



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: Staff Member/Dept:

Agenda Item:

Recommended Motion:

Reasons for Recommendation:

- Currently a portion of the north parking lot that is reserved for YMCA building expansion requires city approval to use for temporary uses (e.g., large tents for fundraisers requiring spikes) and the city also bears maintenance responsibilities.
- The arrangement has caused unneeded conflict between city and YMCA staff of how the parking lot should be repaired following ancillary uses.
- The proposed amendments allow YMCA use and oversight of both the western boundary landscaped portion and the north parking lot (building expansion area) without city involvement or maintenance responsibilities.

Sustainability Impact:

Financial Impact:

<input type="text" value="None OR Adequate funds exist in account:"/>	<input type="text" value="These amendments reduce the city's maintenance obligation related to the north parking lot."/>
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Attachments:

- | |
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| <input type="text" value="1. Proposed Lease Amendment (including Exhibit A)"/> |
| <input type="text" value="2. Existing Lease"/> |

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:	
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(Space Above Line for Recorder's Use)

AMENDMENT TO LEASE, PARKING, MAINTENANCE AND ENCROACHMENT AGREEMENTS

This Amendment is made as of May, 2023 by and between the City of Ketchum, Idaho, a municipal corporation and/or assigns ("**City**"), and the Wood River Community Young Men's Christian Association, Inc., an Idaho non-profit corporation ("**YMCA**", and together with City, the "**Parties**").

1 Recitals. This Amendment is made in contemplation of the following facts and purposes all of which the Parties acknowledge and agree are true and accurate:

1.1 The Parties entered into a Lease Agreement, dated March 16, 2005, ("**Lease**"), under and by virtue of which the City agreed to lease to the YMCA and the YMCA agreed to lease from the City the real property located in the City of Ketchum, commonly known as a portion of the Park and Ride Lot ("**Park and Ride Lot**") described in Exhibit B of the Lease ("**Leased Property**").

1.2 The City adopted Ordinance 953 on July 18, 2005 rezoning the Park and Ride Lot from General Residential-Low Density to Tourist District pursuant to a Development Agreement for a specific development in a specific area for specific uses which include the YMCA facility, community housing and parking for all contemplated uses.

1.3 Pursuant to Section 14.2 of the Lease the Parties entered into a Parking Agreement, dated October 12, 2006 ("**Parking Agreement**") in which the City acknowledges and agrees the YMCA requires 150 parking spaces for its operation and agreed the parking could be located on the portions of the Park and Ride Lot not leased to the YMCA. The Parking Agreement also provided the YMCA would provide funds to match a 5309 Grant awarded to the City for parking related improvements.

1.4 On June 2, 2008 the Parties entered into a Parking Area Maintenance Agreement ("**Maintenance Agreement**") providing for maintenance of the Park and Ride Lot improvements.

1.5 On June 3, 2019, the Parties entered into an Encroachment Agreement ("**Encroachment Agreement**", providing for construction of a fence within the Leased Property.

1.6 In November 2019, the Parties entered into an Addendum and Amendment to Parking Agreement (“**Parking Addendum**” and together with the Lease, Parking Agreement, Maintenance Agreement, and Encroachment Agreement the “**Transaction Documents**”), which further clarified for the provision of vicinity parking in connection with City development of the fire station.

1.7 A dispute has arisen between the Parties regarding their respective rights and obligations under the Transaction Documents relating to the obligations for maintenance and repair of the north parking lot and landscaped areas.

1.8 By this Agreement, the Parties desire to amend the Transaction Documents to include the landscaped areas and Bonni’s Garden within the Leased Property, settle and compromise their differences and release any claims they have against the other and resolve the disputes between them. On the basis of the foregoing premises, and for and in consideration of the covenants and agreements set forth herein, the benefits to be derived therefrom, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend and supplement the Transaction Documents as hereinafter provided

2 Amendments. In view of the foregoing, the Parties agree to amend and supplement the Transaction Documents, as follows:

2.1 The Leased Property, as defined in the Lease, shall include the real property known as Bonni’s Garden and the area within the fence constructed by the YMCA pursuant to the Encroachment Agreement. In addition, the landscaped area within the Park and Ride Lot shall be added to the Lease as part of the Leased Property. The expanded and amended Leased Property is described and depicted in Exhibit A attached hereto and incorporated herein by this reference.

2.2 The YMCA, at its expense, shall be responsible for the maintenance, repair and snow removal from the portion of the north parking lot located within and comprising a portion of the Leased Property. The City, at its expense, shall be responsible for the maintenance, repair and snow removal from the Park and Ride Lot area not located within or comprising a part of the Leased Property, including the south parking lot.

2.3 The Encroachment Agreement is hereby terminated, as such area will now be part of the Leased Property and any Lessee improvements within such will be governed by the Lease.

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

4 Mutual Release. Except with respect to the obligations created or acknowledged by or arising out of this Amendment, each Party, for itself, himself, herself or themselves and their present, past and future parent and subsidiary corporations, divisions,

affiliates, predecessors, partners, and joint venturers, and any and all of their officers, directors, shareholders, agents, employees, insurers, successors, or assigns of such persons or entities, does hereby release and absolutely and forever discharge the other Party and his, her, its or their present, past and future parent and subsidiary corporations, divisions, affiliates, predecessors, partners, and joint venturers, and any and all of their officers, directors, shareholders, agents, employees, insurers, successors, or assigns of such persons or entities, from any and all claims, demands, damages, injuries, losses, debts, liabilities, accounts, reckonings, obligations, costs, expenses, compensation, liens, actions and causes of action of every kind and nature whatsoever, whether or not now known or unknown, suspected or unsuspected, matured or unmatured, fixed or contingent, direct or indirect, which either Party ever had, now has, or may claim to have from the beginning of time against the other Party arising out of or relating to the parking maintenance and fence-enclosed area referenced in this Agreement (“**Released Matters**”). It is the intention of the Parties that the mutual release contained herein shall be effective as a full and final accord and satisfaction and release of and from all of the Released Matters, and that each Party released hereby will have no liability to any Party granting such release by reason of anything occurring prior to the effective date of the release relating to the claims covered by this Agreement.

5 Effective Date. This Amendment is effective as of the date on which the last of the Parties executes this Amendment, and such date will be set forth in the first paragraph of this Amendment where indicated. The Parties have no rights with respect to this Amendment until they have both executed this Amendment.

6 Rule of Construction. The Parties 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 Transaction Documents, this Amendment or any exhibits, attachments and addenda to the Transaction Documents and/or this Amendment. All capitalized terms in the Transaction Documents shall have the meaning in the Transaction Documents when used in this Amendment, unless otherwise defined herein.

7 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.

[end of text – signatures appear on following page]

This Amendment is executed as of the date first above written.

City of Ketchum, Idaho, a municipal corporation

By: _____

Name:

Title:

Attest:

City Clerk

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

By: _____

Name:

Title:

State of Idaho)
) ss.
County of Blaine)

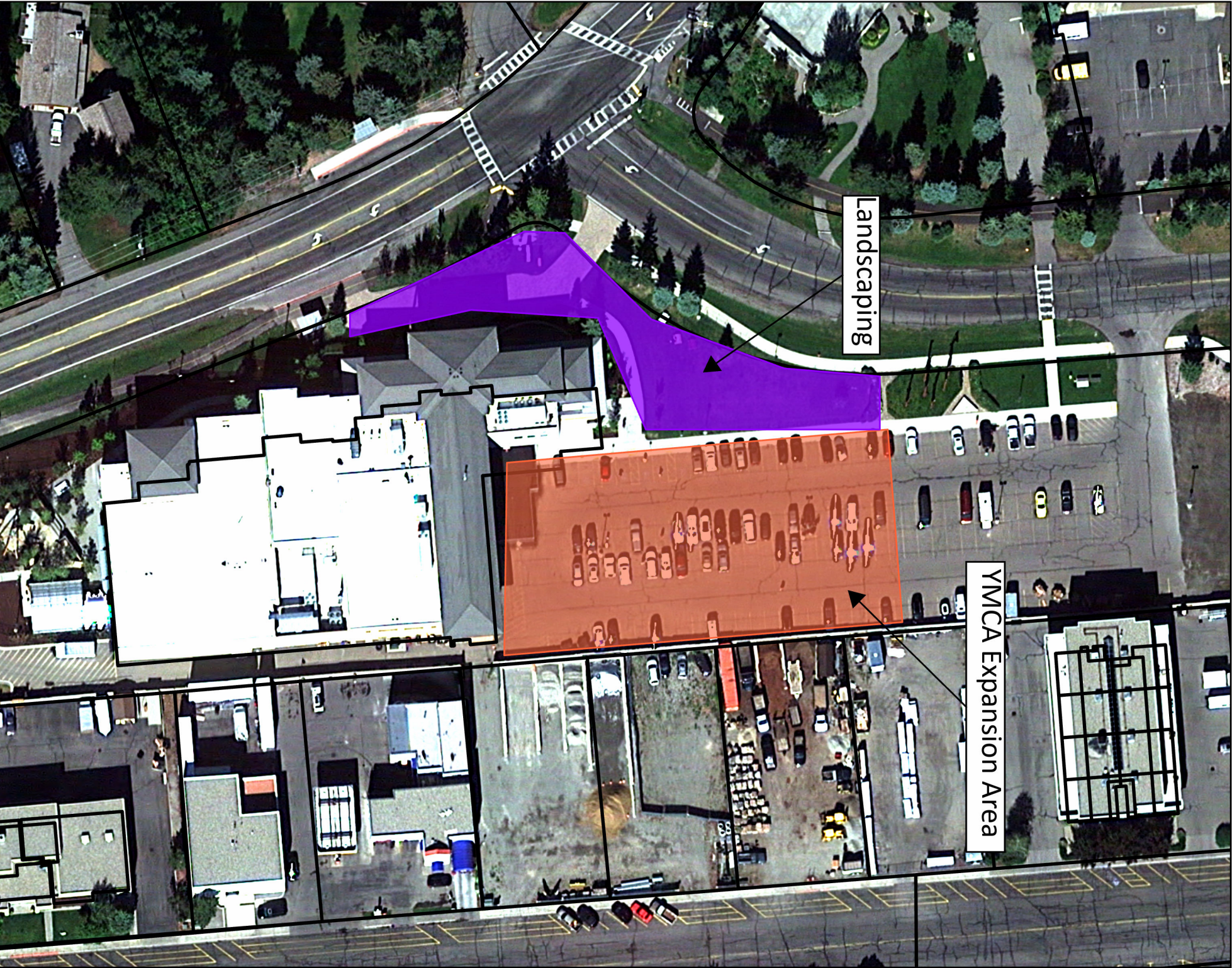
On this ____ day of _____, in the year of ____, before me, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of the CITY OF KETCHUM, the municipal corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

Notary Public for Idaho
Residing at _____
My Commission expires _____

State of Idaho)
) ss.
County of Blaine)

On this ____ day of _____, in the year of ____, before me, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of WOOD RIVER COMMUNITY YOUNG MEN'S CHRISTIAN ASSOCIATION, INC., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

Notary Public for Idaho
Residing at _____
My Commission expires _____



Landscaping

YMCA Expansion Area

Exhibit A

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

(Space Above Line for Recorder's Use)

**AMENDMENT TO LEASE, PARKING, MAINTENANCE AND ENCROACHMENT
AGREEMENTS**

This Amendment is made as of January, 2023 by and between the City of Ketchum, Idaho, a municipal corporation and/or assigns ("**City**"), and the Wood River Community Young Men's Christian Association, Inc., an Idaho non-profit corporation ("**YMCA**", and together with City, the "**Parties**").

1 Recitals. This Amendment is made in contemplation of the following facts and purposes all of which the Parties acknowledge and agree are true and accurate:

1.1 The Parties entered into a Lease Agreement, dated March 16, 2005, ("**Lease**"), under and by virtue of which the City agreed to lease to the YMCA and the YMCA agreed to lease from the City the real property located in the City of Ketchum, commonly known as a portion of the Park and Ride Lot ("**Park and Ride Lot**") described in Exhibit B of the Lease ("**Leased Property**").

1.2 The City adopted Ordinance 953 on July 18, 2005 rezoning the Park and Ride Lot from General Residential-Low Density to Tourist District pursuant to a Development Agreement for a specific development in a specific area for specific uses which include the YMCA facility, community housing and parking for all contemplated uses.

1.3 Pursuant to Section 14.2 of the Lease the Parties entered into a Parking Agreement, dated October 12, 2006 ("**Parking Agreement**") in which the City acknowledges it determined the YMCA requires 150 parking spaces for its operation and agreed the parking could be located on the portions of the Park and Ride Lot not leased to the YMCA. The Parking Agreement also provided the YMCA would provide funds to match a 5309 Grant awarded to the City for parking related improvements.

1.4 On June 2, 2008 the Parties entered into a Parking Area Maintenance Agreement ("**Maintenance Agreement**") providing for maintenance of the Park and Ride Lot improvements.

1.5 On June 3, 2019, the Parties entered into an Encroachment Agreement ("**Encroachment Agreement**", and together with the Lease, Parking Agreement and Maintenance Agreement, the "**Transaction Documents**") providing for construction of a fence within the Leased Property.

1.6 A dispute has arisen between the Parties regarding their respective rights and obligations under the Transaction Documents relating to the obligations for maintenance and repair of the north parking lot and landscaped areas.

1.7 By this Agreement, the Parties desire to amend the Transaction Documents to include the landscaped areas and Bonni's Garden within the Leased Property, settle and compromise their differences and release any claims they have against the other and resolve the disputes between them. On the basis of the foregoing premises, and for and in consideration of the covenants and agreements set forth herein, the benefits to be derived therefrom, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend and supplement the Transaction Documents as hereinafter provided

2 Amendments. In view of the foregoing, the Parties agree to amend and supplement the Transaction Documents, as follows:

2.1 The Leased Property as those terms are defined in the Lease shall include the real property known as Bonni's Garden and the area within the fence constructed by the YMCA pursuant to the Encroachment Agreement. In addition, the landscaped area within the Park and Ride Lot shall be and the same is hereby added to the Lease as part of the Leased Property. The expanded and amended Leased Property is described and depicted in Exhibit A attached hereto and incorporated herein by this reference.

2.2 The YMCA shall be responsible for the maintenance, repair and snow removal from the portion of the north parking lot located within the Leased Property. Except as provided in this Section 2.2, the City acknowledges, covenants and agrees it is and shall be solely responsible at its expense for the maintenance, repair and snow removal from the Park and Ride Lot area not part of the Leased Property, including the south parking lot.

2.3 The Encroachment Agreement is amended to eliminate the area within the fence constructed by the YMCA and to remove the requirement that upon request of the City the YMCA will remove the fence it constructed.

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

4 Mutual Release. Except with respect to the obligations created or acknowledged by or arising out of this Amendment, each Party, for itself, himself, herself or themselves and their present, past and future parent and subsidiary corporations, divisions, affiliates, predecessors, partners, and joint venturers, and any and all of their officers, directors, shareholders, agents, employees, insurers, successors, or assigns of such persons or entities, does hereby release and absolutely and forever discharge the other Party and his, her, its or their present, past and future parent and subsidiary corporations, divisions, affiliates, predecessors, partners, and joint venturers, and any and all of their officers, directors, shareholders, agents,

employees, insurers, successors, or assigns of such persons or entities, from any and all claims, demands, damages, injuries, losses, debts, liabilities, accounts, reckonings, obligations, costs, expenses, compensation, liens, actions and causes of action of every kind and nature whatsoever, whether or not now known or unknown, suspected or unsuspected, matured or unmatured, fixed or contingent, direct or indirect, which either Party ever had, now has, or may claim to have from the beginning of time against the other Party arising out of or relating to the location and number of parking spaces to be made available to the YMCA by the City (“**Released Matters**”). It is the intention of the Parties that the mutual release contained herein shall be effective as a full and final accord and satisfaction and release of and from all of the Released Matters, and that each Party released hereby will have no liability to any Party granting such release by reason of anything occurring prior to the effective date of the release relating to the claims covered by this Agreement.

5 Effective Date. This Amendment is effective as of the date on which the last of the Parties executes this Amendment, and such date will be set forth in the first paragraph of this Amendment where indicated. The Parties have no rights with respect to this Amendment until they have both executed this Amendment.

6 Rule of Construction. The Parties 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 Transaction Documents, this Amendment or any exhibits, attachments and addenda to the Transaction Documents and/or this Amendment. All capitalized terms in the Transaction Documents shall have the meaning in the Transaction Documents when used in this Amendment, unless otherwise defined herein.

7 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.

[end of text – signatures appear on following page]

This Amendment is executed as of the date first above written.

City of Ketchum, Idaho, a municipal corporation

By: _____

Name:

Title:

Attest:

City Clerk

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

By: _____

Name:

Title:

State of Idaho)
) ss.
County of Blaine)

On this ____ day of _____, in the year of _____, before me, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of the CITY OF KETCHUM, the municipal corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

Notary Public for Idaho
Residing at _____
My Commission expires _____

State of Idaho)
) ss.
County of Blaine)

On this ____ day of _____, in the year of _____, before me, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of WOOD RIVER COMMUNITY YOUNG MEN'S CHRISTIAN ASSOCIATION, INC., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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Residing at _____
My Commission expires _____