RESOLUTION NUMBER 02-015

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO, AUTHORIZING THE MAYOR TO EXECUTE A LAND LEASE AGREEMENT WITH DICK YORK'S AUTO SERVICE FOR THE PROVISION OF IMPOUND AND STORAGE OF VEHICLES FOR THE PERIOD OF NOVEMBER 1, 2002 THROUGH OCTOBER 31, 2003.

WHEREAS, the City of Ketchum wishes to enter into a Lease Agreement with York for impound and storage of vehicles, and York wishes to enter into a Lease Agreement with the City of Ketchum.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Ketchum, Idaho:

1. That the City Council of the City of Ketchum hereby finds that said Lease Agreement is in the best interest of said City and the inhabitants thereof in order to protect and promote the public health, safety and welfare; and, that said Lease Agreement is in accordance with and authorized by the laws of the State of Idaho.

2. The City Council of the City of Ketchum, Idaho, hereby authorizes and instructs the Mayor of said City to execute the Lease Agreement with Dick York's Auto Service for the provision of impound and storage of vehicles for the period of November 1, 2002 through October 31, 2003.

DATED this 4th day of November, 2002.

CITY OF KETCHUM

By_____
EDWARD SIMON
Mayor

ATTEST:

SANDRA E. CADY
City Clerk

ORIGINAL

LAND LEASE

THIS LAND LEASE is made and entered into this 4th day of November, 2002, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation (hereinafter referred to as "Landlord"), and Dick York individually and doing business as Dick York's Auto Service (hereinafter referred to as "Tenant").

For and in consideration of the rental and of the covenants and agreements hereinafter set forth to be kept and performed by the parties, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises herein described for the term, at the rental and subject to and upon all of the terms, covenants and agreements hereinafter set forth.

1. PREMISES. Landlord hereby leases to tenant and Tenant hereby leases from Landlord, those certain premises located in the City of Ketchum, County of Blaine, State of Idaho, the legal description of which is a portion of Lot 1A, Block 11, Ketchum Townsite (hereinafter referred to as "Premises").

2. USE.

A. Permissible Uses. The Premises shall be used for the storage of vehicles impounded pursuant to the Agreement of even date for towing and impounding vehicles between Landlord and Tenant. The Premises shall be used for no other purposes whatsoever, including, but not limited to, the storage of Tenant's vehicles or personal property, without Landlord's prior written consent.

B. Compliance With Law. Tenant shall not use the Premises or permit anything to be done about the Premises which will in anyway conflict with the law, statute, zoning restriction, ordinance or governmental rule or regulation or

requirements of duly constituted public authorities now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulation or requirements now in force or which may hereafter be in force with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use or occupancy of the Premises.

3. TERM. The term of this Lease shall be for one (1) year, commencing on November 1, 2002, and ending October 31, 2003.

4. RENTAL. Commencing on November 1, 2002, Tenant shall pay to Landlord as rental for the Premises the sum of SIXTY DOLLARS ($60.00) in advance on the first day of each calendar month.

5. LIENS. Tenant shall keep the Premises and any improvements thereon free from any liens arising out of work performed, materials furnished or obligations incurred by Tenant and shall hold harmless and defend Landlord from any liens and encumbrances arising out of any work performed or materials delivered by materialmen and for labor or services performed, or goods delivered, at the instance or request of Tenant. Tenant shall defend, at its own expense, any such suits and shall discharge and satisfy any judgments taken on account of claims or filed by mechanics or materialmen for work ordered by Tenant. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, or which Landlord shall deem proper, for the protection of Landlord and the Premises, and any other party having an interest therein, from mechanics' and materialmen's liens.

6. MAINTENANCE AND REPAIRS, ALTERATIONS AND ADDITIONS.

A. Tenant's Obligations. Throughout the term of this Lease, Tenant shall keep in good order, condition and repair the Premises and except as otherwise provided herein every part thereof, structural or non-structural, and all adjacent sidewalks, landscaping, driveways, parking lots, fences, and signs located adjacent to or included in the Premises. Tenant shall remove snow from the Premises at its expense except that Landlord shall assist Tenant with snow removal if Tenant's light snow removal equipment is inadequate. Except as otherwise provided Landlord shall incur no expense nor have any obligation of any kind whatsoever in connection with maintenance of the Premises and/or any improvements located thereon.

B. Alterations and Additions. Tenant shall not make any alterations or improvements to the Premises without the prior written consent of Landlord. All alterations, additions and improvements which may be made on the Premises shall, during the term of this Lease, be the property of Tenant. At the expiration or earlier termination of the Lease, they shall become the property of Landlord and remain upon and be surrendered with the Premises.

7. INSURANCE.

A. Liability Insurance. Tenant shall, at Tenant's expense, procure and maintain at all times during the term of this Lease a policy of Comprehensive Public Liability Insurance insuring Landlord and Tenant against any liability arising out of ownership, use, occupancy, or maintenance of the Premises and appurtenant areas. Such insurance shall at all times be in an amount of not less than FIVE HUNDRED

THOUSAND DOLLARS ($500,000.00) for property damage or bodily injury to or death of one or more persons in any one accident or occurrence. Tenant shall deliver to Landlord Certificates of Insurance evidencing the existence and amounts of such insurance with loss payable claims satisfactory to Landlord, provided that in the event Tenant fails to procure and maintain such insurance, Landlord may (but shall not be required to) procure same at Tenant's expense after ten (10) days prior written notice. No such policy shall be cancelable or subject to reduction of coverage or other modification except after ten (10) days prior written notice to Landlord by the insurer. All such policies shall be written as primary policies, not contributing with and to in excess of coverage which the Landlord may carry. Tenant shall, within twenty (20) days prior to the expiration of such policies, furnish Landlord with renewals or binders or Landlord may order such insurance and charge the cost to Tenant, which amount shall be payable to Tenant upon demand. Tenant shall have the right to provide such blanket policies expressly afford coverage to the Premises, the improvements and to Landlord as required by this Lease.

B. Garage Keepers' Insurance. Tenant shall, at its expense, procure and maintain at all times during the term of this Lease a policy of Garage Keepers' Liability Insurance insuring Landlord and Tenant against any liability arising out of the storage of vehicles in the amount of at least TEN THOUSAND DOLLARS ($10,000.00) per vehicle. All such policies shall include the same provisions regarding cancellation and coverage as is required of the liability insurance policy described in Paragraph 7.A., above.

8. ASSIGNMENTS AND SUBLETTING.

A. Assingment. Tenant shall not have the right to assign, sell, or otherwise transfer Tenant's interest in whole or in part of this Lease without Landlord's prior written consent.

B. Right to Sublet. Tenant shall not have the right to sublet all or any part or parts of the Premises and improvements thereon, or to assign, encumber, extend, or renew any sublease without Landlord's prior written consent.

9. DEFAULT – REMEDIES.

A. Default by Tenant. The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant.

1. Any failure by Tenant to pay the rent or any other monetary sums required to be paid hereunder, where such failure continues for ten (10) days after written notice thereof by Landlord to Tenant.

2. The abandonment or vacation of the Premises by Tenant.

3. A failure by Tenant to observe and perform any other provision of this Lease, or the Agreement for towing and impounding vehicles described in Paragraph 2.A., to be observed or performed by Tenant, where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provide, however, that the same cannot reasonably be cured within such thirty (30) day period. Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

B. REMEDIES. In the event of any default or breach by Tenant described in Paragraph 9.A, Landlord may at any time thereafter, with or without notice and demand and without limiting Landlord in the exercise of any right or remedy at law or in equity which Landlord may have by reason of such default or breach:

1. Maintain this Lease in full force and effect and recover the rent and other monetary charges as they become due, without terminating Tenant's right to possession, irrespective of whether Tenant shall have abandoned the Premises. In the event Landlord elects not to terminate the Lease, Landlord shall have the right to attempt to re-let the Premises at such rent and upon such conditions and for such a term and to do all acts necessary to maintain or preserve the Premises as Landlord deems reasonable and necessary without being deemed to have elected to terminate the Lease including removal of all person and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. In the event any such re-letting occurs, this Lease shall terminate automatically upon the new Tenant taking possession of the Premises. Notwithstanding that Landlord fails to elect to terminate the Lease initially, Landlord at any time during the term of this Lease, may elect to terminate this Lease by virtue of such previous default by Tenant.

2. Terminate Tenant's right to possession by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including without limitation thereto, the following: (i) the worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus (ii) the worth at the time of

award of the amount of which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that is proved could have been reasonably avoided; plus, (iii) the worth at the time of award of the amount of such rental loss that is proved could be reasonably avoided. Upon any such re-entry Landlord shall have the right to make any reasonable repairs, alterations or modifications to the Premises, which Landlord, in its sole discretion, deems reasonable and necessary.

10. NOTICES. Wherever this Lease provides for notices, communications or demands, between the parties or wherever the law requires or gives the right of serving any notice, the same shall be served by registered or certified mail addressed to Landlord and Tenant at the following addresses:

TENANT	LANDLORD
Dick York's Auto Service P. O. Box 105 Ketchum, ID 83340	City of Ketchum P. O. Box 2315 Ketchum, ID 83340

Landlord and Tenant may at any time change the place of receiving notices by written notice of such change to the other.

11. MICSELLANEOUS PROVISIONS.

A. Captions; Attachments; Defined Terms.

1. The captions of the paragraphs of this Lease are for convenience only and shall not be deemed to be relevant in resolving any questions of interpretation or construction of any section of this Lease.

2. The words "Landlord" and "Tenant", as used herein, shall include the plural as well as the singular. Words used in neuter gender include the masculine and

feminine and words in the masculine or feminine gender include the neuter. If there be more than one Landlord or Tenant, the obligations hereunder imposed upon Landlord or Tenant shall be joint and several.

B. Entire Agreement. This instrument along with any exhibits and attachments hereto constitutes the entire Agreement between Landlord and Tenant relative to the Premises and this Agreement and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both Landlord and Tenant. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this Agreement.

C. Severability. 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 be enforceable to the fullest extent permitted by law.

D. Costs of Suit. If Tenant or Landlord shall bring any action for any relief against the other, declaratory or other wise, arising out of this Lease, including any suit by Landlord for the recovery of rent or possession of the Premises, the losing party shall pay the successful party a reasonable sum for attorney's fees which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted by judgment.

E. Time: Joint and Several Liability. Time is of the essence of this Lease and each and every provision hereof. All the terms, covenants and conditions contained in this Lease to be performed by either party, if such party shall consist of more

than one person or organization, shall be deemed to be joint and several, and all rights and remedies of the parties shall be cumulative and non-exclusive of any other remedy at law or in equity.

F. Binding Effect; Choice of Law. The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate paragraph hereof, subject to any provisions hereof restricting assignment or subletting by Tenant, all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by and construed in accordance with the laws of the State of Idaho.

G. Waiver. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver or the breach of any covenant, term or condition. Acceptance by Landlord of any performance by Tenant after the time the same shall have become due shall not constitute a waiver by Landlord of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by Landlord in writing.

H. Surrender of Premises. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of the Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it or any or all such subleases or subtenancies.

I. Holding Over. If Tenant remains in possession of all or any part of the Premises after the expiration of the term hereof, with or without the express or

implied consent of the Landlord, such tenancy shall be from month to month only, and not a renewal hereof or an extension for any further term, and in such case, rent and other monetary sums due hereunder shall be payable in the amount and at the time specified in this Lease and such month to month tenancy shall be subject to every term, covenant and agreement contained herein.

IN WITNESS WHEREOF, the Landlord and Tenant have executed this Lease the date and year first above written.

CITY OF KETCHUM, a municipal corporation

By _____
EDWARD SIMON
Mayor

_____
Dick York individually
and doing business as Dick York's
Auto Service

ATTEST:

_____
SANDRA E. CADY
City Clerk

APPROVED AS TO FORM;

_____
MARGARET J. SIMMS
City Attorney