



City of Ketchum

November 18, 2019

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to Approve Lease Agreement 20428 Between the City of Ketchum and the Community Library

Recommendation and Summary

Staff is recommending the council approve Lease 20428 and adopt the following motion:

I move to authorize the Mayor to approve Lease 20428 with the Community Library.

The reasons for the recommendation are as follows:

- The Community Library leases three Forest Service Park buildings for the Regional History Museum
- The Lease term is up for renewal and the Library and City have mutually agreed to the new term

Introduction and History

In 2014 the City and Community Library entered into a lease for the use of three buildings in Forest Service Park. The lease was for 5 years with the option for renewals provided both parties agreed to extend the Lease. The lease term expired October 31, 2019, however, the City and Library worked together on the terms for a new lease.

The City intends to conduct a master planning/visioning process for Forest Service Park in this fiscal year. The Regional History Museum will always be a key feature in the Park. However, as a result of the planning processing, there may be some modifications or discussions related to the use of the various buildings. To preserve flexibility in the planning process, the proposed lease is for an initial two-year term and can be extended. The Lease also provide the Library with the opportunity to participate in the planning/visioning process.

Analysis

The proposed lease provides the opportunity to implement modifications in the event the master planning/visioning process identifies changes. At the same time, no changes will occur without the mutual agreement between the City and Library.

Financial Impact

Since 2014, the rent charged to the Library is \$10.00 annually for use of the buildings. The proposed Lease does not change the rent structure.

Attachments:

Proposed Lease 20428

Redlined Version of Proposed Lease 20428

LEASE AGREEMENT 20428

THIS LEASE AGREEMENT (“Lease”) is made this ___ day of _____, 2019, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation, hereinafter called “Landlord”, and THE COMMUNITY LIBRARY ASSOCIATION, INC., a non-profit corporation hereinafter called “Tenant”.

1. Leased Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, that certain real property situated in the City of Ketchum Blaine County, Idaho, and more particularly described as East Warehouse, West Warehouse, and Center Warehouse located on Block 40 of the Original Townsite of Ketchum, Blaine County, Idaho, which real property is hereinafter referred to as the “Premises”.

2. Term. The initial term of this Lease shall be for a period of Two (2) years commencing November 1, 2019 and continuing to October 31, 2021. At the conclusion of the Park Planning Process, and upon the mutual agreement between Landlord and Tenant, based upon Tenant’s performance under the terms of the lease to the satisfaction of Landlord and any mutually agreed upon changes as a result of the Park Planning Process, Tenant shall have the right to extend this Lease for four (4) additional five (5) year terms by giving the Landlord written notice of its intention to do so at least six (6) months prior to the end of the then current term, and by receiving Landlord’s written consent to such extension within ninety (90) days of such notice which consent shall not be withheld unreasonably.

3. Participation In Park Planning Process. If the City undertakes a planning or visioning process related to future uses and design of Forest Service Park, Tenant shall be included in the process. Participation shall include, but not be limited to, participation in any committee, stakeholder meetings, or development of designs.

4. Rent. For and during the term of this Lease, Tenant shall pay to Landlord as rent for the Premises the total annual rental of TEN DOLLARS (\$10.00). However, at the beginning of each extension term of this Lease, if applicable, Landlord shall have the option to increase the rent for the Premises by giving Tenant written notice of said rent increase at least thirty (30) days prior to the beginning of the applicable extension term.

5. Use. The Premises are leased to Tenant for use as a museum and uses normally incident thereto and for no other purpose.

6. Repairs and Maintenance. Tenant agrees, at its sole expense, to keep and maintain the Premises in a clean and sanitary condition at all times and to keep every part thereof in good order, condition and repair. The Landlord shall improve, repair and maintain the Gas House for use as public restrooms. At the end of the term of this Lease, the Tenant agrees to return the Premises to the Landlord in as good condition as it was at the beginning of the Lease, reasonable wear and tear excepted. Tenant shall not have the right to make any repairs of any kind without prior written consent of Landlord, whose consent shall not be withheld unreasonably. Any repairs made by Tenant to the Premises shall be at Tenant’s sole expense and be completed lien free. Landlord agrees, at its sole expense, to maintain the exterior walls, structural components

and roofs of the Premises in good repair. Further, the Landlord agrees that, where in existence, the electrical, plumbing and heating systems of the Premises shall be in good condition at the commencement of the Lease.

7. Alterations and Improvements. Tenant shall not have the right to make any alterations, installments or re-decorations of any kind without prior written consent of Landlord, whose consent shall not be withheld unreasonably. Any improvements made by Tenant to the Premises shall be made at Tenant's sole expense and be completed lien-free. Any such improvements shall remain as improvements to the Premises 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.

8. Supervision. Tenant agrees to act, and to provide continual supervision over persons at the Premises, so not to create or permit the creation of a nuisance or a threat to persons or property.

9. Assignment and Sublease. Tenant shall not transfer, assign, or sublease this Lease or Tenant's interest in the Premises, or any part thereof, without prior written consent of the Landlord.

10. Premises Occupant. Tenant stipulates that the only occupant of the above Premises will be The Community Library Association, Inc.

11. Notice. Tenant agrees to give ninety (90) days written notice to Landlord prior to vacating said Premises. Landlord agrees to give ninety (90) days written notice to Tenant if the Premises are needed at the termination of a rental period.

Any notice under this Lease must be in writing and must be sent by registered or certified mail to the last known address of the party to whom the notice is to be given, as designated by such party in writing. All notices shall be deemed delivered forty eight (48) hours after depositing the notice in the United States Mail, certified or registered, postage prepaid, addressed to the Landlord or Tenant respectively at the addresses designated herein. The tenant hereby designates its address as P.O. Box 2168 Ketchum, Idaho 83340, and the Landlord hereby designates its address as P.O. Box 2315, Ketchum, Idaho 83340.

12. Hold Harmless. Tenant shall indemnify and hold harmless Landlord against and from any and all claims arising from Tenant's use of the Premises for the conduct of its business or from any activity, work or other thing done, permitted or suffered by the Tenant in or about the Premises, and shall further indemnify and hold harmless Landlord against and from any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of the Tenant, or any officer, agent, employee, guest, or invitee of Tenant, and from all and against all cost, attorneys' fees, expenses and liabilities incurred in or about any such claim or action or proceeding brought thereon, and if any case, action or proceeding be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant as a material part of the consideration to Landlord hereby assumes all risk or damage to property or injury to persons in,

upon or about the Premises, from any cause other than Landlord's negligence and Tenant hereby waives all claims in respect thereof against Landlord.

Landlord or its agents shall not be liable for any damage to The Community Library property entrusted to employees of the Tenant nor for loss or damage to any Community Library property by theft or otherwise nor for any injury to or damage to persons or Community Library property resulting from fire, explosion, falling plaster, steam, gas electricity, water, snow or rain which may leak from any part of the Premises or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other place resulting from dampness or any other cause whatsoever, unless cause by or due to the negligence of Landlord, its agents, servants or employees. Landlord or its agents shall not be liable for interference with the light or other incorporeal hereditament, loss of business by Tenant, nor shall Landlord be liable for any latent defects in the Premises. Tenant shall give prompt notice to Landlord in case of fire, damage, and accidents or of defects therein of the Premises or its fixtures, including the electrical, plumbing, and heating systems. Landlord will provide regular inspections of the property to ensure buildings are in good working condition for Tenant's needs.

13. Subrogation. As long as their respective insurers so permit, Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss insured by fire, extended coverage and other property insurance policies existing for the benefit of the respective parties. Each party shall obtain any special endorsements, if required by their insurer to evidence compliance with the aforementioned waiver.

14. 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 reflecting the amount of \$1,000,000.00, insuring Landlord and Tenant against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Tenant may carry said insurance under a blanket policy, providing, however, said insurance by tenant shall have a landlord's protective liability endorsement attached thereto. If Tenant shall fail to procure and maintain said insurance, Landlord may, but shall not be required to, procure and maintain same, but at the expense of Tenant. Insurance required hereunder, shall be in companies rated A+ AAA or better in "Best's Insurance Guide." Tenant shall deliver to Landlord prior to occupancy of the Premises, 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.

15. Services and Utilities. Tenant shall pay, prior to delinquency, all water, gas, heat, light, power, telephone, sewage, air conditioning and ventilating, garbage and all other material and utilities supplied to the Premises. If any such services are not separately metered to Tenant, Tenant shall pay a reasonable proportion of all charges which are jointly metered, the determination to be made by Landlord, and payment to be made by Tenant within ten (10) days of receipt of statement for such charges. Landlord shall not be liable in damages or otherwise for any failure of interruption of any utility service furnished to the Premises and no such failure or interruption shall entitle Tenant to terminate this Lease.

16. Rules and Regulations. Tenant shall faithfully observe and comply with the rules and

regulations that Landlord shall from time to time reasonably promulgate for the purpose of public health, welfare and safety. Landlord reserves the right from time to time to make all reasonable modification to said rules for the purpose of public health, welfare and safety. The additions and modifications to those rules shall be binding upon Tenant upon delivery of a copy of them to Tenant.

17. Holding Over. If Tenant remains in possession of the Premises or any part thereof after the expiration of the extension terms hereof, with the express written consent of Landlord such occupancy shall be a tenancy from month to month at a rental in the amount of the last monthly rental, and upon all the terms hereof applicable to a month to month tenancy.

18. Reconstruction. In the event the Premises or any part of the Premises are damaged by fire or other perils covered by extended coverage insurance, Landlord agrees to forthwith repair the same; and this Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of the rent while such repairs are being made, such proportionate reduction to be based upon the extent to which the making of such repairs shall materially interfere with the business carried on by the Tenant in the Premises. If the damage is due to the fault or neglect of Tenant or its employees, there shall be no abatement of rent.

In the event the Premises or any part of the Premises are damaged as a result of any cause other than the perils covered by fire and extended coverage insurance, then Landlord shall forthwith repair the same, provided the extent of the destruction be less than ten percent (10%) of then full replacement cost of the Premises or any part of the Premises is damaged to an extent greater than ten percent (10%) of the full replacement cost, then Landlord shall have the option: (1) to repair or restore such damage, this Lease continuing in full force and effect, but the rent to be proportionately reduced as hereinabove in this paragraph provided; or (2) give notice to Tenant at any time within sixty (60) days after such damage terminating this Lease as of the date specified in such notice which date shall be no less than thirty (30) and no more than sixty (60) days after the giving of such notice. In the event of giving such notice, this Lease shall expire and all interest of the Tenant in the Premises shall terminate on the date so specified in such notice and the Rent, reduced by a proportionate amount, based upon the extent, if any, to which such damage materially interfered with the business carried on by the Tenant in the Premises, shall be paid up to date of termination.

Notwithstanding anything to the contrary contained in this paragraph, Landlord shall not have any obligation whatsoever to repair, reconstruct or restore the Premises when the damage resulting from any casualty covered under this paragraph occurs during the last twelve (12) months of the term of this Lease or any extension thereof.

Landlord shall not be required to repair any injury or damage by fire or other cause, or to make any repairs or replacements of any panels, decoration, office fixtures, railings, floor covering, partitions, or any other property installed in the Premises by Tenant that have not previously been acknowledged and agreed upon in writing by the Landlord as a permanent alteration of the Premises.

The Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises, Tenant's personal property or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

19. Conditions. Tenant agrees that each covenant and condition of this Lease shall be considered a condition and that the breach of any covenant or condition shall be good cause for Landlord to terminate this Lease and to pursue any remedies provided by law.

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

a. Any failure by Tenant to pay monetary sums required to be paid hereunder, where such failure continues for seven (7) days after written notice thereof from Landlord to Tenant.

b. Any three (3) defaults, whether or not cured, by Tenant to pay rent or other monetary sums to be paid hereunder in any twelve (12) consecutive month period.

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

d. A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for fourteen (14) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of such default is such that it cannot be reasonable cured within such fourteen (14) 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.

e. The making by Tenant of any general assignment or general arrangement for the benefit of creditors filing by or against Tenant of a petition to have Tenant adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within forty-five (45) days; or the attachment, execute or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease where such seizure is not discharged within thirty (30) days.

21. Landlord Remedies. In the event of any such material default or breach by Tenant, Landlord may at any time thereafter 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:

a. Maintain this Lease in full force and effect and recover 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 to not terminate the Lease, Landlord shall have the right to attempt to relet 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 persons 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 of Tenant.

b. 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. 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.

22. Late Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by terms of any mortgage or deed of trust covering the Premises. Accordingly, if any installment of a sum due from Tenant shall not be received by Landlord or Landlord's designed within ten (10) days after written notice that said amount is past due, then Tenant shall pay to Landlord a late charge equal to ten (10%) percent of such overdue amount. The parties hereby agree that such late charges represent a fair and reasonable estimate of the cost that Landlord will incur by reason of the late payment by Tenant. Acceptance of such late charges by the Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

23. Attorney's Fees. In the event either party hereto retains an attorney to enforce any of the rights, duties, and obligation arising out of this Lease, the prevailing party shall be entitled to recover from the non-prevailing party all legal expenses, including but not limited to attorney's fees at the trial and appellate levels, whether or not litigation is actually instituted.

24. No Waiver. Failure of the Landlord 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.

25. Separability. 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 provision shall remain in full force and effect.

26. 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.

27. Signs. Tenant shall not place any sign upon the Premises without the prior written consent of Landlord, whose consent shall not be withheld unreasonably.

28. Time of Essence. Time is hereby expressly declared to be of the essence of each and every covenant, term, condition and provision of this Lease.

29. Governing Law. This Lease shall be governed by, construed, and enforced in accordance with the laws and decisions of the State of Idaho.

30. 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 Premises other than as set forth in writing in this Lease.

31. Hours of Operation. The tenant agrees to providing landlord with agreeable hours of operation during the term of the lease. "Agreeable hours" indicates an average of 20 (twenty) operating hours per week acknowledging time off for display change-outs and staff time off.

THIS LEASE AGREEMENT is entered into the day, month and year first above written.

LANDLORD: CITY OF KETCHUM

By _____
Neil Bradshaw, Mayor

TENANT: THE COMMUNITY LIBRARY ASSOCIATION, INC.

By _____
President

ATTEST:

Robin Crotty, City Clerk

LEASE AGREEMENT

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2. Term. The initial term of this Lease shall be for a period of Two (2) Five (5) years commencing November 1, 2019 and continuing to October 31, 2021. At the conclusion of the Park Planning Process, and Upon the mutual agreement between Landlord and Tenant, based upon Tenant's performance under the terms of the lease to the satisfaction of Landlord and any mutually agreed upon changes as a result of the Park Planning Process, Tenant shall have the right to extend this Lease for four (4) additional five (5) year terms by giving the Landlord written notice of its intention to do so at least six (6) months prior to the end of the then current term, and by receiving Landlord's written consent to such extension within ninety (90) days of such notice which consent shall not be withheld unreasonably.

3. Participation In Park Planning Process. If the City undertakes a planning or visioning process related to future uses and design of Forest Service Park, Tenant shall be included in the process. Participation shall include, but not be limited to, participation in any committee, stakeholder meetings, or development of designs.

2.4. Rent. For and during the term of this Lease, Tenant shall pay to Landlord as rent for the Premises the total annual rental of TEN DOLLARS (\$10.00). However, at the beginning of each extension term of this Lease, if applicable, Landlord shall have the option to increase the rent for the Premises by giving Tenant written notice of said rent increase at lease thirty (30) days prior to the beginning of the applicable extension term.

3.5. Use. The Premises are leased to Tenant for use as a museum and uses normally incident thereto and for no other purpose.

4.6. Repairs and Maintenance. Tenant agrees, at its sole expense, to keep and maintain the Premises in a clean and sanitary condition at all times and to keep every part thereof in good order, condition and repair. The Landlord shall improve, repair and maintain the Gas House for use as public restrooms. At the end of the term of this Lease, the Tenant agrees to return the Premises to the Landlord in as good condition as it was at the beginning of the Lease, reasonable wear and tear excepted. Tenant shall not have the right to make any repairs of any kind without prior written consent of Landlord, whose consent shall not be withheld unreasonably. Any repairs made by Tenant to the Premises shall be at Tenant's sole expense and be completed lien free. Landlord agrees, at its sole expense, to maintain the exterior walls, structural components and roofs of the Premises in good repair. Further, the Landlord agrees that, where in existence, the electrical, plumbing and heating systems of the Premises shall be in good condition at the commencement of the Lease.

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5.7. Alterations and Improvements. Tenant shall not have the right to make any alterations, installments or re-decorations of any kind without prior written consent of Landlord, whose consent shall not be withheld unreasonably. Any improvements made by Tenant to the Premises shall be made at Tenant's sole expense and be completed lien-free. Any such improvements shall remain as improvements to the Premises 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.

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7.9. Assignment and Sublease. Tenant shall not transfer, assign, or sublease this Lease or Tenant's interest in the Premises, or any part thereof, without prior written consent of the Landlord.

8.10. Premises Occupant. Tenant stipulates that the only occupant of the above Premises will be The Community Library Association, Inc.

9.11. Notice. Tenant agrees to give ninety (90) days written notice to Landlord prior to vacating said Premises. Landlord agrees to give ninety (90) days written notice to Tenant if the Premises are needed at the termination of a rental period.

Any notice under this Lease must be in writing and must be sent by registered or certified mail to the last known address of the party to whom the notice is to be given, as designated by such party in writing. All notices shall be deemed delivered forty eight (48) hours after depositing the notice in the United States Mail, certified or registered, postage prepaid, addressed to the Landlord or Tenant respectively at the addresses designated herein. The tenant hereby designates its address as P.O. Box 2168 Ketchum, Idaho 83340, and the Landlord hereby designates its address as P.O. Box 2315, Ketchum, Idaho 83340.

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4-16. Rules and Regulations. Tenant shall faithfully observe and comply with the rules and regulations that Landlord shall from time to time reasonably promulgate for the purpose of public health, welfare and safety. Landlord reserves the right from time to time to make all

reasonable modification to said rules for the purpose of public health, welfare and safety. The additions and modifications to those rules shall be binding upon Tenant upon delivery of a copy of them to Tenant.

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16.18. Reconstruction. In the event the Premises or any part of the Premises are damaged by fire or other perils covered by extended coverage insurance, Landlord agrees to forthwith repair the same; and this Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of the rent while such repairs are being made, such proportionate reduction to be based upon the extent to which the making of such repairs shall materially interfere with the business carried on by the Tenant in the Premises. If the damage is due to the fault or neglect of Tenant or its employees, there shall be no abatement of rent.

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Notwithstanding anything to the contrary contained in this paragraph, Landlord shall not have any obligation whatsoever to repair, reconstruct or restore the Premises when the damage resulting from any casualty covered under this paragraph occurs during the last twelve (12) months of the term of this Lease or any extension thereof.

Landlord shall not be required to repair any injury or damage by fire or other cause, or to make any repairs or replacements of any panels, decoration, office fixtures, railings, floor covering, partitions, or any other property installed in the Premises by Tenant that have not previously been acknowledged and agreed upon in writing by the Landlord as a permanent alteration of the Premises.

The Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises, Tenant's personal property or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

~~17~~19. Conditions. Tenant agrees that each covenant and condition of this Lease shall be considered a condition and that the breach of any covenant or condition shall be good cause for Landlord to terminate this Lease and to pursue any remedies provided by law.

~~18~~20. Default or Tenant. The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant:

- a. Any failure by Tenant to pay monetary sums required to be paid hereunder, where such failure continues for seven (7) days after written notice thereof from Landlord to Tenant.
- b. Any three (3) defaults, whether or not cured, by Tenant to pay rent or other monetary sums to be paid hereunder in any twelve (12) consecutive month period.
- c. The abandonment or vacation of the Premises by Tenant.
- d. A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for fourteen (14) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of such default is such that it cannot be reasonably cured within such fourteen (14) 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.
- e. The making by Tenant of any general assignment or general arrangement for the benefit of creditors filing by or against Tenant of a petition to have Tenant adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within forty-five (45) days; or the attachment, execute or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease where such seizure is not discharged within thirty (30) days.

~~19~~21. Landlord Remedies. In the event of any such material default or breach by Tenant, Landlord may at any time thereafter 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:

- a. Maintain this Lease in full force and effect and recover 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 to not terminate the Lease, Landlord shall have the right to attempt to relet 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 persons 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 of Tenant.

b. 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. 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.

20-22. Late Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by terms of any mortgage or deed of trust covering the Premises. Accordingly, if any installment of a sum due from Tenant shall not be received by Landlord or Landlord's designed within ten (10) days after written notice that said amount is past due, then Tenant shall pay to Landlord a late charge equal to ten (10%) percent of such overdue amount. The parties hereby agree that such late charges represent a fair and reasonable estimate of the cost that Landlord will incur by reason of the late payment by Tenant. Acceptance of such late charges by the Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

21-23. Attorney's Fees. In the event either party hereto retains an attorney to enforce any of the rights, duties, and obligation arising out of this Lease, the prevailing party shall be entitled to recover from the non-prevailing party all legal expenses, including but not limited to attorney's fees at the trial and appellate levels, whether or not litigation is actually instituted.

22-24. No Waiver. Failure of the Landlord 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.

23-25. Separability. 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 provision shall remain in full force and effect.

24-26. 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.

25-27. Signs. Tenant shall not place any sign upon the Premises without the prior written consent of Landlord, whose consent shall not be withheld unreasonably.

26-28. Time of Essence. Time is hereby expressly declared to be of the essence of each and every covenant, term, condition and provision of this Lease.

27-29. Governing Law. This Lease shall be governed by, construed, and enforced in accordance with the laws and decisions of the State of Idaho.

28-30. 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 Premises other than as set forth in writing in this Lease.

29-31. Hours of Operation. The tenant agrees to providing landlord with agreeable hours of operation during the term of the lease. "Agreeable hours" indicates an average of 20 (twenty) operating hours per week acknowledging time off for display change-outs and staff time off.

THIS LEASE AGREEMENT is entered into the day, month and year first above written.

LANDLORD: CITY OF KETCHUM

By _____
Neil Bradshaw, Mayor

TENANT: THE COMMUNITY LIBRARY ASSOCIATION, INC.

By _____
President