

RESOLUTION NUMBER 04-072

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO, AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT PURSUANT TO I.C. § 50-1407, LEASING LOTS 7 & 8, BLOCK 94, KETCHUM TOWNSITE, TO THE KETCHUM CEMETERY DISTRICT.

WHEREAS, the City of Ketchum owns certain real property commonly known as 971 & 991 Spruce Avenue North and more particularly described as Lots 7 & 8, Block 94, Ketchum Town Site, Ketchum, Idaho (the "Property"); and

WHEREAS, the Ketchum Cemetery District desires to lease the Property from the City; and

WHEREAS, the City Council hereby finds that the Property is not otherwise needed for public purposes and that such lease is in the best interests of the public; and

WHEREAS, the City Council hereby finds that the terms and conditions of the proposed lease agreement are just and equitable.

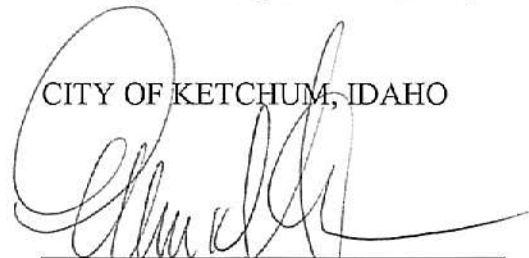
NOW, THEREFORE, BE IT RESOLVED by the Mayor and the City Council of the City of Ketchum, Idaho, that the City Council hereby authorizes and instructs the Mayor to execute a lease agreement pursuant to I.C. § 50-1407, leasing Lots 7 & 8, Block 94, Ketchum Town Site to the Ketchum Cemetery District.

PASSED by the City Council, and APPROVED by the Mayor this 20th day of September, 2004.

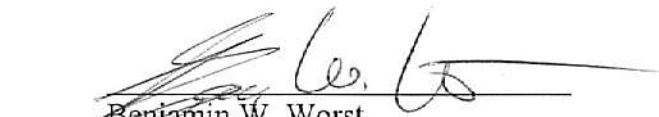


ATTEST:


Sandra E. Cady, CMC
City Clerk/Treasurer

CITY OF KETCHUM, IDAHO

EDWARD SIMON, Mayor

APPROVED AS TO FORM
AND CONTENT:


Benjamin W. Worst
City Attorney

PLANNING COMMISSION

MEMORANDUM FOR THE PLANNING COMMISSION
SUBJECT: [Illegible]

1. [Illegible]

2. [Illegible]

3. [Illegible]

4. [Illegible]

5. [Illegible]

6. [Illegible]

7. [Illegible]

8. [Illegible]

9. [Illegible]

10. [Illegible]

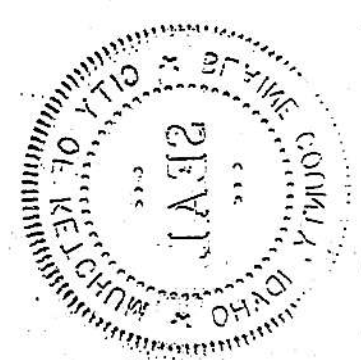
11. [Illegible]

12. [Illegible]

13. [Illegible]

14. [Illegible]

15. [Illegible]



LAND LEASE
(City of Ketchum/Ketchum Cemetery District)

THIS LAND LEASE AGREEMENT is made and entered into this 20th day of September, 2004, by and between the CITY OF KETCHUM, IDAHO, an Idaho municipal corporation ("Landlord"), and the KETCHUM CEMETERY DISTRICT, an Idaho Cemetery District, ("Tenant").

1. **Property.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, that certain unimproved real property commonly known as 971 and 991 Spruce Avenue North, Ketchum, Idaho, and more particularly described as:

Lots 7 and 8, Block 94, Ketchum Townsite, Blaine County, Idaho.

(the "Property").

2. **Term.** The term of this lease shall be for a period of NINETY-NINE (99) years commencing on the 1st day of October, 2004, and terminating on the 30th day of September, 2003. This term shall automatically renew for two (2) TWENTY-FIVE (25) year periods unless either party gives the other party written notification not less than Sixty (60) prior to the end of the Lease Term of its intent not to renew and this Lease shall terminate according to its terms. Landlord may terminate this Lease at any time after giving Sixty (60) days prior written notice to Tenant if Landlord's City Council determines that public necessity and convenience require it to do so, after which time this Lease Agreement shall be of no further force nor effect and neither party shall have any further, continuing or additional obligations to the other.
3. **Rent.** For and during the term of this Lease, Tenant shall pay to Landlord an annual rental of ONE DOLLAR (\$1.00) due in advance on or before September 30 of each year of the lease term.
4. **Use.** The Property are leased to Tenant exclusively for uses defined in the approved Ketchum Cemetery District Master Plan in effect at the time of the execution of this Agreement and for no other purposes without the prior written consent of Landlord. Tenant shall not use the Property or permit the Property to be used in any manner that would violate any federal, state or local law, ordinance, rule or code, which would constitute a nuisance of any kind or which would create or cause any unsafe condition.
5. **Repairs, Maintenance, Taxes and Utilities.** Tenant agrees, at its sole expense, to keep and maintain the Property and any eventual improvements thereon in a clean, sanitary and safe condition at all times and to keep every part thereof in good order, condition and

repair. Tenant shall, at its own expense, provide and pay for all snow removal, landscape maintenance, services and utilities which serve the Property, if any. Tenant shall, at its sole expense, pay all real property taxes assessed against the Property during the Lease Term, if any. Any repairs made by Tenant to the Property shall be at Tenant's sole expense.

6. Alterations and Improvements. Other than the alterations and improvements contemplated in Paragraph 4 herein above, Tenant shall not make any alterations, improvements or installments of any kind on the Property without the prior written consent of Landlord, whose consent shall not be withheld unreasonably. All improvements made by Tenant to the Property shall be made at Tenant's sole expense and shall be completed lien-free. Any such improvements shall remain as improvements to the Property unless Landlord determines that such improvements shall be removed at the termination of this Lease. All costs of removal shall be at Tenant's sole expense. Tenant shall not pledge, promise, hypothecate or use as security or collateral of any kind, all or any right, title or interest it may have in or to this Agreement or the Property and shall not allow liens of any kind including, without limitation, mechanic's liens, to attach to or be filed against the Lease or the Property. At the end of the Lease Term, Tenant shall leave all fixtures, alterations, improvements and installations of any kind on the Property and the same shall become the property of Landlord, unless Landlord notifies Tenant in writing to remove such fixtures, alterations, improvements or installations, at which time Tenant shall immediately remove the same at Tenant's sole cost and expense and repair any and all damage caused by such installation or removal and restore the Property to a condition as good or better than the condition of the Property at the commencement of the term of this Lease.
7. Entry. Upon giving Tenant reasonable notice, Landlord, its elected officials, employees and agents may enter the Property at any reasonable time for the purpose of inspection and repair.
8. Hazardous Materials. Tenant shall not release or dispose of on, under or about the Property any hazardous materials, including without limitation radioactive materials, hazardous wastes, toxic substances, or related injurious materials, whether injurious by themselves or in combination with other materials. For purposes of this Agreement, hazardous materials shall include but not be limited to substances defined as "hazardous substance", "hazardous materials", or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended; the Hazardous Materials Transportation Act, as amended and the Resource Conservation and Recovery Act of 1976, as amended and the regulations promulgated under the above Acts.

9. Assignment and Sublease. Tenant shall not transfer, assign, or sublease this Lease or any of Tenant's right, title or interest in or to the Property, or any part thereof, without prior written consent of the Landlord which may be withheld for any reason.
10. Release and Indemnification. Tenant hereby releases, holds harmless and agrees to indemnify Landlord against and from any and all injuries to persons or property, including without limitation personal injuries and death, damages, claims, liens of all kinds including, without limitation, mechanics' liens, causes of action, costs attorney fees or other liabilities in any manner related to or arising from this Agreement or the use of the Property by Tenant, its elected officials, employees, agents, volunteers, licensees or invitees. If any case, action or proceeding be brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, shall defend Landlord at Tenant's sole expense by counsel reasonably satisfactory to Landlord. Tenant hereby assumes all risk of damage to property or injury to persons in, upon or about the Property, from any cause other than Landlord's intentional, reckless, negligence acts or omissions or its breach or default in the performance of this agreement. Tenant hereby waives all claims in respect thereof against Landlord. The indemnification contained in this paragraph shall constitute a warranty from Tenant to Landlord and shall survive termination of this Lease including, without limitation, termination due to default by either party.
11. Liability Insurance. Tenant shall, at Tenant's own expense, obtain and keep in force during the term of this Lease, a policy of comprehensive liability insurance in an amount of not less than \$2,000,000.00 (TWO MILLION DOLLARS). Such insurance policy shall name Landlord as an additional insured and shall, without limitation, insure against any liability arising out of the ownership, lease, use, occupancy and maintenance of the Property and all areas appurtenant thereto. If Tenant shall fail to procure and maintain such insurance, Landlord may, but shall not be required to, procure and maintain the same, but at the expense of Tenant. Insurance required hereunder, shall be in with a company and in a form acceptable to Landlord. Tenant shall deliver to Landlord prior to occupancy of the Property, copies of policies of liability insurance required herein or certificates evidencing the existence and amounts of such insurance with loss payable clauses satisfactory to Landlord. No policy shall be cancelable or subject to reduction of coverage except after ten (10) days' prior written notice to Landlord.
12. Default. In the event of default by either party hereto, the non-defaulting party shall be entitled to seek all available legal and equitable remedies, including without limitation, specific performance.
13. Miscellaneous Provisions.
- a. Attorney Fees. In the event either party hereto retains an attorney to enforce any of the rights, duties, or obligations arising out of this Lease, the defaulting party shall pay to the non-defaulting party all reasonable attorney fees and costs

incurred whether or not litigation is commenced and including reasonable attorney fees and costs incurred on appeal.

- b. No Waiver. Failure of the either party to enforce any of the covenants in this Lease shall not be construed to be a waiver of any succeeding breach of the same covenant, nor shall any acceptance of a partial payment be deemed a waiver of Landlord's right to full amount thereof.
- c. No Presumptions. There shall be no presumptions for or against either party hereto as a result of the preparation of this Agreement.
- d. Severability. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provisions shall remain in full force and effect.
- e. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- f. Time of Essence. Time is hereby expressly declared to be of the essence with respect to each and every covenant, term, condition and provision of this Lease.
- g. Governing Law. This Lease shall be governed by, construed, and enforced in accordance with the laws and decisions of the State of Idaho.
- h. Entire Agreement This Lease sets forth the entire understanding of the parties hereto, and shall not be changed or terminated orally. It is understood and agreed by the parties hereto that there are no verbal promises or implied promises, agreements, stipulations or other representations of any kind or character pertaining to the Property other than as set forth in writing in this Lease.

IN WITNESS WHEREOF, this lease agreement is entered into as of the date first-above written.

LANDLORD:

CITY OF KETCHUM,
An Idaho Municipal Corporation

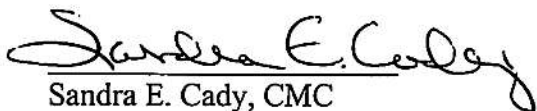
By: 
Ed Simon, Mayor

TENANT:

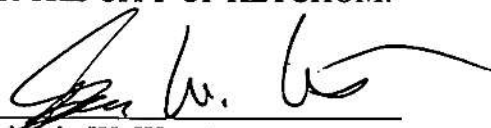
KETCHUM CEMETERY DISTRICT,
An Idaho Cemetery District

By: 
Its: BOARD MEMBER

ATTEST:


Sandra E. Cady, CMC
City Treasurer/Clerk

APPROVED AS TO FORM
AND CONTENT EXCLUSIVELY
FOR THE CITY OF KETCHUM:


Benjamin W. Worst,
City Attorney