shall promptly notify Beneficiary in writing:

- (1) if Trustor is in default in the performance or observance of any of the terms, covenants, or conditions which Trustor is to perform or observe under the Site Lease;
- (2) if any event occurs which would constitute a default under the Site Lease;
- (3) if any notice of default is given to Trustor by the Landlord under the Site Lease;
- (4) if, pursuant to the Site Lease, any proceeds received for the Property are deposited with someone other than Beneficiary, whether received

from any insurance on the Property or from taking of any or all of the Property by eminent domain; and

- (5) if any arbitration or appraisal proceedings are requested or instituted pursuant to the Site Lease.

Trustor agrees to provide Beneficiary promptly with a copy of all written materials relating to any of the above and to provide Beneficiary with such other information as Beneficiary may reasonably request. Trustor represents and warrant that Trust has notified and obtained the written consent of the landlord to the granting of and execution and delivery of this Deed of Trust, Trustor will notify the landlord under the Site Lease in writing of the execution and delivery of this Deed of Trust and of the name and address of Beneficiary and will deliver a copy of this Deed of Trust to the landlord.

(d) Option to Cure Site Lease Default. Upon Beneficiary's receipt of any written notice of Trustor's default under the Site Lease, Beneficiary may, at Beneficiary's option, cure such default, even though Trustor, or any party on behalf of trustor, questions or denies the existence of such default or the nature of the default. Trustor expressly grants to Beneficiary the absolute and immediate right to enter upon the Property to such extent and as often as Beneficiary in its sole discretion deems necessary or desirable in order to prevent or cure any such default by Trustor.

No Beneficiary Obligations. Beneficiary shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Trustor under the Site Lease, and Trustor hereby agrees to indemnify, defend and hold harmless Beneficiary from any and all liabilities arising from the Site Lease or this Deed of Trust. This Deed of Trust shall not place responsibility for the control, care, management or repair of the Land upon the Beneficiary or make the Beneficiary responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Land resulting in loss or injury or death to anyone or any entity. (The remainder of this page intentionally left blank.)

REQUEST FOR RECONVEYANCE

TO TRUSTEE:

The undersigned are the lenders under the Financing Agreement secured by this Leasehold Deed of Trust. Said Financing Agreement together with all other indebtedness secured by this Leasehold Deed of Trust, has been paid in full or the conditions for release of this Deed of Trust have otherwise been satisfied. You are hereby directed to cancel this Leasehold Deed of Trust, which is delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Leasehold Deed of Trust to the person or persons legally entitled thereto.

DATE: _____

DATE: _____

EXHIBIT "A"
PROPERTY DESCRIPTION

4819-5855-8226, v. 2

"EXHIBIT A"

THE PROPERTY

A legal description for a parcel of land located in Section 12 and 13, Township 4N, Range 17E, B. M., in the City of Ketchum, Blaine County, Idaho, and more particularly described as follows:

Beginning at the southeast corner of Tax Lot 6689; thence along the east line of said tax lot N 4°57'10" W, 356.55 feet, thence leaving said east line S 85°01'56" W, 20.53 feet to the TRUE POINT OF BEGINNING;

Thence along the proposed facility footprint, encompassing the construction of the building's footings and adjacent use areas, the following courses:

S 85°01'56" W, 44.83 feet;
S 4°58'04" E, 0.84 feet;
S 85°01'56" W, 8.00 feet;
N 4°58'04" W, 0.84 feet;
S 85°01'56" W, 40.67 feet;
S 4°58'04" E, 0.84 feet;
S 85°01'56" W, 8.00 feet;
N 4°58'04" W, 0.84 feet;
S 85°01'56" W, 14.50 feet;
N 4°58'04" W, 23.08 feet;
S 85°01'56" W, 12.09 feet;
N 4°58'04" W, 30.92 feet;
S 85°01'56" W, 11.92 feet;
N 4°58'04" W, 48.17 feet;
S 85°01'56" W, 9.13 feet;
S 4°58'04" E, 0.30 feet;
S 85°01'56" W, 4.00 feet;
N 4°58'04" W, 4.00 feet;
N 85°01'56" E, 0.38 feet;
N 4°58'04" W, 21.21 feet;
N 85°01'56" E, 4.25 feet;
N 4°58'04" W, 3.58 feet;
N 85°01'56" E, 1.00 feet;
N 4°58'04" W, 18.42 feet;
N 85°01'56" E, 1.33 feet;
N 4°58'04" W, 10.75 feet;
S 85°01'56" W, 15.00 feet;
N 4°58'04" W, 17.33 feet;
S 85°01'56" W, 6.67 feet;
N 4°58'04" W, 10.50 feet;
S 85°01'56" W, 0.33 feet;
N 4°58'04" W, 6.00 feet;
N 85°01'56" E, 0.33 feet;
N 4°58'04" W, 7.50 feet;
S 85°01'56" W, 8.00 feet;
N 4°58'04" W, 14.67 feet;
N 85°01'56" E, 3.33 feet;
N 4°58'04" W, 18.00 feet;
S 85°01'56" W, 3.50 feet;

N 4°58'04" W, 10.95 feet;
64.03 feet along a curve to the left with a radius of 37.01 feet, a central angle of 99°06'45", and a chord which bears North 06°01'36" West 56.34 feet;
N 85°01'56" E, 9.21 feet;
N 4°58'04" W, 12.10 feet;
N 85°01'56" E, 31.30 feet;
N 4°58'04" W, 86.29 feet;
S 85°01'56" W, 0.88 feet;
N 4°58'04" W, 5.00 feet;
N 85°01'56" E, 0.88 feet;
N 4°58'04" W, 23.67 feet;
S 85°01'56" W, 4.97 feet;
N 4°58'04" W, 22.00 feet;
N 85°01'56" E, 22.00 feet;
S 4°58'04" E, 18.33 feet;
N 85°01'56" E, 18.99 feet;
N 4°58'04" W, 3.67 feet;
N 85°01'56" E, 3.59 feet;
N 4°58'04" W, 39.33 feet;
S 85°01'56" W, 3.59 feet;
N 4°58'04" W, 10.00 feet;
N 85°01'56" E, 10.00 feet;
S 4°58'04" E, 3.58 feet;
N 85°01'56" E, 79.67 feet;
S 4°58'04" E, 10.67 feet;
N 85°01'56" E, 16.08 feet;
S 4°58'04" E, 3.00 feet;
S 85°01'56" W, 3.42 feet;
S 4°58'04" E, 17.08 feet;
N 85°01'56" E, 3.67 feet;
S 4°58'04" E, 37.50 feet;
N 85°01'56" E, 3.00 feet;
S 4°58'04" E, 12.00 feet;
S 85°01'56" W, 3.00 feet;
S 4°58'04" E, 45.00 feet;
N 85°01'56" E, 3.00 feet;
S 4°58'04" E, 12.00 feet;
S 85°01'56" W, 3.00 feet;
S 4°58'04" E, 52.83 feet;
N 85°01'56" E, 3.00 feet;
S 4°58'04" E, 12.00 feet;
S 85°01'56" W, 3.00 feet;
S 4°58'04" E, 43.00 feet;
N 85°01'56" E, 0.50 feet;
S 4°58'04" E, 28.83 feet;
S 85°01'56" W, 6.00 feet;
S 4°58'04" E, 207.33 feet, and to the TRUE POINT OF BEGINNING.

Said parcel contains 1.65 acres (71,813 square feet), more or less.

9-11-06

COPY

ORIGINAL

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this 16 day of MARCH, 2005, by and between the City of Ketchum, a municipal corporation ("Lessor" or sometimes "City"), and Wood River Community Young Men's Christian Association, Inc., dba Wood River Community YMCA, an Idaho nonprofit corporation ("Lessee").

WHEREAS, Lessor is an Idaho municipal corporation, existing and organized under the laws of the State of Idaho.

WHEREAS, Lessee is an Idaho nonprofit corporation, dedicated to providing recreational and cultural programs and services for persons of all ages and economic levels.

WHEREAS, Lessor owns unimproved real property located in Ketchum, Idaho more commonly referred to as the Park and Ride Property, as shown in Exhibit A.

WHEREAS, Lessor, in recognition of the need to provide recreational and cultural facilities, is willing to lease to Lessee a portion of the Park and Ride Property, more particularly described on Exhibit B, in order for Lessee to improve the Property with community recreational and cultural facilities as shown generally on Exhibit C ("Project").

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, the parties agree as follows:

I. PROPERTY LEASED.

1.1 Lease of Property. Upon the following terms and conditions set forth in this Agreement and in consideration of the payment from time to time by Lessee of the rents hereinafter set forth and in consideration of the prompt performance continuously by Lessee of each and every covenant and agreement hereinafter contained, Lessor leases to Lessee, and Lessee leases from Lessor the real property shown and particularly described on Exhibit B ("Property").

1.2 Condition of Property. Lessee agrees to lease the above described Property on an "as is" basis.

II. CONDITIONAL TERMINATION.

2.1 Conditional Termination. This Lease may be terminated by Lessor if, after two (2) years from the Approval Commencement Date (defined below in paragraph 2.2), substantial construction of any of the approved Initial Improvements (as defined in Article V) on the Property has not commenced or as may be otherwise agreed upon in a development agreement between the parties. Lessee is allowed to phase construction of the Initial Improvements as provided in Article V. Therefore, compliance with this provision is satisfied if Lessee timely commences substantial construction of the first phase of the Initial Improvements, even if the second phase of the Initial

Improvements is commenced at a later date. Once construction of any of the Initial Improvements is commenced, Lessee shall diligently pursue the construction thereof until completion. This Lease shall not be construed as excusing Lessee from having its application for governmental approvals and permits of the Project fully reviewed by the City Planning and Zoning Commission and by the City Council pursuant to all applicable City requirements.

2.2 Approval Commencement Date. The Approval Commencement Date is defined to be the earlier of that date when final governmental approvals and permits for the subdivision and rezoning of the Property and the Design Review of the Initial Improvements have been granted and the time period within which to contest those final approvals by administrative or judicial proceedings, appeals or otherwise has expired or four (4) years from the date of execution of this Lease.

III. TERM. The term of this Lease shall be for ninety nine (99) years commencing on the day this Agreement is fully executed by Lessor and Lessee ("Lease Commencement Date").

IV. RENT.

4.1 Rent. The rent for the Property shall be One Dollar (\$1.00) per year, for the term of the Lease.

4.2 Due Date. The rent shall be due and payable on the Lease Commencement Date and thereafter on each and every anniversary date of the Lease Commencement Date during the term of this Lease.

V. IMPROVEMENTS, REPAIRS, ADDITIONS, REPLACEMENTS.

5.1 Construction of Improvements. Lessee shall have the right, at its own cost and expense, to construct or place on any part or all of the Property, at any time and from time to time during the term of this Lease, such buildings, structures, parking areas, driveways, walks, gardens and other improvements, including fixtures ("Improvements") as Lessee shall from time to time determine are appropriate for Lessee's providing community recreational and cultural programs and services as required under this Agreement, provided that the same shall be in compliance with all then applicable building codes and ordinances. Lessee may time construction of any Improvements as Lessee determines in its discretion is financially appropriate and responsible. Lessee agrees that construction, alteration or repair of any Improvements on the Property shall be at no cost to Lessor, and Lessee shall hold Lessor harmless from liability for any costs, including attorney's fees, arising from the construction, alteration or repair of any Improvements on the Property.

5.2 Construction of Initial Improvements.

(a) Agreement to Construct Initial Improvements; Project Plans. Lessee has submitted to Lessor an application for permits to construct a recreational and swimming pool facility, ice rink and cultural center ("Initial Improvements"), as shown on the plans, drawings and specifications submitted to Lessor ("Project Plans"). Lessee agrees to construct and install the Initial Improvements substantially in accordance with the Project Plans. The Project Plans may be revised prior to the completion of the Initial Improvements, provided material revisions are approved by Lessor and any exhibits attached hereto are revised to reflect any changes in the Project Plans or the Initial Improvements. Lessee may phase construction of the Initial Improvements as Lessee determines in its discretion is financially appropriate and responsible. In the event construction of the Initial Improvements is phased, there shall be two phases, with the first phase including the swimming pool, gymnasium, exercise areas and climbing area and the second phase including the ice rink and cultural center.

(b) Performance Bond or Other Security. Prior to the commencement of any construction on the Property, Lessee or its contractor shall furnish to Lessor, subject to Lessor's reasonable approval and without expense to Lessor, a performance bond(s) or alternative form of financial guaranty (by way of example, letter of credit, set aside fund, all collectively referred to as "bond") naming Lessor as beneficiary, in an amount reasonably sufficient to complete the construction of the Initial Improvements; provided, if the construction of the Initial Improvements is to be phased, said bond shall be in an amount reasonably sufficient to complete the construction of that particular phase. Said bond shall also guarantee the prompt payment to all persons supplying labor, materials, provisions, supplies and equipment used directly or indirectly by Lessee's contractor, subcontractor(s) and suppliers in the prosecution of the work provided for in said construction of the Initial Improvements and shall protect Lessor from any liability, losses, or damages arising therefrom. Lessor and Lessee agree that a sum equal to one hundred ten percent (110%) of the amount by which the building permit fee is calculated shall be deemed to be an amount reasonably sufficient to complete construction of the Initial Improvements.

(c) Construction Easement and Staging Area. Lessor grants an easement to Lessee (and all persons involved in the construction of the Initial Improvements) for the construction of any of the Initial Improvements (or any phase of construction of the Initial Improvements) and to provide Lessee with a staging area for its construction activities, including storing construction materials, on that certain area of real property adjacent to the Property more particularly described on Exhibit D ("Open Space, Access and Landscape Area"). The construction easement shall commence at such time as Lessee gives notice to Lessor of Lessee's intent to commence construction of any of the Initial Improvements or phase thereof. After final completion of construction of the Initial Improvements or a specific phase of construction of the Initial Improvements, Lessee shall remove all construction materials and debris from the staging area and restore the area of the construction easement to its condition prior to Lessee's construction and staging activities.

5.3 Maintenance of Improvements; Maintenance Easement. Lessee shall, at all times during the term of this Lease and at its own cost and expense, keep and maintain in good order

and repair all Improvements on the Property and shall use all reasonable precaution to prevent waste, damage or injury thereto. Lessor shall not be required to make any improvements, repairs or alterations in or to the Property during the term of the Lease. Due to the configuration of the Property being leased to Lessee hereunder, Lessor acknowledges that Lessee will require access to adjacent property owned by Lessor in order to allow Lessee to repair and maintain Lessee's Improvements on the Property. Therefore, during the term of this Lease, Lessor grants an easement to Lessee for access over the Open Space, Access and Landscape Area for maintenance and repair of Lessee's Improvements and for installation and maintenance of landscaping, driveways and sidewalks as set forth in paragraph 11.3 below, as reasonably required for such work. Lessee, at its own expense, shall be responsible for repairing any damage to Lessor's property as a result of Lessee's use of the easement area for its activities.

5.4 Maintenance by Lessor. In the event that Lessee shall not maintain and repair the Improvements and/or the Open Space, Access and Landscape Area as required under this Lease, then Lessor may, but shall not be obligated to, maintain and repair the Improvements and/or the Open Space, Access and Landscape Area, and may apply all or any portion of the reserve funds referred to in paragraph 12.4 to pay for such maintenance and repairs. Lessor shall give Lessee thirty (30) days prior notice of its intent to make such maintenance and repairs and of its intent to expend reserve funds on the work. Lessee shall be required to restore the amount of the reserve funds expended by Lessor upon ninety (90) days notice to Lessee of the amount to be restored.

5.5 Future Alterations to Improvements. Lessee shall have the right, in its discretion and at its own cost and expense, at any time and from time to time during the term of this Lease, to make such alterations, changes, replacements, improvements and additions in and to the Property, and the Improvements as Lessee may deem desirable for Lessee's providing community recreational and cultural programs and services as required under this Agreement, including the demolition of any building(s) and/or structure(s) that may be on the Property, provided the same shall be in compliance with all then applicable building codes and ordinances. Lessee may time the construction of any such alterations, changes, replacements, improvements and additions as Lessee determines in its discretion is financially appropriate and responsible. Lessor may require a bond for future construction of Improvements, in accordance with the terms set forth above in paragraph 5.2(b). Lessor will provide to Lessee those easements reasonably necessary for future construction of any Improvements, in accordance with the terms set forth above in paragraph 5.2(c).

5.6 Damage to Improvements. If, during the Lease term, the Improvements are damaged by a loss covered by insurance, Lessee shall be required to timely repair such damage or rebuild the Improvements as necessary to restore the Improvements to the condition prior to the event causing damage thereto, subject to Lessee's discretion to change, alter, remodel or reconstruct the Improvements as provided in this Agreement. Lessee shall have the discretion to not rebuild or reconstruct any Improvements if the damage to the Improvements are caused by a loss not covered by insurance or there remains less than ten (10) years on the term of the Lease, in which case any insurance proceeds shall be equitably apportioned between Lessor and Lessee.

5.7 Title to Improvements During Lease Term. Until the expiration or sooner termination of this Lease, title to any Improvements located on the Property and any fixtures,

building equipment and other items installed thereon and any alteration, change or addition thereto shall remain solely in Lessee.

5.8 Title to Improvements at End of Lease Term. On the last day or the sooner termination of the term of the Lease. Lessee shall quit and surrender the Property and all Improvements then thereon to Lessor.

VI. TAXES, FEES AND LIENS.

6.1 Payment of Taxes and Fees. Lessee agrees to pay all lawful taxes and assessments which during the term hereof or any extension may become a lien or which may be levied by the State, County, City or any other tax levying body upon the Property or upon any taxable interest by Lessee acquired in this Lease or any taxable possessory right which Lessee may have in or to the Property or facilities hereby leased or the Improvements thereon by reason of its occupancy thereof as well as all taxes on all taxable property, real or personal, owned by Lessee in or about the Property. Upon making such payments, Lessee shall give to Lessor a copy of the receipts and vouchers showing such payment. Upon any termination of tenancy, all personal property taxes then levied or then a lien on any of said Property or taxable interest therein shall be paid in full without proration by Lessee forthwith or as soon as the statement thereof has been issued by the tax collector.

6.2 Mechanics and Materialmens Liens. Lessee agrees to pay, when due, all sums of money that become due, or purporting to be due, for any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with Lessee's consent to be furnished to or for Lessee in, upon or about the Property, which may be secured by any mechanic's, materialmen's or other lien against the Property or Lessor's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that Lessee may in good faith contest any mechanic's or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest.

6.3 Nonpayment During Contest. If Lessee shall in good faith proceed to contest any tax, special assessment, license fee, permit fee, or other public charge relating to the Property or the validity thereof by proper legal proceedings which shall operate to prevent the collection thereof, Lessee shall not be required to pay any such tax, assessment, fee, or other public charge so long as such proceeding is pending and not disposed of; provided that the nonpayment, in the reasonable judgment of Lessee, will not affect the possession, use or control of the Property. Lessee agrees to indemnify and save harmless Lessor from any loss as a result of Lessee's action as aforesaid.

VII. INSURANCE.

7.1 Lessee's Obligation. During the term of this Lease, Lessee shall carry and maintain at Lessee's own expense, the following types of insurance in the amounts specified:

(a) Liability insurance, including property damage, insuring Lessee against liability for injury to persons or property occurring in or about the Property and/or the Open Space, Access and Landscape Area, including any Improvements, or arising out of the maintenance, use or occupancy thereof in the amount of not less than Two Million Dollars (\$2,000,000.00).

(b) Umbrella liability insurance in an amount not less than Two Million Dollars (\$2,000,000.00), insuring Lessee by providing additional liability coverage to the liability insurance required to be carried by Lessee above in paragraph 7.1(a).

(c) All risk insurance insuring all Improvements, fixtures, contents and personal property against loss or damage by all risks now or hereafter embraced by all risk coverage, so called, in amounts sufficient to cover at least one hundred percent (100%) of the replacement cost of such located on the Property and/or the Open Space, Access and Landscape Area.

7.2 Lessor Additional Insured. Each of the foregoing policies of insurance shall name Lessor as an additional insured. The policy limits herein specified shall be increased from time to time upon written request from Lessor, if circumstances reasonably justify such increases. Lessee shall furnish Lessor with a Certificate of Insurance evincing coverage as required herein at the time such is commenced and at all renewal times thereafter. Each policy shall further provide that it shall not be cancelled or altered without thirty (30) days prior written notice to Lessor.

7.3 Compliance with Insurance Requirements. Lessee shall neither use nor occupy the Property and/or the Open Space, Access and Landscape Area or the Improvements in any manner, nor commit or omit any act, resulting in a cancellation or reduction of any insurance or increase in premiums on any insurance policy covering the Property and/or the Open Space, Access and Landscape Area or the Improvements. Lessee shall, at its expense, comply with all requirements of any insurer pertaining to the use of the Property and/or the Open Space, Access and Landscape Area or the Improvements and reasonably necessary for maintenance of economic and proper fire, liability and other insurance desired to be carried by Lessor.

VIII. INDEMNIFICATION.

8.1 Except as provided herein, Lessee shall indemnify and hold Lessor harmless from any and all liability, damage, judgments and costs by reason of death of or injuries sustained by or property damage suffered by any person on the Property and/or the Open Space, Access and Landscape Area or the Improvements in any manner whatsoever, unless such claims arise from the negligence or intentional acts of Lessor. If Lessor is made a party to any litigation on account of any such claim, Lessee shall pay all damages, costs and expenses recovered against Lessor as determined by a final judgment by a court of competent jurisdiction. Such damages, costs and expenses shall be due forthwith after notice thereof from Lessor. Lessee shall also pay to Lessor all reasonable out of pocket attorneys fees, expenses, costs and losses which Lessor may incur in connection with such claim.

8.2 Except for its negligent or intentional acts, Lessor shall not be responsible or liable for any damage or injury to the Property and/or the Open Space, Access and Landscape Area

or the Improvements or to any person or property damage suffered by any person at any time on the Property and/or the Open Space, Access and Landscape Area.

8.3 Each party shall indemnify the other against all liabilities, expenses, costs and losses, including reasonable attorney's fees, arising out of or relating to the failure by either party to perform any covenant required to be performed by said party under this Lease other than such claims arising out of intentional or negligent acts of the party, its employees, representatives and agents.

IX. CONDEMNATION.

9.1 Taking. If any part or all of the Improvements should be taken for any public or quasi public use under any governmental law, ordinance or regulation or by right of eminent domain or sold by Lessee under the threat of the exercise of said power, (all of which is herein referred to as "condemnation"), this Lease shall terminate as to such portion as shall be taken. If the portion taken does not feasibly permit the continuation of Lessee's operations, this Lease may be terminated by Lessee, in Lessee's discretion, and the rent shall be abated during the unexpired portion of this Lease, effective on the date physical possession is taken by the condemning authority. Any other additional expenses which Lessee has prepaid under this Agreement shall be prorated as of the date physical possession of the Improvements is taken by the condemning authority.

9.2 Condemnation Proceeds. All compensation awarded for any taking, in whole or in part, of the Improvements shall be the property of Lessee and Lessor hereby assigns its interest in any such award to Lessee.

X. ASSIGNMENT.

10.1 Restriction Against Assignment. Lessee shall not sell, assign or transfer, mortgage, pledge or otherwise encumber its interest in this Lease unless approved in advance by Lessor in Lessor's sole discretion. Lessor acknowledges that Lessee may be seeking bank or institutional financing for a portion of the costs of construction of the Initial Improvements and Lessor agrees to work in good faith with Lessee to reach acceptable terms for an assignment in these circumstances. Lessor also agrees to work in good faith with Lessee to reach acceptable terms for an assignment if Lessee seeks bank or institutional financing for construction costs of future Improvements. Lessee acknowledges that Lessor may require any assignment of Lessee's interest in this Lease to a bank or other financial institution to include a provision limiting the transferability of the Lease to a transferee with the demonstrated ability to provide community recreational and cultural activities comparable to other YMCAs.

10.2 No Discharge of Liability Without Consent. In the event Lessor approves of an assignment by Lessee, any assignment hereunder shall not release or discharge Lessee from any liability, whether past, present or future, under this Lease, and Lessee shall continue to be fully liable under this Lease unless Lessor in writing consents to Lessee's release from liability under the Lease. Any assignee shall agree to comply with and be bound by all the terms, covenants, conditions, provisions and agreements of this Lease and Lessee shall deliver to Lessor, promptly after execution,

an executed copy of each said assignment and an assignment of compliance by said assignee.

10.3 Effect of Noncompliance. Any sale, assignment or transfer of this Lease by Lessee which is not in compliance with the provisions of this Article X shall be null and of no force or effect and shall be voidable at Lessor's option or Lessor may elect to terminate the Lease upon notice to Lessee.

10.4 Lessor Assignment. In the event of the transfer and assignment by Lessor of its interest in this Lease and in the Property to a person expressly assuming Lessor's obligations under this Lease, Lessor shall thereby be released from any further obligations accruing thereafter and Lessee agrees to look solely to such successor in interest of Lessor for performance of such obligations. Any security given by Lessee to secure performance of Lessee's obligations hereunder may be assigned and transferred by Lessor to such successor in interest and Lessor shall thereby be discharged of any further obligation relating thereto.

10.5 Sublease. Lessee may sublease space within its buildings or the Property from time to time without approval of Lessor, provided the sublease is consistent with the operational purposes for which Lessee's facilities are being utilized pursuant to this Agreement. All revenues paid by sublessees and concessionaires for use of the facilities shall be paid to and belong to Lessee.

XI. UTILITIES, SNOW REMOVAL AND LANDSCAPING.

11.1 Utilities. Lessee shall timely pay for all water, sewer, electricity, gas, rubbish and all other materials and utilities supplied to the Property and/or the Open Space, Access and Landscape Area and the Improvements.

11.2 Snow Removal. Lessor and Lessee agree to enter into a separate agreement for plowing snow from the parking area of the Park and Ride Property

11.3 Landscaping. Lessee agrees to install and maintain the sidewalks, landscaping and driveways located in the Open Space, Access and Landscape Area in a first-class manner at Lessee's sole cost (including snow removal).

XII. DEFAULT.

12.1 Default. The occurrence of any of the following shall constitute a material default and breach of this Lease Agreement by Lessee:

(a) Any failure by Lessee to pay rent or any other monetary sums required to be paid hereunder when due where such failure continues for thirty (30) days after written notice of said default is given by Lessor to Lessee.

(b) Lessee shall desert or vacate or shall commence to desert or vacate the Property or any substantial portion of the Property or shall abandon substantially all operations

for a period of time in excess of sixty (60) days within a three hundred sixty five (365) day period or shall remove or attempt to remove, without the prior consent of Lessor, all or a substantial portion of Lessee's equipment, fixtures, furniture or other personal property.

(c) The failure by Lessee to observe and perform any other provision of this Lease to be observed or performed by Lessee, where such failure continues for thirty (30) days after written notice thereof by Lessor to Lessee unless a shorter time for cure is specifically provided elsewhere in this Lease; provided, however, that if the nature of such default is such that it cannot be reasonably cured within such thirty (30) day period, Lessee shall not be deemed to be in default if Lessee shall within such period commence such cure and thereafter diligently prosecute the same to completion.

(d) The dissolution or liquidation of Lessee; or the filing by Lessee of a voluntary petition in bankruptcy under any section of the National Bankruptcy Act, as amended, or any similar law of the United States of any state thereof; or the determination that Lessee is bankrupt or insolvent in proceedings filed against Lessee; or the assignment by Lessee for the benefit of creditors; or the appointment of a custodian, a receiver or a trustee over all or a substantial part of the assets of Lessee; where such events shall not be set aside, vacated, discharged or bonded within thirty (30) days after the above referenced event occurred.

(e) Notwithstanding anything to the contrary contained in the foregoing default clause, the parties hereto agree that if Lessee shall have defaulted in the performance of any (but not necessarily the same) terms or conditions of this Lease for three (3) or more times during any consecutive twelve (12) month period during the term hereof, then such conduct shall, at the election of Lessor, represent a separate event of material default which cannot be cured by Lessee. Lessee acknowledges that the purpose of this provision is to prevent repetitive defaults by Lessee under the Lease which work a hardship upon Lessor and deprive Lessor of the timely performance by Lessee hereunder.

12.2 Termination of Lease and Damages. In the event of any material default or breach by Lessee, as defined in paragraph 12.1 above, Lessor shall have the following remedies:

(a) Lessor shall be entitled to terminate Lessee's right to possession by any lawful means, including any statutory proceedings, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Property and Improvements to Lessor. Upon termination of this Lease, Lessor may terminate any sublease then in effect, without consent of sublessee.

(b) Once Lessor has gained possession of the Property and Improvements, Lessor may take any action necessary to maintain and preserve the Property as Lessor deems reasonable and necessary, including removal of all persons and property from the Property. Lessor shall have the right to make any reasonable repairs, alterations or modifications to the Property and Improvements, which Lessor in its sole discretion deems reasonable and necessary.

(c) Lessee shall continue to remain liable for all rent and any other

obligations as provided under this Lease and Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of or arising out of Lessee's default. Lessee's obligations to pay any amounts under this Lease shall survive the termination of the Lease hereunder. Damages shall include, but not be limited to, rent, whether past due or future amounts, costs relating to any and all other obligations arising under the Lease, costs relating to gaining possession of the Property and removal of any Improvements from the Property, costs relating to Lessor's reletting the Property, including attorneys fees, brokerage fees, costs of any repairs or alterations required to repair or relet the Property.

12.3 Remedies Cumulative. Lessor shall have all rights and remedies which this Lease and the laws of the State of Idaho assure to it. Pursuit of any of the above-mentioned remedies shall not preclude pursuit of any other remedies prescribed in other sections of this Lease and other remedies provided at law or in equity. The forbearance by Lessor to enforce one or more of the remedies herein provided upon an event of default, including, but not limited to Lessor's acceptance of rent or other monetary sums due from Lessee after material default, shall not be deemed or construed to constitute a waiver of such default. All rights and remedies accruing to Lessor shall be cumulative, that is, Lessor may pursue such rights as the law and this Lease afford to it in whatever order Lessor desires and the law permits without being compelled to resort to any one remedy in advance of any other.

12.4 Reserve Account. Prior to Lessee's commencement of its programs and services, Lessee shall provide a separate cash reserve security deposit fund in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) under the exclusive control of Lessor to provide Lessor with separate reserve funds for costs of demolishing or operating and maintaining the Improvements in the event that Lessor should acquire the Improvements due to a breach of the Lease by Lessee prior to the end of the Lease term. This reserve requirement may be satisfied by Lessee distributing funds to a separate account for the benefit of and in the name of Lessor, by Lessee providing a standby letter of credit payable solely to Lessor or by other means satisfactory to Lessor. This reserve requirement may be waived, in whole or in part, by Lessor upon a showing of financial strength reasonably satisfactory to Lessor. Lessor may condition any waiver of the reserve requirement on reasonable terms and conditions. Any interest earned on the reserve funds shall belong to Lessor and shall remain on deposit unless Lessor waives the reserve fund requirement herein. At the end of the ninety nine (99) year term of the Lease the reserve funds, if any, shall be repaid to Lessee.

XIII. USE OF PROPERTY AND OPERATION OF LESSEE'S BUSINESS.

13.1 Use of Property. Lessee shall use the Property and Improvements to provide community recreational and cultural programs and services generally provided by YMCAs and any lawful uses reasonably related thereto. The parties acknowledge that a portion of the Improvements will include an indoor ice rink that will be capable of being converted into a large multi-use area, which may be used for public or private events. Therefore, by way of example and not limitation, cultural programs and services, including educational programs, educational seminars and classes, art shows, musical concerts, lectures, public and private meetings may be held; the Property and Improvements may be used for social and business functions and fund raising activities by various

community organizations and associations; the Property and Improvements may be used for conventions and meetings by businesses and organizations, whether those businesses or organizations are nonprofit or for profit.

13.2 Lessee's Fees and Charges. Financial Assistance and Other Restrictions.

(a) Lessee shall have the right to establish from time to time any fees and charges in the course of its operations and business, including but not limited to charges for the use of the Improvements and for the participation in Lessee's programs. Lessee acknowledges that it will allow for day use of its Improvements and will establish charges for such day use.

(b) Lessee agrees to appoint a mutually acceptable representative of Lessor to each committee of Lessee which is charged with the duty of making recommendations for establishing fees and charges to Lessee's Board of Directors or, if Lessor elects, Lessee agrees to appoint a mutually acceptable representative to Lessee's Board of Directors. It is intended that Lessor have the opportunity to provide input to Lessee with regard to Lessee's establishing its fees and charges.

(c) In keeping with the national YMCA policy on financial assistance, Lessee agrees to comply with such policy, which states "subject to available resources, no person shall be denied participation in YMCA programs solely by reason of the inability to pay the prescribed program fees." Lessee agrees to implement an income based sliding fee scale policy as its method for complying with the above stated financial assistance policy.

13.3 Operating Hours. Lessee shall maintain reasonable and customary operating hours for use of the Improvements and participation in its programs by its patrons.

13.4 No Violation of Law. Lessee shall not use the Property or permit anything to be done in or about the Property which will in any way violate any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Lessee shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force.

13.5 Environmental Regulations. Lessee shall not use, or permit any tenant, occupant or other party or entity to use the Property, or any part thereof, for the purpose of generating, treating, producing, storing, handling, transferring, processing, transporting, disposing or otherwise releasing "Hazardous Substances," as hereinafter defined, either on, in, from or about the Property which:

(a) Creates or causes a contamination either on the Property or elsewhere required by any governmental authority to be removed, remedied or otherwise cleaned up under any applicable "Environmental Law," as defined below;

(b) Creates any form of liability, civil or criminal, direct or indirect, due to such contamination; or

(c) Is in contravention of any Environmental Laws.

The terms "Environmental Law" and "Environmental Laws" as used in this Lease include any and all current and future federal, state and local environmental laws, statutes, rules, regulations and ordinances, as the same shall be amended and modified from time to time, including but not limited to "common law", the Comprehensive Environmental Response, Compensation and Liability Act, as amended from time to time ("CERCLA"), the Resource Conservation and Recovery Act, as amended from time to time ("RCRA"), and the Toxic Substances Control Act, as amended from time to time ("TSCA"). The term "Hazardous Substances" as used in this Lease includes any and all "Hazardous Substances" as defined in CERCLA, any and all "Hazardous Wastes" as defined in RCRA, any and all "Toxic Substances" as defined in TSCA, petroleum products, asbestos or asbestos containing materials, polychlorinated biphenyls ("PCB's"), radon gas, urea formaldehyde foam insulation ("UFFI") and any and all other hazardous substances, hazardous wastes, pollutants and contaminants regulated or controlled by any Environmental Law.

Lessee shall, in the event of any discharge, spill, injection, escape, emission, disposal, leak or any other release of Hazardous Substances on, in, under, onto or from the Property which is not authorized by a currently valid permit or other approval by the appropriate governmental agencies, promptly notify Lessor, the Environmental Protection Agency National Response Center and the appropriate State Department of Environmental Resources, and shall take all steps necessary to promptly clean up such discharge, spill, injection, escape, emission, disposal, leak or any other release in accordance with the provisions of all applicable Environmental Laws, and shall receive a certification from the appropriate State Department of Environmental Resources or Federal Environmental Protection Agency, that the Property and any other property affected has been cleaned up to the satisfaction of those agencies. Subject to the foregoing, in the event that any materials or other items qualifying as Hazardous Substances are found on, in, under or around the Property during the term of this Lease, Lessee shall immediately remove the same from the Property, at Lessee's sole cost and expense, in compliance with all applicable Environmental Laws. In addition, after the term of this Lease, in the event that any materials or other items qualifying as Hazardous Substances are found on, in, under or around the Property which result from or are attributable to Lessee's use of the Property during the term of this Lease, Lessee shall immediately remove the same from the Property, at Lessee's sole cost and expense, in compliance with all applicable Environmental Laws.

Lessee shall and does hereby grant Lessor and Lessor's agents, employees, contractors and designees an irrevocable license (coupled with an interest) to enter the Property from time to time to:

- (a) Evaluate and monitor the Property for compliance with all Environmental Laws and the terms of this Lease;
- (b) To evaluate the presence of Hazardous Substances; and
- (c) To perform appropriate tests and test borings, including taking soil and groundwater samples.

Lessee shall provide Lessor with all notices and other communications received from federal, state and local agencies and departments which enforce and administer the Environmental Laws. From time to time Lessee shall provide Lessor, upon request, any and all information reasonably requested by Lessor, concerning the use of the Property and Lessee's compliance with the Environmental Laws and the terms of this Lease, including but not limited to, all licenses, permits and certificates and the books and records pertaining to the Property.

Lessor shall be under no obligation or duty to inspect for or discover any Hazardous Substances.

XIV. PARKING AND ACCESS.

14.1 Access. Lessor hereby grants to Lessee an access easement and shall provide for the term of this Lease full and unrestricted access, ingress to and egress from the Property from Warm Springs Road and Saddle Road across the Open Space, Access and Landscape Area for the purpose of providing reasonably adequate pedestrian and vehicular access to and from the Property to Lessee's employees, agents, guests, customers, patrons, invitees, licensees and the public at large, its or their suppliers of materials and providers of services, and its or their equipment, vehicles, machinery or other property.

14.2 Parking. Lessee agrees to provide adequate parking for Lessee's employees, agents, guests, customers, patrons, invitees, licensees and the public at large. The parties acknowledge that some, if not all, of Lessee's required parking may be reserved or located within the portion of the Park and Ride Property not being leased to Lessee under this Lease, provided that Lessor is not making any guarantee in this Agreement as to what amount of parking may be located within the Park and Ride Property. Therefore, the parties agree to cooperate in good faith to determine that amount of parking deemed to be adequate for Lessee's purposes in order to accommodate Lessee's parking requirements with any future development plans Lessor may have for the remainder of the Park and Ride Property not leased to Lessee hereunder, which will be embodied in a separate joint parking agreement. The parking agreement shall include terms covering special event parking and parking fee charges.

XV. REPRESENTATIONS AND WARRANTIES.

15.1 Lessor's Representations and Warranties.

(a) Lessor is duly authorized and empowered to enter into this Lease Agreement and to carry out its obligations hereunder.

(b) Lessor has good and clear title to the Property, free and clear of all liens and encumbrances, to enable Lessee to construct Improvements on the Property and to enable Lessor to lease the Property to Lessee as provided in this Agreement.

(c) This Lease Agreement has been duly authorized and delivered by Lessor and constitutes a legal, binding, valid obligation of Lessor, enforceable against Lessor in

accordance with its terms.

15.2 Lessee's Representations and Warranties.

(a) Lessee is a nonprofit corporation duly incorporated and in good standing in the State of Idaho, has full corporate power to conduct its business, has full legal right, power and authority to enter into this Lease Agreement and to consummate all transactions contemplated hereby.

(b) This Lease Agreement has been duly authorized and delivered by Lessee and constitutes a legal, valid and binding obligation of Lessee, enforceable against Lessee, in accordance with its terms.

(c) The Initial Improvements shall substantially consist of the facilities, described in Exhibit C and no material changes shall be made thereto except as permitted herein.

XVI. MISCELLANEOUS PROVISIONS.

16.1 Notices. All notices or demands of any kind required or desired to be given by Lessor or Lessee hereunder shall be in writing and shall be given by hand delivery to either party herein; by mail, certified or registered, postage prepaid, to the parties at the addresses set forth in this provision; or by telecopy to the parties at the telecopy number set forth in this provision. All notices or demands which are delivered shall be deemed delivered as of the date of delivery or transmission of the telecopy. All notices or demands mailed shall be deemed delivered the date of depositing the notice or demand in the United States Mail, certified or registered, postage prepaid, to the addresses set forth herein.

Lessor: City of Ketchum
c/o City Administrator
Post Office Box 2315
Ketchum, ID 83340
Fax: (208) 726-8234

Lessee: Wood River Community YMCA
c/o Executive Director
Post Office Box 6801
Ketchum, ID 83340
Fax: (208) 726-1524

Any notice of a change of address or telecopy number shall be given as set forth in this provision to be effective.

16.2 Quiet Enjoyment. Lessee, upon paying the rent and all other sums and charges to be paid by it as herein provided, and observing and keeping all covenants, warranties, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the

Property during the term of this Lease.

16.3 Covenants Running with Land. All covenants, promises, conditions and obligations herein contained or implied by law are covenants running with the land and shall attach and bind and inure to the benefit of Lessor and Lessee and their respective heirs, legal representatives, successors and assigns, except as otherwise provided herein.

16.4 Waiver. The waiver of a breach of any of the covenants contained in this Lease, or the failure of Lessor or Lessee to insist on the strict performance of any provision, rule or regulation shall not be construed to be a waiver of any succeeding breach of the same covenant, provision, rule or regulation.

16.5 Written Modifications. Any modification of this Agreement shall be effective only if it is in writing and signed by both parties hereto.

16.6 Entire Agreement. This Agreement contains the entire agreement between the parties as of this date and the execution hereof has not been induced by either party by representations, promises, or understandings not expressed herein and there are no collateral agreements, stipulations, promises, or undertakings whatsoever upon the respective parties in any way touching the subject matter of this instrument which are not expressly contained in this instrument.

16.7 Captions. The captions of the articles of this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease.

16.8 Exhibits and Attachments. The exhibits, addendums and schedules attached hereto are deemed by attachment to constitute part of this Lease and are hereby incorporated herein by this reference.

16.9 Number and Gender Persons. To the extent appropriate, the singular shall include the plural and the plural shall include the singular. Words used in their neuter gender include the masculine and feminine and words in the masculine or feminine gender include the neuter. If there be more than one Lessor or Lessee, the obligations hereunder imposed upon Lessor or Lessee shall be joint and several.

16.10 Severance and Validity. If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

16.11 Attorneys' Fees. In the event that either party hereto has to retain counsel to enforce any of the rights and duties created hereunder, then the prevailing party shall be entitled to its reasonable attorneys' fees and costs from the non-prevailing party, whether or not litigation is actually commenced and upon appeal.

16.12 Relationship of Parties. Lessor and Lessee shall not be considered or deemed to be joint venturers or partners and neither shall have the power to bind or obligate the other except as may be expressly set forth herein.

16.13 Applicable Law. This Lease shall be construed and enforced in all respects in accordance with the laws of the State of Idaho.

16.14 Binding Effect. This Lease shall be binding on and inure to the benefit of the heirs, personal representatives, administrators, successors and assigns of the parties hereto.

16.15 Time of Essence. Time is of the essence of this Lease Agreement.

16.16 Estoppel Certificate. Lessor and Lessee shall at any time upon not less than twenty (20) days prior written notice from one another execute, acknowledge and deliver to the requesting party a statement in writing (1) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (2) acknowledging that there are not, to the responding party's knowledge, any uncured defaults on the part of the other party hereunder; or specifying such defaults if any are claimed.

16.17 Disputes Resolution. The parties agree to resolve any disputes which arise out of this Agreement as follows:

(a) Mediation. All disputes shall first be submitted to mediation. Any party shall have the right to begin the process by giving the other party a written notice requesting mediation, describing the issues involved. A mutually agreeable mediator and a time frame for the mediation meetings shall be agreed upon. The parties and the mediator may adopt any procedural format that seems appropriate for the particular dispute. The contents of all discussions during the mediation shall be confidential and non-discoverable in subsequent arbitration or litigation, if any. If the parties can agree upon a mutually acceptable agreement, it shall be reduced to writing, signed by all parties, and the dispute shall be at an end. The costs of mediation shall be shared equally by the parties.

(b) Judicial Proceedings. If, after continuing the mediation process in good faith, the parties recognize that the dispute cannot be successfully mediated, then the parties may institute judicial proceedings to resolve the dispute.

(c) Injunctive Relief. Nothing herein shall prevent any party from seeking injunctive relief where appropriate under the law prior to mediation proceedings.

16.18 Unavoidable Default or Delay. Any prevention, delay, nonperformance or stoppage due to any of the following causes shall excuse nonperformance by Lessor or Lessee for a period equal to any such prevention, delay nonperformance or stoppage, provided that the

obligations imposed by this Lease for the payment of rent, taxes, insurance or obligations to pay money that are treated as rent shall not be excused, except as allowed under this Agreement or that may be required by law: strikes, lockouts, labor disputes, failure of power, acts of God, acts of public enemies of this state or the United States, riots, insurrections, civil commotion, inability (using diligent and reasonable effort) to obtain labor or materials or reasonable substitutes for either, governmental restrictions or regulations controls, casualties not contemplated by insurance provisions of this Lease or other causes beyond the reasonable control of the party obligated to perform.

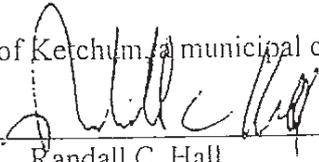
16.19 Recordation. Either party may record this Lease in the official records of Blaine County, Idaho.

16.20 Duplicate Original. This Lease shall be executed in duplicate originals, with one fully executed original being delivered to each party.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement effective as of the day and year above written.

LESSOR:

City of Ketchum, a municipal corporation

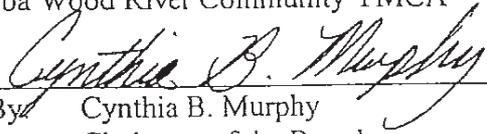

By: Randall C. Hall
Its: President of the City Council

ATTEST:


Sandra Cady, City Clerk

LESSEE:

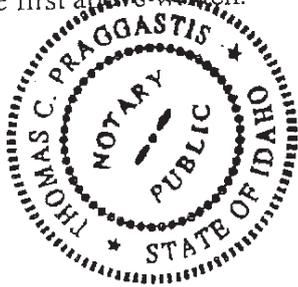
Wood River Community Young Men's Christian Association, Inc., an Idaho nonprofit corporation, dba Wood River Community YMCA


By: Cynthia B. Murphy
Its: Chairman of the Board

STATE OF IDAHO)
) ss.
County of Blaine)

On this 16 day of MARCH, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Randall C. Hall, known to me to be the President of the City Council of the CITY OF KETCHUM, a municipal corporation and the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same on behalf of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto affixed my official seal the day and year in this certificate first above written.




Notary Public for Idaho
Residing at: SUN VALLEY
Commission Expires: 10-6-2009

STATE OF IDAHO)
) ss.
County of Blaine)

On this 16 day of MARCH, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Cynthia B. Murphy, known or identified to me to be the Chairman of the Board of Wood River Community Young Men's Christian Association, Inc., an Idaho nonprofit corporation, dba Wood River Community YMCA, and the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto affixed my official seal the day and year in this certificate first above written.



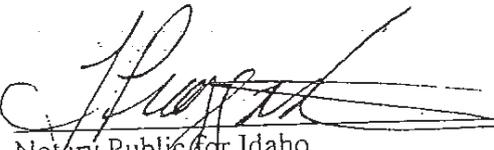
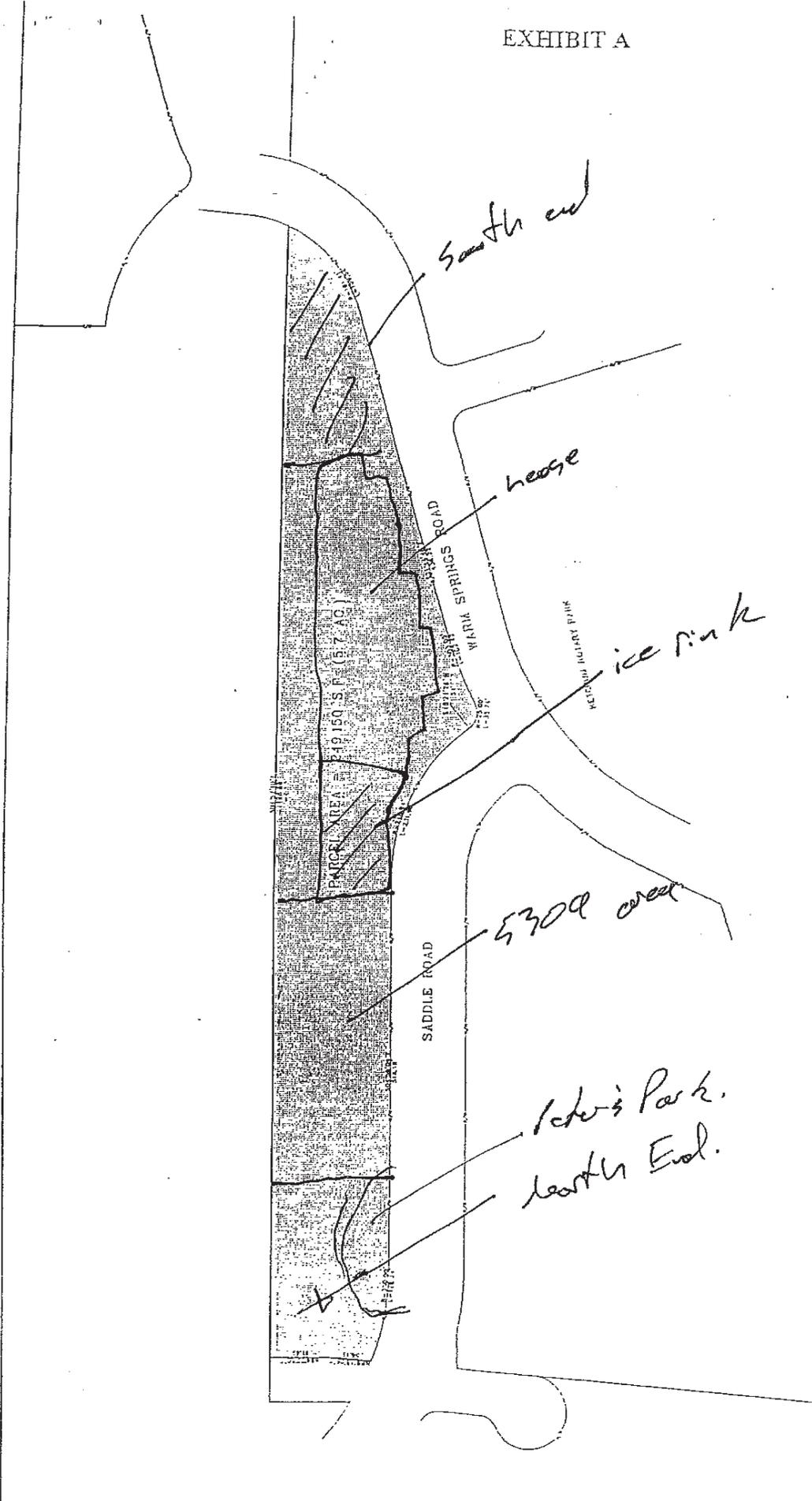

Notary Public for Idaho
Residing at: SUN VALLEY
Commission Expires: 10-6-2009

EXHIBIT A



LEGEND

AREA PARK AND RIDE LOT

GRAPHIC SCALE



1 inch = 200 ft.



REUSE OF DRAWINGS
This drawing or any portion thereof, and the project information herein, may be reprinted or used in whole or in part by any person without the written consent of Galena Engineering, Inc.

GRAPHIC RENDITION OF
THE PARK AND RIDE LOT
 WITHIN SECTIONS 12 & 13, T.4N. R.12E, B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO
 PREPARED FOR THE WOOD RIVER YMCA

Civil Engineers & Land Surveyors
 600 Second Avenue North
 P.O. Box 425
 Ketchum, Idaho 83310
 (208) 728-4729
 (208) 728-4730 fax
 email: galena@galena-engineers.com

Galena
 Engineering
 Inc.

EXHIBIT B
THE PROPERTY

A legal description for a parcel of land located in Section 12 and 13, Township 4N, Range 17E, B. M., in the City of Ketchum, Blaine County, Idaho, and more particularly described as follows:

Beginning at the southeast corner of Tax Lot 6689; thence along the east line of said tax lot N 4°57'10" W, 356.39 feet, thence leaving said east line S 85°01'56" W, 20.03 feet to the TRUE POINT OF BEGINNING;

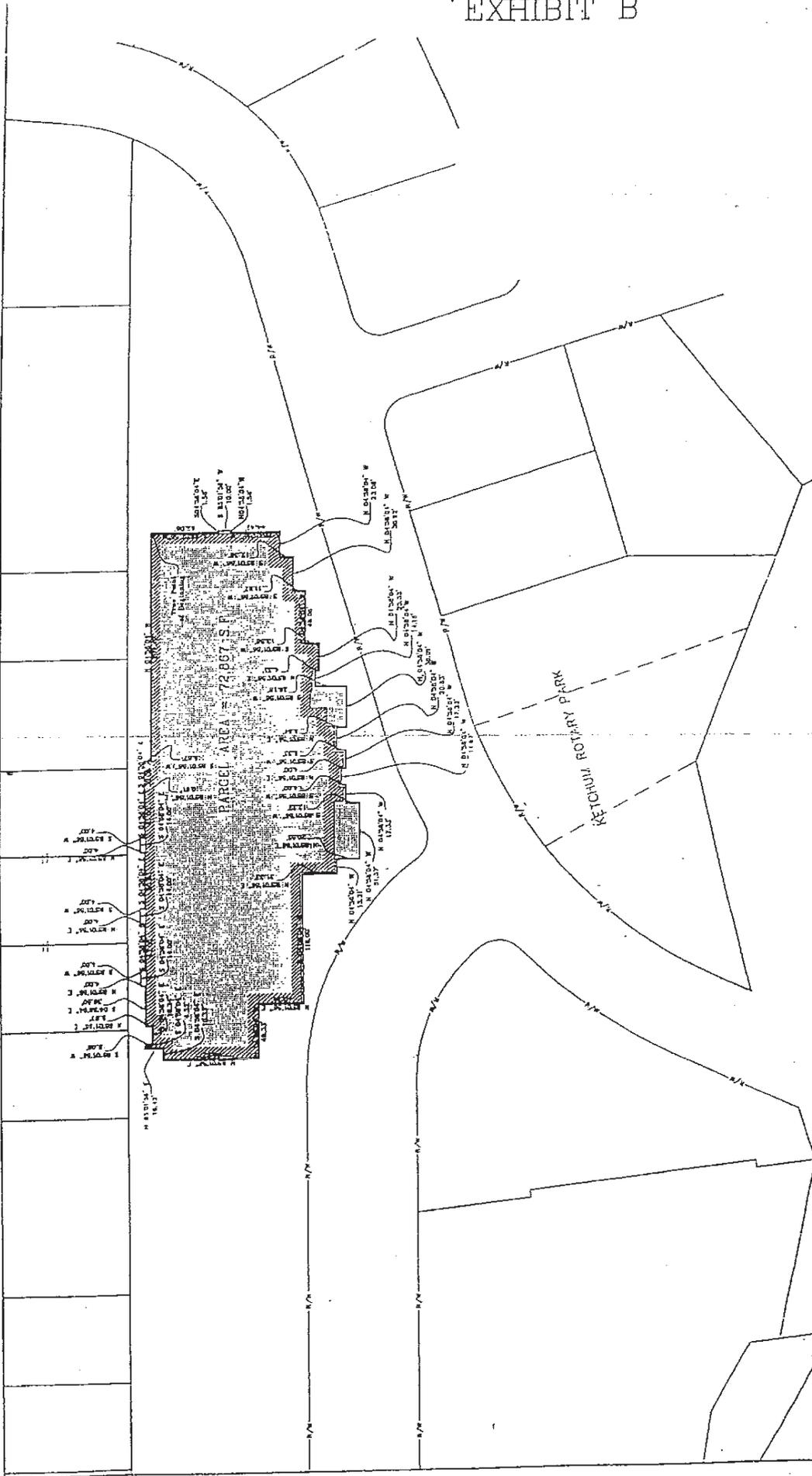
Thence along the proposed facility footprint, encompassing the construction of the building's footings and adjacent use areas, the following courses:

S 85°01'56" W, 62.08 feet;
S 4°58'04" E, 1.58 feet;
S 85°01'56" W, 10.00 feet;
N 4°58'04" W, 1.58 feet;
S 85°01'56" W, 44.42 feet;
N 4°58'04" W, 23.08 feet;
S 85°01'56" W, 12.38 feet;
N 4°58'04" W, 30.92 feet;
S 85°01'56" W, 11.62 feet;
N 4°58'04" W, 48.08 feet;
S 85°01'56" W, 13.58 feet;
~~N 4°58'04" W, 25.33 feet;~~
N 85°01'56" E, 4.33 feet;
N 4°58'04" W, 14.16 feet;
S 85°01'56" W, 28.18 feet;
N 4°58'04" W, 38.01 feet;
N 85°01'56" E, 8.84 feet;
N 4°58'04" W, 20.83 feet;
S 85°01'56" W, 8.33 feet;
N 4°58'04" W, 17.33 feet;
N 85°01'56" E, 4.00 feet;
N 4°58'04" W, 14.67 feet;
S 85°01'56" W, 4.00 feet;
N 4°58'04" W, 17.33 feet;
S 85°01'56" W, 12.22 feet;
N 4°58'04" W, 51.37 feet;
N 85°01'56" E, 20.55 feet;
N 4°58'04" W, 13.31 feet;
N 85°01'56" E, 31.33 feet;
N 4°58'04" W, 118.00 feet;
N 85°01'56" E, 40.34 feet;
N 4°58'04" W, 49.33 feet;
N 85°01'56" E, 86.67 feet;
S 4°58'04" E, 10.33 feet;
N 85°01'56" E, 16.42 feet;
S 4°58'04" E, 4.33 feet;
S 85°01'56" W, 6.08 feet;

S 4°58'04" E, 16.34 feet;
N 85°01'56" E, 5.67 feet;
S 4°58'04" E, 36.50 feet;
N 85°01'56" E, 4.00 feet;
S 4°58'04" E, 14.00 feet;
S 85°01'56" W, 4.00 feet;
S 4°58'04" E, 43.00 feet;
N 85°01'56" E, 4.00 feet;
S 4°58'04" E, 14.00 feet;
S 85°01'56" W, 4.00 feet;
S 4°58'04" E, 50.83 feet;
N 85°01'56" E, 4.00 feet;
S 4°58'04" E, 14.00 feet;
S 85°01'56" W, 4.00 feet;
S 4°58'04" E, 41.00 feet;
N 85°01'56" E, 0.61 feet;
S 4°58'04" E, 30.00 feet;
S 85°01'56" W, 5.87 feet;
S 4°58'04" E, 207.42 feet, and to the TRUE POINT OF BEGINNING.

Said parcel contains 1.67 acres (72,867 square feet), more or less.

EXHIBIT B



GRAPHIC SCALE



1 inch = 100 ft.

REUSE OF DRAWINGS

These drawings, in any portion thereof, and the data thereon, are the property of Galena Engineering, Inc. and shall not be used for any other project without the written consent of Galena Engineering, Inc.

Galena Engineering Inc.

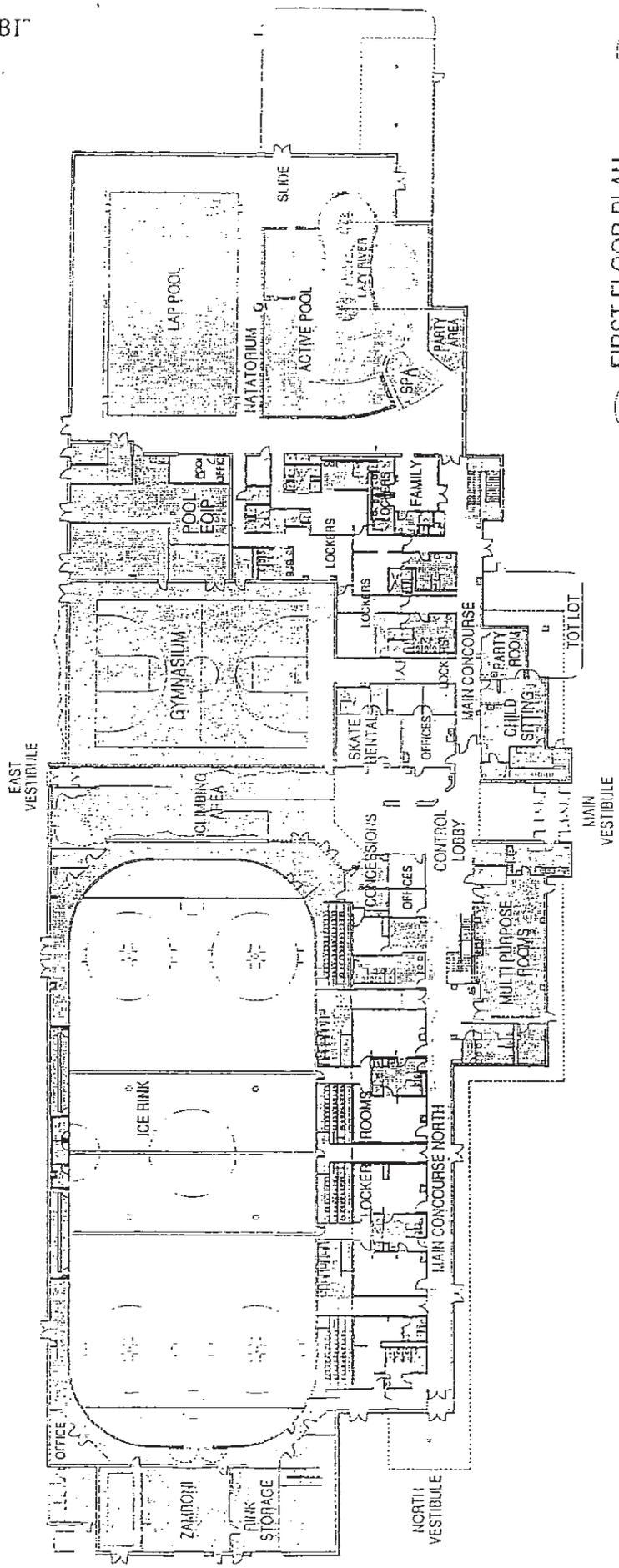
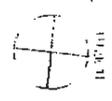
Civil Engineers & Land Surveyors
 500 Second Avenue North
 Box 14046
 Ketchum, Idaho 83310
 (208) 728-4728
 (208) 728-4763 fax

GRAPHIC REPRESENTATION OF THE PROPERTY

WITHIN SECTIONS 12 & 13, T.4N., R.17E., B.M. CITY OF KETCHUM, BLAINE COUNTY, IDAHO
 PREPARED FOR THE WOOD RIVER YMCA

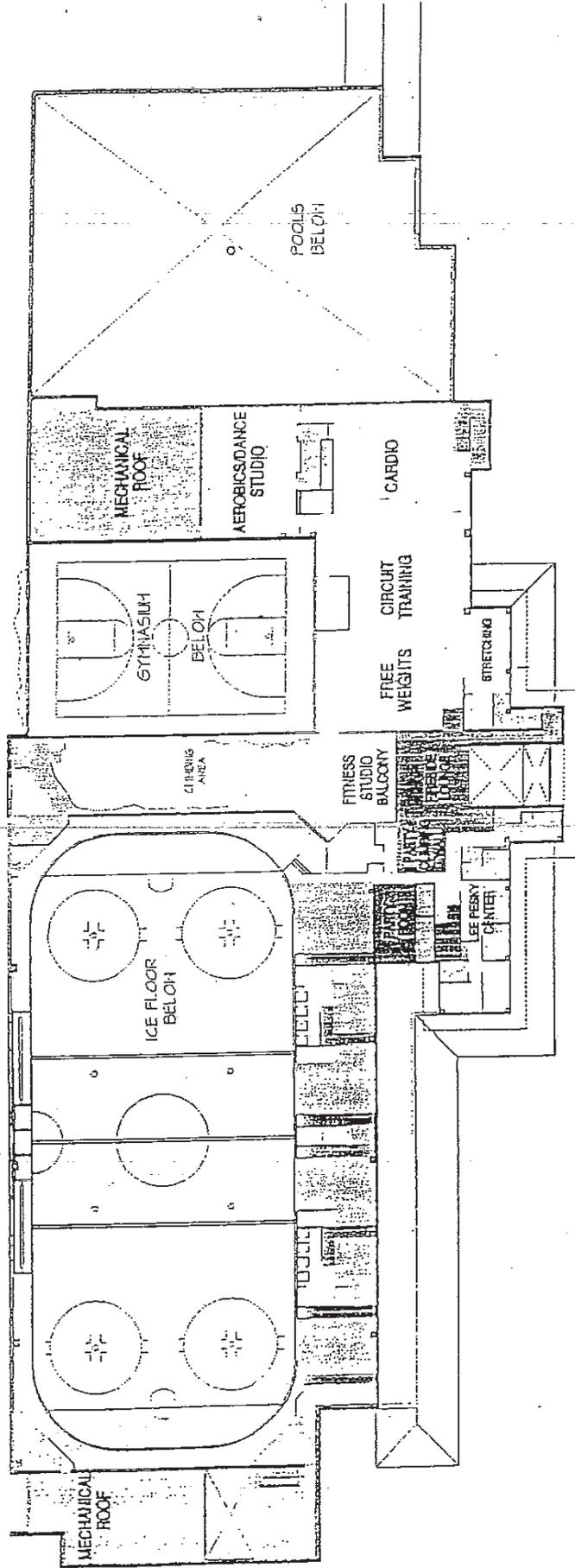
PROJECT NO. 01414701

DATE: 10/1/01



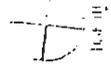
FIRST FLOOR PLAN

1



SECOND FLOOR PLAN

2



11.11.11

EXHIBIT D
OPEN SPACE, ACCESS AND LANDSCAPING AREA

A legal description for a parcel of land located in Section 12 and 13, Township 4N, Range 17E, B. M., in the City of Ketchum, Blaine County, Idaho, and more particularly described as follows:

Beginning at the southeast corner of Tax Lot 6629; thence along the east line of said tax lot N 4°57'10" W, 272.89 feet to the TRUE POINT OF BEGINNING;

Thence leaving said east line S 85°01'56" W, 151.58 feet to a point on the east Warm Springs Road right-of-way;

Thence continuing along the said east Warm Springs Road right-of-way N 21°41'46" W, 270.72 feet to a point of curvature;

Thence continuing along the said east Warm Springs Road right-of-way on a curve to the left 102.42 feet to a point of reverse curvature on the east right-of-way of Saddle Road, said curve having a radius of 503.05 feet, a central angle of 11°39'56", a chord of 102.24 feet bearing N 27°39'57" W;

Thence continuing along the said east Saddle Road right-of-way on a curve to the right 35.74 feet, said curve having a radius of 25.00 feet, a central angle of 81°54'21", a chord of 32.77 feet bearing N 7°27'16" E;

Thence continuing along the said east Saddle Road right-of-way N 48°24'36" E, 1.54 feet to a point of curvature;

Thence continuing along the said east Saddle Road right-of-way on a curve to the left 210.89 feet, said curve having a radius of 248.94 feet, a central angle of 48°32'21", a chord of 204.64 feet bearing N 24°08'14" E;

Thence leaving said east right-of-way N 85°01'56" E, 161.50 feet to a point on the said east line of said Tax Lot;

Thence continuing along the said east line of the said Tax Lot S 4°57'10" E, 838.14 feet and to the TRUE POINT OF BEGINNING;

Excepting out the portion of this parcel defined as the "Exhibit B, The Property" which is more particularly described as follows:

Beginning at the southeast corner of Tax Lot 6689; thence along the east line of said tax lot N 4°57'10" W, 356.39 feet, thence leaving said east line S 85°01'56" W, 20.03 feet to the TRUE POINT OF BEGINNING;

Thence along the proposed facility footprint, encompassing the construction of the building's footings and adjacent use areas, the following courses:

S 85°01'56" W, 62.08 feet;

S 4°58'04" E, 1.58 feet;

S 85°01'56" W, 10.00 feet;

N 4°58'04" W, 1.58 feet;

S 85°01'56" W, 44.42 feet;

N 4°58'04" W, 23.08 feet;

S 85°01'56" W, 12.38 feet;

N 4°58'04" W, 30.92 feet;

S 85°01'56" W, 11.62 feet;

N 4°58'04" W, 48.08 feet;

S 85°01'56" W, 13.58 feet;

N 4°58'04" W, 25.33 feet;

N 85°01'56" E, 4.33 feet;

N 4°58'04" W, 14.16 feet;

S 85°01'56" W, 28.18 feet;
N 4°58'04" W, 38.01 feet;
N 85°01'56" E, 8.84 feet;
N 4°58'04" W, 20.83 feet;
S 85°01'56" W, 8.33 feet;
N 4°58'04" W, 17.33 feet;
N 85°01'56" E, 4.00 feet;
N 4°58'04" W, 14.67 feet;
S 85°01'56" W, 4.00 feet;
N 4°58'04" W, 17.33 feet;
S 85°01'56" W, 12.22 feet;
N 4°58'04" W, 51.37 feet;
N 85°01'56" E, 20.55 feet;
N 4°58'04" W, 13.31 feet;
N 85°01'56" E, 31.33 feet;
N 4°58'04" W, 118.00 feet;
N 85°01'56" E, 40.34 feet;
N 4°58'04" W, 49.33 feet;
N 85°01'56" E, 86.67 feet;
S 4°58'04" E, 10.33 feet;
N 85°01'56" E, 16.42 feet;
S 4°58'04" E, 4.33 feet;
S 85°01'56" W, 6.08 feet;
S 4°58'04" E, 16.34 feet;
N 85°01'56" E, 5.67 feet;
S 4°58'04" E, 36.50 feet;
N 85°01'56" E, 4.00 feet;
S 4°58'04" E, 14.00 feet;
S 85°01'56" W, 4.00 feet;
S 4°58'04" E, 43.00 feet;
N 85°01'56" E, 4.00 feet;
S 4°58'04" E, 14.00 feet;
S 85°01'56" W, 4.00 feet;
S 4°58'04" E, 50.83 feet;
N 85°01'56" E, 4.00 feet;
S 4°58'04" E, 14.00 feet;
S 85°01'56" W, 4.00 feet;
S 4°58'04" E, 41.00 feet;
N 85°01'56" E, 0.61 feet;
S 4°58'04" E, 30.00 feet;
S 85°01'56" W, 5.87 feet;
S 4°58'04" E, 207.42 feet, and to the TRUE POINT OF BEGINNING.

The net acreage of this "Open Space, Access and Landscape Area" parcel contains 1.00 acres (43,542 square feet), more or less.

EXHIBIT D



GRAPHIC SCALE



REUSE OF DRAWINGS
These drawings, or any portion thereof, shall not be used on any project or extension of the Project except by agreement in writing with Galena Engineering, Inc.

CURVE TABLE

CURVE	LENGTH	RADIUS	TANGENT	DELTA	CHORD	CHORD DIRECTION
C1	102.42'	503.05'	51.39'	11°39'56"	102.24'	N 27°39'57" W
C2	35.74'	25.00'	21.70'	81°54'21"	32.77'	S 07°27'16" W
C3	210.89'	248.94'	112.24'	48°32'21"	204.64'	N 24°08'14" E

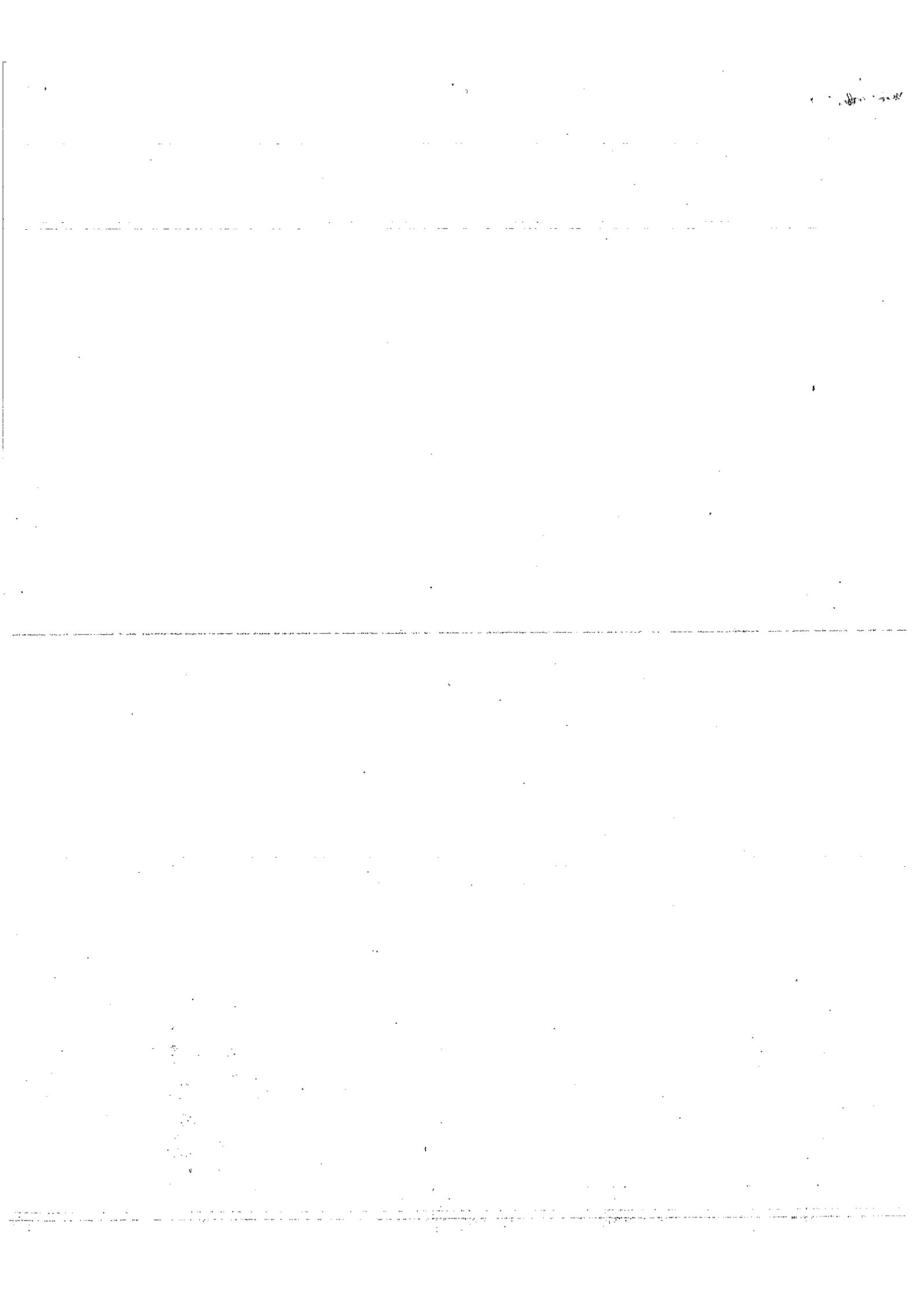
AREA INCLUDED IN OPEN SPACE, ACCESS AND LANDSCAPING AREA

LEGEND



GRAPHIC RENDITION OF
THE OPEN SPACE, ACCESS AND LANDSCAPING AREA
 WITHIN SECTIONS 12 & 13, T.4N., R.17E., B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO
 PREPARED FOR THE WOOD RIVER Y.M.C.A.

Galena Engineering Inc.
 Civil Engineers & Land Surveyors
 600 Second Avenue North
 P.O. Box 200
 Ketchum, Idaho 83840
 (208) 728-4729
 (208) 728-4705 fax
 email: galena@galena-engineering.com



City of Ketchum, Idaho

P.O. Box 2315 Ketchum, ID 83340 (208) 726-3841 Fax: (208) 726-8234



April 9, 2013

Mayor Hall and City Councilors
City of Ketchum
Ketchum, Idaho

Hemingway Splash Park ~ Request For Authorization To Proceed

Mayor Hall and City Councilors:

Introduction/History

Former Director of Parks & Recreation, Kirk Mason, initiated a project in 2005 whereby an above ground splash pad would be installed at Atkinson Park. Mr. Mason drove a successful capital campaign for execution of this project raising approximately \$25,000 in private donations.

The "Hemingway Splash Park" would be operational for about two to three months each summer and offer safe, healthy, and active fun for kids of all ages and abilities. Local examples of this type of feature include Jimmy's Garden in Hailey and Settlers Park in Meridian.

Mr. Mason proceeded with planning this project up to receiving bids, determining engineering specifications, and determining approximate location; however, the looming recession and Mr. Mason's retirement as Director of Parks & Recreation led to an unfortunate tabling of the project.

Current Report

Mayor Hall contacted current Director of Parks & Recreation to inquire about the status of the Hemingway Splash Park and whether it was still a viable and feasible option for execution. Because donation money still existed with the department's Development Trust Fund and the possibility of using refund money from the Blaine County Sherriff's Office for police services with the City of Ketchum, it was easily determined that the project did indeed qualify for execution. Further, the Splash Park has remained on the Parks & Recreation Department's Capital Improvement Plan (CIP) list since the current CIP was initiated.

Under the direction of Mayor Hall, preliminary feasibility outreach with the Blaine County School District (BCSD) and a new Request For Proposals effort were initiated. A site visit with Hemingway Elementary School Principal, Don Haisley and BCSD Land Planner, John Gaeddert, also revealed certain economies of

Parks & Recreation Department

Jennifer L. Smith, Director | jsmith@ketchumidaho.org
208.726.7820 | www.ketchumidaho.org

scale that may be achieved if the Splash Park project is executed in conjunction with and in proximity to a large scale retrofit project involving the school property. Because the majority of Atkinson Park property is owned by the BCSD, the City would need permission for executing the Splash Park project. A Memorandum Of Understanding (MOU) is anticipated, similar to that which was drafted for the creation of the Ketchum Bike Park on BCSD property.

At the time of this writing, City staff has been invited to the April 9, 2013 BCSD Board of Trustees meeting to introduce the concept of the Splash Park and achieve the blessing of the Board of Trustees to proceed with planning efforts.

Financial Requirement/Impact

Very preliminary information received from firms responding to the Splash Park RFQ indicates the cost of a 650 square foot Splash Park will cost between \$150,000 and \$200,000. The high cost of such a feature is due mostly to its high level of attention to water quality and human health and safety. Cost varies widely with considerations of a re-circulating system or a flow-through system. Specifications will be analyzed closely and a decision regarding which group of products and services to purchase will be determined as soon as possible.

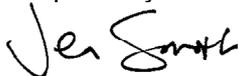
Recommendation

We respectfully recommend that City Council direct Parks & Recreation Department staff to continue with the Hemingway Splash Park project planning process.

Suggested Motion

"I move to authorize the Parks and Recreation Department to proceed with planning for the Hemingway Splash Pad Project."

Respectfully Submitted,



Jennifer L. Smith
Director of Parks & Recreation



Juerg Stauffacher
Parks & Natural Resources Superintendent

Parks & Recreation Department

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City of Ketchum, Idaho

P.O. Box 2315 Ketchum, ID 83340 (208) 726-3841 Fax: (208) 726-8234



April 15, 2013

Mayor Hall and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Hall and City Councilors:

**Recommendation to Adopt Resolution No. 13-005
To set a Public Hearing and Publish Notice
To Amend the 2012-13 Fiscal Year Budget**

Introduction/History

Per Idaho Code 50-1003 the City Council of each city shall, prior to the commencement of each fiscal year, pass an Ordinance to be termed the annual appropriation ordinance.

On September 4, 2012 the Council adopted Ordinance No. 1099 entitled the Annual Appropriation Ordinance for the Fiscal Year Beginning October 1, 2012, appropriating to the various budgetary funds, sums of money deemed necessary to defray all necessary expenses and liabilities within each fund for the ensuing fiscal year, authorizing a levy of a sufficient tax upon the taxable property and specifying the objects and purposes for which said appropriation is made, and providing an effective date.

The city council of any city may, by the same procedure as used in adopting the original appropriation ordinance at any time during the current fiscal year, amend the appropriation ordinance as a result of an increase in revenues from any source other than ad valorem tax revenue. A city whose property tax certification is made for the current fiscal year may amend its budget and annual appropriation ordinance, pursuant to the notice and hearing requirements of Idaho Code 50-1002.

Current Report

Resolution No. 13-005 is a resolution of the City Council providing for publication of Notice of Public Hearing in the Idaho Mountain Express on April 24th and May 1st and for Public Hearing to be held at 5:30 p.m. on May 6, 2013, in the City Hall, 480 East Avenue North, Ketchum, Idaho.

Financial Requirement/Impact

If approved by the Council on April 15, 2013, the budget amendment would appropriate additional monies in the sum of \$167,627.00. Notice of Public Hearing showing Proposed Revenues and Proposed Expenditures has been included in the packet with Resolution No. 13-005

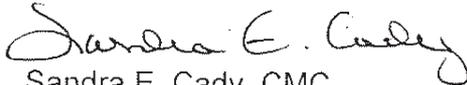
Recommendation

I respectfully recommend that the Ketchum City Council adopt Resolution No. 13-005.

Recommended Motion

"I move to approve Resolution No. 13-005, Providing for Publication of Notice of Public Hearing and for Public Hearing for an amendment to the 2012-13 Fiscal Year Budget".

Sincerely,



Sandra E. Cady, CMC
City Treasurer/Clerk

RESOLUTION NO. 13-005

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO, PROVIDING FOR PUBLICATION OF NOTICE OF PUBLIC HEARING AND FOR PUBLIC HEARING FOR AN AMENDMENT TO THE 2012-13 FISCAL YEAR BUDGET.

BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO:

SECTION 1. That public hearing thereon be held at 5:30 p.m., on May 6, 2013, in the City Hall, 480 East Avenue North, Ketchum, Idaho.

SECTION 2. That the City Clerk published said proposed amendment to the budget for the fiscal year 2012-13 and notice of said public hearing in the Idaho Mountain Express, Ketchum, Idaho, on April 24, 2013 and May 1, 2013.

PASSED BY THE CITY COUNCIL this 15th day of April 2013.

SIGNED BY THE MAYOR this 15th day of April 2013.

Randy Hall, Mayor

ATTEST:

Sandra E. Cady, CMC
City Treasurer/Clerk

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City Council of the City of Ketchum, Idaho will hold a Public Hearing for consideration of an amendment to the 2012-13 fiscal year budget by appropriating additional monies received by the City of Ketchum, Idaho, said hearing to be held at Ketchum City Hall, 480 East Avenue North at 5:30 p.m. on May 6, 2013.

	<u>ACTUAL</u> <u>FY 10-11</u>	<u>ACTUAL</u> <u>FY 11-12</u>	<u>Adopted Budget</u> <u>FY 12-13</u>	<u>Increase over</u> <u>Original</u> <u>Appropriation</u>
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EXPENDITURES

GENERAL FUND:

Hemingway Park Splash Pad Project	0	0	0	167,627
			<u>TOTAL APPROPRIATION</u>	<u>167,627</u>

REVENUES

GENERAL FUND:

Donations-Splash Pad	0	0	0	26,460
Refunds & Reimbursements	0	0	0	141,167
			<u>TOTAL APPROPRIATION</u>	<u>167,627</u>

At said hearing any interested person may appear and show cause, if any he has, why such proposed appropriation ordinance amendment should or should not be adopted.

DATED this 15th day of April 2013


Sandra E. Cady, CMC
City Treasurer/Clerk

Publish: Idaho Mountain Express
April 24, 2013
May 1, 2013